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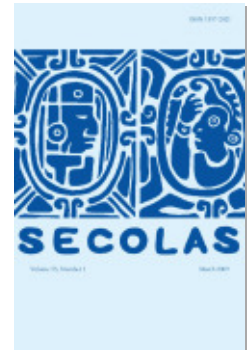
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THE MULTI-FACETED DEBATE ON HUMAN MIGRATION

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Since the beginning of human history people have moved. They have left ancestral homelands, entered new spaces, explored new frontiers and returned to former abodes. Ours is a history of emigrating and immigrating, of crossing borders (territorial, social and political), of trying to establish ourselves in new domains, or of arguing for our right to be where we are. The contemporary concern about immigration is thus a manifestation of an age-old and chronic problem that is not unique to the 21st century or to the United States.¹ Yet the present debate over human movement appears to have intensified as a result of the relentless advance of globalization and the rise in “illegal” or “undocumented” workers.² Questions concerning States’ responsibilities toward migrant workers—especially marginalized and undocumented workers who typically experience labor and human rights abuses—have become especially prominent.

This article explores the question of human movement from multiple perspectives—theory, foreign policy and international doctrine—in order to contextualize the current immigration debate in the United States. It explains how migration challenges human-State relations, influences political discourse and foreign policy directives, and presents many migrants—particularly the undocumented—with very real human security dilemmas. It ends by demonstrating the discord between political practice and international human rights rhetoric with regard to freedom of movement, and alludes to the fact that the debate on human movement is far from over.

Theoretical Overview

In order to address the question of human movement (migration), a brief overview of several key theories that explain migratory movements is instructive. Generally, it has been assumed that “if you build it, they will come;” that is, migration responds to the push-pull factors of economic development, and like water pooling at the lowest level, immigrants are drawn to countries and regions of growth and opportunity, seeking out employment and better life prospects. In other words, the majority of foreign migrants are economic immigrants and/or economic refugees.³ Thus a central question for any theory of migration to address is why migrants leave their homes in the first place. To what extent do economic development and growth, and conversely economic hardship and breakdown, in regions or countries stimulate migration



flows? To answer this question, migration research draws heavily on multidisciplinary contributions and perspectives. Generally, these attribute migration to a "complex set of factors and interactions which lead to international migration and influence its course."⁴ Among the various theoretical explanations of migration include: the economic, the globalization, transnational and historical-structural theory of migration.

Economic theories of migration, alluded to above, emphasize the importance of "push-pull" forces of national policies and economies and the central role migrants play as rational decision-makers, constantly weighing the costs and benefits of immigration.⁵ Key "push factors" include the lack of economic opportunities and political repression in one's home country while important "pull factors" that attract immigrants to receiving countries include jobs, land, and political freedoms.⁶ From the economic perspective, migration is largely conceptualized as a form of rational investment in the development of "human capital" and, as such, immigrants' actions determine their future well-being and their societal worth proportionate to their economic contributions.⁷

Central to economic explanations of migration is the impact of industrialization on labor markets. Migration from this perspective is viewed as the natural consequence of the chronic labor demands of advanced industrial societies and serves as a major pull factor in receiving countries that struggle with labor shortages and rely on immigrant workers to keep their economies booming. Moreover, employers often turn to immigrants not only to meet short-term labor demands but also to solve endemic structural economic problems such as low wage scales, unstable working conditions, and poor labor mobility that deter recruitment from the domestic labor market.⁸ The role of migrant workers, therefore, is to fill the gaps present in the receiving society due to existing structural deficiencies.

Globalization theories of migration focus on the effects of growing international interconnectedness, communications and transactions among different societies in economic, social, and political spheres. Theorists of globalization are divided over its benefits and detriments. One school of thought tends to emphasize the constraints globalization imposes upon States and national policies,⁹ with some proponents predicting the demise and end of the "nation-State" altogether.¹⁰ Another school of thought holds that global constraints on domestic economies and policies are largely exaggerated, and that globalization is primarily a positive development for States and the world economy. In the final analysis, States are still the central authorities that define social and economic policies and determine their citizens' well-being. Migration, from this perspective, is the result of greater global economic interconnectedness and market competitiveness.

Transnational theories of migration are closely related to globalization and explain migration as a direct consequence of global linkages that have increased migrants' overall territorial mobility and the interconnections of social migration networks among sending and receiving countries. Extensive transnational participation largely based on capitalist economic

initiatives serves as a catalyst for a host of reoccurring economic, political, social, and cultural activities across territorial boundaries by a large number of diverse actors from individuals to representatives of national governments and multinational or transnational corporations.¹¹ In short, the social and economic forces of contemporary capitalism and the greater permeability of national boundaries have had a “transnationalizing” effect which has been especially apparent in the expansion of transnational corporations and their logical extension—transnational labor movements. The result is the creation of transnational communities and “transmigrants,” as opposed to the traditional migrants and immigrants into national communities.¹²

Historical-structural theories of migration are rooted in Marxist and world-systems analysis and emphasize the historical inequities in the distribution of wealth, resources and power of the world economy. Migration is an instrument of the capitalist world economy and the exploitative economic and development policies of dominant States in the weaker and poorer countries. Within Marxist theory, employers derive value from labor and the commodities that workers produce but remunerate workers unfairly retaining most of the profits, thereby exploiting labor. World-systems theory projects this model of capitalist class exploitation onto the global scene whereby dominant (or core) capitalist countries exploit and expropriate the labor and resources of weaker and un- or underdeveloped (periphery or semi-periphery) countries through outright colonial rule and/or both direct and indirect economic imperialism. This historical-structural system of capitalist exploitation and unequal core-periphery relations therefore explains international migration and chronic socioeconomic underdevelopment.¹³

This brief theoretical review suggests that perhaps all of the explanations of migration have important insights to offer and that many factors are at work. The uneven process of capitalist development, dependent and interdependent (core-periphery) economic structures and relationships, historical and cultural linkages, population disruptions and dislocations, state policies, institutions and regulations, inter-State relations, regional integration, and the market forces, social networks, and non- and supra-state or non-governmental actors of globalism and transnationalism, may all have had an impact on migration and immigration flows into the United States from Latin America.

The Immigration Debate at Home

“Some of the most violent criminals at large today are illegal aliens.”¹⁴

The above theories do not address the direct impact that existing immigration policies have had on human movement, especially since 9/11. In the United States immigration quotas have decreased and criminal

enforcement, prosecution and deportation have become the dominant policy over the last several years. Whereas previous benign or welcoming climates helped support institutional and social resources that assisted migrants—such as worker associations, trade unions, and community and religious solidarity groups—and eased their normalization and assimilation into U.S. communities, the current climate is prohibitive with an immigration system that is so backlogged, limited, and unfair that migrants become desperate and take extraordinary risks, putting their lives in jeopardy.¹⁵

The immigration debate has become particularly strident in the last two years. This state of affairs is not accidental but the product of a number of forces at work. Firstly, immigration has become highly politicized and manipulated in the media, largely in reaction and opposition to the failed 2006 Comprehensive Immigration Reform Bill, co-sponsored by the Republican Arizona Senator John McCain and the Democratic Massachusetts Senator Edward Kennedy. Although supported by President George W. Bush and Democratic Party leaders in Congress, the bill was opposed by leading Republicans and anti-immigration groups and died in the Senate in June 2007.¹⁶ The grassroots backlash was especially effective in the bill's demise, and had ample historical precedent.¹⁷

Since the 1990s the United States has undergone its fourth great immigration wave. Unlike major immigration floods in the 1850s, 1880s, and early 1990s which brought sanctioned or legal arrivals, most of the contemporary immigrants and migrants are undocumented or illegal. Although immigration rates were significantly higher in earlier waves, some experts predict that the current wave, composed largely of undocumented entrants, may dwarf those of the past.¹⁸ It has certainly altered the balance of legal and illegal arrivals, thereby complicating and criminalizing the immigration problem unlike any time in the past.¹⁹ Moreover, according to census reports, an estimated 70% of "illegal" or unauthorized immigrants in the United States are from Mexico.²⁰

In the ongoing immigration debate dozens of think tanks have arisen, many sponsored by the "restrictionist" or anti-immigration lobbies. Several restrictionist think tanks are the Center for Immigration Studies (CIS), Federation for American Immigration Reform (FAIR), Project USA, and Numbers USA. An especially effective scare strategy of these hard line anti-immigration forces has been the unsubstantiated and unscientific linkage of illegal immigration and violent crime. Capitalizing on a popular myth in the United States (and a number of countries with immigration issues), these groups have asserted that immigrants, especially undocumented immigrants, are responsible for higher violent and nonviolent crime rates.

More reputable studies have refuted these claims and have shown the opposite to be the reality. Incarceration rates are actually lowest for irregular immigrant groups. Indeed, according to the Immigration Policy Center,

in key border cities like El Paso and San Diego where there are a large number of undocumented immigrants from Mexico and Central America, the crime rates have declined.²¹ Nevertheless, because immigrants that enter the country undocumented are already viewed as lawbreakers this spurious linkage is easily reinforced. Since approximately half of the 12 million undocumented immigrants are Hispanic and about half of these are of Mexican heritage, the focus on criminality has invited a racist backlash against Hispanics in general.²² For example, in a 2006 survey over half of Hispanics surveyed blamed the immigration debate for increased discrimination.²³

The dominant popular image that persists is of Spanish-speaking “illegal aliens” flooding across the Mexican border in criminal waves. Thus more aggressive policing and enforcement, a higher and less permeable wall, and even militarization of the border become allegedly necessary responses. Police in Los Angeles and Arizona are encouraged to round up undocumented immigrants and arrest them for immigration violations to protect public safety. Arrests and deportations, from this perspective, become essential for homeland security and are officially authorized by the 287(g) program of the Department of Homeland Security and Immigration and Customs Enforcement (I.C.E.). Maricopa County, Arizona has the largest 287(g) program in the country; and local Sheriff Joe Arpaio has earned a reputation for the ruthlessness of his 160 officers trained in immigration enforcement and 3,000-member deputized citizen posse, some 500 with guns.²⁴ Unlike the political class, and the majority of Americans voters, Hispanics (whether native or foreign-born) have been less supportive of more militarized, criminalized, and intrusive enforcement against undocumented migrants, especially workplace raids, border fencing, and deployment of the National Guard along the border.²⁵

Secondly, immigration has become one of the top five issues in the 2008 presidential campaign and the focus of a number of opinion surveys and polls. All of the initial candidates during the extensive electoral cycle formulated positions on immigration. By the end of the primary season in June 2008, however, the top three hopefuls who remained in the race tended to favor the reformist rather than the restrictionist position on immigration, and all three presidential candidates represented relatively moderate and pragmatic solutions. None favored outright and across the board amnesty, but all generally agreed on some reasonable pathway to legalization and citizenship. Only John McCain clearly supported a guest worker program, while Hillary Clinton and Barack Obama proposed conditional support.²⁶ All three remaining presidential candidates were in unanimity on the importance of immigration for homeland and national security. This last popular linkage between immigration and homeland security represents a third reason why the immigration debate has been both so contentious and politicized.



Immigration, National Security and Foreign Policy: Lessons from the Mexican Case

*"Look, this is a national security issue first and foremost."*²⁷

The international and national security aspects of both legal and illegal immigration have become a greater concern since 9/11 in a number of countries around the world, especially in the United States. Closely related to the ambivalent and often contradictory views of globalization, the world's publics increasingly view migration as a direct threat to their well-being and security (along with threats to their culture, economy, and environment).²⁸ In the United States a key response has been greater enforcement of border control and joint operations with Mexico to stem the flow of illegal crossings. Border enforcement remains popular and has been a top priority of U.S. immigration policy since the early 1990s (despite its limited success and a declining perception of effectiveness).²⁹

Efforts by the U.S. Department of Homeland Security to control and close the border with Mexico, such as the Secure Fence Act of 2006, have already threatened and/or violated citizen's property and constitutional rights, and environmentally protected areas. In the fight against "criminal activity at the border," these rights can be suspended, according to homeland security secretary Michael Chertoff.³⁰ Federal laws, such as the Read ID Act of 2005, intended to deter terrorism and ensure national security, have been challenged as doing very little for security while preempting not only individual privacy rights but also states' rights to issue driver's licenses and identification to undocumented immigrants and non-citizens.³¹ In this emphasis on national security, the human safety and security of immigrants (as well as citizens) are deemed to be at greater risk. For example, San Francisco has begun a multilingual advertising campaign of "safe access" for migrants to public services, schools, hospitals, and police protection, so that these communities do not become the victims of predators, violence and human trafficking.³²

There is the danger that in the all-out campaign to "secure" U.S. borders, illegal activity may become undifferentiated and that the natural and market-driven movement of migrants may become swept up into the violence of the wars against drugs, terrorism and illegal trafficking. If this were to occur, the consequences would be devastating for human security as well as detrimental to U.S. national security. Moreover, bilateral cooperation on these multiple war fronts can result in the U.S. government exerting too much influence and control over Mexican national security and politics. For example, some \$500 million in funding (out of a \$1.5 billion-dollar program) for "Plan Mexico," or the so-called "Merida Initiative" (an extensive "regional security cooperation" plan) is intended to integrate bi-national enforcement and security by providing money and equipment to Mexican military, police and intelligence services to fight the drug war and criminal activity on the border.³³ However, this

expanded enforcement presence has already resulted in un-prosecuted human right violations, invasive intelligence-gathering and military outsourcing by contractors like Blackwater.³⁴

In the end, this proxy and interventionist relationship will further compromise Mexico's national sovereignty, security and traditional foreign policy neutrality. The U.S. emphasis on interdiction, anti-terrorism, enforcement and the "reinterpretation of immigration as organized crime" will also increase violence, potentially strain bilateral relations with Mexico, and further militarize hemispheric relations.³⁵ As in the case of the war on drugs, the current "war on immigrants" and "attrition through enforcement" policy allows U.S. policymakers to internationalize a predominantly domestic problem³⁶ and, not unlike the illegal drug trade, illegal immigration is primarily a product of U.S. domestic forces. The U.S. war on drugs and the North American Free Trade Agreement (NAFTA), as well as intimate ties to Mexico's corrupt Party of the Institutionalized Revolution (PRI) have fostered conditions within Mexico that promoted, if not necessitated, migration across the border.

Fourteen years of NAFTA have been a disaster for small farmers in Mexico. The free trade integration it imposed has increased rural poverty and migrant flight to major cities in Mexico and the United States. An estimated 2 million Mexican corn farmers have been forced out of business by a glut of cheaper, subsidized U.S. imports. Many have filled the ranks of new migrant workers in U.S. agriculture.³⁷ In addition, Mexico has 37 million people living in extreme to moderate poverty who rely on corn as their main source of food and energy.³⁸ The "biofuels boom" is restructuring agriculture in Mexico (as elsewhere) turning millions of hectares of land to ethanol production at the expense of food crops, especially corn. Consequently, the price of corn and staple foods has risen at the same time that Mexicans have become more dependent on food imports, further impoverishing farmers and creating mass rural unemployment and the conditions for northward migration. Major transnational corporations—grain, oil, and biotech companies—have already diversified into the agro-fuels sector further crowding out small and medium farming.³⁹

The irony, however, is that NAFTA-based out-migration not only complicates U.S.-Mexican relations but the growing poverty and discontent over NAFTA can potentially threaten U.S. national security interests if Mexico's fragile democracy becomes destabilized. After all controls on corn imports were removed in January 2008, some 300,000 Mexican farmers and citizens protested on January 31 in Mexico City, demanding the renegotiation of NAFTA.⁴⁰ Despite the seemingly parochial and divergent interests, anti-NAFTA sentiment and its links to immigration has become a lightning rod for Mexican civil society and grassroots protest movements. NAFTA is blamed for Mexico's high inequality and concentration of power and wealth, and "uncontrollable immigration" is one of its consequences for the United States.⁴¹



Also, greater awareness and opposition is forming against the so-called “NAFTA-plus” agreement or the Security and Prosperity Partnership (SPP), which packages together North American security, natural resource control, and corporate interests.⁴² According to its U.S. webpage, the White House-led tri-national plan “‘is based on the principle that our prosperity is dependent on our security and recognizes that our three great nations share a belief in freedom, economic opportunity, and strong democratic institutions. The SPP outlines a comprehensive agenda for cooperation among our three countries while respecting the sovereignty and unique cultural heritage of each nation.’”⁴³

Laura Carlsen argues that one of the plan’s real objectives is to regionalize and extend the security of U.S. borders outward creating a wider U.S. security perimeter, in effect “outsourcing” first-line border control and defense to Canada and Mexico. Additional objectives are to facilitate the activities of transnational corporations (especially U.S.-based companies) by removing any remaining barriers to cross-border production and capital flow, but vigorously blocking unauthorized migration and immigration.⁴⁴ Critics like Carlsen charge that the plan’s focus on simplifying and harmonizing the rules and norms of cross-border business will eliminate onerous labor and environmental standards in Canada and Mexico, while “assuring that harsher security measures don’t interfere.”⁴⁵ The plan may also favor “full labor mobility” among the three countries, which, if approved and implemented, would have a significant impact on the U.S. migration situation.

In addition, the events of 9/11 and the “War on Terrorism” have facilitated an expansive definition of security and the explicit linkage with the movement of people, trade and resources. As part of U.S. counterterrorism, joint border actions have not only become more coordinated, modernized (high-tech), and militarized, but responsibility for control and enforcement has fallen more heavily on our North American partners. In particular, Mexico has been pressured to militarize its southern border and adopt repressive measures toward Central and South American migrants as a way to preempt illegal U.S. border crossings. Also, Mexico now requires citizens of friendly Latin American countries, such as Brazil and Ecuador, to secure visas to enter Mexico, providing an additional line of border defense for the United States.⁴⁶ As the ranks of “visa-waiver countries” shrink for the United States and Mexico, class and race will further infringe upon the human right of movement (which is discussed in the final section) because only the more prosperous and (often white) upper classes can afford visas.⁴⁷

Ironically, critics charge, this U.S. border security myopia has resulted in costly, misdirected, and counterproductive expenditures which could be better applied to Mexican economic development as a deterrent to out-migration, and it has generated politically unpopular measures within Mexico and among its Latin American neighbors.⁴⁸ More heavily reliant on billions of dollars in remittances from its citizens in the United States, the

Mexican government is between a rock and a hard place—under greater pressure to protect and defend its economic interests and the rights of its migrating citizens against aggressive U.S. enforcement measures on the one hand, and to comply with the demands of NAFTA and the Security and Prosperity Partnership on the other.

The Mexican case suggests several important lessons for U.S. immigration policy and its impact on U.S. foreign policy and hemispheric relations. First and foremost, the immigration problem with Latin America cannot be resolved without addressing its root causes. The region's persistent poverty, unemployment, and inequality remain the drivers of migration and must be addressed to stem and reverse the tide. Recent studies indicate that poverty in Latin America has grown from 200 million people in 1990 to an estimated 222 million in 2004, and that 184 million people live below \$2 a day in the region's poorest countries.⁴⁹ The majority of the hemisphere's emigrants become economic immigrants, whose human rights are violated because they "no longer have the option of staying home and are deemed criminals in the receiving country."⁵⁰

Second, as long as the U.S. maintains a hegemonic rather than cooperative relationship with its Latin neighbors, and unfairly privileges its market and prosperity over theirs, it will continue to be a magnet for migrants, as well as an object of resentment and discontent.⁵¹ Third, and in combination with the latter proposition, the skewed U.S. focus on national security and counter-terrorism obscures and heightens the real dangers to regional security, "human security" and human rights. The latter human security concerns (physical, economic and familial) cannot be effectively addressed by repressive enforcement and military means.⁵² Indeed such measures are counterproductive and divert essential resources from human security and development, and only serve to reinforce the divisive "us versus them" policies that have damaged the United States' image and credibility in the region and internationally.⁵³ Instead, a rapprochement with international doctrine on the subject of freedom of movement may be a better method of preventing human security, and even national security, concerns that deal with human movement.

International Doctrine

While membership in political communities has differed throughout human history (people have been subjects, slaves, serfs and nationals, for instance), we are currently in the era of the "sovereign State." This particular political community is defined by territorial borders and "sovereignty" (the State is able to govern within its own jurisdiction with no supra- or international body being able to enforce decisions upon it), and is made up of permanent populations. These permanent populations are labeled "citizens" for the most part, although in some cases the word "nationals" is still used. When a member of a State's permanent population crosses an international border for travel or for refuge, the terms change (non-resident alien in the former case and refugee in the latter, for example).



This terminological change is dictated by various laws, mostly domestic, but some international (as in the case of refugees or stateless people).

Regardless of the source of law for the label change, the people who are the objects of the label change and who must bear the title, whether within their State's border or outside of it, do not readily have a say in which title they will bear. We live in a highly regulated and bound world where the political lines drawn on the map often determine life prospects and few of us have had the chance to choose to which political community we would like to belong. The 192 State bodies around the globe that make up the current international system of States have ultimate control in this regard.⁵⁴ The laws each State makes determine whether one is a citizen or not; whether one is free to travel or emigrate or if a person can take part in a range of activities (political or otherwise) outside of the "home" territory. This is despite the fact that various international instruments emphasize the individual's right to leave a State, to return to his or her country, to change nationality and to work, among others.

Laying the foundation for these rights is the 1948 United Nations Declaration on Human Rights (UDHR) which declares that "[e]veryone has the right to leave any country, including his own, and to return to his country" (Article 13.2). This same document, which is allegedly the foundation of customary international law,⁵⁵ proclaims that "as a member of society" each person has "the right to social security" (Article 22), and further elaborates that "[e]veryone has the right to work, to free choice of employment. . ." (Article 23), the "right to a standard of living adequate for the health and well-being of himself and of his family. . ." (Article 25), and the right to change nationality (Article 15.2). It is of note that Article 22 does not say that "as a member of a State" a person has the right to social security and it may be surmised that the other rights set forth in the Universal Declaration of Human Rights are based upon the same premise (that is, rights are held by humans regardless of their affiliation with a particular State) because Article 2 clearly states that,

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

Writing in 1963, on behalf of the United Nations (UN), Mr. José Inglés further elaborated on the freedom of movement clause found in Article 13.2. His work, the "Study of Discrimination in Respect of the Right of Everyone to Leave Any Country, Including His Own, and to Return to

His Country,” was the first systematic investigation of the restrictions upon the individual right of movement into and out of countries.⁵⁶ It would not be until almost a decade later in 1972, however, that States would seriously consider the research presented on the subject and adopt a “Declaration on The Right to Leave and the Right to Return.”⁵⁷ In this Declaration, participants from 25 States recognized that each person has the right to leave his or her country without fear of reprisal or loss of nationality; that each person, once debts have been paid, is entitled to take his or her property when leaving a State; that each person has the right of reentry to said State and that even long-term residents “who are not nationals, including stateless persons may be refused [reentry] only in the most exceptional circumstances” (Article 12). In addition, this Declaration specifies that individuals must be provided with the appropriate travel documents and have the right of access to an impartial tribunal if their application to leave is denied.

Prior to the passage of the 1972 Declaration on the Right to Leave and the Right to Return, the United Nations had adopted and opened for signature the International Convention on the Elimination of All Forms of Racial Discrimination (CEFRD) and the International Covenant on Civil and Political Rights (ICCPR) in 1965 and 1966 respectively.⁵⁸ Article 5d(ii) of the Convention includes the right of reentry and the right to leave one’s country without being discriminated against based upon race, national origin, color, etc. Article 12 of the Covenant similarly reiterates the claims made in the Universal Declaration of Human Rights and the Declaration on The Right to Leave and the Right to Return—namely that each person is free to leave any country (including his or her own) as well as reenter his or her own country.⁵⁹ It would take the passage of two more decades, however, before the issue of freedom of movement as a subject of international concern would again be seriously revisited by member States of the United Nations.

Special Rapporteur Mr. C. L. C. Mubanga-Chipoya was the first individual assigned by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities to investigate the “trends and developments” among States in their treatment of people with regard to the rights to leave any country and to return to one’s country. In this detailed study, Mr. Mubanga-Chipoya encouraged the adoption of the 1986 Strasbourg Declaration on the Right to Leave and to Return and the creation of an international organ to follow up on “the implementation of the right to leave, to return and additional matters relating to entry, refugees and migration.”⁶⁰ Mr. Mubanga-Chipoya especially stressed the need for members of the international community to “closely and honestly consider the subject of entry” as “[n]o serious and meaningful consideration of the right to leave would be complete or worthwhile, if it does not address the subject of entry in other countries” since “[t]he limitation on entry may also constitute restriction on the right to leave.”⁶¹

Mr. Mubanga-Chipoya's suggestions were reported to the Sub-Commission and the latter resolved to present the Special Rapporteur's report to the Commission on Human Rights⁶² in the hope that a declaration would be approved that could then be offered to the UN General Assembly for adoption. This never occurred. As reported by Mr. Volodymyr Boutkevitch, the second Special Rapporteur to be assigned to the subject of the right to return and to leave,⁶³ the issue of movement has been placed on the agenda of the Sub-Commission in various sessions, but

"Neither the 'draft principles on freedom and non-discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country' of Jose D. Ingles [sic] nor the 'draft declaration on freedom and non-discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country' of C.L.C. Mubanga-Chipoya has advanced far beyond authorial proposals."⁶⁴

Little has changed since Mr. Boutkevitch made this statement in 1997. Serious international consideration of the right to freedom of movement has not been achieved, even though the international post 9/11 climate has become more restrictive regarding people's freedom of movement as noted earlier.⁶⁵ Over twenty years ago, Special Rapporteur Mubanga-Chipoya remarked how "[i]n many countries, the right to freedom of movement has effectively been replaced by an enforced lack of freedom to move or to flee" and today we continue to witness this phenomenon. Even those people forced across territorial borders because of persecution have not found the international environment to be as conducive to the acceptance of refugees over the past few years.⁶⁶

The proclamation of basic human rights, as articulated in the UDHR and other international covenants and declarations, within an international system that recognizes the sovereign right of States to control movement (and subsequently other life choices), has led to increasing tension between "international human rights law and the exercise of state sovereignty."⁶⁷ While most States recognize the right of those lawfully within a State to freely move within it, the general right of freedom to move around the earth has not been satisfactorily considered. This does not mean to say that various studies advocating the freedom of movement, or at least examining the potential advantages of such movement, have not been written. In 1971, for instance, Roger Nett advocated the free movement of peoples around the earth arguing that it would eliminate "one primal cause of poverty and involuntary subordination" and "would allow individuals to rise by their individual energies and give hope of real betterment to untold numbers where little now exists."⁶⁸

Similarly, in a more recent study, Alan Dowty explored the arguments made for closed and open borders and concluded by supporting "an open-exit policy" because it would lead to,

“relief of pressures within the society, strengthening of international ties and communication in an interdependent world, freeing of individual energies from conflicts with authority, and promotion of an atmosphere of individual dignity and mutual cooperation rather than passive acceptance of the unavoidable.”⁶⁹

The quest to protect human dignity, as touched upon in Dowty’s statement, is well expressed in the literature on the subject of the human right to move freely. This is understandable since the Universal Declaration of Human Rights discusses the dignity of all people twice in its Preamble and three additional times in Articles 1, 22 and 23. It is perhaps difficult to equate this international Declaration’s stress on the dignity and equality of all human beings with the current trend, especially in the United States, to criminalize those who cross borders without documents. As Special Rapporteur Boutkevitch notes, the issue of border crossings has become “problematic” as ever stricter national legislation makes it difficult “to speak not only of the right to freedom of movement but even of respect for the dignity of persons crossing the border.”⁷⁰

Ms. Gabriela Rodríguez Pizarro, the Special Rapporteur on the Human Rights of Migrants, has spent almost a decade investigating State treatment of migrants, especially the undocumented, and has visited several countries, including the United States and Mexico, in an effort to shed light on how the international community might better protect these people. In her 2002 report to the Commission on Human Rights, Ms. Rodríguez Pizarro encouraged States not to treat irregular migrants (the “undocumented”) as criminals and to properly train immigration officials in order to prevent potential human rights abuses. In particular, she stressed that the United States ought to accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPRMW).⁷¹

This aforementioned Convention, which entered into force in 2003 and which the United States has not signed, enshrines the varied rights promulgated in the various international conventions and declarations as pertains to migrant workers and their families. Many of the same rights, such as freedom of thought, conscience, association, family reunification, right to a nationality, etc., are included in this Convention and are applicable to all migrant workers regardless of their status in the country of employment or residence. Thus, according to the ICPRMW, undocumented migrants, as well as those in a “regular situation” (“documented”), are to be accorded the same treatment as nationals with regard to work conditions and social security benefits (Articles 25 and 27 respectively). It is noteworthy that this Convention has had few signatories from among the so-called “liberal democracies” and it has been suggested that this is specifically due to the fact that these countries tend to be the desired destination of many migrants.⁷²



On a recent investigative trip to the U.S.-Mexico border, Special Rapporteur Rodríguez Pizarro noted with concern that the United States tended to criminalize irregular migrants and was allegedly separating families during the deportation process—in contravention of the International Covenant on Civil and Political Rights of which the United States is a signatory—in order to discourage them from crossing the border again. The Special Rapporteur commented that she is well aware of the lack of liberty given to irregular migrants and remarked that this group was among the most vulnerable in terms of human rights violations (especially as concerns human smuggling and trafficking). As such, while acknowledging “the right of the United States to protect its borders,” she wanted “the guarantee that all measures taken to this end respect the right to life” of the irregular migrants.⁷³

The “right to life,” the cornerstone of many government constitutions and the Universal Declaration of Human Rights, is put in serious jeopardy when people try to enter the United States through non-legal channels. Antoine Pécoud and Paul de Guchteneire note that “[i]llegal migration has become a very dangerous and risky process: it is estimated that at least one migrant dies every day at the U.S.-Mexico border, mostly because of hypothermia, dehydration, sunstroke and drowning.”⁷⁴ Suggestions have been made by Special Rapporteur Rodríguez Pizarro to place water tanks in the desert on the U.S.-Mexico border in an effort to thwart the inhumane demise of these undocumented migrants. Some non-governmental organizations and churches have tried to do so, but have met with resistance from the Border Patrol because it is believed that such sources of water “could encourage greater migration.”⁷⁵

As mentioned previously, the UDHR and the ICCPR proclaim the right to emigrate and freedom of movement within the borders of States. Article 23.1 of the UDHR asserts that “[e]veryone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.” This same Article asserts that everyone should be paid equally for “equal work” and that other means of “social protection” should be given to workers in order to “ensure an existence worthy of human dignity.” The International Covenant on Economic, Social and Cultural Rights (ICESCR) reiterates these claims⁷⁶ and Special Rapporteur Mubanga-Chipoya remarked that in order to obtain the benefits recognized in the ICESCR it is implied that “an individual may go in pursuit for them beyond national borders.”⁷⁷

Regardless of the implications of Special Rapporteur Mubanga-Chipoya’s previous statement, it is still up to the State concerned to admit individuals into its political borders. No concomitant “right of entry” exists and this is problematic. People are free “to leave,” or emigrate from, a State,⁷⁸ but they are not free to go somewhere else (whether this be for temporary employment, permanent immigration, tourist or business purposes). State governments make the decision of whether to admit a person through various immigration laws, and international law recognizes the

State as the sole arbiter of such determinations. Thus, one has a right to leave any country, but no affiliated right, at least in international law, to enter another country. One has the right to employment, but no one has the related right to seek this employment in another State. Such discrepancies only serve to further exacerbate the tension between sovereign States and international human rights law.

Conclusion

While it is generally understood and accepted that States control entry and exit into their territory, the precise impact of the movement of peoples on the human-State relationship is still in the process of exploration. According to the UN Office of the High Commissioner for Human Rights, approximately 175 million people fell into the category of “migrant” in 2000, and today “[o]ne out of every 35 persons is an international migrant.”⁷⁹ With so many individuals crossing borders from one State to another—individuals who are recognized in international law to have certain basic human rights no matter where they reside or whether they are a national of a State or not⁸⁰—the classical conception of the human-State relationship is bound to undergo some transformation.

The notion that we are born into a given citizenship, or should be life-bound to a certain territory, is no longer sacrosanct. Some people have multiple citizenships, others have various levels of belonging in different political communities (permanent residents, nationals, citizens, refugees, etc.), and others simply feel themselves to be “citizens of the world” with no political allegiance to any given State. As such, the questions of “who belongs?” and “what rights should this person possess?” have fast become issues of paramount importance, as have concerns related to the relationship between different States in a region when a person has political ties to more than one State. Pécoud and de Guchteneire observe, for instance, how “[m]igrants participate in unions, in the educational system, in welfare schemes, have rights protecting their situation on the labour market and sometimes even vote in local elections, thus illustrating how residency—and not only nationality—determines access to rights.”⁸¹

With regard to Latin American immigration into the United States, which according to U.S. census data accounts for over half of all immigration into the country (and, as noted earlier, over half of the immigrants from this region come from Mexico),⁸² many of these “foreign born” citizens are becoming dual nationals as their Latin American countries of origin modify citizenship laws. In “Extraterritorial Citizenship Rights” Cristina Escobar discusses how the modification in citizenship laws of sending States, and their concomitant extension of citizenship rights to their nationals overseas, “is divorcing citizenship from the territorial dimension of the state.”⁸³ She notes how Mexico and Colombia provide social security benefits to their citizens abroad and how Mexico has begun offering health and education programs to its overseas citizens in their countries of residence. In addition, both Colombia and Mexico allow their



citizens abroad to vote in national elections, although the execution of these elections has not been without flaws.⁸⁴

The extension of extra-territorial citizenship rights and the provision of myriad civil and economic rights to non-citizens are altering the human-State relationship. Immigration, both regular and irregular, is changing the composition of national populations around the world while at the same time leading States to become more restrictive of who they let into their territorial confines. The issues associated with freedom of movement, the right to employment and immigration in general are not simply State government or the international community of States' concerns. National populations within States are increasingly engaging in actions to either support or condemn the movement of peoples into their territories.

Many Hispanic migrants to the United States—as with migrants throughout history—have experienced prejudice, marginalization, and abuses. Some have been “assimilated,” but the majority today remains in the shadows of illegality and fear—unauthorized, undocumented and unprotected. The debate over whether immigration reform should include blanket amnesty, normalization, and regulation continues. However, given the ever-growing and ever-politically mobilized and empowered Hispanic minorities and majorities in the United States, the debate has assumed a more complex narrative. It has impacted our relations with our Latin American neighbors, especially our closest neighbors in Central America and the Caribbean, and it has complicated the discourse among Hispanic citizens, undocumented Hispanics, and American citizens in general.

The discourse of the international human rights regime, while establishing a standard of uniform protection for migrants, remains an ideal to which countries, like the United States, can aspire, if not always observe faithfully. In the final analysis, the debate on human movement will continue, as it has done for generations. What needs to be borne in mind, however, is that migrants and undocumented immigrants should not be signaled out for blame and prosecution; a range of forces—from greater global economic integration, the deterritorialization and permeability of borders, and the development of transnational communities, as well as the role of the region's governments (especially that of the United States)—have all served as “enablers” of migration, both legal and illegal.

Notes

¹Migration refers to the movement of people in general while the term “immigration” and “emigration” refer to the specific movement of entering a country and leaving a country respectively.

²This article adopts the terminology used by the Pew Hispanic Center whereby an undocumented or unauthorized migrant is “a person who resides in the United States but who is not a U.S. citizen, has not been admitted for permanent residency and is not in any of the authorized temporary

statuses permitting residency or work." Roberto Suro, and Gabriel Escobar, "2006 National Survey of Latinos: The Immigration Debate," Washington, D.C.: Pew Hispanic Center, July 13, 2006, p. iv.

³Although international law does not yet recognize "economic refugees," the authors hold, as do many others, that economic reasons often push individuals to cross borders in the hopes of attaining a healthy and productive life or simply securing life prospects.

⁴S. Castles, S., and M. J. Miller, *The Age of Migration: International Population Movements in the Modern World*, 3rd ed. New York: Guilford Press, 2003, p. 21.

⁵For example: G. J. Borjas, "The Economics of Immigration," *Journal of Economic Literature*, 1994, vol. 32, No. 4: 1667-1717; and S. Sassen, *The Mobility of Labour and Capital*, Cambridge, Cambridge University Press, 1988.

⁶B. R. Chiswick, "Are Immigrants Favorably Self-selected? An Economic Analysis," in C.B. Brettell, and J. F. Hollifield, eds., *Migration Theory: Talking Across Disciplines*, New York: Routledge, 2000, pp. 61-76; and A. R. Zolberg, S. Astri, and S. Aguayo, *Escape From Violence: Conflict and the Refugee Crisis in the Developing World*, New York: Oxford University Press, 1989.

⁷L. A. Sjaastad, "The Costs and Returns of Human Migration," *Journal of Political Economy*, 1962, vol. 70, no. 5: 80-93, p. 83.

⁸D. S. Massey, J. Arango, G. Hugo, A. Kouaouci, A. Pellegrino, and J. E. Taylor, "Theories of International Migration: A Review and Appraisal," in M. M. Mobahser, and M. Sadri, eds., *Migration, Globalization, and Ethnic Relations: An Interdisciplinary Approach*, Upper Saddle River, NJ: Pearson, 2004, pp. 2-28.

⁹L. Weiss, ed., *States in the Global Economy: Bringing Domestic Institutions Back In*, Cambridge: Cambridge University Press, 2003.

¹⁰K. Ohmae, *The End of the Nation-State*, London: Harper Collins, 1990; and J. M. Guehenno, *The End of the Nation-State*, Minneapolis: University of Minnesota Press, 1995.

¹¹S. Vertovec, "Conceiving and Researching Transnationalism," *Ethnic and Racial Studies*, 1999, vol. 22, no. 2: 447-462; and A. Portes, "Conclusion: Towards a New World—the Origins and Effects of Transnational Activities," *Ethnic and Racial Studies*, 1999, vol. 22, no. 2: 463-477.

¹²N.B. Schiller, L. Basch, and C. Blanc-Szanton, "Transnationalism: A New Analytic Framework for Understanding Migration," in Mobasher and Sadri, *Migration, Globalization, and Ethnic Relations*, p. 203.

¹³A. Portes, and J. Walton, *Labor, Class, and the International System*, New York: Oxford University Press, 1981; and E. Morawska, "The Sociology and Historiography of Immigration," in V. Y. MacLaughlin, ed., *Immigration Reconsidered: History, Sociology, and Politics*, New York: Oxford University Press, pp. 187-240.

¹⁴Tom Barry, "Truth about Illegal Immigration and Crime, Americas Policy Program Commentary, Washington, D.C.: Center for International



Policy, January 18, 2008 <<http://Americas.irc-online.org/am/4903>> quoting from a report by an anti-immigration institute, the Center for Immigration Studies.

¹⁵For example, three-year visas for high-skilled immigrants (H-1B) reached the quota of 65,000 within five days after the application period had opened on April 1, 2008; and applications for the annual quota of 20,000 work visas for immigrants with a master's degree or higher from an American college or university were far in excess. Officials at the Citizenship and Immigration Service (I.C.E.) will hold an electronic lottery to select the immigrants who will receive the visas. "National Briefing: Washington, Quota Limit for High-Skill Visas Is Reached," *New York Times*, April 4, 2008, p. A21.

¹⁶David Leonhardt, "The Border and the Ballot Box," *New York Times*, March 2, 2008, Week in Review section, pp. 1 and 8.

¹⁷Tom Barry analyzes this grassroots, anti-immigration movement and argues that more reasoned and liberal supporters of immigration reform have "lost the war of ideas," in the debate over immigration to restrictionist groups that successfully appropriated the national security agenda, the issue of law and order, and anti-globalization and anti-establishment populism in the fight. Tom Barry, "Losing the War of Ideas, Again," *Americas Policy Program Commentary*, Washington, D.C.: Center for International Policy, December 14, 2007, pp. 1-4.

¹⁸Leonhardt, "The Border and the Ballot Box," p. 8.

¹⁹The term "illegal" became central to the debate as anti-immigration forces used the slogan, "What don't you understand about illegal?" to popularize the rule of law argument and brand all undocumented immigrants as law breakers and criminals. Barry, "Losing the War of Ideas, Again," p. 2.

²⁰Peter Cervantes-Gautschi, "Wall Street and Immigration: Financial Services Giants Have Profited from the Beginning," *American Policy Program Special Report*, Washington, D.C.: Center for International Policy, December 4, 2007, p. 1 of 6.

²¹Barry, "Truth about Illegal Immigration and Crime."

²²The Pew Hispanic Center reports that Hispanics are the country's largest minority about 15.5% of the total U.S. population or 47 million persons. Of these about 25% or 12 million are unauthorized immigrants. Also, of the Hispanic population, non-citizens make up 44% of the adults; and of non-citizen Hispanic adults an estimated 55% are undocumented immigrants and the other 45% are legal aliens. Pew Hispanic Center, *2007 National Survey of Latinos: As Illegal Immigration Issue Heats Up, Hispanics Feel a Chill*, Washington, D.C., December 2007, p. 1, and Summary, revised, December 19, 2007 available at <<http://perhispanic.org/reports/report.php?ReportID=84>> accessed February 22, 2008. Also see Jeffrey S. Passel, "The Size and Characteristics of the Unauthorized Migrant Population in the U.S.," Pew Hispanic Center, March 7, 2006.

²³Suro and Escobar, "2006 National Survey of Latinos," pp. i and 5.

²⁴"Immigration, Outsourced," *The New York Times*, April 9, 2008, p. A36. Since 9/11, Immigration and Customs Enforcement (I.C.E.) has been subsumed under the Department of Homeland Security, and is headed by Julie L. Myers (the niece of Air Force Gen. Richard B. Myers, former Chairman of the Joint Chiefs of Staff). The agency has some 16,000 employees and operates detention centers, holding some 30,000 persons awaiting trial or deportation.

²⁵Suro and Escobar, "2006 National Survey of Latinos," pp. 17-18; and Pew Hispanic Center, 2007 *National Survey of Latinos*, pp. 13-14.

²⁶"Democratic Party Candidates on Immigration, Americas Policy Program Policy Report, Washington, D.C.: Center for International Policy, January 22, 2008, <<http://americas.irc-online.org/am/4917>>; and "Republican Party Candidates on Immigration," American Policy Program Policy Report, Washington, D.C.: Center for International Policy, February 9, 2008, <<http://americas.irc-online.org/am/4953>>

²⁷John McCain. "Republican Party Candidates on Immigration."

²⁸Pew Research Center, "World Publics Welcome Global Trade—But Not Immigration, Summary of Findings," Pew Global Attitudes Survey, October 4, 2007, downloaded from <<http://perglobal.org/reports/display.php?ReportID=258>>

²⁹Consequently there has been a shift to put more emphasis on the 1986 law that prohibits the employment of illegal migrants and to penalize employers who hire them. "America's Immigration Quandary, No Consensus on Immigration Problem or Proposed Fixes," available at <<http://people-press.org/reports/display.php3?PageID=1048>> Indeed the latest national survey by the Pew Research Center for the People & the Press of June 2007 noted that 55% of Americans polled felt that "increase penalties on employers" was more effective than border patrol agents (25%) or more border fences (7%) compared to a similar poll in March 2006 of 49%, 33% and 9% respectively. "Mixed Views on Immigration Bill, Democratic Leaders Face Growing Disapproval, Criticism on Iraq, Summary of Findings," June 7, 2007.

³⁰Randal C. Archibold, "Government Issues Waiver for Fencing along Border," *New York Times*, April 2, 2008, p. A18.

³¹Katie Zezima, "U.S. Gives Main a Deadline of Today to Say It Will Comply with ID Law," *New York Times*, April 2, 2008, p. A18.

³²Jesse McKinley, "Immigrants Safe in San Francisco, City Ads Say," *New York Times*, April 6, 2008, p. A14.

³³Laura Carlsen, "2008: Latin America's Hope and Challenge," Americas Policy Program Column, Washington, D.C.: Center for International Policy, January 18, 2008, p. 3 of 4. Also Laura Carlsen, "Plan Mexico and the Billion-Dollar Drug Deal," CIP American Policy Program, Washington, D.C. Center for International Policy, October 5, 2007, pp. 1-2.

³⁴Carlsen, "2008: Latin America's Hope and Challenge," p. 4.

³⁵Carlsen, "2008: Latin America's Hope and Challenge," p. 4.

³⁶Tom Barry, "Planning the War on Immigrants," *Americas Policy Program Commentary*, Washington, D.C.: Center for International Policy, December 13, 2007, pp. 1-4. The goal of this policy developed by the Center for Immigration Studies (CIS), a restrictionist think tank, is to shrink the illegal population by making it so unviable to work and live in the United States because of greater enforcement and restrictions that larger numbers will return home voluntarily.

³⁷Laura Carlsen, "'Deep Integration'—the Anti-Democratic Expansion of NAFTA," CIP American Policy Program, Washington, D.C.: Center for International Policy, May 30, 2007, pp. 1-4; Laura Carlsen, "NAFTA Inequality and Immigration," CIP American Policy Program, Washington, D.C.: Center for International Policy, October 31, 2007, pp. 1-4; and Laura Carlsen, "NAFTA Free Trade Myths Lead to Farm Failure in Mexico," *Americas Policy Program Policy Report*, Washington, D.C.: Center for International Policy, December 5, 2007, pp. 1-7.

³⁸Victor M. Quintana S. "Biofuels and Small Farmers," *Americas Program Policy Brief*, Washington, D.C.: Center for International Policy, August 29, 2007, p. 2 of 4. Poverty levels in Mexico and Latin America are mixed. Some sources indicate a reduction in extreme and moderate poverty in Mexico, but the data are controversial and do indicate uneven impact of neoliberalism on low-income Mexicans based on geography, economic sector and occupation, p3 and p. 17; see Ann Helwege and Melissa B.L. Birch, "Declining Poverty in Latin America? A Critical Analysis of New Estimates by International Institutions," GDAE Working Paper No. 07-02, Global Development and Environmental Institute, Tufts University, 2007.

³⁹Quintana S. "Biofuels and Small Farmers," pp. 1-4; and Carlsen, "NAFTA Inequality and Immigration."

⁴⁰Laura Carlsen, "NAFTA Free Trade Myths Lead to Farm Failure in Mexico," *Americas Policy Program Policy Report*, Washington, D.C.: Center for International Policy, December 5, 2007, pp. 1-7.

⁴¹Carlsen, "NAFTA Inequality and Immigration," pp. 3-4.

⁴²Katie Kohlstedt, "Mexicans Say: Integrate This!" *Americas Policy Program Commentary*, Washington, D.C.: Center for International Policy, February 11, 2008, p. 1 of 3; and Carlsen, "'Deep Integration'—the Anti-Democratic Expansion of NAFTA."

⁴³Carlsen, "'Deep Integration'—the Anti-Democratic Expansion of NAFTA," p. 1, and quoting from SPP webpage: <http://spp.gov/>

⁴⁴Carlsen, "'Deep Integration'—the Anti-Democratic Expansion of NAFTA," p. 2.

⁴⁵Carlsen, "'Deep Integration'—the Anti-Democratic Expansion of NAFTA," p. 2.

⁴⁶Carlsen, "'Deep Integration'—the Anti-Democratic Expansion of NAFTA," p. 3.

⁴⁷Currently the United States recognizes 27 "visa-waiver countries," the majority of which are in Western Europe.

⁴⁸Carlsen, "'Deep Integration'—the Anti-Democratic Expansion of NAFTA," p. 3.

⁴⁹Laura Carlsen, and Tom Barry, "U.S.-Latin American Relations at Crossroads—U.S. Hegemony or Global Good Neighbor Policy?" IRC Americas Program Special Report, Silver City, N.M.: International Relations Center, February 2006, p. 7 of 11. Also see Helwege and Birch, "Declining Poverty in Latin America? A Critical Analysis of New Estimates by International Institutions."

⁵⁰Carlsen, "NAFTA Free Trade Myths Lead to Farm Failure in Mexico," p. 4.

⁵¹Carlsen and Barry, "U.S.-Latin American Relations at Crossroads—U.S. Hegemony or Global Good Neighbor Policy?" p. 11.

⁵²Indeed some critics argue that the immigration problem also has been fueled by U.S. bankers and Wall Street investors during the 1994 "Peso Crisis" bailout and credit squeeze, and represents a cash cow that has enriched U.S. financial service and banking giants. Today these U.S. mega banks control Mexican banking and continue to profit from extensive investments in the private prison system that detains immigrants on behalf of the Immigration and Customs Enforcement (ICE). Cervantes-Gautschi, "Wall Street and Immigration: Financial Services Giants Have Profited from the Beginning," pp. 1-6.

⁵³Carlsen and Barry, "U.S.-Latin American Relations at Crossroads—U.S. Hegemony or Global Good Neighbor Policy?" p. 11.

⁵⁴Since this article uses a lot of primary data from the United Nations (UN), the UN's count of member States will be used (192) although other sources cite 195 States.

⁵⁵This is according to information obtained from the "Questions and Answers" portion of the Franklin and Eleanor Roosevelt Institute that deals with the UDHR. See <http://www.udhr.org/UDHR/default.htm> for more information on the place of the UDHR in international law.

⁵⁶This report was allegedly first issued as UN Doc. E/CN.4/Sub.2/220/Rev.1 (1963) but up to the present the authors have been unable to verify this point. In Special Rapporteur Mubanga-Chipoya's report to the UN Human Rights Commission, Mr. Inglés' study is alluded to several times.

⁵⁷For the reproduction of this Declaration, refer to "The Right to Leave and the Right to Return: A Declaration Adopted by the Uppsala Colloquium, Sweden, June 21, 1972." *International Migration Review*, 1973, vol. 7, no.1: 62-66.

⁵⁸Information on the Covenants used in this essay is as follows: "International Convention on the Elimination of All Forms of Racial Discrimination." 21 Dec. 1965. 26 Mar. 2008. <http://www.unhchr.ch/html/menu3/b/d_icerd.htm>; "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families." 18 Dec. 1990. 27 Mar. 2008. <http://www.unhchr.ch/html/menu3/b/m_mwctoc.htm>; "International Covenant on Civil and

Political Rights." 16 Dec. 1976. 26 Mar. 2008. <http://www.unhchr.ch/html/menu3/b/a_ccpr.htm>; "The Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live." 13 Dec. 1985. 28 Mar. 2008. <http://www.unhchr.ch/html/menu3/b/o_nonnat.htm> and "Universal Declaration of Human Rights." 1948. 24 Mar. 2008. <<http://www.un.org/Overview/rights.html>>.

⁵⁹Note that section 4 of this Article does not give a person the right to reenter any country.

⁶⁰Mubanga-Chipoya, C.L.C. Commission on Human Rights, 40th session. *Economic and Social Council*. "Analysis of the current trends and developments regarding the right to leave any country including one's own, and to return to one's own country, and some other rights or considerations arising therefrom." E/CN.4/Sub.2/1988/35. 20 June, 1998. 1-128. See p. 116 specifically for this quote.

⁶¹*Ibid.*, p. 65. The Global Commission on International Migration (GCIM) was established in 2003 by the UN Secretary-General and several member States to better investigate this issue. The GCIM produces a series of papers in "Global Migration Perspectives" on the subject of human rights and movement. Special Rapporteur Mubanga-Chipoya's observation was reiterated by Antoine Pécoud and Paul de Guchteneire in a recent GCIM publication; see p. 1 of Pécoud, Antoine and Paul de Guchteneire. "Migration without borders: an investigation into the free movement of people." *Global Commission on International Migration*. Paper No. 27, April 2005. 27 Mar. 2008. <<http://www.gcim.org/attachements/GMP%20No%2027.pdf>>. 1-29.

⁶²In 2006 this organ of the UN was reformed and renamed the Human Rights Council.

⁶³Prior to the appointment of Mr. Boutkevitch as the second Special Rapporteur, a meeting was held in Strasbourg, France in 1986 concerning the subject of emigration and the right to return. The attendees of this meeting issued what is known as the Strasbourg Declaration on the Right to Leave and Return. This Declaration, while incorporating much of the text from previous international declarations and covenants, also seized the opportunity to expound upon procedural safeguards (monetary, issuance of visas, right of access to a tribunal, etc.) to prevent States from arbitrarily preventing someone from leaving or entering his or her country.

⁶⁴Boutkevitch, Volodymyr. Subcommittee on Prevention of Discrimination and Protection of Minorities. *Commission on Human Rights*. "Freedom of Movement." E/CN.4/Sub.2/1997. 1-23. Quote taken from p. 23.

⁶⁵Fewer people are granted asylum in the United States, and more and better surveillance along the U.S.-Mexico border has been implemented. Also, international students now have to partake, and pay for, a new visa system that keeps track of their entrances and exits more thoroughly (it is known as the Student and Exchange Visitor Information System [SEVIS]).

⁶⁶For example, a recent publication of the U.S. Committee for Refugees and Immigrants noted the rather drastic drop in the total number of

refugees admitted during the current administration (from a high of 664,902 under the Clinton administration to 203,490 under the Bush administration). See *U.S. Committee for Refugees and Immigrants*. 18 Mar. 2008. 24 Mar. 2008. <<http://www.rcusa.org/uploads///pdfs/USCRI,%20Refugees%20By%20Administration,%202006.pdf>>. 1-38.

⁶⁷Crépeau, François, Delphine Nakache and Idil Atak. "International Migration: Security Concerns and Human Rights Standards." *Transcultural Psychiatry*, 2007, vol. 33, no. 3: 311-337. Quote from p. 312.

⁶⁸Nett, Roger. "The Civil Right We Are Not Ready For: The Right of Free Movement of People on the Face of the Earth." *Ethics*, 1971, vol. 81, no.3: 212-227.

⁶⁹Dowty, Alan. *Closed Borders: The Contemporary Assault on Freedom of Movement*. New Haven: Yale University Press, 1987. Quote taken from p. 228.

⁷⁰Boutkevitch, p. 17.

⁷¹For reports and resolutions concerning this Convention and the work of the Special Rapporteur on the Human Rights of Migrants (established in 1999), refer to <http://www.unhchr.ch/html/menu2/7/b/mmig.htm>.

⁷²Turkey and Mexico are the only two OECD members that ratified the ICPRMW. Chile, which is also a signatory to the Convention, is in the process of "accession talks" with the OECD. See the "Members and Partners" tab of <http://www.oecd.org> for more information on membership in this organization.

⁷³Quote taken from p. 11; Rodríguez Pizarro, Gabriela. Commission on Human Rights, 59th session. *Economic and Social Council*. "Human Rights of Migrants." E/CN.4/2003/85/Add.3. 30 Oct. 2002. 1-18.

⁷⁴*Ibid.*, p. 3.

⁷⁵*Ibid.*, p. 11.

⁷⁶The International Covenant on Economic, Social and Cultural Rights was adopted on December 16, 1966; the United States has not signed the Covenant. Article 6 of the ICESCR stipulates that State Parties need to take steps "to achieve the full realization of this right" to work and provides examples of how this might be achieved by States. Article 7 of the Covenant discusses work conditions, remuneration and "equal opportunity," among others, for all workers regardless of regular status in the country.

⁷⁷Quote taken from p. 101 of Mubanga-Chipoya.

⁷⁸Bear in mind that in reality this right is often restricted by States, whether directly (as in the case of North Korea) or indirectly (through excessive fees).

⁷⁹Office of the High Commissioner for Human Rights. "Factsheet No. 24: Migration." 25 Mar. 2008. <<http://www2.ohchr.org/english/issues/migration/taskforce/index.htm>>.

⁸⁰See The Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, adopted by the United Nations General Assembly in 1985, for information on the basic rights of non-nationals in other countries.

⁸¹p. 15.

⁸²Total immigration from this region was 16,086,975 with the other regions contributing the following: Africa (881,300), Europe (4,915,555), Asia (8,226,255), North America (829,440) and Oceania (168,045). Data obtained from the *U.S. Bureau of the Census*. "Foreign-Born Population of the United States from the American Community Survey: 2003." 25 Mar. 2008. <<http://www.census.gov/population/www/socdemo/foreign/datatb1s.html>>. It is of note, however, that the majority of asylum applications made by Mexicans were submitted to Canada in 2007 (74%) and not the United States (24%). The information in the prior sentence was obtained from the United Nations High Commission for Refugees. "Asylum Levels and Trends in Industrialized Countries, 2007." 18 Mar. 2008. 28 Mar. 2008. <<http://www.unhcr.org/statistics/STATISTICS/47daae862.pdf>>. 1-38. Quote taken from p. 10.

⁸³Escobar, Cristina. "Extraterritorial Citizenship Rights and Dual Citizenship in Latin America." *Latin American Research Review*, 2007, vol. 42, no. 3: 43-75. Quote taken from p. 46.

⁸⁴Escobar discusses the Colombian case (see p. 65 especially) while Roberto Suro and Gabriel Escobar explain the Mexican case and how Vicente Fox was able to campaign in Illinois and California when he was running for the office of President of Mexico. Suro, Roberto and Gabriel Escobar. "Pew Hispanic Center Survey of Mexicans Living in the U.S. on Absentee Voting in Mexican Elections." 22 Feb. 2006. 27 Mar. 2008. <<http://pewhispanic.org/reports/report.php?ReportID=60>>.