June 9, 2008-2

Education, Culture and the Knowledge Economy Conference
University of Toronto Centre for Innovation Law and Policy

Friday, June 6, 2008

COMPETITIVE IMMIGRATION AND EMIGRATION POLICIES IN THE INTERNATIONAL MARKET FOR TALENT

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The market for highly-specialized human capital – once thought to be a largely domestic market and to raise largely domestic policy issues – has increasingly become an international market in many fields (including many academic fields). Presumably, reflecting in part demands by salient domestic political constituencies (especially employers) for greater access to this market, many countries have come to see their immigration policies as a key policy lever in increasingly intense inter-jurisdictional competition among states, particularly developed countries, to attract specialized forms of human capital in short supply in the domestic market.

Ayelet Shachar, in a widely-cited paper,[1] has superbly documented the evolving nature of this inter-jurisdictional competition. Many countries now have followed Canada's lead and adopted some form of point system for admission of so-called "independent" or "economic" migrants, abandoned much more restrictive quota regimes or in some cases outright prohibitions, and reduced the relative size of the family reunification class of immigrants. The process of evaluating independent or economic migrants for admission has in the case of many countries

[1] Ayelet Shachar, "The Race for Talent – Highly Skilled Migrants and Competitive Immigration Regimes," (2006) 81 *New York University Law Review* 148.

been expedited and simplified. Foreign students are often permitted to apply for permanent resident status after completion of their programs from within the host country; during the period of their studies, they are often permitted to pursue off-campus employment opportunities and hence to develop valuable social and economic networks. Temporary work visa programs have been expanded, and often temporary workers who would not qualify for admission under a point system are permitted later to apply for permanent resident status after demonstrating some relatively limited period of more or less continuous employment. Some countries have developed an accreditation program for employers who are permitted to offer both jobs and work visas to potential foreign employees.

This inter-jurisdictional competition for skilled migrants is the latest manifestation of economic globalization and dramatically advances the so-called Fourth Economic Freedom (in European Community jargon), following international liberalization of trade, capital flows, and services. However, to date (with the exception of the European Union) there is very little in the way of multilateral, regional, or bilateral treaties or agreements regulating the international mobility of people, in contrast to well-established multilateral, regional, or bilateral arrangements regulating international movement of goods, capital, and services.

From an economic perspective, a starting premise would be that liberalization of international movement of people would have many of the same positive impacts on global welfare as liberalization of international movement of other factors of production. Indeed, economists Bob Hamilton and John Whalley estimated, in the mid-1980s, that the benefits to the world of eliminating all global restrictions on the movement of people could more than double

world-wide gross domestic product each year, and at the same time improve the international distribution of income by reducing overall income inequalities – much more dramatic effects than from further trade or investment liberalization.[2] Despite such estimates of dramatic global welfare gains from liberalizing immigration, many, probably most countries, have maintained much more restrictive immigration policies than policies relating to international movement of goods, capital, and services. Some of the concerns underlying these restrictions are undoubtedly cultural – an apprehension that whatever is distinctive about a country's cultural, political, social and economic values and practices may be overwhelmed or at least compromised by massive influxes of immigrants from societies that do not share some or all of these values.[3]

However, there are two enduring concerns that are more economic in nature: first, that an influx of immigrants are likely to depress wages in domestic labour markets and/or raise unemployment rates in these markets, on the assumption that holding demand for labour constant an increase in labour supply is bound to have one or other of these two effects; second, that largely unrestricted immigration may lead to an influx of immigrants that will impose disproportionate burdens on the programs of the welfare state and place them under unsustainable fiscal stress. I have addressed both these sets of concerns in previous writings.[4] Despite the widespread and persistent nature of these concerns in many countries over extended periods of time, in fact there is very little evidence to substantiate either concern.

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[2]See Bob Hamilton and John Whalley, "Efficiency and Distributional Implications of Global Restrictions on Labour Mobility: Calculations and Policy Implications," (1984) 14 *Journal of Development Economics* 61.

[3] See generally for a critique of concerns over immigration, Philippe Legrain, *Immigrants: Your Country Needs Them* (Princeton University Press, 2007).

[4]Michael Trebilcock, "The Law and Economics of Immigration Policy," (2003) 5 *American Law and Economics Review* 271; and Michael Trebilcock and Matthew Sudak, "The Political Economy of Emigration and Immigration," (2006) 81 *New York University Law Review* 234.

With respect to concerns over labour market effects of immigration, it is obviously inappropriate to assume that the demand for labour is constant in the face of an increase of supply of labour from immigrants. Immigrants are not only workers but also consumers, so that their demand for goods and services translates into a demand for additional labour in many sectors. Moreover, an extensive body of empirical evidence has now reached a remarkably strong consensus that, at least in the past, immigrants have had small to non-existent effects on labour markets in terms of wage effects or unemployment effects. Of course, this evidence cannot necessarily be extrapolated into the future if the intake of immigrants were to dramatically increase.

With respect to concerns over the fiscal effects of immigration on public expenditure programs, including various social welfare programs, most people who migrate tend to be younger on average than the domestic population in countries of destination and at least marginally to improve the dependency ratio, i.e., the ratio of working to non-working members of the population. While the empirical evidence has perhaps not reached as settled a consensus as with labour market effects, in general the empirical findings suggest that immigrants (especially skilled immigrants) yield a significant fiscal dividend, i.e., they contribute more in taxes than they draw down in public expenditures.

However, this generally positive view of the economic impacts of immigration needs to be qualified by reference to recent Canadian evidence that recent cohorts of immigrants have done less well economically than prior cohorts and often significantly less well, on average, than the domestic population, despite being better educated, on average, than prior cohorts of

immigrants.[5] This lack of effective economic and sometimes social integration is an important source of concern. On the economic front, the point is sometimes made that while the educational credentials of immigrants have improved over time, those of the domestic population have improved even more strongly. As well, Canada, and probably many other countries of destination, have not been as proactive or effective in the integration policies they have adopted as one might have hoped – in Canada's case in part because of complex federal-provincial jurisdictional issues. However, policies are slowly being developed to provide more broadly accessible ESL programs, more effective and objective evaluation of immigrants' educational and on-the-job qualifications, and to develop bridging programs whereby deficiencies in existing qualifications can be remedied by additional education or training within Canada instead of rejecting the validity of these qualifications altogether on account of these deficiencies.

All of these issues pertain to the immigration side of the equation and the impacts of immigration on countries of destination. But there is obviously another side to the equation – countries of emigration or origin which are losing specialized human capital to countries of immigration or destination. Professor Shachar notes at the end of her paper that the increasingly fierce competition for talent amongst countries of immigration or destination may raise serious issues of international distributive justice. This is often referred to more colloquially as the problem for countries of emigration of the "brain drain." This problem is particularly acute for developing countries where specialized human capital is typically scarce, and prospects for

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[5] See e.g., Christopher Worswick, "Immigrants' Declining Earnings: Reasons and Remedies," C.D. Howe Backgrounder No. 8, April 2004 (Toronto); Jeffrey G. Reitz, "Immigrant Employment success in Canada, Part II: Understanding the Decline," *Journal of Migration and Integration* 8, 1 (2007): 37-62; Jeffrey G. Reitz, "Immigrant success in the Knowledge Economy: Institutional Change and the Immigrant Experience in Canada, 1970-1995," *Journal of Social Issues*, 57.3 (2001): 579-613 (issue on Immigrants and Immigration, edited by V.M. Esses, J.F. Dovidio, and K.L. Dion).

significant increases in economic growth on much conventional thinking in economic development circles is predicated on broadening and deepening the human capital base in these countries through broader access to both basic (primary and secondary) and advanced education and improving the quality and relevance of the education provided. As a scholar with major interests in the field of law, institutions and development, I want to focus the balance of my comments on the impacts of immigration on countries of emigration or origin, especially developing countries.

Empirical evidence on the brain drain has been hampered by the lack of comparable date regarding education levels and migration. The most comprehensive study to date is that of William Carrington and Enrica Detragiache.[6] Classifying the stock of immigrants in OECD countries based on education level and country of origin (for sixty-one developing countries), they find that emigrants tend to have above average education levels for their country of origin, and that "[f]or almost all countries, the highest migration rates are for individuals with a tertiary education."[7] This is especially true in the Caribbean and Central America, where virtually all of the countries show migration ratios[8] of citizens with tertiary education of greater than ten percent, with some countries losing as much as fifty percent of their most highly educated

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[6] William J. Carrington and Enrica Detragiache, *How Big is the Brain Drain?* (IMF, Working Paper No. WP/98/102, 1998) [hereinafter Carrington and Detragiache, *How Big*]; *see also* William J. Carrington and Enrica Detragiache, *How Extensive is the Brain Drain?* 36, *Fin. & Dev.* 2 (1999) [hereinafter Carrington and Detragiache, *How Extensive*]; Frederic Docquier and Hillel Rapoport, *Skilled Migration: The Perspective of Developing Countries* (World Bank, Working Paper No. WPS 3382, 2004), *available at* http://wdsbeta.worldbank.org/external/default/WDSContentServer/IW3P/IB/2004/09/22/000160016_20040922151739/Rendered/PDF/WPS3382.pdf.

[7] Carrington & Detragiache, *How Big, supra* note 5 at 3; *see also* Carrington & Detragiache, *How Extensive*, *supra* note 5 at 2.

[8] In this context, a migration ratio is the ratio of individuals with the particular educational attainment that emigrate versus those who do not.

citizens to the United States.[9] In South America, Guyana shows a migration rate of over seventy percent for citizens with tertiary education – in other words, seven in ten university educated individuals leave for the United States.[10] Some of the poorest African countries, such as Sierra Leone, Ghana, Gambia, and Uganda, each have migration ratios in excess of fifteen percent for highly skilled citizens.[11] This evidence suggests a strong case for concerns about the effects of emigration on development.

However, there is other evidence that this concern over human capital depletion, while intuitively compelling, is incomplete. Objections to the conventional wisdom include the positive incentive effects that emigration may have on the decision to pursue higher education in the first place, and the prospect of return migration and "brain circulation", and investment, trade and fiscal effects.

To expand on these points briefly, given that the ability to emigrate is valuable, factors that influence the possibility of emigration, such as higher education or advanced skills, may be pursued by individuals to maximize the expected value of their education, including, in a probabilistic sense, the possibility of emigrating. In this sense, the possibility of emigration may operate as a positive incentive for individuals to increase their investments in their own education and training (option value) even if in fact many of them choose subsequently not to emigrate. Thus, the effect of emigration on the stock of human capital in a country is somewhat ambiguous. Also, the prospect of return migration or circulation may counter, to a significant extent, the deleterious influence of skilled worker emigration. This effect has been particularly

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[9] Carrington and Detragiache, *How Big*, *supra* note 5 at 17.
[10] *Id.*
[11] *Id.* At 18-19.

pronounced in the recent dramatic economic growth records experienced by India and China, much of this being driven by the return or circulation of emigrants from overseas diasporas, such as members of the Indian community in Silicon Valley in the U.S. or the Chinese communities in Taiwan, Hong Kong, Singapore and elsewhere. Apart from return migration and brain circulation, these far-flung international, economic, social and cultural networks are also a major source of new trading and investment opportunities with or in countries of origin. Countries of emigration can foster these networks by extending the option to their emigrants of retaining a capacious conception of continuing citizenship in their former home countries (recognizing that an increasing number of countries of immigration also now recognize dual or multiple citizenship).[12] With respect to remittances, current estimates suggest that remittances from emigrants from developing countries to family members or others in countries of origin may currently be running in the range of two hundred to three hundred billion dollars a year. To put this number in perspective, official development assistance (foreign aid) is currently running at about eighty billion dollars a year, and foreign direct investment in developing countries at about three hundred billion dollars a year. Thus, remittances from emigrants are an extremely important source of additional revenue for developing countries (offsetting substantially the loss of tax revenues from their departure). Thus, the impact of immigration and emigration on developed and developing countries with respect to specialized human capital is not as straightforward as perhaps initial intuitions might suggest.

In this respect, let me close with the following comment: I have always been bothered by the sharply differential fees charged to domestic and foreign students pursuing advanced

[12] As Kim Barry has argued, "Home and Away: The Construction of Citizenship in an Emigration Context," (2006) 81 *New York University Law Review* 11.

education in Canada, particularly in the case of students from developing countries pursuing graduate studies in Canada. An important contribution that Canada could make to economic development in poorer countries is providing (subsidizing) broader opportunities for graduate study in Canada for the most promising students from developing countries, recognizing that some will choose to stay in Canada or emigrate to other developed countries, but others will choose to return either sooner or later, or become part of the rapidly expanding international networks of emigrants who retain connections with their countries of origin through brain circulation or the development of trade and investment opportunities in their countries of origin, as well as, of course, constituting a major source of potential additional remittances to their countries of origin. In this way we could substantially mitigate, although perhaps not eliminate, the adverse distributional implications of the international competition for talent that Ayelet Shachar (and many others) are rightly concerned about.