

International Cooperation on Migration: Theory and Practice

Alan O. Sykes†

INTRODUCTION

Since the Great Depression of the 1930s, international economic cooperation has flourished on many issues. The Reciprocal Trade Agreements program of the United States laid the groundwork for the General Agreement on Tariffs and Trade (GATT), now subsumed within the World Trade Organization (WTO). Trade liberalization under WTO/GATT auspices has reduced tariffs on dutiable goods imports in developed countries from an average of 30 to 40 percent in 1947 to an average of around 4 percent today.¹ The WTO General Agreement on Trade in Services has made significant initial progress in opening national services markets to companies based abroad. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights has, for better or worse, produced international harmonization in many aspects of patent, copyright, and trademark law. Bank regulators in the developed economies have cooperated through a series of Basel Accords. For roughly a quarter century, the International Monetary Fund orchestrated multilateral cooperation on exchange rates under the Bretton Woods system. And at the bilateral and plurilateral level, hundreds of investment agreements—standalone bilateral investment treaties and investment provisions in preferential trade agreements—afford a variety of protections to foreign investors in developed and developing countries.

† Robert Kindler Professor of Law, New York University School of Law.

I thank Kyle Bagwell and Bob Staiger for helpful conversations on the subject and participants in The University of Chicago Immigration Law and Institutional Design Symposium, held at The University of Chicago Law School on June 15 and 16, 2012, for many thoughtful comments.

¹ See John H. Jackson, William J. Davey, and Alan O. Sykes Jr., *Legal Problems of International Economic Relations: Cases, Materials and Text on the National and International Regulation of Transnational Economic Relations* 5–6 (Thomson West 5th ed 2008).

Conspicuously absent from this list is international cooperation on migration. Although, as shall be seen, more cooperation exists than is widely recognized, it is largely restricted (outside of the European Union) to guest worker programs and measures that facilitate the temporary movement of skilled businesspeople and professionals. The legal rules governing the opportunity to establish permanent residence, to obtain citizenship and voting rights, and to secure long-term access to employment markets remain almost entirely outside international law with the exception of a few close-knit, regional arrangements.

Various economic commentators decry this state of affairs and argue that national immigration restrictions come at an enormous cost to the world economy. According to Professor Dani Rodrik,

[T]he gains from liberalizing labour movements across countries are enormous, and much larger than the likely benefits from further liberalization in the traditional areas of goods and capital. If international policy makers were really interested in maximizing worldwide efficiency, they would spend little of their energies on a new trade round or on the international financial architecture. They would all be busy at work liberalizing immigration restrictions.²

Other commentators have offered empirical estimates of the gains from increased liberalization of migration that exceed the gains from further trade liberalization, in some cases by orders of magnitude.³ Yet, the focus of international negotiation remains on trade.

This Article examines the international pattern of cooperation (and noncooperation) on migration policy with the aid of economic theory. The goal is to identify the ways that noncooperative national policies may lead to inefficiency and to consider

² Dani Rodrik, *Final Remarks*, in Tito Boeri, Gordon Hanson, and Barry McCormick, eds, *Immigration Policy and the Welfare System* 314, 314 (Oxford 2002).

³ See, for example, Bob Hamilton and John Whalley, *Efficiency and Distributional Implications of Global Restrictions on Labour Mobility: Calculations and Policy Implications*, 14 J Dev Econ 61, 62, 70–74 (1984); Ana María Iregui, *Efficiency Gains from the Elimination of Global Restrictions on Labour Mobility: An Analysis Using a Multiregional CGE Model*, in George J. Borjas and Jeff Crisp, eds, *Poverty, International Migration and Asylum* 211, 212, 221–32 (Palgrave MacMillan 2005); Jonathon W. Moses and Bjørn Letnes, *The Economic Costs to International Labor Restrictions: Revisiting the Empirical Discussion*, 32 World Dev 1609, 1610–19 (2004); L. Alan Winters, et al, *Liberalising Temporary Movement of Natural Persons: An Agenda for the Development Round*, 26 World Econ 1137, 1138 (2003).

the feasibility of international legal cooperation to address it. Along the way, it will suggest why international cooperation is so limited and offer explanations for the types of cooperation that we do observe.

Part I argues that the theoretical case for international cooperation rests on three types of cross-border externalities. The first of these is a “terms-of-trade” externality akin to that of a tariff in goods markets—migration restrictions reduce the returns to foreign workers. The second set of externalities relates to the costs of enforcing national migration laws and the possibility that international cooperation can reduce these costs. The third group of externalities relates to the fact that migration restrictions in receiving countries have spillover effects in other receiving countries.

For all of these reasons, international cooperation is potentially valuable, but there are important obstacles to cooperation. The greatest obstacle is the “one-way problem”—the benefits of cooperation to liberalize migration, or to reduce enforcement costs, may be quite asymmetrical and in fact some countries may find themselves worse off with cooperation. It is not easy to fashion arrangements among countries such that all are net beneficiaries. A further difficulty associated with cooperation may be termed “migration diversion,” which is analogous to the “trade diversion” that occurs when trade agreements arise on a bilateral or plurilateral rather than multilateral basis.

Part II reviews the limited international cooperation on migration that now exists. It suggests that the limited degree of cooperation presently observed, and its emphasis on the temporary movement of workers, has its roots in the one-way problem.

I. POLICY EXTERNALITIES AND THE THEORETICAL CASE FOR INTERNATIONAL COOPERATION

Immigration restrictions are ubiquitous in the developed world. National governments routinely limit the number of migrants allowed, often placing them into various categories subject to differing rules and migration ceilings, and delineating additional rules to sort between permanent and temporary migrants. The US system is illustrative.⁴ Close family members of

⁴ For a general introduction to US immigration law, see Thomas Alexander Aleinikoff, et al, *Immigration and Citizenship: Process and Policy* 157–92 (Thomson West 6th ed 2008).

citizens are relatively free to immigrate permanently, but there are greater restrictions on other sorts of family migration.⁵ Green cards are available to certain groups of skilled workers and other special categories, to refugees and asylum seekers, and under a handful of other limited circumstances.⁶ Legal permanent residents are subject to additional rules if they seek to become citizens.⁷ Temporary work visas are available to skilled workers, temporary agricultural workers, and a few other groups, subject to annual caps.⁸ Tourists and business visitors can obtain temporary visas that do not authorize them to seek employment.⁹ Many of these rules create binding constraints on migration, as evidenced by the backlog of applicants for green cards and the large volume of illegal immigration into the United States.¹⁰

Plainly, international migration would increase in quantity, shift in composition, and change in distribution across sending and receiving countries in the absence of such national restrictions. Suppose counterfactually, therefore, that all nations eliminated constraints on migration and that the world moved to a new equilibrium entailing "free trade" in labor. Would this new equilibrium dominate the present state of affairs from an economic standpoint?

On the theoretical side, the starting point for answering this question is the "first theorem" of welfare economics.¹¹ One well-known statement of that theorem is the following: "If every relevant good is traded in a market at publicly known prices . . . and if households and firms act perfectly competitively (i.e., as price takers), then the market outcome is Pareto optimal."¹² In other words, in the absence of nonpecuniary externalities (the complete markets assumption) and with competitive allocation of resources (no market power), an unconstrained market equilibrium is economically efficient.

⁵ See *id.* at 300–03.

⁶ See *id.* at 297, 650.

⁷ See *id.* at 63–83.

⁸ See Aleinikoff, et al, *Immigration and Citizenship* at 405–08, 417–25 (cited in note 4).

⁹ See *id.* at 397, 407.

¹⁰ See *id.* at 437.

¹¹ Andreu Mas-Colell, Michael D. Whinston, and Jerry R. Green, *Microeconomic Theory* 308 (Oxford 1995).

¹² *Id.*

Nothing in this theorem limits the result to a particular type of market. Competitive exchange without nonpecuniary externalities is efficient whether the exchange involves goods, services, capital, or labor. Likewise, any impediments to competitive exchange will generally create inefficiency under the assumptions of the first theorem.¹³ In particular, in the absence of nonpecuniary externalities, government restrictions on competitive labor markets—including migration restrictions—create inefficiencies.¹⁴ Also note that free international trade in labor can diminish any inefficiencies associated with imperfect competition in labor markets—local monopoly suppliers of labor become subject to greater competitive discipline, and local monopoly purchasers of labor (monopsonists) are constrained by a greater threat of outmigration.¹⁵

It would be a mistake to suppose that unfettered international migration is economically desirable from a global perspective, however, because migration can indeed be accompanied by important nonpecuniary externalities. The most important externalities are likely those associated with “welfare migration,” where migration is driven not by higher labor productivity (and wages) in the receiving country, but by the desire of migrants to take advantage of income-support programs, subsidized health care, subsidized public education, and so on.¹⁶ Additional externalities are associated with the congestion of public facilities, with the possibility that migration is motivated by higher returns to crime rather than productive work, and the possibility that migrants may through voting patterns redistribute resources to themselves.¹⁷

Accordingly, the fact that national governments restrict free migration does not alone establish that immigration policy is inefficient. Given the host of potential externalities associated

¹³ See Alan O. Sykes, *The Welfare Economics of Immigration Law: A Theoretical Survey with an Analysis of U.S. Policy*, in Warren F. Schwartz, ed, *Justice in Immigration* 158, 158 (Cambridge 1995). See also Michael J. Trebilcock, *The Law and Economics of Immigration Policy*, 5 Am L & Econ Rev 271, 275–76 (2003).

¹⁴ See Sykes, *The Welfare Economics of Immigration Law* at 168 (cited in note 13).

¹⁵ See Alan O. Sykes, *International Law*, in A. Mitchell Polinsky and Steven Shavell, eds, 1 *Handbook of Law and Economics* 813, 813–14 (North-Holland 2007) (pointing out that a single price monopolist generates deadweight loss which may be limited by greater competition).

¹⁶ For a discussion of the externalities of welfare migration, see Sykes, *The Welfare Economics of Immigration Law* at 168–79 (cited in note 13).

¹⁷ See id at 169, 173, 177.

with migration, some degree of restriction on the free movement of labor is almost certainly optimal.¹⁸

But will national governments, acting noncooperatively, choose appropriate restrictions? For the reasons developed below, the answer is likely no. The reason why is a familiar one in the economic analysis of international law—national governments acting noncooperatively tend to consider the benefits of policy to their own citizens and constituents but tend to ignore or discount the effects of their policy choices on foreigners. Part I.A considers three important classes of externality problems that can arise as a consequence. Part I.B then considers whether international cooperation to address these externalities can emerge, identifies obstacles to such cooperation, and notes possible externalities from cooperation. These considerations suggest important limitations on the feasibility of efficient cooperation on migration and help to explain the limited range of international cooperation on migration that we actually observe (as discussed in Part II).

A. Externalities under Noncooperative Policymaking

1. Terms-of-trade externalities (herein of protectionism).

The modern economic theory of trade agreements identifies terms-of-trade externalities as the source of global inefficiency when nations act noncooperatively.¹⁹ The phrase “terms of trade” refers to the relative price of a nation’s imports and exports.²⁰ When imports become cheaper, or exports become more expensive, the nation’s terms of trade improve, and it is natural to imagine that the nation becomes better off as a result.²¹

In typical models of trade agreements, governments maximize welfare functions that incorporate the interests of their domestic constituents but ignore the interests of foreigners.²² Consider, then, the tariff policy of a large country, defined as a country with the power to affect the prices of goods that it imports

¹⁸ See id at 168–79.

¹⁹ See Kyle Bagwell and Robert W. Staiger, *The Economics of the World Trading System* 3 (MIT 2002).

²⁰ Enrique G. Mendoza, *The Terms of Trade, the Real Exchange Rate, and Economic Fluctuations*, 36 Intl Econ Rev 101, 105 (1995).

²¹ See Bagwell and Staiger, *The Economics of the World Trading System* at 104 (cited in note 19).

²² See id at 3; Gene M. Grossman and Elhanan Helpman, *Trade Wars and Trade Talks*, 103 J Polit Econ 675, 684–93 (1995).

(it faces an upward-sloping import supply curve).²³ When such a country imposes a tariff, foreign exporters respond by reducing their prices to some degree, and hence the importing nation's terms of trade improve. The cost of the tariff is borne in part by foreigners when they reduce their prices, and this negative externality is ignored when the large country chooses its tariffs.²⁴ The result is a set of tariff rates that is too high from a global perspective.²⁵ Put differently, noncooperative national trade policies yield a level of protection against import competition that is economically excessive from a global perspective. A role for international cooperation thereby arises, which takes the form of trade agreements embodying mutually agreed-upon tariff reductions.

This argument is quite general and does not depend on the details of national welfare functions. Classical welfare economic treatments of trade policy often posit that governments should (and perhaps do) maximize national income.²⁶ If so, then free trade is globally efficient.²⁷ Nevertheless, positive tariffs arise in noncooperative equilibrium with large countries,²⁸ suggesting a role for trade agreements.

More recent models generally posit that governments maximize a political-economy-weighted welfare function (say, that prefers certain producer interests over consumer interests, or particular producer interests over others).²⁹ In other words, governments care not only about total national income but also about its distribution. Then, global efficiency (measured against governments' own welfare metrics) will not necessarily entail free trade, but noncooperative tariffs will still be higher than

²³ See Bagwell and Staiger, *The Economics of the World Trading System* at 3 (cited in note 19).

²⁴ See *id.*

²⁵ With reference to the first theorem of welfare economics noted earlier, the inefficiency here derives from the fact that nations have market power over the prices of imported goods (they are not price takers). For this reason, the noncooperative equilibrium is inefficient despite the fact that the externality is pecuniary (flows through prices). See *id.* at 16.

²⁶ See, for example, *id.* at 3; Stephen D. Krasner, *State Power and the Structure of International Trade*, 28 *World Polit* 317, 318 (1976).

²⁷ See Krasner, 28 *World Polit* at 318 (cited in note 26).

²⁸ The seminal paper here is Harry G. Johnson, *Optimum Tariffs and Retaliation*, 21 *Rev Econ Stud* 142 (1953–54).

²⁹ See, for example, Bagwell and Staiger, *The Economics of the World Trading System* at 18–19 (cited in note 19).

globally efficient tariffs—noncooperative policy choices still yield too much protection.³⁰

Although noncooperative tariffs generate revenue for the governments that impose them, a terms-of-trade externality also arises with respect to other policies by large countries that restrict trade but do not raise revenue. For example, Professor Robert W. Staiger and I show how noncooperatively chosen regulatory policies can be distorted by terms-of-trade externalities.³¹ The intuition here is much the same—when a large country imposes a regulation on imported goods, foreign exporters reduce their prices to absorb some of the regulatory compliance cost.³² Because the importing nation does not bear the full cost of regulatory compliance, it tends to regulate imported goods excessively from a global perspective, and regulation will tend to have a protectionist effect absent legal rules to avoid it.³³

The same externality issue arises with respect to national immigration policies. In particular, consider a large receiving country that faces an upward-sloping supply curve of immigrant labor (that is, its immigration policies have the potential to affect wage rates for some types of labor in sending countries). When the receiving country restricts immigration, exporters of labor in sending countries (that is, migrants) are forced back down their supply curve. The receiving country is thus able to purchase immigrant labor more cheaply than otherwise following an immigration restriction. Once again, the result is a terms-of-trade improvement as foreign sellers of labor absorb some of the costs of the migration restriction. Because of this externality, immigration policies will tend to be too restrictive from a global perspective, other things being equal.

The terms-of-trade externality associated with immigration restrictions can also operate through prices in goods markets. Suppose that the labor of would-be migrants can also be used in

³⁰ See *id.*; Grossman and Helpman, 103 J Polit Econ at 705 (cited in note 22) (predicting that tariffs will be higher in industries with more to gain from protectionism).

³¹ Robert W. Staiger and Alan O. Sykes, *International Trade, National Treatment, and Domestic Regulation*, 40 J Legal Stud 149, 167 (2011). Professor Staiger and I argue that when governments can use trade policies to restrict imports, there is no reason for regulatory choices to be distorted by terms-of-trade considerations. *Id.* at 152. But when trade policies are constrained by international commitments, other policy instruments, such as domestic regulation, can become distorted. *Id.* at 153. Absent a national treatment obligation, for example, importing nations constrained in their trade policies will tend to utilize discriminatory regulatory policies that disfavor imports. *Id.*

³² See *id.* at 154–55.

³³ See *id.*

sending countries to produce some tradable good(s). When immigration is restricted, the price of that labor falls, and thus the cost of production for goods that incorporate such labor falls as well. The receiving country can then import the tradable good(s) more cheaply, yielding a further improvement in its terms of trade at the expense of foreign labor suppliers.

Putting the point somewhat differently, immigration restrictions can be viewed as a form of local-content restriction. A local-content restriction is a legal rule that requires local firms to use local inputs in production rather than imported inputs to a greater degree than local firms would choose to do on their own.³⁴ Thus, for example, the law might require that local automobile producers use domestic steel rather than imported steel, either exclusively or to a greater extent than local automobile producers would choose on their own. Immigration restrictions are similar, except that they require local producers to use local labor rather than locally produced goods.³⁵ International economists have long recognized that local-content restrictions can have protectionist consequences,³⁶ effectively insulating local input suppliers from foreign competition. The motivation for local-content restrictions can also be embedded within the modern terms-of-trade externality framework.³⁷

International trade law takes a dim view of local-content restrictions in goods markets. A requirement that domestic firms use domestic goods rather than imported goods is a “[law], regulation [or] requirement” affecting the internal sale of goods that affords less favorable treatment to imports and violates GATT Article III (the national treatment obligation).³⁸ It also violates the Agreement on Trade-Related Investment Measures (TRIMs).³⁹ Subsidies that are conditioned on the use of domestic

³⁴ See David Wheeler and Ashoka Mody, *International Investment Location Decisions*, 33 J Intl Econ 57, 63 (1992).

³⁵ See Gene M. Grossman, *The Theory of Domestic Content Protection and Content Preference*, 96 Q J Econ 583, 583 (1981).

³⁶ See, for example, id at 603.

³⁷ See Kyle Bagwell and Alan O. Sykes, *India—Measures Affecting the Automotive Sector*, in Henrik Horn and Petros C. Mavroidis, eds, *The WTO Case Law of 2002* 158, 175–76 (Cambridge 2005).

³⁸ General Agreement on Tariffs and Trade (GATT) Art III, 61 Stat A5, A18, 55 UN Treaty Ser 188, 206 (1947).

³⁹ See 1868 UN Treaty Ser 186, 186, 190 (1994).

rather than imported input products are prohibited under the Agreement on Subsidies and Countervailing Measures (SCMs).⁴⁰

None of these rules, however, apply to local-content rules for labor. Why does the WTO system prohibit local-content rules applicable to goods, but not those applicable to labor? There are two answers.

First, within the framework of the modern trade agreement models, the WTO system is not an effort to establish “free trade” but rather an effort to establish “optimal trade” (or, if you prefer, an efficient level of trade protection) in relation to the distribution-weighted welfare functions that governments implicitly maximize.⁴¹ To that end, WTO law encourages the “tariffication” of protection⁴²—governments are required to use the relatively simple and transparent instruments of a tariff to protect their markets from foreign competition. Tariffs then become subject to international negotiation, resulting in ceilings on tariff rates (“tariff bindings” in GATT parlance).⁴³ To ensure that the tariff bargain is not undermined by other policy instruments, substitute instruments of protection are prohibited or tightly constrained.⁴⁴ If an importing nation wishes to protect an input-producing industry from foreign competition, it should use a tariff to do so rather than a local-content requirement.

These observations make clear why local-content rules for labor are not covered by WTO prohibitions—governments do not use tariffs to protect their labor markets from competitive entry by foreign suppliers of labor. If all immigration restrictions were treated as prohibited local-content rules, there would be no remaining policy instruments available to governments to achieve the efficient level of labor-market protection. The prohibition on local-content restrictions in goods markets is only possible because a superior policy instrument exists (tariffs) to calibrate the desired level of protection in such markets.

⁴⁰ See Agreement on Subsidies and Countervailing Measures Art 3.1(b), 1867 UN Treaty Ser 14 (1994), in *The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations* 231, 233 (Cambridge 1999).

⁴¹ See Sykes, *International Law* at 807 (cited in note 15).

⁴² See *id.* at 790–91.

⁴³ GATT, 61 Stat at A14 (cited in note 38). See also Jackson, Davey, and Sykes, *International Economic Relations* at 382–83 (cited in note 1).

⁴⁴ See, for example, GATT Art XI, 55 UN Treaty Ser at 224–26 (cited in note 38) (prohibiting quotas). See also Jackson, Davey, and Sykes, *International Economic Relations* at 423 (cited in note 1).

A second, related reason why international trade law does not prohibit local-content rules for labor concerns the fact that terms-of-trade externalities are not the only externalities in play. As noted earlier, welfare migration, congestion externalities, crime, and so forth are also at issue with migration.⁴⁵ Trade in goods rarely raises these types of issues. Even if one were to believe that free trade is desirable in goods markets, it is almost certainly undesirable in labor markets.⁴⁶

Accordingly, it would be fallacious to suggest that all existing immigration restrictions are inefficient based on the analogy to the international prohibition on local-content restrictions in goods markets. Nevertheless, the fact that immigration restrictions are economically equivalent to local-content requirements suggests that terms-of-trade externalities are a likely source of inefficiency when immigration policies are chosen non-cooperatively. In other words, even if *some* immigration restrictions are desirable from a global efficiency standpoint, a potential role for international cooperation arises to eliminate excessive restrictions on immigration that may result from terms-of-trade externalities, just as international cooperation is valuable to reduce (but not eliminate) tariffs on goods. A priori, there is no reason to think that the potential gains in the immigration context are any less than the gains from cooperation on tariffs and other trade policy instruments.

2. Enforcement externalities.

A different, and considerably simpler, set of externality issues relates to the costs of enforcing immigration restrictions. In particular, let us for now ignore the question whether existing limits on immigration are efficient and treat them as exogenous. We simply inquire as to the cheapest way of enforcing those restrictions—Should they be enforced by receiving countries, by sending countries, or by some combination of the two?

It is entirely possible that sending countries have a cost advantage in enforcing certain types of immigration rules. A rule that prohibits immigration by individuals with communicable diseases, with a propensity to commit serious crimes, or with a poor employment record, for example, may require information that is readily available to authorities in sending countries but

⁴⁵ See Sykes, *The Welfare Economics of Immigration Law* at 168–76 (cited in note 13).

⁴⁶ See *id.* at 176.

difficult for authorities in receiving countries to obtain. Yet, sending countries may have no incentive to reveal the relevant information or otherwise to assist the receiving country in enforcing its rules—people who fall into these categories may be precisely the sort of people that sending countries are happy to see emigrate.

Accordingly, when sending and receiving countries act non-cooperatively, enforcement costs may rise considerably relative to the costs that would prevail with efficient cooperation on joint enforcement.⁴⁷ Whether a bargain can be struck to realize these efficiencies will be considered below.

3. Externalities among receiving countries.

A final set of externality issues arises from interactions among the noncooperative policies of receiving countries. The problem is that migration policies in one receiving country can affect the flow of migrants to others. A simple model of this phenomenon is the following:⁴⁸ Consider a set of identical receiving countries, and suppose that an optimal level of immigration exists for those countries. By virtue of their symmetry, the optimal level of immigration is the same for each. Suppose further that an exogenous and heterogeneous supply of migrants will allocate itself among receiving countries in accordance with where they observe the highest net returns to migration, subject to the constraint that returns must be positive. Finally, assume that restrictions on migration by receiving countries take the form of measures that raise the costs of migration and reduce the net returns to migrants.

In this simple framework, the receiving countries face a coordination problem. If one country restricts migration more than others, all the migrants go elsewhere and immigration is

⁴⁷ For a formal model in which the gains from cooperation on migration arise from joint enforcement efforts, see Jesús Fernández-Huertas Moraga, *A General Model of Bilateral Migration Agreements* *12–13 (Barcelona Graduate School of Economics Working Paper No 360, Sept 2008), online at <http://pareto.uab.es/wp/2008/75508.pdf> (visited Mar 1, 2013).

⁴⁸ For the formal treatment, see Paolo E. Giordani and Michele Ruta, *Coordination Failures in Immigration Policy* *4 (WTO Staff Working Paper ERSD-2011-02, Dec 2010), online at http://www.wto.org/english/res_e/reser_e/ersd201102_e.pdf (visited Mar 1, 2013). See also Herbert Brücker and Philipp J.H. Schröder, *Migration Regulation Contagion*, 12 Eur Union Polit 315, 328–31 (2011).

inefficiently low.⁴⁹ If one country restricts immigration less than the others, all the migrants flow into it and immigration is inefficiently high.⁵⁰ The migrants will distribute themselves across all receiving countries only if each country has the same immigration restrictions, and noncooperative equilibrium then requires that all receiving countries adopt exactly the same policy. Only one level of immigration restriction yields the optimal amount of immigration, however, and the challenge facing the receiving countries is to ensure that they coordinate on the optimal policy rather than becoming stuck in a noncooperative equilibrium in which they all choose an inferior policy.⁵¹ In such a scenario, cooperation on immigration policy among receiving countries may be necessary to achieve the efficient outcome.

B. Potential Obstacles to Beneficial Cooperation

1. The one-way problem and related issues.

Part I.A suggests three reasons why joint gains may arise from international cooperation on migration policy, but the existence of joint gains by itself is insufficient to ensure beneficial international cooperation. Two other requirements must be met here as in other areas of international law: (1) it must be possible to distribute the joint gains such that all cooperating nations are better off than by not cooperating and (2) cooperation must be self-enforcing, in the sense that cheating on commitments can be punished by other parties to an extent that discourages cheating.⁵²

International trade agreements again provide a useful illustration. Country A will agree to lower its tariff on country B's exports in return for a commitment by country B to lower its tariff on country A's exports. Each country receives enhanced market access abroad, allowing both to benefit on balance from the agreement. Likewise, if one country cheats on its commitment, the other country will revoke its commitment and both will return

⁴⁹ See Giordani and Ruta, *Coordination Failures in Immigration Policy* at *5 (cited in note 48).

⁵⁰ See *id.*

⁵¹ See *id.*

⁵² See Bagwell and Staiger, *The Economics of the World Trading System* at 95 (cited in note 19).

to the lower level of welfare of the status quo ante. It is then in each party's interest to honor its commitment.⁵³

In principle, an agreement liberalizing migration might work much the same way—country A opens up to migration from country B in return for a commitment from country B to allow more migration from country A. Perhaps agricultural workers in country A see better opportunities in B, for example, while scientists in B see better opportunities in A.

Problems arise, however, if people in B want to move to A, but people in A have no interest in moving to B. Let us term this the “one-way problem.”⁵⁴ In the relationship between the United States and Mexico, for example, low-skilled Mexican workers seem to have an interest in moving to the United States in large numbers, and to some degree skilled workers from Mexico may also wish to move. US restrictions on immigration impede these flows, and perhaps Mexico would be willing to offer something of value to the United States to induce the United States to liberalize (more on that point below). But relatively few Americans seem to want to move to Mexico.⁵⁵ It is thus questionable whether a bargain involving mutual liberalization of immigration restrictions could offer the United States enough benefits to induce its participation.

To be sure, “issue linkage”⁵⁶ may offer a solution. Perhaps Mexico can offer concessions on trade or investment policies, for example, in return for concessions by the United States on immigration policy. Such bargains tend to be more difficult, however, because the number of interest groups and bureaucratic players is larger, and the agreement must be more complex.

Moreover, issue linkage will not solve the problem that arises if sending-country governments do not perceive themselves as

⁵³ See id at 96.

⁵⁴ Whether immigration agreements can offer reciprocal benefits to all participants has been discussed elsewhere. See, for example, Timothy J. Hatton, *Should We Have a WTO for International Migration?*, 22 *Econ Pol* 339, 364–65 (2007); Gordon H. Hanson, *The Governance of Migration Policy* *3 (UN Development Programme Human Development Research Paper 2009/2, Apr 2009), online at http://hdr.undp.org/en/reports/global/hdr2009/papers/HDRP_2009_02_rev.pdf (visited Mar 1, 2013).

⁵⁵ See Michael Topmiller, Frederick J. Conway, and James Gerber, *US Migration to Mexico: Numbers, Issues, and Scenarios*, 27 *Mexican Studies/Estudios Mexicanos* 45, 49–51 (2011) (estimating the number of US citizens living in Mexico to be as low as 500 thousand people in 2008).

⁵⁶ Ernst B. Haas, *Why Collaborate? Issue-Linkage and International Regimes*, 32 *World Polit* 357, 371–72 (1980) (describing issue linkage as linking two separate issues—trade and migration, for example—in order to negotiate a deal).

beneficiaries of agreements with receiving countries to liberalize immigration. The difficulty relates to the differential effects of liberalization on the welfare of the migrants themselves versus the welfare of "those left behind." Consider a simple neoclassical model of migration in a two-country setting with two factors of production—capital and labor—and no government sectors. Technology exhibits constant returns to scale and every factor of production is then paid the value of its marginal product. One country has abundant labor and the other has abundant capital. Labor in the labor-abundant country sees higher returns in the capital-abundant country and wishes to migrate. The migrants gain from migration, of course, or they would not move. The receiving country also gains from inframarginal immigration because the marginal product of labor falls—each migrant is paid the marginal product of labor, but the average product of migrants is higher, with the difference going to people previously resident in the receiving country (specifically, the owners of capital). The labor-abundant country suffers an economic loss, however, for the opposite reason—the departed laborers had been paid their marginal product, which was below their average product, and the surplus that previously went to owners of capital in the labor-abundant country evaporates.⁵⁷

A variant of the same phenomenon is often discussed under the rubric of the "brain drain." Developing countries often complain that many of their most skilled and talented citizens emigrate to developed countries where incomes are higher. The loss of skilled labor, which is complementary in production to unskilled labor and capital, reduces the returns to those left behind.

This type of one-way problem can also frustrate efficient cooperation regarding the information available to sending countries. As noted, the efficiency gains from migration flow from the greater productivity of labor in the receiving country than in the sending country, but not all migration yields sufficient productivity gains to overcome various negative externalities associated with migration (such as the consumption of social services or crime⁵⁸). A difficult challenge for any immigration policy, whether

⁵⁷ See Sykes, *The Welfare Economics of Immigration Law* at 165–66 (cited in note 13). For a more formal exposition of the benefits to the receiving country (the "immigration surplus"), see generally George J. Borjas, *The Economic Benefits from Immigration*, 9 J Econ Persp 3 (Spring 1995).

⁵⁸ See text accompanying notes 16–17.

national or cooperative, is to screen out the migrants who realize private gains but impose net social costs.

One fundamental problem in this regard is imperfect information. Migrants know what drives them to migrate, but authorities in receiving countries may not. Often, however, sending countries will have superior information about potential emigrants than receiving countries, but they lack incentives to generate or disclose that information if they view emigration as a net detriment.⁵⁹ Moreover, sending countries can benefit if migrants who are criminals, sick, or poor workers can be foisted off on unwitting receiving countries.

In sum, if sending countries discount the welfare effects of emigration on the migrants themselves and focus instead on the economic welfare of those left behind, they may view emigration negatively and be quite unwilling to offer receiving countries concessions in return for liberalized immigration rules. Sending countries may also be unwilling to assist receiving countries in screening migrants for qualities that make migration inefficient. This set of problems, too, has possible solutions. The key challenge is to allow those left behind to share in some of the benefits of migration. In some cases, this sharing may occur because migrants return home or send remittances to families back home. One can also imagine that sending countries might somehow impose a tax on emigration to capture some of the benefits.⁶⁰

2. Migration diversion.

Beyond the challenges of devising approaches to cooperation that can afford benefits to all interested countries, international cooperation on migration must confront another set of problems that also arises with trade agreements—multilateral cooperation is difficult and costly, while bilateral cooperation entails externalities that can lead to an important inefficiency. In the trade context, the inefficiency at issue is termed “trade diversion”; the analogous problem in the migration context can be termed “migration diversion.”⁶¹

⁵⁹ See Hanson, *The Governance of Migration Policy* at *31 (cited in note 54).

⁶⁰ See Jagdish N. Bhagwati, *The International Brain Drain and Taxation: A Survey of the Issues*, in Jagdish N. Bhagwati, ed., *The Brain Drain and Taxation: Theory and Empirical Analysis* 3, 22–26 (North Holland 1976).

⁶¹ Richard G. Lipsey, *The Theory of Custom Unions: Trade Diversion and Welfare*, 24 *Economica* 40, 41 (1957).

To appreciate the problem of trade diversion, consider an importing nation that initially charges the same tariff on imports of a particular type of good from all sources. A uniform tariff ensures that imports of the good will come from the source(s) of supply that offers the best mix of price and quality characteristics. Now suppose that the importing nation negotiates a bilateral trade agreement with one exporting country, reducing the tariff on imports from that country below the tariff applicable to imports from other countries. The tariff preference plainly affords a competitive advantage to exporters in the favored country, which may allow them to take sales away from competitors in other countries who have lower costs or higher quality. The shift of production from low cost and high quality sources to the higher cost and lower quality favored producers is a pure economic loss, which is avoided if tariffs are nondiscriminatory and obey the most-favored-nation principle.⁶²

Preferential migration agreements raise the identical problem. Suppose that the largest economic gains from migration into some set of jobs in the United States arise if Chinese immigrants fill the available job openings (perhaps the Chinese workers are the best match in terms of their skills, or perhaps the labor market in China offers them especially bad options). Suppose further, however, that the United States enters a bilateral agreement liberalizing immigration restrictions on migrants from India. The result may be a displacement of Chinese immigrants by Indian immigrants, with attendant economic loss because migration comes from a less efficient source. The general point is that if international cooperation on migration results in preferential treatment for certain source countries, the global efficiency losses from migration diversion may be substantial and may actually exceed the gains from any increase in the allowable volume of migration.

Such welfare-reducing agreements may nevertheless arise because of externalities. In the hypothetical scenario above involving the United States, India, and China, the inefficiencies associated with diverting migration from China to India may be borne primarily by Chinese workers who are denied the opportunity to

⁶² For a definition of the most-favored-nation principle, see G.C. Hufbauer, J. Shelton Erb, and H.P. Starr, *The GATT Codes and the Unconditional Most-Favored-Nation Principle*, 12 Law & Pol Intl Bus 59, 59 (1980) (defining the most-favored-nation principle as when "one country promises to extend to another the most favorable trade concessions it has granted, or may grant, to any third country").

migrate. These costs will be ignored by India and the United States when they consider whether to enter their bilateral arrangement.⁶³

Of course, to the degree that preferential agreements among two or a few countries are cheaper to negotiate, these cost savings must be considered. Moreover, a preferential agreement that results in greater amounts of migration from efficient sources will not entail the costs of migration diversion. Thus, one cannot conclude that preferential agreements are undesirable across the board, only that they may be undesirable if they produce enough migration diversion.

Migration diversion can be avoided if international cooperation adheres to an equivalent of the most-favored-nation obligation under GATT, a rule that (subject to exceptions) prohibits tariff discrimination among trading partners.⁶⁴ The difficulty, of course, is that migration is not controlled by tariffs, nondiscriminatory or otherwise, but by a variety of other rules and regulations, sometimes involving migration quotas for particular countries. This approach to migration control raises the possibility of migration diversion even under noncooperative national policies, let alone preferential cooperation. Against this backdrop, the task of designing cooperative arrangements that afford an origin-neutral allocation of the opportunity to migrate and ensure that the most efficient migration occurs in relation to any allowed level of migration, is a daunting one.

II. INTERNATIONAL COOPERATION IN PRACTICE

International cooperation on migration is limited to be sure, but by no means unimportant. This Part divides the landscape into four areas: cooperation on permanent migration, cooperation on temporary migration, cooperation on enforcement of visa restrictions, and cooperation on the accommodation of refugees. It discusses the degree and nature of cooperation in each area in relation to the theoretical considerations developed in Part I.

A. Permanent Migration

Free internal migration, including the opportunity to secure permanent residence and employment, is a common (although

⁶³ The danger of inefficient bilateral agreements due to trade diversion externalities is well-known in the international trade literature. See Bagwell and Staiger, *The Economics of the World Trading System* at 71–94 (cited in note 19).

⁶⁴ See GATT Art I, 55 UN Treaty Ser at 196 (cited in note 38).

not universal⁶⁵) characteristic of nation-states. In the United States, for example, free internal migration is constitutionally guaranteed under the Privileges and Immunities Clause.⁶⁶

With rare exceptions, however, international migration agreements do not facilitate permanent migration. The most notable exception is the European Union. EU residents are allowed to move freely among member states. After ninety days, the receiving country may require them to demonstrate that they will not become a burden on social services.⁶⁷ Otherwise, they can extend their stay and earn a right to permanent residence after five years.⁶⁸ The Trans-Tasman Travel Arrangement (TTTA), an informal set of mutually agreed-upon immigration practices, enables Australians and New Zealanders to reside and work indefinitely in the other country (although their ability to draw on social services requires the further step of permanent residency⁶⁹). A similar arrangement is the ultimate objective of the Economic Community of West African States⁷⁰ (ECOWAS), although its implementation is to date incomplete.⁷¹

Although the members of the EU, TTTA, and ECOWAS differ dramatically in their level of development, they have some common characteristics. First, to a great degree, each contains nations at roughly comparable levels of development.⁷² As a result,

⁶⁵ For example, China's *hukou* system of household registration makes movement from rural to urban areas difficult. See Kam Wing Chan, *The Chinese Hukou System at 50*, 50 *Eurasian Geo & Econ* 197, 198 (2009) (noting that up to 800 million are adversely affected by the system).

⁶⁶ See Note, *Interstate Migration and Personal Liberty*, 40 *Colum L Rev* 1032, 1046–47 (1940).

⁶⁷ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely within the Territory of the Member States, 2004 OJ L158 77, 81 (Apr 30, 2004).

⁶⁸ See Directive 2004/38/EC, 2004 OJ L158 at 82 (cited in note 67).

⁶⁹ See Australian Government Productivity Commission, *Population and Migration: Understanding the Numbers* *26 (Productivity Commission Research Paper, Dec 2010), online at http://www.pc.gov.au/_data/assets/pdf_file/0016/104128/population-migration.pdf (visited Mar 1, 2013).

⁷⁰ Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo. See *Economic Community of West African States (ECOWAS): Revised Treaty*, 35 *Intl Legal Mat* 660, 664, 667 (1996).

⁷¹ See *Free Movement of Persons in Regional Integration Processes* 27–29 (International Organization for Migration (IOM) 2010). See also Vikki Chambers, Marta Foresti, and Daniel Harris, *Final Report: Political Economy of Regionalism in West Africa—Scoping Study and Prioritisation 4* (Overseas Development Institute Mar 30, 2012), online at <http://www.odi.org.uk/resources/docs/7720.pdf> (visited Mar 1, 2013).

⁷² Some movement toward cooperation on permanent migration appears to be underway in two other regions that also roughly meet this condition—the Common Market

migration can be expected to occur in a variety of directions—these arrangements do not suffer from a one-way problem driven by migration from rich to poor countries.⁷³ Second, at least with the EU and ECOWAS, both arrangements have strong political underpinnings favoring deep integration and cooperation. The EU evolved as a response to the enormously costly conflicts in Europe that preceded it. ECOWAS likewise embraces the goal of bringing democracy to the region, overcoming years of abuses by authoritarian regimes, and includes extensive local cooperation on security matters.⁷⁴ Australia and New Zealand are less committed to deep integration politically, but they do share a common colonial heritage.

It is noteworthy, however, that each of these arrangements raises the problem of migration diversion. Conceivably, the geographic proximity of the member nations in these arrangements dampens the problem—because the direct travel costs of migration will tend to be lower between proximate nations, and cultural barriers that diminish the quality of life for migrants may tend to be lower as well, the members of these arrangements may be relatively efficient suppliers of migrants to each other, but one cannot be sure.

B. Temporary Migration

Most international cooperation on migration takes the form of arrangements to facilitate temporary entry of certain categories of workers. To give a few examples, Germany has bilateral labor agreements with certain Central and Eastern European nations for the supply of temporary workers on a contract basis to German firms.⁷⁵ The workers remain employees of firms in

for Eastern and Southern Africa, and the Andean Community of Nations. See *Free Movement* at 30–33 (cited in note 71).

⁷³ See Hatton, 22 *Econ Pol* at 370 (cited in note 54). To be sure, concern for “welfare migration” arises in the EU, especially from some of the more recent and lower per-capita-income member states. The ability of host countries to screen out migrants likely to become a burden on social services is a partial response to the problem. See generally Herbert Brücker, et al, *Managing Migration in the European Welfare State*, in Tito Boeri, Gordon Hanson, and Barry McCormick, eds, *Immigration Policy and the Welfare System* 1 (Oxford 2002); Assaf Razin, Efraim Sadka, and Benjarong Suwankiri, *Migration and the Welfare State: Political-Economy Policy Formation* (MIT 2011).

⁷⁴ ECOWAS, 35 *Intl Legal Mat* at 668, 687 (cited in note 70).

⁷⁵ See Daniela Bobeva and Jean-Pierre Garson, *Overview of Bilateral Agreements and Other Forms of Labour Recruitment*, in *Migration for Employment: Bilateral Agreements at a Crossroads* 11, 13 (Organisation for Economic Co-operation and Development 2004).

their home country and are limited to a two-to-three year stay in Germany.⁷⁶ Canada has agreements with a number of Caribbean countries to supply temporary agricultural workers.⁷⁷ Workers are in many cases selected by their home country governments and receive priority for return visits to Canada if they have complied with all requirements, including the obligation to return home.⁷⁸ The Philippines has a number of bilateral migration agreements covering, among other things, temporary workers at a variety of skill levels, including health care workers destined for positions in the United Kingdom⁷⁹ and Norway,⁸⁰ and for relatively low-skilled positions required by the US military (such as food service workers).⁸¹ The Philippine government typically plays a role similar to an employment agency, transmitting information on vacancies to Philippine workers, screening them for proper credentials, and in some cases providing them with foreign-language training.⁸²

Increasing numbers of preferential trade agreements and related instruments also provide for temporary migration. Chapter 16 of the North American Free Trade Agreement⁸³ (NAFTA), for example, covers temporary entry of businesspeople for purposes of trade in goods, services, or investment.⁸⁴ The covered categories include business visitors entering temporarily to engage in international business activity, intracompany transferees in a "capacity that is managerial, executive or involves specialized

⁷⁶ See Thomas Liebig, *Recruitment of Foreign Labour in Germany and Switzerland*, in *Migration for Employment* 157, 162 (cited in note 75).

⁷⁷ See Bobeva and Garson, *Overview of Bilateral Agreements* at 13 (cited in note 75).

⁷⁸ See *Labour Migration* (IOM), online at <http://www.iom.int/cms/en/sites/iom/home/what-we-do/labour-migration.html> (visited Mar 1, 2013).

⁷⁹ See *Memorandum of Understanding between the Government of the Republic of the Philippines and the Government of the United Kingdom of Great Britain and Northern Ireland on Healthcare Cooperation* Art I, in Foreign Service Institute, *Philippine Bilateral Agreements (2003–2004)* 12 (July 31, 2007), online at http://www.poea.gov.ph/lmi/Bilateral%20Agreements/BLA_PH_UK2003.pdf (visited Mar 1, 2013).

⁸⁰ *Agreement between POEA Philippine Overseas Employment Administration and Aetat the Directorate of Labour Norway on Transnational Cooperation for Recruiting Professionals from the Health Sector to Positions in Norway 2* (June 26, 2001), online at http://www.poea.gov.ph/lmi_kiosk/Bilateral%20Agreements/BLA-%20NORWAY.pdf (visited Mar 1, 2013).

⁸¹ US-Republic of the Philippines Offshore Labor Agreement (1968) 19 UST 7560, TIAS No 6598 (1968).

⁸² See *Agreement between POEA and Aetat* at 7 (cited in note 80).

⁸³ *North American Free Trade Agreement between the Government of the United States of America, the Government of Canada and the Government of the United Mexican States*, 32 Intl Legal Mat 612 (1993).

⁸⁴ *NAFTA*, 32 Intl Legal Mat at 665–66.

knowledge,” and “professionals” seeking to engage in a “business activity at a professional level.”⁸⁵ Workers in these categories face fewer paperwork requirements, potentially lower fees, and in the case of professionals have a certain number of visas reserved for them. A similar system is included in Chapter 11 of the US-Singapore Free Trade Agreement.⁸⁶ Numerous other examples might be offered.

At the multilateral level, the WTO General Agreement on Trade in Services⁸⁷ (GATS) affords a vehicle for temporary migration commitments in relation to services trade. “Mode 4” of services trade under GATS involves the provision of services “by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.”⁸⁸ WTO members can make commitments with regard to Mode 4 trade on a “horizontal” basis (covering all service sectors) or on a sector-by-sector basis (for example, legal services, financial services, and so on).⁸⁹

Most of the Mode 4 GATS commitments to date are horizontal.⁹⁰ To take the example of the United States once again, the primary horizontal commitment applies to the temporary entry of salespersons, managers, executives, and certain individuals with specialized skills.⁹¹ These provisions to a significant degree parallel the provisions in US free trade agreements, with a focus on visitors facilitating transactions with foreign suppliers and investors, and certain classes of highly skilled workers.⁹²

⁸⁵ *NAFTA*, 32 Intl Legal Mat at 666.

⁸⁶ US-Singapore Free Trade Agreement Implementation Act, Pub L No 108-78, 117 Stat 948, 970 (2003).

⁸⁷ 1869 UN Treaty Ser 183 (1994).

⁸⁸ GATS, 1869 UN Treaty Ser at 185–86 (cited in note 87).

⁸⁹ See GATS, 1869 UN Treaty Ser at 198 (cited in note 87).

⁹⁰ See *Movement of Natural Persons: Current Commitments and MFN Exemptions* (WTO 2012), online at http://www.wto.org/english/tratop_e/serv_e/movement_persons_e/movement_persons_e.htm (visited Mar 1, 2013).

⁹¹ See *Services Database* (WTO), online at <http://tsdb.wto.org/default.aspx> (visited Mar 1, 2013) (providing an overview of US horizontal commitments under the “horizontal commitments” drop-down menu). See also Sumanta Chaudhuri, Aaditya Mattoo, and Richard Self, *Moving People to Deliver Services: How Can the GATS Help?* *7 (World Bank Policy Research Working Paper No 3238, Jan 2004), online at http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/04/14/000009486_20040414171539/Rendered/PDF/wps3238mvpeople.pdf (visited Mar 1, 2013) (explaining that most of US GATS commitments relate to salespersons, managers, or specialized workers).

⁹² See Joel P. Trachtman, *The International Law of Economic Migration: Toward the Fourth Freedom* 249, 250 (W.E. Upjohn Institute for Employment Research 2009).

In sum, agreements to facilitate temporary migration are common and tend to fall into one of two categories. The first category involves agreements that focus on skilled labor, professionals, and workers engaged in international transactions.⁹³ The second involves agreements that focus on the temporary entry of less-skilled workers in local short supply, such as agricultural and food-service workers.⁹⁴ In both instances, receiving countries have assurance that the temporary migrants have gainful employment on arrival or high-level skills that make them unlikely to become unemployed.

The prevalence of this type of cooperation is easy to explain on the basis of the considerations developed in Part I. First, and most obviously, these programs for temporary migrants greatly reduce the chance that the migrants will become a net drain on social services, and they do much to ameliorate concerns about welfare migration.

Second, temporary migration helps to overcome the one-way problem. Temporary migrants remain citizens of the sending country, will return to it eventually, and will contribute to it economically. They retain political participation rights in the home country. Many have relatives in the home country to whom income will be sent. Sending countries are thus more likely to enjoy economic and political benefits from the facilitation of temporary migration.

Somewhat more puzzling is the pattern of cooperation in GATS, with horizontal commitments prevailing over sectoral commitments.⁹⁵ Perhaps the explanation lies in the possibility that highly skilled workers, professionals, and intracorporate transferees are on balance desirable as temporary migrants without regard to the service sector in which they work, while other types of service workers raise too many concerns about welfare migration, again irrespective of the service sector.

One other noteworthy aspect of GATS cooperation is its nondiscriminatory nature. Under GATS Article II, market-access commitments in all service sectors must obey the most-favored-nation principle.⁹⁶ Adherence to that principle here avoids the problem of migration diversion (except with respect to

⁹³ See Bobeva and Garson, *Overview of Bilateral Agreements* at 22 (cited in note 75).

⁹⁴ See *id.*

⁹⁵ For an explanation of horizontal and sectoral commitments, see Rupa Chanda, *Social Services and the GATS: Key Issues and Concerns*, 31 *World Dev* 1997, 1999 (2003).

⁹⁶ GATS, 1869 UN Treaty Ser at 186 (cited in note 87).

the small number of countries that are not WTO members) by placing all WTO member countries on a level playing field to compete for Mode 4 services trade.

C. Enforcement Cooperation

Professor Eleanor Brown's recent work on outsourcing immigration compliance brings to the fore the role that international cooperation may play in achieving greater compliance with immigration rules, perhaps at lower cost.⁹⁷ She focuses particularly on an arrangement between Canada and Jamaica, in which Jamaica screens applicants for temporary agricultural jobs in Canada and incentivizes temporary migrants to return to Jamaica in compliance with the terms of their visas.⁹⁸ The evidence suggests that the program is fairly successful at preventing migrants from overstaying their welcome, and Jamaica is implicitly rewarded for its efforts with an increase in the number of visas given to Jamaicans for employment in Canada (or the avoidance of a decrease in that number).⁹⁹ This example offers a clear illustration of the benefits of international cooperation on enforcement matters. The key to such cooperation in the case of a country pair such as Canada and Jamaica is to find a solution to the one-way problem—as explained above, temporary migration helps considerably in that regard, and the favorable treatment of Jamaica with regard to the number of visas granted further sweetens the pot from its perspective.

The major concern with such arrangements, of course, is migration diversion. There are many source countries for temporary agricultural workers, and it is hardly clear that Jamaica is a more efficient source of supply than other Caribbean or Latin American nations. To maximize the gains from such cooperation, therefore, it should ideally be made broadly available to source countries and designed so that market forces determine the flow of migrants from cooperating countries rather than, for example, arbitrary quotas.

⁹⁷ Eleanor Marie Lawrence Brown, *Outsourcing Immigration Compliance*, 77 *Fordham L. Rev.* 2475, 2521 (2009).

⁹⁸ *Id.* at 2498–2501.

⁹⁹ *Id.* at 2500.

D. Refugees

The 1951 Convention Relating to the Status of Refugees,¹⁰⁰ as modified by the 1967 UN Protocol Relating to the Status of Refugees,¹⁰¹ embodies a commitment by signatories not to return refugees to their country of persecution—in essence, a mutual commitment to host refugees.¹⁰² Professors Ryan Bubb, Michael Kremer, and David Levine argue convincingly in a recent paper that the Convention may be understood as an agreement among altruistic receiving countries to supply the public good of hosting refugees.¹⁰³

This arrangement serves as a clear illustration of international cooperation to address externalities among receiving countries. It is costly to host refugees, yet potential receiving nations also value an outcome in which refugees are saved from persecution. Acting noncooperatively, each nation would prefer to avoid the costs of hosting refugees while hoping that some other nation will let them in; the result is that refugees are turned away. To avoid this outcome, nations covenant to admit the refugees that appear at their border.

The difficulty with the Convention is that cooperation only goes so far—refugees decide for themselves where to seek protection. Moreover, each nation is allowed to establish its own procedures for deciding who qualifies as a refugee.¹⁰⁴

Cooperation can then break down for at least three reasons. First, host countries are subject to shocks in the flow of refugees. In particular, if certain host countries experience a flood of refugees, then the costs of hosting them all may exceed the altruistic benefits of sustained cooperation. They will turn the refugees away and cooperation can unravel.

Second, because host countries can establish their own standards for deciding who is a refugee, nations may be tempted to set unjustifiably high standards in that regard. If shading in this way is difficult for other countries to observe, then it may become widespread, and again cooperation can unravel.

¹⁰⁰ 189 UN Treaty Ser 137 (1951).

¹⁰¹ 606 UN Treaty Ser 267 (1967).

¹⁰² See 1951 Convention, 189 UN Treaty Ser at 176 (cited in note 100); 1967 UN Protocol, 606 UN Treaty Ser at 268 (cited in note 101).

¹⁰³ Ryan Bubb, Michael Kremer, and David I. Levine, *The Economics of International Refugee Law*, 40 J Legal Stud 367, 372–73 (2011).

¹⁰⁴ See 1951 Convention, 189 UN Treaty Ser at 162 (cited in note 100).

Third, and related, the problem of shading on standards is compounded when economic migrants start trying to claim refugee status.¹⁰⁵ In particular, assume (as seems to be the case in practice) that the degree of altruism toward economic migrants is considerably less than toward bona fide refugees. Receiving nations faced with the challenge of distinguishing economic migrants from refugees will now have further incentive to tighten the standards for securing refugee status, diverting migrants elsewhere and encouraging other nations to do the same. The result may again be an unraveling of cooperation, or at least inefficiently stringent rules for identifying refugees.¹⁰⁶

A possible solution, of course, is a deeper level of international cooperation to constrain the legal rules governing the ability of migrants to obtain refugee status. Cooperation at this level may be exceedingly difficult to enforce, however, as shading in individual cases may not be easily detectable.

CONCLUSION

This brief contribution offers an overview of the theoretical case for international cooperation on migration as well as the obstacles to such cooperation. The potential benefits of cooperation appear quite significant, but the challenges of orchestrating cooperation in the face of asymmetric information about migrants, the related problem of welfare migration, and the one-way problem are considerable. The result has been an emphasis on the temporary movement of high-skilled workers and low-skilled workers with demonstrable employment prospects.

¹⁰⁵ For a formal model of the third problem, see Bubb, Kremer, and Levine, 40 *J Legal Stud* at 381 (cited in note 103).

¹⁰⁶ See *id.*