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## FOREWORD

Since 1965, the number of international migrants has doubled. As of the year 2000, there were approximately 175 million migrants throughout the world. Thus, approximately 2.59% of the world population, or one in every thirty-five persons, are migrants. There are multiple reasons for this: the collapse of long-standing political barriers to movement, the development of worldwide communication systems, and the relative cheapness of modern means of transport – to name but a few. None of these trends is likely to be reversed in the foreseeable future. Hence, the growing awareness of the phenomenon of international migration among both policy makers and academic experts.

Both countries of origin and countries of destination benefit from migrants. Countries of origin are in great need of foreign financial resources to foster their economic development. It is estimated that worldwide remittances now amount to more than 73 billion US\$ per year. Abroad, migrants have access to education and training indispensable for creating enterprises when they return to their countries of origin. They are also among the first investors in their home economy and can in that way compensate for the “brain drain” caused by their departure. Countries of destination, on their part, have a lack of certain types of labor, e.g., nurses, computer specialists, agriculture workers. Moreover, many destination countries have a significant demographic imbalance. Europe’s population would rapidly decline to an even greater extent – with dramatic economic and social impact – if not compensated in some measure by migrants.

However, migration is to a large extent perceived negatively in countries of destination. Migrants are often seen as potential competitors by the domestic labor force; they are blamed for the rise in criminality; in case of recession they are the first to lose their jobs and burden the social security system; even the cultural identity of the local population is said to be at stake if faced with too many immigrants. Disruptive and disorderly movements are considered to be a threat to internal order and stability. Worse, since September 11, 2001, migrants are perceived as potential terrorists. The situation is exacerbated by the reluctance of some countries of origin to readmit their own citizens as well as by the perceived tolerance on the part of these same states of smuggling and trafficking of human beings.

Not surprisingly, many countries of destination, alarmed by the public mood, are resorting to unilateral measures to reduce immigration. A number of them are limiting immigration to qualified workers and reduce, if not eliminate, social assistance to foreigners. Several countries of destination are also imposing more severe penalties on those who enter illegally and forcibly return migrants in an irregular situation. Some go as far as to discourage marriages between nationals and foreigners.

The regional and international repercussions of such unilateral restrictive measures are rarely considered. Neighboring countries are suddenly confronted with an unexpected shift of the stream of migrants to their borders and have to take comparable measures thus accelerating the spiral of restrictions. Countries of origin are

blamed for being at the root of the problems; at best, a discussion with them is started on how to return undesirable migrants.

This does not mean that there are no international treaties dealing with migration. On the contrary, there are many agreements, as well as bilateral, regional, and multi-lateral conventions aimed at managing aspects of migration, in particular in the humanitarian field. Some of these rules work satisfactorily whereas others are not fully implemented. In certain areas, however, no rules or guidelines to regulate interstate cooperation exist.

With the exception of the European Union and of the limited scope of the General Agreement on Trade in Services in the World Trade Organization (WTO), there is no comprehensive regional or multilateral institution that deals with the relations among States, or tries to bring order to the myriad of conventions, agreements, guidelines, and best practices, on migration. There is no global system of orderly movements, managing in a cooperative way and combining efficiency, equity, and respect for the interests of the countries of origin, of transit and destination. There is also no umbrella agreement like the WTO that stipulates minimum standards with which unilateral action or bilateral agreements must comply.

In view of the importance of the issues involved, the question arises – why? The most important reason is no doubt State sovereignty; migration is thought to be too sensitive an issue to be dealt with in a binding multilateral context. Understandably, Governments want to maintain sovereign authority, and international organizations active in the field of migration are reluctant to relinquish any of their responsibilities to an overall framework of migration.

The uncoordinated approach to migration may have functioned well enough until now. However, without better cooperation and partnership between concerned countries, irregular migration will continue to increase and to foster lasting negative perceptions towards aliens. The consequences of such developments may affect relations among States, as well as the delicate balance in the international trade and financial regimes and global security.

Although policy makers are becoming gradually more aware that domestic measures alone are not sufficient to cope with the occurrence of migration and that the problem is now increasingly discussed at the international level, there has been, until now, no broad-based initiative to open up for a dialogue between countries of origin, countries of transit, and countries of destination on the full range of migration issues. This is astonishing. While it is true that countries of origin, of transit, and of destination have different interests, these countries also have many common concerns. All stakeholders involved and, last but not least, the migrants themselves, would benefit from a better management of migration at the international level.

It is with this in mind that the Federal Office for Refugees in Switzerland launched in June 2001 the *Berne Initiative*. Government representatives of migrant origin, transit, and destination countries, international organizations, non-governmental agencies and academics gathered at a symposium in order to start up a States'-owned process with the objective of obtaining better management of migration at the regional and possibly at the global level through cooperation between States. The process should ideally lead to a dialogue between countries of origin and destination first regionally, then globally. This dialogue could lead to the establish-

ment of a suitable general intergovernmental framework with guidelines and best practices to assist Governments when confronted with challenges in the field of migration policy development.

Such a framework of guidelines and best practices would have to strike a balance of interests between countries of origin and countries of destination. It should not be governed by a laissez-faire attitude, but by the principle of orderly or regulated movement of people. It should also lead to a reduction of forced and disruptive migration. Orderly migration should be promoted and illegal migration and the criminal aspects related thereto, including trafficking, should be prevented.

However, in order to aim at such ambitious results, a series of intermediary steps are necessary. One of these is a stock-taking of existing international legal standards on migration as presented in this volume. An expert study comprising contributions of some of the most renowned legal scholars in the field of migration – led by the Migration Policy Institute (MPI) of Washington, D.C. and the Graduate Institute of International Studies (HEI) in cooperation with the International Organization of Migration (IOM) – will serve as background for further work. The aim of this expert study is to highlight existing regulations, standards, and norms on migration as well as to point out clear legal gaps in that area.

The present study – financed by the Federal Office for Refugees in Switzerland – lays the ground for further work, which may eventually lead to the establishment of the intended framework. It will certainly facilitate the global dialogue on interstate migration and serves not only as an important reference work for legal experts on migration norms, but moreover offers valuable information for government officials and practitioners.

The publication of this study would, of course, not have been accomplished without the work and support of a number of people. There is, first of all, T. Alexander Aleinikoff, professor of Law and Senior Associate of MPI in Washington who has mastered the challenging task of supervising the work of all authors by collecting, analyzing, improving, and editing the various articles which have been written in the course of this project.

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