

**International Symposium on Migration
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**WHICH ESSENTIAL GUIDING PRINCIPLES WOULD CONSTITUTE
A BASIC FRAMEWORK ?**

(DISCUSSION PAPER IV)

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I. THE RELATION OF THIS PAPER TO THE OTHER MEETING DOCUMENTS

The aim of this paper is to serve as a tentative blueprint for the discussions at the Symposium, on the basis of the Concept Paper, with respect to the possible elements of an eventual future global framework for dealing, at the state-to-state level, with the movements of people; or at least to initiate a discussion on which elements to include in a first attempt to outline the parameters of a coherent approach to the issue. It differs therefore from the other three discussion papers submitted to the Symposium in that it deliberately concentrates on only those basic factors around which it may be possible to achieve preliminary consensus among experts representing a wide range of interests, while excluding such factors with regard to which a consistent harmonized approach may not seem desirable or attainable, at least not in the immediate future.

To recall, the global migration challenges for the coming decades have been outlined in Discussion Paper I. This Discussion Paper also includes a juxtaposition of the migration policy perspectives and interests of migrant sending and receiving countries, and, more important, an overview of apparent convergences of interests and benefits between sending and receiving countries. In terms of Common Interests, the paper highlights (i) the joint interest of good international relations, (ii) coordinated border management, which may allow for freedom of circulation of citizens between States, but also more security and stability through joint fight against trafficking and other forms of organized crime, (iii) the protection of the rights of migrants, but also the mutual respect for state sovereignty in dealing with migration, based on the rule of law, as well as mutual cultural enrichment and exchange, accruing from migration.

In terms of Mutual Benefits from Enhanced Co-operation, Working Paper I highlights (i) the demographic realities (surplus versus demographic needs), with regard to which migration in the mid-term may play an equalizing role, (ii) joint return policies, which may serve the interests of both the receiving and the sending state, (iii) joint long-term efforts to counteract negative development effects of migration in the overall context of negative effects of globalization, and (iv) in this connection the benefits which may follow from co-ordinated action to address conditions in countries of origin through joint action in the field of development assistance, free trade and direct investments etc.

In Working Paper II, an analysis is made of the existing international migration instruments and institutions, with the aim of identifying gaps. Notably, the paper highlights the absence of a well-co-ordinated institutional framework at the global level for dealing with international movements of people.

Working Paper III, in turn, describes the consequences of the globalization process on the international movements of people in terms of (i) globalization effects on migration, (ii) the acceleration of migration, (iii) the differentiation of migration, and (iv) the "feminization" of migration.

In contrast, this Working Paper IV aims thus, against the background of the analysis provided in previous Working Papers, to evoke the issue of the identification of elements on the basis of which a global process possibly could be initiated, with regard to the eventual establishment of a framework for the co-operation between states on the beneficial and orderly movements of people, for the sake of a harmonized approach, mutually advantageous co-operation, increased security and benefits for all concerned.

II. GENERAL CONSIDERATIONS ON HOW TO INITIATE DISCUSSIONS ON THE ISSUE OF A GLOBALLY HARMONIZED APPROACH TO BETTER MANAGE INTERNATIONAL MIGRATION

This issue has not yet been dealt with previously in a consistent and goal-oriented manner at the global inter-governmental level. The reconciliation processes after World Wars I and II included as a major component efforts to create systems for the protection of refugees, and their return or resettlement (through the League of Nations and UNHCR respectively). The peace and stabilization efforts after World War I also resulted in a system to protect foreign workers from exploitation (through ILO), which in its basic forms, like the refugee protection system created parallelly, has been sustained until today (reinforced i.a. through the 1990 UN convention on the rights of migrant workers). However, these two systems were basically created to protect persons, not to regulate flows between states.

Following the drastic changes in the world order in 1989-1991, which were the result of the collapse of communist systems, the issue of international migration emerged for the first time on the international security agenda. A basic goal was to avoid the growth of irregular trans-continental movements by way of sustained economic development in sending countries.

The insertion of the issue of population movements on the global agenda resulted among others in the adoption at the 1994 UN Cairo Population Conference of a pioneer set of global principles for the movements of people and for the co-operation between sending and receiving countries. Earlier, OECD and ILO had been active in this area. However, moves in the direction of a major UN conference on international migration, emanating from the Cairo Conference, have stalled as a result of differing views on the objectives of such a possible global event, taking into account the various interests of sending, receiving and other states.

To date, the UN processing of the matter of a global migration regime has focused on the one hand on reports on the standstill in terms of bringing the process initiated in Cairo further on, and on the other hand it has benefitted from the work of specialized agencies in developing various sub-aspects of the issue. Thus, to mention just two examples, the General Agreement on Trade in Services encompasses the issue of liberalized labour movements, and the 2000 report of the UN Population Division on "replacement migration", which evokes the demographic deficits over the coming decades in the developed countries, has in a radical way provoked thinking on long-term migration policies world-wide. A consolidated UN or otherwise global approach to the issue of a possible system for the orderly movements of people is nevertheless still lacking.

Nevertheless, in the last ten years there has been a marked interest among states at the regional level to enter into a multilateral dialogue with a view to better regulating the movements of people by way of collaborative action. In Europe, this has been a major aim for the EU, and there have also been complementary processes to involve other industrialized states in a dialogue about this (EU Trans-Atlantic Dialogue, IGC etc.). Central and Eastern European states are associated to this EU harmonization process (through negotiations as EU Candidates and also through the Budapest process). A special UN-initiated process on population displacement has concentrated on the CIS countries. A couple of similar processes have been initiated in Asia, and there are also such regional processes in the wider North American region (notably the Puebla-process). Steps to create similar processes have also been taken among the Mediterranean states, in South and West Africa etc. Although these regional processes differ in character they also have much in common. They constitute, in a way, a laboratory for the establishment of an eventual global model, and they would benefit from inter-change between each other in the interest of the gradual formation of a global framework.

Moreover, various researchers have during the last years increasingly devoted attention to the need for new global systems for the movements of people. Most of these scholarly analyses set out from macro-economic theories on the long-term benefits of a more (or fully) free movement of labour worldwide, for the economic development of sending and receiving countries alike. This thinking (much resembling the basic ideas of the 1950's which gave rise to the OEEC/OECD and the EC/EU free circulation of labour) has been summarized in acronyms such as "NIROMP" (New International Order for the Movements of People) and "GAMP" (General Agreement on the Movements of People). While embracing basic political and economic concepts which have met with general understanding at the international level, less attention has been paid by the scholars on the possible practical implementation of these innovative concepts with regard to the de-regulation of migratory flows. Suffice it to mention, by way of illustration, the complicated discussions on the extent to which the NAFTA-agreement should involve clauses relating to labour movements, or the present EU discussion on transition periods before free labour movements could be in place with regard to the Candidate States.

It thus seems that any multilateral approach to the issue has to take as a basic starting point the general wishes of all states to ensure the orderliness and benefits of international migration, in contrast to disorderliness and disadvantages, while at the same time safeguarding the already internationally established rights of migrants. Only through a piecemeal approach, building upon the joint wishes of all countries to achieve order in otherwise disorderly migratory movements, as disorderly movements would violate basic interests of all states, could possibly a process towards a coherent global framework be successfully initiated.

III. THE PRESENT NORMATIVE SYSTEM

In sum, the present globally oriented normative system mainly consists of hard/soft law rules relating to rights of individual migrants (but not to relations between states), having been elaborated over the last 50 years:

- freedom of movement within own state;
- freedom to leave and return to own state;
- freedom to seek asylum in other states and not to be refouled to persecution or torture;
- non-discriminative treatment, particularly on the labour market;
- certain rights relating to family reunion.

However, as from the 1980's, with the heated asylum debate in the North, and at the UN Population Conference in Cairo (1994), the sovereign right of Governments to decide on whom to let in and who not is increasingly highlighted in the relevant documents:

- states have full freedom to control entry and to expel individual aliens, while taking into account refugee law (Cairo);
- this was also the fundamental basis for the gist of the EU acquis emerging from 1986, and paradoxically a prerequisite allowing for the gradual liberalization of movements, which now takes place on the basis of Amsterdam and Tampere.

Nevertheless, states have already earlier in various contexts been set under some international obligations to adhere to certain constraining rules with regard to the management of migratory flows:

- collective expulsion of aliens was prohibited already by the European Convention on Human Rights, and this principle has been reiterated in various regional contexts during the last decades;
- tentative soft law on readmission obligations and also on non-punitive attitude vs. rejectees/ returnees was considered in Cairo in 1994.

However, from the mid-1990's, the problems in returning unsuccessful migrants has increasingly been finding their expression in a number of arrangements aimed at facilitating the readmission of nationals and third country nationals:

- hundreds of bilateral readmission agreements have been concluded, and readmission principles have been inserted in the EU mixed agreements;
- readmission obligations with regard to persons smuggled and trafficked were included in the Palermo Protocols of 2000; however globally binding readmission obligations of a general character are still not in place.

And in the context of the Palermo trafficking context as well as in EU (from 1996), new obligations have been conferred on states to give trafficked victims:

- humanitarian treatment and at least temporary residence during court proceedings against traffickers.

Finally, through the General Agreement on Trade in Services, states have been set under certain obligations to in very special cases:

- accept some temporary entry of foreign labour provided that this strictly forms part of services and does not constitute immigration.

This short catalogue of adopted main principles with regard to the state-to-state management of migration seems astonishingly enough to be fairly exhaustive. There is indeed as per today no coherent system. There are gaps and lacunae. And it seems that the basic deficit is the lack of an explicit expression of the general aims of international co-operation on the issue.

To this comes the lack of a UN or otherwise global set-up or institutional framework responsible for cultivating a holistic and well-balanced approach to the issue, and for the drafting and possible negotiating of state-to-state arrangements to cope with the new global developments in this area, like there is for labour in general (ILO), trade issues (WTO),

customs control issues (WCO) and so forth. There is not even a "focal point" or a "co-operative consortium of focal points at the global level".

To conclude, in contrasting the basic philosophical ideas of the Concept Paper elaborated for the Berne Symposium with the reality, it emerges that indeed the elements which form the present sketchy global system do not at all correspond to actual trends in multilateral co-operation on the issue at the regional level. In particular, what is lacking is a general expression of needs, trends, purposes, and state-to-state commitments to ensure that movements are and will remain orderly and beneficial, in the interest of all states, while at the same time guaranteeing that the rights of migrant workers as defined from 1919 onwards continuously are safeguarded.

IV. THE IDENTIFICATION OF BASIC PREMISES

In initiating a process aimed at discussing the possible elaboration of a set of common principles for state-to-state co-operation on the movements of people, as suggested in the Concept Paper drafted for the convening of the Berne Symposium, it is pertinent to identify the basic premises on which such a possible process may rest. Working Paper I has highlighted a number of areas which encompass the common interests of receiving, sending and transit states, such as:

- interest in good international relations;
- stability and security around joint borders;
- protection of human rights and the rights of migrants.

There is also in that Working Paper an enumeration of co-operation areas where intensified co-operation may enhance mutual benefits:

- equalization of labour market supply and demand;
- demographic realities and needs;
- combating negative effects of globalization;
- economic co-operation, investments and trade for the sake of mutual prosperity.

The quest for reinforced bilateral and multilateral co-operation with a view to entering into collaborative arrangements among states with regard to migration is bound to take on growing dimensions in the coming decades. Only through international co-operation, and ultimately the global adaptation of migration policies, will states be able to effectively manage growing international flows of persons.

Ideally, a possible framework for the international movements of people should encompass all elements of relevance, such as:

- inter-state co-operation to ensure the orderliness and the benefits of flows on the basis of mutual goals and understanding;
- general standards for the admission of various categories of immigrants (labour, experts, family reunion, non-employed etc.);
- the control of flows through border guard and police co-operation and efforts to combat trafficking and smuggling in migrants;
- the better utilization of regulated migration for an expansion of economic co-operation, incl. the productive use of remittances;
- efforts to prevent irregular flows from occurring through collaborative short- and medium term preventive action and economic development in areas suffering from out-migration;

- long-term international security, human rights, trade and development co-operation, to achieve economic and demographic balance to offset migration pressures;
- the successful return and reintegration of migrants for the development of societies of origin;
- the integration of migrants into receiving countries and their access to citizenship;
- the enhancement of the positive effects of migration to reinforce international understanding, cultural exchange and co-development.

However, at the present stage, such an ambitious endeavour to establish an overall global framework may meet with a critical response in many circles in various categories of countries.

Therefore, it is suggested that, at the Berne Symposium, participants concentrate as a first stage on outlining the basic parameters of a possible global co-operation framework for orderly migration.

Clearly some basic principles have to be formulated as a starting point for any such discussion:

- the need for coherence, predictability, transparency, manageability, trust;
- shared view among all states that irregular movements are negative to all;
- confidence of governments and individuals in a functioning orderly system vs. disorderliness;
- agreement that measures could be considered against states which digress from the common framework;
- firm expressions of common interests between producers and receivers of massive irregular migration, that this issue should be handled jointly;
- expression of a long-term interest in both North and South that a system for long-term predictions of migratory flows is needed (a tentative planning module);
- generally and mutually binding readmission obligations both as regards citizens and third country residents;
- principles expressing favoured treatment as regards economic co-operation if clauses on "orderliness and readmission" are honoured;
- on the above basis, the eventual drafting of a standard bilateral protocol between pairs of sending and receiving countries, replacing the 1960-1970 generation of bilateral labour agreements.

V. A POSSIBLE MAXIME FOR THE FURTHER WORK

After having identified general common interests such as those included in the list above (and others not mentioned), consensus could maybe be reached, as a starting point, on a general maxime for State-to-State management of orderly migration at the global level. It may tentatively read as follows.

The right of the individual to leave and return to his/her own country is fundamental. And the rights of individual migrants and for refugees are safeguarded in international instruments which should be fully respected and implemented. States are at the same time interested in regulating migration. Orderly migration should be strived at through a global system established in co-operation between sending and receiving States, whereby all categories of States agree on the conditions under which citizens of sending States should be able to apply and be granted entry into receiving States. If agreed conditions are met, orderly movement could take place. If conditions are not met, and the agreed system for orderly

movements is circumvented by way of irregular entry, the persons concerned may be returned and should be readmitted, provided that they are not found to be in need of international protection. Such a system would presuppose that the receiving country has established a set of explicitly stated policy priorities in terms of which categories of persons ideally should be granted entry into the country, against the background of certain overall immigration policy objectives. It also presupposes that the sending country has firm views on i.a. how to retain, in the country itself, expertise and labour needed for the economic and social development of the nation, as well as on the role of return movements in this regard. Once such basic principles have been agreed upon and tested in reality, openings towards liberalization could be discussed, for the sake of free circulation, mutual exchange, reinforced trust and co-operation.

If functioning and applied efficiently, such an ideal system would imply that regular and advantageous movements could prevail over irregular movements. This should be the primary aim, on the basis of which further discussions on the framework of a possible global system may be undertaken.

Obviously, there are a number of issues to examine when it comes to the possible initiation of discussions on such a possible framework. Should it be of a binding character, should there be an international institutional set-up to monitor the implementation of the framework etc.? Questions which may be discussed in this regard are summarized below.

TOPICAL QUESTIONS FOR DISCUSSION

- 1. Is there a need for a global framework of guiding principles for inter-state co-operation on international migration, in addition to the body of standards pertaining to existing individual rights and obligations of migrants?**
- 2. If so, which basic elements and guiding principles should such a global framework ideally encompass?**
- 3. Can such a framework include elements of a binding character?**
- 4. What follow-up and negotiation process could be established, and which institutional arrangement would best be suited to assume responsibility for the follow-up process? Which role would the private sector and non-governmental organizations play in this context?**
- 5. If a global framework of guiding principles could eventually be approved, which international organization(s)/institutional arrangement should monitor and supervise the implementation of such a global framework?**