

**AMERICAN BAR ASSOCIATION**

**ADOPTED BY THE HOUSE OF DELEGATES**  
**August 7-8, 2006**

**RECOMMENDATION**

RESOLVED, That the American Bar Association supports multinational cooperation and consultation in the formulation of national laws and policies relating to migration.

FURTHER RESOLVED, That the American Bar Association urges the United States government to enter into regional and international discussions and agreements governing the flow of workers.

**REPORT**

## **I. Introduction**

Migration recently has been a major subject of discussion at meetings of the International Labor Organization (ILO) and the World Trade Organization (WTO) in Geneva and elsewhere around the globe. Remarkably, except for the United Nations High Commissioner for Refugees (UNHCR) that handles refugees and asylum seekers, there is no UN agency responsible for the subject of migration. The UN Secretary General, Kofi Annan, recognizing that migration is high on the global agenda, and seeing the gap in the UN system, encouraged a thorough discussion of the subject. Migration is defined as the movement of persons from one country to another.

### **The Report of the Global Commission on International Migration**

In December 2003, a Core Group of States established the Global Commission on International Migration (GCIM) with a mandate to provide the framework for the formulation of a coherent, comprehensive and global response to the issue of international migration. Created as an independent body and consisting of 19 people from different parts of the world with a variety of high-level international experience, the Commission was more specifically requested to promote a comprehensive debate among states and other actors with respect to migration; to analyze gaps in current policy approaches to migration; to examine inter-linkages between migration and other global issues; and to present appropriate recommendations to the UN Secretary-General, governments and other stakeholders.

The GCIM's report found that in every part of the world there is now an understanding that the economic, social and cultural benefits of international migration must be more effectively realized, and that the negative consequences of cross-border movement could be better addressed. The report provides an excellent basis for future cooperation on migration issues. It will serve as a basis for discussion at the UN General Assembly's High Level Dialogue on Migration and Development in September 2006. This Report and Recommendation does not endorse all of the recommendations of the GCIM, but does strongly endorse one of them: expanded dialogue, consultation and cooperation among governments and international organizations at the global level based on widespread consultation and discussion with civil society.

### **Process**

The GCIM's Co-Chairs were Jan Karlsson, former Minister for Migration and Development, Sweden and Mamphela Ramphele, former Managing Director, World Bank, South Africa. The nineteen Commissioners included: Mary Robinson, former President of Ireland and former UN High Commissioner for Human Rights, Ireland; Rev. Nicholas DiMarzio, Bishop of Brooklyn, Chair of the Catholic Legal Immigration Network, United States; Sharan Burrow, President, International Federation of Free Trade Unions and Australian Council of Trade Unions, Australia;

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Mike Moore, former Prime Minister of New Zealand, Former Director General, World Trade Organization, New Zealand.<sup>1</sup>

In 2004 and 2005 the GCIM and its Geneva-based Secretariat met on a regular basis and undertook extensive consultations with a wide variety of stakeholders. This included five major regional hearings in Manila, Cairo, Budapest, Mexico City and Cape Town, attended by government officials at the local, regional and national levels, representatives of international and non-governmental organizations, trade unions, migrant associations, employers, corporate managers, recruitment agents, academic experts and journalists. The Commissioners and the Secretariat also held bilateral meetings with governments and institutions around the world. The Commission convened workshops with parliamentarians, the private sector, human rights organizations, the media and migration policy specialists. The Secretariat conducted a broad analysis and research program involving leading experts and scholars. The Core Group of States (32 governments) provided informal consultation.

Given the breadth of the issue, the GCIM decided to focus on those migration issues that are largest in scale and of broadest and current concern. It therefore gave primary attention to the economic and social human rights and governance dimensions of migration within developing regions and from developing regions to industrialized states. While not employing a formal definition of migrants, the report focused on people who have been living outside their country of origin for more than one year, as well as on temporary migrants. It does not examine issues relating to large-scale refugee situations in developing countries, nor the issue of internal migration and internal displacement. The work of the GCIM was supported by the governments of Switzerland, Sweden, Netherlands, United Kingdom, Norway, Australia and Germany, and by the McArthur Foundation, Ford Foundation and World Bank.

## **Key Factual Findings**

The GCIM presented its report to the United Nations Economic and Social Council (ECOSOC) in New York in October 2005. The Report and a library of research materials are on the Commission's website: <http://www.gcim.org>.

The GCIM found that the world has been transformed by the process of globalization. There are nearly 200 million migrants counting only those who have lived outside their country for more

<sup>1</sup> The other Commissioners were: Prof. Francisco Alba, Professor and Researcher, El Colegio de Mexico and Member of the Committee on Migrant Workers, Mexico; Dr. Aicha Belari, former Secretary of State for Co-operation, former Ambassador to the European union, Morocco; Hon. Joris Demmink, Secretary General, Ministry of Justice, Netherlands; Dr. Mary Garcia Castro, Member, Brazilian Commission on Population and Development, Brazil; Hon. Sergio Marchi, former Minister of Citizenship and Immigration, Environment, International Trade, former Ambassador to the World Trade Organization and United Nations, Canada; Dr. Nafis Sadik, former United Nations Under-Secretary-General, former Executive Director of UNFPA, Pakistan; Amb. Reda Ahmed Shehata, former Assistant Minister of Foreign Affairs, former Secretary to the President of Egypt, Egypt; Hon. Nand Kishore Singh, former Minister of State and Member of the National Planning Commission, India; Prof. Dr. Rita Sussmuth, former President of the German Parliament, former Minister for Family, Women, Youth and Health, Germany; Hon. Patricia Sto Tomas Aragon, Minister of Labour and Employment, Philippines; Prof. Valery Tishkov, former Minister for Nationalities, Director, Institute of Ethnology and Anthropology, Russian Academy of Science, Russian Federation; Hon. David Wheen, former Senior Official of the Department of Immigration and Multicultural and

Indigenous Affairs, Australia.

than one year and including 9.2 million refugees.<sup>2</sup> The number of migrants has doubled since 1985 and is equivalent to 3% of the world's population, or more than the population of Brazil (the world's fifth-largest country). Migrants now are to be found in every part of the globe and the distinction between sending and receiving countries is disappearing.

The Commission concluded that the international community has failed to capitalize on the opportunities and challenges associated with international migration for several reasons.

1. **States' Lack of Capacity.** States lack the capacity to formulate and implement effective migration policies. This is true in most countries, not only in developing countries. Officials dealing with the issues of migration, development and labor markets need access to better data. They lack training and do not understand the way in which migration and other policies impact on each other.

a. **Lack of Coherence.** Governments all around the world acknowledge difficulties in formulating coherent migration policies. They are confronted with competing priorities from within and without government.

b. **Wider Consultation is Required at the National Level.** Not only governments, but other stakeholders, including the private sector, non-governmental organizations, civil society and migrant organizations, should be able to contribute to policy development.

c. **Lack of Capacity and Political Will.** Because of lack of capacity and political will, states do not often enough implement international agreements on human rights, especially the seven core UN human rights conventions.

2. There is a need for more interstate cooperation and consultation in the formulation of immigration policies.

3. There is a need for more cooperation and coordination among the different multilateral international organizations working in the field of migration.

### **Recommendations of the GCIM**

The report set out a number of Principles for Action. If the benefits of international migration are to be maximized and its adverse consequences minimized, then migration policies should be based on shared objectives and have a common vision. The Principles are:

1. Migration should be by choice and not by necessity;
2. The role of migrants in promoting development and ending poverty should be recognized;

<sup>2</sup> The Office of the United Nations High Commissioner for Refugees (UNHCR) was established in 1950 by the UN General Assembly. UNHCR is mandated to lead and coordinate international action to protect refugees and

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resolve refugee problems worldwide. Refugees also are the subject of UN conventions. The GCIM therefore did not address refugees separately from other migrants.

3. The rights of irregular migrants should be protected;
4. The integration of migrants into society should be supported; and
5. There should be more coherence and capacity at the national level; greater cooperation among states at the regional level (including trade agreements, common definitions or model laws); dialogue, consultation and cooperation among governments and between international organizations at the global level, taking into account the close linkages between migration and development, trade, aid, state security, human security and human rights.

## **II. Rationale**

Migration is on the agenda of the U.S. Congress, the World Trade Organization, and bilateral and regional trade discussions, as well as the legislatures of most countries in the world. While the ABA has previously endorsed specific policies relating to rights of certain groups of migrants, it has not previously adopted a recommendation encouraging international dialogue and cooperation on the issue of international migration.

As globalization continues, it is increasingly important for national governments to coordinate their migration laws and policies. Such cooperation aids security efforts. As importantly, a fact-based discussion of migration issues will further the development of the rule of law relating to this topic. Coordinated migration laws and policies will facilitate international trade by making it easier for companies and individuals doing business internationally to understand and to comply with national immigration laws.

Migration is no longer a discussion in just a few developed or “receiving” countries. “Sending” countries also desire a discussion on migration. Concerns about demographic shifts, economic inequalities, globalization and security lend themselves to international dialogue. Treating migration as an issue that can be governed by more than 150 national migration regimes, with scant attention to coordination, best practices, reference to common values and definitions, and the like, has not worked well to date and will serve even less well in the future. The international business community is asking for greater transparency in the law, and other stakeholders are promoting similar agendas that could be advanced through expanded government-to-government dialogue. The potential upside of such a dialogue is significant, and the risks are minimal. The ideas generated ultimately could become the subject of international commitments.

Over the past fifty years, the ABA has adopted policy positions on a wide range of immigration issues. ABA entities playing a crucial role in the development of these policies included the Section of International Law, Commission on Immigration, Section of Individual Rights and Responsibilities, Section of Litigation, Criminal Justice Section and Section of Administrative Law and Practice. Most recently, at the 2006 Midyear Meeting, the ABA House of Delegates adopted seven new recommendations that address: Right to Counsel; Immigration Reform; Due Process & Judicial Review; Administration of U.S. Immigration Laws; Immigration Detention; Asylum and Refugee Procedures; and Protections for Immigrant Victims of Crime. The instant

R&R, however, is the first time we have addressed the concept of enhanced government-to-government coordination in setting policies relevant to the phenomenon of migration.

This Report and Recommendation puts the ABA firmly on record in favor of more effective dialogue and cooperation among governments and international organizations based on widespread consultation and dialogue with civil society concerning migration laws and policies. It provides a basis for advocacy in support of broad participation, including US government participation, in international discussions in whatever forum (UN or otherwise) emerges as a viable candidate. It is understood that, when civil society groups are invited to the table, the ABA will participate actively.

### **III. Future Agenda**

The international dialogue on migration is in its infancy. Worldwide demographic shifts, economic imbalances and security concerns mean that migration likely will be a primary topic of discussion and concern for the foreseeable future. In the long term, it will be desirable to discuss model laws, minimum requirements for transparency of national regimes, new institutional arrangements at the multilateral level and the like. In the short term, discussion can begin on cooperation in specific, non-controversial areas. There would be much to gain from doing so.

Respectfully submitted,

Michael Byowitz  
Chair  
August 2006

## GENERAL INFORMATION FORM

Submitting Entities: Section of International Law

Submitted By: Michael H. Byowitz

### **1. Summary of Recommendation.**

The Recommendation supports multinational cooperation and consultation in the formulation of national laws and policies relating to migration and urges the United States government to enter into regional and international discussions and agreements governing the flow of workers.

### **2. Approval of Submitting Entities.**

The Council of the Section of International Law approved the recommendation at its 2006 Spring Meeting. The Commission on Immigration approved co-sponsorship of the recommendation at its 2006 Spring Meeting.

### **3. Has this or a similar recommendation been submitted to the House or Board previously?**

No.

### **4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?**

The ABA has a number of policies on issues of immigration but none specifically on migration of workers.

### **5. What urgency exists which requires action at this meeting of the House?**

Migration issues are on the agenda of the U.S. Congress, the World Trade Organization, and bilateral and regional trade discussions, as well as the legislatures of most countries in the world.

### **6. Status of legislation.**

Not applicable.

### **7. Cost to the Association.**

None.

### **8. Disclosure of interest (if applicable)**

Not applicable.

**9. Referrals.**

Simultaneous with this submission, referral is being made to all other ABA Sections and Divisions.

**10. Contact Persons (prior to the meeting)**

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