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MIGRATION IN A CONTEXT OF GLOBALISATION

(DISCUSSION PAPER III)

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I. INTRODUCTION

This paper discusses the most important tendencies in the relation between countries of different economic performance and political stability. These differences are the basis to explain migration in a context of globalised relations between nation states and raise important questions in the regulation of belonging through citizenship. The paper has been prepared by Gianni D'Amato, Martina Kamm and Sandro Cattacin.

II. TWO CONSTITUTIONAL FACTORS OF TRANSNATIONAL MIGRATION: THE SHIFT OF NATIONAL JURISDICTION AND THE MEMBERSHIP IN POLITICAL COMMUNITIES

Increasingly, with the changing geopolitical landscape and the emergence of new Nation States, international migration has gained a new importance. Two key factors characterize transnational migration compared to internal or "pre-State" migration. First, it is the jurisdiction that shifts from the source to the receiving State. In a context of irregular and uncontrolled migration, often tied to organised crime such as trafficking and smuggling of migrants, different national jurisdictions are hampering the adoption of a common strategy to prevent such abuses. New international standards and the recently adopted UN Convention against Transnational Organized Crime and its Protocols on Trafficking and Smuggling highlight the efforts that the international community currently undertakes in this field. Second, and in case of permanent migration, it is the change of membership from one political community migrants belong to, to a new one. Therefore, transnational migration results in various conflicts and confrontations between individuals and States. While certain individuals decide to leave their country with the intention to improve their personal economic situation, the receiving countries on their part follow economic and often restrictive goals.

Migration and the principles of a free market and global economy

Obstacles, which migrants meet when they arrive in a receiving country, are partly contradictory to the rules and principles of a free market and global capitalist economy. Liberalism

functions in a hierarchic way: while the transfer of goods and finance is less affected by a political decision making process, the latter fully determines the working domain (Bhagwati 1984). On a world economy level, immigration restrictions therefore constitute one of the most significant exceptions to the rules of liberalism. Furthermore, Nation States hardly accept any instructions that are made by supranational institutions or that are subject to an international code of conduct. Both aim at regulating or controlling migration movements. Instructions are often perceived as forms of imposed restrictions to States' sovereignty. Today, globalisation will imply a process of liberalisation in the domain of highly skilled labour. This process might be cyclical, but will nevertheless have considerable consequences for the transfer of knowledge from developing countries into the modern world (keyword: *brain drain*).

Migration as an outlet and buffer for the (re-)building of modern industrial societies

While the institutions of Bretton Woods have guaranteed a multilateral finance and trade system after World War II, questions of international migration have not at all been negotiated. This lack of cooperation between States has been interpreted as reflecting the single States' interests to obtain a large offer of cheap labour force, so that they are capable to accomplish the structural adjustment that is a precondition for being a global partner in the international world economy (Zolberg 1991). Due to an unlimited offer of labour and a lack of cooperation between the offering entities it has been impossible to introduce suitable instruments to control and regulate migration, such as a code of conduct. An exception to this was the International Labour Organization (ILO), whose success record in this regard has been quite limited.

Migration hence served as an outlet and buffer for the (re-)building of modern industrial societies. Receiving countries have been provided with flexible labour force, whereas in sending countries the pressure on economic and political change was reduced. Contrary to the balance model, which positively values migration in the sense of an individual or group specific status improvement, the structuralist approach of the seventies has always interpreted migration in a context of growing inequalities between industrial centre States on the one hand, and the less developed and depending States on the other hand. This theory has been corroborated by the fact that a considerable number of newly arriving immigrants were employed in unqualified jobs and were submitted to several social, political and legal restrictions.

Migration movements as an indicator for social and economic crisis

The cyclical buffer politics worked especially in Western Europe until the breakout of the petrol and financial crisis at the beginning of the seventies. After a recruiting stop for labour force, immigration took place in forms of family reunion and asylum flows. Though, today there seems no longer to be a high demand for additional low-skilled labour force, most Western States are likely to remain de facto immigration countries. With the disappearance of the Iron Curtain, immigrants no longer have quasi-automatic access to the status of political refugees. Nevertheless, large numbers of people living in the Eastern part of Europe, in North Africa and in the successor states of the former Soviet Union still have strong reasons to migrate, such as to escape from economic deprivation, political instability, and ethnic violence (Fassmann/Münz 1994: 30).

In many underdeveloped countries, (internal) migration remains an indicator of persisting social crises on the way to an integration into the world market of these countries. Destabilizing economic and political factors such as armed conflicts, internal strife, crop or house destructions, poverty and famine, are key factors for forced migration and an increasing number of internally displaced persons (according to UNHCR about 20 to 25 million people worldwide). They suffer from lacking development aid programmes and a legal system for

international protection; hence, they represent today one of the main challenges to the international community.

Growing gap between Nation States' interests in the protection of human rights in general and migrants rights in particular

The Western States community has traditionally focused on the protection of human rights in the fields of civil and political rights. This focus has resulted in essential international instruments such as the UN Convention relating to the Status of Refugees, the UN Convention against torture or the International Covenant on Civil and Political Rights (ICCPR). Again, since the end of the Cold War, the political situation worldwide has changed in such a fundamental way that today, uncontrolled and irregular migration movements such as forced migration or internally displaced persons are falling outside of these existing protection instruments. They are more often linked to economic and social problems, such as lacking educational programs or famine in the regions of the Great Lakes in Africa, for example, or crop destruction in South East Asia. Though these factors have to be seen in the context of political instability, they are not well enough defined under international law. Following the growing inequalities between developed and less developed countries that can be explained in a context of globalisation and liberalisation, Southern States are more and more asking for an equally binding character of economic, social and cultural rights (ESCR) in addition to the predominant political and civil rights (see the recent resolutions at the sessions of the UN High Commissioner for Human Rights).

Confronted with political tensions and inequalities on a global level, the industrialized countries have an ethical duty to strive for more than only a symbolic crisis management. There is a pressing need to develop active and farsighted migration policies that remain within a sound legal and institutional framework. On the one hand, policies should be based on a large public support and the participation of the civil society, on the other hand they should reflect the fact that the industrialized countries are not an island, isolated from the rest of the world.

Proposals for additional monitoring, protection and controlling instruments in the above mentioned fields could be an integral part of a common discussion among representatives of developed and underdeveloped countries in the field of human rights in general and migrant rights in particular. The questions which remain to be addressed is, if western States really have the capacity to control immigration, or if there are not reasonable constraints that impede an efficient controlling? And on what kind of mechanism does migration in reality depend on?

Migration networks

Growing populations and the technical revolution of the agricultural sector lead to internal migration movements into cities, where working conditions are often inadequate and social and living conditions miserable. With the aim of avoiding this hard fate and to improve their living conditions, some migrants undertake another step and emigrate to industrial countries. These "supranational zones" of the OECD-member States became dominated by the services sector. While these factors can only give tentative reasons for migration movements as such, they do not explain why some countries are among the favourite destinations while others are not. If economic indicators such as salaries would be the only explanation, then in the European Union (EU) Portuguese migrants would rather immigrate to Germany than to France, which is not the case. Cultural, political and historical links and networks between the original and the guest society could instead have a higher explanation value than economic factors.

Though there is only a small minority in the less developed countries that decides to emigrate, the punctual effects their decisions have on certain countries are considerable. Even if the original intention to leave might have been temporary, many migrants settle down as permanent residents in the receiving countries. Reasons for this are multiple and complex. Just to mention a few, there are the quick economic and political changes in the source countries, that force migrants to reconsider their intention to return or even render it impossible. Concerning the growing number of migrant workers worldwide, they often live under harsh conditions and are deprived from their fundamental rights to return or even get in contact with their families abroad (this is the case for e.g. migrant workers in Saudi Arabia). On the other side, migration networks grow and link countries of origin and final destination, with the result of a social exchange at both levels. Migration movements therefore not only change the demographic, economic and social structure of societies but also contribute to cultural diversity, enrichment and exchange, that confronts national conceptions and self-images.

Sovereignty of Western States challenged?

There are some scholars who are referring to a crisis of immigration control in Western States. In this vein, Cornelius, Martin, and Hollifield (1994) have diagnosed a 'gap' between restrictive policy intentions and an expansionist immigration reality. Is sovereignty, understood as ultimate control over a bounded territory and populace, effectively challenged? Certainly, internally only the state can establish and enforce collectively binding decisions. But the state rarely appears as a monolithic actor. Instead, the domestic state is multiple set-up fractured into executive and legislative systems, not to mention party-political and corporate arrangements between polity and society, and federal states are even territorially fractured. Whereas "the international state" is judicially sovereign, equal, and protected by the doctrine of non-intervention, the capacities of "the domestic state" to formulate and implement policy and law vary accordingly.

Regarding immigration, sovereignty is by definition in place as the discretion of states to admit or expel aliens. But, this discretion is not absolute, even in its international dimensions. It is limited, first, by the exigencies of state interdependence, where hostility towards aliens might be taken as an act of inter-state hostility, and, secondly and more recently, by a nascent international human rights law, that provides individuals with elementary rights that states have to respect (the principles of non-refoulement and non-discrimination etc.). But, as Joppke (1998) points out, the right to asylum as codified in the UN Universal Declaration of Human Rights, is the right of sovereign states to grant asylum, not the right of the individual to be granted asylum. International migration law is essentially a function of actual States practice, not vice versa, and its constraints to states are the soft constraints not to stray from the norms of a 'civilized' conduct in the international community. Therefore, the reasons for the 'migration crisis', i.e. the fact that Western states end up admitting more immigrants than their restrictive policies would allow them to, can be explained with external and internal constraints to States sovereignty.

Constraints to sovereignty

Globalists are tempted to depict immigration in the colours of diminished state sovereignty. One the one hand, poor people and refugees are obviously excepted from the increasingly deregulated flows of capital and information. In this context, Saskia Sassen (1998) juxtaposes a 'renationalisation' of immigration policies and a 'denationalisation' of economies in the age of globalisation, and suggests that restrictive immigration policies are more rhetorical and symbolic than driven by substantive concerns. On the other hand, globalists depict the symbolic politics of immigration control as undermined by external economic and human rights constraints. Accordingly, Saskia Sassen points out, and not without good evidence, that the coexistence of two contradictory regimes – an open one for capital, and a closed one

for immigrants – is inherently unstable, and she argues that the latter will succumb to the exigencies of the former. An example for this is the strongly invisible liberal immigration regime that is already in place for the elite personnel of the global economy. In addition, Sassen finds state discretion over immigrants curtailed by an emergent international human rights regime that is forcing states to take into account persons *qua* persons, rather than *qua* citizens. According to her, the individual is now object of law and a set of rights, regardless of whether being a citizen or an alien.

While having concentrated on the identification of factors that mobilize possible migrants, the globalists have neglected some important domestic factors that can explain the expansiveness of Western states towards immigrants. One factor to be mentioned here has been interpreted by Gary Freeman in his political science framework as ‘client politics’: contrary to the widespread rhetoric and stereotype of ‘restrictionism’, the politics of immigration in liberal democracies is expansionist and inclusive. To explain this, he identifies two features of immigration that cause their processing in liberal democracies: the costs of immigration are highly diffused and invisible, whereas its benefits are concentrated and tangible. This is a constellation in which the exigencies of collective action favour the organized recipients of concentrated benefits over the non-organized bearers of diffuse costs. Not the uninformed, non-mobilized, and rather restrictionist public, but the expansionist ‘organized public’ of employers, ethnic groups, and civil rights advocates comes to shape immigration policy in liberal states. Though this model has to be compared to the different Western political cultures, its main argument may resist to the variety of arrangements, namely that restrictionist policies were undermined by an expansionist reality - with an immigrant population in Western Europe, which is not only not diminishing but increasing.

Future migration tendencies

With this process in mind, today we can identify four tendencies that will characterize and influence migration movements in the near future (see also Castles und Miller 1993).

- *Globalisation of migration:* There are more and more countries involved in migration movements at the same time. Original places and countries are multiplied so that the economic, social and cultural spectrum of immigrant communities in the developed and less developed countries is also characterized by a growing diversity.
- *Acceleration of migration:* As migration movements increase worldwide, this quantitative growth as well as the corresponding difficulties urge governments to react and to undertake appropriate measures.
- *Differentiation of migration:* Many countries are confronted not only with one type (migrant workers, refugees) but also with a whole spectrum of different types of migration. Migration chains can also start with one type and then change into another one or a combination of different ones. This can be due to the controlling instruments single governments impose or to measures they undertake. It is exactly this complex and differentiated development that can be hampering to national and international efforts to react on abuses.
- *Feminisation of migration:* In many regions, the number of women among migrants constantly increase. In the past, working migrants and refugees were predominantly male. Women were mostly represented in the special category of family reunion. Today, women often play a key role in migration movements, which is the case for women from Cap Verde, now living in Italy, for women from the Philippines living in the Middle East or for women from Thailand, living in Japan. In Europe, there was a high percentage of women among those fleeing from former Yugoslavia.

TOPICAL QUESTIONS FOR DISCUSSION

1. **Intergovernmental interests in the protection of migrant workers are partly due to a political interest to protect nationals abroad (with respect to e.g. avoiding or limiting statelessness or loss of nationality). Networks could play an important role as a part of the civil society and provide a monitoring instrument to guarantee protection and rights of migrant workers. How to forward such processes towards increased rights?**
2. **A permanent UN-Committee on migrants rights could be a future model and monitoring instrument, that obliges States to submit regular reports according to international instruments. Is such a mechanism needed?**
3. **A Code of Conduct would initially serve as a soft and flexible instrument to check the need and functioning of State-to-State co-operation on international migration. Is such a Code of Conduct needed?**
4. **Planning mechanisms for assessments of migration levels and for the identification of the linkage between migration policies and economic development may be considered. Are such planning mechanisms needed at the global and/or regional levels?**

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