POLICY BRIEFS & RECOMMENDATIONS

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POLICY BRIEF 1

Citizenship

By T. Alexander Aleinikoff

Overview

Citizenship represents full membership in a nation-state. Large-scale immigration presents a challenge for states to the extent it produces a settled population of less-than-full members with less-than-full rights.

Traditionally, citizenship has been closely linked to concepts of loyalty and allegiance, implying a preference in international law and policy for individuals to hold no more than a single nationality. Legal changes in both migrant-sending and migrant-receiving states, however, have in recent decades produced a substantial increase in dual nationality.

Foundational EU policies extending social, economic and political rights to citizens of one EU state residing in other EU states have put pressure on traditional concepts of membership that limit certain rights and opportunities to citizens. The extension of social welfare rights to third country nationals in EU states has further eroded distinctions between citizens and non-citizens. The current legal regime is best described as one that implicitly recognizes a status of denizenship—that is, the possession of basic economic, social and political rights for settled lawful immigrants.

The concept of EU citizenship is an evolving one. It is noteworthy that EU citizenship derives from citizenship in an EU member state. Development of an EU citizenship law that would reverse this order—making member-state citizenship derivative of EU citizenship—does not seem likely. However, harmonization of member states' policies on acquisition of citizenship, dual nationality, and the rights of citizens and non-citizens may be both feasible and advisable.

Discussion

Access to citizenship: State laws on citizenship vary significantly, and little effort has been undertaken to harmonize citizenship policies. For example, some states provide citizenship to all persons born on their territory (e.g., the U.S. and Canada); other states recognize birthright citizenship for the children of lawful resident aliens (e.g., the U.K. and Germany); and still others endow citizenship only on children born to citizens (e.g., Austria and Japan). There is a growing recognition, however, that the presence of multiple generations of non-citizens living within a state inhibits integration and undermines fair and equal treatment of persons.

Dual nationality: Traditionally, the prevailing international norm was that every person should have one—and only one—citizenship. The common view was that dual nationality inevitably represented a conflict of loyalties that could create tensions between states. Increasingly, however, states have come to tolerate—and some even to embrace—plural nationality. Countries of origin may seek to maintain ties with their diasporas by permitting them to

retain citizenship even if they acquire citizenship in another state. Immigrant-receiving states may permit naturalizing citizens to retain other citizenships in order to remove the disincentive to naturalize occasioned by a renunciation requirement. Furthermore, some states are changing their policies to endow birthright citizenship on children born to some non-citizens (Germany is an example)—a reform that increases the incidence of dual nationality.

Rights of citizens and immigrant: Laws allocating rights, opportunities, and responsibilities on the basis of citizenship are common. Most states deny non-citizens the right to vote and run for political office; and many limit particular jobs and social benefits to citizens. Only citizens are issued passports, and citizens—unlike aliens—may not be expelled or exiled from their home states. Increasingly, however, states have extended social benefits and even local voting rights to some classes of non-citizens (welfare legislation adopted by the United States in the 1990s, which terminated aid to settled immigrants, is an exception to this general trend). Furthermore, in some states, settled immigrants have access to the labor market on terms equal to those of citizens. These measures have been adopted based on considerations of fairness (settled immigrants pay taxes and frequently participate in society much as citizens do) and also to assist in immigrant integration.

Naturalization rules: All states provide immigrants access to citizenship through naturalization rules, although naturalization requirements vary substantially. State policies may include a required period of residence, knowledge of the language, knowledge of history or culture, lack of criminal record, oath of allegiance, and renunciation of prior citizenships.

Recommendations

1. Convergence of citizenship acquisition policies towards a "generations" approach: States should ensure that the grandchildren of immigrants born in a host state (the "third generation") acquire citizenship of that state at birth. Children of immigrants (the "second generation") should be entitled to citizenship if they are born on national territory and either they or one of their parents resides there lawfully. Children who migrate at early age and reside in the receiving state for an extended period during their formative years should be granted citizenship.

2. Toleration of dual nationality: Earlier policies against dual nationality are no longer appropriate. States should seek to manage rather than prevent dual nationality, accepting it when it reflects a person's true link to the countries concerned. Accordingly, states should repeal renunciation requirements in their naturalization laws and should not remove citizenship from their nationals who naturalize in other states. Where a citizen's obligations to two states conflict, primacy should be given to the country of principal residence and connection.

3. Extending rights to immigrants need not undercut the importance of citizenship: The extension of political, social and economic rights to settled immigrants does not necessarily undermine citizenship. Citizenship constitutes a crucial aspect of belonging, and commitment, to a state—its people, its values and its history.

4. Reasonable, fair and efficient naturalization policies—Naturalization rules should be clear and objectively administered. A criminal record should not

be a permanent bar to naturalization where it would not be a basis for expulsion. Conditions requiring applicants to have a certain level of economic resources or to demonstrate personal good character should be avoided.

Conclusion

Citizenship is under pressure from above ("globalization") and from below (demands for autonomy pressed by subnational groups). The idea of citizenship needs to be transformed and reinvigorated to reflect the new realities and impacts of large-scale migration.

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POLICY BRIEF 2

Migration Versus Trade: The Enlargement of the EU to Central & Eastern Europe

By Gudrun Biffl

Overview

With the opening up of the Central and Eastern European countries (CEECs) to international trade, increased trade was substituted for migrant labour in those areas of production where substitution was possible. The process of industrial restructuring and reallocation of production had winners and losers in the Western European countries. Winners were the highly skilled workers and professionals; losers the unskilled, semiskilled and tradesmen, often migrants. These circumstances have changed the economic rationale for migration.

Under the prevailing economic and technological developments in Europe today, a greater flow of unskilled migrants would create difficulties. It would increase unemployment, widen pay differentials between skilled and unskilled and result in a growing informal sector—all of which would jeopardise social stability. Thus, migration policy should change in favour of an intake of more highly skilled migrants. In addition, adequate education and training would need to be provided for the resident migrants, so that they can participate fully in the more specialised production processes of a learning society on which Europe has set its sights.

Discussion

Migrant workers in Western Europe are concentrated in industries with a low capital-to- labour ratio and low-to-medium-tech production processes. As CEECs opened up to international trade, relative production costs changed suddenly and significantly, particularly in the stages of production with a high migrant-worker component. In the circumstances, the economic rationale for the employment of migrants was nullified and replaced by trade. Indeed, trade did not only allow investors to tap into resources less efficiently used than in the West but also to access the markets of CEECs. A specialisation in industrial production ensued on both sides of the EU borders during the 1990s, resulting in increased inter- and intra-industry trade, as well as growth in economic activity, employment and productivity.

However, the process of restructuring involved adjustment costs in the labour market. Workers employed in service industries specialising in human skills and industries using advanced technology were the winners, while workers in production industries that intensively use low-to-medium-level skills were the losers.

As job opportunities dried up in the traditional employment sectors of migrants, they turned increasingly to the non-tradeable sector in search of employment, raising the labour supply at the margin of the labour market. The major employer in non-tradeables is the public sector; private sector industries are mostly characterised by imperfect competition in the goods and labour market, and/or by very specific and high skill requirements. These

circumstances make it difficult for migrants with specialised trade skills to find suitable employment. They are often faced with having to accept less skilled jobs, unemployment or a move into the informal sector.

It appears, then, that with the opening up of free trade, increased migration is not the most effective policy instrument to promote economic growth and integration in Europe. Only the ageing of the European populations provides a strong economic case in favour of increased migration. However, a major challenge is the provision of adequate education and training for migrants, which is a precondition for their full participation in the specialised economic production processes of Western Europe.

Recommendations

Economic integration of CEECs with the EU largely takes the form of trade in goods and services. Migration may continue to play an important role in that process, but as a facilitator of specialised production processes and trade rather than as a substitute for trade. This implies that:

1. European migration policy needs to focus less on quantity and more on quality, i.e. migrants with suitable specialised skills

2. Migration policy should focus on the promotion of cross-border migration and commuting in order to foster regional economic integration

3. Immigration policy with the objective of settling migrants should follow selection criteria similar to those in traditional immigration countries like Canada or Australia

4. Migrant intake on humanitarian grounds should be accompanied by adequate education and training measures to allow full socio-economic participation.

Conclusion

If these recommendations are not heeded, immigration will continue to take place, but not in accordance with the specialisation processes of industrial production and economic integration. This may lead to increasing unemployment along with an increase in labour scarcities. The latter will not only hamper economic growth potential but also contribute to rising income inequality.

With the increasing labour supply in certain occupations and skills, not adequately matched by labour demand, the likely result is the growth of the informal economy, with undesirable social consequences.

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POLICY BRIEF 3

Immigration & the European Economy

By Guido Bolaffi

Overview

Immigration in Europe presents a political problem because the growing economic need coexists with major social rejection of the phenomenon. The economy needs immigrants, but society does not—at least this is how things appear. Although not a complete novelty in the history of immigration, the contradiction causes tension, which can be explosive. The reasons for the contradiction need to be explored.

Discussion

In the past, immigration was part of a world well on its way to being modernized, but which still had a strong sense of security and a circumscribed social system. This society was flexible in one sense, but also steady. Newcomers, often with low qualifications, had the opportunity to occupy the lower rungs of the social and economic ladder as they were slowly abandoned by the native-born population. The immigrant of today, however, has to deal with the contradictions of a society in which not only the economy and the labor market, but also traditional social centers such as the church, unions and political parties, are undergoing rapid and often difficult processes of change. Moreover, the immigrants arriving today—be they refugees, highly qualified technicians or those with little education but with a strong will for emancipation—can find some place in contemporary multi-ethnical society as a worker, as an exploiter or an outcast.

Immigration today causes more political than economic concern. Immigration in Europe isn't just the result of a productivity expansion in the richer economies but is also a sub-product of the crisis of communism and the proliferation of ferocious ethnic wars. It's not masses of poor, illiterate peasants that are arriving but small groups of people coming from various places around the world who have been subjected for years to arbitrary and violent power, in which human rights were only a euphemism.

Immigrants today, in contrast to those of the past, are sought after by countries such as France, Germany, Italy and Greece that are experiencing structural, long-term unemployment of millions of citizens. This problem cannot make the discussion of immigration taboo, but rather presents a reason for reflection on the characteristics of the demand for employment that today comes from the more developed European economies.

In Europe, particularly in the south, the irregular employment market is spreading exponentially through the building trades, agriculture, cleaning services, catering, domestic work, sub-contracting of handicrafts and some parts of industry. This irregular labor market favors the absorption of both legal and illegal immigrants.

In contrast to the economy of the first half of the 20th century, when immigration answered the needs of industry primarily, today it supports and is supported by the services sector—above all the urban sector. The

consumers who benefit from this readily available and therefore competitive labor market populated by immigrants are mostly made up of the middle and upper classes. These are the classes that have the disposable income to pay immigrants for personal care work and the most varied kinds of services. The highest income groups thereby obtain, at a low cost, services which only immigrants will perform. Thus immigration on one hand creates wealth for the host country and on the other reinforces a distribution of wealth that is skewed in favor of those who consume such services.

Anti-immigrant sentiment today does not originate or consolidate in the underdeveloped, poor social/geographical areas but generally in wealthier and more orderly areas. Basically, the tensions are not among the poor, as was common in the past. Anti-immigration movements today are spreading in the wealthier areas of Europe and involve social sectors which for various reasons feel threatened; it is not just plain and simple competition for work with the new arrivals. The new xenophobic populism resonates in the most economically developed and civilized areas of the Old World and not yet in the poorer and underdeveloped parts. Italy significantly confirms this tendency: greater tension is found in the North, where the ideological anti-immigration movement is much stronger, than in the more degraded and poorer Southern Italy. Today, the quarrel between the immigrant and native poor is not a fight over the labor market for a modest income. The more serious tension has developed between the new arrivals and the local working class over the nature and location of recreation and family life. Therefore, relations regarding spare time are more under stress than those regarding work. The more serious confrontations occur not in the work place but in the areas where the working classes live and spend their spare time.

Last but not least, the vast range of help offered by the welfare state to European citizens is the results of long processes centered on the national population. The central question now is whether such a social system can be compatible with high immigration.

Recommendations

In the face of these difficulties, governments could try to reduce social costs by taking the following steps:

1. Invest in more articulate and flexible social policies, to reduce friction regarding immigration on life and "living space" of nationals, starting with schools, hospitals and social living areas.

2. Strengthen the identity of the host country by insisting on an understanding of the language by those needing to learn it and favoring, by rapid access to citizenship, a shortening in the distance between THEM and US.

3. Work on the younger generation (nationals and immigrants) to create roots for a tolerant and untroubled culture, considerate of its diversity but also understanding the need to respect the laws of the hosting country.

4. Privilege quality immigration against that of a lower profile which functions as an easy and cheap solution, delaying and not resolving the modernization of the national labor market. A part of the "dividends" of

immigration must be devoted to the re-qualification of the long-term unemployed and to fight against the rampant unofficial labor market.

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POLICY BRIEF 4

Is Immigration a Threat to the Traditional Welfare States of Western Europe?

By Grete Brochman

Overview

The welfare state is a central element in explaining the approach to immigration policies in Western Europe. Generous welfare models, which embrace all legal inhabitants, can be undermined by excessive burdens. This fact requires that some limits be set on the numbers and characteristics of potential new members from outside the state. In a country that espouses the principle of equal treatment of all residents and has an extensive welfare state, immigration challenges the population's generosity. It may, in the longer term, affect the sustainability of the welfare system itself if large numbers of the newcomers are unable to support themselves. Crucial here is how large a share of those who come are absorbed into gainful employment. Thus, controlling inflow into the country —the first gateway to the territory — is a prerequisite for governing a welfare state.

The principles of equal treatment, public governance and an active social policy have a logical corollary in immigrant integration policy. Welfare states do not tolerate substantial numbers of persons or groups that fall by the wayside, disturbing the regulated world of work and burdening social policy budgets. If the political framework of the welfare state is to be maintained, new inhabitants must be made a part of it. Immigration policy since the 1970s has operated on two somewhat contradictory levels: immigrants are not desired at the outset, but if they manage to enter anyway, they must be incorporated in some way. The responsibilities of the state go further still: it must lay the basis for a positive attitude in the general population in order for the integration project to succeed. It must, in other words, win support for this policy.

Discussion

The authorities need to strike a balance between exercising fair terms of incorporation in keeping with human rights principles and moral considerations, while listening to popular sentiment in order to retain legitimacy and to ensure that parts of the majority do not begin to feel and act like a threatened minority. Moreover, the majority is not a unified block. Individual groups may have "objective" interests in keeping a certain group of people at a low level of integration. Employers, for example, may profit from immigrants being content with poorer pay and working conditions than nationals.

Most thinking in Western Europe since the 1970s has been based on the assumption that immigrants represent a burden on public budgets: they are consumers of welfare. The prevailing immigration policies have turned this assumption into a fact. Restrictions on labor immigration have channeled most immigrants through the humanitarian gate, thus generating excessive burdens on the welfare system.

The fairly recent awareness that an ageing society, along with certain structural characteristics of the labor market, calls for a more liberal labor immigration policy has turned the welfare logic on its head. It is now widely believed that supplies of foreign labor are necessary to maintain the level of welfare in society. This new approach emphasizes the role of immigrants as producers of welfare.

Today Western European welfare states find themselves in a paradoxical situation: parts of working life are in need of labor that is difficult to find nationally – and internationally. While this is partly due to inflexible policies, it is also due to competition for labor among Western countries. The authorities are under pressure from trade and industry to liberalize immigration policies. At the same time, asylum seekers are constantly arriving, often to be joined by family members. Although the labor market is in principle irrelevant when processing asylum applications, it is nevertheless crucial in the longer run to integrating asylum seekers and refugees who are accepted for long-term residence in the labor market, both in their own and society's interest. The authorities are confronted with a mismatch between the supply of and demand for immigrants. Those who actually come are often not the ones needed: either they have the wrong qualifications, or – if they should match – it may not be possible to retain them unless their asylum application is approved. A third category – unregistered or illegal migrants – may be working, but in the black market. If they are detected, they should in principle be sent out of the country (unless they are offered an amnesty – a policy only applied in some countries). The receiving countries do not get the labor they want, while many of those who actually come cannot be incorporated productively for various reasons. This situation illustrates the squeeze facing today's welfare states between the logic of humanitarian responsibilities and the concerns of the national economy.

Being dependent on heavy taxation of the inhabitants, the welfare state is a vulnerable creation: the very economic basis of the welfare state may be affected by immigration. For the system to be sustained, it is essential that the population is willing to participate and pay tax—but the more newcomers extract from the common pot, the more fragile is this implicit social contract.

For European authorities the major choice has appeared to be between restrictive entry and restrictions on welfare. Until recently restrictive entry has been the rule. This policy, however, has structural flaws. The tighter the controls the higher the price of labor, and thus, the higher the incentives for immigrants to enter illegally and for employers and employees alike to break the rules. Moreover, restrictive access makes people who might otherwise have considered leaving the country stay on. More open doors are more conducive for flexible return options.

On the other hand, restricting access to welfare is a double-edged sword. Various forms of social benefits and services are essential for many people's ability to participate fully in society. Hence, punishing groups by withdrawing benefits may punish society in the long run. Welfare states were established with the aim of creating social and political stability. This is still a central concern.

Recommendations

1. Governments should clarify the range of rights available to newcomers of different categories, both for purposes of comparison within the EU, and as a basis for national comprehensive reviews of law-making.

2. Governments should review welfare state arrangements in the light of immigration, and clarify which reforms are needed to protect the basic welfare interest of society. This needs to be done considering human rights obligations, and principles of equal treatment.

3. Governments should evaluate the differential effects of general vs. targeted integration policies, and make the evaluation available for comparison on a European level.

4. The EU should evaluate the extent to which variation in welfare systems and in labor regimes explain variation in immigration pattern between the different member countries.

Conclusion

There is a basic catch to the welfare state's relationship to multicultural immigration. Social exclusion of multi-ethnic newcomers through the formation of a new underclass threatens the equity ethos of the welfare state. At the same time, taking action to counteract exclusion is costly and, moreover, could challenge the majority's sense of justice. If the transfers are on a large scale the entire legitimacy of the welfare state may be threatened, at the same time that they serve to stigmatize immigrants as people in need of aid. Tailored integration programs can undermine the traditionally universalistic welfare state: the mechanisms that originally were believed to create cohesion among groups in society may instead become a source of deeper divisions.

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POLICY BRIEF 5

Emulating Canada's Immigration Program: The Quest for Tolerance

By Meyer Burstein

Overview

Canadians viewing the European debate on migration often assume a position of moral and analytic superiority. This view is misplaced. There is a great deal to recommend the Canadian system and there are important lessons for Europe in Canada's experience, but Canada's successful migration program is largely a result of history and accident rather than design. As a vast, under-populated, recently colonized country in a high-tariff world, Canada was forced to adopt open immigration as a matter of economic necessity. Not so Europe. Europeans do not owe their prosperity to immigration. The result is that European and Canadian perceptions of immigration differ. Europe must come to grips with the fact that diversity will increase no matter what policies are adopted. The big challenge for democratic Europe is finding the 'policy space' that naturally exists in Canada in order to develop a positive immigration program and foster positive public attitudes toward immigrants. The two are inextricably linked because immigration, properly managed, produces tolerance – not the other way around.

Two concerns are dominant in the European debate on migration. The first involves demography – population aging and decline – and the second, rights and fair treatment. Both are problematic. Amid these two preoccupations, the core migration issue facing Europe has not been squarely addressed: that issue is tolerance. The policy debates now underway need to be re-framed with the goal of heightened tolerance in mind. Failure to do so will result in inappropriate policy tradeoffs.

Discussion

The argument that immigration can be a solution to aging and demographic decline is deeply flawed. While immigration can hold population decline at bay, it cannot – under reasonable intake scenarios – substantially alter the age structure of that population, especially the key ratio of workers to non-workers. The reason is that the age structure of immigrants does not differ sufficiently from the age structure of the host society. To substantiate this, one has only to look at Canada. True, the onset of population decline is being delayed, but today Canada's foreign-born population is older than Canada's native-born population. It is simply not possible to import huge numbers of children.

The economic case for immigration is also contentious. Immigration, by increasing population size, makes the economy bigger, but is size per se an appropriate economic target? Some would argue that population size translates into political influence and economic clout. The Economic Council of Canada, on the other hand, has argued that a better and more direct measure of economic benefit can be obtained by examining how immigration affects the per capita incomes of the host population. Seen from this vantage point, the gains from immigration, while positive, are small. While it may be

possible to construct an alternative economic case for immigration, it is unlikely to prove a panacea. This should not surprise anyone. After all, simple inspection will reveal that per capita incomes in Europe and America are not closely correlated with population size, population growth rates or levels of in-migration. The absence of a clear link between population dynamics and labor market performance indicates substantial policy maneuverability. And, of course, immigration can still be extremely useful in alleviating occupational shortages and bottlenecks.

The EU's policies on equal rights and fair treatment similarly proceed from a weak premise. From a moral perspective, these represent a significant advance and cannot be faulted. They are an essential element of the struggle against racism and xenophobia. Nevertheless, they are half measures at best because the prevention of acts of intolerance does not, in and of itself, produce a tolerant society. Tolerance is an effect and not a cause. Canada has a multi-cultural policy and welcoming institutions because it is a tolerant society and not the other way around. The principal role of public policy is thus to create the conditions that produce and nurture tolerance. In Canada's case, the most important of these policy instruments is well-managed immigration, a point that will be elaborated below. Beyond this, tolerance is best understood as the by-product of shared enterprise among immigrants and native-born Canadians in pursuit of shared goals

Another reason for arguing that a purely right-based approach is inadequate has to do with public receptivity. Such an approach, especially when pursued through affirmative programs that generate institutional reform, tends to be regarded as privileging some groups over others. That this creates tension is apparent in the current U.S. debate on affirmative action. It would be all the more contentious in Europe, since the groups advantaged by such policies would be immigrants rather than native-born minorities.

If the arguments underlying the twin pillars on which Europe is developing its immigration policies are shaky, must we conclude that the policies themselves are wrong? Paradoxically, the answer is 'no'. It is not the policies that are wrong but rather the manner in which they are framed and the objectives to which they are directed. The risk is that incorrectly framed policies will produce tradeoffs without regard to the real issues that need to be managed.

Intolerance toward immigrants has found its way into mainstream political movements in Europe. Consequently, the principal goals of public policy need to be refocused from the production of orderly labor markets and orderly legal regimes to the production of orderly societies – societies characterized by tolerance, respect for diversity and social harmony. These are issues over which governments hold only indirect sway because, ultimately, they depend on public attitudes and perceptions that operate not only in the public sphere but also the private one.

This paper has argued that increased legal immigration is unlikely to produce for Europe the economic and demographic benefits that policymakers seek. It has also argued that purely legal regimes cannot transform public attitudes. What has not been said, however, is that while the upside to increased immigration has been exaggerated, there does not appear to be a significant economic downside. The importance of this point is that it makes available to European policymakers a neutral economic 'space' in which to develop immigration programs. The shape of these programs should be determined by

the problem at hand. This paper identifies the problem as tolerance and social stability —hence the prescription, elaborated below, that Europe model its policies after Canada's program for attracting educated, high skilled workers.

Canada's skilled worker program is almost unanimously viewed as being in the public interest and skilled immigrant workers are widely believed to contribute to Canada's prosperity. Family migration, on the other hand, while consistent with Canadian values, is seen as responding to private rather than public interests. Refugee policy is understood to be costly, but the costs are willingly assumed providing Canada is setting the limits.

Because immigration, particularly skilled migration, is seen as benefiting Canadians, integration policy tends to be viewed as a public investment rather than a public drain. This produces public support for tax-financed integration measures. Equally important, however, is what occurs in the private sphere where a good deal of integration takes place in settings over which government has little influence. Face to face contact in favorable circumstances is the engine that generates tolerance in Canada. The fact that Canada's immigration program selects individuals who are visibly successful, who are economically self-sufficient, who value education for their children, and who aspire to owning their own homes and cars reassures Canadians that their values will be respected and their communities enhanced.

Canada is thus extraordinarily well equipped to cope with growing social, cultural, racial and religious diversity. This allows the country to better integrate not only those arrivals who are invited in but also those who appear spontaneously. The existence of this capacity is not a matter of genetics. It is the result of long-standing behaviors and practices that now form a part of the Canadian identity. Europe will need to create similar receptivity. Emulating Canada's skilled worker program would constitute a significant step in this direction. Taking this step is not as problematic as it once seemed.

Recommendations

1. Current European demographic concerns offer European leaders an important opportunity to transform the dialogue on immigration and to implement skilled worker immigration programs such as those found in Canada and Australia.

2. The discussion around immigration, migrant rights and demographic change should be re-framed so as to explicitly recognize the links between these issues and the production of tolerance.

3. More attention needs to be paid to improving the circumstances under which migrant and host populations come into contact. Tolerance for diversity and mutual respect are by-products of positive contacts.

Conclusion

It is important that policy-makers and politicians not exaggerate the consequences of population aging or the benefits obtainable through immigration. It is equally important that they understand that tolerance is a by-product of immigration and not its antecedent. Failure to appreciate these points may produce inappropriate policy tradeoffs – such as a see-saw

between greater EU mobility and reduced immigration. Such tradeoffs might be economically sound but lose sight of the fact that the most important 'work' that immigration does is to produce a tolerant society. Without this, Europeans may find themselves economically well off but facing the larger problem of profound social and economic divisions characterized by racial, religious and ethnic tension.

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POLICY BRIEF 6

The Global Migration Picture

By Joseph Chamie

Overview

International migration has moved to the forefront of national and international agendas, becoming a major issue of concern in an increasing number of countries – both developed and developing. The formulation and implementation of national policies to better manage levels and patterns of international migration have also intensified, spreading to all regions of the world. More recently, in the aftermath of the events of 11 September 2001, many countries have further tightened their borders and stiffened their policies

Issues such as population decline and population ageing, sustained below-replacement fertility, family reunification, human trafficking, undocumented migration and national security have assumed paramount importance for sending, receiving and transit countries. These developments require reassessments of migration policies as well as of the potential benefits and disadvantages of international migration.

Discussion

The right to move was recognized internationally over a half-century ago with the adoption of the Universal declaration of Human Rights. However, while people have the right to leave and return to their own countries, they do not have the right to enter another country.

This apparent contradiction is the predicament that increasing numbers of nations and regions are facing. In brief, the supply of potential migrants, who are free to leave their homelands, simply exceeds the demand for migrants, which is set by the receiving countries.

While many forces are at play, four noteworthy developments are adding prominence to international migration on the national and international scene.

First, and perhaps foremost, is the demographic dimension, with receiving countries facing a "birth rate crisis" and sending countries continuing to grow, many at very high rates. The birth rate crisis in Japan, Europe and elsewhere is leading to labour shortages. With fertility rates well below replacement, such countries are experiencing population ageing and facing population decline in the near future. These changes have significant consequences and implications for pension schemes, health-care systems, education programmes and housing plans as well as for economic vitality and growth.

On the other side of the demographic coin, the populations of sending countries continue to grow relatively rapidly, with many people of working age facing difficulties finding gainful employment. As a consequence, large numbers of skilled and unskilled youths are seeking opportunities in the wealthier receiving countries, especially in Europe and North America.

Second, in contrast to the past, the composition of the immigrant population in many instances differs greatly from that of the host country. In Europe, for

example, many of the immigrants in the past had come from the relatively poorer countries of the southern Europe, such as Italy, Spain and Portugal. Many of the immigrants of today, especially those entering illegally, are not only less educated and lower skilled than the native population but are ethnically very different from the native population. This raises concerns about cultural integrity, integration and assimilation.

Third, immigration has recently become a central issue in the elections of many receiving countries, especially in Europe. The successes of some of the parties of the right have been linked to their opposition to immigration. Although the numbers of migrants in these communities are relatively small, they have increased noticeably over the last few decades. For example, in some European countries such as Austria, Denmark and the Netherlands, the proportion of immigrants has increased several-fold since the 1970s.

Fourth, the events of 11 September 2001 in the United States have heightened security concerns associated with international migrants in most countries and exert a strong influence on international migration policies and programs. For example, since September 11, 2001, the United States Government is reported to have arrested hundreds of Muslim and Arab men on grounds of immigration violations that rarely caught the attention of federal officials before.

Recommendations

The many issues and concerns raised by international migration have few simple remedies or solutions. However, some important steps are advisable.

1. The new challenges being brought about by declining and ageing populations will require objective, thorough and comprehensive reassessments by countries of many established economic, social and political policies and programs. In addition to immigration policies, Governments will need to reassess, for example, retirement ages, labor force participation, levels of contributions of workers to retirement and health-care schemes, and benefits for the elderly.

2. Given the controversial nature of migration, especially in receiving countries, a global consensus on how to address the many facets of international migration is unlikely in the near term. Therefore, bilateral and regional agreements among nations appear to be the more likely course ahead, at least for the foreseeable future.

3. Many business leaders and some Governments are looking to immigration as a possible solution to address the consequences of declining and ageing populations. However, the general public appears less willing to accept the arrival of immigrants, who are often seen as threatening employment conditions and opportunities. Governments may wish to address the growing gap between national needs and public reactions to immigration.

4. The knowledge base on international migration is relatively poor. Sound analytical studies and research are needed and would be facilitated by improved coordination in the collection and compilation of migration information among national offices as well as international institutions.

Conclusion

International migration will no doubt continue to be a highly controversial and divisive issue for some time to come. These difficulties are unlikely to be confined to the developed countries; developing countries are increasingly concerned with these issues.

A political consensus by the international community on the subject of international migration is unlikely to emerge in the near future. Issues such as sustained below-replacement fertility, population decline and population ageing, family reunification, human trafficking, undocumented migration, and national security require reassessments of migration policies and the potential benefits and disadvantages of international migration.

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POLICY BRIEF 7

How Europe Selects Immigrants Today

By Heaven Crawley

Overview

Opportunities for work attract large numbers of people to the Member States of the European Union. Since the 1970s, however, most Member States have formally maintained restrictive 'zero-immigration' policies. As a result, coherent policies for managing labour migration to meet the needs and aspirations both of individuals and the Members States are lacking. Although large-scale labour migration has taken place, much though not all of it has been ad-hoc or informal.

A difficult consensus now remains to be forged around fundamental questions such as the actual need for labor (short and long term) in different sectors and regions, the models of labor selection that should be established (permanent and temporary), the degree of selectivity that is possible and desirable when managing migration, the selection criteria that should be employed, and the framework for integration needed to make these effective. The way in which labor migration can be managed in the context of widespread public hostility toward policies to increase or even maintain existing levels of labor immigration is also a key issue.

Labor migration policies are often contentious because they directly affect people's well-being, their economic and physical security, their sense of identity, and for individual citizens, their relative position in society. Concerns about the multiplier effects of family reunification in particular appear to have a significant impact on the willingness to be open about the need for selected immigration. In addition, concern is increasing about the impact on countries of origin of the out-migration of workers, particularly those who are educated and skilled.

There is a potential tension between policies at European and national levels, partly because access of third-country nationals to work is a highly sensitive issue, but also because of potential competition between Member States, particularly for highly skilled migrants. Both migrants and Member States have a stake in national models of labor migration that are based on coherent and consistently applied principles at the European level.

Discussion

Although there are pressures in every Member State to allow increased immigration, because of the aging and shrinking of the European labour force, the logic of the state and the logic of the market do not always come together. Managing labour migration is not simply a question of getting more people to fill the gaps by opening up new labour migration routes. There are fiscal, social and political impacts associated with immigration, and states have a range of priorities, interests and concerns that have to be balanced. Existing models of labour migration to Europe can most effectively seen as the result of a series of trade-offs (both technical and political) between competing interests and priorities: for example between higher tax revenues

and increased business productivity on the one hand and depressed wages for disadvantaged domestic workers on the other.

The fact that social cohesion is now high on the agenda of many European countries has increased concerns about the size of the intake, especially the possibility numbers associated with family reunion. While migrants may be more likely to integrate socially if their families are able to join them, this often imposes additional costs for the state in terms of welfare provision. Concern about uncontrollable migration associated with family reunion is one of the strongest factors influencing policy making in this area.

Labour migration policies therefore reflect the choices states make to balance the interests of various stakeholders – businesses who want access to readily available workers and intra-corporate mobility; NGOs who want a rights-based immigration policy as a complementary labour market strategy; trade unions and certain other interest groups who give priority to increasing the labour-force participation of women, re-adjusting the retirement age and including marginal groups in the economy. At the same time European governments are aware that public opinion polls indicate that there is little support for further immigration.

The approaches of Member States: In most European countries there are considerable discrepancies between proclaimed policy principles, existing statutory and regulatory frameworks, practice with regard to the granting of work permits on the one hand and (tolerated or untolerated) reality on the other. In most countries, regulations and, even more so, their implementation, are adapted within existing statutory and political margins in order to accommodate labor market needs.

During the 1990s new models for selecting labor migrants have emerged. Flows have become more flexible and dynamic. Nonetheless there are significant differences in how individual European states select migrant workers and how explicit they are about the shift to managed migration. Some countries, particularly Germany and the UK, openly discuss the need for selective labor migration. The Dutch government, by contrast, has explicitly rejected labor migration as a policy tool for cushioning the effect of demographic change. An analysis of existing models of labor selection across the EU reveals the following characteristics, although there are some exceptions to most of these general observations:

o Virtually all EU Member States hold to the principle of labor market testing, which means that work permits should only be granted if no suitable recruit can be found or trained within the EU or the EEA. However the administrative application of the principle varies quite considerably;

o European work-permit systems are essentially employer-led. In the majority of Member States, prior matching between employer and employee is required i.e. a work permit can only be granted for a specific job offer;

o As a general rule, quotas do not apply to higher-skilled and senior employees. Quotas are usually imposed for lower skilled labor migrants, especially seasonal workers and those on project-related work schemes;

o The length of the work permit correlates positively with the level of training or the position in question, with the longest usually reserved for higher-skilled workers and more senior positions;

o There are significant differences between States in terms of the prospects for permanent migration. As a rule, work permits in Europe are temporary.

In sum, models of labor migration to Europe have generally combine high-skilled work permits (sometimes permanent but usually temporary); low-skilled temporary and seasonal migration quotas; and/or large-scale and on-going regularization in some countries. Virtually all countries have schemes for allowing the entry of seasonal workers on a quota basis. This is true even for those countries that want to maintain their position as 'zero-immigration' counties.

In the absence of legal low-skilled labor migration channels, hundreds of thousands of workers have found illegal work in Europe. The increase of regularization programs in several Member States in recent years bears witness to this. During the 1990s, Belgium, France, Greece, Italy, Portugal and Spain all enacted amnesty programs for undocumented migrants. According to a recent study, just over 1.8 million requests for regularizations have been accepted since 1974 in the seven countries where such policies exist.

Recommendations

Nuanced approaches to labor migration in Europe are needed. Neither zero-immigration nor mass migration is a realistic option. The aim should be managed migration. Governments and the European Commission must be prepared to accept responsibility towards those migrants who enter legitimately. The key to this evolving new approach is flexibility at the national level based on coherent and consistently applied principles at the European level. Models of labor migration to the European Union should be based on the following:

1. Evidence-based policy making: Comparative policy analysis based on rigorous empirical research and recently available data sets is needed to ensure a clear understanding and proper assessment of the demographic and economic basis for labour migration to Europe. This should include a better understanding of the individual calculations of migrants so that policies can be introduced which provide incentives to comply with systems for labour selection.

2. The importance of public opinion and the politics of immigration: Models for labour migration to Europe will only be successful if governments step up their efforts to inform and convince public opinion of the potential benefits of migration.

3. Labour market reforms: immigration should not be used as a substitute for needed reforms in European labour, education, and social welfare policies. Radical reform is still needed to achieve sustainable labour markets and pensions systems.

4. Regularization: There is limited benefit to bringing in additional migrant workers if there are already existing workers in various categories, especially at the low –skilled end of the labor market, who cannot be removed and would be willing and able to contribute if provided with an opportunity to do so without fear of deportation. The scale and scope of

schemes for regularization is an important issue to be determined at the national level and a vital first step towards managed migration in Europe.

5. Introduction of flexible work permit arrangements: Once the need for labor has been properly identified, flexible work permit arrangements should be introduced which meet the needs of both migrants and Member States, can react quickly to changing economic and demographic circumstances and can be balanced by mechanisms to protect domestic labor markets from unfair competition. The Commission should develop and maintain channels of communication for sharing information about the experiences of different systems and approaches.

6. Appropriate reception and integration policies: The admission of migrants for employment pre-supposes a substantial strengthening of integration policies for immigrants residing legally on the territory of the Member States. Once Europe has decided that immigrants are important, its governments need to think about ways of attracting and admitting them, and creating coherent rules that support integration. The rights of immigrants, equal treatment and security of residence should form the cornerstone of immigration and integration policies throughout Europe.

7. Impact on countries of origin: The European model for labor migration should encourage immigrants to themselves become actors in the development of their countries of origin by enabling them to maintain the necessary links with these countries. The Commission should continue supporting and developing dialogue with countries of origin about the impact of migration and better ways to manage migratory flows.

Conclusions

The overall aim of European migration policy should be to manage migration, not to prevent it. This will require a political acceptance by Member States of the role of immigration as a complementary labor market strategy, and the development of flexible, evidence-based models of migrant selection which are both adaptive to national requirements and based on consistent principles established and monitored at the European level. A successfully operating Community policy based on common definitions, criteria and procedures regarding the conditions of entry and residence of third-country nationals must be progressively put in place while leaving a high level of discretion with Member States. The failure to do so will undermine the contribution that migrants are able to make to addressing labor market shortages in Europe and in turn the ability of Member States to maintain economic growth and social stability.

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POLICY BRIEF 8

Combating Illegal Immigration: From Tampere Via Seville
By Adrian Fortescue

Overview

This latest chapter of European migration policy-making starts with the Tampere European Council of 1999, which set the current policy framework. The Seville Council of 2002 was not in fact a major departure. Its initial concentration on – and withdrawal from the brink of – a policy of stick without carrot was part of a normal cycle of Europe's often repeated immigration debate. Because of the absence of any reference to immigration policy in the EU's founding Treaties until Maastricht (1993), this debate started rather late in the EC/EU's history. For all the words, wise or less wise, that have been spilled on this debate, one theme always recurs: public and political opinion will not accept a more open policy towards legal immigration unless they are convinced that illegal immigration is under control; and its corollary that illegal immigration and its profiteers best flourish when the doors to legal immigration are declared to be closed.

At the time of the Tampere Council conclusions, Heads of State and Government seemed open to the idea of solving the conundrum by emphasizing the advantages of a more open immigration policy; by the time of Seville they – and a number of them were the same people – came close to reversing the emphasis with potentially strange consequences for the Union's internal and external policies towards migration. The recommendation that emerges from this experience is that those who seek to maintain a momentum in favor of legal migration should neither appear to overlook the issue of illegal immigration nor underestimate how quickly the approach of governments to immigration issues can be reversed by considerations of domestic politics —particularly in a Union where in any given year several Member States will be holding a national election.

Discussion

Following the positive signals in favor of the more measured and less myth-based ("zero immigration") approach that emerged from Tampere, a series of proposals to implement it were submitted to the Council of EU Ministers responsible (Justice and Home Affairs). It was always the intention to complete these proposals with a comprehensive programs to address illegal immigration. In retrospect, it was probably a mistake to leave this topic to the end of the sequence. As the positive combination of circumstances that had made Tampere possible began to unravel in the light of events (declining world-wide economic prospects; 11 September and the US response; well-publicized trafficking horror stories; a quick succession of national elections in certain key Member States), so the emphasis on illegal immigration increased.

These political realities led to the adoption, with considerable publicity, under the Spanish Presidency of an action plan "to combat illegal immigration and trafficking of human beings in the European Union". The plan was in fact encouragingly more sophisticated than it would have been in a not too distant

past, in that it did not limit itself to proposals for border reinforcements or increased police work and penalties. An attempt was made to think through what might be done, for example, in terms of relations with countries of emigration and transit, to address migration pressures at source. The build-up to Seville, however, showed worrying signs of shifting the emphasis of this chapter more and more towards using the EU's muscle as a provider of development assistance as an instrument of pressure on third countries perceived to be uncooperative on immigration issues. Some late damage-limitation efforts saved the day, and the Seville conclusions were more or less balanced. But these were warning signs.

Recommendations

Recommendations issued at events like the AMPI Conference are usually addressed to government policy-makers by non-governmental experts. The following set of recommendations reverses this order; it is addressed from a practitioner's point of view to experts who seek to influence the policy makers.

In general

1. Don't lecture policy-makers as if they are too stupid or stubborn to grasp the fundamental verities to which all right-thinking experts have immediate and comprehensive access.

2. Enhance your own credibility by not dismissing out of hand what politicians (who are also professionals in their field) believe public and Parliamentary opinion can bear.

3. Try to avoid expressing outrage. Well thought-out alternative strategies are better.

4. With particular reference to illegal immigration

5. Work with the more "holistic" approach that is taking root. Enrich the thinking on how to help cooperating emigration countries, not necessarily only through money.

6. Do not expose yourselves to any risk of being accused of siding with "traffickers" who rightly or wrongly enjoy no public support. Seek instead to eliminate the market for their product.

7. Where the politicians' debate seems to rest on misrepresentation or misunderstanding of the facts, provide non-confrontationally the "correct" information and interpretation.

Conclusion

The real answer to illegal immigration (and, incidentally, to the alleged abuse of the asylum system) lies in properly and lucidly managed legal migration. This is the case that needs to be made persuasively to both policy makers and European publics.

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POLICY BRIEF 9

Europe's Demographic Future: Labor Markets & Immigrants

By Constantinos Fotakis

Overview

One of the major success stories of the second half of the 20th century has been the increasing longevity, reflecting improved conditions of health and higher welfare standards, of the population within the European Union. However, extended longevity coupled with an important decline in fertility over the last 30 years has resulted in a rapid transition towards a much older population structure that, according to demographic projections, will last for several decades.

The trend towards population ageing is bringing about profound changes for all generations and most areas of economic and social activity. The demographic trend challenges the policies, institutions and attitudes established in the past, when the demographic perspective was very different. The issue is particularly relevant for European employment and social policies.

Discussion

According to Eurostat, the working age population —both in the EU of fifteen Member States and the enlarged EU of 25 —will start falling at the beginning of the next decade. This decline coincides with a fast increase in the 65+ age group. One clear implication of the overall trend is that the objective of higher employment rates, particularly after attaining the targets of 70 per cent set at the EU Summit in Lisbon in 2000, will cease to be a sufficient condition for growth in the absolute number of people employed. Given the demographic decline of the working age population, even a further growth of employment rates beyond 70 per cent could not prevent substantial decline of the number of workers by the end of next decade.

From a macro-economic perspective, the fall in the total volume of employment may have a negative impact on economic growth. This could indeed be compensated by increases in productivity growth. However, after attaining a maximum employment rate of 70 percent provided by the Lisbon objectives, maintaining (all other factors being constant) an overall economic growth rate of say 2.5 per cent in the EU of 25 would imply an equivalent (or even higher) increase in the productivity growth rate. It is worth mentioning that last year the rate of productivity growth was on the order of 1.2 per cent. In addition —although this is hard to predict —declining employment in the context of an ageing population is in itself likely to have an impact on productivity, and not necessarily a positive one.

This new situation will characterize at least the next three to four decades, as the size of the working age population cannot be affected by any possible change in fertility and mortality in the medium term. The difficulty of sustaining employment growth will also affect the sustainability of pension systems. Maintaining the economic dependency ratio (persons 65+/persons

employed) at the current level, all the other factors remaining equal, would require annual employment growth of 1.36 per cent between 2010 and 2040.

Once high employment rates are attained, even maintaining the volume of employment would require a very important growth of the annual inflow of immigrants: assuming a maximum 70 per cent employment rate of both natives and immigrants after 2010, it would require an average annual net inflow of around 2.2 million immigrants for the period between 2010-2040 to sustain even a zero growth employment level.

Analyzing the ageing trend at the aggregate level provides a good overview, but it is not sufficient to identify the various issues brought about by the pattern of ageing in the different Member States. Both national and regional analyses reveal important differences in the intensity and timing of the ageing trend. By 2005, more than one third of the European regions will already have a declining working age population.

In addition to geographical differentials, skill mismatches may also grow as a result of the decrease in labor reserves and demands for new skills and competencies.

Despite its internal difficulties, the opportunities offered by the European labor market and the high standards of European living conditions represent a strong attraction for a great number of citizens of the developing world. This is because most of these countries are characterized by relatively young populations facing very poor employment prospects and standards of living. These contrasting situations are expected to continue generating migratory flows towards the developed countries over the next decades. With an average net legal immigration of nearly 1 million persons per year, the inflows in the 1990s were the largest since 1945. This number does not reflect the extent of illegal immigration. The types of migrants and countries of origin have also diversified, with a dramatic increase in the number of immigrant women as well as unprecedented peaks in the number of asylum-seekers.

All Member States are concerned. Spain, Italy, the UK and Germany together account for 70 per cent of the net inflow of immigrants. Former countries of emigration, such as the southern Member States and Ireland, also became countries of immigration over the last decade.

With low fertility rates, net migration already accounts for a significant proportion of population change in the EU. For example, without migration, Germany, Greece and Italy would have experienced a population loss and Sweden would barely have grown.

Recommendations

Present employment rates of immigrants are not satisfactory. At 54.1 per cent, the employment rate of the non-nationals of the enlarged EU is significantly lower than the 68.8 per cent rate for EU nationals. The link between education and the employment rate is very clear. More educated immigrants are more easily integrated into economic and social life. Increasing employment rates will require a more systematic effort in human resources development.

Illegal immigration is one of the most sensitive issues in Europe. A growing trend of illegal entry has been observed across the EU over the last decade.

To a great extend, the credibility of any new framework for legal economic immigration will depend on the ability to combat undeclared work and illegal immigration.

The integration of immigrants in European societies should be seen as a condition for increasing labor market participation rather than as a result of it. Social exclusion and discrimination must be fought and diversity respected. Fighting against discrimination and the barriers to social participation will increase possibilities for integration and strengthen social cohesion. The challenge is particularly strong for women. Addressing the needs of immigrant women will be critical in order to ensure their equal and full integration, but also in order to maximize the overall benefit from immigration. Being transmitters of cultural values and social attitudes, immigrant women are key actors in strategies to secure a successful integration of second and third generation immigrants.

Conclusion

The ability of the Union to succeed in managing substantially larger migratory inflows in the future will influence its overall capacity to master economic transformation and social change. The optimal orders of magnitude of immigration inflows are not determined solely by economic considerations. They will also strongly depend on the social environment of the host societies —the policies and politics in place. Looking at different paradigms, societies have shown widely differing degrees of tolerance to immigration. Immigration and integration policies should take account of these different social environments and develop adequate, timely responses. The observed emphasis of the public immigration debate on restriction and prevention does not rely on any solid argument. However, it may be a mistake to attribute this xenophobic attitude to some intrinsic quality of European societies. Rather, the restrictive and backward-looking approaches to immigration of the past 30 years, and their interaction with the high migratory pressures of the 1990s, are more likely to blame.

It is also important to recognize that immigration alone, even well managed, can only partly offset the impact of demographic trends on the workforce and pensions. Even doubling present levels of immigration flows would not be enough. European states will still need to focus their efforts on employment policies and pensions reforms, if they are to achieve sustainable labor markets and pensions systems. Immigration policy should be seen as a contributing element within a comprehensive package of policy measures.

The ability of the European Union to increase productivity, make best use of its human resources and successfully manage larger migratory inflows will therefore condition its overall capacity to master economic transformation and social change. The European Union and the Member-States must find ways to prepare for future immigration for the optimal benefits of all: the EU economy, the migrants and the countries of origin. The time horizon until 2010 is particularly critical, since it provides perhaps the last opportunity for the EU to benefit from a relatively slow ageing process and prepare for the more severe and lasting trends that will follow over the next 30 to 40 years.

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POLICY BRIEF 10

Dealing With Unlawfully Resident Immigrants: Regularizations & Beyond

By Jean-Pierre Garson

Overview

Although all OECD countries have migrants in an irregular situation within their borders, the numbers vary dramatically—from the high of 8-9 million currently estimated for the United States to some 50,000 for Australia and much lower numbers in smaller, less populated countries. Migrants seeking employment opportunities unavailable in their home countries can account for a large share of these flows. Others come to join family members, at times to avoid the queue in certain immigration systems, or sometimes to join more distant members not entitled to sponsor them in family reunification immigration systems. Many others come seeking asylum, although their situation may not meet the authorities' criteria to grant asylum. Moreover, a characteristic feature in the majority of OECD countries is the preponderant share taken by immigrants who remain in the host country long after expiration of their valid permits.

Some OECD Member countries (essentially France, Greece, Italy, Portugal, Spain and the United States) have, in the last 15 years, implemented regularization programs for undocumented foreigners who, for the most part, reside in their territory, have family links there, and work there. Most other OECD countries do not wish to introduce such programs, mainly because of the risk of attracting new migrants hoping to take immediate advantage of the opportunity or to remain illegally in the country in anticipation of the next regularization program.

Discussion

Definition and eligibility criteria for regularization program: The definition of regularization varies greatly among countries. Many countries (Greece, Italy, Spain, Portugal) grant legal status for a fixed period of time and, unless permanent legal status has been achieved under other criteria in the interim, the migrant is faced with reverting to irregular status or applying under a subsequent regularization program, if one is available. Thus, many of those regularized under recent programs have also participated in earlier ones. Unless subsequent programs are available, the migrant's status reverts to irregular. Studies of regularized migrants in Spain and in Italy have shown that an important share had again become irregular after having obtained a temporary permit or after having been the beneficiary of a regularization program in the past.

In contrast to these temporary, recurring programmes, other countries have carried out regularization programs that result in permanent legal status for the migrant. The United States carried out the largest of these permanent programs under the 1986 Immigration Reform and Control Act (IRCA), with some 2.7 million persons being granted permanent status.

Regularization based on work: The most common criterion for eligibility is the right acquired through employment, which may lead to a perverse effect insofar as it could encourage illegal employment in the hope of an amnesty. This is the case in Italy, Spain and Portugal. Employers benefit from both the increased flexibility of the labor force and from inexpensive labor.

The United States carried out the largest program based upon prior work experience, granting permanent resident status to nearly 1.1 million agricultural workers in the early 1990s. This program, legislated in the 1986 IRCA, was plagued by fraudulent documentation attesting to the applicants' prior agricultural work in the United States.

Regularization based on prior residence and on family criteria: Several countries have regularization programs premised on prior residence for a fixed number of years or since a particular date. The recent regularization program in The Netherlands was premised upon five years of residence. Also, nearly 1.6 million persons were granted legal permanent resident status in the United States under the 1986 IRCA on the basis of continuous residence in the United States since January 1, 1982. In more recent years, an increasing number of countries (France, Italy, and Japan) have granted regularization based upon family relationships not covered by existing law. For example, it is the case for families with children born in France of immigrant parents in an irregular situation

Regularization based on delays in the processing of applications of asylum seekers and/or on not meeting existing asylum criteria: In several countries (Belgium, Luxembourg, Switzerland), recourse to a regularization program results from an important backlog in the processing of applications for asylum. In Luxembourg, the program has not benefited those persons for whom it was initially intended. Many irregular workers did not come forward, either for fear of expulsion or because their employers did not want to provide them with a contract. In the end, a lot of the cases concerned asylum seekers who were not the initial targets. Legislation in the United States in 1997 and 1998 provided an amnesty to nationals of Nicaragua and Cuba who had been in the United States for at least two years and re-established less stringent standards, although not blanket amnesty, for nationals of El Salvador, Guatemala, Haiti, the former Soviet Union and certain Eastern European countries to remain in the United States.

Recommendations

1. Whatever is done to combat the employment of foreigners in an irregular situation must address the problem of undeclared work in general and not just the employment of illegal immigrants, which is just one element, and not necessarily the most important, of economic activity in the so-called "underground" or "undeclared" economy.

2. Sanctions against the illegal employment of immigrants must be applied against the main actors involved in the relevant breaches of labor and immigration laws. Sanctions must be applied not only against direct employers, but also indirect ones (subcontractors who outsource segments or phases of their operations). They also apply to any persons who actively promote illegal immigration and/or the employment of foreigners in an irregular situation, be these persons intermediaries seeking profit by

providing lodging, for example, or professional traffickers of illegal labour. Lastly, sanctions should apply to the undocumented workers themselves.

3. Effective strategies against the employment of illegal immigrants must be based on a combination of sanctions and of non-punitive measures (such as the dissemination among employers, immigrants and sending countries, of information governing the entry, stay and access to the labour market, or the risks associated with illegal employment).

4. Better co-ordination and coherence of administrative measures to tackle the employment of illegal migrants is fundamental, both at national and local level. Such co-ordination is all the more important in that labor markets, and therefore illegal hiring practices, have a strong local dimension. A particularly important area of co-operation among agencies is the exchange of information about illegal practices, the measures taken to address them, and their results. This information should be accurate, and the government agencies concerned must have at their disposal effective and accurate methods to evaluate their interventions. However, this information should not be collected at the expense of individual rights to privacy.

5. An awareness-raising program is recommended for those operating national court systems, to alert them to the importance of following through with the application of legal sanctions, and ensuring that all imposed fines are paid in full and in a timely manner. This sort of intervention would reinforce and strengthen the role of sanctions in combating illegal hiring practices inasmuch as fines for such practices are generally low and therefore ineffective as deterrents.

6. The general public must be better informed about the risks and penalties involved in the use of illegal labour. This information should be directed at both employers and workers in industries where these illegal practices are prevalent, but they should also be directed at employers that resort to the use of undeclared labour on an occasional basis only.

7. The specific measures adopted in certain OECD Member countries can serve as a model for other nations. Examples of best practices include the requirement to notify relevant government agencies prior to recruitment, fiscal incentives for the employment of legal workers (through the reduction of, or exemption from, social charges and taxes in certain sectors and in certain types of job), and the streamlining of contractual and administrative requirements associated with service sector employment (notably as concerns the hiring of domestic help). Another example of a best practice is the forging of partnerships between relevant government agencies on the one hand, and employers and business associations on the other, to promote joint efforts to combat illegal employment.

8. International cooperation is becoming more urgent, in particular to combat labour trafficking networks. European Union members have become aware of this necessity and the Council of the European Union has adopted several recommendations recently concerning the repression of the employment of foreigners in an irregular situation.

Conclusions

The decision to establish a regularisation programme is extremely complex, having a large number of very significant pros and cons. On the positive side, such programmes bring persons out of the shadows and provide them with the status and rights necessary to become more successful members of society. For example, regularisation empowers foreign workers and helps to ensure that they will not be forced to accept wages and working conditions below the legal minimum. It also facilitates their upward movement within the labour market by eliminating the fear entailed in changing jobs that persons in irregular status often face.

Regularisation often provides an opportunity to accord a status and rights to foreign workers and residents who have been in the country for several years in an illegal situation. Lastly, where numbers of illegal immigrants in a country reach critical dimensions, regularisation can meet public security objectives. It prevents immigrants from being exploited and/or from taking up illicit or even criminal activities. Another consideration when deciding whether to establish a regularisation programme is the pragmatic question of what other options are available to reduce or otherwise deal with the presence of large numbers of irregular migrants in the country.

There are, however, negative potential consequences in establishing a regularisation programme. One of the most frequently cited is that regularisation programmes often encourage future illegal migration, sometimes even at greater rates than those occurring before the programme. These flows occur in part because new migration networks have been established. In this way, paradoxically, recourse to regularisation does not always allow a lasting reduction in the numbers of irregular migrants. Also, irregular migration may increase as a result of the promise of future regularisation programmes.

A second argument against regularisation is that such programmes reward law-breaking. For those countries having a legal immigration system - whether of a temporary or permanent nature - regularisation programmes can essentially result in queue-breaking, with the irregular migrants entering before those who have been waiting their turn. Another possible drawback of establishing regularisation programmes is that they may prevent countries from establishing formal admission systems, particularly those directed toward low skilled-workers. Largely because of these negative consequences, there are a number of OECD countries (e.g., Australia, Canada, Denmark, Norway and Switzerland) which have either had an extremely limited regularisation programme or none at all.

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POLICY BRIEF 11

Cities of Promise & Cities of Success: Migration, Cities & Urban Policy

By Jorge Gaspar

Overview

The phenomenon of migration is at the very heart of the growth and nature of cities, contributing fundamentally to their economic, social and cultural complementarities and diversity. Often, immigration is regarded as an urban problem, where minority groups are believed to endanger cohesion and economic and social stability. However, in periods when cities flourish and grow, there are always substantial multi-cultural migratory flows.

A new cycle of development in the European urban system has commenced after the 1980s. Cities constitute the fundamental building blocks and the locus of the new European edifice. Through the cities, the concept of the European is emerging, as has happened at earlier historical junctures. The Renaissance of the city, now unfolding, is closely associated with immigration, more clearly in the upper levels of the urban hierarchy and in particular in global cities. The new map of Europe is being drawn by the movement of people, both from inside and outside continental Europe.

Despite positive outcomes of this process of restructuring, there are still negative elements. Some indigenous populations exhibit xenophobia, and right-wing movements have gained in strength, spreading a sense of fear. Such reactions naturally threaten the process of urban development, a process that will potentially lead to a strengthening of the urban system and to the sustainability of a multi-cultural Europe.

Discussion

Developments since World War II explain the differences in the importance of migration in north, central and southern Europe. The consequences of the war, the different pace of the process of demographic transition and re-industrialization after the war made Europe north of the Pyrenees and the Alps destinations for population movements from other countries, though these movements had different trajectories. In the first phase of post-war European migration, emigrants from Turkey and southern Europe were the dominant groups, as well as former colonial populations —for example in the case of the United Kingdom and France. In some cases, migration occurred between neighbors, as with the case of Ireland and the United Kingdom or Finland and Sweden.

Later, southern Europe also experienced industrialization, associated with substantial rural depopulation. By the 1980s, southern Europe was converging with northern Europe, both in terms of restructuring of the economic base and in the demographic transition.

In the 1990s there was a movement towards harmonization of the countries of the European Union in their response to the globalization of migratory movements. Migratory flows both to Northern and Southern Europe have become simultaneously more diffuse and intense. However, some underlying

determinants still remain, such as cultural and historical affinities between origin and destination countries, geographical proximity, and a common history of migratory movements.

The rapid economic growth that occurred in southern European countries, in part stimulated by European Union funds, was only possible because of successive waves of immigration. These immigrants filled primarily low-wage, low-skill jobs, particularly in construction, agriculture, tourism and low-skill services, where local labor supply was limited.

The rapid growth of these migratory flows and the lack of a clear spatial pattern in the origins of the immigrants have worked against the emergence of differentiated ethnic and cultural patterns within southern European cities. This contrasts with cities of northern and central Europe, where concentration of immigrants in the central core of cities has been the rule.

In the cities of southern Europe there have been negative reactions to immigration similar to those in Northern Europe. It is also clear that the Mediterranean axis faces migratory pressures from North Africa and the Middle East, reinforced by the political instabilities of these regions and regions such as the Balkans. There is in fact an articulation of migration and migration policies not only between the European Union and third countries, but also between cities of the Mediterranean themselves. For Southern Europe, cities of the north appear increasingly as cities of promise. However, for a successful development strategy to be realized, a successful policy on immigration is essential. In this respect, both southern and northern Mediterranean cities have long multicultural traditions, which can provide a valuable reserve of knowledge, experience and practice.

The distinction between integration and assimilation of immigrants and the interaction between the two trajectories is important. For first and second generation immigrants, the host society's recognition of and respect for their cultural and social values and many (but not necessarily all) of their traditions and behavior is an important component in their successful integration into that society. Supportive policies, particularly at the city level, will further integration. On the other hand, both immigration and supportive policies will also enrich and transform the society that receives the immigrants. However, in the longer term, the aim must be to ensure that immigrant groups are assimilated into the recipient society, this society itself having been enriched and, in part, transformed by immigration

The first and second enlargements of the European Union have consequences both for the urban system and migratory flows. These enlargements will, in general, reinforce the cities of the western core or heartland of the union, which will continue to attract immigrants. However, the enlargements, coupled with political change in Eastern Europe, will give dynamism to a vast ring of peripheral European cities, which will become increasingly attractive destinations for migrants. This ring stretches from Glasgow and Helsinki in the north, through Copenhagen and the Baltic states, to Warsaw, Prague, Bratislava and Budapest in the east, to Nicosia in the south. Cities which were formerly on the eastern border of the union, such as Berlin and Vienna, may become, in relative terms, less successful, as compared with the new peripheral ring of cities. A further question, related to these peripheral cities, is European Union policy with respect to immigration from the former Soviet Union, and from newly acceded countries such as Romania and Bulgaria.

Both enlargements will increase regional economic disparities within the European Union, which will, in general, increase migratory flows. These flows will become increasingly complex, both in terms of the levels of qualification of the migrants and in terms of migratory patterns. One probable general flow is from the cities of southeast Europe (Romania, Bulgaria and the rest of the Balkans) to the cities of south-western Europe (Italy, Spain, Portugal).

Recommendations

In the light of the above discussion and the need for the EU to develop a global strategy to address the twin issues of urbanization and immigration, the following set of recommendations can be made. They are addressed to the solution of problems on the ground and are initially directed at Southern European cities

1. Each city or metropolitan area should develop as one component of strategic planning a strategy to address the insertion of immigration into urban economic, social and cultural policies. The way in which the welfare state adopts and adapts to the new migration flows is of central importance.

2. Housing must be given absolute priority and must be treated as a broad concept, to include not only shelter and accommodation, but also community services and its articulation with places of work.

3. At the metropolitan and intra-metropolitan scale, planning should aim, where feasible, to ensure that demographic thresholds are reached for immigrant communities which have the same cultural identity or a common set of values, traditions and behavior. This creates better conditions for the provision of services, both public and private, and is a key to success for the implantation of immigrant groups. Otherwise, specific measures should be directed at the integration of smaller groups.

4. Policy should aim to create conditions, both material and immaterial, for growth of immigrant businesses

5. Social and physical infrastructure related to the use of immigrants' leisure time, directed at different age groups, gender groups and time intervals (daily, weekly, monthly) should be developed. There are some examples of success in this area, such as sport (especially soccer), crafts, gardening and the use of information and communications technology.

Conclusions

The rebirth and restructuring of the European urban system is shaping the structure of the Europe of the future. The dynamics of urban growth are closely related to the dynamics of migration P Political and policy measures directed towards the necessary marriage between migratory flows and urban development are badly needed. Without these, social and economic cohesion, city and union complementarity and social and spatial equality will suffer.

Cities are complex structures, characterized by diversities —economic, social and cultural —that complement each other, create synergies and, at the same time, increase the sense of identity, belonging and inclusion. The interface

between urban policy and the politics of immigration thus takes on a critical dimension for the future of European cities.

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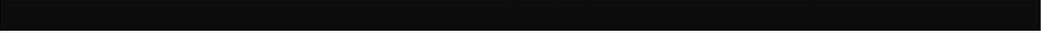
POLICY BRIEF 12

Immigrants & EU Labor Markets

By Louka T. Katseli

Overview

Most European countries are experiencing increased flows of immigration. Immigrants have contributed to population growth, filled labor shortages and contributed to growth and competitiveness. In sectors in which foreign and domestic labor can easily be substituted for each other, employment of immigrants has also increased unemployment among native-born workers. Labor rigidities in almost all European countries mean that, paradoxically, new immigrant flows coexist with low force-force participation rates, labor shortages and unemployment.

Migration policies need to take into account not only the commonalities but also the differences among European labor markets. Distinct migration regimes in northern and southern Europe require differentiated policy approaches. More importantly, migration policies cannot substitute for required domestic economic and social policies. The complexities involved and the need for coordination across various policy domains require new institutional mechanisms to design policy with the active participation by all stakeholders. In light of European integration and enlargement, migration-migration policies should become an integral component of the EU policy agenda.

Discussion: EU labor markets and immigration

In nearly all the European OECD countries, populations are expected to fall by about 10% in the first half of this century and the EU dependency ratio is expected nearly to double. Even taking account of the effects of immigration and potential changes in labor participation rates, the labor force is expected to decline in most European countries. Labor shortages, which are already apparent in many countries, are likely to persist and become more serious.

Labor market imbalances are largely due to structural rigidities which include, among other things, the lack of inter-regional geographic mobility aggravated by linguistic barriers, restrictions that reserve access to specific professions only to nationals, mismatches between existing skills and those in high demand, and cultural and socio-economic barriers that preclude the entry of nationals into low-status or low-wage jobs. It is worth noting that in 1999, intra-European migration involved less than 0.2 per cent of the total population of the Union, while only 1.2 per cent of people in work changed residence.

Structural rigidities in European labor markets also imply that labor shortages in most countries are likely to coexist not only with large pools of unemployed and/or inactive people, both nationals and foreigners, but also with continuous inflows of new immigrants. In 2000-2002, employer surveys confirm the appearance of labor shortages for skilled and/or unskilled personnel, even in countries such as France and Germany which recorded high unemployment rates among both nationals and foreigners and experienced high immigration inflows. It has been estimated that the size of

the 'unused or latent labor supply' in Europe varies from 18-22 per cent in Switzerland and Sweden to 40 per cent in Italy.

In view of these trends and characteristics, it is not surprising that foreign workers enter EU countries to cover needs at both ends of the skills spectrum. In the more industrialized countries which can be considered as traditional immigration countries (Austria, Germany, Netherlands, Belgium, France and Sweden), skilled immigrants, mostly on a temporary (5-year) visa, fill job openings in the manufacturing and mining sectors or in sectors exhibiting rapid technological change (such as the information and communications sector). At the same time, unskilled immigrants, both legal and illegal, cover vacancies or create demand for new jobs at the lowest social and occupational categories. In the Nordic countries, (Denmark, Norway and Sweden), as well as in Ireland, the share of total foreign employment is relatively high in the education, health and community-service sectors. State agencies or large firms recruit immigrants, and labor migration still remains concentrated on a few nationalities. Family reunification inflows are also on the rise as immigrants become integrated into the formal economies. Given these trends, the effort to manage migration flows in the North has focused mostly on fighting against irregular migration and illegal employment, as well as on policies for more effective integration.

In southern Europe —where agriculture still accounts for a significant share of total employment, including large informal and seasonal sectors —foreign employment tends to be concentrated in the agricultural sectors, the construction industry, the wholesale and retail trade and in the tourist industry. High rates of employment of foreigners can also be found in household services, even though the female unemployment rates are high and female participation rates are very low (especially in Greece, Italy and Spain). Regardless of the sector of employment, foreigners typically cover seasonal, short-term and/or 'atypical' jobs in the south.

Extended borders with non-EU countries, along with weak border control and administrative structures, contribute to rising illegal entry, residence and work in these countries. Legal entrants often overstay their visas. Recruitment by private 'illegal brokers' is prevalent. Even though immigrants from neighboring countries constitute the larger share of immigrants (Albanians in Greece and Italy, Moroccans in Italy and Spain), immigrants exhibit a remarkable diversity of nationalities and educational levels. Given the ease of illegal immigration, asylum seeking in these countries has never been a major issue. Through repeated regularizations, governments have attempted to manage the extended illegality and irregularity of migrants. This policy pattern has in fact prompted new illegal migrant inflows and a tendency toward permanent as opposed to temporary settlement of immigrants.

The segmentation of EU labor markets in conjunction with differences in economic, social and institutional characteristics have thus given rise to two distinct 'migration regimes' in northern and southern European countries. Migration regimes are further distinguished with respect to immigrant and host country characteristics, labor market and redistribution effects from immigration, and policy content and effectiveness. The policy debate in Europe must take these differences into account.

Recommendations

Globalization of production, commodity trade and capital-market liberalization have not so far proven sufficient to equalize standards of living across the world. In the coming decades, there will be increased pressures for greater integration of labor markets through migration. The effective management of migration flows is thus likely to become a top priority for policy makers across Europe.

From the analysis provided so far, the following can be concluded:

1. The presence of diverse migration regimes across Europe requires flexible policy approaches. 'Best practices' in some countries can turn out to be 'worst practices' in others. For example, targeted immigration programs to meet specific market-market needs have proven to be relatively successful in northern industrial countries but totally ineffective in southern Europe.

2. Given the high possibility of substitution between different kinds of immigrants (i.e. labor immigrants, asylum seekers, refugees) and potential routes to immigration, migration policy should become more integrated across policy domains and more strategic (as opposed to defensive), focusing on the choice of incentives and disincentives for entry, length of stay, work and degree of mobility of migrants.

3. In many countries, especially in southern Europe, migration policies should facilitate rather than impede —as they presently do —temporary and recurrent migration flows through the extension of renewable, multi-annual visas.

4. Rapid technological change and labor market changes require a continuous reevaluation of needed skills, while information costs are usually prohibitive. Thus, selective and targeted immigration policies could be useful in meeting very specific short-term needs but cannot provide the basis for an effective migration policy in the long-term.

5. Migration-migration policies should be integrated across regulatory areas, involving the EU, national governments and local administrations. Participation in policy design and implementation by immigrant associations, NGOs and the wider public is a prerequisite for sustainability of policies, successful integration and better use of both immigrant and domestic labor potential. The creation of a high-level Task Force for Migration Policy, supported by an appropriate Secretariat or Policy Institute, could provide consistency and help coordination across policy domains, and assist regional administrations in the design and implementation of regional policies.

Conclusions

Designing effective migration policies is as much a political as a technical issue. Given the complexities involved, most European governments have so far tried to keep migration issues at the low end of the political agenda. They attempt to cope with the issues either through crisis management or stop-go defensive tactics, including tightening border controls, selective immigration programs, and massive regularizations.

Strategies for managing international labor flows must become an integral part of the European policy debate, side-by-side with trade and capital-market integration. Monetary integration alone cannot promote European competitiveness and growth in the presence of entrenched rigidities and imbalances in the labor markets. The 'European democratic deficit' could increase further if this debate is postponed.

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POLICY BRIEF 13

Tried & True, Tried & Failed: North American Experiences With Illegal Immigration Controls

By Doris Meissner

Overview

In 1986, the United States Congress enacted legislation intended to address and resolve the problem of undocumented immigration. It authorized strengthened border controls, penalties against employers who hire undocumented workers, and legalization. Legalization was implemented during 1987-88 and was successful: more than three million immigrants obtained legal status. Employer sanctions have been hampered from the outset by flaws in the legislation itself, inadequate resources, and a lack of political support for implementation. As a result, the enforcement of sanctions has not been effective. Strengthened border controls were not implemented until 1994. Since then, there have been substantial, sustained, and continuing increases in new strategies and resources devoted to.

Nonetheless, the undocumented population in the United States numbers approximately 8-9 million, the largest it has ever been. Even with the current economic downturn, demands for immigrant labor and rates of undocumented migration have remained strong. Post-September 11 security concerns have sidelined consideration of new policies to address undocumented migration. When the issues arise again, changes in policy should reflect the reality that international migration is inherent in globalization. To work, new policies should attempt to manage and regulate, not stop, illegal immigration.

Discussion

Approximately one million legal immigrants are admitted to the U.S. annually. This flow is comprised largely of eligible family members joining immigrants already in the country and of smaller numbers of refugees and those deemed to meet specific labor market needs. In addition, about 20,000 asylum applications are approved each year. The asylum system, which was reformed in the mid-1990's, is no longer an avenue for subverting immigration rules.

The two major vehicles for illegal immigration are overstays of temporary visas and undocumented entry, primarily of Mexican nationals who cross the U.S.-Mexico border. During the 1990's, political pressures for more effective control of the Southwest border with Mexico dominated immigration politics and won broad-based bipartisan political support.

Implementation of strengthened border controls has changed the nature of undocumented migration in the intervening years. Because the border is much more difficult to cross, organized, lucrative smuggling networks have proliferated. In addition, undocumented migrants are far more likely to quickly settle in the United States once they arrive rather than to travel back and forth.

Border controls, however, have not appreciably reduced undocumented immigration. The fundamental reason for this is strong and sustained growth in the U.S. economy throughout the 1990s. The demand for immigrant labor

has been unchecked, whether legal or illegal. The lesson is that effective border controls are necessary elements of effective immigration admission and control systems, but they are not sufficient by themselves to manage illegal immigration. Economic and labor market imperatives must be factored into immigration and enforcement policies if they are to be effective.

With the aftermath of September 11, attention abruptly and immediately shifted to the visa overstay dimension of illegal immigration. The security vulnerabilities represented by weaknesses in visa-issuance processes, port-of-entry admissions procedures and information management systems are now the focus of immigration policymaking.

As a result, significant changes have been introduced and are likely to continue. They are bolstering controls and lengthening waiting periods for visas and other admissions regimes, especially for visitors and international students. In addition, the numbers of refugees allowed to resettle in the U.S. from abroad have been sharply reduced. New control policies affecting visitors and temporary residents already in the U.S. have been especially harsh in targeting Arab and Muslim-American communities.

At the same time, immigration policy and the laws governing legal, permanent immigration have not changed, nor has the general backlash against immigrants or immigration that many predicted developed. Still, the focus of migration policy in the U.S. today is singularly one-dimensional. Migration as a function of economic linkages and interdependence in the world economy remains beyond the ambit of current policy debates or measures.

Recommendations

Migration policies to address illegal immigration must be comprehensive to be effective.

1. Comprehensive policies should include border and entry controls. However, such controls must be part of broader regimes that also include labor market protection and interior enforcement measures.

2. International policy cooperation should move beyond action to combat trafficking and smuggling, and begin to engage receiving, sending, and transit nations in joint regulation of migration flows.

3. Migration as an outgrowth of globalization must be incorporated into discussions and conceptual understandings of development and trade policies as well as regional and international security arrangements.

Conclusion

Sizeable migration flows are all but inevitable in a steadily more integrated international economy. To fail in the effective management of migration and the policy discourse it generates means to risk losing public confidence in the ability of government and political leaders to address issues that go to the heart of national identity. These issues are of deep concern to most nations. The extremist politics that have sometimes dominated illegal immigration debates can threaten democratic decision-making. Anti-immigrant politics also contribute to deepening discrimination and raising barriers that impede the

process of integrating sizeable, diverse immigrant populations already settled in our nations.

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POLICY BRIEF 14

Asylum & Its Discontents: The Challenges of Refugee Protection in Europe

By Kathleen Newland

Overview

Approximately one-third of the migrants who enter the European Union today do so as asylum seekers – a grand total of 381,623 in 2002, according to the office of the UN High commissioner for Refugees (UNHCR). The number of new asylum applicants in the European Union has actually been declining for the last four years (from about 414,400 in 1999). Individual countries, however, have experienced sharply divergent trends. A number of countries have implemented policy changes that immediately resulted in sharp declines in numbers of asylum applications, showing that this realm is not immune to policy intervention. Yet the institution of asylum is widely perceived in Western Europe to be overwhelmed and in crisis.

The costs of asylum bureaucracies and adjudication systems, along with the public benefits that asylum seekers receive while they are in this process, are very high – an estimated $10,000 per asylum seeker in Europe. With many of the claims portrayed in the press and public discourse as spurious, public resentment of asylum and asylum-seekers runs high – as does the political peril of ignoring the issue. Policy-makers in several European countries are therefore seeking alternatives to the existing asylum system, which assigns responsibility for protecting a refugee to the state in whose territory the refugee physically presents himself or herself for asylum. By breaking the link between asylum seeking and access to legal residence in an advanced industrial economy, they hope to reduce the numbers of asylum seekers in Western Europe while still providing protection to people truly in danger of persecution. The most radical proposals pose fundamental threats to the refugee protection regime, and are unlikely to produce the desired results. More modest, achievable reforms to asylum procedures are capable of achieving the desired goals without such damage. Such reforms should be the focus of European asylum policy.

Discussion

In the vast majority of cases, refugees flee to a neighboring country where they are accepted prima facie, without going through an individual asylum determination procedure. They often endure harsh deprivations in dangerous settings, even as refugees. (For example, it is estimated that as many as one-third of the women in a refugee camp in northern Kenya have been sexually assaulted, and malnutrition is common especially in African refugee camps.) They may continue to live in such conditions for years without being able to return home or integrate in the country of first asylum. But with increasing ease of transportation, as well as the growth of sophisticated smuggling networks, refugees are presenting themselves for asylum in distant countries with advanced economies that offer much more attractive prospects for building a new life.

For the two other major 'streams' of immigration – economic and family reunification – governments set the rules and thereby exert some control over the numbers of people who enter. Unauthorized entries are liable to removal. But in the asylum stream, illegal entry is not grounds for removal. In fact, the 1951 Convention relating to the Status of Refugees, to which all EU Member States are party, explicitly provides that refugees should not be penalized for illegal entry to a country for the purpose of seeking protection. Under the Convention, States are obligated not to return a refugee to a place where he or she would face danger to life or liberty, and European governments acknowledge that in order to avoid doing so they must have a system in place to judge whether a person who claims asylum does in fact have a well-founded fear of being persecuted.

The determination systems in place currently are for the most part inefficient and slow-moving. This reality sets up a powerful incentive to enter the asylum system, which attracts would-be migrants who do not have valid claims to international protection. (The number of 'abusive' asylum applications is, however, almost certainly exaggerated. The largest groups of applicants in recent years have come from countries that are war-torn and repressive, such as Iraq, Afghanistan and Somalia.) A slow-acting system permits people to remain in the country (often for years) while their applications are being processed, to draw public assistance and, in some countries, to work. Moreover, States find it difficult to remove people whose asylum claims are rejected, for a variety of reasons. The resulting frustration is understandable, but the lack of practical steps to reform asylum systems is not.

While the overall trend in asylum applications in the EU is down, there is considerable variation among the Member States. Denmark, the Netherlands and Spain experienced the largest declines from 2001 to 2002 whereas Finland, Luxemburg and Sweden saw the largest increases. The United Kingdom received more applications than any other country in 2002: 110,700 or 24 per cent of all applications. It has overtaken Germany as the largest recipient country in the EU. Not surprisingly, the UK is currently driving asylum reform discussions in the EU. Rather than focusing on reform of its own systems, however (following the pattern of Germany and other states that have introduced quite far-reaching changes in domestic asylum laws and procedures), the UK is promoting radical changes for all EU States.

The UK proposals, which have drawn support from some other States and are to be discussed at the EU level, include processing centers outside of the EU to which asylum seekers could be sent, willingly or unwillingly. Successful asylum seekers would be distributed among Member States for resettlement; resettlement programs would have to expand enormously from their current levels to accommodate accepted cases. The assumption is that rejected cases would return to their countries of origin, although if that was unsafe they might be allowed temporary protection in the EU. It is not clear what would become of rejected asylum seekers who for some other reason could not be returned, or whose country of origin could not be determined. Some Member States may choose not to participate in the proposed scheme, having a well-founded historic aversion to shipping people off to camps against their will.

The costs of operating off-shore centers to a humane standard would be high – quite possibly higher than the existing system. Even a model operation would leave serious questions about the legal and human rights implications of detaining asylum-seekers in closed camps. The build-up of camp

populations in the face of large inflows, processing problems, a slow pace of resettlement off-take, or inability to return rejected cases could quickly make processing centers unsustainable. Like the Red Cross camp at Sangatte, such processing centers would likely attract smugglers to offer their services to the residents.

Recommendations

Elaborate schemes to replace the existing asylum systems are less promising as a solution to the problems of asylum in Europe than conscientious reform of domestic systems coordinated among EU Member States.

1. Governments should invest in fast, fair, transparent adjudication of asylum claims, by creating either nationally or at EU level a specialized asylum corps with access to the training, information and technology needed to make robust determinations in a timely manner. The investment should be large enough to bring the average processing time down to less than six months, with an eventual target of no more than three months. The second priority should be to reduce backlogs. Appeals should be streamlined but not eliminated or reduced to meaningless formalities.

2. Once processing times have been reduced, public benefits to asylum seekers may be reduced to a minimum for the target processing period. If processing time exceeds the target, asylum-seekers should have access to full benefits, including permission to work.

3. Streamlined procedures for 'manifestly founded' as well as manifestly unfounded claims should be put in place to move the easier cases through the system quickly.

4. Governments should promote early employment and economic self-sufficiency for refugees, whether successful asylum-seekers or resettled refugees, so that they are and are seen to be contributing members of the host society.

5. EU Member States should give priority to harmonization of criteria and procedures for asylum on the basis of the common instrument that already exists—the 1951 Refugee Convention.

6. Cooperation with countries of first asylum in the regions of origin and countries of transit should be aimed at maximizing protection and durable solutions rather than reducing the presence of refugees in Europe.

Conclusion

Schemes to deter asylum seekers are likely to be more expensive and less effective than domestic reforms and investments in asylum systems, coordinated among the EU members. Streamlining and harmonizing asylum systems will not reduce the flow of unauthorized immigrants to EU Member States, particularly if extremely restrictive channels for legal immigration continue to frustrate the needs of the labor market and the legitimate aspirations of separated families to reunify. Nor, in the short term, will it save money, since serious investment is needed to make the systems work. In the longer run, however, the social support costs are likely to decline as fewer

non-refugees will be drawing support as asylum-seekers. Sensible reforms backed by the resources needed for implementation will remove the incentives for unauthorized migrants to clog the asylum channel with weak or spurious claims. This will make it easier for governments to process the cases of people who believe that they can demonstrate a well-founded fear of persecution and to offer the successful ones protection consistent with the 1951 Convention.

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POLICY BRIEF 15

Innovation in the Selection of Highly Skilled Immigrants

By Demetrios G. Papademetriou

Overview

As Europe considers how best to leverage migration as a strategic tool for growth and competitiveness, it would do well to adopt immigrant selection systems that integrate the best of the methods now used by the so-called 'Traditional Countries of Immigration' (TCIs): Australia, Canada, New Zealand and the United States. These four countries have, over time, developed immigration systems tailored to meet specific economic, social and --in some instances-- demographic goals.

The TCIs admit three primary streams of permanent immigrants: a humanitarian stream of refugees and asylum-seekers, a family reunification stream of immigrants joining family members already residing in the TCIs and an economic stream of immigrants who are thought to invigorate the domestic economy. In addition, all four TCIs have extensive temporary labor immigration programs, which in some cases can lead to permanent immigration. The permanent and temporary flows of economic migration are used most strategically by the TCIs and will be the focus of this brief. These flows are composed primarily of highly skilled workers who are thought to bring valuable and, in most instances, scarce skills to the job market.

Discussion

An examination of the TCI's immigration regimes shows four basic approaches for selecting better-educated and qualified immigrants. Each TCI uses several of these strategies simultaneously.

Employment-based admissions: In this strategy, each immigrant is nominated by an employer to fill a specific job opening. Generally, the employer must demonstrate to the government's satisfaction that the immigrant is capable of performing the job in question and that the immigrant will be paid the current market wage and offered appropriate working conditions—and thus will not depress the wages and working conditions of other workers in similar jobs. In many cases, the employer must also show that no eligible domestic worker was available for the job and may have to pledge not to use foreign workers to influence labor disputes.

Employment-based selection allows businesses to fill labor needs quickly and helps ensure that incoming immigrants have immediately marketable skills. However, questions have been raised about the balance between efficiency and worker protection. By granting employers a high degree of discretion and power, the system may in some instances fail to protect both immigrant and native workers.

The permanent labor immigration stream in the US is composed almost entirely of high-skill workers nominated by employers. Australia and New Zealand also have employment-based, employer-initiated selection programs, but admit most of their permanent economic stream under a separate 'points

system' that is not conditioned on a specific offer of employment. Canada has no permanent admissions based directly on employment, but does consider job offers among other criteria when rating applicants for permanent residency. The temporary labor immigration programs, both high-skill and low-skill, in all of the TCIs continue to use several variants of the employment-based selection approach.

Labor market testing: In a second strategy, the government identifies labor market segments that are experiencing supply shortages or that it wants to strengthen with talented foreigners and gives preference to immigrants qualified in those occupations. Market-market testing often considers a variety of indicators such as vacancy rates, wage growth, forecasted demand, the unemployment rate, and the time needed to train new workers. The process is neither methodologically robust nor simple. In practice, governments are likely to respond to lobbying by employers and tend to use the simplest of 'tests': when employers cannot find employees at the current market wage, a shortage is deemed to exist and the inflow valve is adjusted accordingly.

The US and New Zealand identify specific supply shortages and streamline visa applications in those occupations. Australia keeps a list of occupations that receive preferential treatment when being assessed in their general economic immigration category. Canada no longer conducts labor market testing for permanent economic immigrants.

Talent accrual approach: This strategy looks at the immigrant's skills outside of the context of a specific job offer or occupation. It recognizes that many highly skilled immigrants will eventually change occupations. Thus, the talent accrual approach aims to admit the 'best and brightest' as defined by such indicators as the number of years of schooling, training or experience, relevant language ability and degrees or certifications when they can be properly assessed.

Canada, Australia, and New Zealand rely most heavily on this method. In each of these countries, a points system is used to select immigrants. In all three systems, education and experience in any skilled field are heavily relied upon as the primary criteria used in rating applicants. The US also makes use of the talent accrual approach. Persons of 'extraordinary ability' can be admitted without a specific job offer, although these are a small proportion of permanent admissions.

'Filtration' systems: A fourth strategy admits immigrants 'temporarily' for work—usually to fill a specific, high-skill vacancy—or as university students and later gives them the chance to become permanent residents. This method selects immigrants at two points: first, when the individual is admitted on a temporary visa, and again, when the temporary immigrant is considered for permanent residence. Thus, it is possible to use one set of selection criteria (drawn from the strategies above) for the first selection and another set for the second. This dual-stage selection allows the government—or employers— to select immigrants based on performance in a domestic job or university. This strategy also reflects a basic reality of temporary work programs: many temporary immigrants want to become long-term residents and will find a way to do so.

The US makes extensive use of the filtration approach on a de facto basis: a large proportion of people admitted for temporary work or study are later

sponsored for permanent residence by an employer. In Australia, Canada, and New Zealand, where temporary high-skill work programs have shorter histories and are smaller in scale, workers who are admitted for temporary work receive an advantage in selection for permanent residence (under a system based largely on talent accrual). New Zealand has an employment-based residence-to-work visa that grants foreign workers temporary residence with the explicit option of achieving permanent residence in two years.

The systems that best integrate the four strategies, and perhaps are most interesting to Europe, may be the "points systems" used by Australia, Canada and New Zealand. Each immigrant is scored according to criteria drawn—if unevenly—from each of the four approaches outlined above: points are typically awarded for education and experience, a job offer, qualifications in occupations in short supply, and temporary work in the host country. Additional points may also be awarded for factors that promote immigrant integration, such as language skills and family or social ties. Finally, age is also considered, helping ensure that immigrants make a sustained economic contribution and contribute to demographic objectives. The passing score that applicants must meet to be granted residence is adjusted periodically to achieve desired immigration targets. In addition to being a relatively elegant way to integrate a variety of selection criteria, points systems have the advantage of being flexible, relatively transparent, and based on quantitative measures that are perceived as objective.

Recommendations

Each of the four strategies outlined here has specific advantages. A strong selection process will use them in a coordinated fashion to maximize the strengths and minimize the weaknesses of each.

1. Employment-based admissions and labor market testing should be used to make the selection of immigrants sensitive to immediate economic needs and to sustain support for immigration in the business community.

2. Temporary work programs and student visas should set conditions under which those who qualify can gain permanent status. This makes temporary labor immigration programs easier to manage and provides better information on potential permanent immigrants, allowing greater selectivity.

3. A well-designed talent accrual strategy should be incorporated to bring in the 'best, brightest, and most suitable' immigrants with the skills that will benefit the economy most in the long run and help newcomers integrate more easily into their new homelands.

4. Multiple strategies should be used and integrated creatively. The points system provides one model for beginning to think about a comprehensive approach, but it should not be the only one. For example, a points system that seeks to accrue talent could be combined with an employment-based temporary labor program leading to permanent immigration. Such a program would produce two distinct streams of needed immigrants.

Conclusion

A well-reasoned, regularly reviewed and adjusted selection strategy for highly skilled immigrants guarantees that immigration contributes directly and visibly to the economic life of the receiving country. By drawing on all four of the selection strategies, it is possible to admit immigrants who will contribute to economic growth in both the short and long term. Without a coherent selection process, European countries will fail to maximize the economic benefits high-skill and occupationally targeted immigration can bring and forego important opportunities to gain greater public support for immigration in general.

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POLICY BRIEF 16

Responding to Illegal Immigration: The Need for a Comprehensive Policy Package

By Demetrios G. Papademetriou

Overview

Large-scale illegal immigration challenges a society's social and economic systems of governance and undermines its legal and even constitutional order. Left unattended, illegal immigration aggravates a society's centrifugal forces, fuels xenophobia, stokes popular anxiety, and often leads to extreme law-and-order responses. Yet there are virtually no examples in which law-and-order responses, <u>alone</u>, have been successful in conquering illegal immigration.

Illegal immigration has real costs. Many of the arguments about its adverse economic effects, however, are contrived. Such arguments often incorporate incomplete or disingenuous analyses and uneven—but typically high—levels of political hypocrisy. More importantly, such arguments fail to expose and speak clearly about the complicity of two of illegal immigration's most important domestic allies: unsound (or failed) social and economic policies and inflexible and unsustainably restrictive <u>legal</u> immigration policies.

Hence the need for a comprehensive policy package to address illegal immigration. The package must target four broad policy fields more or less simultaneously—a challenge that demands unusual amounts of policy coherence and administrative coordination within and across the affected states.

o   First, it must pursue domestic social, economic, and labor market reforms that reduce structural unemployment and encourage employers to create more jobs. Done properly, such reforms can lead to equally important collateral benefits—effectively creating a series of virtuous policy circles that further advance other societal goals. Among these are more affordable domestic products and services and greater international competitiveness.

o   Second, it must create wider channels for legal immigration. By working <u>with</u> the market to address mismatches between education and employment, a flexible and easy-to-adjust system of legal, safe and orderly immigration undercuts the attractiveness of employing illegal immigrants for law-abiding employers who are trying to remain in business in a world of disappearing trade barriers.

o   Third, it must constantly re-evaluate the effectiveness of domestic (interior) controls and, when appropriate, adjust them. Enforcement efforts should give priority to criminal involvement in the organized movement of people and to the illegal employment—<u>and exploitation</u>—of unauthorized migrants.

o   Finally, a comprehensive policy must look for new approaches to international cooperation in combating illegal immigration. Cooperative international policing and intelligence-sharing must be part of this overall

effort—a sub-field that is still in its infancy and in which substantial capacity-building is needed.

Discussion

EU Member States are seeing an unprecedented rise in unauthorized immigration, as are most advanced industrial democracies around the world. The phenomenon has created serious social and political strains on host societies. Its potential as a channel for terrorists has obvious implications for domestic and regional security as well.

The EU Member States have most often relied on four sets of responses in their effort to curtail clandestine immigration. They are (a) tightening border controls, (b) increasing sanctions against migrant smugglers, traffickers, and, increasingly, against employers who hire unauthorized foreigners, (c) negotiating agreements with the home countries of unauthorized immigrants to take back their deported nationals, and (d) implementing periodic regularization programs for unauthorized immigrants. Whether evaluated individually or in concert, these responses have proven singularly unsuccessful to date.

Nor are the control burdens distributed equally across the EU. Countries with large coastlines (e.g. Italy, Greece, Spain, and Portugal) are often criticized for being easy entry points into the EU. Yet, these states' efforts to share with other Member States some of the costs and responsibility for protecting the Union's southern and southeastern flanks has been met so far with little enthusiasm by other EU members.

Recommendations

The four recommendations that follow are the basic elements of a multifaceted approach to a more thoughtful EU migration management policy. The first two elements are tactical in nature and fall most naturally in the "due diligence" class of state actions. Necessary as they are both in a law-and-order framework and in political symbolism terms, they should not be expected to produce policy outcomes that are substantially different than what has been the case so far—while their costs in terms of human rights and personal freedoms will be quite substantial. It is the last two, and more strategic, recommendations instead that hold most of the promise for real gains in the struggle against <u>organized</u> illegal immigration—and the ones recommended most strongly.

A successful strategy will of course need to draw on all layers of interventions—if in different combinations—and will implement them in a coordinated fashion.

1. Continue efforts to prevent unauthorized entry through smarter border and entry controls. This element must include extending and tightening visa requirements, establishing increasingly substantial carrier sanctions for the transportation of improperly documented passengers, and making even greater investments in physical, electronic, and human controls at the borders. It must also incorporate more aggressive initiatives such as insisting that states identified as weak links in the effort against organized unauthorized migration accept 'targeted technical assistance' (which may

include the stationing of EU member-state immigration officers at their main ports of exit) and pursuing agreements with source countries to take back their illegally resident nationals.

2. Develop and implement smarter interior controls that focus on organized rings, immigrants that commit crimes, and "bad" employers. No state has been effective in their interior control efforts against illegal immigration. Improving the payoff from this response entails three elements. The first, interior enforcement, requires intense cooperation and coordination among a variety of police and police-like branches in agencies with enforcement mandates (such as labor, tax revenue and social welfare ministries). The formation of multi-agency task forces focusing particularly on organized criminal activity that relates to illegal immigration must receive increasing attention, as is giving enforcement agencies such additional legal powers as asset-seizure authority so that they can confiscate the property and other resources of those that engage in trafficking. The second element focuses on holding employers liable for habitually employing those who are not authorized to work <u>and</u> for exploiting them. The likelihood that such hires are often used to skirt employer responsibility toward their required social contributions, and may also violate other fundamental social, human, and labor rights, provides additional enforcement incentives while placing non-complying employers under multiple moral and legal hazards that may be more difficult for them to ignore. The third element targets unauthorized workers themselves with a system of penalties that combine forms of "asset forfeiture" (in the form of substantial fines) with incarceration for repeat offenders. (Only Japan currently uses this extreme enforcement tool.)

3. Strengthen and tap into the resources of the intelligence community far more systematically. This response relies on intelligence resources to disrupt and dismantle organized criminal trafficking networks. Among its tools are classic police tactics, such as the use of informants and the penetration of criminal networks by undercover officers, and greater international cooperation among intelligence agencies. Understanding better how the various networks are organized and relate to each other, their infrastructure and resource bases, their routes and support systems, and their "clients" at destination must become priorities. The policy objective must be to shut down entire rings, rather than to arrest a few operatives and a group of unauthorized immigrants. To be successful, this effort must overcome two challenges. The first is the use of constantly shifting organizational paradigms among such syndicates that protect the organization from being penetrated and dissolved by the authorities. The second is much more consequential. Illegal immigration controls have created lucrative black markets for all types of products and services that can corrupt officials. This avenue requires patience and a sustained commitment of adequate resources. Furthermore, it cannot be pursued effectively by intelligence-heavy law enforcement in a single country alone; it requires the cooperation of other targeted countries, as well as of sending and transit countries.

4. Invest much greater amounts of diplomatic capital in strategies to contain organized forms of clandestine migration. The thrust of this response is to engage key sending and transit states in truly bilateral negotiations, offering items of high interest to them in exchange for their "organic"

cooperation in a common front against organized forms of illegal migration. Among the items receiving countries must put on the negotiating table are conditional offers of more open trading relationships that benefit the sending/transit state, substantial physical and social infrastructure assistance, <u>and much greater access to Europe's labor markets</u>. This is not to suggest that current humanitarian, development, and trade relationships should be tied to one's cooperation on combating organized illegal immigration—a "judgment" that will be always difficult to make. Rather, it is to suggest that cooperation in combating such immigration be viewed as a reason for EU and its Member States to <u>expand</u> their commitments in these areas. This foreign-policy/diplomacy-heavy response should also pursue the more robust implementation of the UN Convention against trafficking and the development of regional mechanisms for addressing asylum.

Conclusion

The proposed policy package must be pursued with uncharacteristic imagination and rigor while each of its elements must be internally consistent both with the others <u>and</u> with the implementing state's value orientation. If accompanied by thoughtful reforms in the receivers' systems of labor and social protections, and thoughtful and substantial openings in legal immigration, the package holds great promise for the more effective management of clandestine migration. It must be also pursued cooperatively within and across states. Illegal immigration has drawn oxygen from inadequate attention and resources, bad policies, and official hypocrisy. If innovative forms of action are not pursued, one might legitimately question whether the EU and its Member States consider illegal immigration as much of a challenge to their first principles of governance as they claim.

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POLICY BRIEF 17

Immigration Without Integration: A Recipe for Disaster
By Rinus Penninx

Overview: The need to rethink integration

European states try to handle international migration, rooted in global developments, in a framework based on the nation-state. In such a framework, migration across political borders is an anomaly. As a consequence, migration policies have been primarily defensive, and integration policies for immigrants reactive if not absent. These two tendencies reinforce each other. The lack of a consistent and transparent immigration policy is an impediment to effective integration policies. The lack of consistent integration policies and the (real or perceived) obstacles to the integration of increasingly diverse streams of newcomers lead in turn to predominantly negative perceptions of migration and immigrants —and hence reinforce defensive immigration policies.

The newcomer is often perceived as the classic 'other', who does not belong. Such constructions of the 'other' may be based on legal status (aliens), physical appearance (`race'), cultural and religious differences, class characteristics or on any combination of these elements. Such constructions may be used politically, for example by the anti-immigrant movement, and express themselves in discriminatory practices, deteriorating interethnic relations and weakening social cohesion in communities, cities and states.

The facts of current immigration into Europe, particularly visible in Europe's larger cities, require long term, consistent integration policies in receiving communities if these communities are to remain viable and livable for all residents. The absence of such policies would be disastrous. Integration policies should go hand in hand with (and at the same time will enhance) pro-active immigration policies.

Discussion: The logic of integration processes and exclusion

Integration is the process of becoming an accepted part of society. There are two parties involved in integration processes: the immigrants, with their particular characteristics, efforts and adaptation; and the receiving society with its reactions to the newcomers. The interaction between the two determines the direction and the ultimate outcome of the integration process. They are, however, unequal partners. The receiving society —its institutional structure and the way it reacts to newcomers —is much more decisive for the outcome of the process.

The process of integration does not – as often supposed - only take place at the level of the individual immigrant, whose integration is measured in terms of his/her housing, job, education, and social and cultural adaptation to the new society. It also takes place at the collective level of the immigrant group. Immigrant organizations mobilize resources and express the ambitions of the group. They may become an accepted part of civil society and a potential partner in integration policies —or they may isolate themselves or be excluded. Finally, the level of institutions involves two types. The first are general public institutions of receiving societies, such as the educational

system or institutional arrangements in the labor market. Laws, regulations and executive organisations as well as unwritten rules and practices are part of such institutions. These, however, may hinder access or equal outcome for newcomers, or even completely exclude them. The functioning of these general public institutions, and the possible adjustment of them in view of growing diversity, is supremely important: on this level, integration and exclusion are mirror images. The second type of institution is specific to immigrant groups themselves, such as their religious or cultural institutions. Like immigrant organizations, they may become an accepted part of society on the same level as comparable institutions of native groups, or they may isolate themselves or remain unrecognized and excluded.

Uniform outcomes cannot be expected from this complex and interactive process of integration. Studies that compare the integration of immigrant groups in the same institutional and policy context show that different immigrant groups follow different patterns of integration. On the other hand, the experience of similar immigrants in different national contexts leads to very diverse patterns of integration.

Integration policies are, by necessity, context-bound. Integration mechanisms in societies with a strong, liberal, market orientation differ from those in caring welfare states. Also, the historical peculiarities of institutional arrangements may determine the feasibility of policies in certain domains. The introduction of institutional facilities for immigrant religions or languages, for example, may be relatively easy in countries with a tradition of diversity, while these same facilities meet much more resistance in more homogeneous societies. Such differences also exist at lower levels, for example between cities and municipalities within one national context.

Recommendations

A pro-active, consistent and transparent immigration policy is a prerequisite for a comprehensive integration policy. Transparency is a key element of admissions policies. Immigrants with a legitimate expectation of long-term residence should have access to a secure legal status, tools to function adequately in society, and public facilities and services. Long periods of uncertainty about future residence, and dependency in the case of asylum seekers, should be avoided, for their negative implications both for the migrants concerned, and for the image and legitimacy of admission policies.

Integration policies should define clear priorities for action in certain policy domains. For long-term immigrants, priority should be given to domains in which authorities do have effective and generally accepted instruments to promote integration and prevent exclusion: the economic domain of work and the social domain, particularly of education and housing. Policies in the political and cultural domain (including religion) are indispensable over the long term to integrate immigrants.

Active interaction between immigrants and local society should have the highest priority. National policies, and by implication also European integration policies, should set general frameworks, rules and instruments, primarily facilitating local actors.

Integration policies should follow strategies and tactics that engage partners in the integration process at different levels. It should combine `top down'

activation with `bottom up' mobilization. It should define the process of integration as `open' within the rules of liberal democratic societies, leaving room for an outcome of a more diverse but cohesive society. The diversity reached in this way is neither predetermined nor static, but negotiated, shared and ever changing.

Local, national and EU-governmental agencies are important actors, but they are not the only ones. Numerous non-governmental actors influence the integration process of immigrants, for better or for worse: for example, institutional actors such as churches, trade unions, employers' organizations, political parties, and the media, just to name a few. Governmental policies that aim at steering processes of settlement and integration should involve not only immigrants themselves, but important players in the civil society as well.

Conclusion: Why, when and how do integration policies matter?

In view of an expected need for and growth of immigrants in Europe in the future, comprehensive integration policies are needed. They should be consistent and coordinated with immigration policies, and able to steer processes of immigrant settlement by mobilizing resources for integration and influencing the behavior of both the immigrants and the receiving society. Such explicit policies do matter, because they offer a frame for thinking about the common goal of guaranteeing viable and livable communities, as well as guidelines and instruments for all parties willing to contribute to this goal.

Processes of integration are long term by their nature. At the group level this means that the litmus test for integration, and for the success or failure of policies in this field, is the position of the second generation. Perversely, political processes in democratic societies demand that policies bear fruit within much shorter, electoral time frames. Unrealistic promises and demands derived from such 'democratic impatience' often lead to backlash.

The settlement process itself acts as a force towards convergence of policies, particularly as it presents itself at the local level. Whatever the institutional arrangements, local authorities have to find answers to the same questions, such as how to provide immigrants with adequate housing and jobs, and how to react to their demands to fulfill religious obligations or facilities to use and teach their mother tongues. They also have to deal with very similar reactions of the native population to immigrants, particularly when it leads toward discrimination and social exclusion.

At the level of municipalities and cities, tensions between national and local governments become visible and the need for coordination between immigration and integration policies becomes urgent. The admission of newcomers is 'steered' by national and European policies, while the consequences of settlement are felt particularly by cities. Intensive and pro-active integration policies are needed at this local level, where the concept of the citizen should regain its original meaning: an active and accepted participant in the daily life of the city who both profits from and contributes to the health of the city

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POLICY BRIEF 18

The Policy Challenges of Intervention in Local & Private Integration Processes

By Brian Ray

Overview

The integration trajectories that immigrants and refugees embark upon when they settle in a new society are far from smooth and linear. Integration is a long-term and variable process; effective public policy must take account of the specific socio-economic, cultural and organizational features of the cities where immigrants settle. The opportunities for and constraints on successful inclusion vary significantly from place to place. Integration also is bound to the nature and quality of long-term encounters between newcomers and private institutions, organizations and individuals.

Over time, migration flows have become more socially and culturally diverse, and migrants have steadily opted to live in a few urban places. The 'where' of integration is not only cities or their suburbs but includes the organizations and institutions that either assume or support the long-term work of newcomer integration. Public agencies and non-governmental organizations (NGOs) shoulder important responsibilities in assisting immigrants and refugees to take their first steps toward permanent settlement. However, families and friends, employers and unions, and schools and neighborhoods support and foster, if largely in an unsupported and unheralded manner, much of the work of long-term integration. Public support of private activities that encourage inclusion and mobility may be one avenue toward achieving smoother paths to integration.

Discussion

To support the processes by which immigrants and their children build lives in a new society requires approaching integration as something more than the simple 'melting pot' of one-way assimilation. Integration is a sustained mutual interaction between newcomers and the societies that receive them —an interaction that may last for generations. Dealing directly with the complexities inherent in these interactions has tremendous importance for social and economic inclusion as a public policy goal. It also fosters the effective use of immigrants' human and social capital for their own benefit and that of the receiving society.

Cities in Europe, North America and the Asia-Pacific region that receive migrants have become kaleidoscopes of cultures, identities, and histories. These cities are the bedrock of integration. National governments may set the parameters of immigration by determining the number and the characteristics of legal migrants, but it is in cities —and usually a small number of major cities —that the integration work of individuals, social groups and institutions is undertaken. Cities' complex, dynamic and diverse social and economic environments make integration policy and program development especially challenging.

Integration policy would be much simpler if all cities were the same, but they are not. Some have substantial histories of settling newcomers and have developed institutions, networks and programs that encourage and facilitate integration. In other cities, migrants and their integration pose a new economic and socio-cultural challenge. Some cities have dynamic economies that seem effortlessly to incorporate newcomers, while others suffer high rates of underemployment and social conflict rooted in the frustrations of limited opportunities and/or racial discrimination. In all cities, and especially in large "gateway" cities, immigrants tend to concentrate in some inner-city neighborhoods and, increasingly, in low-income and middle-class suburban districts. This "uneven geography" of settlement challenges national governments to develop effective relationships with other levels of government as well as private institutions and to ground policies in local conditions.

A great deal of integration work happens in contexts that are infrequently addressed by standard policy approaches. National governments have traditionally provided integration services in the initial phases of settlement, or supported local governments and NGOs to provide them. Guidebooks to living in the receiving society, simultaneous translation services, housing assistance and access to income support programs are examples of traditional public-sector interventions. Studies have consistently demonstrated, however, that newcomers' use of integration services provided by governments and NGOs declines sharply after their first year of settlement, and that the number of people who repeatedly make use of these services, even in the first year, is relatively small. Newcomers are far from fully integrated after the first 6 months or year after arrival; instead, a lack of resources, opportunities, and discrimination often block them and their children from social mobility and civic participation.

These observations suggest a need for new approaches. Relatively few policies and programs directly support integration activities that occur in workplaces, families, ethnic communities, religious institutions, schools and local neighborhoods. While public agencies and NGOs provide useful services, the long-term and quotidian qualities of integration means that much of the hard work of integration is borne by private institutions, organizations and individuals.

Recommendations

What kinds of policies and programs would make a difference in fostering integration if we accept the family, workplace and community/neighborhood as principal 'places' where integration occurs? How can social inclusion be encouraged in these essentially private domains? How can policies and programs strategically use the "uneven" qualities of immigrant settlement?

1. Uneven need and social policy: The Supporting Communities Partnership Initiative (SCPI) of the Canadian government's National Secretariat on Homelessness (NSH) suggests one model of response to a geography of uneven demand. To use existing human, institutional and financial resources, the NSH has entered into agreements with 61 communities across Canada to address homelessness at a local scale. In each site, a different balance of participation and responsibility has been struck among federal, provincial and local governments, community-based social welfare
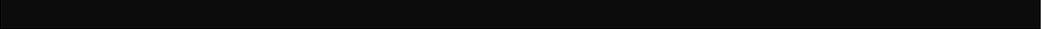
agencies, and advocacy organizations. Engaging the resources of several governments, their agencies and community partners is a intensive-intensive way to build social policy, but it is effectively tied to local conditions and needs.

2. Integration and the Workplace: Employment is one reason for lower participation in integration. The desire to work and the need for income usually trump second-language training or skills upgrading programs, information about social programs and services, or civics instruction classes that interfere with employment. Opportunities for integration in the workplace include learning about labor standards and laws, interacting with unions, and developing relationships with co-workers. Governments should recognize and foster integration activities already in motion, for example by underwriting the costs of on-site language training programs or skills upgrading. The benefits of such programs extend beyond the workplace and may even encourage employees, armed with new expertise, to seek opportunities elsewhere. Costs that discourage employers from giving resources, time and space to immigrants may nonetheless offer a potential long-term benefit to society as a whole, and are worthy avenues for the pursuit of public-private programs and cost sharing.

3. The school-family nexus: Funding is certainly needed for excellence in bilingual and second-language instruction as well as cross-cultural communication and learning. In addition, educators have identified a need for financial and human resources to undertake outreach to immigrant parents and encourage their participation in their children's education. Children's success depends heavily on the direct involvement of families in the education process.

4. Integration on a local scale: Governments should incorporate adequate, affordable housing and opportunity-rich neighborhoods as key elements of immigrant integration policy. During a 24-hour day, children and adults spend far more time in and around their homes than in schools or workplaces. The kinds of housing and neighborhood environments in which children live strongly influence education and mobility outcomes. Housing arguably plays a more fundamental role in social life than occupation or education, in that it is required across the age continuum from childhood to old age, affects individuals who work both in and outside of the formal economy, influences access to a wide range of services, and affects the generational transmission of wealth.

Conclusion

Governments can make meaningful interventions in only a few key dimensions of the long-term process of integration. Policy initiatives could be effective if they build local conditions into programs from the outset, and if they are undertaken in partnership with private actors and institutions. Integration policy does not have to work in the same way everywhere. A successfully managed immigration system depends on smooth integration trajectories. A sophisticated immigrant selection program will ultimately be of little value if the places where immigrants settle are ill equipped to support the social inclusion of newcomers.

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POLICY BRIEF 19

The Challenges of Integration for the European Union
By Sarah Spencer

Overview

Migration is a growing and permanent part of Europe's future. Two factors have led to pressure for a more effective EU strategy to promote the economic, social, cultural and political integration of migrants and the next generation: recognition of the failure to integrate past migrants effectively, and concern about the rise in support for the far right. A Communication on integration from the European Commission is imminent. Differing views among European countries on both the goals of integration and the most appropriate strategies to achieve it need not inhibit the EU using the unique levers at its disposal to make an effective contribution to the development of integration policy, complementing the primary responsibility of Member States.

Discussion

Some 13-14 million third-country nationals live in the EU. This represents less than 4 per cent of the population. A number of patterns, however, make the issue more significant than this statistic would suggest. Immigrants remain concentrated in particular regions and cities, and may remain excluded even after they and the second generation have become nationals. Indeed, EU nationals themselves can face barriers to integration outside their own countries but within the Union (for example Portuguese immigrants in Ireland).

Net migration into Europe is increasing, and is now the largest component of population change. Migrants, moreover, come from a far wider range of countries, and bring a greater diversity of languages and cultures, than in the past. Some European states have only recently become countries of immigration, with no experience of integration strategies.

Migrants bring significant economic and cultural benefits. Some newcomers are very successful in the labor market and enjoy positive relations with other residents. But there is substantial evidence of disadvantage on all the key indexes of integration: legal rights, education, employment, criminal justice, health, living conditions and civic participation. Moreover, migrants and the second generation can be well integrated on one index (such as inter-marriage, for example) but not on others (such as high unemployment).

One of the factors leading to an increased focus on integration at the EU level is the belated recognition that migration will be a permanent part of Europe's future. The workers who come to fill skills and labor shortages, refugees, family members who come to join immigrant relatives and overseas students will require a level of incorporation, whether they stay temporarily or permanently. In addition, Member States cannot afford to neglect the talents of migrants already in the workforce. If states are to compete for the 'brightest and best', potential migrants must be confident that they will not face discrimination and exclusion.

Ten new countries will join the EU in 2004, leading to greater mobility (including of Roma communities). A desire to ensure that their arrival does not provoke tensions, and that the new EU citizens experience equality of opportunity with other EU nationals, also needs to be expressed in policy initiatives.

Public resentment of migrants and fear of difference leads to discrimination, community tensions, and occasional violence, and has contributed to the rise in support for far-right political parties, who successfully exploit people's fears and resentments. Public anxiety about Muslim minorities (in particular since September 11), subsequent international conflicts, and the vocal hostility that Muslims in Europe have experienced all point to the need for a comprehensive integration strategy –which has not been addressed effectively at the national level. European policy makers share the concern that a minority of disillusioned, alienated migrants may seek an alternative sense of identity and purpose by joining fundamentalist groups, segregating themselves further from mainstream society, or engage in anti-social criminal behavior.

The EU has long recognized that integration is a necessary part of a comprehensive immigration and refugee strategy. The European Council in Tampere (1999) found a new willingness to cooperate in developing that comprehensive strategy, addressing integration under the heading of 'fair treatment of third country nationals'.

Primary responsibility for integration lies at the national and local levels. But EU goals in relation to immigration, economic growth and social cohesion all require a focus on integration. The Union has competence to address a range of issues vital to integration, including post-entry rules on immigrants and refugees (for example in the Directive on family reunification); EU law on discrimination; targeted programs for migrants like Equal; and through (currently marginal) attention to integration in mainstream strategies on employment and health.

Since the Amsterdam treaty (1999), the EU has a mandate to require anti-discrimination legislation. Directives now require member states to legislate against discrimination on grounds of race (in employment, goods and services); to establish a statutory body to provide assistance to individual victims; and to ban religious discrimination in employment by December 2003. The JHA Council in October 2002 asked the Commission to come forward with proposals for a more comprehensive integration strategy. A Communication from the Commission on Immigration, Integration and Employment is imminent.

Recommendations

An EU strategy should go beyond the provision of common minimum legal standards and information sharing to the use of its unique levers to promote integration. The following steps would promote that progression:

1. Establish a mechanism for dialogue and coordination between Member States and across the Commission to enable ideas for an EU integration strategy to develop and converge; a forum for essential debates such as the need for common, European values (around the Charter of Fundamental Rights) and the content of EU wide induction programs for migrants which ensure that they are given information on their rights and

responsibilities, on public expectations on social behavior, and on how to access services and employment.

2. Review existing and proposed EU immigration and asylum measures to ensure that they provide migrants with a secure legal status, with rights and responsibilities that reflect their temporary or permanent status, and with the maximum possible access to the rights that promote integration —including employment and family reunification.

3. Take active responsibility for leading a balanced, informed, public debate about the reasons migrants are in Europe, by putting into the public domain information about the contribution they make and barriers they experience; acknowledging public fears, and redressing misinformation. Promote contact between people from different religious and cultural backgrounds; building a consensus that racial prejudice is socially unacceptable.

4. Take steps to promote a common understanding across member states of the barriers to integration and of effective steps to address them – within and beyond the labor market - through data collection, research, monitoring initiatives and dissemination. Engage member states, the social partners, NGOs and migrant organizations, learning from them, sharing ideas on good practice (such as the innovative new legislation to promote equality in Britain and Northern Ireland), and enabling migrants to participate in decision-making.

5. Conduct a review to identify which Community policies, programs, budgets and policy levers are most relevant to integration including strategies on employment, social inclusion and health (to embed within them provisions addressing the particular barriers migrants face). Use its substantial leverage over public procurement rules; and targeted measures to address specific barriers. This strategy will require integrated policy making across the Commission; and for the Commission to lead by example, reviewing its own staffing procedures to increase the number of ethnic minority staff at all levels – to ensure both equal opportunities and that policy making benefits from their experience. Reconsider the bar on employment of third country nationals.

6. Monitoring and enforcement by the Commission could help to ensure implementation of the Discrimination Directives by Member States, including the requirement that Member States establish national bodies to promote and enforce the Race Directive. Review the need to extend the Directive on religious discrimination to promote equal treatment beyond employment.

Conclusion: Obstacles to agreement on EU strategy

There are three obstacles to securing agreement on a substantive, EU-wide integration strategy. The first is fear of public resistance to migrants, and to EU involvement in their conditions of stay. Second, the key levers for integration (such as employment policy, family reunion) come within the remit of different Directorates-General at the European Commission, different committees in the European Parliament, and different Ministries at national level —with the usual barriers thus created to developing a coordinated strategy. Third, views differ across Europe on the goal of integration and

appropriate strategies to achieve it. In practice, however, no member state pursues any of these positions to its extreme. Their own models are not immutable, but are evolving towards greater convergence.

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POLICY BRIEF 20

New Ideas for Addressing Asylum Problems in Europe: From the Current EU Track to the UK's New Vision

By Gerry Van Kessler

Overview

In the last twenty years more than 6 million applications for refugee status under the international Convention relating to the Status of Refugees have been submitted in EU States. For the EU as a whole, the number of asylum seekers peaked in 1992 (the largest number went to Germany as a result of the civil wars in Yugoslavia), but for many EU States recent years have seen record or near-record annual intakes. The number of persons receiving Convention refugee status and other forms of protection is significant, but the number refused such status is higher. Because most failed asylum seekers are not returned to their home countries, claiming asylum is an attractive option for irregular migrants. This is the major reason that there is a nexus between migration and asylum.

The response of governments has been to maintain both the obligation to protect refugees and the sovereign right to manage migration. The high numbers of asylum seekers, the significant costs involved in supporting them and adjudicating their claims, the increasing criminal involvement in transporting migrants, the problem of returning failed asylum seekers, the challenges of integration and the erosion of public confidence in the asylum system —all have led to a re-examination of policies and approaches, including the harmonization of EU migration and asylum policies. UNHCR examined the nexus between migration and asylum during its 2001-02 Global Consultations on international protection. Now it is doing again so through the 'Convention Plus' project. Recently it made public a three-pronged strategy. The first concerns finding refugee solutions in regions of origin, including comprehensive plans for regional solutions and the return of specific caseloads to the region. This would respond to the secondary movements of refugees and asylum seekers to Europe. The second concerns new joint initiatives in Europe for common EU processing and reception centers for caseloads from countries that do not normally produce refugees. The third prong concerns improvements in the national asylum systems of individual States. The United Kingdom has proposed dealing with refugee claims outside the country of intended destination, both in the regions of origin and in transit processing centers. The European Commission is examining the issue in preparation for the European Council meeting in Thessalonica in June 2003.

There is a marked contrast between the asylum systems of EU States with their high financial costs and the resource problems affecting refugee protection and care in many countries of first asylum in the regions where refugees originate. The opportunity now exists for a fundamental change in how States provide protection, not only in Europe but also in countries where most of the world's refugees are.

It is recommended that States, UNHCR and other interested parties enhance protection in the region of origin as the most effective way to respond to the asylum-migration nexus and overcome the inequities inherent in today's two-tier system.

Discussion

The major challenge facing the asylum systems of EU States is to achieve fair and efficient asylum processes while countering abuse of asylum by irregular migrants. Despite some successes, overall the situation remains difficult for States. Measures such as visas, carrier fines and interceptions have made access to EU States more difficult and increased the tendency of asylum seekers to resort to professional smugglers. More resources for asylum systems, policy changes to deal with manifestly unfounded claims and procedural simplifications have improved the management of asylum systems in many countries. One result of measures taken individually by States, however, has been 'burden shifting'—the diversion of asylum flows to neighboring countries that have not introduced similar measures. This adds to the fluctuations in intake that make asylum management difficult, and is one of the reasons the EU is striving to achieve a common asylum and migration system. Despite the measures taken, many States have seen applications rise in recent years. Increasing numbers of the applicants are from outside Europe. The probability of being able to remain in the destination country, even if the asylum decision is negative, remains the main incentive for irregular migrants to use the asylum system. As long as asylum is an attractive means to enter and remain in European countries, breaking the nexus will remain difficult.

The costs involved are very high. It is estimated that countries with mature asylum systems spend at least $10 billion annually on the asylum system. The United Kingdom's expenditures alone are three times the annual UNHCR budget. Yet, the number of asylum seekers in EU States is small compared to the number of refugees for which the UNHCR is responsible. The result is a two-tiered protection system.

The idea that it would be better to protect refugees in the region of origin rather than through asylum in western States is longstanding. At different times since the late 1980s, Denmark, the Netherlands and the United Kingdom have raised the matter. As noted, the issue of mixed flows was examined during UNHCR's Global Consultations and forms part of Convention Plus. Recently, UNHCR put forward specific ideas for enhancing protection in the region and for dealing with manifestly unfounded claims. The United Kingdom has proposed dealing with protection claims outside the United Kingdom. These ideas share common elements. Both are based on a better sorting of irregular migrants and refugees. Both seek to ensure effective protection outside the country of intended destination, principally in the region of the country of persecution. Both acknowledge the need to enhance the protection of refugees close to home rather than depend on the ability to get to a western country. Both assume that irregular migrants are unlikely to apply for asylum if the result is a denial of access and stay in the country of intended destination and thus that protection in other regions will discourage abuse of the asylum system.

The proposals to deal with asylum claims elsewhere than in the country of intended destination, preferably in the region of origin, raise numerous complex issues.

1. Legal: States will have to consider the legal issues, including their own constitutional provisions, in turning back asylum seekers, denying them

access to their territory and, for those already in the country, returning them to the region of origin. This involves the Refugee Convention's obligation to refrain from forcibly returning refugees to a place of danger, the application of Section 3 of the European Convention on Human Rights (which prohibits cruel, inhumane or degrading treatment) and the provision of effective protection in the country to which the person might be returned. Returns, including readmission arrangements, will involve legal arrangements among countries of return, transit countries, hosting governments and proposed processing centers.

2. Effective protection: The acceptance of returns depends on more than refraining from forcible return and includes the physical security and wellbeing of refugees. The determination of the threshold for wellbeing is critical. In many countries it has to be above what is currently available, though it need not be at the levels of the EU.

3. Durable Solutions: A common quandary in recent years has been the secondary movement of refugees who are seeking, in effect, their own durable solution. Refugees in countries of first asylum and asylum seekers returned to these countries will continue to behave in this manner if no durable solutions are provided for them. A question for States is the emphasis they place on durable solutions, including resettlement. If there are no timely durable solutions then moving refugees and asylum seekers away from Europe will give substance to accusations of warehousing and burden shifting.

4. Costs: Not all countries in the region can afford the costs of all elements of effective protection. In exchange for countries in the regions of origin agreeing to accept asylum seekers, Western governments should agree to share in the costs of effective protection and to contribute to durable solutions.

5. Partnerships: Reaching agreements involving different States and international organizations with different perspectives and responsibilities will be particularly challenging. Within governments the issues will have to be dealt with not by individual ministries only but by the government as a whole.

Recommendations

The challenge is to provide better protection to refugees on the basis of need rather than on the basis of which country they were helped to reach by smugglers. This will also make it easer to counter abuse by irregular migrants as asylum is not attractive to them if it does not ensure access and stay.

1. Effective refugee protection should be provided and sought in the region of origin and greater emphasis placed on durable solutions, including resettlement.

2. Asylum seekers should be expected to avail themselves of effective protection where it is offered at an alternative site outside the country of their intended destination.

3. EU States should assume a greater share of the costs of effective protection in the   region and assist in durable solutions. Sources of funds for this effort could be savings from reduced numbers of asylum

seekers along with development aid. States in the region should agree to readmission agreements for the return of asylum seekers and refugees who already had found protection in the region.

4. Development of the concept and of its application should involve States (destination, transit and hosting), international organizations (UNHCR, IOM), NGOs and experts.

5. Given the complexity of the issue, pilot projects should first be undertaken to test new arrangements.

Conclusion

Public and political reactions to the current approach to asylum indicate the fragility of the existing asylum system. Public support for refugees, as seen in Kosovo, is strong when the issues are clear. It is the failure to respond effectively to non-genuine asylum seekers that keeps the issue unclear in the public mind. Through making refugee protection in the region a reality, the abuse of asylum by those not needing refugee protection will diminish and support for refugees will grow.

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POLICY BRIEF 21

Refugee Resettlement in the European Union

By Joanne van Selm

Overview

With both the asylum issue and migrant smuggling high on the agenda of the European Union, discussion has emerged about other appropriate ways to permit some refugees to arrive in EU Member States. Refugee resettlement has started to be considered more widely both in individual governments and in the European Commission. Four EU Member States are traditional countries of resettlement and two more are on UNHCR's list of 'emerging resettlement countries'. As such, resettlement is not a new issue in European states. It is, however, newly prominent in policy discussions and is being considered by some as at least part of the answer to a wide range of problems, including the unauthorized arrival of asylum-seekers. To others, the consideration of resettlement as an answer to the asylum 'crisis' is an anathema.

In the current discussion, some policy-makers posit that resettlement could replace asylum systems altogether, while others assert that resettlement could very well co-exist with asylum but would not be a total alternative. Similarly, some suggest that resettlement of refugees could help bring an end to smuggling and trafficking – while others contend that both refugees and economic migrants would continue to use the smuggling route and be exploited by traffickers. In fact, resettlement can best be considered as part of a comprehensive approach to refugee protection, linked not only to the emerging Common Asylum System in Europe but also to the full range of migration issues including the other 'durable solutions', return and local integration.

Discussion

Denmark, Finland, the Netherlands and Sweden have long-standing resettlement programs. Each offers between 500 and 1,500 places. The cases are almost all referred through UNHCR. The four countries have different methods for selection, ranging from decisions based on paperwork alone (the Netherlands) to decisions made only after a full interview by a selection mission in the country of current, but non-durable, asylum (Finland) and a mixture of the two (Sweden). Denmark includes representatives of the Danish Refugee Council in its selection missions; the other countries have no role for NGOs in selection.

The United Kingdom's proposed program will accommodate 500 refugees selected by officials based in the region from which the initial caseload will be drawn. Ireland and Spain are emerging resettlement countries. Ireland has taken some 20 refugees for resettlement for the last few years, but is set to increase its program. Spain resettled 17 Afghans from Uzbekistan in 2001, but has taken no refugees at all for resettlement since then. In the German government's coalition agreement, 500 resettlement places are mentioned, although it is not yet established how this program might become policy or law – or be implemented. In all the countries mentioned, resettlement is, by

definition, for an unlimited time, carrying permanent status and the possibility of naturalization according to national legislation.

Many of the current EU Member States resettled Indo-Chinese refugees from South East Asia in the 1970s and 1980s. Before that, many assisted Austria in 1956 when it received a very large influx of Hungarians. These examples illustrate one aspect of what resettlement is intended to achieve: a demonstration of solidarity with other states that are facing a significant refugee influx or have a long-standing, large refugee population. The other two purposes of resettlement are equally important: to provide protection to people in need and to provide a durable solution to refugees who have no realistic opportunities either to integrate in their country of current asylum or to return to their country of origin.

Resettlement is neither necessary nor a real option for many refugees. There is no solid assessment of the need for resettlement worldwide. It is certainly more than the number of places currently available, which is less than 100,000 per year. Some estimates of the need range between 100,000 and 250,000 places per year, but the true level could be higher.

No country that carries out resettlement in significant numbers has seen spontaneous arrivals of asylum seekers disappear. The United States, with a resettlement ceiling of 70,000 in 2003 (though it may receive fewer than 30,000 because of security concerns post 9-11), receives about 80,000 asylum applications per year according to UNHCR statistics. Canada has a target of some 12,000 refugees for resettlement across three types of resettlement program, and receives between 30,000 and 40,000 asylum applications annually. Sweden, Denmark and the Netherlands all receive many more asylum applications than they have resettlement places – and all experience the fluctuations in asylum statistics over the years that seem common in the EU.

The prospect of resettlement does not often resolve the problems of individual refugees in a timely way: even much higher numbers of places would still leave some refugees in urgent need of protection because of slow, imperfect and limited selection systems. So refugees are still likely to take the initiative to move, and by doing so they do not negate the obligation of non-refoulement contained in the 1951 Convention. Those who need to seek asylum in Europe in order to escape from a dangerous situation may have little choice but to use the services of smugglers to escape or to negotiate a journey to a place where they feel best able to integrate —for example, because a family member is already present.

Recommendations

1. All EU Member States, whether separately or collectively, should establish resettlement capabilities as key members of the international community providing refugee protection. Those programs could be very small, in the first instance, and only provide emergency resettlement for urgent protection cases, at the call of UNHCR. Over time all of the Member States should turn attention to selection criteria that permit more widespread resettlement, as a matter of burden-sharing with states in the region of origin.

2. As a matter of strategy, EU Member States should view resettlement as part of a comprehensive approach to protection which includes other durable solutions and is linked to the EU's external relations. A comprehensive approach would include capacity building measures in countries of first asylum (linked to local integration) as well as return and repatriation, both from countries in the region of origin and from the EU Member States. Resettlement should be seen as an element of regional strategies that include the local integration of some refugees and the return of others according to their protection needs.

3. As a short-term tactical measure to encourage resettlement in Member States that do not currently have programs, partnerships should be established between those countries and the Member States that are traditional resettlement countries. (A model for this can be found in the exchanges between Sweden and the UK since Spring 2002, when the UK Home Office announced the intention of establishing a resettlement program).

4. To advance discussion on resettlement, the Commission should, following the feasibility study on resettlement currently in progress, present a Communication to the Council and the Parliament for discussion starting either in the High Level Working Group (reflecting the link to external relations, and permitting a role for the full range of ministries with interest in this subject) or in SCIFA. The aim of the discussion should be to explore avenues of agreement on establishing resettlement in all Member States and the role for the Union level and Commission in such a program or programs.

5. All Member States, including those that already have resettlement programs, should strengthen the roles of NGOs and other civil society groups in both the selection process and the integration process through, for example, private sponsorship of refugees (beyond existing quotas) for their initial reception.

Conclusion

If the EU Member States do not work to develop broader resettlement programs they will put at risk both their reputations for refugee protection globally and their harmonization process on asylum and migration issues. Global actors in refugee protection need to show solidarity with countries facing large refugee influxes. If they do not, the control measures established over the years to limit access to asylum, and any attempts to build capacity in asylum systems outside the EU, will appear purely as burden-shifting measures. The fact that almost half the EU Member States engage in some resettlement means that there will be a gap in the Common System if they continue their generally good and often long-standing practices while other States remain outside the resettlement system.

Political issues are bound to arise, particularly in the perennial discussion of selection criteria. What criteria beyond the need for protection can properly be used to identify the refugees to be resettled to any particular country? Those issues, for the sake of European integration and the humanitarian identity of Europe, should be discussed and managed as the European Union emerges as a powerful actor in refugee resettlement.

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POLICY BRIEF 22

Excluding Terrorists from Refugee Protection

By Monette Zard

The events of September 2001 catapulted the threat of global terrorism to the forefront of national and international policy agendas. The feeling of vulnerability engendered by the attacks and the perception that the hijackers exploited open and liberal societies to commit their heinous acts have intensified an already restrictive climate for refugees and asylum seekers, justified in the name of security. The irony, as High Commissioner for Refugees Ruud Lubbers has pointed out, is that the refugee is often the first victim of persecution and terror. A difficult challenge lies ahead for government policy makers – preserving the rights and values that lie at the heart of democratic societies (of which the principle of asylum is a cornerstone) while at the same time taking measures that are necessary to protect citizens and institutions.

International refugee law explicitly excludes from protection those who have violated the human rights of others or committed other serious crimes. Nazi genocide and war crimes were fresh in the minds of those governments that drafted the new framework of human rights and refugee law in the immediate post-war years, including the 1951 Convention relating to the Status of Refugees, and they felt that such 'undeserving' cases should be prevented from claiming refugee status. The Convention thus contains the so-called exclusion clauses – Article 1F – which placed anyone who had committed such crimes outside the protection of the international refugee regime. The exclusion clauses provide that the provisions of the 1951 Refugee Convention "shall not apply to any person with respect to whom there are serious reasons for considering that: a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

c) he has been guilty of acts contrary to the purposes and principles of the United Nations."

Discussion

Governments are legitimately concerned to ensure that the international refugee regime is not abused by terrorists. This is also in the long-term interest of bona fide refugees and asylum seekers. However, since the consequences of exclusion are so severe – it means the removal of protection against forcible return to a country of persecution —it is important that the exclusion clauses are restrictively interpreted and resorted to only where there is clear and compelling evidence of individual responsibility for a serious crime specified under the exclusion clauses. Both the decision-making process and the substantive grounds on which refugees may be excluded from international protection need to be addressed in such a way that the rights of refugees are respected.

Terrorism as such is not explicitly mentioned in the Refugee Convention. Nevertheless, under article 1F(a), terrorists could find themselves excluded because there are serious reasons to consider that a 'crime against humanity' has been committed (certainly the acts of 11 September rise to that level). They would likely also fall foul of article 1F(c) which excludes the granting of international protection to those who may have committed acts contrary to the purposes and principles of the UN.

The exclusion clause which has traditionally been most relevant in the battle against terrorism is Article 1F(b), which bars from international refugee protection those who have committed serious non-political crimes outside the country of asylum. This provision mirrors one in Article 14 (2) of the Universal Declaration of Human Rights and is intended to ensure that extraditable criminals do not escape prosecution by claiming refugee status. Interpreting and applying this provision is one of the most complex challenges facing decision makers today and give rise to a number of questions of law and policy. Three are highlighted here.

Definition of Terrorism: In the absence of an internationally accepted definition of terrorism, efforts have been made to develop European standards in this area by, for instance, defining the notion of a "terrorist group" and designating a list of "terrorist" groups. It is important to note, however, that for the purposes of refugee law, the exclusion clauses require an examination of an asylum-seeker's activities within an organization and his or her objective role in the commission of excludable acts. Mere membership of an organization designated as terrorist is unlikely to prove sufficient. This is an area that may well call for the development of international as opposed to regional standards.

The Temptation to Expedite: Inclusion before Exclusion: A central objective of the Refugee Convention is to provide protection to those persecuted on account of their political activities and terrorists frequently assert a political motivation for their crimes. In determining whether an offence is 'political' and therefore exempt from exclusion, or a crime which renders its author undeserving of protection as a refugee, decision makers are asked to walk a fine – but critical – line. Central to their ability to do so fairly and effectively is that they consider all the elements of a case – including the grounds for inclusion as well the grounds for exclusion. A comprehensive examination of all the circumstances of an asylum claim allows the decision maker to place any allegations of criminal conduct and accusations of terrorism in full context. This approach was most recently reaffirmed in UNHCR's Global Consultations.

However even prior to 11 September, States were looking for a fast track to curtail the consideration of asylum claims. Increasingly, they were employing exclusion as a "test of admissibility." Recent thinking on the part of the EU, [articulated in the Commission Working Document which examines the Relationship Between Safeguarding Internal Security and Complying With International Protection Obligations and Instruments] similarly posits the use of accelerated procedures where there is a prima facie finding that an asylum-seeker falls under the exclusion clauses. States would then be able to limit themselves to the grounds of exclusion without having to examine the potential reasons for inclusion of the asylum-seeker concerned.

Extradition and Prosecution: Some of the crimes that fall under article 1F are crimes that are deemed so serious under international law that any state may investigate, try and punish their perpetrators on the basis of the principle of universal jurisdiction. This is the case, in particular, for crimes within the scope of Article 1 F (a). This option is explicitly considered in the Commission Working Document. Few States however, have yet to take up these obligations. States may also hand over those excluded, either to one of the International Criminal Tribunals or to a state requesting the extradition of the person concerned. However, sometimes, extradition may not be possible, either because no state has made a request for extradition, or because there is no extradition treaty between the host state and the country of origin. Often, human rights conditions in the latter make it impossible to extradite. On the other hand, the capacity of the Tribunals to play a role in the exclusion process is very limited. Apart from limitations in resources and manpower, both the Yugoslavia and Rwanda tribunals are temporary institutions with limited geographical, territorial and personal mandates. Of course, this situation will change once the International Criminal Court is fully functional.

Under applicable domestic law, excluded asylum-seekers will typically be under an obligation to leave the country and, if they fail to do so, will be liable to forced removal (deportation or expulsion). However, any such measure must be in accordance with international human rights standards protecting every person from threats to their life or physical integrity. Since the drafting of the 1951 Convention, developments in international human rights law have led to the establishment of a system of protection against certain very serious violations of human rights that is applicable to everyone. In some respects, international human rights guarantees for the protection of the right to life and physical integrity are stronger than the prohibition of non-refoulement as contained in refugee law: they do not provide for any exceptions based on the conduct of an individual. For example, in the Convention Against torture, the prohibition of exposing a person to torture —through expulsion, deportation or any other forced removal measure —is absolute. It applies to everyone and includes even those who have persecuted others or committed serious crimes.

The situation of those who are excludable but cannot be removed is one that is an increasing preoccupation to States who find themselves with ever more limited options. The suggestion in the Commission Working Paper that the European Court of Human Rights review its position that the protection of Article 3 is absolute is particularly unpalatable; combined with the notion that extradition cam take place on the basis of informal legal guarantees, they represent a significant step backwards in the evolution of the European Union as a community which is anchored in a set of core values..

Developing practical and law-based post-exclusion options for States is key if the structures thus far created are to survive. Promotion of the rule of law is particularly important, especially in post-conflict societies where efforts to seek justice are likely to proceed hand in hand with requests for the extradition of those suspected in war crimes and crimes against humanity. Finally, the concept of universal jurisdiction over certain crimes, which was itself developed by states, requires efforts at the domestic level to ensure that it becomes just that – universal in practice rather than in name only.

Recommendations

1. An effort needs to be made to develop and implement processes which can reconcile the need for speed and efficiency in adjudicating cases where exclusion is a possibility with the need to ensure that those in need of protection have their claims fully and fairly considered. Specialized teams of expert screeners or so-called 'exclusion units' should be developed. Other approaches such as streamlining and improving country-of-origin information systems, broadening and integrating different sources into the flow of information available to asylum adjudicators, as well as other practical and law-based options should be explored.

2. Difficult questions remain as to how the international system deals with an individual who has been excluded from international protection. Once a decision to exclude has been taken, the authorities are under a two-fold duty: first, to ensure that the excluded individual is not immune from prosecution, either before an international or national criminal court and, second, to ensure that s/he continues to be protected by international human rights law both in the host country and if s/he faces removal to a country where there is a substantial risk of human rights violations.

3. The Commission Working Paper's suggestion that relations with the International Criminal Court be developed; in this area should be followed, perhaps with a view to developing arrangements regarding the sharing of exclusion-related information as well as a possible prosecutorial role for the ICC in such cases.

Conclusion

While it is important to acknowledge that States have a legitimate security interest in ensuring that terrorists and other criminals do not take advantage of the system of international protection, it is vital that any measures taken do not undermine the very system itself. The 1951 Convention provides States with the tools to reconcile their security interests with the interests of those fleeing persecution and terror. Fifty years of refugee law and a proud tradition of providing asylum to those in need should not be bypassed by responses to the events of 11 September and other acts of terrorism.

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