

Interstate Cooperation and Migration

Berne Initiative Studies



The Berne Initiative



IOM International Organization for Migration

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The Federal Office for Migration was established on 1 January 2005, as a result of a merger between the Federal Office for Refugees (FOR) and the Federal Office for Immigration, Integration and Emigration (IMES). It regulates all matters arising under the laws concerning foreign nationals and asylum seekers in Switzerland: entry and residence, labour, protection against persecution, integration, naturalization, emigration, and returning from abroad.

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TABLE OF CONTENTS

Foreword	5
Interstate Cooperation: Europe and Central Asia	7
Interstate Cooperation: Asia	35
Interstate Cooperation: The Americas	65
Interstate Cooperation: Africa	87
Managing Migration: Interstate Cooperation at the Global Level Is the emergence of a new paradigm of partnership around the corner?	109

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FOREWORD

Earlier versions of the papers prepared for this volume were first presented at the Second Conference of the Berne Initiative, “Managing International Migration Through Cooperation”, Berne, 16-17 December 2004. IOM gratefully acknowledges the generous financial support of the Swiss Foundation for Population, Migration and Environment that enabled these papers to be prepared for the Berne Initiative process.

The Swiss Federal Office for Refugees launched the Berne Initiative in 2001 in an effort to promote better migration management at national, regional and global levels through enhanced cooperation between states. During 2004, the Berne Initiative convened four regional consultations, which took place in Africa, Europe and Central Asia, Asia and the Americas.

The Berne Initiative is a states-owned consultation mechanism, responding to the need to institute interstate dialogue and cooperation on migration management at the global level. Its most important outcome has been the development of the International Agenda for Migration Management (IAMM). The IAMM, a non-binding reference system and policy framework on migration management at the international level, was developed by states through a series of consultations involving interested states, as the principal actors in the field of migration management, with the advice and support of relevant stakeholders.

This report highlights in particular the growing significance of regional consultative processes which have become an increasingly important component of migration management. A decade ago few processes existed. Today more than 200 countries participate in one or more of the regional processes. Regional Consultative Processes (RCPs) are non-binding consultative fora, which bring together representatives of states, civil society, and international organizations at the regional level to discuss migration issues in a cooperative manner.

RCPs are focused exclusively on migration concerns and differ from other regional groups, such as regional economic organizations, which cover many other issues. This volume also includes analysis of other forms of interstate cooperation including intergovernmental institutions, such as the African Union and Organization of American States, which have been active in the migration field and which have contributed much to understanding of the phenomenon at the regional level.

Four of the five papers in this volume examine current forms of interstate cooperation in the migration field at the regional level and the fifth paper discusses trends in interstate cooperation at the global level. Taking as their point of departure the rapid growth in informal non-binding regional consultative processes on migration, the papers analyse their modes of operation, review their outcomes and provide an assessment of their effectiveness in facilitating interstate cooperation at the regional and global level. The papers also suggest ways in which interstate cooperation at the regional and global levels might be enhanced in the future.

The report shows that current forms of interstate cooperation are complex and varied, ranging from dialogue and sharing of information on experiences and practices to cooperation in policy development and operational implementation. There are bilateral, regional and multilateral forms of cooperation; legally binding and non-binding; direct policy cooperation, and cooperation with regard to related policy areas, such as trade, development and other areas.

One of the key questions raised in this volume is to what extent will regional consultative processes become a building block towards greater interstate cooperation at the global level? Bimal Ghosh in his paper asks, for example, whether informal and non-binding principles for cooperation emanating from RCPs could serve as the foundation for a Global Framework of Guiding Principles for Migration Management, preserving the same informal and non-binding character at the global level.

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**INTERSTATE COOPERATION:
EUROPE AND CENTRAL ASIA**

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The views expressed in this paper are those of the author and do not engage either the Organization or the national authorities concerned.

INTERSTATE COOPERATION: EUROPE AND CENTRAL ASIA

INTRODUCTION

Immigration is by definition transnational.¹ Events since the 1980s and, above all, since the fall of the Berlin Wall, have accelerated this process. Inspired in the broadest sense by a recognition that the challenges posed by immigration cannot be met, and might indeed be exacerbated by unilateral action, the receiving states of Europe and North America have entered into a series of formal and informal arrangements in the area of migration and asylum. The former have included the Schengen Agreement on the creation of a common external border for Europe, and the Dublin convention on the processing of asylum claims at the first point of entry into the EU. Both have inspired a large scholarly literature. There is much less awareness, particularly outside the intergovernmental policy community, of informal arrangements. Although they have expanded since 1989, relatively little is known about their impact and, in particular, about whether they have a causal effect on the conceptualization of immigration by policymakers, and on the policies they enact.² Within the framework of the Swiss-sponsored Berne initiative, this paper reviews these processes in Europe, draws conclusions on their impact and suggests ways in which current best practices might be expanded in order to reinforce and further their impact. The paper proceeds in five steps. The first briefly introduces and defines the key concepts and terms. The second summarizes the formation, history and current aims of these associations. The third offers an interest-based account of their emergence and the expansion of their remit. The fourth considers the influence that Regional Consultative Processes (RCPs) have exercised (though a rigid quantification is impossible). Finally, the fifth reflects on the policy implications. In the last, I argue that RCPs work best when they are able to depoliticize and “mediatize” issues; when access to them is limited; when they identify a clear incentive structure on the part of all participants, and “linkage” and/or “conditionality” are achieved – when receiving countries are able to offer something in exchange for sending country cooperation.

1. REGIONS AND REGIONAL CONSULTATIVE PROCESSES

A region can be anything “less than global” (Hurrell, 1997: 38). Klekowski von Koppenfels suggests that this definition is too broad, and offers another as a substitute: regions are bound together by common concerns, understandings, ties or interests (IOM, 2001b: 21). These commonalities include the regional members sharing them and exclude those without them (IOM 2001b: 21; Hurrell, 1997: 39).

RCPs emerge from these commonalities. They offer four characteristics: first, they are informal; second, they are non-binding; third, they imply no up-front financial commitment and fourth, their members meet more often than once. A process is by definition iterated. In practice, they are also facilitated not by the states themselves, but by an international organization (the

International Organization for Migration (IOM), the International Centre for Migration Policy Development (ICMPD), the United Nations High Commissioner for Refugees (UNHCR) or the Organization for Security and Co-operation in Europe (OSCE)), which also serves as the RCPs' secretariat (IOM, 2001b: 23).

2. REGIONAL CONSULTATIVE PROCESSES: EUROPE

During the 1990s, regional interstate cooperation expanded in Europe. In its informal manifestation, it was organized around five large ongoing regional consultative processes: the Budapest Process, the Commonwealth of Independent States (CIS) Conference Process, the 5 + 5 Mediterranean Process, the European Union, and the Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC). Their histories, membership and aims are covered in earlier IOM publications, but it is worth devoting a few words to them.³

2.1 The Budapest Process

The Budapest Process originated from the 1991 Berlin Process. The German minister of the interior at the time, Wolfgang Schäuble, called a meeting to respond to the migratory pressures unleashed by the end of the Cold War and, above all, to the threat posed by large-scale migration from Central and Eastern Europe (CEE) and the Commonwealth of Independent States (CIS). Beginning with a membership of 27,⁴ the Berlin Process evolved into the Budapest Process, and membership increased to 44.⁵ Over ten years, its remit and aims have expanded and altered in response to the changed political and economic context. These can be conveniently grouped around the main recommendations made at the key meetings:

Berlin 1991: Recommendations on measures for checking illegal migration from and through Central Europe

Budapest 1993:

- Criminalize the trafficking of migrants.
- Introduce sanctions on the employment of illegal migrants.
- Increase the exchange of information on irregular movements among states.
- Improve border controls, particularly in the area of training.
- Establish specialized national police units.
- Expand readmission agreements among sending, transit, and receiving countries.

Prague 1997:

- Harmonization of legislation to combat the trafficking of aliens, including prison sentences of two to three years.
- Adoption by remaining states of UN protocols on trafficking.
- Tougher sanctions for illegal employment.

- Use information programmes in relevant countries of origin and transit with a view to preventing illegal migration.
- Adopt common standards for the issuing of passports.
- Introduce carrier fines.
- Adapt visa and transit visa regimes, procedures for issuing visas as well as border control practices to relevant policies and regulations adopted by the EU.
- Restrict the issuing of visas to competent authorities, and ensure that they expire 30 days before the expiration of the travel document.
- Receiving countries to consider return as the most appropriate solution.
- Adopt policies and procedures to facilitate return, including readmission agreements.
- Introduce data protection laws and ensure that data collection regimes are compatible and based on common definitions.
- Establish a comprehensive European system for the monitoring and analysis of illegal migration.
- Provide technical and financial assistance to CEE states.
- Link trafficking in aliens and other forms of organized crime.

Rhodes 2003:

- Achieve a substantial reduction in illegal migration through fully implementing 1993/1997 recommendations, harmonizing respective penalties, ratifying UN Protocols on smuggling, increasing cooperation among participating states and establishing contacts between origin, transit and destination countries.
- Undertake a cooperative effort within the Budapest Process to confront the main challenges created by illegal migration, including the demarcation of borders among CIS states, common visa policies, strengthening the Working Group on South-Eastern Europe and initiation of a dialogue on the harmonization of various entry categories.
- Establish fair and decent asylum procedures and harmonize them as much as possible.
- Facilitate the development and the gradual application of safe third country, and first country of asylum principles.
- Establish cooperation among countries of destination, transit and origin with a view to promoting return.
- Steps to be taken by participating states to facilitate determination of migrants' identities.
- Improve implementation of existing readmission agreements.
- Reinforce measures regarding visa screening, identity fraud, information exchange and training to combat terrorism.
- Continue to monitor the implementation of the Budapest Process.

2.2 The CIS Conference Process

The Russian Federation initiated the CIS Conference Process in 1993 by sponsoring a UN General Assembly Resolution calling for a world conference on migration and the establishment of migration mechanisms to cope with movements within, from and through the former Soviet Union. There was reticence regarding what was perceived by some as an effort to secure funds and/or to perpetuate Russian influence in the region, and a year later the Russian Foreign Minister addressed a request to UNHCR and IOM, concerning the organization of a conference on

ethnic Russians migrating to the Russian Federation (Helton, 2005). The CIS Migration Conference was held in May 1996 in Geneva under the auspices of UNHCR, IOM and the OSCE. Representatives of 87 governments, 27 international organizations and 77 non-governmental organizations (NGOs) attended the meeting. The conference adopted a non-binding programme of action. The action plan addressed institutional and operational frameworks, prevention, cooperation and follow-up.

The conference had two immediate consequences. First, that it occurred at all was evidence that migration issues were being taken seriously by participating states. Second, the conference made strides in defining concepts and creating a common language. It produced distinct migrant categories, including externally and internally displaced persons, repatriates, involuntarily repatriating persons, formerly deported persons and “ecological migrants” (the last was something of an innovation at the time) (Helton, 2005).

2.3 The Mediterranean 5 +5 Dialogue on Migration

France initiated the 5 + 5 Dialogue in 1990, bringing together France, Italy, Portugal, Spain, Malta, Algeria, Libya, Mauritania, Morocco and Tunisia. The first meeting took place in Rome. It was based on the premise that migration between the two regions called for a multilateral approach. The dialogue is designed to create regular and informal meetings between the two regions to discuss political, economic and cultural aspects of migration (Dialogue, 2002). The meeting resulted in the Tunis Declaration, which committed participants to a number of key objectives (Tunis Declaration, 2002):

- Establish regional processes in the western Mediterranean region for consultation, information exchange and the analysis of migration trends.
- Address illegal migration through the exchange of information and technical expertise, the combat of criminal gangs engaged in illegal migration and the trafficking of human beings, the promotion of readmission agreements and by encouraging adherence to the UN protocols on trafficking.
- Link migration with development by supporting development efforts in southern countries, the pursuit of possible means of action in depressed areas, improving potential migrants’ living conditions in their home countries and promoting the transfer of new technologies.
- Pursue the integration of migrants based on respect for their basic rights, allowing family reunification, promoting free movement between source and destination countries, ensuring their social and economic rights on a par with nationals and raising awareness of the rights and obligations of migrants.
- Pursue a more streamlined and flexible approach to visa policy, in cooperation with western Mediterranean countries.
- Manage labour migration to address skills shortages in third countries, including implementing training opportunities in areas with a high emigration potential.
- Initiate programmes aimed at improving the health of migrant workers.

The Tunis meeting was followed by ministerial conferences in Rabat in October 2003, and Algiers in September 2004.

2.4 The European Union and interstate cooperation

At one level, the European Union (EU) is the opposite of an RCP; its meetings are formal, its agreements are binding and backed up by relatively powerful enforcement mechanisms. The EU has nonetheless associated itself with some established RCPs, particularly the Budapest Process, and has itself acted as a regional consultative process. It has done so through the use of the “open coordination method”, which involves informal policy coordination taking place mainly between national governments and administrations with a role for the EU (Best, 2003: 2-3). Open coordination has several components:

- It fixes guidelines with specific timetables.
- It establishes appropriate qualitative and quantitative indicators and benchmarks as a means of comparing best practices.
- It allows member states to translate these European guidelines into policies by setting specific targets.
- It establishes a structure for the monitoring, evaluation and peer review with the aim of creating a learning process (Radaelli, 2003: 15).

As in the other RCPs, the process is informal and the conclusions, agreements and policy recommendations are non-binding.

Open coordination was first used in economic and monetary union and has been invoked since when formal harmonization is politically unacceptable, unnecessary, or otherwise undesirable (Best, 2003: 7). Much open coordination has occurred in economic policy, and spillover areas such as education, training and social policy. But there has also been movement in immigration and asylum policy. Emerging from the 1999 Tampere conclusions on a comprehensive immigration policy, the Commission issued a communication to the European Parliament “on an open method of coordination for the Community immigration policy” (Commission, 2001a). The core of the communication were six multi-annual guidelines approved by the Council (Commission, 2001a: 7) First, member states are to ensure the development of a comprehensive and coordinated approach to migration management at the national level by considering how increased economic migration would affect asylum flows, and by giving their full support to the plan of action on the collection of migration statistics.⁶ Second, they are to promote the exchange and publication of information on avenues for legal entry, consular services, and the risks of trafficking. Third, they are to strike a balance between allowing avenues for primary migration, and introducing appropriate sanctions for illegal migration. Fourth, they are to establish coherent and transparent policies and procedures for opening the labour market to third-country nationals. Fifth, they are to integrate migration issues into relations with third countries by supporting measures to maximize the positive impact of migration as a factor of development, encouraging mobility between EU member states and third countries, and assisting third countries to combat illegal immigration. Furthermore they are called upon to develop immigration legislation and structures, and to assist with the reintegration of returned victims of smuggling and trafficking. Finally, they are to ensure the development of integration policies for third-country nationals legally resident in member state territories. The communication calls for a series of national action plans for the implementation of the guidelines, and gives the Commission the role of monitoring the progress.

3. TRENDS IN THE LEVEL OF INTERSTATE COOPERATION DURING THE LAST DECADE

Regional consultative processes are largely a post-Cold War development with expansionist trends in four senses. First, there are now four large RCPs in Europe where there had been none before. Second, the processes have expanded their membership, remit and, in many cases, ambition. Third, the European Union has supplemented its formal, binding decision-making procedures with informal, non-binding ones. Finally, the large RCPs have directly spawned or otherwise encouraged smaller RCPs. The Cluster Process brings together three southern Caucasus countries (Armenia, Azerbaijan, Georgia) and interested western European countries (Denmark, the Netherlands, Belgium, Sweden, Switzerland and Germany). The Cluster Process examines voluntary return, illegal migration, information exchange and technical assistance. The Söderköping Process, or Cross-Border Co-operation Process, includes Poland, Latvia, Lithuania, Hungary, Slovakia, Romania, Estonia and their western CIS neighbours – Ukraine, Moldova, and Belarus. It began in early 2001, jointly launched by UNHCR and the Swedish Migration Board (SMB) and named “The Söderköping Process” after the town in Sweden where the first meeting took place. It addresses cross-border cooperation issues arising with the EU enlargement eastwards and promotes dialogue on asylum and irregular migration issues among the countries situated along the new eastern border of Europe. It is a forum for providing training and sharing expertise and knowledge. It aims mostly at training through seminars and has built a small secretariat. The EU has sponsored Border Management in Central Asia (BOMCA), providing tens of millions of euros in funding of border management in Central Asia. In contrast with some of the other processes, BOMCA is very much driven by donor states and is hierarchical in terms of its organization and operations.⁷ Finally, some member states themselves have pursued multilateral measures. Portugal, Angola, Cape Verde and Sao Tome and Principe entered into a multilateral agreement on the Establishment of specific desks in border entry gates for the reception of Portuguese-speaking African nationals, cited by the Portuguese government as an example of best practice (Pedroso, 2004: 1-2).

Why have RCPs expanded? The answer will depend in part on assumptions about state motivation. If we assume the state to be altruistically inclined, then international cooperation of any form is unsurprising so long as someone other than the state itself benefits. This, however, is a doubtful assumption unsupported by empirical evidence. Although states may use the language of altruism when presenting their actions, and some state actions may truly have an altruistic component, it is politically more realistic and methodologically more demanding to assume that states act primarily out of self-interest. The question then becomes, what interests do European states have in regional consultative processes?

The answer to this comes in two parts. The first asks why states seek multilateral solutions of any sort, whether binding or non-binding. Here the answer is clear: states look to international solutions when to act unilaterally is either ineffective or undesirable. In the area of immigration, reduced transaction and transportation costs (Caviedes, 2004: 291), growing disparities in global wealth, and old and new patterns of conflict and instability have all increased incentives to migrate to Europe and North America. At the same time, unilateral immigration controls are ineffective and/or inefficient. They are ineffective for three reasons. First, in many cases to effectively police borders would require an intolerable investment of funds and man-hours. This is true of the US border with Mexico, the early 1990s German borders with Poland, the Czech

Republic, and the current borders of the Russian Federation. Second, in the case of asylum, border controls are not effective: once asylum seekers reach the territory of a signatory state to the 1951 UN Convention relating to the status of refugees and its 1967 Protocol, that state is obliged under international law to process their asylum claim. Third, traffickers and smugglers enable migrants to evade border control and, once inside the borders of a liberal democratic state, it is relatively easy (particularly so in the US and the UK, relatively less so in continental Europe) to remain undetected.

As Matthew Gibney and I have argued elsewhere, the complex of legal and social rights acquired by migrants once they enter, legally or illegally, the liberal democratic state makes it necessary, from the point of view of border control, to ensure that illegal migrants are stopped before they enter (Gibney and Hansen, 2003). The recognition of the inefficacy inspired the conclusion by EU member states of readmission agreements with the CEE sending and transit countries, the Schengen Agreement (motivated in part by the fact that less severe immigration controls in southern Europe undermined more restrictive ones in northern Europe), and extensive cooperation in border policing between EU member states, particularly Austria and Germany, and CEE countries. Unilateral border controls are inefficient because they lead to the duplication of tasks that could be divided, and because they cannot prevent repeated entry efforts. Regarding the latter, EU member states initiated the Dublin process to discourage failed asylum seekers from seeking entry to the EU by filing applications in another member state.

In seeking multilateral solutions to migration, the major receiving states have drawn lessons from past policy experiences. From the end of the post-war boom until the early/mid-1980s, liberal democratic states – with the partial exception of the classic immigration countries in North America and Australasia – pursued a unilateralist restrictionist approach. This was particularly true in Europe. European states sought to restrict immigration to an unavoidable core of family reunification, and they did so through national legislation in isolation from their partners and from the institutions of the then European Community.⁸ The policy failed: migrants kept coming, through family reunification, through the asylum system (the last available legal channel of migration to Europe), and through clandestine networks. Asylum applications in West Germany topped 100,000 as early as 1980 (Angenendt, 2004), and there were repeated large-scale arrivals of asylum seekers throughout the decade: from Sri Lanka, Afghanistan, Iran, Iraq and Central America (Zolberg, Suhrke, Aguayo, 1989, chapter 9). Other, reactive unilateral policies such as Italy's mass regularization programme of 1986 also failed to reduce Italy's attractiveness to migrants. All the while, illegal migrants slipped into France and Italy from North Africa, into Germany from Turkey, and, after 1989, into Austria, France and Germany from Central and Eastern Europe.

The second question asks why they join informal and non-binding regional associations. Here it is important to distinguish between historical and structural variables. Historically, the fall of the Berlin Wall triggered a political response. When the Cold War ended suddenly and unexpectedly, European policymakers feared a mass of potential migrants from the east. The national press everywhere wrote of the imminent arrival of hordes, and conferences were organized around themes such as “will Europe be overrun by immigration?” In the case of the CIS Conference Process, these fears were emphasized to generate Western interest in the region with the hope of securing donor sponsorship. Structurally, RCPs have several key advantages over formal, binding processes. One of the mostly commonly cited fact is that the informal and non-binding

nature of RCPs encourages more states to join them. There are several reasons for this. First, both entry and exit costs are low relative to formal, binding agreements. States commit themselves to no financial costs by joining an association, and there is little or no censure for leaving. By contrast, entering into formal, binding agreements – by joining the European Union, or ratifying UN conventions, implies both high entry and exit costs. Second, joining RCPs requires no formal legislation, and thus spares states the time, effort, and expense of drafting legislation and guiding it through parliament (Héritier, 2002: 3). Third, states are less likely to encounter opposition as private actors are less likely to mobilize resistance (Héritier, 2002: 11), and the press is less likely to scrutinize the decision-making process. Fourth, RCPs offer the chance for political learning, the exchange of ideas, and perhaps even a degree of policy convergence, but they *do not* imply formal harmonization. Resistance to harmonization has several origins, including principled objection to the perceived loss of sovereignty and apprehensions regarding the domestic consequences of such a formal process (this is particularly strong in the UK, where every negotiation is portrayed by sections of the local media as a battle between Britain and (the rest of) Europe). But there is also the belief among countries generally sympathetic to European policy integration that contrasting institutional legacies, traditions and legal cultures make harmonization in certain areas impossible (Radaelli, 2003: 42). For Kay Hailbronner (2002) immigration falls within these areas.

The final advantage concerns membership: in joining a RCP, destination countries join an association that includes both destination and source countries. By contrast, the most advanced binding international regimes governing interstate migration – the European Union, and bilateral agreements between the US and Canada (on, for instance, “NAFTA visas”) and Australia and New Zealand – are among wealthy destination countries. Between these countries, migration produces at most local difficulties. The majority of the RCPs that have emerged since 1989 bring together rich and poor countries, sending and receiving countries; these are the countries that have the most to gain from each other, and to lose. Receiving countries seek limits on migration, efforts to combat trafficking, and the easy readmission of irregular migrants to their home countries; sending countries want financial aid, some degree of access for migration, liberally implemented visa regimes, and guarantees that their nationals will be well treated. RCPs provide a unique forum for pursuing these interests.

In short, the RCPs have several distinct advantages over formal associations such as the European Union or binding agreements such as Schengen (on a common travel area and common visa policy) or Dublin (on the transfer of refugees). There may be a further factor explaining their expansion: success. As we know from the public policy literature, policy evolution is reactive, both positively and negatively: success encourages policy continuity, and failure policy change or reversal.

4. EFFECTS AND ACHIEVEMENTS

Given their expansion, it stands to reason to ask what RCPs have achieved. There are naturally several standards for success, but two will be considered here: process and policy. The first question is, how RCPs have affected the policymaking process. Have they made it more open or more closed, more or less inclusive? The second concerns how they have affected policy development.

4.1 Process

RCPs have distinct advantages in the policy process, and these alone justify their continuation. First, they provide a structure for routine meetings among actors whose interactions would otherwise be limited, and in many cases single events with little or no follow-up. They bring together officials from sending and receiving countries on equal terms. As such, it creates an institutional structure that partially overcomes the adversarial and hierarchical relations implicit in more formal north-south dialogues, whether bilateral or multilateral. Receiving countries are not issuing demands to resentful sending countries; rather, they are entering into a dialogue with each other, with no commitments made in advance and no fear of subsequent binding pledges. This has important material and psychological consequences. Materially, it provides the sending countries with a stake in, and with “ownership” over, the decision-making process. Psychologically, it reduces or removes the visceral suspicion and hostility with which certain sending countries view receiving countries’ demands, particularly when the north-south relation is viewed through the lens of colonial history.

RCPs can also bring together different actors holding different institutional positions: politicians, civil servants, NGOs and academics. The CIS Conference Process, in particular, integrated NGOs into its deliberations. Rather than shouting from the sidelines, NGOs were able to play a role that was both critical *and* constructive.⁹ At the same time, the process also encouraged the creation of local NGOs in CIS countries, allowing them to work with each other and with NGOs abroad.

Second, and this point closely follows the first, the process contributes through its informality to confidence building. When policymakers are going “on record”, and their statements will be reported back to their seniors, to third-country officials, and to the press, they are instinctively and inevitably guarded. They retreat into generalities, and the established official position. The result can only be limited progress, if not deadlock. If they are free to speak informally without fear of censure or reprisals, they are much more likely to depart from the official position and to step out of the national mind frame, and to suggest new departures from established policy. It will not occur easily nor immediately; meetings must not only be informal but iterated. As the political science literature on cooperation has demonstrated, trust is built up only during repeated encounters (Axelrod, 2004). As officials meet more often and get to know each other, as they gain certainty from past meetings that their informal, unofficial utterances will not come to haunt them, trust and mutual confidence are built. These can serve as the foundations for a meaningful dialogue, for policy learning, and for policy transfer. Indeed, it is a prerequisite for this to happen (Ghosh, 2000: 235).

4.2 Public Policy

In the area of public policy, it is more complicated to draw firm conclusions about the effect of RCPs on policy outcomes. The inputs to the policy process are multiple, they cumulate, and there are feedback effects. It is almost impossible to state definitely which individual set determined the policy outcomes. What is possible is to compare the pre- and post-RCP policy landscape, to identify the extent of policy change, and to draw tentative conclusions, drawing in particular on conversations with some of the actors involved, about the degree of RCP influence.

The task of measuring influence is partially complicated by the fact that the policy process has several stages: agenda-setting, definition of concepts and of terms, policy articulation, definition of mechanisms, passage of legislation, and implementation. In this section, brief attention is given to agenda setting and issue definition, the definition of concepts and terms, and finally the passage of legislation.

4.2.1 Setting agendas and defining issues

In some cases, the creation of RCPs reflected the fact that migration was on the political agenda; in others, it helped shape the agenda. There are at least two specific examples of RCPs contributing to agenda setting. First, relatively few members of the CIS process viewed migration (particularly illegal migration) and asylum/protection as major political issues in the early 1990s; today, they all do (Klekowski von Koppenfels, 2001: 11). The CIS process made particularly important strides in bringing immigration onto the CIS agenda. Second, in 1991, trafficking was not at the top of the domestic or international political agendas, and there was confusion between trafficking and smuggling.¹⁰ This partly reflected that fact that smuggling had positive historical associations with organizations that helped refugees flee Nazi Germany or Communism. In the decade that followed, policymakers in all participating states have come to recognize the distinction between the two, the links between trafficking and criminal organizations, and the human suffering trafficking creates.¹¹

Once issues are on the agenda, policymakers need a common language, a common set of concepts, terms, and definitions to approach them. This conceptual process is a prerequisite to any policy movement. Regional consultative processes provide the forum for the emergence of such a common language.¹² This discursive process is basic, but it is also not without policy effect. As one strain of public policy literature has emphasized, the way in which an issue is defined encourages certain policy responses, while discouraging others (Baumgartner, 1989). In the Lisbon process, the fact that the “master discourse” of competitiveness was instituted means that, when there is tension between pursuing European competitiveness and pursuing Europe’s social model, competitiveness wins (Radaelli, 2003: 29). It does so because Lisbon has been primarily framed in terms of European competitiveness, above all vis-à-vis the United States, and only secondarily in terms of social provision and the creation of a “social Europe”. In short, language, terms and the manner in which issues are framed and defined matter, and RCPs contribute directly to them.

4.2.2 Policy implementation

The RCPs cover a broad range of policies, and it is useful to group them together under several themes: visa policy, readmission agreements and return, trafficking, border management, and development.

4.2.3 Visa policy

The RCPs encouraged a series of visa policy reforms. The Budapest Process in particular recommended that participating states “adapt progressively their visa and transit visa regimes, their procedures for issuing visas, as well as their border control practices to the relevant policies and regulations by the European Union” (Prague recommendation No.19). In the area of visa

harmonization, there has been a high degree of policy change. Whereas in 1997 several participating states – the Czech Republic, Hungary, Romania, Poland and Bulgaria – maintained a visa-free regime for more than ten countries on the EU negative list, by May 2002 no state did so. Latvia, Slovenia, the Czech Republic and Estonia were in perfect compliance with the list; Hungary, Lithuania and Bulgaria maintained a visa-free regime for two such states, as did Slovenia; Slovakia for three; Poland for four, and Romania for six (ICMPD Secretariat, 2003: 29-30). Similarly, recommendations on limiting the issuing of visas to the relevant competent authorities (rather than, for instance, honorary consuls), and on visa expiration to occur at least 30 days before the expiration of the validity of the passport have been adopted by all but a few participants. As of 2003 much less progress has been made in negotiations with non- or third-wave candidate countries: Albania, Bosnia and Herzegovina, the Federal Republic of Yugoslavia/Serbia and Montenegro.

4.2.4 Readmission agreements

Participating states, particularly but not only the accession countries, adopted a broad range of admission agreements. Indeed, it is fair to say that they proliferated throughout the 1990s. Between 1990 and 2000, the number of readmission agreements increased from only a handful to over 300 (ICMPD Secretariat, 2003: 35). They link all western European states with all CEE countries, and some of the migrant-sending countries of the south. Among the EU states, there are variations: France has the most extensive set of readmission agreements, and Germany, Switzerland, the Netherlands and Belgium have similarly broad agreements. The UK, Ireland, Finland, Luxembourg, Spain, Portugal and Norway have negotiated fewer, although these concentrate on major source countries and/or contiguous countries. Among non-EU countries, Romania has negotiated 31 readmission agreements with 33 states (one agreement covers the Benelux countries), and it has ratified agreements with Turkey, Lithuania, and Albania (the latter being a Protocol) (Romanian contribution, 2004: 3). Since 1999, the EU has itself been able to negotiate such agreements, and in 2000 the Council authorized the Commission to negotiate readmission agreements with Russia, Morocco, Pakistan and Sri Lanka. In 2001, an agreement was negotiated between the EC and the Special Administrative Region of Hong Kong.

When the major source countries outside Europe, or further east in Europe, are considered, a less consistent pattern emerges. Morocco has readmission agreements, signed or in preparation, with France, the Netherlands and Belgium; Tunisia has an agreement with Austria and France; India has an agreement with Germany; Nigeria has agreements with Ireland and the Netherlands; Sri Lanka has one with the Netherlands, and Ghana has one with Switzerland. A similar patchy pattern can be found regarding Angola, Bangladesh, Ethiopia, Côte d'Ivoire, Libya, Mali and Senegal. At the same time, the Secretariat of the Budapest Process uncovered patterns of non-cooperation among a constant set of countries, including those that had signed readmission agreements: Algeria, China, Ethiopia, India, Iran, Pakistan, Viet Nam, and the Federal Republic of Yugoslavia/Serbia and Montenegro (ICMPD Secretariat, 2003: 33).

The picture here is not entirely bleak: states, such as Germany, Finland, Sweden and Switzerland have negotiated programmes for voluntary return with some of the key countries of origin outside Europe: Somalia, Sri Lanka, Ethiopia (ICMPD Secretariat, 2003: 34). The absence or the inconsistent implementation of readmission agreements is nonetheless cause for concern. They

have been least successfully negotiated with sending countries of the south and the east. Nonetheless, as the EU's external border over the medium term shifts outward to these countries' borders, it will be states further east and south with which European nations will need readmission agreements. And it is precisely in the case of these states that readmission agreements are non-existent or ineffectively enforced.

4.2.5 Trafficking

The post-1990 recognition of trafficking as both distinct from smuggling, and as a serious crime has led to a series of international and national developments. At the international level, all states participating in the Budapest Process have signed the UN Convention against Transnational Organized Crime and the Palermo Protocols on Trafficking in Human Beings, and Smuggling of Migrants. The ratification process has been slower: as of July 2003, there were only 14 ratifications.

At the national level, efforts have centred on the criminalization of trafficking, including the introduction of harmonized minimum penalties and provisions punishing the state's own nationals for aiding the illegal entry of migrants into its territory. The criminalization of trafficking is now common practice: almost all states participating in the Budapest Process have made trafficking a criminal offence, as also the aiding and abetting of trafficking in aliens (for instance, by harbouring aliens trafficked by a third party).

As of 2003, half the Budapest participants had implemented the recommendation addressed to states to punish the abetting of the trafficking aliens by their own nationals, with only Sweden and France not having yet done so.¹³ Penalties for trafficking vary considerably from eight days to 15 years (ICMPD Secretariat, 2003: 15). However, there are developments within the EU and second-wave accession states to agree on minimum penalties, though maximum ones will continue to vary.¹⁴ Finally, there has also been progress regarding non-accession countries in south-east Europe and Central Asia, where cooperation has proved difficult. Since 2000, 11 countries in the region had signed and six had ratified the UN Convention Against Transnational Organized Crime; 10 had signed and six (most recently Russia and Ukraine) ratified its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (IOM, 2004a: 5). Ukraine, Moldova and Belarus, which in 2000 had not recognized trafficking and smuggling as problems, have made both part of public debate (IOM, 2004a: 5). The Central Asian Conference on Combating Trafficking in Human Beings was held in Minsk in December 2003, and in May 2004 the Second Annual International Law Enforcement Conference took place in Kiev. Several countries, most recently Azerbaijan in May 2004, have drawn up official action plans with IOM and OSCE/ODIHR assistance (IOM, 2004b: 2).

European countries have also negotiated a series of multilateral initiatives to combat human trafficking (Casados, 2004: 5):

- *The Neptune Operation* was developed in October 2004 to target boats ferrying illegal migrants in the zone between Italy, Malta, Libya and Tunisia.
- *The Magellan 1 Operation* is designed to improve checks of merchant ships and their crews passing through EU ports by improving the coordination and exchange of information on ship movements among EU ports, and on the detection of fraudulent crew contracts and

forced seafarer documentation. The WSBC (Wesbanco Inc), the Commission and Council of the EU, Europol and Spain are organizing the operation, which will be implemented by Spain, France, Slovenia, Portugal, Italy, Greece and the Netherlands.

- *The Baltic Salmon 2005 Operation* coordinates the observation of fishing boats, leisure boats and merchant ships. It is being led by Latvia, and implemented by Latvia, Denmark, Estonia, Finland, Germany, Lithuania, Poland and Norway. Sweden, Russia, Spain and the UK are acting as observers.

Although it is difficult to track post-legislative implementation records with precision (and here trafficking is no different than any other policy area), there is little doubt that there has been substantial, perhaps massive legal and policy developments regarding the trafficking of persons. Problems nonetheless remain, and this report will revert to these in the last section.

4.2.6 Border management and capacity building

The reform of border management was most successful in the pre-2004 accession countries, where passports, border training, equipment, security and the computerized exchange of data between countries have improved immensely since the early 1990s. All intend to implement the Schengen Agreement within a few years, marking full harmonization with EU border management policy.

Beyond these notable developments in accession countries, considerable challenges remain. In part, this is owing to the nature of border management itself. Border management is a prime case of policy being made by, what Michael Lipsky (1983) refers to as, “street level bureaucrats”. Policy is made above, by civil servants and politicians, but it is implemented below, by border guards, immigration officers and the police. The quality of the work performed by these “street-level bureaucrats” invariably reflects directly on the policy itself; if there is corruption, incompetence, faulty technology, or inadequate coordination, then the most clearly defined border management policy will be ineffective. This makes it a particularly difficult area about which to generalize.

At the same time, effective border management is extremely expensive, and the longer the border, the more expensive it becomes. To cite one example, the border between Russia and Kazakhstan spans some 6,000 kilometres. To patrol this immense distance effectively would require a massive investment in human and technical resources, that no donor state(s) would be likely to assume and that neither country can afford. Moreover, the sands are always shifting: traffickers and smugglers are constantly looking for ways to evade border controls by identifying other poorly defended border crossings, by foiling passport verification equipment, and bribing local officials.

Despite these limitations, there has been progress. In the case of the CIS Conference Process, the RCP had to cope with the fact that a number of countries were transformed overnight from having to deal with internal controls to assuming responsibility for external border controls; policymakers had little or no experience regarding visas, border policy, or, indeed, the content, implication and application of the UN refugee convention to their particular situation. By raising the general public awareness of these and other issues in the countries concerned, the CIS Process has achieved much.

At the same time, RCPs provided international organizations with a framework within which to pursue various projects. IOM ran a series of pilot projects in south-eastern Europe and Central Asia and thereby introduced the countries to existing best practices concerning the identification of false documents, visa processing, detecting weaknesses in border control mechanisms and policy, legislation, and more. These projects raised the knowledge of those directly participating, supported the training of officials and border guards (in groups of approximately two dozen each), and facilitated the dissemination of such information (IOM, 2002). Under a project funded by the United States, IOM is also working together with Kyrgyzstan to introduce an entirely new passport issuance system. Finally, the EU has granted EUR 22,000,000 to improve border management in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan. BOMCA (Border Management Programme for Central Asia) address five areas: the legal and organizational framework for border management; human resources and training; regional police and border-guard dog training capacity; border management at airports, and model border management in four pilot regions. According to IOM, the capacity building in migration management has achieved variable progress across the region. Most countries had taken advantage of the training opportunities organized by IOM, and some, e.g. Ukraine and Georgia, had made substantial progress concerning legislative reform (IOM, 2002: 19-28). Others, such as Azerbaijan, Turkmenistan and Kazakhstan achieved only limited progress (IOM, 2002: 19-28). Such progress as had been made depends on appropriate implementation at all levels concerned, including, in particular, by border officials themselves.

4.2.7 Technical assistance

Until the late 1990s, multilateral assistance was largely limited to the work of organizations such as UNHCR, IOM, ILO and the Council of Europe, which carried out programmes and seminars on migration legislation, international legal norms, border policing and other relevant areas. EU assistance programmes to Central and Eastern Europe included Third Pillar issues only to a limited degree. There were also a number of inconsistencies in the application of bilateral arrangements on the training of police and immigration officials, border management and false documents (ICMPD, 2003: 44). Overall, the pattern was one of limited and variable assistance.

In the last seven years, the volume of multilateral assistance has increased considerably, particularly from the European Union (ICMPD, 2003: 44). This includes a series of programmes:

- *The Phare Programme* provides support for the ten 2004-accession countries in the form of capital grants, guarantee schemes and credit lines, as well as direct investment in infrastructure. From 1995 to 1999, EUR 415 million were allocated; the figure for 1997-2001 was EUR 525 million, with a concentration in the post-1999 period. Whereas Phare funds accounted for 3 per cent of the total in 1997, this increased to 10 per cent by 2000, with EUR 200 million being targeted to Justice and Home Affairs (JHA) issues, including EUR 125 million allocated to raising migration control measures in the accession countries to Schengen standards. The most important achievement was in the area of visa harmonization (ICMPD, 2003: 45).
- *The Screening Process* introduced accession countries to the EU *acquis*, with particular attention to illegal immigration and border management in Bulgarian, Latvian, Lithuanian, Romanian and Slovak screening projects.

- *Twinning projects* were initiated in 1998 to transfer expertise in the adoption, implementation, and enforcement of important aspects of Community legislation to the candidate countries. They operated through the secondment of a “Pre-Accession Adviser” to ministries in the candidate countries. From 1998 to 2001, there were 371 twinning projects, of which 73 were carried out within the framework of JHA (Commission, 2001b). Immigration control projects were carried out in Bulgaria (strengthening of border police), the Czech Republic (preparation of Schengen implementation), Estonia (border control and customs), Hungary (border management), Latvia (development of integrated border management strategy), Lithuania (migration and asylum management system and consular procedures management system), Romania (border management and control, asylum and migration), Slovakia (border management and EU Schengen *acquis*) and Slovenia (legislative harmonization in the field of migration).
- *The Stability Pact* for south-eastern Europe was created on 10 October 1999, and brings together EU member states, Norway, Switzerland, the EU candidate countries, the non-European G8 members (Canada, Japan, Russia and the US) and the countries of south-eastern Europe: Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia/Serbia and Montenegro, FYR of Macedonia and Moldova. It aims to provide a forum for regional strategies, to align political strategies, and to coordinate existing and new initiatives in the region. In April 2001, the Migration and Asylum Initiative (MAI, now the Migration, Asylum and Return of Refugees Initiative, MARRI) aims to improve capacity building as well as the legislative environment.
- *The Cards Programme* creates a single framework for assistance to the countries of the West Balkans (Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia/Serbia and Montenegro) and the FYR of Macedonia. Cards aims to assist these countries to participate in the Stabilization and Association Process (SAP), and to bring them closer to the EU. In JHA, the priority area in the SAP, the programme aims to strengthen national institutions, to develop regional cooperation among the police and the judiciary, and to raise administrative and institutional standards and capacities to the EU level.
- *Tacis* integrated technical assistance to 13 eastern European countries into their broader relationship with the EU: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Mongolia, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. *Tacis* also covers migration-related issues, including border control and illegal migration, allocating EUR 3.5 million out of its EUR 31 million budget thereto.

The EU also initiated a series of programmes specifically under the umbrella of JHA:

- *Odysseus* is a programme aimed at fostering training, exchange and cooperation in the areas of asylum, immigration and transnational border crossings. EUR 12 million were allocated over three years, and projects included seminars on readmission and visa policies, migration management in Bosnia and Herzegovina, and a project on future external borders of the EU (ICMPD, 2003: 47).
- *Argo* picks up where *Odysseus* left off, allocating EUR 25 million for the period 2002-2006 to fund administrative cooperation and support to raise the effectiveness in the fields of external border, visas, asylum and immigration management.
- *Stop* was created in 1996 to fund information and personal exchange programmes for officials responsible for combating trafficking in human beings and the sexual exploitation of women and children. Funding was approximately EUR 6 million per year.

5. POLICY IMPLICATIONS

RCPs cover a large, complex and overlapping range of policy areas, making it difficult to draw firm conclusions. Nonetheless, this overview highlights a number of strengths and weaknesses, and suggests ways to further enhance and strengthen the role of RCPs. The first point has already been made: RCPs lead to higher participation rates, encourage the creation of a common terminological and conceptual environment, and bring North and South, East and West, sending and receiving countries together on equal terms. As a *process*, these non-binding, informal forums represent considerable progress and they should be continued.

This leads us to the implications for policymaking: how can RCPs be improved to lead to better policy? Here it is worth repeating the point about unpredictability: it is extremely hard to state in advance which RCP will generate most policy activity. This depends on things as unquantifiable as the right chemistry between participating members. As stated, RCPs also interact with a wide range of international and domestic variables, some structural, others contingent. There can be little doubt, however, that they have an important impact; one Home Office official went so far as to suggest that informal arrangements allow member states to achieve more (for instance, in the juxtaposition of border control guards between Britain, France and Belgium) than putatively binding EU directives.¹⁵ The question thus becomes the following: recognizing that RCPs have merit, how can we maximize their influence under conditions of pervasive unpredictability?

It is useful to begin by assigning a rough “report card” to the RCPs. At the risk of vastly oversimplifying, the Budapest Process and the EU have been more successful than the CIS, which in turn has been more successful than the 5 + 5 process. Considering all RCPs by area and geography, they have been most successful in the area of visa harmonization, readmission agreements, trafficking in human beings and this, in terms of policy implementation, in the 200-Accession countries. They have been less successful in the third-wave accession countries (though Bulgaria is an exception), in south-eastern Europe and in the southern sending countries. This does not mean that they have failed; there are examples in almost every country of post-RCP shifts in problem-definition, concepts, patterns of cooperation, or policy determination and implementation. Nonetheless, these broad patterns obtain.

To draw lessons from them, it is necessary to consider *why* some worked, and to consider how RCPs might be adjusted to extend their success beyond the accession countries. Again, this is particularly important as the May 2004 incorporation of ten CEE countries into the EU means that migration challenges, and the focus of RCP work, inevitably shift south and eastwards.

5.1 Depoliticization and demediatization

RCPs work when they live up to their fundamental aims, i.e. when they are informal, non-binding, and confidence building. In a sense, each process has to reinvent the wheel: as one official involved with the CIS process testified, it is invariably extremely difficult at the outset to encourage actors to depart from prepared statements and generalities.¹⁶ This rhetorical conservatism is understandable. Public actors, particularly politicians, have to choose their words carefully, sometimes to the point where it is remarkable that they venture to say anything at all.

They know that what they say will be scrutinized, twisted, and attacked. The inevitable result is that, though ministers might be relatively frank with each other over coffee during breaks, once in an official capacity they retreat into established policy (as dictated by Berlin, London, Algiers or Tirana), and their official communiqués will be at best general and well-intentioned, and at worse banal. The greater the degree of press and public scrutiny of official deliberations, the more this tendency to policy conservatism will be reinforced. This accounts in part for the lower achievement in the framework of the 5 + 5 process. During the Tunis meeting, policy experts were locked out of the meeting room while ministers hammered out the Tunis Declaration, which is little more than a series of good intentions with few realizable policy implications.

This conservatism can only be overcome and confidence built, when the process is depoliticized and “demediatized”. It has to be removed from the partisan political debate, from nationalistic posturing, and from sensationalistic media coverage. In many instances, the ideal candidates for depoliticized RCPs will be senior, influential and discreet political actors, who neither attract nor seek public attention. They may be senior civil servants, supported by experts from the NGO/international organization and academic communities, rather than politicians. High ranking civil servants, with (usually) tenure in a position of relative security from press scrutiny, will be more likely to develop the relaxed, mutually confident atmosphere necessary for a meaningful discussion and policy change. One member of the Budapest Process testified to the almost transformative effect of routinized, informal and largely secretive meetings among senior civil servants. This need not always be so. There are instances in which venue shifting will achieve depoliticization and demeditiatization, even though politicians remain the key actors. For instance, taking the CIS Process from the spotlight of New York to Geneva removed it from the open and highly mediatized floor of the General Assembly. But a meeting of civil servants will be relatively ineffective unless they have the necessary influence over elected officials. The important point is that the actors should have influence, and should strive to remove politics, and the press, from the regional consultative process, particularly during the early stages.

Although it might seem paradoxical, political benefits flow from a depoliticized and demediatized process.¹⁷ Once an RCP has issued guidelines, or action plans, these have legitimacy because they flow from a state-driven process. They provide international organizations and NGOs a legitimating structure through which to approach donor governments and pursue bottom-up projects.

5.2 Access

The point about membership leads directly to one about access. Although some observers have decried the democratic legitimacy of RCPs on the grounds that they are less transparent and solicit less public involvement than formal multilateral cooperation (Radaeilli, 2003), this is in fact their strength. As Virginie Guiraudon has demonstrated, migration, citizenship and asylum policies are most likely to be transformed, and that in a liberalizing direction, in closed policy communities with relatively little public access (Guiraudon, 2000). These policy areas are too complex and, more important, too vulnerable to media hysteria and political demagoguery, to be deliberated by focus groups. The proper time for democratic input comes when concrete policy proposals are submitted to the legislature. Before then, in matters of access, less is more.

This observation has implications not only for restricting access, but also for the comportment of those present. Members of the NGO and academic communities, who have themselves rarely made actual policy, should resist the temptation to lecture civil servants, or to suggest, however well intentioned, that the answers to the challenges of migration are clear and obvious. Answers will emerge from the discussion, not precede it. Finally, it is essential that all actors respect the Chatham House rule. If any member of the discussion report or, worse, attribute policy proposals to the press, then the essential basis of confidence is destroyed. When this occurs, policy ideas that might still be at a crude and preliminary stage, but have great potential, are killed for reasons of political necessity.

All things being equal, the objectives of depoliticization, demediatization and restricted access are most easily achieved when the groups remain small, have a regular attendance, and are backed up by an effective secretariat. The CIS conference was negatively affected by the first two problems: it was too large and unwieldy, and there was too much turnover among the national ministries. As the CIS conference process draws to an end, governments should think about new RCPs that reflect post-millennium migration concerns and post-millennium regional alliances. It no longer makes sense to think of the CIS as concentric circles extending out from Russia: the Central Asian countries look to each other and to non-CIS neighbours as much as Russia, and the western CIS looks to Europe. Trafficking, illegal migration, return, document forgery and readmission implicate not just Europe, but China, Sri Lanka, Africa and so on. Five-plus-five represents an important step in this direction, but it is hampered by the absence of a secretariat supporting the Budapest and CIS conference processes.

5.3 Linkages, trade-offs, and incentive structures: the conditionality requirement

The fourth implication has the most direct and measurable effect on policy outcomes. RCPs were most successful when all actors had a clear incentive to act. At the outset, the advantage lay with the sending countries. Receiving countries' migration policies, visa and border management policies depended on sending countries' taking action to limit illegal migration and trafficking, raising standards in their passport and visa policy, and stamping out corruption and laxity in their border control policies. There was, in short, little that was obviously in it for the receiving countries. Over the following decade, RCPs worked where common interests were identified, and where the receiving countries were able to offer something in exchange for sending country action. The incentive to act is greatest where that which might be called the *conditionality requirement* is met: in situations where what a sending country seeks is conditional on a change in some aspect of its migration policies. A looser but nonetheless useful method involves *linkage*: the receiving countries use the carrot of technical, policy, or financial transfers to encourage sending country action. Linkage and conditionality are thus related concepts, of which conditionality is the more exacting standard.

The importance of linkage and conditionality is clear from the success rate of the various RCPs. Policy – visa policy, border management, and the combating of illegal migration – was most thoroughly and consistently changed in the case of the pre-2004 Accession countries. These countries had a clear incentive to act: membership of the European Union was conditional upon policy change. In the absence of this requirement, it is doubtful that Poland, Hungary and the

Czech Republic could have been convinced to introduce visas for their neighbours in the east; they did so only reluctantly, and they made their reluctance known. As the summary report of a Euro-Atlantic Partnership Council (EAPC)/Seegroup workshop on integrated border management put it,

There is no doubt that a beacon of hope is instrumental. That beacon is a rapprochement and (...) integration into the *European Union*. When all the definitional differences on organized crime (and) all the technical and operation projects (...) are said and done, this is what keeps South Europe moving forward (italics in original) (Hess, 2004: 7).

It is no coincidence that the Budapest Process achieved its greatest success from the mid-1990s onwards, after the EU associated itself with the process. Until then, it was, in the words of one participant, an “unguided missile”.¹⁸

Outside Europe, the United States has used the 2000 US Trafficking Protections Act to create a strong conditionality requirement. Under it, the US can impose non-humanitarian sanctions on a government when it is placed into Tier 3 of the annual TIP (Trafficking in Persons) Report. The three Tiers are: those fully complying with minimum standards (Tier 1), those not complying but making significant efforts to do so (Tier 2) and those not meeting standards and not making significant efforts (Tier 3). This linkage has worked because it is broadly applied and enjoys cross-bureau support. For instance, it led Bosnia to alter its policies and, more generally, puts strong pressure on countries when they are given a Tier 3 ranking.¹⁹ By contrast, Germany’s attempts in the 1990s to link readmission of returned migrants to foreign aid failed because the Ministry of Economic Cooperation and Development (*Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung*) came out publicly against it. Even such broad linkages do not always work: the US has had little effect on policy in Uzbekistan and Tajikistan because the US needed their support in its policy towards Afghanistan. Finally, even where such strong conditionality requirements work, they might not be wise. They essentially involve using a threat to secure action. Threats may lead to resentment and a reluctance or refusal to cooperate in the future, particularly when the receiving country needs a sending country’s help more than the other way round. It is preferable to ensure that linkages occur when all parties perceive themselves as having ownership over the process. Here again, RCPs have clear and distinct advantages: ownership is built into the consultative process itself.

To be sure, incentives are not only material, they may also be reputational. In the case of trafficking, there was less of a quid pro quo between sending and receiving countries. Instead, most countries had an interest, for reasons of national pride if no other, in preventing their citizens and, above all their women and children, from being trafficked and sold into sexual slavery. Likewise, even in the complete absence of material incentives a country may be shamed if it is made publicly known that, for instance, its border management is plagued by corruption or its migration policies are wholly inadequate. The Budapest and Puebla Processes’ reviews of implementation records in the participating countries are one useful way of invoking reputational mechanisms (though these often depend on self-reporting). Reputational incentives are at best a soft mechanism: they are variable and difficult to manipulate. Uzbekistan showed itself to be indifferent to them, and Turkmenistan still refuses to recognize that trafficking is a serious problem.

That the success of RCPs in the 1990s depended in large measure on linkages and conditionality is both reassuring and worrying. It is reassuring because it identifies a clear mechanism through

which policy change can be affected; it is worrying because the clearest incentive – EU membership – cannot be offered indefinitely. Future RCPs will have to involve countries that have only a long-term hope of EU membership or none at all: south-eastern Europe, Russia and Central Asia, and the southern sending countries. In these cases, it will be up to members of the sending country to identify areas of common interest and exploit linkages and conditionality. It is likely that these will be more focused and less ambitious in scope than those achieved under the Budapest Process (near-complete visa harmonization and exponential growth in readmission agreements, for instance). A visa-free regime will not be extended by the EU to Russia or the Maghreb region. Rather, progress will have to be piecemeal. Recent experience suggests that limited linkages can be very successful. The UK ran a successful pilot project scheme in Lebanon in which Lebanon agreed to block illegal migrants transiting through the country if the UK provided funds for identifying and reintegrating people in the detention camps. Similarly, western European countries have had considerable difficulty identifying and returning people from the south Caucasian countries. Following discussions within the framework of the Cluster Process on return issues, including the identification and documentation of irregular migration, the Netherlands provided the southern Caucasian countries with computer equipment and training in its use (the Edison system, which facilitates the checking of travel documents to detect forgeries or other falsifications), financed information campaigns on trafficking and smuggling. Belgium, Switzerland and the Netherlands are working with Armenia to provide support for the reintegration of returned migrants (for instance, small grants for business start-ups) in return for readmission. The Czech Republic has also initiated a programme with Georgia. These programmes have the added benefit of ensuring that returned migrants have something to return to, and prevent them from attempting immediate re-entry into western Europe.²⁰

Linkages and conditionality are not simply a tool in the hands of the receiving countries. Sending countries can identify receiving country interest as a means to put their own interests forward. Although there will always be fairly tight limits on the degree to which policy can be liberalized, sending countries can link more open visa arrangements and labour migration. And, since 9/11, there is a new and overriding receiving country interest: security. Since 2001, the United States has shown a renewed commitment to improving border controls, particularly in Central Asia.

5.4 Making the inter-European extra-European

To be truly effective, European cooperation must extend beyond Europe. European policymakers have long recognized this, but the enlargement of the European Union and the strong pull exerted by European countries for the South makes it imperative to extend RCPs beyond Europe. Some positive consequences have flown from the 5 + 5 Rabat meeting (Casado, 2004: 3). Following it, the Spanish and Moroccan labour ministries met to examine legal Moroccan workers in Spain. On the control side, mixed Spanish/Moroccan police teams cooperate to combat illegal migration, and Spain has offered to train and provide technical assistance to the Moroccan border control officials. In exchange, Morocco will expand its efforts to intercept and return illegal migrants. Morocco is negotiating with Spain the return of unaccompanied Moroccan minors (of which there are 1,566 in Spain), and Moroccan officials and NGOs have been invited to visit the reception centres where they are held. In exchange for these efforts and for Morocco's promise of better implementation of the readmission agreement between the two countries, Spain

has agreed to recognize Moroccan driving licences in Spain and to create a plan and allocate a budget for immigrant integration in the Kingdom. Finally, following a practice successfully employed by Germany to secure the return of migrants from the former Yugoslavia by granting temporary protection in the early 1990s, Spain initiated the Previe Plan on voluntary return in April 2003. It provides voluntary return migrants with a free airticket, 50 euro travel allowance on departure, and another 450 euro per adult and 200 euro per child to a family maximum of EUR 1,400 (Casado, 2004: 4). Future work within RCPs should look towards consolidating and expanding RCPs between European countries and southern (and south-eastern and central Asian) sending countries. Following the experience of inter-European RCPs, these meetings should also strive for depoliticization and demediatization, limited access and linkage and conditionality.

5.5 Development

The at times cryptic concept of “co-development” is sometimes mentioned, particularly, but not only, in EU contexts, as a basis for extra-European cooperation. The debate about migration and development is both old and new. In the former, there has long been a debate about, and woolly commitment to, reducing emigration pressures in the sending countries by addressing the “root causes” of migration: political instability, poverty, and insufficient professional opportunities for educated migrants. The goal in the most ambitious versions would be to raise sending countries’ standard of living to a level that eliminates the incentive to emigrate. Ireland was a sending country in 1984; following ten years of staggeringly rapid economic growth, it is a receiving country in 2004. It is, however, unlikely that the Irish and, earlier, Spanish and Italian outcomes, will be repeated, at least not in any predictable manner.²¹ Western countries’ aid budgets are inadequate and unlikely to increase sharply. In some source countries, major institutional reforms and an attack on corruption are a prerequisite to using aid effectively. In addition, economic development may exacerbate rather than reduce emigration pressures in the short term: dislocations resulting from development encourage the “losers” to migrate, while others increase their resources sufficiently enough to consider migration (Zolberg, Suhrke, Aguayo, 1989: chapter 10). If the migrants are unskilled, this outcome is the opposite of receiving country intent; if they are skilled, the emigration may limit the aid-driven economic development.

None of this means that “co-development” cannot be a useful focus of RCP work. Development aid provides not (merely) the remote prospect of wealth equalization; rather, it opens a space for linkages and conditionality. Sending countries, particularly but not only those in Africa, have an interest in limiting brain drain, and measures to tackle the drain could be linked with African policies on illegal migration and human trafficking. To do so, efforts should be micro rather than macro focused and on systems-transforming: they should specify particular regions and cities, and focus on the factors that push migrants out. Bilateral cooperation is currently in place between Senegal and Italy, and the Netherlands and Cape Verde and Eritrea (Ghana Contribution, 2004). These measures aim to assist the transfer of knowledge and business acumen acquired by African citizens resident in the sending countries towards their countries of origin; to develop business capabilities in the countries and cities of origin, and to foster economic cooperation there. The integration of these efforts into RCPs would enable useful information exchange possible, avoid duplication and ensure that existing programmes are not working at cross-purposes.

6. CONCLUSION

In summary, there has been a clear upward trend in the number, remit and ambition of RCPs since 1989. Their growth is a reflection of (a) the general inability of the state to cope with migration-related pressures unilaterally and, (b) the particular attractiveness of RCPs over formal, binding agreements. The latter can be divided into negative and positive incentives, when “negative” is not to be understood in either pejorative or coercive terms. Negatively, RCPs have lower exit and entry costs; they imply no up-front financial commitment; they avoid the costs of legislation, and they pose fewer risks of mobilized resistance. Positively, they bring sending and receiving countries together on equal terms, and they allow political learning, the exchange of ideas and even convergence, without requiring formal harmonization. RCPs also have a clear and direct impact on the policy process. By bringing sending and receiving countries together on equal terms, they overcome the adversarial relationship implied by formal structures (psychological effect) and they give both parties ownership over the process (material effect). Finally, they are unique forums for confidence building, itself a prerequisite to information exchange, the creation of a common language, and policy change.

In terms of policy outputs, RCP effects have varied according to geography (they have been most successful in CEE accession countries) and policy area (they have been most successful in visa policy, trafficking and readmission agreements). Although specifying exact causes for these successes is impossible, and there is always the possibility that certain policy areas and regions are particularly resistant to change for reasons independent of the RCPs, the paper has delineated some causes and implications. RCPs work best where the groups are small; where the issues examined have been depoliticized and demediatized; where access is limited in the early phases, and where there has been linkage between sending and receiving country interests. In the future, governments should strive to retain and reinforce these features and, in particular, to identify common interests between European receiving countries and third-wave and (above all) non-accession countries in the Southern Caucasus, Central Asia (including, of course, Russia) and the southern sending countries. The creation of new, and the extension of existing RCPs to include these countries has begun, and the process should continue.

In the end, regional consultative processes will never provide a clear and immediate solution to migration challenges. They require time to mature; their trajectory is difficult to predict, and their effect on policy is variable and capricious. Yet, they offer the promise of creating a genuine multilateral, north-south policymaking community with a common language, and they have shown that they can contribute to substantial results in areas beyond the reach of formal, binding international forums. In a world of nation states, and ours is and will remain a world of nation states, they provide the best hope for policy-relevant cooperation between, rather than simply within, regional blocs.

ENDNOTES

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2. By contrast, the study of less formalized procedures in other policy spheres has become, to quote one scholar, a “cottage industry” (Radaelli, 2003: 16). See the European Union Center, University of Wisconsin’s web project on the open coordination method: <http://eucenter.wisc.edu/OMC/index.htm> (consulted 2 November 2004). Only one article is devoted to immigration, compared to 29 on the topic of unemployment.
3. For reasons of space, this paper will focus on the Budapest Process, the CIS Conference Process, and 5 + 5, with less space devoted to the IGC.
4. Albania, Austria, Belarus, Belgium, Bulgaria, Czechoslovakia, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, the Soviet Union, Spain, Switzerland, Ukraine, the United Kingdom and the FR of Yugoslavia.
5. Including 35 governments and nine international organizations: Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, the United States of America, the Central European Initiative, the Council of Europe, the European Commission, ICMPD, IGC, IOM, Interpol, UNCCP (The UN Conciliation Commission for Palestine) and UNHCR. The figure for countries is slightly inflated by the partition of two countries at the 1991 Berlin meeting: Czechoslovakia (into two countries) and the Federal Republic of Yugoslavia (into four countries).
6. For the Action Plan, see Commission (2003).
7. Interview with an IOM official, 25 November 2004.
8. On this, see Geddes, *The Politics of Immigration in Europe*, London, Sage, 2003, chapter 1.
9. Interview with an IOM official, 17 November 2004.
10. Interview with an ICMPD official, 3 November 2004.
11. Interview with an ICMPD official, 10 November 2004.
12. Interview with an ICMPD official, 10 November 2004.
13. Sweden is now doing so. Interview with an ICMPD official, 3 November 2004.
14. Interview with an ICMPD official, 10 November 2004.
15. Interview with a Home Office official, 23 November 2004.
16. Interview with an IOM official, 17 November 2004.
17. Interview with an IOM official, 24 November 2004.
18. Interview with an ICMPD official, 10 November 2004.
19. Interview with an IOM official, 18 November 2004. Promotion from Tier 3 to Tier 2 ranking can lead to a more complacent attitude rather than ongoing substantial policy commitment.
20. Interview with an IOM official, 17 November 2004.
21. In the late 1980s, economists and demographers predicted continuing Irish economic stagnation and increased unemployed caused by a glut of school leavers.

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INTERSTATE COOPERATION: ASIA

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INTERSTATE COOPERATION: ASIA

INTRODUCTION

This paper addresses the major regional arrangements in the Asia-Pacific region and examines their role in relation to managing migration. Eight institutions have been selected on the basis of their significance in terms of their scale of operations (APEC, ASEAN, SAARC, PIDC) or their unique focus on migration (APC, Asian Migration Ministerial Consultations, Bali Process). One other, the TTTA was selected as it is unique to the region.

There has been a large increase in the movement of labour in Asia – fuelled by the strong economic growth experienced in the region, notably in China (including Hong Kong SAR and Taiwan), Singapore, Japan and the resulting need for both skilled and unskilled labour. Most of these movements did not occur in the framework of regional arrangements, but have been negotiated by individual governments, firms and agents, or occurred independently as migrants use social networks and other people to facilitate their movements.

1. CURRENT FORMS OF INTERSTATE COOPERATION AT THE REGIONAL LEVEL¹

Inter-Governmental Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants (APC)

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Geographical scope and structure

The Asia-Pacific Inter-Governmental Consultations on Refugees, Displaced Persons and Migrants (APC) was established in Canberra in 1996. It counts 36 member countries in the Asia-Pacific region: Afghanistan, Australia, Bangladesh, Brunei, Bhutan, Cambodia, China, Fiji, Hong Kong SAR of China, India, Indonesia, Japan, Kiribati, Laos, Malaysia, Micronesia, Mongolia, Myanmar, Nauru, Nepal, New Caledonia, New Zealand, Pakistan, Papua New Guinea, Philippines, Republic of Korea, Samoa, Singapore, Solomon Islands, Sri Lanka, Timor Leste, Thailand, Tonga, Vanuatu, Viet Nam and Tuvalu. It also has members and observers from the International Organization for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR) and the Pacific Immigration Directors' Conference (PIDC).

Mode of operation, including with outside countries

The original aim of the APC was to promote dialogue and explore opportunities for greater regional cooperation on matters relating to protection and migration issues. However, following reforms agreed at the 8th Plenary in December 2003, the APC has adopted an action-oriented role. The chairing arrangement for the APC is for a one-year term with the option of continuing for an additional year with the consent of participating governments. In 2003 it was agreed to

rotate chairs on an informal alphabetical basis. As there is no separate APC Secretariat, the Chair appoints a Coordinator who in turn manages the APC Secretariat by providing functions such as the support and coordination for the APC during the year. China is the Chair for the year 2005 and the APC Secretariat is based in Beijing. Planning for 2005 will focus on practical activities and may cover information sharing; building regional capacity for durable solutions, including refugee status determination and resettlement; and migration and development.

Description of regional consultative processes

Characteristics of the forum are informality and its voluntary and non-binding nature to allow participating governments to actively engage in dialogue and information exchange and to undertake practical activities. The annual programme of activities includes the main Plenary session and subregional and/or expert meetings. The APC has held nine Plenary meetings and a joint meeting with the Inter-Governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC).

- **November 1996: 1st Plenary Meeting, Canberra, Australia**
Theme: *Regional approaches to refugees and displaced persons in Asia.*
- **July 1997: 2nd Plenary Meeting, Bangkok, Thailand**
Theme: *Population movement and information sharing.*
- **June 1998: 3rd Plenary Meeting, Bangkok, Thailand**
Theme: *Prevention and preparedness, and impact of the current economic crisis in Asia on population migration.*
- **June 1999: 4th Plenary Meeting, Kathmandu, Nepal**
Theme: *Role of the country of origin in the context of refugees and displaced persons and migration, the APC progress report and its future direction.*
- **November 2000: 5th Plenary Meeting, Hong Kong SAR of China**
Theme: *Burden/responsibility sharing and migrant trafficking and smuggling.*
- **April 2001 – Joint APC-IGC Meeting, Bangkok, Thailand**
Key objectives were to raise awareness of the global nature of contemporary refugee, asylum and migration issues, including organized people smuggling, and to initiate a dialogue between Asia-Pacific nations and Western destination countries with developed asylum systems.
- **December 2001: 6th Plenary Meeting, Manila, Philippines**
Theme: *Prevention of irregular migration and refugee protection in the context of irregular migrant flows.*
- **November 2002: 7th Plenary Meeting, Halong Bay, Viet Nam**
Theme: *Regional capacity building on return, reintegration and combat against people smuggling and burden sharing in the context of refugee protection.*
- **December 2003: 8th Plenary Meeting, Sydney, Australia**
Theme: *Strategic trends analysis of refugee, displaced person and migrant flows; comprehensive approaches to durable solutions to refugee situations – Asia-Pacific models; and public awareness campaigns to facilitate the return and reintegration of victims of people trafficking.*

- **November 2004: 9th Plenary Meeting, Nadi, Fiji**
Theme: *Comprehensive approaches to durable solutions and migration trends. The 10th Plenary Meeting will be held in China in 2005.*

Main policy emphases

The forum focuses on protection and migration issues relating to population movements, including refugees, displaced persons and migrants.

Extent to which cooperation in other policy areas includes migration, i.e. trade, development, economic cooperation

No other areas of cooperation.

Asia-Pacific Economic Cooperation (APEC)

Matt Ngui, Faculty of Commerce, University of Wollongong

Geographical scope and structure

The Asia-Pacific Economic Cooperation (APEC) is the major multilateral forum for the Asia-Pacific region, particularly on trade and investment policies and related issues (www.apecsec.org.sg/apec/about_apec.html 2004). In 2000, 2.6 billion people lived in APEC's 21 Member Economies and produced approximately 60 per cent of world GDP (US\$19, 254 billion) and about 47 per cent of world trade.

APEC was launched in 1989 and now has 21 members – Australia, Brunei Darussalam, Canada, Chile, People's Republic of China, Hong Kong SAR of China, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, the Russian Federation, Singapore, Chinese Taipei, Thailand, the United States of America and Viet Nam. Thus, the membership of APEC consists of culturally and economically diverse economies surrounding the Pacific Ocean.

Mode of operation, including with outside countries

The Secretariat is based in Singapore. APEC has no treaty obligations required of its members and the principle of consensus governs the commitments undertaken on a voluntary basis by each member. APEC's structure is organized around a series of meetings or forums at different levels, attended by representatives of member governments. The apex of the APEC structure features the "Leaders Meeting", which brings together the heads of government of all its members, except Chinese Taipei and Hong Kong SAR of China, which are represented by senior "economic officials" instead. The APEC structure is largely driven by the Senior Officials Meeting (SOM), which takes major management, financial, policy and other decisions (http://www.apecsec.org.sg/apec/about_apec/structure.html 2004).

The second level of meetings brings together ministers responsible for specific areas such as trade, education, finance, labour and human resources, business, and customs. At the third level of meetings, 15 specific issue committees and working groups deliberate and develop programmes to encourage practical implementation of policy priorities. Working groups and committees often

have networks and groups of experts providing specific policy advice and information on a wide range of subjects.

In principle, APEC members are permitted to consult and cooperate with other non-member national and international organizations that share its interests but this type of cooperation requires the approval at APEC senior level, such as by the Senior Officials Meeting (SOM). In practice, therefore, participation tends to be limited to the practical programme level or to invitations on specific topics. In human resources development, for example, organizations such as the International Labour Organization seldom participate in APEC institutions (www.apecsec.org.sg/apec/about_apec/stakeholders 2004).

Description of regional consultative processes

APEC works according to the principles of openness, voluntary participation and consensus in decision making, and mutual respect and cooperation in this multilateral forum. APEC consultations take place at both the formal and informal level. At the formal level, representatives of member governments meet annually to endorse new and major initiatives and to re-emphasize their interest or consensus. Following the highest level of decision making, the second level of senior policy officials forward the decisions for implementation at the programme level, within the limits of its small budget. In reality, the SOM is where most of the negotiations take place and decisions are formulated for submission to the heads of economies to agree or disagree. Informally, alliances and mutually supportive relationships develop between government officials, business representatives, academics and other experts to further their own individual interests (www.apecsec.org.sg/apec/about_apec/how_apec_operates.html 2004).

Main policy emphases

The main policy emphases of APEC in the first decade of its existence were economic, trade and technical issues. In 1994, APEC achieved the “Bogor Goals” when all members agreed to establish “free and open trade and investment in the Asia-Pacific region by 2010 for industrialized economies, and 2020 for developing economies” (Ravenhill, 2001: 157; APEC, 1995: 4, www.apecsec.org.sg/apec/about_apec.html 2004). The APEC leaders agreed in 1995 to adopt the Osaka Action Agenda which set out the process to implement free and open trade and investment in APEC by 2010/2020.

The leaders recognized the need to facilitate the movement of business people in the region to enhance global trade and investment, particularly with the growing demand for services. They recognized the critical importance of investment in stimulating economic growth.

The enhancement of business mobility was one of the APEC’s 15 action areas. The four main objectives of the group are:

- exchange of information on regulatory regimes relating to the mobility of business people in the region;
- examine the possibility of setting the scope for cooperation at a regional level aimed at streamlining and accelerating the processing of visas for short-term travel;
- examine the possibility of setting the scope for cooperation at a regional level aimed at streamlining and accelerating arrangements for temporary residence for business people to engage in trade and investment; and

- establish and maintain dialogue on mobility issues with the business community.

APEC has explored the impact of migration on their respective urban areas, labour markets and rural labour forces. An international workshop on migration and structural change, funded by Japan and Chinese Taipei in October 2000, involved 16 members. It focused on four major themes: migration transition and labour market adjustment; labour importation and local workers; migration trade and foreign direct investment (FDI), and migration policy and development strategy. The workshop concluded that further research was needed on the impact of immigration on both sending and receiving economies, the social and cultural impacts of migration, definitional and other issues on unskilled and semi-skilled workers and gender issues and migration. Intergovernmental cooperation in the exchange of data and information on international migration is also needed, but these issues have not yet been included in the forum's political agenda.

Migration issues, however, are not within the scope of the specialist body or any other body within APEC. The efforts have been to promote these opportunities to increase trade and investment. Although APEC supplements the aims of the WTO GATS, this relates solely to temporary entry (under mode 4) and does not relate to migration (in the permanent sense).

It is not within the charter of the APEC to consider migration issues but to focus on the temporary entry of overseas workers and the mobility of business people.

Extent to which cooperation in other policy areas includes migration i.e. trade, development, economic cooperation

Since 1993, there have been discussions regarding strategies for the development and the sharing of human resources. Skills shortages in many economies have revealed the need for a concerted approach so that the rate of development of some economies (e.g. Hong Kong SAR of China, Thailand) is not restrained by shortages. But there is considerable variation in respective training standards and styles of training (informal/formal), the nature of occupations, the degree of entry control to occupations, different licensing, registration and certification arrangements, and different bodies for controlling entry, all of which can make migration difficult. APEC includes arrangements aimed at facilitating the mobility of highly skilled labour through information exchange, dialogue with business, development and implementation of immigration standards, and capacity building to help streamline temporary entry, stay and departure processing for business people (Nielson, 2003: 106). As such, APEC does not provide market access but facilitates entry.

The most outstanding and successful initiative in relation to mobility is the APEC Business Travel Card scheme that was introduced in 1997. Under the scheme, cards are issued by the host government and holders are allowed multiple entries into other cooperating APEC economies for short periods (2-3 months) for business purposes, without having to apply for a business visa every time. The cards are valid for three years and have to be presented along with the passport at the point of entry. The scheme is open to citizens of APEC economies who are bona fide business persons and is not available for spouses and children or for entertainers, musicians, artists, sportspeople or media correspondents. The APEC travel card scheme is perceived as a very successful model (including transparency and access to data on websites) and has been promoted for ASEAN and as a model for the development of a GATS Mode 4 visa.

Asian Migration Ministerial Consultations (Countries of Origin)

Robyn Iredale, APMRN Secretariat, ANU

Geographical scope and structure

The International Organization for Migration (IOM) organized the first ministerial consultations for Asian labour-sending countries in Colombo, April 2003, which brought together participants from the main sending countries in Asia: Bangladesh, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Viet Nam. The second meeting was held in Manila in September 2004.

Mode of operation, including with outside countries

The aim of the Ministerial Consultations is to provide a forum for Asian labour-sending countries to share their experiences, discuss issues and identify steps for follow-up in the form of recommendations. Major international agencies, such as the ILO, the Asian Development Bank and the UK Department for International Development (DFID), and regional experts also participate in meetings. A major flaw is the absence of receiving countries, but if sending countries can be encouraged to work together rather than competing with each other, this will be a very beneficial process.

Description of regional consultative processes

This is a consultative process, aided and supported by IOM. At the first meeting, 22 recommendations were made and prior to the second meeting, countries were asked to report on progress in the three areas. It is a non-binding arrangement. A similar process will be undertaken before the next meeting in Indonesia in 2005.

Main policy emphases

On the basis of the discussions at the first meeting participating states identified the following measures as conducive to the effective management of labour migration programmes:

- Protection of and provision of services to migrant workers
- Optimizing benefits of organized labour migration
- Capacity building, data collection and interstate cooperation

The second consultation focused on the following priority areas under the three main headings above:

- Regulatory frameworks and allied measures to prevent malpractice and abuses in recruitment
- Establishment and operation of migration welfare funds
- Pre-departure orientation services
- Establishing a common migrant resource centre in the Gulf Cooperation Council (GCC) states
- Facilitating managed labour migration
- Remittances
- Enhancing the development impact of remittances
- Training and skills development
- Sharing information
- Training and capacity building
- Interstate cooperation.

Extent to which cooperation in other policy areas includes migration i.e. trade, development, economic cooperation

None.

Association of South East Asian Nations (ASEAN)

Robyn Iredale

Geographical scope and structure

ASEAN was founded in 1967 through the signing of the Bangkok Declaration by its five original members, Indonesia, Malaysia, the Philippines, Singapore and Thailand. It later expanded to seven in 1995 to include Brunei Darussalam and Viet Nam. In the late 1990s, it expanded again to ten by incorporating Cambodia, Laos PDR and Myanmar.

Mode of operation, including with outside countries

ASEAN was conceived as a collective venue for action by senior government and political leaders as well as a forum for private business and community-level interactions (ASEAN Secretariat, 1997: 17). Aims initially focused on the development needs of founding members with less emphasis on regional cooperation and integration. By 1976, however, there was increased emphasis on regional cooperation and three important documents were signed at the Bali Summit. They established the basis for ASEAN cooperation and interstate relations, and for the establishment of the ASEAN Secretariat. The ASEAN Secretariat is located in Jakarta and consists of staff from across the ten countries. There is a Secretary-General and many committees and structures, ranging from Heads of state down. The Secretariat assumes a leadership role that, although short of the political similarity with the EC, “is sufficient to keep ASEAN solidarity going” (ASEAN Secretariat, 1997: 191).

Description of regional consultative processes

ASEAN is a non-binding arrangement. Its success depends on a strong understanding of ASEAN ideals, a sense of belonging and identifying with the goals and objectives, and the wide participation of ASEAN nationals in ASEAN affairs. According to the Secretariat (1997: 87), “increased familiarity and mutual trust kept ASEAN cooperation alive through all of the twenty-five years” from 1967 to 1992. The declaration of a free trade area in 1992 was a bold step that indicated an unambiguous move in this direction.

As well as the official machinery, ASEAN also has networks of regional non-governmental organizations and various subregional blocs. These are mostly business organizations, though there are other organizations in the travel, ports, airports, fisheries, and in medical, services, youth, sport and other areas.

The challenge of the external environment has acted as a solidifying force not only in the formation of a free trade area but also in other domains. The need to develop external relations with developed countries emerged in the early 1970s in the field of trade and commodities (ASEAN Secretariat, 1997). Consequently a system of bilateral relations with developed countries, collectively called “dialogue partners”, was instituted. Close economic relationships exist with China, Japan, Republic of Korea and India while Australia, Canada, the EU, New Zealand, the US, Russia and many others also have “dialogue” relationships, including the UNDP. ASEAN + 4

includes the ten ASEAN countries plus China, Japan, the Republic of Korea and India that have a special arrangement with ASEAN on particular aspects. Other countries, including Australia, have been developing closer relationships with ASEAN and funding projects that are of mutual interest. In November 2004, Australia and New Zealand signed an agreement to begin arrangements for their inclusion in the ASEAN Free Trade Area.

Main policy emphases

ASEAN's focus has been on economic cooperation and technically it became a single economy since the start of the twenty-first century. This means increased mobility of goods, improvements in transport and communication and greater commonality of standards to ensure the international competitiveness of ASEAN goods. It is now moving towards greater commonality in such areas as product and environmental standards, competition policy and labour market reforms. A series of projects funded by Australia are focusing on the development and harmonization in the tourist industry, such as enhancing skills recognition arrangements and the move towards improving procedures to enable professional recognition across ASEAN, and developing common standards in the fishing industry, among others.

Extent to which cooperation in other policy areas includes migration i.e. trade, development, economic cooperation

The 1995 ASEAN Free Trade Area (AFTA) "contains no specific provisions on labor mobility, although Mode 4 is included under the general coverage of trade in services" (Neilson, 2003: 104). This agreement committed members to negotiations aimed at achieving commitments beyond those in their existing GATS (General Agreement on Trade in Service) schedules. Following the GATS framework, ASEAN developed the ASEAN Framework Agreement on Services (AFAS) in 1998. In this, the temporary international movement of individual service providers is categorized as Mode 4, as in GATS. Manning and Bhatnagar (2004) point out that trade in services may have a significant impact on labour markets in the Asian region, but that this has yet to materialize. Nevertheless, moves are undertaken to increase labour mobility.

Another initiative, the project on *Enhancing Skills Recognition Arrangements* (SRAs) has been high on the agenda of Labour Ministers in ASEAN since 1997. This project was finally funded by the Australian government, under its AusAID budget, and commenced in 2004. While the overall aim is to improve skills recognition arrangements and, hopefully, skills profiles generally, a secondary aim is to facilitate the mobility of workers at a range of skill levels within ASEAN.

The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the "Bali Process")

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In the period 2000-01, large numbers of boat arrivals run by people smuggling operations arrived in Australia from Indonesia (6,640 people arriving on 83 boats). In response, Alexander Downer, the Foreign Minister for Australia, and his Indonesian counterpart, Dr N. Hassan Wirajuda, agreed to strengthen bilateral and regional cooperative efforts to deal with people smuggling and trafficking in persons.

They co-chaired the first Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime (the “Bali Process”) in February 2002, in Bali that was attended by representatives from 36 members, 15 observer countries and various international organizations.

The Australian and Indonesian Foreign Ministers co-chaired a Second Bali Ministerial Conference in April 2003 in Bali which was attended by 28 Ministers from 32 members, 14 observers and 13 international organizations.

Geographical scope and structure

The Bali Process is a regional process that stretches from Turkey in the west and China in the north to Kiribati in the east and New Zealand in the south. Participants include source, transit and destination countries (some, such as Thailand, are all three) as well as key international organizations, notably the UNHCR and IOM.

The Bali Process brings participants together to work on practical measures to help combat people smuggling, trafficking in persons and related transnational crime in the Asia-Pacific region and beyond. Given the diversity of participants, the interests and levels of engagement of countries vary. Some involve themselves in all aspects of the process, others pick those areas and activities of most relevance to them.

To take forward the Ministerial objectives, Ministers agreed that senior officials develop practical plans of action. New Zealand has coordinated activities to increase regional and international cooperation and Thailand has coordinated work on legislation, law enforcement and document fraud issues. Overall direction and coordination has been provided through an officials’ level steering group comprising Indonesia and Australia as the two co-chairs, New Zealand and Thailand as the coordinators and the UNHCR and IOM as partner agencies. IOM also administers the process.

Type of cooperation, including with states outside the region

The Bali Process is voluntary and non-binding and promotes regional cooperation through capacity-building activities and practical workshops which has created an environment in which regional foreign, justice, law enforcement and immigration ministries are increasingly cooperative and effective in addressing people smuggling and trafficking issues. According to Australia’s Minister for Foreign Affairs, Alexander Downer, “The Bali Process doesn’t legislate, the Bali Process doesn’t force anybody to do anything. What it does do is provide a framework, it provides context *and* it provides priority” (Press Conference, 2004).

As mandated by Ministers at the second Bali conference, senior officials reviewed progress in taking forward Ministers’ objectives at a Senior Officials Meeting in Brisbane in June 2004. The meeting was chaired by Australia’s Ambassador for People Smuggling Issues, Ms Caroline Millar, and her Indonesian counterpart, Mr Makmud Widodo.

Participants noted that the Bali Process had moved on from discussing political principles to implementing practical measures and had successfully delivered direct practical benefits to regional operational agencies.

Key areas of activity since the first Bali conference include:

- the establishment by IOM of a **Bali Process website** (www.baliprocess.net). Used initially to provide basic information the website is now being developed as a capacity-building tool, including model agreements and operational information;
- two **legislation workshops** in Malaysia for regional immigration, police and justice officials. These resulted in the development by Australia (AGD) and China of model legislation **to criminalize people smuggling and trafficking** (to enable police investigations, prosecutions and extraditions) which has subsequently been used by many regional countries in the development of their own legislation;
- a **law enforcement and travel document fraud workshop** in China, including training by the Bangkok-based Immigration Control Experts (ICE) team, represented by Australia and the United States;
- two workshops run primarily by UNHCR in Thailand and Fiji respectively on best practice procedures for determining the **status of asylum seekers** and on balancing a country's right to determine who enters its territory with the right of victims of persecution or violence to seek and receive protection in other countries;
- two people **trafficking/public awareness** workshops in the Republic of Korea;
- a workshop on **identity management and document fraud** in Thailand, resulting in the development of best practice guidelines for the initial establishment of identity, mechanisms for coordinating regional training, and support for a regional approach to information sharing on documentation, lost and stolen passports and persons of concern;
- a **bilateral returns** workshop in Perth, run jointly with the regional Budapest process, resulting in agreement to contribute draft paragraphs for governments to draw on in developing bilateral return agreements, and the development of a checklist of issues to be addressed in the return of illegal migrants. A key disincentive to people smuggling is the return of those smuggled persons found not to be refugees, and the outcomes of the Perth workshop should assist the capacity of regional countries to deal with this issue, and
- two workshops among law enforcement agencies focusing on cooperation in identifying and **targeting key people smugglers** and traffickers in the region.

Main policy emphases

The main objective of the Bali Process is to raise awareness and develop a higher level of cooperation between regional countries in order to combat people smuggling and trafficking (Report to Ministers, 2004).

At the two Bali Ministerial Conferences, Ministers agreed to the following specific objectives:

- develop more effective information and intelligence sharing;
- improve cooperation among regional law enforcement agencies to deter and combat people trafficking and smuggling networks;
- enhance cooperation on border and visa systems to detect and prevent illegal movements;
- increase public awareness in order to discourage these activities and warn those susceptible;
- enhance effectiveness of return as a strategy to deter people smuggling and trafficking through conclusion of appropriate arrangements;
- cooperate in verifying the identity and nationality of illegal migrants and trafficking victims;
- enactment of national legislation to criminalize people trafficking and smuggling in persons;

- provision of appropriate protection and assistance to the victims of people trafficking, especially women and children;
- enhance focus on tackling the root causes of illegal migration, including by increasing opportunities for legal migration between states, and
- assist countries to adopt best practices in asylum management.

Extent to which cooperation in other policy areas includes migration i.e. trade, development, economic cooperation

The Bali Process is a unique regional cooperative effort. Increasingly the root causes, education and the demand side of trafficking have gained importance and attention has started to shift somewhat to these long-term issues. Such issues formed a large part of the future directions established in *The Report to Ministers* at the Senior Officials' Meeting in Brisbane, Australia, 2004.

One offshoot has been some change in priorities in Australia's aid programme. AusAID administers Australia's overseas aid programme with the primary objective being to assist developing countries to reduce poverty and achieve sustainable development. Recently it has been working with South-East Asian partners in the fight against trafficking and child sex tourism.

AusAID funds a number of trafficking-focused projects that amount to around Aus\$ 14 million. This includes AusAID's Aus\$ 8.5 million Asia Regional Cooperation to Prevent People Trafficking Project (ARCPPT), which focuses on strengthening legal policy frameworks and building national and regional capacity to prevent people trafficking in women and children. The ARCPPT commenced in April 2003 and is due to be completed in April 2006. AusAID also funds IOM's Return and Reintegration Project in the Mekong region, which is currently in its second phase. In addition, AusAID manages the annual Aus\$ 15 million International Refugee Fund which aims to support humanitarian programmes in the Asia-Pacific region that help improve conditions, alleviate suffering and maintain dignity of refugees and internally displaced people.

The Pacific Immigration Directors' Conference (PIDC)

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Geographical scope and structure

The Pacific Immigration Directors' Conference (PIDC) is a forum for official Immigration Agencies of the Pacific region. It was established in 1996 as a result of the first PIDC, sponsored by the Forum Secretariat and held in Suva in October 1996. It started off as an annual regional conference for Pacific Island Forum members and slowly grew to include dependent territories such as French Polynesia. The annual conference is an opportunity for Heads of Immigration and Senior Immigration Managers from throughout the Pacific to discuss some of the major issues affecting immigration today. The annual conference is now assisted by a Secretariat and an Advisory Committee. The Advisory Committee is currently undertaking a wide-ranging review of the PIDC.

The PIDC Charter opens membership to immigration agencies of the following 23 countries and territories: American Samoa, Australia, Commonwealth of Northern Mariana Islands, Cook Islands, Federated States of Micronesia, Fiji Islands, French Polynesia, Guam, Kiribati, Marshall Islands, Nauru, New Zealand, New Caledonia, Niue, Norfolk Island, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu, Wallis and Futuna. Not all of these 23 states and territories are active members of PIDC and attendance at the annual conference is a good indication of active membership: the 2004 conference was attended by a record 17 states and territories.

Type of cooperation, including with states outside the region

The principal objective of the PIDC is to promote consultation and bold cooperation among immigration agencies within the Pacific region. The PIDC provides a forum for the heads of immigration agencies to meet and discuss issues of mutual interest and to foster multilateral cooperation and mutual assistance. The multilateral cooperation and mutual assistance is aimed at strengthening participants' territorial borders and the integrity of their entry system. Hence, much of the information shared between PIDC members is confidential.

The PIDC focuses on border protection and institutional strengthening in immigrant-receiving and transit countries. The current strategy seeks to foster multilateral cooperation and mutual assistance. The multilateral cooperation and mutual assistance is aimed at strengthening participants' territorial borders and the integrity of their entry system. Some Pacific Islands have the potential to be used as transit points for irregular migrants from Asia and West Africa en route to Australia, New Zealand, the US and elsewhere. The PIDC works with transit and destination countries in the Pacific region to stop irregular migration. The concern of Pacific Island Country Governments is to not gain a reputation as being either transit points for irregular migrants or centres of trafficking.

In September 2002, the members adopted the Third PIDC Charter, outlining the mission, aims, objectives and responsibilities of the PIDC:

- encourage greater cooperation, communication and liaison between participating agencies, including the development and maintenance of communications between conferences;
- foster a coordinated approach to the implementation of any policies of Forum members having a regional focus;
- coordinate the exchange of technical assistance by and between participating member agencies, and
- act as a focal point for collaboration with other regional and international bodies and organizations such as the Forum Secretariat, the Oceania Customs Organisation (OCO), the South Pacific Chiefs of Police Conference (SPCPC), Interpol, PACRIM, IATA, the Pacific Transnational Crime Coordination Centre, IOM and relevant UN agencies.

Close cooperation exists with the Forum's law enforcement and political departments. In April 2004, the PIDC Secretariat attended the Pre-Forum Regional Security Committee Meeting Working Group hosted by the Forum Secretariat in Suva. During the meeting, the viability of Forum Countries joining and participating in a Pacific regional identity fraud register was explored – an issue that had earlier been raised at a meeting hosted by the Australian Crimes Commission during which it was considered how the Australian Identity Protection Register might be expanded to include the Pacific region.

Description of regional consultative processes

Apart from an annual conference, first held in Suva in 1996 but since then rotated around the Pacific region, the organizational structure consists of an Advisory Committee and the PIDC Secretariat. The Advisory Committee was established in 2002 to progress issues between conferences and to provide direction and guidance to the Secretariat on behalf of the PIDC members. The committee membership changes on an annual basis and is elected during the conference. It currently consists of the Directors of Immigration Departments of Australia, Fiji, New Zealand, Palau, Papua New Guinea, Samoa and Tonga.

The PIDC Secretariat came out of the 2001 conference held in Rarotonga. It is co-funded by Australia and New Zealand. It was initially located with the Oceania Customs Organisation (OCO) Secretariat in Brisbane and moved to Fiji in December 2002 where it is located at the Forum Secretariat offices in Suva.

The Secretariat facilitates the exchange of information between participants, supports the annual conference and actions any recommendations coming out of the conferences. It also exchanges relevant information with police and customs organizations. In addition, it actively collects and processes information, produces reports and helps member countries draft legislation and provide comments on legislation.

At the 2003 PIDC conference in Tonga, a Memorandum of Understanding was signed between UNHCR and PIDC. The PIDC Secretariat also attends other conferences: for example, the 6th annual OCO Conference in PNG in March 2004; follow-up to the 2nd Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crimes, co-organized by the UNHCR and the Fiji government in Nadi in April 2004; Pacific Roundtable on Counter-Terrorism held in Wellington in May 2004 and hosted by New Zealand. Pacific Island Countries' attention was drawn to the nature of existing and imminent new international counter-terrorism obligations.

Following an invitation by the APC at its annual meeting in Sydney in 2003, the PIDC Secretariat attends APC meetings as an observer.

Main policy emphases

The annual PIDC conferences provide a forum to discuss a wide range of issues of concern to immigration agencies in the region. At the 2004 conference in Palau, the issues discussed included:

- Secure information communication systems
- Advanced passenger information
- Illegal migration and movement of illegal migrants
- Integrity within immigration
- Institutional strengthening
- Passports
- People Smuggling, Trafficking and Illegal Migration
- Immigration crime and identity fraud
- Seaports
- Training
- Regional Law Enforcement Cooperation.

Extent to which cooperation in other policy areas includes migration (i.e. trade, development, economic cooperation)

There is no cooperation in other policy areas that includes migration.

South Asian Association for Regional Cooperation (SAARC)

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Geographical scope and structure

The South Asian Association for Regional Cooperation (SAARC) was established in 1985 by the Heads of state or government of Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. It provides a platform for the peoples of South Asia to work together in a spirit of friendship, trust and understanding. It aims to accelerate the process of economic and social development in member states (<http://www.saarc-sec.org/main.php>). With 1.3 billion inhabitants in 1999, these countries represent almost 22 per cent of the world population, but only 1.97 per cent of world GNP (US\$ 575 billion in 1999). Average per capita income is US\$ 441.

Mode of operation, including with outside countries

The SAARC Secretariat was established in Kathmandu in January 1987. Its role is to coordinate and monitor the implementation of SAARC activities, service the meetings of the association and serve as the channel of communication between SAARC and other international organizations. The Secretariat has also been increasingly utilized as the venue for SAARC meetings. The Secretariat comprises the Secretary-General, seven Directors and the general services staff. In January 2004, it was decided to strengthen the capacity of the SAARC Secretariat and a committee comprising of a member from each member state was established to look at options.

Subregional cooperation is encouraged by means of the development of specific projects relevant to the individual needs of three or more member states under the provisions of Articles VII and X of the SAARC Charter. Interregional cooperation was stressed in January 2004 as follows: “We express our determination to develop mutually beneficial links between SAARC and other regional and international organizations, bodies and entities and agree to establish dialogue partnership with other regional bodies and with states outside the region, interested in SAARC activities” (<http://www.saarc-sec.org/main.php>).

Description of regional consultative processes

SAARC is an arrangement that has evolved over time to develop and foster the interests of all participants but it has been fractured by political disputes. It put renewed emphasis on political cooperation in January 2004 and agreed to address conflicts, differences and disputes through peaceful means and dialogue. There was a reaffirmation of the pledge to promote good neighbourly relations on the basis of the principles of sovereign equality, territorial integrity and national independence, non-use of force, non-intervention and non-interference and the peaceful settlement of disputes, and to recognize the importance of informal political consultations in promoting mutual understanding and reinforcing confidence building process among member states.

SAARC is a non-binding arrangement that operates on the basis of mutual interest and understanding. SAARC leaders also attach high priority to the promotion of people-to-people con-

tacts in the region to strengthen mutual understanding and goodwill among the peoples of South Asia. While SAARC is an intergovernmental association, successive summits have emphasized the importance of promoting people-to-people contacts at all levels beyond the state sector.

Main policy areas

The main policy areas of SAARC are economic development (moving towards free trade), poverty alleviation, science and technology, social issues, culture, the environment and combating terrorism. The 10th SAARC Summit (Colombo, 29-31 July 1998) decided to set up a Committee of Experts (COE) to draft a comprehensive treaty framework for creating a free trade area within the region, taking into consideration the asymmetries in development within the region and the need to set realistic and achievable targets. The Agreement on South Asian Free Trade Area (SAFTA) was signed on 6 January 2004 during the Twelfth SAARC Summit in Islamabad. The Agreement is to come into force on 1 January 2006.

Under the Trade Liberalisation Programme, scheduled for completion by 2016, the customs duties on products from the region will be progressively reduced. However, under an early harvest programme for the least developed member states, India, Pakistan and Sri Lanka are to reduce their customs duties to 0-5 per cent by 1 January 2009 for the products from such member states. The least developed member states are expected to benefit from additional measures under the special and differential treatment accorded to them under the Agreement. SAARC is also particularly mindful of the security concerns of its small states.

Extent to which cooperation in other policy areas includes migration i.e. trade, development, economic cooperation

SAFTA does not include trade in services, but under a visa exemption scheme (1992), visa requirements are waived for 21 categories of persons. This enables the relatively free movement of workers across the India/Nepal border but it has also enabled traffickers to operate with impunity. Visa procedures and requirements have also been simplified for business people to promote trade and tourism throughout the region (Nielson, 2003: 106).

At the 12th SAARC Summit in 2004, SAARCFINANCE was given the responsibility to make recommendations on the early and eventual realization of a South Asian Economic Union (SAEU). This may eventually lead to greater free flows of people, but at the moment migration is generally not managed well by individual countries in the bloc, or by SAARC as a whole.

The SAARC Regional Convention on the Suppression of Terrorism, agreed at Kathmandu on 4 November 1987, recognizes the seriousness of the problem of terrorism as it affects the security, stability, and development of the region. The signing of the Additional Protocol to the SAARC Regional Convention on the Suppression of Terrorism in Islamabad, in January 2004, to deal effectively with financing of terrorism, is a further manifestation of SAARC's determination to eliminate all forms and manifestations of terrorism from South Asia. The purpose of this Additional Protocol is to strengthen the SAARC Regional Convention on Suppression of Terrorism, particularly by criminalizing the provision, collection or acquisition of funds for the purpose of committing terrorist acts and taking further measures to prevent and suppress financing of such acts. Towards this end, State Parties agree to adopt necessary measures to strengthen cooperation among them, in accordance with the terms of this Additional Protocol (<http://www.saarc-sec.org/main.php>).

Australia-New Zealand Arrangements (Closer Economic Relations – CER, Trans-Tasman Mutual Recognition Agreement – TTMRA, Trans-Tasman Travel Arrangement – TTTA)

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Geographical scope and structure

There have been special arrangements between Australia and New Zealand since the 1920s. In the 1960s, Australia and New Zealand began to explore forms of cooperation. Initially, this was focused on economic cooperation between the countries, but was hastened by the entry of the United Kingdom into the EEC and the impact of the oil crises in the early 1970s.

Mode of operation, including with outside countries

In the Asia-Pacific region, Australia and New Zealand stand out as having similar levels of GDP per capita (the other that is similar is Singapore), common origins (in terms of settlement by the UK), customs and language, along with broadly similar institutions (educational, political). Unlike the EU, there is no supranational political or regulatory body, reflecting the concerns of full integration, notably from New Zealand. But for most purposes, the level of economic and social interconnectedness is such that very high levels of collaboration and integration exist.

While CER, and what has followed, has been widely seen as a success, integration involving elements that have a symbolic and national importance have stalled some future options. Political integration is unacceptable for many New Zealanders despite their various economic and personal connections with Australia. Recently, the suggestion that CER should be extended to include certain Pacific or ASEAN countries has been mooted. Tim Harcourt, Chief Economist for the Australian Trade Commission, suggested in 2004 that the expansion of CER was a possible next step along with the involvement of New Zealand in the FTA between Australia and the USA.

Main policy areas

The first step was the New Zealand Australia Free Trade Agreement (NAFTA) signed on 1 January 1966 with the intent of further facilitating trade between the two countries. This economic focus has remained, but it has been given an important additional human dimension with a common labour market.

In 1973, the next step was taken with the signing of the Trans-Tasman Agreement as the basis for a common market between Australia and New Zealand. It provided the platform for the export of goods across the Tasman and a review in the late 1970s found that the agreement encompassed 80 per cent of goods. What remained continued to be subject to tariffs or subsidies that inhibited free trade between the two economies. The issue was raised by a New Zealand Minister, Hugh Templeton, in 1979 and became the subject of ministerial negotiation and a joint Prime Ministerial communiqué.

In 1983, Closer Economic Relations (CER) was signed with the intent of including all products liable to be exported across the Tasman to achieve complete trade liberalization. This was the first agreement of its kind globally. Free trade was achieved by 1990, five years ahead of schedule, and CER encompassed trade, services, investment, labour and visitors. Two decades on, CER was assessed to have been a success with 500 per cent growth in trade involving bilateral trade of Aus\$ 15.8 billion in 2000-01, and bilateral investment worth Aus\$ 33.8 billion.

Description of regional consultative processes

Relations are underpinned by various forms of official high level contacts: key ministers meet annually; New Zealand is a member of most Australian Commonwealth-State councils, and there is a series of officials groups set up to deal with particular issues. Since the late 1990s, a number of additional agreements have been signed in order to further harmonize trade and regulatory requirements. These include the binational agency to regulate therapeutic products, the establishment of the Joint Food Standards Authority of Australia and New Zealand, and the Trans-Tasman Accounting Standards Advisory Group, the Trans-Tasman Business Awards, and bilateral agreements on customs and quarantine harmonization, government procurement and aviation.

Extent to which cooperation in other policy areas includes migration i.e. trade, development, economic cooperation

Alongside developing a common economic market, a common labour market has also been developed by removing any restrictions for New Zealanders or Australians to move on a temporary or permanent basis to the other country. The Trans-Tasman Travel Arrangement (1973) enables New Zealanders and Australians to visit, reside and work in the others' country without restrictions to provide ready access to the other country for purposes of employment or residence. The major beneficiaries have been New Zealanders who migrated to Australia in considerable numbers in the 1980 and 90s for a combination of reasons: climate in the case of Queensland, or larger labour and urban environments in the case of Melbourne or Sydney. By 2001, of the 800,000 New Zealanders who lived outside the country, half lived in Australia as permanent and long-term (PALT) migrants. On the other hand, some 50,000 Australians were living in New Zealand.

In recognition of the exchange of goods and people, the Trans-Tasman Mutual Recognition Act came into being in 1997. This acknowledged that products and trained people who originated from the other country would be treated as meeting local requirements. In relation to goods, it meant that any goods legally sold in one country could also be sold in the other without the need for further tests or certification. In terms of qualifications, the qualifications of those who were trained across the Tasman would be automatically recognized, with the exception of medical professionals. This removed a major impediment to the movement of skilled individuals, without the need for the complete harmonization of professional qualifications. With few exceptions, the effect has been to produce a common market in both products and people, and Australia and New Zealand have been described as the two most interwoven economies in the world. Nevertheless, there have been some concerns related to people. The large number of New Zealanders resident in Australia has given rise to the Reciprocal Agreement on Social Security, the Reciprocal Health Agreement and the Child Support Agreement to deal with access by New Zealanders to domestic benefits. The acceptance of certain migrants into New Zealand, their subsequent gaining of permanent residence or citizenship, and then onward migration to Australia has been raised as a concern by some politicians, and there have been minor modifications in processing. In 1994, the Special Category Visa (SCV) was introduced for New Zealand citizens. In practical terms, there was little change. New Zealand citizens continued to require only a valid passport. When they present their passports for immigration clearance, they will have been considered as having applied for a visa and, subject to health and character issues, will automatically receive an SCV, which is recorded electronically. It is not necessary for a New Zealand citizen who holds an SCV to apply for or be granted permanent residence in Australia. The SCV allows a New Zealand citizen to remain and work in Australia lawfully as long as that person remains a New Zealand citizen.

However, following the introduction of bilateral social security arrangement between Australia and New Zealand on 26 February 2001, New Zealand citizens who arrive in Australia on or after 27 February 2001 must apply for and be granted Australian permanent residence if they wish to access certain social security payments, obtain Australian citizenship or sponsor their family members for permanent residence.

Under transitional provisions, these changes do not affect New Zealand citizens who:

- were in Australia on 26 February 2001 as SCV holders;
- were outside Australia on 26 February 2001, but were in Australia as an SCV holder for a total of 12 months in the two years prior to that date, and subsequently returned to Australia, or
- have a certificate, issued under the Social Security Act 1991, stating that they were residing in Australia on a particular date.

Significant future issues include the next stages in regional cooperation. Initial discussions to develop a single currency or common share market have tended to attract opposition from New Zealanders while many Australians have been focused in the last decade on developing bilateral (or multilateral) relations with the USA, and a number of other countries in Asia.

2. ASSESS AND EXPLAIN TRENDS IN INTERSTATE COOPERATION OVER THE LAST DECADE

The previous section shows major growth in interstate cooperation in the Asia-Pacific region, especially during the last decade. Much of this growth has been in economic cooperation, while recent initiatives have been specifically targeted at handling some of the issues associated with regular labour migration, the movement towards a common labour market and the rise of irregular migration, including trafficking and smuggling.

The two major bodies, ASEAN and APEC, have been in place since 1967 and 1989, respectively, and both emerged in response to general economic and political issues and the need to strengthen regional collaboration in the Asia-Pacific region. Both developed with a strong focus on trade liberalization and economic development, but in terms of regional bodies, their structure remains relatively loose. Over time, but particularly since the mid-1990s, they have strengthened their influence in non-economic matters. Until recently, this had little to do with migration, but ASEAN is now beginning to explore the possibilities of a common labour market. Within both ASEAN and SAARC, in the levels of activity in relation to irregular migration, trafficking and the spread of HIV/AIDS have also increased recently.

One example of successful ASEAN cooperation on an issue associated with mobility began in 1999, when the UNDP Southeast Asia HIV and Development Programme in Bangkok began to focus on the impact of mobility on vulnerability to HIV. Because of the pending health costs and development impacts of HIV/AIDS, this was obviously a crucial issue if the region was to avoid a serious pandemic. The programme moved from a country approach, reflected in the publication *Mobile Populations and HIV Vulnerability: Selected Responses in Southeast Asia* (Cambodia, Thailand and Viet Nam) in March 2002 (UNDP Southeast Asia HIV and Develop-

ment Project, 2002), to a regional approach in *Towards Borderless Strategies Against HIV/AIDS* in May 2002 (du Guerny and Hsu, 2002). At an ASEAN heads of state meeting in November 2001, a declaration was adopted stressing the importance of joint regional action to reduce the vulnerability of mobile populations and to promote intersectoral collaboration in reducing socio-economic vulnerability, prevention and care/support and treatment. It shows how a major health issue involving migration prompted a strong regional response, but its transferability to other areas remained limited.

In terms of migration generally, issues associated with labour migration, a major phenomenon in the region, is handled on a bilateral basis. At present, there are no special labour movement concessions within APEC, ASEAN or SAARC. There have been some moves to free the movement of labour, but they are very slow, mainly on a bilateral basis and as yet have had little impact. Differences in country perspectives mean that there is still some way to go to reach common multilateral agreements. According to Manning and Bhatnagar (2004: 70-71), there is no regional trade agreement or bloc in the world where the constituent member countries are at different stages of economic development and where free labour mobility is allowed.

The chances of APEC's becoming a stronger unit of cooperation on migration are not great. Australia, the US, Canada and New Zealand all fear large flows of people and want to keep tight control of immigration. Policy changes in the last ten years have resulted in much more Asian migration, but it has been tightly controlled and only selected (usually highly skilled) migrants are welcomed. More developed countries within APEC generally want to use it to their own advantage. There does not appear to be much concern to use it as a means to aid the development of other economies within APEC. While developed countries wish to tap into APEC, to benefit from the rapid growth of economies with large populations, they do not also wish to attract massive population influxes and the social, political and cultural impacts of the free movement of labour, or even the temporary movement of less skilled labour (for Australia). On the other hand, Canada, the US and New Zealand all have temporary labour migration schemes for less skilled workers, but they are not specific to APEC.

ASEAN has more possibilities to move in that direction owing to greater commonality, but the recent failure of Malaysia and Indonesia to agree on a MOU on domestic maids is disappointing. The inclusion of the four new countries – Cambodia, Laos PDR, Myanmar and Viet Nam, has increased the diversity in the level of economic development, the number and quality of training institutions and many other institutions that affect the possibility of harmonization.

The Labour Migration Ministerial Consultations organized by IOM and hosted by various Asian sending country governments, were an attempt to bring the countries together to develop capacity, formulate better management policies and cooperate on some aspects. These consultations, however, are seriously weakened by the absence of the major receiving countries in the region: Singapore, Malaysia, Japan and Korea. Nevertheless, they are linked by a common concern for the protection of migrants and they may undertake common initiatives to try to overcome the absence of major receiving countries from the UN human rights platform.

Outside these blocs, the aspect attracting growing international activity in Asia is irregular migration. Irregular migration is present in all Asian countries and has become the most troublesome issue for governments. Unlike regular migration that is managed through national policies

or bilateral agreements without also involving dialogue with other countries, irregular migration is perceived as an issue to be discussed at the multilateral level (Battistella, 2004: 6). Consequently, regional initiatives have been launched, such as the APC and the Bali Process, that are aimed at concerted multilateral initiatives for the control of irregular migration. In these and other processes, international organizations such as the IOM and the UNHCR, have played a major role as providers of technical assistance, but “since they both operate on agendas established by governments, their role cannot be neutral” (Battistella, 2004: 6). The politics of the impact of international organizations’ assistance/involvement could be the subject of further research. The Australian government has also played a lead role in both the Bali process and APC. Whether stronger regional activity has come about in this area because of the intervention of international organizations and/or particular governments needs to be investigated.

Few Asian countries have ratified the 1990 UN Convention on the Protection of All Migrant Workers and Members of their Families. Controlling irregular migration may have brought governments to the same table, but protecting migrants has not achieved the same result. According to Battistella (2004: 6), the exception is the trafficking of migrants, which has involved various multilateral initiatives because of the abuse that it represents and the participation of organized crime in facilitating it. As has been shown, the SAARC has focused on this area, as have other specific processes.

Within the Pacific region, the diversity, distances and lack of resources make regional cooperation difficult. Nevertheless, we have seen the strengthening of the PIDC and other bodies, such as the South Pacific Commission, in recent years. This seems to be in response to a growing awareness of international trends and threats and to pressure from Pacific Rim nations. In addition, threats posed by rising sea levels, the exhaustion of fishing stocks and poverty have motivated Pacific Island states to begin to cooperate much more consistently. Improvements in communication are further facilitating this development.

Thus, existing and new regional arrangements have been harnessed to enable greater cooperation within the Asia-Pacific region. In both subregions, Asia and the Pacific, a sense of commonality with neighbours makes for easier negotiations, greater sharing of information and the development of common tools. But the Asian region, in particular, is so diverse and the level of transparency and openness is often so low as to make regional cooperation difficult. Still, given time, it is more likely to develop within the region rather than in the context of some international framework.

3. EVALUATE THE IMPACT OF REGIONAL COOPERATION ARRANGEMENTS

Cooperation has developed slowly in the region, especially in relation to migration. The management of migration has not been a focus of regional agreements, with the exception of the Australia-New Zealand arrangement, and there has been reluctance on the part of many Asia-Pacific countries to submit to regional decision-making processes. It is taking a long time to build trust and a mutual understanding that regional arrangements can benefit all. The situation is so complex and heterogeneous in Asia that it is often difficult to find common ground between countries. Some countries are senders, some are receivers, and some are both. Yet others are in a

transition phase of moving from being largely senders to becoming receivers. The Pacific is experiencing a rapid rise of intraregional movements characterized by highly skilled, unskilled and irregular migrants.

The particular issues associated with labour migration are problematic in Asia. Receiving states have generally wanted cheap, unprotected labour to boost their economic development, while sending countries have been willing to comply on account of high unemployment at home, poverty and competition from other sources. This has caused many commentators to be critical of both sending and receiving countries. Rodriguez (2002: 24) argues that in receiving countries, “migration [only] becomes an issue when it facilitates the increased mobility of flexible labour, but it fails to be part of the agenda when it concerns migrant workers’ rights”. Wickramasekera (2002: 33) states that “labour-receiving countries in the region have shown a high degree of aversion to the formulation of bilateral agreements to obtain labour or provide social security to foreign workers”.

For example, many members of APEC are either receiving or sending semi-skilled or unskilled workers and their families to support economic development, but there is no consistent approach and little agreement within APEC on migration. The movement of large numbers of people appears to be too sensitive and uncomfortable for politicians and public officials to discuss in the senior or higher levels of APEC. Some of the contentious issues are that:

- Malaysia does not want easier skilled labour migration arrangements as it fears losing more skilled nationals to the United States, Canada, Australia, New Zealand;
- the Philippines wants compensation for skilled personnel who emigrate to developed members of APEC;
- some countries with surplus labour want Australia, for example, to take less skilled personnel on a contract labour basis – to increase remittances and assist with the development of APEC economies.

The relatively low cost of wages and remuneration of workers, the rights of guest workers, the social and cultural impact of workers, irregular workers and the treatment of female workers are sensitive issues for officials and politicians from all governments. The possibility of inter-governmental cooperation on international migration is unlikely to occur unless there is political support from major members of APEC.

The unwillingness to cooperate on labour migration seems to stem from a fear of the long-term social, cultural, political and economic ramifications of increased immigration. Countries know that even though most workers come on a temporary basis, some inevitably become permanent and bring their families; the “guest worker” schemes in Europe showed that it is very hard to stop permanent settlement. “Formulation of policy on international labour migration is usually the last and, in many ways, the most difficult dimension of designing policies towards greater regional economic integration” (Manning and Bhatnagar, 2004: 1). This has also been the case within ASEAN and attention to issues associated with migration has only occurred since the late 1990s.

During the last decade, the growth of specific purpose arrangements for cooperation on migration has been a notable feature in the region. The recognition of the importance of people

smuggling and trafficking as an issue affecting Asia and the Pacific region as a whole triggered the formation of both APC and the Bali Process. Prior to the establishment of the Bali Process there was no framework or effective forum for discussion in which states could join forces to deal with people smuggling. The disjointed approach favoured the activity of people smugglers and traffickers whose networks extend across national borders.

Even though the Bali Process was a response to large numbers of boat arrivals in Australia from Indonesia in 2000-01, and initially was largely driven by Australia (DFAT, 2003), more recently it appears to have taken on a greater regional approach. The incorporation of many states into the regional process has resulted in considerable progress. For example, in November 2003 it was reported that:

- 19 countries had criminal legislation in place for people smuggling and/or trafficking in persons;
- 12 countries were considering the implementation of criminal legislation, or were in the draft stage of such legislation;
- 18 countries had made use of model legislation;
- eight of those countries with legislation had also adopted key protection measures for victims of trafficking;
- 15 countries had mutual legal assistance arrangements and/or extradition legislation covering people smuggling and trafficking in persons and related transnational crimes, and
- nine countries had established national action plans, prevention strategies or inter-agency cooperation mechanisms (Ad Hoc Experts' Group II, 2003).

Legislation has become a major winner as a result of the Bali Process, benefiting from clear objectives and guidelines and active review and reform throughout most participant countries. Recently there has been a shift towards people trafficking as an area of particular concern that required further work, in addition to people smuggling issues. Members have highlighted the need to streamline their activities to combat people smuggling and trafficking, as well as to strengthen mutual information and intelligence sharing. They also recommended the construction of confidential databases for law enforcement that would be accessible through the Bali Process website. Increasing awareness remains a priority of the Bali Process policy, along with the ongoing work to promote regional law enforcement cooperation (Report to Ministers, 2004).

Ministers at the Senior Officials' Meeting in Brisbane, June 2004, expressed strong appreciation for the way the Bali Process has delivered direct practical benefits to regional operational agencies. They agreed, however, that although some of the objectives set by ministers had been achieved and progress had been made, "significant challenges remained, particularly in dealing with trafficking in persons issues" (DFAT, 2003). Ministers therefore recommended a future programme of continuing and new activities in areas where the Bali Process could best add value, such as:

- regional law enforcement cooperation, including border controls;
- regional training for law enforcement officers in dealing with the victims of trafficking and in combating trafficking;
- public awareness of people smuggling and trafficking;

- child sex tourism;
- mutual assistance and extradition;
- development of policy and/or legislation on lost and stolen passports;
- targeting people smugglers and traffickers (DFAT, 2004).

Thus, from its roots of addressing people smuggling from Indonesia to Australia, the Bali Process has evolved to include the wider issue of people smuggling throughout the Pacific and Asia region, while at the same time injecting greater emphasis into people trafficking and human rights issues. In its rather short history of international cooperation, the Bali Process has moved from simply a forum for discussion to a phase of implementation of measures aimed at achieving practical results (Report to Ministers, 2004). This strength of unity has enabled increased potential to establish an efficient, sustained and effective programme to address people trafficking and smuggling. Thus, inclusiveness in terms of both participant countries and range of issues, has become important and will impact on the overall success of the Bali Process.

To date the emphasis has been on control rather than the management of migration, and this emphasis may change in the future. However, the more highly developed Pacific Rim countries are mostly interested in curbing undocumented immigration and tightly controlling other migration flows. In this regard, their interests are not congruent with other countries in the region and this may prevent closer collaboration in the future.

A particular focus of SAARC governments is women's development, and leaders have also taken laudable initiatives to prevent the crime of trafficking of women and children in the region. On 5 January 2002, the *SAARC Convention on Trafficking* was sealed at the 11th SAARC Summit in Kathmandu, Nepal. This Convention on Trafficking is the first such regional instrument. While it limits itself to combating trafficking for the purpose of prostitution, it has underscored the need to expose highly organized networks of pimps and brothel owners who have been forcing young girls and women into prostitution. The convention includes a role for NGOs in efforts aimed at prevention, intervention and rehabilitation – including through the establishment of protective homes or shelters and providing suitable care and maintenance for the victims of trafficking.

However, before the SAARC countries had drawn up action plans to tackle trafficking, many experts had already raised doubts about the convention's relevance. According to some social activists, the SAARC resolution has little or no relevance as member countries have often failed to adopt SAARC resolutions in the past. Others voiced a specific complaint: the definition of trafficking of women and girls in the convention is limited to a specific purpose of trafficking only (i.e. prostitution). This loophole may be exploited by criminals to evade the law and continue their business in trafficking, as human trafficking for other purposes (such as forced migration and child labour) is not covered. Furthermore, it ignores the issue of consent or considers consent irrelevant. Excluding the relevance of consent in the definition of the offence of trafficking can result in a serious violation of the rights of persons who are willing to be transported across borders and pay for such assistance. SAARC would overcome some of these problems by following the internationally agreed definition on trafficking.

Thus, while SAARC countries have demonstrated their political will in adopting this important convention, the framework and the approach which informs the formulation of the clauses are

not consistent with the protection, promotion and fulfilment of the rights of women and children affected by trafficking. It has been suggested that wider consultations with experienced NGOs and others may have resulted in a more comprehensive and valuable convention.

Within Asia, the movement of refugees has almost totally fallen outside the realm of cooperative arrangements. The resettlement of Indo-China refugees from the late 1970s was a rare example of international cooperation in this regard, but it occurred only in response to pressure from South-East Asian countries that were being swamped. Action concerning the situation facing North Koreans is inconsistent and lacks coherence.

The area with the greatest prospect for cooperation in Asia is in relation to skilled migration, though this can be a sensitive issue for some countries. Moves are afoot within both APEC and ASEAN to promote greater mobility of skilled workers and trade in professional services. This is politically the least sensitive area and where the greatest gains/benefits are seen to lie.

Migration has long been a feature in the Pacific area and many states now depend on the remittances sent from New Zealand and Australia, the US, Canada and other countries for their economic survival. Friendly arrangements with New Zealand in particular, mean that the issue has not become problematic. However, the recent rise in terrorism, trafficking and smuggling has put pressure on Pacific states to cooperate more with countries on the Pacific Rim. Regional arrangements are largely the initiative of Australia, but the members are beginning to work more closely as equal partners and to develop solutions to common problems.

For example, one item on the PIDC's current agenda concerns assistance towards the development of a regional response to transnational crime. Since 2002, Fiji, Samoa, Tonga, Vanuatu, PNG and the Solomon Islands have established units to combat transnational crime. The PIDC currently collaborates closely with the Forum Secretariat to coordinate the development of a regional framework, including model legislation, to address terrorism and transnational organized crime. The Forum organized the second meeting of the Expert Working Group in February 2003 in Suva, representing 12 member countries. The Group was guided by the need to ensure that the provisions were responsive to the specific needs of the Pacific Island Forum Countries, while taking into account the requirements of relevant UN conventions and Security Council resolutions. The PIDC deals with enquiries on this matter by member countries.

A new phase of combating transnational crime in the Pacific Region began with the establishment of the Pacific Trans-national Crime Coordination Centre (PTCCC) in Suva in April 2004, with a mandate to develop a regional response to the emergence of transnational crime. The PTCCC, PIDC and PIC Immigration Agencies collaborate to develop and exchange intelligence in relation to immigration and transnational crime matters.

Another issue currently on the agenda of the PIDC Secretariat is the adoption of Advance Passenger Information/Advance Passenger Processing (API/APP) Systems by PIDC member countries, which aim at improving border security and facilitating passenger flow in response to heightened global security concerns. Following the 2003 PIDC conference, the Secretariat prepared a paper on the background and possibilities of a uniform API System for PIDC members in the Pacific region, highlighting a number of possibilities, as well as challenges. A Working Group convened by the Secretariat met at the Forum Secretariat in April 2004 with 18 participants from

Australia, New Zealand, Fiji, Niue, Norfolk Island, Palau, Samoa, Tonga and Vanuatu, as well as the Oceania Customs Organization and the Forum Law Enforcement Advisor.

The main item on the agenda was the API/APP and the possibility of implementing a simplified version in the Pacific region. Various countries made presentations detailing their respective border management systems. It was agreed that API was probably the best system for the region as most members had visa-free policies, but that questions of cost, security access and maintenance had to be addressed. It was agreed that a uniform approach for IT systems and data collection should be adopted. The issue was referred back to the Secretariat, which now works with those member countries which have made moves to implement API/APP, and whose knowledge and experience should assist those members who have not yet implemented such a system. Other items dealt with by the Working Group were terrorism and transnational organized crime and model refugee determination legislation, as well as mechanisms for a similar transfer of knowledge and model legislation in these areas.

Both the similarities and close relations between Australia and New Zealand make their arrangement quite unique and the free movement of people is unlikely to be replicated elsewhere. The management of migration by both these countries is on a cooperative basis that involves constant dialogue. Any difficulties are sorted out with relative ease. The Pacific has experienced much less control and paranoia about migration, even though much of the migration is irregular and not part of any formal arrangement, except in relation to New Zealand.

4. IDENTIFY POLICY IMPLICATIONS

It is evident that the Asia-Pacific region trade agreements and regional blocks have been slow to address the issue of migration management. This suggests that the sensitivities and ramifications associated with migration make regional players unwilling to tackle the issues. Regional arrangements have been considerably strengthened over the last decade or so, and perhaps the issue will attract more attention given more time and increased awareness of developments elsewhere. Indeed, relevant information regarding international trends and processes is lacking in much of the region.

This suggests that specific focus arrangements/frameworks, such as the APC and Bali Process, may, in the short run, be more successful in addressing issues associated with migration. The non-binding and non-sanctioning nature of these arrangements have worked in their favour, together with the system of negotiation, planning and tackling the issue from a number of dimensions. Whether they lead to better management is uncertain, but it is clear that dialogue and increased awareness have led countries to improve their own national systems for addressing trafficking and other issues of concern. Once they are given the information and some incentive to address these issues in the form of poverty alleviation, education and similar incentives, they are more willing to cooperate. This indicates that while aid should ideally not be tied to cooperation, it may be emphasized to encourage it. Indeed, the willingness of countries such as Australia to “commit resources for holding workshops, promote placement and exchange of technical and law enforcement personnel and otherwise assist the less developed countries in the region with practical measures to deal with people trafficking is important in any regional effort to manage migration” (Khoo, 2004).

Over the last two decades, labour migration has become a major phenomenon in the region and there is an increasing need to mainstream labour migration issues as part of regional discussions, processes and mechanisms. Perhaps with the exception of SAARC there is no body that includes only senders, but even it has not worked towards achieving better conditions for its overseas workers. The overall situation will improve only once sending countries no longer compete among themselves for employment opportunities to the detriment of migrant worker rights and conditions, and develop common policy frameworks (Amin, 1998). Strengthening collaboration between labour-sending countries should ensure continued access to offshore labour markets with better conditions for workers. One positive approach would be to stabilize the price of labour to prevent employers and recruiters from exploiting migrant workers. There have been cases of successful campaigns and enforcement of workers' rights, but at times these have had unintended consequences, such as when Filipinos were replaced by less organized and/or less vocal nationality groups. This also causes the segmentation of workers based on nationality, ethnicity and social/human capital.

Some destination countries have been more inclined towards establishing less formal cooperative arrangements with countries of origin on labour migration management. Multilateral consultative processes, such as those sponsored by the IOM, and the bilateral Joint Commissions on Labour (a mechanism for regular consultation between the administrative authorities of the two states concerned), have provided an informal and flexible structure for dialogue. New Zealand's approach to some Pacific states is to be commended for its flexibility and its generosity. It has annual quotas for nationals of a number of Pacific countries (including Samoa and Tonga), plus free entry for Cook Islanders, Niuean and Tokelauans (all of whom are also NZ citizens). "This is largely a friendly gesture but also reflects its colonial relationship with the region. Australia, by contrast, has no quotas for any Pacific Islanders, not even for citizens of its former colony Papua New Guinea" (Voigt-Graf, 2004).

Both ASEAN and APEC include senders and receivers, and to date there has been little attempt to resolve these different interests. These organizations are starting to tackle the issue of skilled worker movements in the face of shortages in the health, IT and other areas, and this is a beginning that needs to be built on. Much of this movement is short-term and falls under the umbrella of trade in services. How states will manage this new element has yet to be seen.

ENDNOTE

1. This section of the paper has been enriched by information provided by the government of Australia and the government of the Peoples' Republic of China.

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**INTERSTATE COOPERATION:
THE AMERICAS**

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INTERSTATE COOPERATION: THE AMERICAS

INTRODUCTION

The migratory trends in the Americas became more complex during the 1990s. Traditionally a continent of immigration mainly from Europe, the Americas have turned in large part into a continent of emigration. Emigration from Latin America to countries outside the region has increased, and traditional immigration flows have virtually disappeared. The United States continues to be the main country of destination for migrants from the region, particularly from Central America,¹ while Europe also emerges as a major destination for migrants from Latin America. By 2000, the number of entries from Latin America and the Caribbean had doubled, and by 2003 it had reached over 500,000.² At the same time, as more migrants leave the region, inter-American migration to non-adjacent countries in the region has increased and cross-border migration, usually a traditional feature of Latin American migration, declined.

As this paper sets out to show, these developments have not left policy unaffected. As migration in the Americas has become more diverse, governments in the region have increasingly recognized the need for greater cooperation in managing migration. Bilateral and multilateral agreements are well established within the region. Certain agreements and understandings are linked to distinct subregional integration processes, such as North American free trade agreements, the Andean Community and Mercosur. Others focus specifically on migration, such as the Central American Organization on Migration. More recently, the countries in the region have also become engaged in intergovernmental consultations on migration management, or regional consultative processes (RCPs). Originally intended to function on ad hoc basis, these regional consultative processes have become a prominent feature of interstate cooperation in the region.

Although bilateral cooperation and multilateral agreements as part of regional integration schemes will also be discussed, the main emphasis of this paper will be on the novel forms of interstate cooperation on migration, the Regional Consultative Processes. In particular, this paper aims to examine their role in facilitating interstate cooperation in this regard. In doing so, the migratory context in which RCPs operate will be presented. The paper will then provide an account of the structure of the two most important RCPs – the Regional Conference on Migration (RCM) also known as the Puebla Process, and the South American Conference on Migration (SACM). Some of the main areas of migration where RCPs have facilitated interstate cooperation are then discussed. Finally, the impact of RCPs on interstate cooperation will be assessed systematically by comparing two cases of bilateral cooperation, before and subsequent to the creation of the RCPs.

1. A CONTINENT CHARACTERIZED BY GROWING MIGRATION

The American continent is a region of high and growing population mobility. It includes the world's largest receiving country, the United States, where just under 1 million foreigners attain

immigrant status per year; Canada, with an average of 220,000 - 250,000 new immigrants per year, a proportionately larger inflow, and a number of Latin American countries that receive and host significant numbers of immigrants, in addition to being also countries of transmigration or emigration; this includes Costa Rica, Chile, the Dominican Republic, Argentina and others.

Most countries, however, show a negative migration balance. Mexico is today the world's largest country of emigration in absolute terms, with roughly 10 per cent of its population and 15 per cent of its workforce living and working in the US. Nicaragua has decades-old emigration flows directed mostly at Costa Rica, but also to other countries. El Salvador and other Central American countries experience very high emigration rates to the US and Canada, although more recent figures are non-conclusive.³ The Dominican Republic and Haiti reveal a complex migration profile: in all likelihood, Haiti is the country with the largest relative population living abroad in the Dominican Republic, the US, Canada and the Bahamas, and the Dominican Republic hosts a large immigrant population from Haiti, while at the same time it is a country of substantial transmigration and emigration directed principally towards Puerto Rico and the US (Martin *et al.*, 2002). In relative terms, Colombia is as large a country of emigration as Mexico, with 10 per cent of its population living in neighbouring countries as well as the United States and Europe. Ecuador, Bolivia and Peru are countries of recent, large movements to Chile, the US, Canada and western Europe, and Bolivia is a traditional source country for migrant flows into Argentina.

Governments in the Americas seem to be at a crossroads between their traditional national migration policies and the search for novel alternatives. A clear policy shift with regard to emigration has occurred. Traditionally, the countries of the region took no great interest in emigration. Now, however, there is a growing tendency to adopt policies that are committed to nationals living abroad. Governments in the countries of origin have become increasingly concerned over the effects of emigration in both the host countries and at home.

This growing public concern with emigration is in part also owing to the increasing awareness regarding remittances that account for an increasingly significant proportion of sending countries' GDPs. Mexico, for instance, received between 15 and 17 billion US dollars in remittances in 2004. El Salvador, which is one of the world's leading emigration countries, receives between 15 and 20 per cent of its GDP from remittances. Other countries, such as Brazil, Colombia, Nicaragua and the countries of the Andean Region are also significant recipients of remittances.

Thus, both remittance transfer mechanisms and the destination of remittances are important items of public policy. A further important emigration-related aspect is the growing possibility of voting abroad in elections held in the country of origin. In South America, this right has already been granted in, for example, Argentina, Brazil, Colombia, Peru and Venezuela; it is in the process of implementation in the Dominican Republic and is being discussed in other countries, such as Chile and Uruguay.⁴

As for border control and immigration policies, the direction of policy change is less clear. As in other parts of the world, the governments of the region seem to be treading a fine line between traditional restrictive policies and the search for new approaches. The United States and Canada enforce strict border and entry controls, but share one of the world's longest undefended borders.⁵

However, a growing number of middle and low-income countries that have signed entry and exit-fee and visa waivers are seeking free mobility agreements. In many borders are typically enforced only at a limited number of entry ports, airports, border control posts, with unregulated movements effectively taking place elsewhere.

Some immigration flows are well established and form part of the receiving country's society and economy (Canada, the United States, Costa Rica, Chile, the Dominican Republic, southern Mexico). Others may change suddenly in response to economic and currency fluctuations. This means that, apart from large South-North flows, and those from Latin America to the US, Canada and Europe, there are a number of other migration regions. At times they may encompass mainly two countries (as in the case of Mexico and the United States, or Nicaragua and Costa Rica), in other instances bilateral flows are part and parcel of far more complex movements, as is the case of the diversified emigration patterns of Colombia, Peru, Ecuador and Argentina, or the bilateral movements from Haiti to the Dominican Republic, which should, moreover, be placed also in the context of emigration from both towards Puerto Rico and the United States.

Generally speaking, the continent's main migration flows are economic in nature. Labour migration is the main cause of migration, but there are large and rising movements comprised of family members, as well as intra-company and business mobility. They include a significant component of trans-border short and longer-term flows tied to traditional social and market exchanges. The transnational nature of social ties has become increasingly relevant as a result of large movements in the 80s and 90s. But there are also socially undesirable movements, in particular such as human trafficking in persons and migrant smuggling, drug trafficking and a few smaller but relevant guerrilla movements across unguarded border areas. Though these were more relevant during the eighties and early nineties, for a few countries they still pose significant legal and national security challenges.

2. COOPERATION AND MIGRATION REGIMES

Partly, as a consequence of this growing concern with emigration and its impact on sending and receiving countries, interstate cooperation and agreement on migration have tended to revolve around three main axes: Migration and development, migrant rights and irregular migration, and, finally, migration and national security. Technical collaboration as provided deals directly with procedures, and can fall under any of the previous categories, but its main concern is the management of migration flows.

Although national security issues have gained new attention since September 2001, they have been at the core of some immigration legislation since the late 1990s. The first three, substantive issues have impacted upon the substance and form of cooperation for the past ten years. They have also helped place migration regimes within a broader set of social and national concerns which could guide and encourage technical cooperation. The two main regions in this account (Central and North America and the Dominican Republic, on the one hand, and South America on the other) have placed different emphasis on each of these areas of interest, with security a more salient factor in North and Central America. Both, however, link these issues to the advancement of their migration regimes.

3. THE TWO MAIN REGIONAL CONSULTATION PROCESSES

3.1 The Regional Conference on Migration, or Puebla Process

This mechanism was created at the request of the Mexican government and launched in Puebla, Mexico, in 1996. Its member countries are Belize, Canada, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the United States. It also includes a number of observer countries such as Argentina, Colombia, Jamaica and Peru and observer organizations such as UNHCR, SIECA, IACHR, IOM, ECLAC, UNFPA, and the UN Special Rapporteur for the Human Rights of Migrants. The latter have also implemented many of the initiatives adopted by RCM discussions, some of which were already part of the OCAM Action Plan.

The Central American Organization on Migration (OCAM) was set up at the meeting of Central American Migration Directors of Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama at San José on 5 October 1990, with the aim to develop joint initiatives on migration issues. While OCAM is closely linked to economic integration schemes, the Central American Economic Integration (SIECA) is not on the agenda of the RCM.⁶

The RCM is chaired by the host country on an annual rotating pro tempore basis. The RCM presidency is assisted by a technical secretariat to follow up on the agreements reached at the RCM meetings. Together with IOM's technical support, this management mechanism has been able to prevent the growth of a heavy bureaucracy, a continual challenge in view of the growth of RCM membership and observers, and the increasing interest in other regions. The RCM technical secretariat operates and constantly updates the virtual secretariat⁷ which has been operating a public and private site since 2000 to exchange information. The RCM holds two meetings per year, one at vice-ministerial level in the first quarter of the year, and a technical meeting during the last quarter. It has convened ten times, most recently in Vancouver, Canada in 2005.

The vice-ministerial meeting is the executive decision-making body of the RCM. It is where governments adopt the decisions reached by consensus that define the goals, tasks, the conceptual basis and aspirations of this forum. The actual decision-making takes place in a closed-door meeting attended only by vice ministers and, if deemed necessary, a high-ranking official.

The Regional Consultation Group on Migration (RCGM) is the technical expert group of the RCM. The RCGM has no authority to decide on goals, functions, conceptual bases or aspirations of the RCM, but it is able to formulate recommendations to the vice ministers. This group also monitors the activities and the progress within the RCM framework and states its approval together with a set of conclusions.⁸

Vice-ministerial meetings issue Joint Communiqués or Declarations which may contain (non-binding) principles and practices covering a wide range of policy areas, as well as decisions of an administrative, operative or political nature, always with due respect for the sovereignty of the countries concerned. Although the agreements are non-binding, the aim of the conference is to develop and establish appropriate practice and encourage cooperation among countries. This dialogue also fosters cordial relations between high-ranking officials, which in turn leads to mutual cooperation and initiatives. The RCM also established a Plan of Action, a programmatic

document adopted by consensus that defines the themes, objectives and actions of common concern, as well as a corresponding schedule of implementation. Evolving in step with the RCM, the Plan of Action is periodically updated by decision of the vice ministers during their annual meeting. The RCGM may also update and revise the Plan of Action at its intermediate meeting.⁹

The Technical Secretariat and the Presidency assess the implementation of the action plan.¹⁰

The observer organizations play a prominent role as their expertise has allowed them to offer their technical assistance to the RCM. IOM plays an important role in the RCM process. On request it can outline the steps individual countries can take to implement new agreements, and offer necessary technical advice and training.

Civil society organizations, also known as Regional Network for Civil Society Organization on Migration (RNCOM) dealing with migrant populations, are also invited to participate in particular areas of interest in both the technical and vice-ministerial meetings. They meet simultaneously but separately to discuss the agenda issues and present their recommendations for actions and projects to the plenary session of the RCM, outlining principles and encouraging governments to undertake actions on certain issues. Initially, the statements and positions of civil society organizations were presented during a final, non-deliberative session, and often called for implementation of past resolutions, strict government compliance with agreements, and more vigorous measures against trafficking in persons and respect for migrants' rights. The mood was often confrontational. Confrontations have not disappeared entirely, but in subsequent meetings civil society organizations have played a more relevant role and have become more closely articulated with the process. This parallel mechanism makes intergovernmental consultations more accountable and thus helps to raise the level of commitment by administrations.

3.2 The South American Conference on Migration

The South American Conference on Migration (SACM) was created in 1999. Its member states are Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Paraguay, Peru, Uruguay and Venezuela. Significantly, both the United States and Canada participate as observers together with other countries. It has met five times. During its third conference in 2002, SACM approved its first action plan, which itself was the outcome of the development of its first technical meeting along similar lines to those in the Puebla Process. Its most recent meetings have been attended by all South American countries, and IOM serves as the technical secretariat. A number of other international agencies also participate in SACM. In its most recent action plan, governance tops its strategic agenda, followed by human rights and migration and development.¹¹ With governance, a significant priority is accorded to cooperation generally, cooperation for the integration of migrants in the host society, and coordination for the advancement of migration-related laws and procedures, with the aim of harmonization.

Although the South American Conference on Migration functions on the same broad principles as the RCM, a number of member countries have considered its agreements as mandates (limited to what can realistically be achieved in national legislation). Although published documentary evidence of this process is scant and various, countries such as Chile have asked participating vice-ministers or the IOM to prepare analyses and proposals that include revising national legislation to comply with SACM's agreements.

Both regional conferences have agreed on a number of basic principles that may be summarized as follows:

- Migration is a major force, closely related to the forces leading to greater social, political and economic interactions worldwide.
- There is a direct link between migration and poverty, as the existence of widespread poverty, together with low levels of social and economic development drives a large part of current population movements. Social and economic development should be at the core of national policymaking to arrive at manageable levels and forms of migration.
- Governments need to intensify cooperation and technical and information exchange to ensure the better protection of migrants' rights.
- Governments condemn the smuggling and trafficking in human beings, and agree to cooperate in their efforts to combat these. This position has been reinforced since September 2001.
- All of the above principles are agreed upon with the understanding that cooperation will not should infringe on national sovereignty.

Both RCPs collaborate with other regional instances. One consequence has been the strengthening of the CA-4, a group of four Central American nations (Honduras, Nicaragua, El Salvador and Guatemala) that agreed to waive visas and fees for cross-border movements. Although some member countries have at times reimposed fees or visa requirements when immigration seemed to exceed tolerable levels, they have continued to consult and, in 2004, intended to create a region characterized by the completely free movement of persons.¹² The CA-4 is an association of economically similar countries. Costa Rica and Panama do not participate directly. At the March 2005 meeting of the RCM, the Honduran government reported on the progress made towards the creation of a single visa and a passport for Central Americans. The other significant example is the Andean Community, which agreed to gradually implement, among other things, free movement of persons.

Although a strict comparison between the RCM and SACM with other regional consultation processes is beyond the scope of this text, one significant difference is worth noting. The RCM insists continually on the respect for national sovereignty. In the South American case, however, the intent may be to proceed further. This is evident in the stricter interpretation of some of the SACM's agreements and in the declaration during the most recent meeting of the eight South American countries in Cuzco in December 2004, where the launch of an Economic Community-style association was announced by countries that differ significantly in their political structures, levels of development and migration status. This announcement explicitly recognizes the conclusions of the 5th South American Conference on Migration. It exhorts member governments to work with the SACM, the Center for Latin American Migration Information (CIMLA) and the South American Migration Observatory (OSUMI) to monitor and implement the SACM's agreements. It further contemplates the creation of a common migration space. The meeting of heads of state in Cuzco, where the charter of the South American Community of Nations was signed, included Brazil, Bolivia, Chile, Colombia, Guyana, Peru, Surinam and Venezuela.¹³

The Andean Community also adopted three significant migration-related resolutions (Nos. 503, 545 and 583) dealing with the implementation of:

- Visa-free mobility for tourists (resolution 503).

- A framework for the development of free mobility agreements regarding workers (resolution 545). This refers to workers holding a valid job, or job offer, prior to travel, and includes, (a) individual workers, (b) workers in enterprises undertaking activities abroad, (c) seasonal workers and (d) border workers. This resolution also commits member countries to create a migrant labour office in their labour ministries, which will provide official recognition of departing workers and their jobs, facilitate travel and allow government supervision of their activities.
- Finally, resolution 583 deals with migrants' access to state institutions and social security in destination countries. Although it recognizes state sovereignty in this field, it expresses the commitment of member states to work towards (a) social security totalization and (b) the harmonization of social security systems. This resolution details a number of the specific mechanisms that should allow these processes, including the transfer of personal retirement accounts between member countries, and the rules governing totalization. The Andean Instrument on Social Security, as it is called, was signed in May 2004, and initially allowed for a six-month period for its initial implementation.
- It is nevertheless significant that there is a notable absence of any regional agreements, or provisions for agreement, on existing irregular migrant workers.

The initiative by Mercosur members to establish a common legal resident status for migrants is another indication that different forms of interstate cooperation are emerging in the southern hemisphere. In 2002 Argentina, Brazil, Paraguay and Uruguay, plus its associates Bolivia and Chile signed the "Residence Agreement Concerning Nationals of Member and Associate States", by which they commit themselves to allow the citizens of other signatories to live and work on their territory.

Notwithstanding these differences in migration relations between South and North and Central America, there has generally been a considerable improvement of interstate communication on migration-related issues. In spite of the difficulties states might have faced in the past over issues not related to migration, states continue to look to RCPs as the venues to address multilateral migration issues. In fact, RCPs may be the preferred venue for states to address policy differences. If in the past unilateral policies, such as unannounced group deportations or other restrictive policies may have caused tension between states, a multilateral forum such as RCPs would allow states to resolve this tension and to recreate trust among them.

Finally, there have been attempts to promote the exchange and collaboration between the RCM and the SACM. Colombia and Peru, which hold observer status in the RCM, have participated actively in its most recent vice-ministerial meetings. The RCM pro tempore Presidency participated in the 5th South American Conference on Migration, where it transmitted the most recent resolutions of the RCM and sought to initiate systematic exchanges between the two.

4. RCP-RELATED COLLABORATION

RCPs facilitate dialogue between states on migration matters and interstate cooperation at different policy levels, be it at the level of policy development, implementation or technical design. This section shall review the main areas of interstate cooperation on migration, some of which

have been facilitated by RCPs and received technical assistance from international organizations such as IOM, UNHCR or ECLAC.

4.1 Visa and fee agreements

During the past five years a number of Latin American countries have eliminated or reduced visa requirements on a bilateral basis. In some cases, this includes border-crossing fees. While these agreements are on the whole quite positive, since they tend to increase and facilitate short and long-distance trade and population movements, some signatories have faced difficulties in implementing them since border control agencies have at times been financed directly from these fees. The solutions provided have not always compensated the loss in fees. This may result in less efficient border enforcement and alternative funding mechanisms must be found.¹⁴ The Central American initiative concerning a single Central American passport and Central American visa system may constitute such an alternative approach. Discussions on this issue are still ongoing.

In the medium-term future, Andean countries may make significant progress in this area, whether from the platform of the SACM, the Mercosur or the economic community of the Andes.¹⁵

In the post-9/11 environment, several countries have imposed restrictions on immigration from a number of Asian, African and the Middle Eastern countries. While this is understandable, these countries do not always possess the mechanisms (or the consular bodies) to allow them to screen visitors from these countries, and this has on occasion affected social, economic and scientific exchanges.

4.2 Repatriation agreements, extra-regional nationals

Even before the RCPs, most countries had readmitted their nationals who had been deported or removed from abroad. However, the RCM, in particular, has improved the level of collaboration regarding the repatriation of its nationals and the deportation of extra-regional migrants.¹⁶ In Central America, and Mexico especially, this included a number of Asian and Middle Eastern nationals, for whom consular offices in the respective country of transmigration either do not exist or which are unable to receive them. Among neighbouring countries, unilateral and sudden deportations have often triggered bilateral tension as large groups are repatriated to places lacking the capacity to receive them, or when the country receiving the deportees is not informed in a clear and timely manner of the size of the group, and the reasons for and the timing of the deportation. Readmission agreements can overcome these problems, as in the case of Haiti and the Dominican Republic (see below). However, these agreements came under new stress after the natural and humanitarian disasters befalling Haiti in 2004.

IOM assisted the RCM in the organization of the repatriation and reintegration programmes especially for migrants returned from North America. Under this programme returned migrants are contacted at the reception airport, and offered reintegration support. In some cases it includes access to government or international aid programmes. Another related activity carried out by IOM helped to return families displaced by Hurricane Mitch and to rebuild basic infrastructure.

4.3 Trafficking in persons

Countries unanimously condemn trafficking in persons. However, this is an area that requires closer bilateral and multilateral cooperation, legal reform, and the implementation of some form of TPS (Temporary Protection Status) for the trafficked migrants, to ensure the criminal indictment of traffickers. But as procedures differ and at times be abused by mala fide migrants, this can lead to government scepticism and low numbers of migrants receiving TPS to provide testimony at trial. Fear of traffickers is also an obstacle. This is an area of increasing collaboration, but one that requires much stronger commitment from governments and better collaboration on the procedures ensuring better conviction rates.¹⁷ Successful criminal trials of traffickers only make up a low percentage of all prosecutions, and vary from one country to another. At the March 2005 RCM meeting, IOM submitted a proposal for the application of the UN Convention Against Transnational Organized Crime and its protocol on trafficking in persons.

4.4 Border management, technical assistance and capacity building

The RCM, with a longer history than the SACM, has a good track record in improving government procedures and capacities for border protection. The governments of the United States, Canada and, most recently, Mexico, have organized workshops and training programmes for other participating governments aimed at the precise recording and matching of entries and exits, and the up-to-date management of foreigners. Most recently, at the March 2005 meeting of the RCM, Mexico suggested that the technological means of the virtual secretariat be used to establish a database providing up-to-date representations of the most frequently used forged or stolen travel documents. This database will be available to RCM member countries only. The IOM and participant countries are also actively engaged in similar efforts in South America. This is an area in which member governments, especially from smaller countries, have expressed significant satisfaction, as did several government representatives at the regional meeting of the Berne Initiative in Santiago in 2004. These matters have been the subject of most technical cooperation activities between member countries.

A further area of cooperation arising from the RCM is the creation of a common Central American consulate in Veracruz, Mexico. This is necessary because a number of irregular transmigrant flows converge there and many detentions take place. The governments concerned have agreed to open this office.

4.5 Temporary migrant worker programmes

Several countries participating in the RCPs have at one time or another designed and operated guest-worker programmes of varying types, scope and duration. The most recent examples, however, benefit directly from RCPs. The large movement of workers from Nicaragua to Costa Rica has been an important issue for both governments for a considerable time. Both countries have gradually increased their level of cooperation in this regard within the framework of the "Agreement on Migrant Labor" (*Convenio de Mano de Obra Migrante*), whose initial formulation dates from 1993. During 2004-05, the government of Canada provided technical cooperation to the governments of Costa Rica and Nicaragua to develop a bilateral temporary worker

programme that profits from the experience of the temporary worker programme that Canada operates bilaterally with other countries. The agreement to provide technical advice and help design and operate this programme was closely related to the participation of these countries in the RCM. By early 2005, the two countries concerned had arrived at a specific programme design, regulated by the governments and operated to a large extent by employers. Details of its implementation are pending.¹⁸

The region must develop much more substantive expertise on the design and operation of migrant worker schemes. Migrant worker flows are large and varied, and workable solutions must be found for these movements, regarding both their technical aspects and the specific political and legal forms of consensus that will ensure that they become a part of the regular flows. An important aspect is the relationship of temporary to permanent immigration. The progress made in Central and South America should be monitored and, where possible, other schemes developed.

4.6 Family transfers, migrant-oriented financial agreements

Since remittances in the Americas can represent up to one fifth of GDP for some countries and assure the subsistence of millions of families, they have become an area of priority attention among sending and receiving countries. Banks (especially the Inter-American Development Bank)¹⁹ are working with RCPs and other institutions in both sending and receiving countries to, (a) lower transfer costs; (b) develop mechanisms for asset building and the creation of small enterprises; (c) increase access to banking institutions in source and destination countries, and (d) strengthen remittance-based credit. The cost of transfers has dropped.²⁰ The new schemes are making rapid progress in most emigration countries in the Americas and could become a significant factor determining the quality of life of migrants and their families.²¹

4.7 Amnesties and regularization

Amnesties are a form of regularization that pose specific difficulties since they may foster expectations of further regularizations, which in turn tends to increase immigration. They are also indicative of deficiencies in immigration regimes. In some instances, however, there are few alternatives once a large population of foreign workers and their families is established in the country. Amnesties predate the RCPs. Significant amnesties before the RCPs were IRCA (Immigration Reform and Control Act) in the United States that regularized 2.6 million immigrants through its two major provisions (General Amnesty and Special Agricultural Workers Act (SAW)), and the amnesties introduced by Costa Rica to its mostly Nicaraguan immigrants in 1990 and 1994.

Since the creation of the RCM there have been other significant amnesties. One is the NACARA in the US that granted temporary protection status to immigrants from the Central American countries most affected by civil wars in the eighties, and the amnesty granted by Costa Rica to Nicaraguan immigrants in 1999. However, the large number of applications for IRCA, the huge amount of ensuing applications for family reunification and the weakness of workplace enforcement provisions contained in that bill led the US government to refrain from any other major

amnesties providing resident status. Nevertheless, in 1997 Congress passed NACARA that allowed immigrants from Nicaragua, El Salvador, Guatemala, Honduras and (ex-socialist) eastern Europe to renew their temporary status every two years. This concerned initially close to 1 million persons.²²

After Hurricane Mitch, the presidents of Central America and Mexico met in San Salvador to manage and overcome the main consequences of the catastrophe. That meeting led to another amnesty granted by the government of Costa Rica to Nicaraguans. At the end of the period of regularization (2000), 140,000 Nicaraguans had been granted an amnesty.

4.8 Major legal changes

Finally, the impact of RCPs on migration-related legislation in the participating countries should also be considered. Though not a specific form of cooperation, it is closely linked to it. Hansen (2004) notes that in the European case, the countries making substantial legal changes have been close to EU accession. In other words, accession-related linkages and conditionalities have proven to be a very successful mechanism for the reform of migration-related laws and procedures. While achievements in the Americas are modest because integration-specific conditionalities are not on the table, some countries, such as Chile, specifically incorporated the agreements and recommendations of the RCPs into a profound re-writing of their immigration laws. This case is significant because Chile is a country of immigration. In other countries, vice-ministers who participated in RCPs, encouraged changes in legislation, sometimes on the basis of the RCPs recommendations. A detailed survey of these changes would be necessary to gauge the impact of RCPs on national migration-related laws.

Thus, there are instances of legislative change that may well be the result of RCPs. As already pointed out, trafficking in human beings is an important area of cooperation. Since the inception of RCM, the combating of trafficking and smuggling has been one of the key objectives of the RCM's plan of action. While the objectives in the plan of action have more or less remained the same, the range of proposed action for implementation has become more extensive and complex. The increasing number of actions proposed by RCM is reflected in the growing legislative output on smuggling and trafficking in RCM member states.²³ Ten of the 11 RCM passed legislation on smuggling. While only two member states have introduced specific legislation on trafficking, all countries have adopted legislation on trafficking-related activities, such as aiding and abetting, illegal entry and harbouring, and fraudulent documents.²⁴ Significantly, countries enacted these legislative changes during their RCM membership. While the causal relationship between RCMs activities and the legislative output of RCM members on smuggling and trafficking still awaits systematic analysis, it is certain the RCM contributed to an environment where legislative changes in this area were considered.

Free-trade agreements often include free labour mobility or other migration-related provisions. In all agreements signed between developed and developing countries, migration-related provisions have been considered, but they are few and limited in scope. In the case of NAFTA, which includes Mexico, Chapter 16 of the agreement provides for an unlimited number of visa-free technical and professional movements of Mexicans as of 2004. The procedures have only partially been implemented, and this form of migration is substantially (and paradoxically)²⁵

under-utilized. More recent free-trade agreements signed by the United States with middle- and low-income countries have still more modest migration provisions.

5. TWO BILATERAL CASE STUDIES

This section reviews recent bilateral cooperation efforts between Haiti and the Dominican Republic, and between Mexico and the United States. A comparison of these two cases is guided by the following considerations: Haiti does not participate in the RCM, and the Dominican Republic was an observer for a number of years and eventually joined in 1999. On the other hand, Mexico proposed the creation of the RCM and the United States welcomed it and played a very significant role in securing the participation of all countries in the region. A comparison of these two cases of bilateral cooperation should help establish at which level participation in RCPs makes a difference for the countries involved.

5.1 Haiti and the Dominican Republic²⁶

These two countries possess an intense one-way migration relationship. It is estimated that 500,000 to 800,000 Haitians live in the Dominican Republic. They are considered transit migrants, and therefore an extremely small number (around 5,000) were legal residents of the Dominican Republic until 2002. Most of them also lacked Haitian identity documentation. Another 900,000 Haitians have migrated to the United States, France, Canada and the Bahamas.

The history and memories of Haitian immigration in the Dominican Republic are long. They include bitter episodes, such as the massacre of Haitian migrant workers ordered by the Dominican dictator Trujillo in the 1930s. Later, from 1952 to 1966, and from 1966 to 1983, both countries signed agreements on temporary migrant workers. The two countries did not differ substantially in their levels of wealth and development. But, more recently, their paths diverged: Haiti became progressively poorer, while the economy of the Dominican Republic witnessed modest but sustained improvement. Until then, Haitian migrants in the Dominican Republic had been mostly seasonal to work in the sugarcane industry. However, since the late 1970s Haitian agriculture became increasingly less viable, and migrant workers ceased to return to Haiti at the end of the harvest, or *zafra*. They looked for jobs in other agricultural crops, the urban informal sector, and construction. Cross-border movements were mostly unregulated, and many workers brought their families with them and created shantytowns close to the sugar mills, or in cities. A stable population of foreign, low-paid workers at times caused a halt in recruitment, which was renewed as the sugar industry complained of labour shortages. Since the 1980 there have been several episodes of movements of Haitians into Dominican cities, massive deportations at the end of the *zafra*, and increased (informal) recruitment, which led to a rapid rise in the Haitian population.

By 1998, the population of Haitians in the Dominican Republic had reached half a million or more, and most of them had in fact settled. But they lacked both a regular status and an official Haitian identity. Most had families, but children were not entitled to a local education since they, as their parents, were considered to be “in transit”. In the late 1990s, the Dominican

government was removing 2,000 Haitians per month in a “voluntary” scheme that allowed workers and their families to take their belongings back to Haiti.

The public in the Dominican Republic is ambivalent towards Haitian immigrants. While their work in the sugarcane industry is appreciated, their presence in large numbers throughout the Dominican Republic, and its cities especially, is viewed negatively by many, both as concerns unfair labour market competition and as a threat to what conservative Dominicans call the “three pillars” of Dominican society: Spanish ancestry, Hispanic culture and Catholicism.

However, the bilateral relations on migration between the two countries changed fundamentally in the late 1990s. If in the past Haiti-Dominican Republic migration relations were dominated by unilateralism and mutual indifference, in the 1990s the two countries emphasized joint cooperation in managing migration. A bilateral commission on migration affairs was created in 1998. A year later, the Dominican Republic joined RCM. Bilateral cooperation became more intense. From 1998 to 2002 the bilateral commission met six times and arrived at the following agreements:

1. In 1998, both governments agreed to take the necessary measures to manage the flows.
2. In 1999, they agreed that deportations would only take place at certain times, and that migrants would be received by Haitian authorities at four designated posts.²⁷
3. In 2001-02, the commission agreed to provide a labour contracting mechanism, subject to proof of a job offer, and a birth certificate. They agreed to organize campaigns to document their nationals in the other country and, in the case of Haitians, they agreed to measures that should facilitate acquisition of official identity documents, by lowering the fees charged for passports, and simplifying the process (Haitians in the Dominican Republic would only require two witnesses in order to receive a Haitian birth certificate).²⁸

The changes in the two countries’ approach to migration clearly coincided with Dominican Republic’s participation with the RCM. The extent to which the two developments are causally linked requires further research. Yet it is important to bear in mind that there are also advances in interstate cooperation between the Dominican Republic and the US, also a party to the RCM.

The Dominican Republic is not only a receiving but also a sending country. One in nine Dominicans lives abroad, mostly in the US. While some of these flows are well established, and relatives of migrants residing in the Dominican Republic are able to acquire the visas and documents to travel abroad, others are unregulated and comprise both Dominicans and Haitians who attempt to enter the US by boat directly or via Puerto Rico. To do so, they pay smugglers and traffickers (often for the sex trade) to be able to board old or improvised boats called *Yolas*.

Realizing that the problem of people smuggling and trafficking cannot be dealt with unilaterally, the US and the Dominican Republic have increased cooperation at the border. The US Border Patrol and the Dominican Navy have implemented an agreement on joint patrols. They survey the coast to determine the spots at which migrants gather and the places where boats are under construction, and they also patrol the seas around the Dominican Republic to detain them.

Although cooperation between the US and the Dominican Republic is relatively limited and low-level, it indicates improved communication between the two countries and a gradual shift

towards a comprehensive approach to irregular migration. Given that RCM places a premium on improving communication and exchange of information between sending and receiving countries, it is likely that RCM consultations laid the basis for enhanced cooperation between the Dominican Republic and the US.

5.2 Mexico and the United States

There are interesting similarities between the Mexican-US relations on migration and the Haiti-Dominican Republic case. The Mexican-US relations are also highly asymmetric: the US accepts immigrants from and trades with many nations, but virtually all Mexican emigrants and most Mexican exports go to the US.

Unauthorized or illegal migration is also a highly sensitive issue in bilateral relations, which itself is the legacy of the guest-worker policy that the US and Mexico launched in the 1940s. Under the “Bracero” programme, some 4.6 million Mexicans legally entered the United States to work on farms between 1942 and 1964. Most of the seasonal Mexican workers shuttled between their homes in Mexico and jobs in the USA, but over the course of 22 years, more and more workers and employers preferred to work outside the legal temporary workers system. The number of illegal worker has been rising ever since. It is estimated that in 2004 more than 10 million undocumented migrants live in the US.

In the light of these figures, it is not surprising that illegal migration has been a constant source of tension between the two countries that has occasionally turned into open hostility. Tensions between the US and Mexican government ran high during operation “Wetback” in the 1950s, a massive border control and interior enforcement operation against undocumented migrants. This operation led to the sudden removal of 1 million Mexicans from the territory of the United States, which gave rise to mutual recriminations. In 1964 the US government unilaterally terminated the “Bracero” programme. Yet the issue of undocumented migration did not go away. In fact, it has since periodically flared up in domestic debates in the US. In 1994 Californian citizens, for instance, passed Proposition 187, which denied basic education, health and social services to those who could not prove legal residence. In 1996 Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which meant a massive increase in border enforcement, especially concerning the removal of illegal migrants, and a cut-back in services for migrants.

In spite of general public hostility and the restrictive stance of the US Congress on immigration, Mexican-US relations on migration significantly improved in the 1990s. The Clinton administration has invested unprecedented resources in a US-Mexican Binational Commission and in a Working Group on Immigration and Consular Affairs partly to limit the harmful effects of heightened border enforcement and congressional restrictionism. The most significant development has come since 1995. In a meeting of the Binational Commission, the two sides explicitly recognized immigration as a bilateral problem calling for cooperative approaches and expressed joint opposition to the exclusion of immigrants from benefits. The two sides also agreed to expand services on both sides of the legal border crossings, to greatly expand the Border Liaison Mechanism to promote local diplomatic contacts, and to notify each other of cases of migration enforcement. Finally they agreed to establish a Binational Study, written by ten academics from

each side, that would define an agreed set of facts about binational flows and would form the basis for future negotiations (Rosenblum, 2000: 46).

Thus, some advances in bilateral cooperation preceded the creation of RCM in the region. Others, however, coincided with it. Shortly after the first RCM in 1996, the meeting of the Binational Commission produced a Memorandum of Understanding (MOU) signed by the US-Secretary of State and the Mexican Foreign Minister, including a joint agenda for addressing human rights and law enforcement, emphasizing that the protection of migrants' rights is a higher priority than law enforcement. This was followed up with a joint declaration in 1997, outlining four specific programmes to promote migrant safety, maximize cooperation between enforcement agents and consulates, minimize the negative impact of forced repatriations and link immigration control to economic development. Strikingly, all of these points addressed by the Binational Commission were also the priority areas of 1996 RCM meeting (joint communiqué, 1996).

As in the Dominican Republic-Haiti case, the causal relationship between the 1996 RCP and the subsequent MOU is difficult to disentangle without further research. The Binational Commission may have "bilateralized" the multilateral priorities of the RCM or the RCM may have "multilateralized" the programmatic priorities of US-Mexican relations. Whatever the relationship between these developments, it is certain that the RCM has reinforced existing cooperative efforts between the two countries and thus helped to avoid the kind of damage to bilateral relations that domestic restrictive policies might have caused. As Rosenblum (2000: 46) put it, "ground-level cooperative efforts have assured that the massive increase in border enforcement and the cut in services to migrants have been accomplished with a minimum of strain on bilateral relationship". The RCM has ensured that the dialogue between the US and its neighbours has not ceased even in difficult times when domestic opinion might shift against migration and restrictive policies prevail. US relations with Mexico and its other Central American neighbours is currently put to test by the range of restrictive immigration measures imposed by the US in the wake of the 9/11 terrorist attacks. Notwithstanding this challenge, collaboration between the US and its neighbours continues. The Bush administration has recently signed an agreement with its Mexican counterpart on access of migrant workers to health service and protection of labour rights. In addition, the two governments negotiated a social security totalization agreement, which has yet to pass Congress.

6. CONCLUSION: THE PATH AHEAD

RCPs have made a substantial contribution to the general environment and the practical procedures that have led to better migration practices in the Americas. Both RCPs are preparing further developments in the short and medium terms. Member countries have expressed satisfaction in a number of fields, including governance and capacity building, treatment of their nationals, easing of migration controls between countries and much enhanced cooperation.

Nevertheless there are still significant challenges ahead. In the post-9/11 environment, security and migration are high on the political agenda, especially in North America. While countries might be tempted to revert to unilateral action, the global nature of terrorism suggests that the success of such policies is bound to be limited. Closer cooperation and dialogue seems to be a

more appropriate response to this challenge and RCPs could be the appropriate venue to foster such cooperation. The informal and non-binding nature of RCPs may make for an appropriate environment to enhance communication between states on such a sensitive issue as security.

Undocumented migration remains a thorny issue, especially in US-Mexican migration. Since 1986, when the last large-scale amnesty took place in the United States, the number of undocumented immigrants has swelled to roughly 10 to 11 million by 2004. These immigrants are afforded various levels of rights and recognition, but they still remain vulnerable. As we have seen, bilateral cooperation between the US and Mexico has significantly advanced in this area. Yet, a bilateral approach is not a substitute for regional one. The source countries of undocumented migrants have become more diverse in recent years, and improved and cheaper transportation enables migrants to change their route at short notice. Thus, for bilateral cooperation on undocumented migration to be successful, it needs to be complemented with a regional forum of cooperation. The RCM reflects this dual track approach where participating states cooperate with each other bilaterally as well as multilaterally. Yet, in light of these overlapping forms of interstate cooperation, it would be interesting to examine more closely the conditions under which bilateral and multilateral cooperation complement rather than undermine each other.

Significant advances towards closer interstate cooperation have been made in the Southern American Hemisphere. In the South American case, the technical documents produced by the SACM, its Action Plan and its coordination with other regional bodies suggest major changes could take place. These visions of regional integration may soon be tested by individual countries' political structures.

Generally, there are indications that greater regional integration is on the agenda in the Southern American Hemisphere. Economic communities such as Mercosur and the Andean Community have made significant advances in this regard, while in Central and North America the prospect for further regional economic integration is limited. There is recognition in the Northern American Hemisphere that Free Trade Agreements such as NAFTA have partially delivered on their promises as regards the growth in trade, investment and employment. Yet, there is still great resistance to domestic reforms that may be required for enjoying the full benefits of trade liberalization.

In a context of limited regional integration, RCPs may prove useful mechanisms for improving interstate cooperation. Our case studies of Mexican-US and Haitian-Dominican Republic relations showed that RCPs might indeed facilitate cooperation where it does not exist or strengthen existing cooperation, and they might even do so in a climate of domestic opposition to migration. Indeed, as Hansen argues, government might in fact want to pursue interstate negotiations through RCPs precisely because of general hostility to migration at home. A crucial advantage of RCPs vis-à-vis more formal forms of cooperation is that RCPs, in Hansen terms, "depoliticize" and "demediatize" migration policy. Limited access means frank and free dialogue and provides the appropriate environment for creating confidence. Furthermore, the non-binding nature of agreements allows participating state to define the pace and the level at which cooperation should proceed. Lastly, RCPs are mechanisms of interstate cooperation that are highly adaptable to changing international and socio-economic circumstances.

Although the interstate cooperation on migration has significantly improved since the inception of RCPs, there is one area in which interstate cooperation is still limited. The benefits of international cooperation on migration and development issues are potentially great. Yet, to date, they remain unrealized as interstate cooperation has not progressed far in this area. Thus, both RCPs placed the migration-development nexus on the regional agenda by making it a key plank of their plan of action.²⁹ However, in the light of the fact that extra-regional migration and intra-Latin American migration have expanded geographically, closer cooperation within RCPs is not sufficient to maximize the development benefits of migration. Individual RCPs need to look beyond their geographic confines and seek closer cooperation with other RCPs inside their own region and further afield. Only then could migration be more effectively used as a development resource.

ENDNOTES

1. OECD (2004) DELSA/ELSA/WP2(2004) 10.
2. OECD (2004), DELSA/ELSA/WP2(2004) 9.
3. Calculations by the United Nations Population Division (2003) and the US Citizenship and Immigration Services (2003) yield an estimate of 9.49 per cent, to which Salvadorans benefiting from TPS in the US must be added, for a total of approximately 11 per cent. However, Salvadoran officials estimate the total in the US at approximately 2 million, or 25 per cent of the population in the country itself, which would explain the volume of remittances received in that country. As of writing, the US Bureau of Census had not completed its population profile for El Salvador and other Central American countries.
4. World Migration Report, 2003: 176.
5. This, however, has changed after October 2001, and may change further as a result of new legislation.
6. World Migration Report, 2003: 181.
7. At www.crmsv.org.
8. Taken from the Glossary of the Regional Conference on Migration (RCM).
9. Taken from the Glossary of the Regional Conference on Migration (RCM).
10. Progress in the implementation of the Action Plan is reported periodically at the virtual secretariat web page.
11. The Action Plan also includes “crosscutting” strategic axes that basically provide the technical and information underpinnings of substantive progress.
12. As of writing, progress in mobility agreements had gained impetus between Guatemala and El Salvador. Cooperation between these two countries and Nicaragua and Honduras has not reached the same level.
13. “A dream with many hurdles”, BBC News, 9 December 2004.
14. IOM was asked to study migration management practices in Central America, and has subsequently proposed new forms of border and migration management that should result in better migration practices in Central America (would be good to have a citation of the study).
15. The long-term significance of this newly formed organization remains to be seen. It is different from Mercosur both in its membership and its declared scope. It is based on a European Union model rather than Free Trade.
16. Migrant readmission has posed far fewer problems in the Americas than among the countries of origin of irregular migrants to the EU. It should nevertheless not be taken for granted. IOM has provided technical assistance to countries in both RCPs regarding the deportation of non-regional nationals.
17. The most recent meetings of the RCM have agreed to monitor progress, compare laws and procedures and, in general, increase collaboration for the conviction of traffickers and the reduction of trafficking in persons.
18. The Nicaraguan press nevertheless notes that the new agreement does not include the largely unregulated flow towards urban jobs, and especially domestic employment (www-ni.laprensa.com.ni/archivo/2005/enero/22/regionales/regionales/-20050122-05.html).
19. Large commercial banks have also worked with governments and migrant associations to capture larger market shares and lower transference costs. Wells Fargo and Bank of America are notable examples.

20. The large class action suits against some money transfer corporations also played a significant role in the reduction of transfer fees.
21. Two government representatives attending the Berne Initiative (2) in December 2004 pointed out that their governments could vouch for the benefits derived from the Puebla Process. Among the benefits they mentioned that it was an environment which fosters cooperation and agreement among governments, that it allowed them to deal with all the major aspects and implications of migration, that its informality allowed a degree of openness which was perceived as key to their success, and that they had derived practical benefits from participation, including advancing migrants' rights, designing policies that promoted development on the basis of migration, promoting much improved forms of deportation and readmission of nationals, and collaboration for the repatriation of deceased migrants' remains (personal communications).
22. Soon after, the US Congress also passed a similar bill for Haitian immigrants.
23. Plan of Action, Regional Conference on Migration (RCM), Panama City, Panama, 2-3 December 2004.
24. Comparative Matrix on Legislation on Smuggling and Trafficking in RCM Member States, http://www.rcmvs.org/investigacion/pagina_investigacion.htm.
25. This is paradoxical because Mexico-US migration comprises a significant number of skilled migrants who may often work irregularly in the US (Lowell et al., forthcoming).
26. The author participated in the *Migration Dialogue* held in the Dominican Republic in March 2002. This review, however, is mostly based on Martin, Smidgley and Teitelbaum (2002), who directed that meeting.
27. The list of agreements also includes non-separation of families; refraining from taking the migrants' property and documentation; repatriation only as a result of a personal order of repatriation, which must be handed to the migrant; sending advance notice of the individuals to be repatriated to Haiti's consular offices in the D.R., and Haiti's commitment to the operation of border posts to ensure that Haitians leave with proper documents (Alexandre, 2001).
28. Although this is not an outright amnesty, it de facto allows Haitians with Haitian documents and access to the labour contracting mechanism to remain in the Dominican Republic.
29. See pp. 2-3 of the Plan of Action for International Migration in South America, Quito, Ecuador, August 2002, and pp. 8-9 Plan of Action, Regional Conference on Migration, Panama City, Panama, 2-3 December 2004.

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INTERSTATE COOPERATION: AFRICA

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INTERSTATE COOPERATION: AFRICA

1. CURRENT FORMS OF INTERSTATE COOPERATION AT THE REGIONAL LEVEL

Sub-Saharan Africa (SSA) is a region with a variety of migration flows within, from and into the African continent. Migration is both pervasive and deep-rooted, fuelled by economic deterioration, poverty, conflicts, social and cultural transformations, as well as the phenomenon of globalization. As economic situations deteriorate with widespread and deepening poverty, many more Africans are migrating, often irregularly, to relatively richer countries within, and increasingly outside, the region. Trafficking in women and children within and outside the region signals a deepening structural crisis in African societies. Migration has understandably become a controversial issue in some receiving countries worried about the influx of “illegal” immigrants into their territories. Interstate cooperation, whether at the bilateral, multilateral or regional levels, is essential for effective and mutually beneficial management of international migration. In the following sections we shall discuss regional mechanisms for interstate cooperation as well as a series of bilateral labour agreements to regulate inter-country labour migration, irregular migration, human trafficking and repatriation. In order to place the contribution of regional consultative processes in SSA in facilitating interstate discourse of common as well as divergent views on migration in its proper context, we first discuss the efforts and challenges faced by regional economic organizations to facilitate intraregional migration. This is then followed by a description and analysis of regional consultative processes, which are more informal attempts to achieve interstate cooperation.

2. SUBREGIONAL ECONOMIC ORGANIZATIONS IN SUB-SAHARAN AFRICA

The Lagos Plan of Action 1980 sets the framework for subregional organizations as building blocks for the African Economic Community (AEC), and became functional in May 1994. Several regional economic groups have since emerged: the Economic Community of Central African States (CEEAC); the Economic Community of Countries of the Great Lakes (GEPLG); the East African Cooperation (EAC); the Economic Community of West African States (ECOWAS); the Common Market for Eastern and Southern Africa (COMESA); the Southern African Development Community (SADC); the Intergovernmental Authority for Development (IGAD), and so on. The north African countries are mostly members of the Union of the Arab Maghreb (UMA) and share several features that distinguish them from other parts of Africa, especially with respect to their proximity to European Union’s southern countries and migration configurations.

This section focuses on the role of ECOWAS, COMESA, SADC as well as the African Union in the management of regional migration through multilateral agreements. These incorporate most of the SSA countries, which belong to multiple economic groupings. These are also the vibrant subregional organizations in sub-Saharan Africa (SSA), which also reflect the diversity and complexity of migration configurations and their management in the region. These organizations

have faced challenges in the process of implementing the protocol on free movement of persons (in ECOWAS), or in reaching a consensus in assenting to and implementing it by all member states (as in SADC); and also include the demographic and economic giants in the region (Nigeria and South Africa), major recipient countries of migration (Côte d'Ivoire, Nigeria, South Africa, Botswana); major sending countries (Lesotho, Mozambique, Burkina Faso, Mali), as well as sending, transit and receiving countries (Zambia, Zimbabwe, Senegal, Ghana). The migration situation is dynamic, and rarely can countries in the region be classified under only one category, either as receiving or sending countries.

The Economic Community of West African States (ECOWAS)

The treaty creating ECOWAS was signed in Lagos in May 1975. Article 27 affirms a long-term objective to establish a Community citizenship that could be acquired automatically by all nationals of the member states and reinforces the treaty's preamble to remove obstacles to the free movement of goods, capital and people in the subregion. Hence the Protocol on Free Movement of Persons and the Right of Residence and Establishment of May 1979 capitalized on free mobility of labour (Ojo, 1999). Phase one of the Protocol guaranteeing free entry of Community citizens without visa for 90 days was ratified by member states in 1980, and put into effect forthwith to usher in and formalize an era of free movement of ECOWAS citizens within member countries.

The rights of entry, residence and establishment were to be progressively established within 15 years from the definitive date of coming into force of the protocol. The implementation of the first phase over the first five years abolished requirements for visas and entry permits. Community citizens in possession of valid travel documents could enter member states without a visa for up to 90 days. Member states can nevertheless refuse admission into their territory to so-called inadmissible immigrants under its laws. In such an event, the cost of expulsion is to be borne by the immigrants, but states would guarantee the security of such citizens, their family and property. The delayed second phase (Right of Residence) of the Protocol came into force in July 1986, with its ratification by all member states, but the Right of Establishment has not yet been implemented now.

The coming into force of the protocol on free movement of persons coincided with a period of economic recession in most countries of the subregion, especially those bordering Nigeria, whose economy was fuelled by oil sector earnings. In early 1983 and in mid-1985, the Nigerian government revoked Articles 4 and 27 of the Protocol to expel so-called illegal aliens, mostly from member countries of ECOWAS. This development created a crisis of confidence that rocked the Community to its very foundation. In 1992, the revised Treaty of ECOWAS affirmed, among other things, the right of citizens of the Community to entry, residence and settlement; enjoined member states to recognize these rights in their respective territories and take all necessary steps at the national level to ensure that these provisions are duly implemented.

The Southern African Development Community (SADC)

The Southern African Development Coordination Conference (SADCC) was established in 1980 by ten countries principally to reduce their economic dependence on apartheid South Africa,

forge links for creating a genuine and equitable regional integration and mobilize resources to promote the implementation of national, interstate and regional policies (Oucho, 1998). SADCC created the Southern African Labour Commission to reduce the vulnerability of the labour-exporting countries to, and later eliminate the supply of, migrant labour to South Africa. In August 1992, the Windhoek Treaty established SADC to replace SADCC, incorporated special protocols on aspects of regional cooperation and some provision for the movement of people across borders. Mauritius later joined the Community and South Africa was admitted in 1994. The Democratic Republic of Congo (DRC) became a member in 1998. By July 1994, member states agreed to abolish visa requirements for travel by nationals in SADC countries. However, Zimbabwe and South Africa decided to maintain visas for visitors between their countries, ostensibly in order to control illegal immigration. The objective to create a southern African economic community with free trade, free movement of people and a single currency by the year 2000 has not materialized. Already hosting about 2 million “illegal” immigrants, South Africa has been oblivious to the huge influx of immigrants taking advantage of the Community’s protocol on free movement of persons. With the admission of South Africa into SADC, nationals of Zambia and Tanzania who were barred from migrating to apartheid South Africa and the DRC now could do so, and migrate there legally.

The Common Market for Eastern and Southern African (COMESA)

COMESA was founded in 1994 to continue the work begun by the Preferential Trade Area (PTA) towards economic cooperation and integration of its member states with the ultimate objective of creating a common market. Egypt was accepted into COMESA in 1998, thereby extending the coverage of the common market to North Africa. Convinced that a functional common market required free movement of citizens of the member states, COMESA fashioned its Protocol on Free Movement of Persons, Labour, Services, Right of Establishment and Residence on that of ECOWAS. COMESA’s Protocol would be implemented in phases, beginning with the aspect on free movement of persons, followed by freedom to take up employment in any member state “under similar conditions as nationals”, and culminating in the right to reside freely in member states. Yet, little progress has been made since. Mozambique has suspended its membership of COMESA, and Tanzania signalled that it might withdraw from the organization (Colliers, 2001).

3. ACHIEVEMENTS AND CHALLENGES OF SUBREGIONAL ECONOMIC ORGANIZATIONS

The free movement of persons without a visa within ECOWAS is a major achievement of the organization. The abolition of the mandatory residence permit and the granting of the maximum 90-day period of stay to ECOWAS citizens at entry points took effect as of mid-April 2000. Many ECOWAS countries have modernized border procedures through passport scanning machines and a closer collaboration is being forged between security agents on information sharing and staff exchange programmes. Other positive developments include the creation of a borderless subregion and the adoption of an ECOWAS passport as a symbol of unity to progressively replace national passports in circulation over a transitional period of ten years. The

Lomé Protocol on the mechanism for the prevention, management and control of conflicts, and maintenance of peace and security was signed in December 1999, when ECOWAS also adopted the variable-speed approach, whereby sets of common objectives are agreed upon, but countries move at different speeds towards their implementation.

Overlapping membership and institutional arrangements have, however, constrained integration efforts. Members of ECOWAS, COMESA and SADC belong to interlocking unions with different ideologies and objectives, and political leaders are unwilling to surrender national sovereignty to supranational institutions. It does seem that the smaller and more homogeneous the membership of economic unions, the greater the chances of achieving important but limited objectives, as is the case of UEMOA, the West African Economic and Monetary Union, a group of former French colonies in West Africa. Economic unions have been dominated by the economies of a single country, and movements of persons have been directed to a limited number of countries within these unions – South Africa and Botswana in SADC, Gabon in central Africa, Côte d'Ivoire and Nigeria in ECOWAS.

Migrants are often viewed as a disruptive force rather than as contributors to economic progress. Whenever economic situations deteriorate, migrants are convenient scapegoats and politicians, eager to blame their policy failures on foreigners, target the immigrants they attracted during periods of economic prosperity, for expulsion. Zimbabwe, once a subregional economic frontliner, is now deeply immersed in political and economic crises with the economy and polity on the verge of collapse, as is Côte d'Ivoire today, albeit for different reasons.

COMESA's protocol on free movement of persons and SADC's half-hearted attempt to facilitate intra-Community movements of nationals are largely still on the drawing board. ECOWAS' protocol on establishment and residence has not been implemented in spite of the close link to the promotion of labour mobility in the subregion. Migration is a controversial issue in SADC countries: the original 1997 protocol on free movement of persons was revised several times to incorporate objections from member states, especially South Africa (Solomon, 1997). In the revised protocol on facilitation of movement of persons, the initial six-month visa-free entry period was reduced to three months, and states reserved the right to enter into bilateral agreements with other states in respect of condition of entry of immigrants, and were to establish population registers to differentiate citizens from non-citizens (Oucho and Crush, 2001). Many member states advanced selfish reasons for not endorsing the protocol and, in spite of informal negotiations the protocol remains stalled at the political level.

It is in the context of the stalled attempts by subregional organizations to entrench the principle and practice of free movement of persons that regional consultative processes have come to play a crucial role in the region.

4. REGIONAL CONSULTATIVE PROCESSES IN SUB-SAHARAN AFRICA

Two basic characteristics are common to regional consultative processes: they are informal and the results, though consensual, are non-binding (IOM, 2002: 9). Regional consultative processes provide a forum to exchange information, experience and perspectives and can facilitate co-

operation among governments on migration policy and practice (IOM, 2003: 127). There are two major regional processes in Africa – the Migration Dialogue for Southern Africa (MIDSA, 2000); and the Migration Dialogue for West Africa (MIDWA, 2001).

SADC launched a consultation process in 1993 among its members in order to design and adopt a regional protocol on migration. As indicated above, the process stalled without concrete result as member countries were embroiled in the arguments for and against free movement of persons within the Community. The lack of an appropriate legal framework and efficient coordination at both regional and national levels, as well as unreliable and incompatible migration data, made the need for a regional dialogue between SADC member states on the critical issue of migration more pressing than ever before (IOM, 2003).

In 1999, the International Organization for Migration (IOM), in collaboration with the Southern African Migration Project (SAMP) and the United States Immigration and Naturalization Service (INS) organized a regional migration policy and law training course for senior migration officials of SADC member states. Follow-up meetings were later organized in Zimbabwe and Zambia. In November 2000, a seminar was held in Mbabane (Swaziland) where participants confirmed the interest of SADC countries in holding regular meetings on migration issues to enable officials in the subregion to exchange their experiences. At that time, MIDSA was officially established as an inter-agency and intergovernmental initiative and a viable framework for regional dialogue on migration. Covering 14 countries that are members of SADC and COMESA – Angola, Botswana, the Comoros, Democratic Republic of Congo (DRC), Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe – MIDSA's main goal is to facilitate cooperation among regional governments and to contribute to regional migration management by fostering understanding of migratory flows and strengthening regional institutional capacities. MIDSA's long-term objective is to enhance SADC's migration management capacities through a functional network of cooperation.

The MIDSA dialogue was thus established as an open and ongoing process to support officials from SADC member states, the SADC secretariat, to exchange experience, share concerns and develop understanding and institutional capacities in migration matters. The MIDSA secretariat plans and coordinates the annual cycle of activities and networks between SADC countries, the secretariat and interested donors. SADC members expect the MIDSA process to contribute to shaping policy on migration and provide an appropriate framework for discussion and problem solving.

The International Migration Policy Seminar for West Africa, organized jointly by IOM and the International Migration Policy Programme (IMP) in December 2001 in Dakar, is unique in many respects. First, it was held in the context of the Declaration of Dakar and follow-up proposals adopted by ECOWAS ministers during the West African Regional Ministerial Conference on the Participation of Migrants in the Development of their Countries of Origin (Dakar, 13 December 2000). Second, the seminar was a first important step towards implementing the Dakar Declaration and Follow-up Proposals with reference to government capacity building in migration policy development and migration, and regional interstate dialogue and cooperation, along the lines of MIDSA (IMP, 2002). The conference attracted more than 60 senior government officials from 15 ECOWAS member states, 50 international experts, representatives of international organizations and government observers from within and outside Africa.

The MIDWA process was launched in 2001 with the participation of 13 countries of ECOWAS, namely Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. This preceded the Dakar Declaration and Follow-up with the major aim of accelerating the ongoing ECOWAS regional integration process, especially in respect of the free movement of persons, the right of residence and establishment.

The key aspects and common areas of interest discussed in the MIDWA process include border management, data collection, labour migration, irregular migration, development, remittances, the rights of migrants, trafficking and smuggling in children and women, return and reintegration (IOM, 2003). Participants noted that intra and inter-regional cooperation make it possible to strengthen and harmonize migration and development policies based on partnership between origin, transit and destination countries, and to optimize the benefits of migration in regular situations.

Among the relevant recommendations was the establishment of a national migration statistics unit to coordinate migration data collection, an information focal point in each country to deal with all aspects of migration data (IMP, 2002). The need for greater cooperation and coordination among countries of the subregion to harmonize their labour migration policies was stressed, as was research on labour needs of countries of origin and destination to match respective labour skills and demand. The need to strengthen interstate cooperation, consultation and dialogue between ECOWAS countries and partner countries, especially the European Union, was stressed as a means to fostering collaboration on migration issues.

It was agreed during the conference that IOM, in partnership with international, regional and subregional organizations, would assist in capacity building of the staff of regional and governmental organizations in the formulation and implementation of policies on international migration; assist in harmonizing, coordinating and integrating regional migration policies and cooperation at interregional levels, and help to strengthen intra- and inter-regional cooperation. A permanent observatory and information system on regional migration, a statistical database and network to disseminate information on migrations were proposed. A follow-up commission to the Dakar Declaration was to be established and include IOM, ECOWAS and UEMOA in partnership with governments and migrants. However, little information is available on the extent to which these recommendations have been implemented.

The African Union's strategic framework for a policy on migration

The OUA Council of Ministers during its July, 2001 meeting in Lusaka, called for a strategic framework for migration policy in Africa, to address emerging migratory configurations and ensure the integration of migration and related issues into national and regional agendas for security, stability, development and cooperation. It also agreed to work towards fostering free movement of people and to strengthen intra- and inter-regional cooperation in migration matters (AUC, 2004). African countries also affirmed their commitment to: address border problems that threaten peace and security; strengthen mechanisms for protection of refugees and combat trafficking; invest in human resource development to mitigate the problem of brain drain; promote regional integration and cooperation; and promote economic growth, integration and trade.

These commitments reflect the increasing recognition of migration as an engine for regional cooperation and integration and socio-economic development of the continent.

In May 2002, IMP organized a regional migration policy dialogue conference in Kenya for 13 governments of three subregions – East Africa, Horn of Africa and the Great Lakes – to discuss priorities and establish common understanding on key migration and forced displacement issues. Participants from Burundi, Djibouti, DRC, Eritrea, Ethiopia, Kenya, Rwanda, Somalia, Sudan, Uganda and Tanzania also attended a follow-up conference in Addis Ababa a year later in collaboration with the African Union (UNITAR/IMP, 2003). During the 2004 Berne Initiative Regional Consultations for Africa, participants discussed issues covering the root causes of migration, respect for human rights of migrants, the vulnerability to exploitation of migrants in irregular situations, the importance of integration, the positive contribution of migrants to receiving and sending countries, and the need for a comprehensive and cooperative approach, collaboration and cooperation between states and other relevant stakeholders.

The strategic framework – a tool for developing and presenting a coordinated migration policy based on common priorities – was discussed and adopted by a panel of experts (UNITAR/IMP, 2003: 3). It covers a wide number of themes, including: labour migration (national labour migration policies, regional cooperation and harmonization of policies, regional economic integration); border management; irregular migration; human rights of migrants; internal migration; migration data collection and data exchange; migration and development (brain drain, remittance transfers and Africans in the Diaspora); interstate cooperation and partnerships; and other social issues (migration and poverty, health, environment, trade, gender, and children, adolescents and youth). There is little available information regarding the implementation of these activities especially the extents to which aspects of the recommendation have been integrated into national migration programmes.

5. ASSESSMENT OF THE TRENDS IN INTERSTATE COOPERATION OVER THE LAST DECADE

Over the past decade or so, several initiatives have emerged between countries within and outside the region aimed at fostering an improved migration management mechanism through cooperation, capacity building and dialogue. The increase in interstate cooperation is largely premised on the recognition that the growing number of migrants and the complexity of the migratory configurations within and across subregions of SSA necessitate a more coherent and cooperative interstate approach to migration management. The need for clear objectives, opportunities for the exchange of experiences and best practices is also recognized. African countries are facing daunting challenges in respect of human trafficking, increasing irregular migration, migrants' rights, and brain drain.

The dialogue between African and the EU countries is of particular relevance because the latter are important destinations for labour migrants, irregular migrants, highly skilled migrants and victims of trafficking. The direction of interstate cooperation reflects the concern over irregular migration and the trafficking of children and women within and between regions. Below, we elaborate on the thrust of some of the initiatives, with emphasis on multilateral and bilateral agreements, in order to place the growing interstate cooperation agreements in perspective.

The European Union (EU)/African Caribbean and Pacific (ACP) countries agreements

The Joint Assembly of the EU-ACP and its Bureau serve as the permanent secretariat to discuss matters relating to migration between the two organizations. This framework also provides the institutional link for the exchange of information, consultation and implementation of programmes on migration in Africa, and a channel for harmonizing migration policies and multilateral agreements between the EU and AU countries.

The Cotonou Agreement, signed in June 2000, aimed at building a partnership between the EU and the ACP countries in order to reduce and eventually eradicate poverty by promoting sustainable development, capacity building and integration into the world economy (IOM, 2003: 261). The concluding parties emphasized political dialogue, development cooperation and trade relations as specific areas of concern, while respecting the principle of equality between their countries. The management of migration is recognized as a priority area for technical cooperation between the EU and ACP countries, with migration as an important element of the political dialogue, which seeks to explore different dimensions of cooperation.

It is in this light that Article 13 of the Cotonou Agreement sets forth a framework for migration management. It stated, in part, that respect for the rights of migrants shall be guaranteed with a commitment to fair treatment of migrants who reside legally in the territories of the concluding parties. Strategies to tackle root causes of massive migration flows emphasize “supporting the economic and social development of the regions from which migrants originated”. The training of ACP nationals and the access to education in the EU for ACP students were explicitly mentioned. With respect to regulations to counter irregular migration, the parties were committed to respectively return and readmit all nationals in an irregular situation. To this end, the conclusion of bilateral readmission and return agreements was emphasized (the ACP-EU, 2000). Technical cooperation, with an eye on cost-efficiency and ownership, should enhance the transfer of knowledge, develop national and regional capacities and human resources, and promote exchange between EU and ACP professionals. In order to achieve this, the EU expressed its commitment to support the ACP countries’ efforts to reverse the brain drain. It also pledged financial support for capacity building.

ECOWAS Political Declaration and Action Plan against Trafficking

The issue of trafficking has engaged the attention of SSA governments, but, more crucially in West Africa, at bilateral and multilateral levels. At the regional level, an agreement was concluded between Benin, Togo and Gabon to prosecute traffickers. The bilateral agreement between Côte d’Ivoire and Mali to penalize illegal trafficking of children for labour was signed on 6 September 2000 and represents a model for bilateral agreements between neighbouring countries to tackle the issue of child labour and child trafficking (Anti-Slavery, 2002: 3).

The Foreign Affairs Ministers of ECOWAS countries adopted a Political Declaration and an Action Plan against Trafficking in Human Beings in West Africa in Dakar on 17 December 2001. The plan of action commits ECOWAS countries to take urgent action against trafficking in persons; set achievable goals and objectives; ratify and fully implement crucial international

instruments of ECOWAS and the United Nations that strengthen laws against human trafficking and protect victims of trafficking, especially women and children. It calls for the establishment of special police units to combat trafficking of persons; training for police, customs and immigration officials, prosecutors and judges in trafficking prevention and the prosecution of traffickers; protecting the rights of victims, and the victims against traffickers. Importantly, the action plan called on ECOWAS countries to set up direct communication between their border control agencies and to expand efforts to gather data on human trafficking (Sita, 2003).

Officials from West and central African countries who attended a regional meeting organized by UNICEF and the ILO in Libreville (Gabon) in February 2002, endorsed a common platform of action that proposed a legal framework to protect child workers; an improvement in the custodial system of child victims of trafficking; the strengthening of cooperation among governments, and the establishment of transit and reception centres for returned children (Sita, 2003). In mid-September 2004 the parliament in Gabon tabled a motion to impose heavy fines and prison sentences on child traffickers (CNN News Report).

In September 2002 an Africa-Europe expert meeting on trafficking in human beings, sponsored by the governments of Sweden and Italy, called for a number of measures to be taken in both origin and destination countries, covering issues such as the prevention and combating of trafficking and awareness-raising, protection and assistance to victims, legislative framework and law enforcement; and cooperation and coordination within and between states and regions. The lack of information on the subject, especially research on root causes, as well as the need to discuss the consequences of national customs and practices regarding trafficking in a broader context were highlighted (ILO, 2003).

ECOWAS-IOM cooperation agreement

At the signing of a cooperation agreement between IOM and ECOWAS in 2002, covering technical cooperation, consultations and exchange of information on matters of mutual interest, the Executive Secretary of ECOWAS “expressed the optimism that the collaboration with the IOM will enable ECOWAS to ensure orderly and beneficial migration of its peoples within the framework of its policy on intra-Community free movement and residence” (ECOWAS, 2002: 1). IOM on its part offered its technical assistance to ECOWAS in the management of migration in the subregion. To date, little seems to have been done concretely to follow up on this agreement.

Bilateral agreements between Africa and European countries

As part of the ongoing Berne Initiative, Portugal has recently signed a series of bilateral and multilateral agreements on immigration with lusophone African countries with colonial, cultural and historical ties, including the Multilateral Agreement between Portugal and Angola, Cape Verde, Sao Tome and Principe, on the “Establishment of Specific Desks in Border Entry Gates for the Reception of African Portuguese Speaking Countries Nationals”, signed on 30 July 2002.

Spain has signed bilateral agreements with some African countries for the readmission of irregular migrants and for the management of migratory flows. In sub-Saharan Africa a draft agree-

ment signed with Ghana in Madrid on 21 February 2003 has led to the repatriation of 370 such immigrants. The terms of the Agreement on Immigration, signed with Guinea Bissau in Madrid on 7 February 2003, are being provisionally implemented, pending its ratification. A similar agreement on immigration was signed with Mauritania in Madrid on 4 July 2003, and with Nigeria in Abuja on 12 November 2001. In the latter case, and pending ratification, over 1,000 illegal immigrants each were repatriated in 2002 and 2003, and about 900 in 2004. While such agreements focus on entry control and repatriation, emphasis should also be on the reintegration of migrants on return.

A few other EU countries have also entered into bilateral agreements with countries of emigration in West Africa to facilitate the return and reinsertion of migrants into their home communities. For example, the Franco-Senegalese Protocol Agreement initially signed in 1975 by France and Senegal and revised several times thereafter, encourages the voluntary return of Senegalese migrants in France to enable them to contribute to the development of their communities (Diatta and Mbow, 1999). Bilateral cooperation agreements between Senegal and Italy, the Netherlands and Cape Verde focus on co-development and the decentralization of cooperation outside official development aid, to assist in the transfer of knowledge, entrepreneurship and financial resources acquired by Africans in the diaspora to their countries of origin.

Bilateral migrant labour agreements between South Africa and her neighbours

South Africa has a chequered history of bilateral, even unilateral migration agreements with its poor neighbouring countries. Bilateral labour treaties were signed in the 1970s between South Africa and Portugal on behalf of Mozambique (1964), Malawi (1967), Lesotho (1973), Botswana (1973) and Swaziland (1975). Apart from the treaty with Malawi, which is now defunct, other treaties still govern the entry of mine and farm workers to South Africa from these countries. The treaties were designed to govern migration to South Africa by regulations rather than by legal statutes, and placed immense power and autonomy in the hands of the employers. In spite of several calls since the demise of apartheid in 1994 to renegotiate, modernize or abolish these treaties which formed the cornerstone of the apartheid migrant labour system, no progress has been made (SAMP, 2003). In 2003, for instance, the new immigration law (unilaterally) introduced a 2.5 per cent tax on foreign miners' wages to fund training courses for South African workers.

The free movement of persons within SADC remains stalled at the political level. In the process a unique opportunity to design and implement a regional management strategy to govern legal migration movements has been missed. In this context, regional consultative processes like MIDSA have the potential to get SADC governments to talk to each other and address more cooperatively the issue of migration in a multilateral way. Although informal and non-binding, it can help keep the migration management debate alive: irrespective of the differing views and interests, SADC states have a shared interest in well managed migration, given that historically and today, migration ties many countries of the subregion together and, umbilically, to South Africa.

6. IMPACT OF REGIONAL COOPERATION ARRANGEMENTS

The impact of regional consultative processes on migration should be evaluated against their objectives, bearing in mind the informal, non-binding nature of decisions. In general, the objectives include efforts to intensify the exchange of information, engage in concrete bilateral and regional cooperation, endorse and implement the principle of free movement and establish the foundation for coherent and manageable migration systems. To this extent, regional processes constitute a viable tool for fostering dialogue and cooperation in shaping migration policies among states (The Berne Initiative, 2001: Chairman's summary).

Although the focus of each regional process depends on the interests of the participating countries, the recognition of a shared interest in migration, despite differing national interests and experiences, can enhance progress by focusing first on issues that bring participants together, rather than those that divide them (Klekowski von Koppenfels, 2001). This is particularly relevant in SADC which should have focused first on regional integration, trade, tariff regimes – non-controversial areas of shared interest – and later move on to its derivatives, the phased free migration of persons, establishment and residence, cross-border crime, irregular movements and migrant trafficking through transnational channels and networks. Even though the informal and non-binding nature of regional consultative processes often limits the strength of their recommendations, the search for cooperative approaches and solutions through dialogue could ultimately promote frank discussions among states (IOM, 2003).

MIDSA was indeed born at a critical time when the issue of free migration in SADC was embroiled in controversy and, crucially, also when South Africa's Aliens Act was passed amidst intense political and legal controversy, even within the ruling African National Congress (ANC). MIDWA, on the other hand, served to rekindle interest in the stalled third phase of the implementation of the ECOWAS protocol on free movement of persons, settlement and establishment. Indeed, the West African Regional Ministerial Meeting in Dakar (December 2000) underscored the urgency of strengthening regional integration processes, with emphasis on the free movement of persons, the right of residence and establishment. This became urgent in order to, among others, promote dialogue and cooperation on migration and development between various subregional organizations in Africa, and to harmonize, coordinate and integrate regional migration policies.

MIDSA stimulated a process to discuss migration issues of interest to the participating countries in the context of regional movements of persons, namely migration management, labour migration and irregular movements, border control, migration and development. Other interests are the causes, dimensions and impacts of migration, harmonizing systems of data collection and immigration policy and legislation. MIDSA has served as a viable framework for regional dialogue on migration through technical cooperation training and information sharing.

During 2001-2002, the MIDSA process work plan focused on migration data collection, processing and assessment, research on harmonization of legislation, review and comparative study of immigration policies and law in SADC countries. A workshop on border management and intraregional exchanges was also planned. Planned activities for 2003-2004 included workshops on labour migration, counter trafficking, forced migration and internally displaced persons, tech-

nical cooperation on migration, migration and HIV/AIDS, and linkages with the New Partnership for Africa's Development (NEPAD).

The MIDSA process fills the gap created by the collapse of the SADC Protocol on the Facilitation of Migration, and responds to SADC member states' recognition of the imperative need for greater and closer regional cooperation on migration. The first of its kind in Africa, MIDSA is an example of similar initiatives in other parts of Africa, if it succeeds in formalizing action-oriented activities in SADC countries to enhance and streamline the subregion's migration management.

In West Africa as in other subregions of Africa, there is no forum set up specifically to discuss migration issues by the relevant stakeholders – governments and their various agencies, the corporate sector, civil society and migrant associations. The Dakar conference did, however, attract high-level representatives of government agencies directly or indirectly dealing with migration issues. These officials had the unique opportunity of interacting with each other. The government agencies and ministries represented included such sectors as the interior, foreign affairs, labour, social development, protection of women and children, health, commerce, economy, finance, environment, police, administration and justice (IMP, 2002). While a remarkable achievement, other sessions should take on board also representatives of other stakeholders. With respect to MIDSA, for example, the short-term goal to bring together SADC member states and other relevant partners has been achieved. As IOM's 2003 *World Migration Report* emphasized, the most important role for regional consultative processes is to get governments to talk to each other and address issues in a cooperative multilateral setting. Indeed, SADC countries initiated MIDSA after previous SADC efforts had failed to develop and establish a regional protocol on the movement of people (IOM, 2003: 233). The prominence of migration issues on regional groupings' agendas is also beginning to have a positive impact on legislation and policy in individual countries. The very act of talking and sharing experiences helps to “develop relationships, enhance knowledge and understanding and build confidence and trust” in migration matters regarded as controversial and complex.

Concrete examples of beneficial outcomes of cooperation at bilateral and tripartite levels in managing the repatriation of migrants and cross-border movements are slowly emerging. In the DRC, for example, the recent case of the expulsion of Congolese (and west Africans) living in an irregular situation in the Luanda Norte province in Angola by the Angolan government, evoked the bilateral dialogue between the two countries and ensured an organized repatriation in a humane manner.

DRC has also concluded bilateral agreements with the Netherlands, Belgium and France in areas of migration and development and, through the MIDA pilot programme, the country's diaspora living in Belgium and other EU countries are encouraged to share their expertise in medicine, agriculture and other relevant fields and to invest and participate in the development of their country. Unfortunately, the necessary financial mechanisms and institutional and technical capacities to facilitate the realization of this initiative are not yet in place. South Africa is holding consultations with Canada and the UK, and others are in progress between Ghana and the UK and the Netherlands in respect of the emigration of skilled medical personnel, especially doctors and nurses.

The Berne Initiative has enhanced efforts to control migratory flows along common borders between Congo, the DRC and Angola. The three countries signed a tripartite agreement on the orderly movement of persons in the context of the Joint Tripartite Commission on Security to control the influx of migrants. The accord stipulates the conditions for entry of citizens of each state and their establishment in the country of their choice. The final stage will involve the circulation of a common laissez-passer for the border population of the three countries. With respect to the fight against human trafficking, DRC and Belgium have initiated a common plan of action against trafficking. Experts of both countries have conducted working sessions in Kinshasa and Brussels and this has contributed enormously to the reduction of the phenomenon. Under the terms of the agreement reached with France, a French expert has been placed at Congo's international airport; however, the principle of reciprocity was not observed by also positioning a Congolese expert at the Paris international airport for more effective outcomes.

Consultations have also helped to resolve thorny migration issues at multilateral levels. During the Lomé V Convention negotiations between the then 15 member countries of the EU and the 71 ACP countries, for instance, no firm decision was reached with regard to the EU arrangements to repatriate illegal immigrants to the country of origin. The ACP countries were willing to accept the readmission of their own citizens, but rejected readmission of non-nationals or stateless persons who transit their territory. Besides, the ACP, and especially African countries, argued that their interior ministers responsible for migration matters were not involved in the negotiations and that the trade and finance ministers were not competent to discuss complex migration matters. Ultimately, a flexible approach involving negotiated bilateral accords between the EU and ACP countries on migration matters was adopted. The Joint EU-ACP Assembly Bureau serves as the organ for handling the sensitive migration matters (The ACP-EU Courier, No 179, February/March 2000: 5).

In April 2000 when the first African-European Union summit was held in Egypt with 15 EU and 53 African countries attending, EU representatives pressed African countries for good governance and economic reform, including the eradication of corruption, while African leaders asked for debt cancellation, poverty reduction and greater access to European markets. They also insisted on greater cooperation and partnership in achieving mutually beneficial trade relations. Recent achievements by African countries in terms of political, democratic and economic reform have been overwhelmed by the crushing debt burden and deepening poverty. It does seem that greater access to European markets through preferential trade agreements remains the anchor point for fostering economic growth and generating employment for the rapidly growing African populations, a strategy that also has direct impacts on curtailing both intra and inter-regional migration. The prolonged negotiations during the meeting resulted in the Cairo Platform of Action.

7. POLICY IMPLICATIONS

African countries are facing daunting challenges on all forms of migratory flows, but especially in respect of irregular migration, human trafficking, and migration of skilled professionals. The African Union recognized that this development necessitated coordinated implementation of policies and programmes, and the imperative to develop a comprehensive framework in

addressing issues of migration and forced displacement (AUC, 2004). The focus of this section is to provide concrete examples of policy coherence and divergence, or the lack of it, in the management of labour migration, trafficking, data collection and shared information, as well as practical suggestions on what should be done to ensure humane and orderly migration management.

Policy convergence on trafficking and smuggling of human beings is increasing more than that regarding other forms of migration, in particular as migrants are adopting more sophisticated, daring, and evasive methods to elude increasingly tight border controls and enter countries in the developed North. A growing number of young people are involved in daredevil ventures to gain entry into Europe, and movements are more clandestine, involving riskier passages and trafficking via diverse transit points. Côte d'Ivoire, Gabon and South Africa are the major destinations of trafficked women and children, as for other forms of migration. Trafficked women and children are recruited through networks of agents to work in the sex industry or are exploited as domestic servants or workers on plantations. South Africa is also a destination for extra-regional trafficking of women from Thailand, China and eastern Europe. This helps to explain South Africa's keen interest on curtailing the intertwined phenomenon of trafficking, organized crime and irregular migration. Traffickers have recently extended the destinations of women and young persons to the EU, especially the Netherlands, UK, Italy, Germany, Spain, France and Sweden for domestic labour, sexual exploitation and pornography. It is in this context that EU and African countries have strengthened efforts to combat Africa's human trafficking and smuggling map, involving diverse origins within and outside the region, arrest and prosecute the perpetrators and repatriate the victims.

Emigration pressures from poor countries are intensifying at the same time that receiving countries are tightening their entry requirements and making entry generally more difficult for migrants. Lack of opportunity for regular migration fuels irregular migration, including trafficking in human beings from poor to rich countries. Hence, new approaches must be considered in sending and receiving countries in order to formulate coherent and concerted responses. Migratory policies must be congruent with those in other migration-related fields, especially trade, development, environment and human rights, but also comprehensive enough to include the needs and interests of sending, transit and receiving countries.

In other world regions, major migration-receiving countries are at the forefront of regional co-operation efforts. In the case of South Africa, aspects of the apartheid migration policies are still in place and migration issues remain as controversial and sensitive in policy and public discourse. Yet, it is now obvious that South Africa's migration policy is facing problems, as is the reliance solely on bilateral agreements to manage migration. What is needed, among others, is effective dialogue and cooperation with her poorer neighbours and other labour exporting countries, especially the former "Front Line States" that apartheid South Africa destabilized, to more effectively integrate the subregions' labour markets and manage migratory flows. SADC countries and especially South Africa should seize the opportunities offered by the MDSA process to restart the stalled negotiations leading to a practical protocol on free movement of persons in the subregion.

Most African countries lack an explicit and comprehensive migration policy. In South Africa, for example, migration policy comes under the responsibility of the Ministry of Labour, while

the Ministry of Home Affairs deals with issues relating to immigration. In Botswana, the same ministry deals with labour and home affairs. In order to ensure a coherent (labour) migration policy, current data collection methods must be reviewed, updated and expanded and the key agencies responsible for migration matters (in the case of South Africa, the Departments of Labour and Home Affairs) should coordinate their activities more transparently and effectively.

As suggested by the interministerial meeting in Dakar (2000) it is imperative to create a mechanism of consultation and dialogue between ECOWAS and partner countries, particularly the European Union, in order to foster collaboration on migratory issues. A concrete example is the permanent working group on immigration of high officials and senior experts from Spain and Morocco, set up in Spain in November 2003, involving the ministries of labour, home affairs and foreign affairs, which meets regularly.

The dialogue processes provide African countries with the opportunity to evolve effective mechanisms to provide their nationals with adequate information on conditions in the receiving countries. Information dissemination to potential emigrants in countries having or likely to have a significant potential emigrant population like Lesotho, Mozambique, Zimbabwe, Zambia, Burkina Faso, Mali, Senegal, Zaire, Ghana and others regarding rules and regulations guiding entry, residence and employment abroad. In this context, for example, Portugal has produced a joint information brochure in collaboration with the UK in Portuguese and English with information on employment conditions, rights and contacts in the UK for Portuguese nationals. The Portuguese authorities also launched a campaign on television, radio and newspapers advising their nationals considering working abroad to visit the Directorate General for Consular Affairs and Portuguese Communities and the Labour Inspectorate before leaving Portugal, and specially before signing any work contract, in order to obtain accurate information about their rights as workers and as European citizens. The package also contains information on social security, national insurance number, national minimum wage and local legal assistance abroad.

Some African countries have taken new initiatives in this connection. The government of Mali has created a ministerial level post to assist Malians abroad with their return and to conduct public relations visits to help the receiving countries understand the peculiar situation prompting Malians to emigrate, as well as about job and residence requirements in the receiving countries. Emigrants are encouraged to send money home regularly, and consular positions have been expanded in the major receiving countries to deal with Malian immigrants' problems (Adepoju, 1998). Senegal has also taken steps to facilitate the emigration and return of thousands of its nationals resident in Africa, Europe and America, and to promote remittances by these emigrants. The Ministry of Foreign Affairs and Senegalese Abroad was restructured in 1993 to enhance the welfare of nationals abroad, and articulate programmes for their repatriation and rehabilitation. The new orientation encourages emigrants to be actively involved in the socio-economic development of Senegal. Such examples should be replicated in other African countries.

The wavering political support, political instability and the reluctance of countries to surrender national sovereignty to subregional organs have rendered the economic groupings ineffective (Ndongko, 1993). Persistent border disputes deriving from arbitrary borders are common events in the region, even when African governments are enjoined to respect these borders in order to avoid the potentially protracted, widespread conflicts such disputes may generate. Dialogue can

promote peace and stability in as much as good governance promotes human rights, and can help curtail skills flight and the exodus of the intelligentsia, as well as the incessant refugee flows.

Many African countries remain ambivalent towards the principle of free movement of persons, and reluctant to modify domestic laws and administrative practices. Intensive advocacy is therefore needed to harmonize national laws that are in conflict with regional and subregional treaties. Now is the time to realign national laws to subregional treaties to facilitate intraregional labour mobility, establishment and settlement within the region. Growing xenophobia, fanned by the media and politicians hastily blaming illegal migrants for untested negative aspects of migration, as has happened in South Africa and recently Côte d'Ivoire, require public education to halt the hostility against migrants among traditionally hospitable African peoples, and showcase the positive aspects of migrants as agents of development in both source and destination countries. The events in Côte d'Ivoire, a major country of immigration in West Africa, show how changes from a liberal immigration to a short-sighted and politically driven policy can impact drastically the migration space, stability and development of a country.

Recent efforts by ECOWAS aiming at political leadership to create a borderless subregion should be replicated by other economic groupings, especially SADC and COMESA. The 1991 Abuja Treaty establishing the African Economic Community (AEC) signed by African heads of state and government at Abuja is designed to ultimately promote intraregional free mobility of labour based on the lessons learnt from subregional organizations. Although increasingly a global phenomenon, migration in Africa remains largely a regional phenomenon and should also be addressed within the framework of the New Partnership for Africa's Development (NEPAD) to strengthen regional economic groupings in Africa. Global experience has shown that regional cooperation unions have the *potential*, which should be maximized to influence the flow of labour migration, especially those that foresee in their agreements the free flow of skilled labour and rights of establishment in member countries. Subregional economic units should be revamped to serve a larger role in the management of intraregional labour migration.

In view of the chequered history and controversial nature of the migration debate in parts of Africa, it is hoped that a pan-African approach to migration management, incorporating a regional dialogue and consultative approach, could balance the interests of the sending and receiving countries and migrants alike. The establishment of the Africa Economic Community is heading in that direction; article 43 addresses "free movement of persons, rights of residence and establishment". The dilemma, however, is how AEC can succeed where subregional organizations floundered in respect of the free movement of persons. In the view of some experts regional arrangements should be established before envisioning a common African approach (IOM, 2003: 234).

The issue of migration cannot be solely handled bilaterally; what is needed is a comprehensive approach to a global issue through global harmonization of migration policies. Global networks are used for trafficking in migrants and illegal migration, hence a global approach is needed to curtail it with the support of international organizations and governments. In this context, there is a need for greater dialogue between African countries and the European Commission on migration matters to implement the relevant provisions of the Cairo Plan of Action adopted at the Africa-Europe Summit (Cairo, 3-4 April 2000); Article 13 on Migration of the EU-Platform on

Future Relations between Africa and the EU (Follow-up to the Cairo Summit, Ouagadougou, 2002). As recognized by the African Union (AUC, 2004: 9), bilateral and multilateral efforts to strengthen cooperation on labour migration could ultimately promote systematized and regular movements of workers, respond to the supply and demand needs of domestic and foreign labour markets and reduce recourse to irregular movements. The recruitment of seamen from Cape Verde to Rotterdam is an example of fostering orderly migration by matching labour supply with demand at origin and destination, respectively.

The Berne Initiative is a consultative, non-binding and cooperative process, a platform for the exchange of opinions, experiences and information, and dialogue on migration issues among countries of migration and other interested stakeholders. So far, the process in SSA has not incorporated the private sector, civil and migrant societies. Since migration affects and is influenced by economic, social, labour and related policies, states should devise appropriate frameworks to incorporate all actors in the migration arena and take concrete steps to address trafficking of persons and migrant smuggling, the protection of the human rights of migrants, labour migration and the integration of returnees in a flexible, but sustainable way. SSA countries must capitalize on ongoing efforts to enhance cooperation and coordination among countries within and among subregions regarding the harmonization of labour migration policies and the adoption of common regional approaches to labour migration issues. This can best be achieved through open and continued contact and communication between countries of origin, transit and destination as well as migrant communities.

However our expectations must be modest and informed by the experience of regional integration efforts. In West Africa, where free movement of persons has been institutionalized, the aspects of residence and establishment still remain unresolved. Unlike non-binding interstate agreements, regional integration agreements are binding and often require changes in national laws. In West Africa, also, member countries cannot enter into bilateral agreements that contradict the protocol on free movements of persons and establishment. A viable entry point to ensure a comprehensive approach is to focus on harmonized data collection, analysis and exchange on labour needs in sending and receiving countries that can help match labour skills with labour demands and maximize the gains from migration. The experience of SADC countries census 2001 series should be evaluated and the lessons learnt widely disseminated to other regions. Above all, the respective SSA government authorities that participated in the Berne Initiative should endeavour to document success stories and lessons learnt in interstate consultations, dialogues and bilateral agreements, and share these with other countries within and outside the region. It is in this way that the goals and vision of the Berne Initiative can be mutually beneficial for all countries globally.

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**MANAGING MIGRATION: INTERSTATE
COOPERATION AT THE GLOBAL LEVEL**

**IS THE EMERGENCE OF A NEW PARADIGM
OF PARTNERSHIP AROUND THE CORNER?**

Bimal Ghosh

This paper was prepared by Bimal Ghosh.

The views expressed in this paper are those of the author and do not engage either the Organization or the national authorities concerned.

MANAGING MIGRATION: INTERSTATE COOPERATION AT THE GLOBAL LEVEL

IS THE EMERGENCE OF A NEW PARADIGM OF PARTNERSHIP AROUND THE CORNER?

INTRODUCTION

Interstate cooperation at the global level on certain specific aspects of migration, such as refugee flows or protection of labour migrants, is not new. What is new is that such cooperation is now extending to the management of the whole migration process. Immigration and border control, for example, have traditionally been handled by governments on a unilateral or bilateral basis. True sporadic attempts were occasionally made in the past to address these issues through interstate cooperation. In 1927, for example, a League of Nations conference had explored at some length the possible adoption of an international convention to “facilitate and regulate” international exchange of labour, but no definitive decision was taken and there was little follow-up.

In the course of the past few years, however, things have changed. Managing migration is no longer considered to be just a matter of gate keeping or simply an issue of law and order that can be effectively handled unilaterally or even on a bilateral basis. There is a growing recognition that the changing configuration of contemporary migration, including multiplicity of source and destination countries and its diversified directional pattern, unpredictability and high intensity of some of the flows, and the global networks of human trafficking, has made international migration a truly global process that calls for a global policy approach.

This is reinforced by a nascent but perceptible awareness that migration is closely interlocked with several other major policy issues such as trade, investment, human rights, democracy, and the environment. In many ways it has become closely interwoven with economic globalization. The crosscutting nature of international migration has two important implications that further underline the importance of a global approach. First, states cannot ensure effective management of migration in isolation, regardless of what happens in related policy areas. Second, given that most of these issues, like migration itself, have clear international dimensions, policy coordination remains elusive unless states closely cooperate with one another at the global level as they strive to address the migration challenge.¹

The combination of these new and emerging trends points to the need for a new paradigm of interstate partnership in managing migration. This short paper examines some of the prospects and constraints facing such interstate partnership and the lines along which it can be further developed.

1. FORCES THAT DRIVE INTERSTATE COOPERATION ON MIGRATION MANAGEMENT

The past few years have seen a significant increase in international migration. The world migrant stock of less than 85 million in 1975 has more than doubled to 175 million.² Almost one in every 34 persons is a migrant. In industrial countries the ratio is even higher: one in ten (United Nations, 2002). Their numbers increased by about 6 million a year, implying that, on average, between 10 and 11 persons have been crossing borders every minute. The sheer volume of this flow makes migration a matter of global concern. But numbers alone do not tell the full story about the complexity of contemporary migration. Even more than the volume, it is the changing configuration of the flow that explains why nation states are finding it increasingly necessary to cooperate with one another in managing migration.

The unpredictability and high intensity of some of the massive flows – whether driven by political, ethno-political, economic, or environmental factors or a combination of them – make it difficult for countries to deal with them if they act alone. Population displacements caused by ethno-political conflicts, for example, could affect a large proportion of the entire population of a country, as was recently witnessed in Liberia and Rwanda. For many years, the east-west movement under the communist regime was limited to some 100,000 persons a year, according to official sources. In the wake of the seemingly sudden fall of the Berlin Wall, it jumped to 1.3 million in 1989-90, taking western governments by surprise. The ethno-political conflicts in the Balkans generated large flows of internally and externally displaced people running into millions. In Central America, bitter internal conflicts and large-scale violence in El Salvador and Guatemala, and widespread political upheavals in Nicaragua, often interacted with economic and ethnic factors to produce massive movements involving more than 2 million refugees and internally displaced persons. Although the whole process spanned a good part of two decades, the movements were often sporadic, haphazard, and unpredictable. The 1991 conflicts in the Gulf countries witnessed an exodus of some 1.9 million labour migrants and their dependents within a matter of weeks, just as the Asian financial crisis in 1998 suddenly led to large return flows to the countries of origin (Ghosh, 2000).

Such massive and unpredictable flows have spillover effects that go beyond the neighbouring countries and often have regional and even global implications. The handling of such situations is often too difficult and too overwhelming for any single country acting alone. They call for a collective response, including collective preparedness, based on a common understanding among nations. Not surprisingly, the European Union has been making continued efforts – despite difficulties owing to the divergence in national policies – to develop a common or harmonized migration and asylum policy, along with efforts to reach out to the source countries in the South.

The ever-widening diversity of source as well as destination countries is still another important factor that demands closer interstate cooperation in managing migration. Geographical contiguity, historical ties including colonial links, and cultural affinity, are no longer the only factors that shape the geographical pattern, or determine the direction of international migration. Dramatic progress in systems of communication and information, a sharp fall in transport costs, expansion of social networking and multi-country operations of migrant trafficking syndicates

have profoundly affected the traditional directional patterns of international migration. Migration flows now embrace more countries than ever before and even their directions often change at short notice, depending, for example, on the ease of access to a country and transiting facilities. Human trafficking has lent additional impetus to some of these trends. The remarkable ingenuity, alertness and resourcefulness of the traffickers help them to change their strategy, including the route and the transit points, at short notice and with surprising flexibility (Ghosh, 1998). Both the fast widening geographical spread and the dynamics of the movements underscore the need for sending, receiving and transit countries to work together if the movements are to be effectively managed.

Beyond all this, there is a most pressing and increasingly recognized need for closer interstate cooperation to redress a deepening supply-demand *mismatch* in the world migration system. As mentioned above, human mobility in terms of the number of persons moving across the countries has never been as high as it is today. Many more are in the queue, willing and anxious to move. Paradoxically, we are also living in a time when there is an increasing resistance to inflows of migrants, alongside a seemingly declining tolerance of foreigners. In 1976 only 6 per cent of the United Nations' 150 member states viewed immigration as too high; by 1993 the percentage jumped to 35 per cent – nearly a sixfold increase in less than three decades. Today, 40 per cent of the 193 UN member states in both developed and developing regions has policies aimed at reducing immigration (United Nations, 2002).

Germane to this paradoxical situation is a growing migration mismatch. On the one hand, there are 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. The experiences of the past few years have clearly shown that reactive and inward-looking policies focusing on unilateral border and immigration control are inadequate to bring these conflicting trends into a sustainable and dynamic harmony. There is also a growing awareness that what is badly needed is a comprehensive regime which combines both proactive and preventive measures, based on the principle of regulated openness and sustained by close cooperation between nations. It is felt that such an arrangement, with a shift of emphasis from unilateral immigration control to cooperative management, will avoid a knee-jerk reaction to the rising emigration pressure and, instead, will help bring emigration pressures and opportunities for legal and orderly entry into a sustainable harmony (Ghosh, 2005).

2. GLOBAL COOPERATION IN THE NORMATIVE FIELD

A tangible expression of the states' commitment to global cooperation on migration lies in the international instruments collectively negotiated and adopted by them on migration issues. Such normative work has so far covered three main areas of migration: (1) freedom of movement; (2) protection of migrants' rights and promotion of their welfare; and (3) punitive and preventive measures against human trafficking and smuggling and other unauthorized movements. Although this classification is useful as it shows the main concerns and areas covered by these instruments, it is not a rigid, mutually exclusive categorization since, as the discussion below will show, their thrust often overlaps.

Freedom of movement

A number of international conventions guarantee, with some claw-back clauses, the right of an individual to leave any country and to return to his or her country. But there is no such right to enter a state other than one's own. Currently, there are only two main international instruments that address the issue of the right to enter: the one dealing with refugee flows, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (the refugee regime), and the other dealing with temporary movement of persons providing services across borders under the General Agreement on Trade in Services (the GATS regime).³

As regards the refugee flows, more than 140 states have ratified either the 1951 Convention relating to the Status of Refugees or its 1967 Protocol. Under these instruments the right of persons "to leave any country" 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. States are also obliged to grant recognized refugees a range of benefits and opportunities on a non-discriminatory basis in relation to immigrants and nationals. Although these protection norms, including the right to *non-refoulement*, constitute the most widely adopted international regime related to migration, there are, as will be discussed below, numerous gaps in law just as there are weaknesses and inadequacies in practice.

The GATS Annex on the movement of natural persons invites commitments from governments allowing liberalization of temporary movement of individuals providing services across countries (Mode 4). Thus the person's movement in question relates to a (service) trade transaction and excludes access to the employment market of another member state. The Annex goes further to specifically mention that it does not apply to movement aimed at citizenship or residence or employment on a permanent basis.⁴ The GATS also makes it clear that its provisions shall not prevent governments from applying measures to regulate the entry and temporary stay of a non-national, however with the proviso that a border control measure may not be applied in such a manner that may nullify or impair the benefits accorded by a commitment under the agreement. Liberalization of Mode 4 movement is a significant development in the area of freedom of movement for economic purposes. However, for a variety of reasons, some of which are mentioned later in this section, the actual impact so far has been rather limited.

Migrants' rights and welfare

In addition to a series of major international instruments on human rights, which are of relevance to migrants, there exists a body of rich and varied ILO and UN standards dealing specifically with the rights and welfare of migrants. The ILO Migration for Employment Convention 1949, No. 97, and its supplementing Recommendation No. 86, adopted soon after the end of World War II, focus on standards applicable to the recruitment of migrants for employment and their conditions of work. By 1975, in the wake of the economic downturn, the focus shifted from employment of surplus labour to bringing migration flows under control. In keeping with this, the ILO adopted two instruments: the Migrant Workers Convention 1975, No. 143, and Recom-

mentation No. 151 – one of the first multilateral efforts to deal with irregular migration. It calls for sanctions against traffickers while requiring states to respect the basic human rights of all migrant workers. Both these Conventions provide for equal treatment of all migrant workers. The ILO instruments also advocate bilateral regulation, including the development of model contracts to govern the conditions of migrant workers. Furthermore, under the 1998 Declaration of Fundamental Principles and Rights at Work and its Follow-up, ILO member states have an obligation to respect four categories of principles and rights at work, including equality of opportunity and treatment, which is of particular relevance to migrant workers (ILO, 2004).⁵

The United Nations, for its part, adopted in 1990 the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which recently became operational. The ILO and UN instruments are broadly similar in scope and thrust, although the UN Convention's definition of "migrant worker" is broader in scope than the ILO's and it ensures the protection of universal human rights for all migrant workers and their families in more explicit language. However, despite this long ILO/UN history of standard-setting activities, their overall impact on management of international migration has not been particularly significant; some of the reasons are indicated below.

Smuggling of migrants and human trafficking

Two Protocols – the one against trafficking in persons, especially women and children, and the other against smuggling of migrants by land, sea, and air – supplement the United Nations Convention Against Transnational Organized Crime, 1998. The anti-smuggling protocol defines migrant smuggling as procurement of an illegal entry of a person into a state of which the person is not a national or a permanent resident, in order to obtain a financial or other material benefit. Trafficking, on the other hand, involves the use of violence, coercion, deception, or the abuse of power for the purpose of exploitation, including prostitution of others and other forms of sexual exploitation, forced labour, slavery, servitude, or the removal of organs. The two Protocols, combined with the Convention, are based on a three-pronged approach: (1) to prevent and combat trafficking and smuggling, particularly by criminalizing such acts; (2) to treat those who are trafficked and smuggled as victims with inherent rights and (3) to promote international cooperation in dealing with the culprits (Muntaborn, 2002).

What is the real impact?

In a short paper like this, it is difficult to make a detailed assessment of interstate cooperation on the normative aspects of migration policy. Only a few general observations can be made. It will be clear from the above that although the existing legal instruments cover several important areas of migration policy, they do so in an isolated and fragmentary manner and are too narrowly focused to provide an adequate normative framework for a comprehensive approach to migration management. If, as discussed in the preceding sections, effective management of contemporary migration calls for a comprehensive and concerted policy approach, the normative framework should move in the same direction to sustain it. Such a regime or normative framework is yet to emerge.

As matters stand, even within the specific areas covered under existing international instruments, there are many gaps and ambiguities.⁶ In the case of refugees, for example, the 1951 Convention and its Protocol do not apply to all categories of forced migrants who need and deserve protection at least on a temporary basis, such as victims of armed conflicts, civil war or disorder, generalized violence, and those fleeing from natural and man-made disasters. It is the recognition of the gaps in the existing protection system and of the need for more effective implementation of the 1951 Refugee Convention that led the UN High Commissioner for Refugee to launch in 2001 a Global Consultations on International Protection. Among other matters, the Consultations were designed to examine a number of emerging issues, including those not adequately covered by the 1951 Convention and to develop new approaches, tools, and standards to strengthen protection.⁷

As regards labour migrants, the ILO developed its main Conventions on Migrant Workers following the end of World War II and in the wake of the first oil crisis in 1973. In 1998 the ILO's Committee of Experts on the Application of Convention and Recommendations concluded that the international context of these instruments have changed and identified certain gaps in them. It cited in this connection the declining role of state leadership in the world of work, the shift towards temporary migration, the increase in illegal migration, and the development of new forms of transport. It also recognized that existing international arrangements did not fill the gap left by the decline in bilateral agreements following the economic downturn of the mid-1970s.

In the past, the ILO encouraged bilateral agreements and generally followed a narrowly focused approach to protect and promote migrants' rights. Responding to new trends in international migration and in the wake of other initiatives in this new direction (see the penultimate section in this paper "Outlook for the future: the road ahead"), it now recognizes that cooperative migration management can better achieve goals for both sending and receiving countries and sees the need for a more integrated approach to labour migration, which would comprise a programmatic response to the issues of migrant workers in a cooperative, complementary, and comprehensive process, cutting across all spheres of ILO activity including employment policy, the right of workers to organize, social security, and social implications of globalization (ILO, 2004).

Then, there is the problem of ratification and enforcement of the standards laid down in the instruments. It took more than 12 years since the formal adoption of the 1990 UN Convention on Migrant Workers and their Families to secure the minimum 20 ratifications required to make it operational. And those who have ratified so far are all migrant-sending developing countries. The number of ratifications of the main ILO Conventions on migrant workers has remained disappointingly low. There is often a dichotomy between states' collective expression of concern in migration issues at the international level and their willingness or ability to translate it into commitment for action at home (Ghosh, 2003).

As for the trade-related temporary movements, it should be noted that although the GATS provides the principles of liberalization, each government retains the right of what specific commitments it makes under them. The GATS is a complex agreement, partly a reflection of the many conflicting interests that needed a political compromise, with the result that some of the edges of the agreement are not sharply defined. This has led to some confusion and undue concerns,

which, in turn, at least partly explain the low level of actual commitments so far. In some cases the nature of the commitments themselves have added to the confusion. For instance, although the GATS is not supposed to deal with issues of access to the importing country's employment market, many commitments link liberalization of the movement of service-providing natural persons to labour market tests. Also, while the GATS provides for the liberalization of the movement of such persons, regardless of the level of their skill, the actual commitments of governments have been mostly limited to executive and managerial personnel and specialists. Some progress is expected under the ongoing Doha Round; but as of now, the government commitments, except in a few cases, hardly go beyond what is already allowed under existing immigration legislation.

In some of the above areas of normative work, the weaknesses of the monitoring mechanisms or their absence inhibits the process of enforcement of the norms specified in international instruments. For example, both under its own statute and the provisions of the 1951 Refugee Convention, the UNHCR has the responsibility to supervise the enforcement of the Convention. However, according to some analysts, in the absence of a specific monitoring mechanism and a formal process of interstate scrutiny – let alone a system of individual petitions – the enforcement arrangements have remained weak. It should be noted that although Article 35 (2) of the Convention provides a basis of installing a periodic reporting system, it imposes no obligation to establish a formal and specific mechanism for interstate scrutiny. Chloka Beyani attributes the inadequate protection of refugees' rights to this lack of a mechanism to hold states accountable under the Convention. This has had the unavoidable effect of subjecting the application of an international standard to domestic interpretation (Beyani, 1997).

As regards the instruments against smuggling and trafficking, it is too early to make a proper assessment of their impact; only some comments can be made. Although these instruments, essentially preventive and punitive in nature, mandate states to protect and assist the victims, including their physical, psychological and social recovery, NGOs have been somewhat critical of them on the grounds that they are biased towards anti-crime measures without being sufficiently sensitive to the human rights of the victims. For instance, rather than making the provision of assistance to victims as a formal obligation, the matter has been left to the discretion of states. Concern has also been expressed about the quality of enforcement of these measures. Furthermore, it is feared that the emphasis on anti-trafficking and anti-smuggling may undermine the position of those seeking refugee status: the latter run the potential risk of being given the status of victims of trafficking or smuggling with fewer guarantees than those accorded to recognized refugees. The most serious lacuna in the whole situation is of course the absence of a complementary instrument or instruments to deal with the root causes of migrant smuggling and trafficking through forward-looking and proactive measures.

Summing up, there are signs of a growing recognition of the need for closer interstate cooperation in developing a comprehensive and global approach to migration management. But the level of general awareness of this need is yet to reach a point where states would be ready to make formal or legal commitments, and ensure their effective enforcement, to foster and uphold such an approach. The existing normative frameworks are thus lagging behind the need for a new, more comprehensive and concerted policy approach. But, as will be discussed later in this paper, there are positive signs that the normative arrangements, now seemingly in a watershed, are poised to move forward in tandem with the emerging policy approach.

3. INTERLINKAGE OF MIGRATION AND OTHER GLOBAL ISSUES

Since, as noted earlier, migration closely interacts with several other policy areas it cannot be effectively managed unless there is adequate coordination – or at least no contradiction – between and among these policies. Trade is a case in point. Poverty, unemployment and lack of economic opportunities are among the important causes of high emigration pressure. Many migrant-sending developing countries have a comparative advantage in a number of labour-intensive branches of production, such as agriculture, textiles and garment making, footwear, and leather goods. Expansion of these activities through trade should enable these countries to create more jobs and increase earnings, and thus help reduce emigration pressure. If however trade protectionism in industrial countries prevents them from doing so, it would run counter to migration policies aimed at reducing emigration pressure in migrant-sending countries and making migratory movements more orderly.

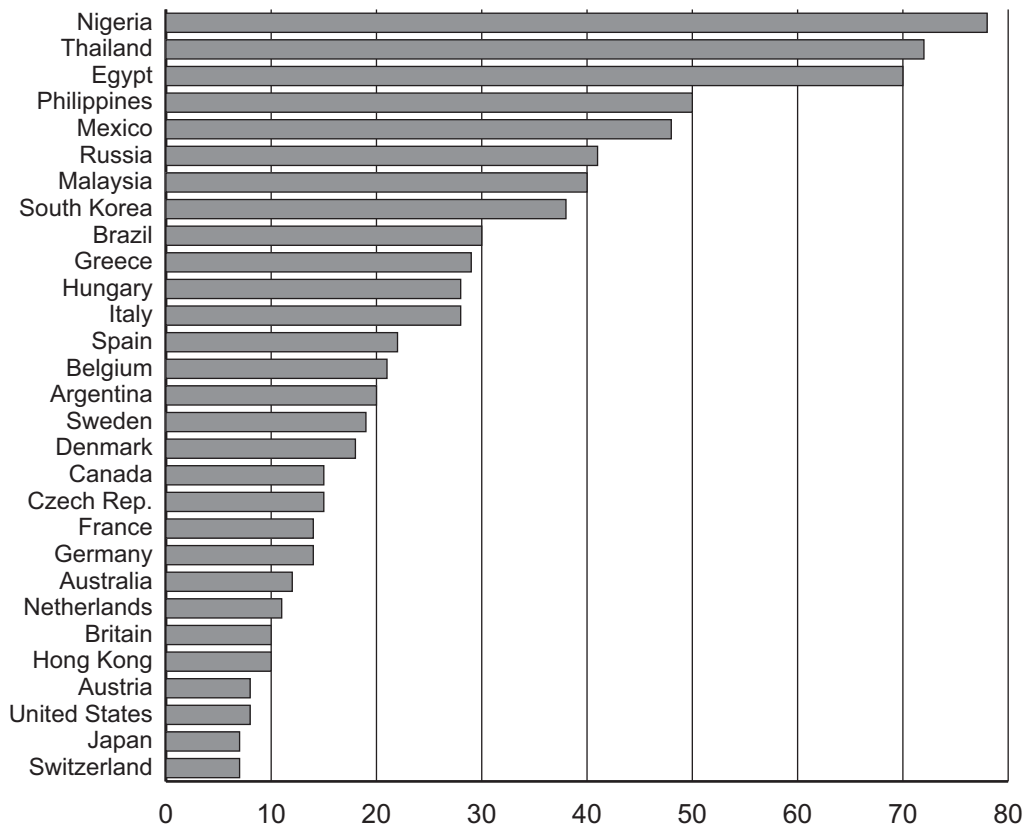
According to a 1995 UNCTAD study, over two-thirds of developing countries' commodity exports were affected by trade distorting subsidies under industrial countries' farm policies (UNCTAD, 1995; *Financial Times*, 20 October 1995). Another estimate showed that developing countries were losing US\$ 100 billion annually in lost revenues for farm products and a further \$ 50 billion for textiles and clothing alone due to such trade protectionism (UNDP, 1993). Since then, under the Uruguay Round trade accords, there has been a significant reduction in overall tariffs and further dismantling of trade restrictions are expected under the ongoing Doha Round of multilateral trade talks.

An important point to note however is that, although coherence between migration policies and those related to international trade is critically important to ensure better management of migration, there is no evidence that this consideration played any important part in the negotiation on trade liberalization under the Uruguay Round or is doing so under the Doha Round. The same generally applies to the debates on other related issues such as debt relief and development aid.

A related example of policy contradiction relates to the growth of the underground economy or the informal sector. Many declining and less competitive industries and marginal firms survive in the underground economy by using cheap, docile and mostly irregular immigrant workers while avoiding taxes and lobbying for subsidies. In recent years, there has been a spectacular expansion of the informal sector in most countries, including migrant-receiving industrial countries (Figure 1).

In the EU, for example, the underground economy accounts for some 16 per cent of its GDP, compared to 5 per cent in 1970. It engages between 10 and 20 million workers, many of whom (though by no means all) are immigrants, mostly in an irregular situation. A most worrying aspect of the situation is that, driven at least in part by high fiscal burdens, including social charges, and rigidities in the labour market, many reputable firms in the organized sector are also seeking to lower their production costs by taking advantage of the underground economy through subcontracting arrangements. The underground economy thus serves as a magnet for irregular immigrant workers. There is some evidence that employers in the underground economy in Europe and in sweatshops in the US often encourage, and sometimes work in active connivance with, smugglers and traffickers for the supply of irregular migrant workers.

FIGURE 1
SHADOW ECONOMY AS PERCENTAGE OF OFFICIAL GDP



Note: Developed economies 1998, estimated using the currency-demand approach. Emerging economies, various years 1990-9, estimated using the physical-input method. Data for Japan are from 1993. Based on Fredrich Schneider.

Restructuring or reforming the underground economy is, however, a complex task that impinges on multiple policy areas, including trade, investment, the fiscal system, as well as labour and human rights. And, although these are seemingly domestic issues, most of them also have clear international dimensions; consequently, changes in the relevant policy areas call for closer inter-state consultations and cooperation.

Policy coherence should not be seen as an issue of concern only to the destination countries. For their part, migrant-sending countries also need to follow congruent policies to reduce the pressure for disorderly migration through a strategy of broad-based development, combining job creation and economic growth, with a fair distribution of income and good governance. This points once more to the importance of interstate cooperation embracing North and South.

It would be unrealistic to assume that countries, whether sending or receiving, would base their broad economic and social policies (including trade, aid, investment and labour, and human rights) on migration-related considerations alone. However, a greater awareness of the interlinkages should help governments to ensure that concerns related to migration are fully taken into account in crafting policies in such areas as trade, investment, aid, and debt-relief as

well as human rights. The existence of a global policy approach to migration that is both concerted and comprehensive should itself be of help in this process.

4. HUMAN RIGHTS, MIGRATION MANAGEMENT AND INTERSTATE COOPERATION

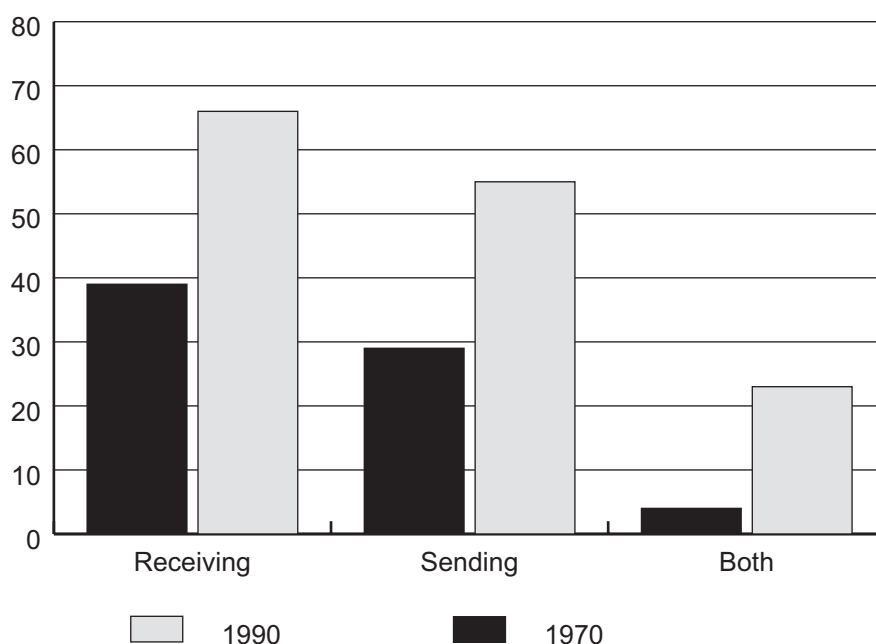
Protection of human rights and management of migration are closely interrelated, and the nexus makes a compelling case for states to cooperate for the sake of both.⁸ Under international human rights law, states have an obligation to protect the human rights of all those within its territory and jurisdiction. And, as Guy Goodwin-Gill puts it, protection of human rights of migrants extends even into the areas of sovereign competence. He argues that, given the manifestly international dimensions of migratory and refugee movements, there is a collective duty of states to protect the persons moving across borders. It is therefore incumbent upon them to cooperate to achieve this objective. These human rights obligations, he points out, are also embedded in the cooperative framework established by the United Nations Charter and general international law (Goodwin-Gill, 2000, 1996).⁹

If both ethics and law governing human rights, including those of migrants, thus call for close interstate cooperation, so do the exigencies of effective management of international migration. It is well recognized that the denial or abuse of human rights in origin countries 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 violations of human rights in countries of transit and destination. When this happens, management of migration becomes more difficult and financially burdensome; it also entails heavy social and human costs. By straining interstate relations or provoking conflicts, the situation could even threaten regional and international stability. Given that the states have an individual as well as a collective interest in maintaining a sound and sustainable system of orderly migration, they must be prepared to protect human rights, including those of migrants, as an essential interlocking element in the system of migration management. Viewed from this perspective, those anxious to defend the human rights of migrants and those involved in migration management clearly share a common interest (Ghosh, 2003).

There is a further, more pragmatic and citizen-centric consideration as to why states need to cooperate closely to protect human rights of migrants as part of migration management. The nation state has a basic, internally driven and widely accepted 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 interstate cooperation based on reciprocity. This requires the state to treat non-nationals working or living within its own territory in the same manner as it would like its own nationals to be treated abroad. Obviously, such reciprocity between states can best be guaranteed within a multilateral framework. A state, when convinced of its direct national stake in protecting (im/)migrants' access to their rights, is more likely to improve its domestic performance and take its international commitment more seriously in this regard. A 1994 ILO survey of some 100 countries showed that nearly 25 per cent of them were now simultaneously involved in both emigration and immigration (ILO, 1994, 1999), and that the number of such countries is increasing:

FIGURE 2

NUMBER OF MAJOR* MIGRANT-SENDING AND MIGRANT-RECEIVING COUNTRIES, 1970 AND 1990



* "Major" is defined as including only countries which (a) had a population of more than 150,000 in 1970 and 200,000 in 1990, and (b) whose labour market or GNP was affected to an extent of at least 1 per cent by international labour migrants, disregarding asylum seekers or refugees. The successor states of the ex-socialist Federal Republic of Yugoslavia are not included.

Source: ILO, 1994, 1999.

The fact that more and more states are becoming involved in *both* emigration and immigration adds to the importance of such interstate reciprocity within a multilateral framework (Ghosh, 2003).¹⁰

5. INTERSTATE COOPERATION ON MIGRATION: HOW STABLE OR VIABLE IS IT?

Looking at the performance of existing regional and subregional agreements on mobility of labour from the perspective of international political economy and the regime theory, some analysts have expressed doubts whether there is a valid or sustainable basis for the emergence of such regimes.¹¹ Their basic argument is that cooperation between migrant-sending and migrant-receiving countries on free movement of people lacks some of the essential ingredients that could lead to the emergence of a true multilateral regime of cooperation and subsequently sustain it. It maintains, most importantly, that there is no common or collective good and no need for collective action binding the two groups (Meyers, 2002). This is because the (richer) destin-

ation 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. A destination country could stop immigration at 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 multidirectional.

There is clearly some empirical evidence to show that when countries are on similar levels of income and development, and inter-country movements are relatively modest (as in the case of the EU-15), multilateral agreements on free movement are more likely to succeed. Conversely, the more countries diverge in levels of income and economic development, with high pressure, actual or potential, of inter-country migration, the more likely it is for the agreements on free movement to be exposed to setbacks, as witnessed by several such regimes in Africa and Latin America. Does this also debunk the case for interstate cooperation on managed migration, based on the principle of regulated openness? For several reasons, the answer is no.

First, the analyses and the empirical evidence mentioned above relate to regimes of free movement of labour and do not apply to interstate cooperation on *managed migration* embodying the principle of regulated openness and based on a set of agreed norms, principles, and recognized best practices.

Second, it is the *orderliness and predictability* of movement in which both sending and receiving countries hold a shared interest that provide the common or collective good and sustain a regime of interstate cooperation on managed migration. Also, it is the pursuit of this common good that spurs joint action and shapes congruent state behaviour. The shared interest of the participating states is reinforced by a range of mutual benefits that they can derive from such cooperation. These include better and more cost-effective border and immigration control, less tension related to irregular migration and human trafficking, and improved interstate relations, effective protection of human rights, and improved security.

Third, the asymmetry of interests between receiving and sending countries as perceived in the above analyses seems overemphasized. True, in general, receiving industrial countries are more interested in skilled immigrants and are anxious to avoid large inflows of unskilled or low-skilled foreigners. It is also a fact that sending (developing) countries, on the other hand, are generally more anxious to export their surplus, low or unskilled workers, and preserve their scarce human capital embodied in skilled personnel. But the argument of asymmetry cannot be pushed too far; it will be a misleading oversimplification to do so.

The reality is that in most industrial countries, in addition to skill shortages, there is a significant amount of unmet labour demand to fill a wide variety of low-skilled jobs in the services sector as well as in seasonal industries, especially during the peak seasons. This demand is now being met mostly by irregular immigration with all its attendant ills. Further, from a medium to long-term perspective, industrial countries also have a general interest in immigration given the growing problems associated with low fertility rates, such as a shrinking labour force, difficult social security funding and demographic decline. Admittedly, immigration is not a panacea or a long-term solution to the ageing process or demographic decline, but it can attenuate the problems, smooth the necessary processes of adjustment and, as part of a wider policy package, play a

valuable role in meeting the challenge. For their part, developing countries, or at least some of them (with a strong human capital base), may not be averse to the emigration of some of their skilled workers if it does not deplete their human capital, especially if, through transnational networking with the diaspora community, they can also adequately tap their skills, talents, business contacts and other resources and use them for national, including private sector, development.¹²

The point that emerges from this brief discussion is that, if the sending and receiving countries have some conflicting interests, they also share some important common and complementary interests. Under managed migration, these divergent interests make it possible for the sending, receiving and transit countries and other stakeholders to work out trade-offs through constructive bargaining and optimize their respective benefits, with the result that each stakeholder is better off.

Finally, the rigid demarcation made in the above analyses between sending and receiving countries seems also to be an oversimplification. In the past, migration has often been perceived as an area where the interests of sending and receiving countries as two separate and mutually exclusive groups are in conflict. But this is changing. As already noted (Figure 2), more and more countries are becoming involved in both emigration and immigration at the same time. This should help promote among nations a better understanding of migration's benefits and costs, as they affect different groups of population at both ends of the flow, and of the need to cooperate among themselves to optimize the benefits for all.

To sum up, the recent setbacks in several of the regional/subregional agreements on *free mobility* of labour, although real and empirically tested, are of little relevance to interstate cooperation on *managed migration* embodying the principle of regulated openness, nor do they detract from the value or viability of such cooperation.

Is sovereignty an obstacle to interstate cooperation?

Basic to the concept of sovereignty is a state's prerogative to protect its borders and to decide who may or may not enter its territory. If nation states cooperate closely in managing migration, does that mean that they are abdicating part of this authority? Some seem to think that any such cooperation is indeed an intrusion onto state sovereignty, or at least a dilution of its authority in a domain that is strictly its own.

State sovereignty thus stands in the way of increased interstate cooperation in managing migration. The idea is, however, seriously flawed. It seems to be based on an inadequate understanding of the historical evolution of the nation state and of the nature and characteristics of interstate cooperation needed for managed migration.

The concept of state sovereignty as it emerged in Westphalia in 1648 should not be seen as a static one. Modern states have been accustomed to developing new forms and areas of cooperation. But for such cooperation, shared values, and agreed norms of conduct for peaceful co-existence, the very survival of nation states might have been at stake. These norms provide the basis of interstate relations and much of the sources of international law in a civilized world society.¹³

The interpenetration of markets and economies, the growth of the transnational communities, including systems of dual nationalities, and the emerging concepts of transnational 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 interstate cooperation and coalition.¹⁴ Many of these changes have dramatically enhanced the importance of transnational or extra-territorial issues. Sovereign states are forging alliances between themselves, as they have always done in the past, to better manage these complex matters in the transnational space. Migration is one such issue.

Admittedly, international migration differs from other forms of exchanges or types of movements such as flows of goods, services and capital between countries in one very important respect: it involves people and not inanimate objects. This makes it a more sensitive issue vis-à-vis territorial sovereignty, which the nation state seeks zealously to preserve. But this also makes the stakes in the whole game of managing migration particularly high. It is precisely this human aspect that makes the perils of mismanaging migration particularly alarming, thus highlighting the imperative need for its better management through new forms of global cooperation.¹⁵

The model of interstate cooperation implicit in managed migration should not be confused with a supranational construct, or seen as an externally imposed constraint on the nation state, but as a freely negotiated arrangement of convenience between sovereign states. Such cooperation enhances and enriches nation states' capacity to deal with extraterritorial aspects of international migration. It is an expression of the continuing evolution of the nation state, not of a diminished concern for its territorial integrity nor of an erosion of its sovereignty.

6. FORGING GLOBAL COOPERATION: REGIONAL ARRANGEMENTS – BUILDING BLOCKS OR STUMBLING BLOCKS?

International migration, as this paper argues, has become increasingly global, calling for closer interstate cooperation at the global level to ensure its effective management. As Thomas Straubhaar puts it, “global games call for global rules.” But if global cooperation is so important, how best to forge such cooperation? Should states follow a “bottom up” approach, starting with efforts at the subregional and regional levels and then moving step-by-step upwards? Or, will it be more expedient and effective to follow a “top down” approach to ensure from the outset that all efforts at cooperation fit into a common global framework of principles? Or, could it be that the global approach is too ambitious?¹⁶

Rigid discussions on the subject could lead us into a false debate. As argued below, achieving optimal results in building interstate cooperation depends on both these approaches moving hand in hand, each contributing to, and at the same time deriving support from, the other.¹⁷

A regional approach certainly has a number of advantages. Confidence building is no doubt an essential first step towards a cooperative and harmonized policy approach; and it is perhaps true that building such confidence is generally less difficult within a relatively small group of contiguous countries than on a global level. This is even more so if the countries concerned have already attained a high degree of economic and social convergence and share a set of common

objectives, as has been the case within the EU-15. Arguably, yet another consideration favouring a regional approach is that a significant proportion of cross-border movements continues to take place within the same region. The latter provides a vantage point from which to initiate the process of policy harmonization, as the countries concerned are more likely to have a shared concern and a common interest in managing migration.

There is also an important practical consideration. A number of powerful states in the industrial world seem averse to becoming engaged in what they perceive to be a long-drawn out process of global negotiation on a sensitive subject like interstate cooperation on movement of people. They tend to think that the challenge is too complex and too overwhelming to be tackled at the global level. Some of them – who are anxious to explore new ways of promoting cooperative management of migration – feel more comfortable to do so within a regional context. Some others who perceive migration mainly as a “problem” would like to “contain” it within the regional confines. As Goodwin Gil puts it in the context of refugee flows, “many states have attempted to contain or regionalize the movement of persons, that is, to keep those in need of protection or solutions within their regions of origin, beyond the developed world” (Goodwin Gil, 2000). This then serves almost as an extension or as a mirror image of the “policy of containment” under traditional statecraft. Both these groups would prefer a regional approach to migration management, though for different reasons.

Even if some of these points are valid, the limitations of an exclusively regional approach are also clear. Movements of people are no longer just a regional phenomenon, if they ever were. As already noted, contemporary migration is a powerful global process that cuts across regions and continents. True, a large proportion of migration still takes place within the same regions, but the pattern is neither constant nor uniform.¹⁸ To illustrate, in the case of the United States, the number of admissions of permanent immigrants from Asia accounted for an average of 47.7 per cent of admissions from all regions in 1980-84 and 41.8 per cent in 1990-94, compared with 41.5 per cent and 36.7 per cent, respectively, from the American region (including Canada).¹⁹ The average annual number of admissions from Latin America and the Caribbean accounted for 42 per cent of the total inflows to the US in 2001-2002.²⁰ As regards Europe, figures for recent years indicate that almost half of the foreign population resident in industrial (northern and western) Europe is from outside the European region. Current *annual flows* show a roughly similar trend.²¹

It is not just that the main source, transit and destination countries are not always located in the same region. More importantly, in an increasingly globalized world the direction of the flows, as already discussed, tends to change quickly when there are changes in the surrounding circumstances – for example, tightening of immigration control by destination countries in one region (e.g. western Europe) is likely to add to pressures for immigration in other regions (e.g. North America) and *vice versa*. In consequence, the directional pattern of the flows may change quickly.

Also, contrary to the premise that it is generally easier to build mutual confidence between contiguous countries within the same region, wide intra-regional disparities often serve as a potential source of suspicion and mistrust among the member countries. The history of North-South dialogue in the 1970s, the emergence of the Group of 77 and its efforts to develop economic and technical cooperation among developing countries (ECDC/TCDC) across regions show that economically less affluent and politically less powerful states are often fearful of the more dominant states and the leverage they enjoy in any regional negotiation.

This is why, in their efforts to minimize the real or perceived hegemonic influence of the dominant states within a region, the weaker states generally prefer to negotiate and cooperate with the more powerful states within a multilateral framework. Not surprisingly, recent initiatives related to regional trade and economic cooperation arrangements, including those already established, have shown that high intraregional disparities invariably act as a source of tension and weariness within the groupings, thereby inhibiting progress (see also in this paper the section on *Interstate cooperation on migration: how stable or viable is it?*). It is therefore wrong to assume that reaching mutual understanding between migrant-sending (developing) and migrant-receiving (developed) countries will necessarily be easier in a regional context.

This is also true for developing regions marked by significant disparities in levels of income and development. As a recent international conference observed, regional cooperation in southern Africa on the management of international migration “had its limitations due to enormous income differentials between countries such as the 40-fold gap in incomes between South Africa and Mozambique.”²²

A regional framework for cooperative management of migration assumes that a matching of push and pull factors can be achieved and a stable migration equilibrium maintained within each major regional grouping. This then would be a tidy geographical arrangement for managing global migration, with each region taking care of the components pertaining to it. In practice, however this is far from a viable proposition. Movements of people do not stop at the frontiers of their respective regions. Nor is it possible to contain the emigration pressure within the limits of a given group of countries.

By stretching our imagination, let us assume that through cooperative efforts the countries in the Americas successfully work out a stable equilibrium between emigration pressures and immigration intakes within the region, and that countries in eastern and Western Europe do the same within the European region. By stretching our imagination further, we may even assume, however unrealistically, that the flows from North Africa can also be accommodated within a Euro-Mediterranean framework. But what about the peripheral countries in sub-Saharan Africa? And how to accommodate the mounting emigration pressure from South Asia? Will even a wider regional framework embracing Australia, New Zealand, and the Gulf States be adequate to cope with it? Will not the migratory movements tend to defy and overflow the expanded regional borders? In short, the intraregional migration asymmetry is often too striking to be contained or managed within the limits of each specific region, even when these are defined in a most flexible manner.

Regional and subregional arrangements, like bilateral agreements, when worked out in isolation from the rest of the world, are ill-equipped to deal with the problem of third-party freeriders – for example when a tax is levied on immigration to neutralize or reduce its negative externalities. Another important shortcoming of the regional approach concerns the potential danger that different regions may apply for admission and protection of migrants. As mentioned above, in such a situation, migration flows are sure to be diverted to that region which has the most liberal migration regime or which has the least effective immigration control. The consequent destabilizing effect can only contribute to tension between regional groupings. As for the countries which may not belong to any regional groupings, and may be lacking effective immigration control, they could well turn into a vast dumping ground for all kinds of unwanted migrants and thus become a potential source of international instability.

A recent event within the Nordic group of countries, well known for their traditional intra-regional solidarity, illustrated the kind of tension this could engender. In May 2002, Sweden accused Denmark of a “lack of solidarity” after seeing a surge of asylum seekers that it partly blamed on a tougher line on immigration taken by its neighbour (*Financial Times*, 28 May 2002). Similar tension could develop between regions if their policy paths widely diverge or are in direct conflict with one another.

The fact that international migration is a global phenomenon and that its effective management calls for a global framework of cooperation – a central point underpinning the arguments advanced in the preceding paragraphs – are indeed already reflected in the global scope of the two recent Protocols dealing, respectively, with migrant smuggling and human trafficking and with the concerted global efforts that went into it.²³ What is true of these essentially punitive and preventive measures must also be true for proactive active measures to better manage migration. The two sets of measures – punitive and proactive – are complementary, and the same basic logic and operational considerations that have led the proposed instruments to be designed as global initiatives dictate that a global framework be used also for effective overall management of international migration.

To conclude, a global framework based on a common set of principles is essential for cooperative and harmonized interstate action. This however does not suggest that the regional initiatives are irrelevant or useless. On the contrary, the latter could be valuable building blocs for the establishment of a new global framework of understanding for better management of migration, provided however that a common frame of reference is used to harness regional efforts, thereby avoiding the risks of confusion or friction between parallel regional initiatives and shunning the problem of third-party freeriders. The regional and subregional consultations are also extremely useful as inputs to the process of developing global norms and principles in cases where they are still lacking. Furthermore, global efforts can draw support and inspiration from *best practices* already established at the regional/subregional levels. This may be combined with an issue-oriented (or modular) approach – reaching agreement on specific components – as long as the interlinkages of issues are not forgotten and the comprehensiveness of the regime is fully upheld.

A similar composite approach in managing trade and monetary issues as part of the world economy in the twenty-first century was recently advocated by Peter Kenen and Barry Eichengreen:

(m)ere proximity (...) does not always create a commonality of interests, and the quest for deeper integration may lead to a second solution – namely, functional rather than regional groups. But functional groups, like regional groups, tend to discriminate against outsiders and close off opportunities for cross-issue bargaining. This is a reason for shunning them, or at least ensuring their compatibility with a third potential solution adapting and strengthening the global institutional framework and insisting that both regional and functional negotiations take place within that framework.²⁴

7. OUTLOOK FOR THE FUTURE: THE ROAD AHEAD

This paper started by suggesting that in recent years there has been an increasing recognition of the need for closer interstate cooperation at the global level to better manage migration. If this is

right, one could legitimately ask a follow-up question: What has been the progress so far in giving practical expression to the recognition of this need? The picture is mixed, but not totally disappointing. The international community has no doubt responded most energetically in dealing with at least one most worrisome and agonizing consequence of the present migration malaise: migrant smuggling and human trafficking. The speed with which the international community moved to adopt in 2000 new international instruments to deal with these matters was most remarkable, though its real impact is yet to be seen.

But mobilizing international efforts for punitive and preventive action against criminal and dehumanizing activities is one thing; launching comprehensive and proactive 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 (Ghosh, 2005, forthcoming). As already noted, interstate cooperation in normative work on migration has existed over a long period of time. But the International Conference on Population and Development (Cairo Conference), held in 1994, was perhaps one of the first major attempts to “institutionalize” international cooperation on multiple aspects of migration management. The Programme of Action, which in chapter X deals with international migration, has made some impact on nascent interstate cooperation on migration management. However, some observers have felt seriously disappointed that, despite at least five UN General Assembly Resolutions since the Cairo Conference on the subject and the efforts made by the UN Secretariat, it has not been possible even to hold a conference on migration and development. On the other hand, many others, like the author of this paper, have taken the view that holding a world conference without setting out its key objectives and building at least a measure of consensus around them might prove to be counter-productive.²⁵

Meanwhile, however, in keeping with the UN resolutions mentioned above various UN agencies and programmes have held meetings and consultations to, inter alia, promote cooperative action at inter-regional, regional and subregional levels in dealing with specific migration issues. Although these initiatives did not directly deal with the institutional or normative aspects of global cooperation as such, they did encourage closer interstate cooperation. Also of significance are two new global initiatives: UNHCR Global Consultations on International Protection (2000-20002) and the IOM’s international dialogue on migration policy (2001). The UNHCR’s Global Consultations “reflect the heightened recognition over the years of the fact that the refugee problem is an international one and that crafting responses to address many of today’s issues is best approached on the basis of multilateral cooperation.”²⁶ The purpose of the IOM’s international dialogue is to promote understanding of the complexity of the migration process and enhance interstate cooperation in managing migration.

What is particularly encouraging is that, as a consequence of several other initiatives that predated or ran parallel to the above activities, some tangible progress has already been made towards building a new consensus on the need for a more comprehensive and harmonized interstate approach to ensure better management of migration. Already in 1993, the Commission on Global Governance, which was co-chaired by Ingvar Carlsson, then Prime Minister of Sweden, and Sridhath Ramphal, former Secretary-General of the Commonwealth Secretariat in London, considered favourably a paper outlining a proposal for the establishment of a new global regime based on regulated openness to better manage movement of people.²⁷ Following upon this proposal, an ambitious project dubbed *New International Regime for Orderly Movement of People*

(NIROMP) was launched in 1997 with the financial support of UNFPA and several European governments, including Switzerland, Sweden, and the Netherlands. An inter-regional meeting, which was held in Geneva (September 1997) under the aegis of the project, endorsed the concept and objectives of a global migration regime and encouraged follow-up action. A second inter-regional 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 harmonized 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 2000.²⁸

During 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 regime of multilateral cooperation 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.

This growing interest in the matter is already reflected in several official and nonofficial initiatives launched more recently to promote, directly or indirectly, closer interstate cooperation to manage migration. One such initiative was launched in 1999 by the Netherlands Chapter of the Society for International Development (SID), now involving more than 1,000 persons with different backgrounds and from different parts of the world, but all working on refugee and migration issues. Under the project, four seminars were held over a period of three years culminating with the adoption in November 2002 of a Declaration of the Hague on the Future of Refugee and Migration Policy, in the presence of the UN Secretary-General Kofi Annan and the heads of several international organizations concerned.²⁹ Follow-up has been ensured by the establishment in 2003 of The Club of The Hague on the Future of Refugee and Migration Policy. The Club has the overall responsibility of implementing a multi-year action programme in keeping with the 21 major points of the Declaration. The Hague process is a good example of the growing recognition of the need for developing a concerted global approach to migration management and of the gathering support for it.

Another example is provided by the International Metropolis Project. Launched in 1996 in Canada, its membership of research, policy, and non-governmental organizations now extends to over 20 countries. The members share a common vision of strengthened migration policy, thereby allowing societies to better manage the challenges and opportunities that migration presents. Recently, responding to the changing configuration and increasing complexities of migration it joined the search for a more effective policy approach to migration management. A keynote theme for its sixth conference held in Rotterdam in 2001 was “Managing Migration in the 21st Century”, which focused on the need for developing an internationally harmonized approach to migration management.³⁰ In 2004, its ninth session, held in Geneva, reverted to the theme. The conference started with a panel discussion on the subject under the title “The Emerging Migration Management Paradigm: Cooperation and Partnership.”

Of particular importance in this context is the Bern Initiative, a state-owned process launched by the Swiss government in 2001. It aims at developing a broad policy framework to facilitate

cooperation between states in planning and managing movement of people in an orderly and humane way. The framework, in the first place, would map out a series of understandings based on interests and concerns common to all countries and all migratory situations. In doing so, it would take account of existing elements of relevant international law. Secondly, it would put forward a set of policies and practices for a planned and coherent approach. As under the NIROMP process, it recognizes that at present there exists no comprehensive and harmonized system on the basis of which states could cooperate to manage migration.

Following the first Consultations held in July 2003, which supported the above approach, four regional consultations were held in 2004 to enable regions to be actively associated with the process. A second international conference (Bern II) was held in December 2004 to develop an international agenda for migration management, based on these regional inputs. The conference is expected to be an important step in carrying forward the Bern Initiative process, and thus will help to develop a more comprehensive and harmonized interstate approach towards migration management.

Meanwhile, the need for a more concerted global approach to migration management has also been underscored by several independent commissions. These include the Commission on Human Security (2001-2003), set up at the initiative of the government of Japan and the World Commission on Social Dimension of Globalization (2003-2004), sponsored by the International Labour Organization (ILO). In line with the call made under the NIROMP process, the Commission on Human Security proposed the development of an international framework to ensure orderly and safe movement of people, alongside increased migration opportunities, and to formulate international and regional norms and develop an adequate institutional mechanism in the pursuit of this goal.³¹ Likewise, the World Commission on Social Dimension recommended the launch of a process leading to the creation of “a multilateral framework for immigration laws and consular practices to be negotiated by governments that would govern cross-border movements of people”.³²

Furthermore, in 2003, a Global Commission on International Migration was established by Switzerland, Sweden, and several like-minded governments, with the active encouragement of the UN Secretary-General. Although its terms of reference are much wider, it is hoped that the findings of the Commission would spur further action in promoting cooperative management of international migration.³³ The Commission is expected to submit its final report to the United Nations Secretary-General and other stakeholders in the second half of 2005.

Parallel to these developments and as a response to the present malaise in the world migration system, some policy analysts and scholars have argued for the establishment of a World Migration Organization. Jagdish Bhagwati of Columbia University, for example, has been strongly pleading for a new World Migration Organization (WMO) (Bhagwati, 2003). His two inter-related arguments are that such a central organization would be in a position to (1) compile existing migration laws and regulations and codify “enlightened” immigration policies and best practices, and (2) 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, that these two arguments are strong enough to justify the establishment of a whole new international organization. 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 intergov-

ernmental agencies including the OECD, with some limited funds made available specifically for this 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”, even “openness” can be defined or measured in many different ways. The OECD’s annual table of development aid performance and the WTO’s trade policy review are credible and meaningful precisely because of the existence of a set of well defined and previously agreed-upon norms and principles in each of these fields.³⁴

There are several other alternatives that can be considered to promote and strengthen the growing consensus for a more concerted and comprehensive interstate approach to migration management. As part of this process, a low-cost project that can be put in place without much difficulty or much additional cost is to organize, at a sufficiently high level, under the auspices of an international organization like the IOM and preferably in collaboration with the UN agencies concerned,³⁵ a global inter-regional meeting, of representatives from the legally constituted regional and subregional institutions that have adopted formal agreements on interstate movements and other aspects of migration management. This should provide a useful opportunity (1) for the regional/subregional bodies to learn from each other’s experiences, identify constraints and obstacles, areas and conditions of successes, and best practices as appropriate, and (2) to assess collectively how and to what extent regional/subregional efforts can derive support from, and lend support to, global interstate efforts to better manage migration.

8. SUMMARY AND CONCLUSIONS

To sum up, there is an increasing recognition among policymakers and migration specialists that migration has now become a truly global process and that states need to cooperate more closely within a global framework to address the challenge and opportunities of international migration in the twenty-first century.

While this recognition often finds expression in the ongoing migration debate and in general declarations on migration, formal commitments by states based on such a policy approach are yet to come by. For instance, the international normative framework on migration, a tangible expression of states’ commitment, continues to be weak and fragmentary with serious gaps and ambiguities. This constrains effective management of international migration.

There is also a growing awareness of the need for better coherence of policies on international migration and those in other related policy areas such as trade, aid investment, and human rights. However, as of now, this awareness, seems to be mainly confined among those dealing with migration, with little evidence that it has made any significant impact on policymaking in other related fields or that migration is being factored into the latter processes.

In view of the recent setbacks in some of the regional and subregional agreements on free movement of labour, some analysts have expressed doubts about the viability and sustainability of any

such arrangements for interstate cooperation. These doubts, mainly based on the consideration of asymmetry of interest between poor, migrant-sending countries and rich, migrant-receiving countries, do not seem to be well founded. There is a sufficiently strong commonality of interests and a discernible shared goal (or a “collective good” under the regime theory) that binds the sending and receiving countries and can provide a viable and sustainable basis for a regime of multilateral cooperation. A regime of managed migration, based on the principle of regulated openness, should not be confused with one dedicated to free or unfettered movement of people. It would be useful to hold a high level inter-regional meeting to allow a direct exchange of views, mainly on the experiences of the regional and subregional agreements on the movements of people, their prospects and constraints, and the lessons that can be learnt.

There is a powerful nexus between the protection of human rights and effective management of migration. Those anxious to defend human rights and those involved in migration management share a common stake. A multilateral framework on migration should include measures to foster, develop, and sustain cooperation in these two areas.

Historically, nation states have cooperated with one another to effectively deal with transnational issues. Migration is one such issue. A global agreement on interstate cooperation to better manage migration should not therefore be seen as an encroachment on state sovereignty, but rather as a freely negotiated and mutually convenient arrangement that enhances the capacity of nation states to manage migration in the transnational space.

As long as the regional and global efforts are pursued within a common framework they could complement, support, and reinforce each other. If, however, regional efforts are pursued in isolation and move along divergent paths, there could be tension and even conflict between different regions that might undermine interstate cooperation at the global level.

Recent global initiatives to forge interstate cooperation for better management of international migration reflect a growing recognition of the need for a concerted, comprehensive and cooperative approach to migration management. They hold the promise of carrying this agenda forward. As the process gathers further momentum in the years to come, it should lead to a broad consensus among the various stakeholders in the migration field and may also be expected to have an impact on the thinking in related policy areas. These ongoing efforts deserve to be encouraged and actively pursued.

ENDNOTES

1. Cf. UN General Assembly Resolution 54/212 of 2 December 1999. The resolution points to the international character of migration, emphasizes the “need for comprehensive, coherent and effective policies – based on a spirit of genuine partnership and common understanding” and “urges member states and the United Nations system to strengthen international cooperation.”
2. Part of the increase in the migrant stock is due to the break-up of the former Soviet Union into a number of independent states.
3. The only other instrument that allows such freedom of movement concerns the Convention on the Rights of the Child. Article 9 of the Convention requires that states “shall ensure that a child shall not be separated from his or her parents against their will, except when (...) such separation is in the best interests of the child”. The article recognizes that it is not always in the best interests of the child to remain with parents. However, unlike the International Covenant on Civil and Political Rights, which prohibits only “arbitrary and unlawful”

interference with the family, the CRC does not recognize the test of a public interest to be weighed against the involuntary separation of the family. See Kate Jastram, "Family unity" in T.A. Aleinikoff and V. Chetail (Eds), *Migration and International Legal Norms*, 2003.

4. For details see Ghosh, 1997.
5. The other three are the freedom of association and collective bargaining, the abolition of forced labour, and the elimination of child labour.
6. See T.A. Aleinikoff and V. Chetail (Eds), 2003, op. cit. Also, Bimal Ghosh, 2003, *Elusive Protection and Uncertain Land: Migrants' Access to Human Rights*. The latter identifies and examines protection gaps as they affect several specific migratory situations or migrant groups.
7. For more details on gaps and inadequacies see T.A. Aleinikoff, *Migration and International Legal Norms*, 2003, op.cit; also Bimal Ghosh, 2003, op. cit.
8. See Bimal Ghosh, *Elusive Protection and Uncertain Lands: Migrants' Access to Human Rights*, 2003, op. cit.
9. Article 1(3) of the United Nations charter, for example, specifies the duty of states to cooperate "in solving international problems of an economic, social, cultural and human character, and in promoting and encouraging respect for human rights (...)"
10. An ILO survey, made in 1994, shows that out of the 98 countries significantly involved in migration 24 countries, or roughly a quarter, were both major sending/emigration and major/receiving countries at the same time. ILO/IOM/UNHCR, *Migrants, Refugees and International Co-operation*, 1994. "Major" is defined as including those countries which (a) had a population of more than 150,000 in 1970 and 200,000 in 1990 and (b) whose labour market or GNP was affected to an extent of at least 1 per cent by international labour migrants, disregarding asylum seekers and refugees. The successor states of the former Federal Republic of Yugoslavia are not included.
11. Eytan Meyers, 2002.
12. Some recent econometric analyses have put forward the concept of "optimal brain drain." They show that countries with emigration of over 20 per cent of all persons with tertiary education and low levels of adult education (e.g. El Salvador, French Guyana, Jamaica and Trinidad and Tobago) would benefit from reduced skill emigration. On the other hand, countries (e.g. Brazil and China) with low levels of adult education and low emigration rates would benefit from skill migration.
13. Ghosh, 2000.
14. Ghosh, 2005 (forthcoming).
15. In Ghosh, 2000.
16. This section draws largely on "Global vis-à-vis regional approach: a false dichotomy", in B. Ghosh (Ed.) *Managing Migration: Time for a New International Regime?*, 2000.
17. An inter-regional meeting held in 1997 on migration management under the auspices of NIROM, expressed the view that efforts at the two levels – global and regional – should go hand in hand and be so designed that one reinforces the other, combining the advantages of both the so-called top-down and bottom-up approach.
18. Viewed from this perspective, the oft-debated dichotomy between the global and the regional approach is a false one.
19. Japan in this context is a special case due to several factors: past history, geographical location, highly restrictive immigration policy, and strong attachment to social cohesion and cultural homogeneity.
20. United Nations, *World Population Monitoring, 1997*, Population Division, Department of Economic and Social Information and Policy Analysis, New York, 1998, Table 11.9.
21. IOM, *World Migration 2005*, Table 23.6.
22. 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. Figures for the EU, if regarded as a region, show a similar trend. For most of the EU countries (9 out of 12), non-EU nationals are the largest group in the immigration flows. In five countries, more than half of the total numbers of immigrants are non-EU nationals. Italy has the highest proportion (71%), Austria (66%), Germany (57%), Sweden (56%), and Netherlands (52%) (EUROSTAT, 2002: 11).
23. UNFPA, *Executive Summary*, 1998. Technical Symposium on International Migration and Development, The Hague, Netherlands, June-July 1998, p. 34.
24. By resolution 53/111 of 9 December 1998, the General Assembly established an Ad Hoc Committee open to all states for the purpose of drafting these instruments, and the states had committed themselves to ensure the completion of the committee's work by the year 2000.
25. Barry Eichengreen and Peter Kenen, "Managing the world economy under the Bretton Woods system: An overview", in Peter Kenen (Ed.), *Managing the World Economy*, Institute for International Economics, Washington, DC, September 1994, p. 54.

26. IOM, *Role of the Council as a Forum for Migration Policy Dialogue*, 30 April 2002.
27. www.unhcr.ch/cgi-bn/texis/vtx/home. The consultations were launched, inter alia, to develop complementary new approaches, tools and standards to ensure the availability of international protection where the 1951 Refugee and its 1967 Protocol needed to be buttressed.
28. The Commission's report, *Our Global Neighbourhood*, was published in 1994.
29. See "The NIROMP process – An overview", 2001, IOM/UNFPA. NIROMP relies on an interactive methodology, combining global and regional approaches on the one hand and the integrative and modular approaches on the other.
30. "Declaration of the Hague on the future of refugee and migration policy", SID, The Hague 2001. The Declaration contains 21 main points: responsibility of states, focus on a new dialogue, regional approaches, migration management, mobility and security, orderly migration, irregular migration, refugee protection and asylum, internally displaced persons, migration and development, conflict and conflict prevention, post conflict reconstruction, focus on the potentials, integration and social inclusion, participation and responsibilities, refugee and migrant women, children and families, the role of the corporate sector, leadership, education, and information, implementation of legal instruments, and institutional arrangements.
31. For the text of the keynote address, see Metropolis website www.international.metropolis.net. For the slightly modified Spanish version, see *Migraciones En El Siglo XXI* [Managing Migration in the 21st Century], *Migraciones*, (Madrid) No. 12, December 2002, pp. 175-206.
32. *Final Report, Commission on Human Security*, New York, 2003.
33. World Commission on the Social Dimension of Globalization: *A Fair Globalization: Creating Opportunities for All*, ILO, 2004.
34. The mandate of the Commission, which is co-chaired by Ms Mamphela Ramphela and Mr Jan O. Carlsson, is to place international migration on the global agenda, analyze gaps in current policy approaches to migration, and examine interlinkages with other issues.
35. See in this connection, B. Ghosh, "Progress has been made towards better management of migration", *Financial Times* (Leaders & Letters), 10 November 2003.
36. It would be advisable to associate the UN regional commissions with any such exercise.

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