



IOM International Organization for Migration
OIM Organisation Internationale pour les Migrations
OIM Organización Internacional para las Migraciones

INTERNATIONAL DIALOGUE ON MIGRATION
INTERSESSIONAL WORKSHOP ON

**FREE MOVEMENT OF PERSONS
IN REGIONAL INTEGRATION PROCESSES¹**

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BACKGROUND PAPER

Global trade liberalization has mainly focused on facilitating, to the broadest degree possible, the movement of capital, goods and services, rather than the movement of people, per se. Human mobility is still a country – or region – specific freedom, rather than a global one.

Although migration is an increasingly global issue that is now recognized as holding considerable potential for economic and social growth and development for countries of origin and destination alike, as well as for individual migrants and their families, much remains to be done before agreement can be reached at the global level on the migration management strategies that need to be put in place, whether at international, regional or national levels to fully realize this potential. Globalization creates almost unlimited awareness of opportunities and networking possibilities in a context where job options in countries other than the place where one is born are numerous and are now seen as a viable life choice. At the same time, population and demographic imbalances, labour market and income disparities combine to produce migratory dynamics that are increasingly dominated by the search for employment abroad. In the absence of sufficient legal channels for migration, irregular migration has risen significantly, with its attendant risks to human life and well-being and its distorting economic, social and security effects.

Against this backdrop, global trade liberalization efforts are touching, albeit indirectly, on liberalization of the movement of people. The General Agreement on Trade in Services (GATS) being negotiated under the umbrella of the World Trade Organization (WTO), addresses liberalization of trade in services that are supplied through four modes: cross-

¹ As the International Dialogue on Migration (IDM) theme for 2007 is consistent with the *World Migration Report 2007* (WMR) on the topic of managing labour mobility in the evolving global economy, the Administration has been able to draw on the research and analysis undertaken in connection with the forthcoming WMR, in particular Chapter 13, in its preparations for this year's IDM activities.

border supply (Mode 1), overseas consumption (Mode 2), commercial presence (Mode 3) and the temporary movement of natural persons (Mode 4). Mode 4 deals only with the temporary movement of persons and exclusively in connection with the provision of services. However, progress on Mode 4 has been limited to date, with commitments mainly covering only highly skilled professionals such as executive managers and intra-corporate transferees. Renewed efforts are currently underway to invigorate this element of the trade talks, which has been identified as holding significant potential for developing country economies.

Regional integration

At the regional level, there has been comparatively greater progress in addressing the multifaceted relationship between trade, migration and development. The relative success of regional frameworks in handling mobility issues is not surprising: the limited number of countries involved can offer better possibilities for finding common ground for cooperation, including in addressing complex migration dynamics. In addition, the largest share of migration flows occur within regions, with people increasingly moving for short and recurring stays, underscoring the importance of regional integration agreements and legal frameworks for the management of these flows.

Neighbouring States around the globe have achieved varying degrees of economic integration through sub-regional and regional economic and trade agreements. As a general rule, the deeper the integration, the greater the likelihood of finding relatively liberal freedom of movement provisions. Four levels of integration are generally recognized. The lowest level is characterized by internal removal of trade barriers and is called a *free trade area*. The most common example of such an arrangement is the North American Free Trade Agreement (NAFTA) between Canada, the United States and Mexico. *Customs unions* deepen integration further by equalizing the trade advantages enjoyed by member States with respect to third country exports. The Caribbean Community (CARICOM) is an example of such a customs union. *Common markets*, such as the Southern Common Market (MERCOSUR) in South America, provide for the free flow of labour and capital (factors of production). An *economic union* establishes greater integration among national economic policies. The European Union (EU) is an example of such an arrangement, and has developed in recent years to encompass further integration in such important political fields as foreign policy and justice and home affairs policies.

In some cases, several regional trade agreements (RTAs) are in force in a given region. States may be party to more than one RTA as well as to intra- and extra-regional bilateral agreements. They may also participate in one or more non-binding Regional Consultative Processes on migration (RCP), in the context of which they discuss a much broader range of migration-related issues.

Approaches to the mobility of persons under RTAs

Provisions for the liberalized movement of persons feature in many regional integration agreements.² Just as regional integration agreements vary significantly, liberalization of the movement of persons is approached in a wide variety of ways within the framework of these agreements. Liberalization of mobility may be either a primary or secondary element of the agreement. In addition, the overall objectives of the regional agreement impact the extent to which the movement of people is liberalized and how the movement of people is addressed and implemented. Regional integration agreements also vary in the aspects of mobility they address: facilitation of entry and rights of establishment are more common, while independent residence is less frequently and fully covered and is often subject to national regulations. Provisions regarding freedom of movement are not always contained in the agreement itself, but may be found in separate or adjoining agreements at varying stages of ratification among member States.

Mobility provisions in regional integration agreements can range from covering the mobility of persons in general, others provide for the free mobility of labour in general or certain types of labour (e.g. higher skilled workers), yet others facilitate the mobility of service suppliers or are limited to offering simplified procedures for movement related to investment activities. Some agreements may offer the facilitated admission of specific categories of persons, such as tourists, students, family members, business visitors, entertainment and media professionals and non-wage earners. The scope of the agreements varies also regarding the type of barriers to mobility they choose to alleviate or remove (access to the entire labour market or certain sectors, facilitation of recognition of qualification procedures, temporary and/or permanent migration, family reunion, access to social security benefits, prevention of double taxation, etc.). Importantly, some agreements are implemented gradually or in stages, meaning that they may envision over time a greater degree of mobility than is currently allowed as is the case for CARICOM.

The approaches to human mobility taken by regional agreements can be broadly classified into three groups³. The first group specifically recognizes a **right to mobility** and includes agreements such as the EU and NORDIC. These agreements not only cover free movement of all nationals of States party to the agreement within the region, but also allow them to engage in work, self-employment and service provision. Most of the agreements in this category provide for the right of residence. Where residence is not related to employment it may be subject to additional conditions, for instance proof of sufficient funds for self-support. These agreements also typically offer entry and, in some cases, market access to family members of nationals of the participating States. Some of

² For the purposes of this paper, regional integration agreements and regional trade agreements (RTAs) are used interchangeably. Please note that unlike the RTA definition adopted by the World Trade Organization, regional agreements will refer to agreements concluded between more than two parties.

³ More information on mobility provisions in regional integration agreements is provided in a chart and compilation of one-page summaries outlining the main characteristics and provisions of selected RTAs with respect to the movement of persons, which will be made available on the workshop webpage and distributed at the workshop.

the agreements in this group allow permanent migration after a certain period of time for nationals of States party to the agreement.

The second group includes agreements that are largely based on the **GATS Mode 4** model. MERCOSUR, for instance, covers the same types of mobility as Mode 4 - temporary movement for service suppliers. Some of the agreements in this category, however, may not cover the full range of service supplier mobility foreseen under Mode 4 while at the same time allowing mobility of certain types of persons in addition to service suppliers (i.e. contain provisions additional to the GATS model). NAFTA, for example, offers market access to high-skilled categories of persons only, including but not exclusively service providers – business visitors, traders and investors, intra-company transferees and professionals. CARICOM covers service providers at all skill levels and also provides for free movement of other skilled groups – university graduates and professionals in selected occupations. Some agreements within this group permit entry of the family members of nationals of the participating States although do not allow their employment.

The third group does not provide any market access but **facilitates entry** and allows temporary stay for certain categories of people in particular persons engaged in trade and investment activities. APEC, for instance, does not contain any specific provisions allowing labour mobility, but it includes arrangements aimed at facilitating and streamlining temporary entry of business visitors under the APEC Business Travel Card Scheme. SAARC includes a visa exemption scheme for more than 30 categories of persons. In addition, visa simplification procedures for a number of additional categories are in place to facilitate the development of trade and tourism. The agreements in this group do not address entry rights of family members, nor do they grant residence rights, although temporary residence may be allowed subject to the acquisition of a residence permit.

Principle challenges to the acceptance and implementation of regional free movement regimes

In addition to considerations of ensuring adequate political will and commitment to making the regional agreement work among all States party, there is often the additional need to overcome a perception of unequal benefit for some States. Gaining public support requires showing benefits to each.

Beyond these more general challenges, there are challenges specific to the mobility provisions of regional integration agreements.

Terminology and Perception

The phrase “free movement” itself can create stumbling blocks for acceptance and implementation of mobility provisions. Indeed, the term itself is almost always a misnomer, with “liberalized movement” generally being a more accurate description of what the agreements attempt to achieve. Misperceptions as a result of the “free

movement” terminology can result in negative public sentiment towards the mobility provisions, in turn resulting in political pressure not to accept or implement them fully.

Mismatch between Aspirations and Existing Circumstances

The particular aims of the mobility provisions of the agreement may be overly ambitious given the circumstances in the region and historical, political and economic differences and disparities between the participating States. For example, countries of destination in the region may be concerned about massive influx of unskilled migrants, and countries of origin in the region may be concerned about loss of skilled workers. In this type of situation, it may be more realistic for the States to commit to *facilitate* entry, residence and establishment of citizens of other States party to the agreement, rather than to grant these citizens with a *right* to entry, residence and establishment.

Concerns Relating to Irregular Migration

An additional challenge to acceptance and implementation is concern regarding irregular movement of persons both into and within the region. While increased inter-state cooperation can be highly effective in countering irregular migration, at the same time States may be particularly cautious to commit to mobility provisions that they perceive might complicate and make more difficult their efforts of restraining irregular migration. The prospect of unauthorized persons gaining entry or residence under the facilitated regime, and the general complexity of implementing a two-tiered or multi-tiered entry and residence system in situations where adequate personal are lacking, travel identification is problematic and government capacities for inspection are weak, are significant factors.

Labour Market Concerns

Another barrier to the acceptance and implementation of mobility provisions can be States’ hesitation to allow citizens of other member States access to their labour markets, primarily due to concerns about protection of the local labour force. Complications relating to the complexity of social security (such as the portability of pensions) as well as issues relating to professional training and the recognition of qualifications can also present barriers.

Regional integration schemes can make it more difficult for nationals outside of the regional integration agreement to access the region by giving preferences to internal mobility, especially in terms of access to employment. This can lead to tensions with countries not party to the agreement.

Lack of Capacity

Lack of capacity is perhaps the greatest challenge that States – and in particular less developed States – may be faced with in seeking to fulfil their obligations relating to the movement of people. Many or all of the participating States may lack adequate

operational systems and legal/regulatory frameworks to implement their commitments under the regional integration agreements.

The relationship between regional integration agreements and national policies presents policy-makers with the difficult task of ensuring that the national migration policy and procedures conform to the standards and requirements of the regional agreement. This may be particularly difficult as mobility provisions may have implications for national regulations and practice in a number of spheres, such as labour, welfare and health. In some cases, States retain (or enact) national legislation and/or practices that are at odds with their obligations under the regional arrangement.

States also often lack the necessary automation and data management systems required to effectively monitor and manage regional migration in a manner consistent with the provisions of the regional integration agreement. Many States still operate only manual systems at ports of entry, and are therefore more susceptible to human error and delays. Further, a lack of harmonization in border management procedures and data collection regimes between States also poses challenges to compliance with the terms of the regional integration agreement. Similar challenges are often present in the capacity to produce high quality identity and travel documents, based on sound identity management models. Although regional mobility regimes presumably will impact a larger percentage of a national population than for example those who are issued passports, ensuring integrity in basic identity or breeder documents (documents used to obtain other documents used for identity purposes) may still pose challenges.

States may also lack the necessary administrative infrastructure, such as monitoring bodies and systems for the secure and rapid exchange of information, consistent with privacy protection laws. For instance, a regional agreement may require member States to issue a visa to nationals of other member States within a month, and States need the capacity to process requests within the time limit.

There are also capacity issues relating to human resources: those people whose duties relate to the implementation of mobility provisions – including labour and welfare officials, consular officers, border guards and law enforcement officials – need to be provided with the information and training necessary to carry out their duties in accordance with the mobility provisions of the regional agreement.

The origin of much of this impaired capacity is often limited resources. For instance, the Economic Community of West African States (ECOWAS) introduced a travel certificate in 1985, with the intention of exempting its bearers from the obligation to complete immigration and emigration forms when travelling between ECOWAS Member States. The printing of the certificate has proven to be the greatest challenge, with some Member

States being deterred from issuing it due to high printing costs (and other Member States having issued it in different colours and formats).⁴

Conclusion

Facilitating labour mobility can take many forms, ranging from the adoption of global or regional trade or integration agreements, to bilateral labour migration schemes or unilateral policies. These approaches can be seen as complementary as they often focus on different types of mobility and categories of persons, and may have differing underlying objectives.

Moreover, as global approaches to mobility of persons may be difficult to envision on a wide basis in the near term, RTAs may also be considered as building blocks towards more comprehensive arrangements, be they formal or consultative. They may help build confidence in the ability of States to work together to manage mobility efficiently and effectively.

On their own merits, in any case, it is useful to take stock of the experiences under the various existing regional free movement regimes, to learn from what exists and to share good practices. Much can be learned by those States contemplating developing or adjusting arrangements for the liberalized movement of persons in their regions from the longer and deeper experiences of other States with various aspects of free movement arrangements. For example, States might learn from the experience of other States in areas such as facilitated entry, access to employment or residence, and the attendant administrative, legislative and other mechanisms required for these to operate efficiently. For this reason, a chart summarizing the main characteristics and provisions of selected RTA's with respect to the movement of persons will be posted on the workshop webpage and distributed at the workshop.

Open dialogue, sharing of experiences and cooperation between countries of origin and destination, and between different communities (e.g. migration and trade authorities) can help facilitate a more balanced distribution of the benefits of the mobility of persons among the principal stakeholders as well as a greater coherence between mobility and other policy areas affected by migration or affecting migration.

⁴ J. Martens, "Moving Freely on the African Continent: The Experiences of ECOWAS and SADC with Free Movement Protocols", *International Migration Law* (2007), R. Cholewinski, R. Perruchoud and E. Mac Donald, eds.