

I LIVE HERE BUT WORK THERE: INSIGHTS ON TRANSBORDER LABOUR

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I. INTRODUCTION

The world seems to grow smaller by the day. As communications and transportation technologies improve, it is easier and faster for people, objects, and information to cross national boundaries.¹ One of the trends that is growing with this increased internationalism is that of daily transborder labour flows.² These are not the “immigrants” that xenophobes so fear,³ but rather people who live in one country and work in another, crossing the border daily (or weekly) to earn a living.⁴ Through the use of several border case studies, the following text will

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¹ See, e.g., Martha Neil, “Over There” (2003) 89 A.B.A. J. 54, in which the author discusses the increased expansion of legal markets as a result of growth in the global economy. Also, see generally Yvonne A. Tamayo, “Who? What? When? Where? Personal Jurisdiction and the World Wide Web” (1998) 4 Rich. J.L. & Tech. 7, examining how the Internet has reshaped traditional notions of geographic boundaries for establishing personal jurisdiction on a defendant.

² Julie Clothier, “Going the Distance to Work” (25 July 2006), online: CNN <<http://www.cnn.com/2006/TRAVEL/07/21/long.commute/index.html>>. The article explores the findings at a forum held by Thompson Holidays, the largest tour operator in the United Kingdom, and concludes that cross-border labour movement is likely to grow significantly until it will be commonplace by approximately 2016.

³ See, for example, Robert Donnelly & David A. Shirk, “Trans-Border Migration and Development”, University of San Diego Border Brief (5 October 2006), online: University of San Diego <https://sandiego.edu/tbi/documents/bp_shirk_donnelly.pdf>.

⁴ Franz Hirtzelsberger, Jochen Reuter, & Wolfgang Steinle, “Scientific Report on the Mobility of Cross-border Workers Within the EEA”, Report, Commissioned by the European Commission & DG Employment and Social Affairs, Presented by MKW Wirtschaftsforschung GmbH, Munich (November 2001) at 16 (defining a ‘frontier worker’ as any worker who pursues an occupation in one State but resides in another, to which he returns daily, or at least once per week); Citizens Information Board, “Working in the EU,” online: Citizens Information <http://www.citizensinformation.ie/categories/moving-country/moving-abroad/working-abroad/working_in_the_EU>, (defining “cross-border” or “frontier” worker as a person who lives in one country but works in another and who returns home at least once weekly).

outline and develop insight into the present and future of the social, political, and legal responses to transborder labour flows.

II. CASE STUDIES

a. United States—Mexico

The United States' border with Mexico has been the source of heated controversy for hundreds of years. The focal point of the controversy is the increased illegal entry of undocumented immigrants into the country.⁵ The ten largest border communities along the U.S.-Mexico border⁶ are San Diego–Tijuana, San Ysidro–Tecate, Caleixco–Mexicali, Nogales–Nogales, Douglas–Agua Prieta, El Paso–Ciudad Juárez, Presidio–Ojinaga, Eagle Pass–Piedras Negras, Laredo–Nuevo Laredo, and Brownsville–Matamoros.⁷ Transmigratory commuters in these areas (and others along the U.S.–Mexico border) receive border commuter cards that enable them to cross the border on a regular basis.⁸

A unique aspect of the transborder labour situation is the overall attitude of citizens in these border towns. Given that much popular opinion in the United States is so pervasively anti-immigration, one might expect the citizens of border communities to be among those most strongly opposed to border crossings, even in a daily context. One might expect American citizens to be bitter about Mexican citizens crossing the

⁵ For more information on undocumented workers, their social and economic effects, and reactions to them, see Rachel Feltman, “Undocumented Workers in the United States: Legal, Political, and Social Effects” (2008) 7 *Rich J. of Global L. & Bus.* 65.

⁶ U.S. Bureau of the Census, *Frequently Requested Population Tables* (2000), online: U.S. Census Bureau <<http://www.census.gov/statab/www.pop.html>>; INEGI (Instituto Nacional de Estadística, Geografía e Informática), *Resultados Preliminares del XXII Censo General de Población y Vivienda 2000*, online: INEGI <http://www.inegi.gob.mx/inegi/contenidos/espanol/prensa/Boletines/Boletin/Comunicados/Especiales/2000/Junio/cp_73.pdf>.

⁷ They are listed United States – Mexico, respectively. These communities formed as the result of the mid-nineteenth century U.S.–Mexico border formation. See Oscar J. Martinez, *Border People: Life and Society in the U.S.-Mexico Borderlands* (Tucson: University of Arizona Press, 1994).

⁸ Nestor Rodriguez & Jacqueline Hagan, “Transborder Community Relations at the U.S. – Mexico Border: Laredo/Nuevo Laredo and El Paso/Ciudad Juárez” in Demetrios G. Papademetriou & Deborah Waller Meyers, eds., *Caught in the Middle: Border Communities in an Era of Globalization* (Washington, D.C.: Carnegie Endowment for International Peace, 2001) 88 at 101.

border to work in the United States and “taking” American jobs. However, the border community response is much the opposite. Rather than becoming divided in the course of the dispute, border communities have merged and formed a unified front in favour of more open borders, particularly toward cross-border workers. One official in Nuevo Laredo, Mexico, described the phenomenon by asserting “that we are all finally understanding that Nuevo Laredo and Laredo, Texas, are a single city, divided by a river.”⁹ This cooperative approach hints at the integration of the Mexican and American communities such that daily cross-border worker interactions are in fact not viewed in the same manner as are longer-term and longer-distance migratory movements.

Many border citizens complain about national involvement in local border situations. One Laredo, Texas business leader described the situation as being “a major problem... If it was left up to us, we could probably figure it out pretty fast and solve it. That is one of the major problems, federal regulations. Because [they] are imposed by people that do not even understand the border.”¹⁰ Two noteworthy decisions provide an example of the national intervention that directly affects transnational workers in often-contradictory ways. First, the decision to increase border enforcement activity has made cross-border movements more difficult and has increased geographical divisions.¹¹ The North American Free Trade Agreement (NAFTA), on the other hand, has opened borders. As a result, trading among the NAFTA countries has increased.¹²

Cross-border pedestrian transit across the Laredo–Nuevo Laredo international bridges had already approached three million by the late 1990s. Of these, many are Nuevo Laredo labourers who cross the border daily to perform informal labour tasks in Laredo, such as domestic and construction work.¹³ Contrary to popular belief, movements do not flow exclusively from Mexico to the United States, but there is also a significant transborder flow of workers from the United States to Mexico

⁹ *Ibid.* at 88. Author interviews with residents of U.S.–Mexico border communities have revealed that ordinary citizens share this attitude. United States citizens in such interviews regularly indicate that their livelihoods, financial success, and businesses rely on daily border crossings by Mexican nationals. Interviews conducted 6 October 2007.

¹⁰ *Ibid.* at 88–89.

¹¹ *Ibid.* at 89. One example of specific enforcement activity was Operation Blockade (also known as Operation Hold the Line), when Border Patrol agents created a human barrier in an attempt to stop illegal immigration through the El Paso–Ciudad Juárez area. *Ibid.* at 94.

¹² *Ibid.*

¹³ Rodriguez & Hagan, *supra* note 8 at 92.

as well. There are ninety *maquiladora* plants¹⁴ in Nuevo Laredo, employing approximately 3,000 Laredo workers.¹⁵

With thirty-eight percent of all U.S.–Mexico trade passing through Nuevo Laredo and Laredo, there is also a large number of individuals who must cross the border to transport and sell their wares – individuals who also qualify as transmigratory workers.¹⁶ There are over 400 customs brokers in Nuevo Laredo, working with over 500 different transportation lines to transport goods back and forth across the border.¹⁷ Close business relationships in both border cities, fostered by the Laredo Development Foundation and the *Comité para el Desarrollo Industrial de Nuevo Laredo*,¹⁸ result in regular cross-border labour migrations by businessmen in virtually every industry.¹⁹

Community ties also increase the amount of cross-border labour movement. There are a number of community-based organizations that send personnel across the border on missions.²⁰ For example, *Centro Aztlán* is a Laredo-based legal aid center that sends immigration counselors and other social service providers to Nuevo Laredo if individuals there cannot cross the border to get help.²¹ People will also cross the border as promoters when an event is to be held, such as a festival or art show.²²

El Paso and Ciudad Juárez are two more border cities with a large number of citizens who qualify as cross-border workers.²³ This is largely a result of the enormous *maquiladora* industry, but there is also a large number of Mexicans who cross into the United States to join El Paso's informal labour force.²⁴ As in Laredo and Nuevo Laredo, goods and

¹⁴ *Maquiladora* plants are manufacturing and export-processing centers along the Mexican border with the United States. See generally, Adam Thompson, "Mexico's Producers Seek to Avert Crisis" *Financial Times Deutschland* (6 March 2008), online: http://www.ftd.de/karriere_management/business_english/:Business%20English%20Mexico/326647.html.

¹⁵ *Ibid.* at 98.

¹⁶ *Ibid.* at 91.

¹⁷ *Ibid.* at 98.

¹⁸ The Committee for the Industrial Development of Nuevo Laredo (CODEIN).

¹⁹ Rodríguez & Hagan, *supra* note 8 at 98.

²⁰ *Ibid.* at 101.

²¹ *Ibid.*

²² *Ibid.*

²³ See Diana Washington Valdez, "NAFTA is Mixed Bag for Day Workers" *El Paso Times* (24 June 2003) 2A, describing the working conditions that Mexican day-labourers experience.

²⁴ Rodríguez & Hagan, *supra* note 8 at 103.

services are unable to transport themselves across the El Paso–Ciudad Juárez border, so that the number of transborder workers grows as demand and trade grow.²⁵ In addition to the Ciudad Juárez *maquiladoras* is a large number of final manufacturing plants, distribution centers, and support service businesses located on the U.S. side of the border.²⁶

One common complaint regarding border crossings around the world is the sometimes lengthy wait time to enter and exit.²⁷ This complaint is also true of the United States' border with Mexico.²⁸ Border officials, however, have implemented some creative techniques for reducing wait times.²⁹ In one situation where there was a high volume of migrants returning to Mexico, the *Instituto Nacional de Migración*, the Mexican Immigration Service, set up a border checkpoint fourteen miles into the United States' territory.³⁰ This checkpoint issued permits, reducing wait times a few miles away at the American checkpoint.³¹ Colour Coded Processing ("CCP") is another program designed to reduce border crossing wait times.³² CCP allows border officials to make an initial twenty- to thirty-second inspection; then, if a further inspection is required, the car is assigned a colour identifying the nature of the additional search needed and it is sent to another inspection station.³³

An interesting twist on the situation of cross-border labourers is the U.S. government's policies of actively encouraging and fostering close

²⁵ See *ibid.* at 96.

²⁶ *Ibid.* at 95 and 102.

²⁷ This argument is often used as a major criticism of the Israeli security fence and checkpoints, which are discussed in more detail below.

²⁸ Gabriela A. Gallegos, "Border Matters: Redefining the National Interest in U.S. – Mexico Immigration and Trade Policy" (2004) 92 Cal. L. Rev. 1729 at 1731, citing Christian Clark Casare, "Border Crossing: A Day Trip" *Nova Quarterly* (Fall 2001) 55.

²⁹ This includes special lanes for trucks carrying duty-free goods. *Ibid.*, citing U.S. Department of Transportation, "Border Crossing: U.S. – Mexico Border Crossing Data" (2004), online: U.S. Department of Transportation, Bureau of Statistics

<http://www.bts.gov/programs/international/border_crossing_entry_data/us_mexico/pdf/entire.pdf>.

³⁰ Rodriguez & Hagan, *supra* note 8 at 109; see also Steven A. Camarota, "The Open Door: How Militant Islamic Terrorists Entered and Remained in the United States, 1993-2001", Center for Immigration Studies, Paper 21 (2003) at 13, online: Center for Immigration Studies

<<http://www.cis.org/articles/2002/theopendoor.pdf>>. The report states that the age of unilateral border controls is over.

³¹ *Ibid.*

³² *Ibid.* at 112.

³³ *Ibid.*

transborder business relationships and transborder labour movements. This includes the funding of programs, such as “*maquiladora* colleges.”³⁴ One example is the Advanced Technology Center (“ATC”) at El Paso Community College, which receives federal funding to pursue its mission of promoting the economic development of industries in both El Paso and Ciudad Juárez.³⁵ On February 23, 2007, President Bush announced plans to expand the rights of Mexican truckers,³⁶ a suggestion that caused intense national scrutiny.³⁷ His initiative would permit them to drive anywhere within the continental United States.³⁸

Opponents to this plan for increased transborder labour flows did not take long to respond. In March 2007, Congresswoman Nancy Boyda introduced the *Safe American Roads Act of 2007*.³⁹ Supporters of this (and similar bills)⁴⁰ assert that these migrants will reduce American jobs, smuggle in drugs and people, increase crime, drive ecologically unfriendly vehicles, and will be incapable of understanding the rules of the road.⁴¹ Representative Boyda characterized the Department of

³⁴ Tom Barry, Harry Browne, & Beth Sims, *The Great Divide: The Challenge of U.S. – Mexico Relations in the 1990s*, 1st ed. (New York: Grove Press, 1994) at 103.

³⁵ *Ibid.*

³⁶ Carolyn Whetzel, “Public Citizen, Other Groups Allege Cross-Border Trucking Pilot Project is Illegal” *Daily Labor Report* (25 April 2007) A14. Initially this program will be only one year and will only permit 100 companies to pass the current twenty-mile commercial zone.

³⁷ Paul Stephen Dempsey, “Free Trade But Not Free Transport? The Mexican Stand-off” (2001) 30 *Denv. J. Int’l L & Pol’y* 91.

³⁸ *Ibid.*

³⁹ Kansas Workbeat, “Boyda Bill Will Halt Reckless Mexican Trucking Program” (29 March 2007), online: Kansas Workbeat <http://www.ksworkbeat.org/Issues/2007_15/2007_15.html> [AFL-CIO].

⁴⁰ One such other bill so far introduced is U.S., Bill H.R. 1756, *NAFTA Trucking Safety Act of 2007*, 110th Cong., 2007, introduced by Congressman Duncan Hunter. Several such bills have also been submitted in the Senate. See Maria Giorgio, “Breaker, Breaker, a ‘Truck Out’ Planned Over Mexican Trucks Entering the USA!” *Associated Content* (14 April 2007), online: Associated Content <http://www.associatedcontent.com/article/215094/breaker_breaker_a_truck_out_planned.html>.

⁴¹ See, e.g., *ibid.*; AFL-CIO, *supra* note 39; American Maritime Officer, “Mexican Trucks Will Have Access to Entire Nation: Decision to Open Domestic Transportation May Reverberate in Waterborne Shipping”, online: American Maritime Officer <<http://www.amo-union.org/Newspaper/Morgue/1-2002/Sections/News/border.htm>>; Anchorage Activist, “National Truckers’ ‘Truck Out’ Protest Against Unrestricted Access For Mexican Truckers Planned For April 23-25, 2007” (12 April 2007), online: Alaska Pride <<http://alaskapride.blogspot.com/2007/04/national-truckers-truck-out-protest.html>>.

Transportation as being in a “mad rush toward unrestricted trade.”⁴² At least one lawsuit has also been filed, alleging environmental and safety concerns.⁴³

However, the Federal government’s reasons for permitting Mexican truckers to transverse the continental United States were not capricious; they were in response to trucking provisions contained in the North American Free Trade Agreement (NAFTA).⁴⁴ The American government was, in fact, hesitant to implement the NAFTA-required provisions,⁴⁵ but an international tribunal found the United States in violation of its international agreement in 2001.⁴⁶ Legislation was passed in 2001 delineating safety requirements, but a lawsuit alleging safety and environmental concerns was filed, stymieing the government’s compliance efforts.⁴⁷ When the Supreme Court in 2004 overturned a Ninth Circuit Court of Appeals decision blocking the Bush administration’s efforts, however, the government was able to resume its pursuit of NAFTA compliance.⁴⁸ It is unlikely that this anti-trucking effort will succeed in the long run, given the supremacy of the international agreement⁴⁹ and the Supreme Court’s prior decisions.⁵⁰

This is not the first time this type of conflict over transborder transportation of goods has arisen, although it may be the first time such a national controversy has resulted from it. In Laredo and Nuevo Laredo, the *Asociación Solidaria de Transportistas de Exportación*, an association of export transporters in Nuevo Laredo, once solved part of the problem

⁴² *Ibid.*

⁴³ Whetzel, *supra* note 36.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Re Cross Border Trucking Services (United States v. Mexico)* (2001), USA-MEX-98-2008-01 (Ch. 20 Panel), online: Foreign Trade Information System <<http://www.sice.oas.org/DISPUTE/nafta/english/U98081ae.asp>>; C. O’Neal Taylor, “The Mexican Trucking Case and NAFTA: Introduction, Commentary, and Afterward” (2001) 42 S. Tex. L. Rev. 1239; Jeffery Atik, “National Treatment in the NAFTA Trucking Case” (2001) 42 S. Tex. L. Rev. 1249.

⁴⁷ Daily Labor Report, 17 January 2003 at A-6.

⁴⁸ Daily Labor Report, 8 June 2004 at A-8.

⁴⁹ U.S. Const. art. VI, § 2.

⁵⁰ See, e.g., *Randall v. Sorrell*, 126 S.Ct. 2479 at 2484 (2006) (defining *stare decisis* as “the basic legal principal commanding judicial respect for a court’s earlier decisions and their rules of law”); *Carey v. Musladin*, 127 S.Ct. 649 at 655 (2006), citing *Sheet Metal Workers v. EEOC*, 478 U.S. 421 at 490 (1986) (stating that as “a general rule, the principle of *stare decisis* directs us to adhere not only to the holdings of our prior cases, but also their explications of the governing rules of law”); *Arizona v. Rumsey*, 467 U.S. 203 at 212 (1984) (noting that departure from precedent is unusual and requires “special justification”).

by using American trucks. When those trucks crossed the border, the American license plates were replaced with Mexican plates, so that they were registered in both countries.⁵¹ In this way the Association managed not only to transport cargo effectively, but also avoided Mexican import fees.⁵²

Cross-border workers play an important role not only in border communities, but in the national society and economy as well. While immigration flows primarily from Mexico to the United States, transborder work flows in both directions. Transborder workers facilitate trade between the United States and Mexico by crossing back and forth not only to deliver goods (apparently a controversial situation in and of itself), but also to negotiate business deals, smooth over customs and political conflicts, and to provide aid to those in need. Largely due to the spotlight on immigrants from Mexico, cross-border Mexican workers in the United States face significant challenges in the future. It is likely that the resultant disputes will eventually be overcome and transborder migration between the United States and Mexico will continue to grow and gain importance in the future.

b. Israel—Territories

In 1947, United Nations Resolution 181 was passed, creating a partition plan for the division of British Mandate Palestine into separate Jewish and Arab states.⁵³ The Arabs, who were to receive the vast majority of the area's arable land, refused to accept the United Nations decree and on November 30, 1947 responded by violently attacking the Jewish denizens of the land.⁵⁴ The ensuing conflict resulted in the creation of a Jewish State on May 14, 1948. Since that time, both Arabs and Jews have had to adjust to divisions of land.⁵⁵ One of the natural results of the situation is that some residents of Gush Katif (the Gaza Strip) and of Judea and Samaria⁵⁶ must pass through border checkpoints to reach businesses and ancestral farmlands.⁵⁷

⁵¹ Rodriguez & Hagan, *supra* note 8 at 109.

⁵² Mexican customs officials approved of this plan before its implementation. *Ibid.*

⁵³ *United Nations General Assembly Resolution 181*, GA Res. 181, UNGAOR, 2d Sess., UN Doc. A/RES/181(II)(A+B) (1947).

⁵⁴ Yisrael Ne'eman, Address (Lecture for Hasbara Fellowships, 20 December 2006) [unpublished].

⁵⁵ *Ibid.*

⁵⁶ Judea and Samaria is a geographical area commonly known by the political term "West Bank".

⁵⁷ See generally, Israel Ministry of Foreign Affairs, "Disputed Territories: Forgotten Facts About the West Bank and Gaza Strip" (1 February 2003), online: Israel Ministry of Foreign Affairs

Palestine, a region that encompasses both Israel and the Israeli-controlled territories, has one of the largest cross-border worker populations per capita in the world. This is largely due to its small size and comparably significant border.⁵⁸ Additionally, because both Jews and Arabs have lived for centuries in the region, ancestral farmlands and business establishments do not fall in any pattern that facilitates easy border delineation. As a result, a great number of Jews pass into the territories every day to work, just as a great many Arabs must pass into Israel to work. Due to the significant amount of religious and historical tourism this region of the world attracts, there are many tour operators, tour guides, and bus drivers who do some of their work in one territory and part in another territory, all of whom can be classified as cross-border labourers. In addition to participants in the tourist industry, teachers,⁵⁹ academics, businessmen, entrepreneurs, industrialists, environmentalists, actors, and artists in Palestine are all often cross-border workers.

Part of what makes this Middle Eastern situation so much more complex and controversial is the unsettled nature of the boundaries transnational workers must cross. While Israel has offered to give up virtually the entire territory and return to its pre-1967 borders, no agreement has yet been met and the boundaries remain in question.⁶⁰ In fact, the border⁶¹ here discussed is much more ephemeral than any other borders mentioned in this paper and has been established for security

<http://www.mfa.gov.il/MFA/MFAArchive/2000_2009/2003/2/DISPUTED%20TERRITORIES-%20Forgotten%20Facts%20About%20the%20We> [IMFA, "Disputed Territories"].

⁵⁸ The State of Israel is about the same size as the state of New Jersey.

⁵⁹ Alice Shalvi, (Comments in *Education for Peace: A Roundtable Discussion*) (1996) 3 *Palestine-Isr. J. Pol. Econ. & Culture* 58 at 63.

⁶⁰ East Jerusalem is the only part of the territories Israel has not offered to give to the Palestinian Arab population for their autonomous control. *Framework for Peace in the Middle East*, Israel and Egypt, 17 September 1978, 1136 U.N.T.S. 196; *Framework for the Conclusion of a Peace Treaty*, Israel and Egypt, 17 September 1978, 1138 U.N.T.S. 53 [Camp David Accords] (setting forth a process whereby the Palestinian Arab population would be granted political autonomy over Judea and Samaria and Gaza over a five-year period, and basing this settlement on United Nations Resolution 242); Yisrael Ne'eman, *supra* note 54.

⁶¹ In fact, it is highly important to note that Israel's "border" for the purposes of this paper is a border between a State and territories of an unsettled status, rather than between two Nations. As such, the use of the term "border" in this section is loosely applied and should be construed as meaning a border for practical purposes, not an official political border.

reasons, not for political reasons.⁶² Security is a matter of great concern and significance in Israel, where terrorists murdered nearly 1000 people between 2000 and 2003, and injured thousands more.⁶³ This continues to be a concern as upwards of 400 rockets per month are fired at and fall on Sderot alone from the Gaza Strip.⁶⁴ Naturally, increased security measures affect cross-border workers and their ability to move freely and easily from one country to another. However, Israel differs from the United States only in that its sole motivation for erecting a border-control fence is security, whereas the United States has erected in some places along the border with Mexico (and continues to erect) a fence designed primarily to keep immigrants from entering the country without documentation.

As a result of shared experiences and cultural interactions, cross-border workers are an integral part of the peace process.⁶⁵ Some scholars argue that, by opening borders, transnational labour movements will in fact bring about a peace process from the ground up.⁶⁶ However, even they admit that terrorism is a major obstacle to achieving peace.⁶⁷ Prior

⁶² *Deit Sourik Village Council v. The Government of Israel* (2004) HCJ 2056/04 (Israeli Supreme Court), online: The Israel Diplomatic Network <<http://securityfence.mfa.gov.il/mfm/Data/55414.pdf>> (noting that the Israeli Defence Force is justified in its construction of a security fence only if its motivations are purely for purposes of national security, and not as a means of annexing additional territories onto Israel or for any other political motive).

⁶³ Israel Ministry of Foreign Affairs, "Saving Lives – Israel's Security Fence" (26 November 2003), online: Israel Ministry of Foreign Affairs <http://www.mfa.gov.il/MFA/MFArchive/2000_2009/2003/11/Saving+Lives+-+Israel-s+Security+Fence.htm> [IMFA, "Saving Lives"].

⁶⁴ Julie Levin, "Mock Rockets Target Plight of Residents of Israeli Town" *Miami Herald* (23 March 2008) 18WC.

⁶⁵ Herbert C. Kelman, "International Interchanges: Some Contributions From Theories of Attitude Change" (1975) 10:1 *Studies in Comparative International Development* 83 at 90 and 98; Herbert C. Kelman, "Social-Psychological Approaches to the Study of International Relations: The Question of Relevance" in Herbert C. Kelman, *International Behavior: A Social-Psychological Analysis* (New York: Holt, Reinhart and Winston, 1965) 565 at 575-576.

⁶⁶ Barry A. Feinstein & Mohammed S. Dajani-Daoudi, "Permeable Fences Make Good Neighbors: Improving a Seemingly Intractable Border Conflict Between Israelis and Palestinians" (2000) 16 *Am. U. Int'l L. Rev.* 1 (arguing for open borders in the Palestinian region).

⁶⁷ *Ibid.* at 51-53; Dion Nissenbaum, "Death Toll of Israeli Civilians Killed by Palestinians Hit a Low in 2006" *McClatchy Newspapers* (10 January 2007), online: *McClatchy Newspapers* <<http://www.mcclatchydc.com/165/story/15469.html>> (quoting Ray Dolphin, author of "The West Bank Wall: Unmaking Palestine" and Jeff Halper, a longtime critic of the fence, as admitting that the barrier has in fact decreased murders at the hands of terrorists).

to Israel's securing of its borders, building a fence for safety, and implementation of strict border checks, the number of suicide bombings and deaths from terrorism were steadily on the rise.⁶⁸

Since the implementation of the security fence and border checkpoint programs, terrorist acts and the resultant deaths have dropped dramatically.⁶⁹ As global terrorism continues to rise,⁷⁰ deaths from terrorist attacks in Israel have decreased.⁷¹ In the entire decade of the 1990s, 428 Israelis were killed as a result of terrorist attacks.⁷²

⁶⁸ See Daniel Ayalon, "Israel's Ambassador Defends Security Fence" *Washington Post* (26 August 2003), online: Embassy of Israel <<http://www.israeemb.org/articles/2003/August/2003082600.htm>>; Israel Ministry of Foreign Affairs, "Saving Lives: Israel's Security Fence," online: Israel Ministry of Foreign Affairs <<http://securityfence.mfa.gov.il/mfm/Data/45853.pps>> [IMFA, "Israel's Security Fence"]; Israel Ministry of Foreign Affairs, "The Anti-Terrorist Fence – An Overview: A Comprehensive Summary of the Major Issues Concerning the Fence," online: Israel Ministry of Foreign Affairs <<http://securityfence.mfa.gov.il/mfm/Data/48152.doc>> [IMFA, "The Anti-Terrorist Fence"]; Israel Ministry of Foreign Affairs, "Summary of Terrorist Activity 2004" (5 January 2005), online: Israel Ministry of Foreign Affairs <<http://www.mfa.gov.il/NR/rdonlyres/927D5873-E41C-4C99-BBF0-5A53DF237FCF/0/terrorsummary2004.pdf>> [IMFA, "Summary of Terrorist Activity 2004"]; Israel Ministry of Foreign Affairs, "Four Years of Conflict: Israel's War Against Terrorism" (3 October 2004), online: Israel Ministry of Foreign Affairs <<http://www.mfa.gov.il/NR/rdonlyres/9D70B198-BB04-481F-8C3B-1D4DD0F8BF93/0/FourYearsofConflict.doc>> [IMFA, "Four Years of Conflict"]; Israel Ministry of Foreign Affairs, "2005 Terrorism Review" (2 January 2006), online: Israel Ministry of Foreign Affairs <<http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/2005+Terrorism+Review.htm>> [IMFA, "2005 Terrorism Review"]; Israel Ministry of Foreign Affairs, "Terrorism Deaths in Israel – 1920-1999" (1 January 2000), online: <http://www.mfa.gov.il/MFA/MFArchive/2000_2009/2000/1/Terrorism%20deaths%20in%20Israel%20-%201920-1999> [IMFA, "Terrorism Deaths in Israel – 1920-1999"] (citing statistics provided by the National Insurance Institute).

⁶⁹ See, e.g., IMFA, "Terrorism Deaths in Israel – 1920-1999," *ibid.*; IMFA, "Summary of Terrorist Activity 2004," *ibid.*; IMFA, "2005 Terrorism Review," *ibid.*; IMFA, "Four Years of Conflict," *ibid.*

⁷⁰ Susan B. Glasser, "U.S. Figures Show Sharp Global Rise in Terrorism: State Dept. Will Not Put Data in Report" *Washington Post* (27 April 2005) A01; CNN, "Report: Global Terrorism up more than 25 Percent" (30 April 2007), online: CNN <<http://www.cnn.com/2007/US/04/30/terror.report/index.html>>.

⁷¹ Nissenbaum, *supra* note 67; IMFA, "Terrorism Deaths in Israel – 1920-1999," *supra* note 68; IMFA, "Summary of Terrorist Activity 2004," *supra* note 68; IMFA, "2005 Terrorism Review," *supra* note 68; IMFA, "Four Years of Conflict," *supra* note 68.

⁷² IMFA, "Terrorism Deaths in Israel – 1920-1999," *supra* note 68.

Following the Palestinian uprising in 2000, fatalities increased drastically, until they hit a high of 452 fatalities⁷³ and 2,309 casualties in 2002 alone.⁷⁴ In 2003, due to the security fence around Judea and Samaria that began construction in late 2002,⁷⁵ the number of victims decreased to 144 fatalities⁷⁶ and 1004 injuries.⁷⁷ In 2004, the number of fatalities decreased again to 117⁷⁸ with over 441 injuries,⁷⁹ and in 2005 the number of fatalities decreased to 45.⁸⁰ In 2006, there were only 23 Israelis murdered at the hands of terrorists.⁸¹ In spite of increased security measures⁸² and decreasing death tolls, however, there were still 2,990 terrorist attacks targeting Israelis in 2005,⁸³ emphasizing just how important border security measures have been and still are.⁸⁴ However, between April 2002 (the start of the anti-terror program) and September 2004, the Israeli military intercepted 6,964 terrorists.⁸⁵ The benefits of these border controls⁸⁶ were significant enough that the Israeli Supreme Court, sitting as the High Court of Justice, approved them.⁸⁷

The security fence is being built with various considerations in mind, many of which focus on the importance of cross-border workers.⁸⁸

⁷³ IMFA, "Four Years of Conflict," *supra* note 68 at 2. Of these 289 were civilians and foreign visitors. Nissenbaum, *supra* note 67.

⁷⁴ IMFA, "Four Years of Conflict," *supra* note 68 at 2.

⁷⁵ Nissenbaum, *supra* note 67.

⁷⁶ IMFA, "Summary of Terrorist Activity 2004," *supra* note 68.

⁷⁷ IMFA, "Four Years of Conflict," *supra* note 68 at 3.

⁷⁸ IMFA, "2005 Terrorism Review," *supra* note 68.

⁷⁹ IMFA, "Four Years of Conflict," *supra* note 68 at 3.

⁸⁰ IMFA, "2005 Terrorism Review," *supra* note 68.

⁸¹ Nissenbaum, *supra* note 67.

⁸² IMFA, "Israel's Security Fence," *supra* note 68 (explaining how other security measures were implemented prior to the deciding to build a fence for security, but those measures failed to prove effective).

⁸³ IMFA, "2005 Terrorism Review," *supra* note 68.

⁸⁴ See generally Nissenbaum, *supra* note 67 (noting that although the number of successful suicide bombings has decreased, the number of attempts has risen, from 96 attempted suicide bombings in 2005 to 187 attempted suicide bombings intercepted in 2006).

⁸⁵ IMFA, "Four Years of Conflict," *supra* note 68 at 5.

⁸⁶ "In the 34 months between the start of the conflict on September 29, 2000 and the establishment of the security fence, the operational organizations in Samaria carried out 73 mass murder attacks (suicide attacks or car bombs) within Israel, killing 293 Israelis and injuring 1,950. In the year between the beginning of August 2003 and August 2004, the terrorist organizations in Samaria succeeded in carrying out only 5 mass murder attacks within Israel, killing 28 Israeli citizens and injuring 81." *Ibid.* at 6.

⁸⁷ *Deit Sourik Village Council v. The Government of Israel*, *supra* note 62.

⁸⁸ IMFA, "Israel's Security Fence," *supra* note 68 (explaining the factors taken into consideration during the construction of the security fence); Israel's Ministry

It is designed so that none of the Arab population would need to relocate and a great deal of emphasis is placed on reducing the hardship imposed on them as a result of its creation.⁸⁹ Regarding transborder labourers, special gates have been built to allow easy access to their fields.⁹⁰ If even a tree must be uprooted in order to build the fence,⁹¹ that tree is replanted, so as to cause the least harm possible.⁹² In spite of the necessity of a secure border for safety purposes, innumerable efforts have been made to decrease the challenges, discomforts, and inconveniences that cross-border workers must face.

Israel is in large part dependent on, and supportive of, its cross-border worker population, Jewish and Arab alike. Although it has had to define a security border, the unsettled status of the territories in Judea and Samaria and Gaza makes even such a definition controversial. This security border, although not technically a national border, has created a population of transborder labourers that essentially live in one society but work in another.

c. European Union

The transborder labour situation of Europe today is essentially the opposite of that of Israel; in Palestine one land has been split into two divided areas with ever-intensified border protections, whereas the European Union (EU) (and the European Community (EC) before it) has unified multiple countries so that border controls have become less stringent in recent years. In essence, the EU seeks to eliminate national borders, thereby removing a major impediment to the free movement of goods, services, capital, and people amongst countries.⁹³ Since the advent of the European Union, which was designed with the goal of

of Defence, "Israel's Security Fence," online: Israel's Ministry of Defence <<http://www.seamzone.mod.gov.il/Pages/ENG/default.htm>>.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.* (providing a diagram of fence construction and indicating the frequency of border crossings so as to allow the easiest and fastest border crossing possible).

⁹¹ The fence is constructed with the intention of avoiding agricultural properties, but this is not always possible. See *ibid.*

⁹² *Ibid.*

⁹³ See Michael Foucher, "The Geopolitics of European Frontiers", in Malcolm Anderson & Eberhard Bort, eds., *The Frontiers of the European Union* (New York: Palgrave, 2001) 237; Thomas M. Wilson, "Sovereignty, Identity and Borders: Political Anthropology and European Integration" in Liam O'Dowd, James Anderson & Thomas M. Wilson, eds., *Borders, Nations and States: Frontiers of Sovereignty in the New Europe* (Portland, OR: F. Cass, 1996) 199; Didier Bigo, "Frontiers and Security in the European Union: The Illusion of Migration Control" in Malcolm Anderson & Eberhard Bort, eds., *The Frontiers of the European Union* 148 at 151.

fostering labour fluidity, transborder labour movements have taken on a more complex character and dimension.⁹⁴ New international laws make it much easier to move and work⁹⁵ among the countries of the European Union.⁹⁶ This includes movements between highly-developed industrialized nations, as well as underdeveloped nations.⁹⁷ Although cross-border labour movements are still not the dominant labour pattern,⁹⁸ they are gaining in prevalence and importance.⁹⁹ It appears

⁹⁴ Henk Van Houtum & Martin Van Der Velde, "The Power of Cross-border Labour Market Immobility" (2004) 95 *Tijdschrift voor Economische en Sociale Geografie* 100 at 100, online: Wiley Interscience <<http://www.blackwell-synergy.com/doi/pdf/10.1111/j.0040-747X.2004.00296.x>>. See generally European Commission, *Employment in Europe 2001: Recent Trends and Prospects* (Belgium: Office for Official Publications of the European Communities, 2001), online: European Commission <http://ec.europa.eu/employment_social/employment_analysis/eie/2001_en.pdf> [EC, "Employment in Europe 2001"]; European Commission, *New European Labour Markets, Open to All, with Access for All* (2001) at <http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/com/2001/com2001_0116en01.pdf> [EC, "New European Labour Markets"]; European Commission, *High Level Task Force on Skills and Mobility, Final Report* (14 December 2001), online: European Commission <http://europa.eu.int/comm/employment_social/news/2001/dec/taskforce2001_en.pdf>; European Commission, *Commission's Action Plan for Skills and Mobility* (13 February 2002), online: European Commission <http://ec.europa.eu/employment_social/news/2002/feb/ap_en.pdf> [EC, "Commission's Action Plan for Skills and Mobility"].

⁹⁵ Philip Raines, *The Impact of European Integration on the Development of National Labor Markets* (Geneva: International Labour Organization, 2000), online: International Labour Organization <<http://www.ilo.org/public/english/employment/strat/download/ep1.pdf>>.

⁹⁶ References to the EU and pre-EU times should be construed to include the EU's predecessor, the European Community (EC) and the European Economic Area (EEA).

⁹⁷ Jon Erik Dølvik & Line Eldring, "Mobility of Labour and Services Across the Baltic Sea After EU Enlargement: Nordic Differences and Commonalities" (Paper presented to the European Sociological Association Conference, Torun, Poland, September 2005) [unpublished].

⁹⁸ Van Houtum & Van Der Velde, *supra* note 94.

⁹⁹ Hirtzelsberger, Reuter & Steinle, *supra* note 4 at 30 (noting that "[t]he number of cross-border commuters in the regions under study increased by 29.01% from 1995 to 1999. Thus, the average annual increase was 3.95%... [I]n several cases, such as in the case of German commuters to the Netherlands, enormous annual increases of 30.1% were recorded"); M. Kiehl & H. Werner, "The Labour Market Situation of EU and of Third Country Nationals in the European Union," IAB Labour Market Research Topic No. 32 (1999), online: Institut für Arbeitsmarkt- und Berufsforschung <<http://doku.iab.de/topics/1998/topics32.pdf>>.

that approximately 1.5 percent¹⁰⁰ to 0.2 percent of the total workforce qualifies as cross-border workers.¹⁰¹ Nevertheless, even if the population of cross-border workers in Europe is relatively small, it is important in that it is an active and growing portion of the population, with a great deal of political significance.¹⁰²

Table 1.
Cross-border commuters in European Border Regions in 1999¹⁰³

Cross-border Region	Total Workers in 1999	Frontier Workers in 1999¹⁰⁴	Percent Annual Increase¹⁰⁵
Austria – Germany	2,183,056	20,916	1.42
Austria – Italy	849,309	1,900	
Belgium – France	2,764,960	24,410	11.9
Belgium – Germany	941,013	6,294	2.43
Belgium – Netherlands	3,411,953	22,940	4.25
Denmark – Germany	325,970	2,480	1.52

¹⁰⁰ Hirtzelsberger, Reuter, & Steinle, *supra* note 4.

¹⁰¹ Compare European Commission, “Employment in Europe 2001,” *supra* note 94, with Eurostat, *Labour Force Survey: Results 2001* (Office for Official Publications of the European Communities, 2002). Unfortunately, there are few reliable statistics on the subject of cross-border workers in any nation. This is likely due to their high level of mobility and an inability to distinguish them from other types of international workers.

¹⁰² Certain sectors of the cross-border worker population have been growing more rapidly than others. Namely, the number of women and service professionals involved in cross-border work has been increasing. Hirtzelsberger, Reuter & Steinle, *supra* note 4 at 35 (citing a 2001 study by INSEE).

¹⁰³ Hirtzelsberger, Reuter & Steinle, *supra* note 4 at Annex II, 3; see also Van Houtum & Van Der Velde, *supra* note 94 (presenting a similar but less detailed chart with similar figures and conclusions). The accuracy of these statistics is negligible. It is likely that there is in reality a greater number of cross-border workers. This is because certain groups of cross-border workers were excluded from the statistical analysis, including seasonal workers, temporary workers, and truckers. Furthermore, if more recent statistics, such as those from 2000 or 2001, were available, they were substituted so that this is not an accurate assessment. It is, however, the most accurate assessment currently available and provides a useful approximation of the current reality. Switzerland, Liechtenstein, and the Netherlands are the only nations that keep consistent records of transnational labour movements and they represent 43.3% of European frontier workers, indicating that their figures may be more accurate and representative of actual labor flows than other figures in this chart may be.

¹⁰⁴ Belgium–Netherlands, Finland–Sweden, Germany–Netherlands, and Italy – Switzerland are figured from 2000. Denmark–Sweden’s figures are from 2001.

¹⁰⁵ Missing figures are the result of an unavailability of data for the previous year.

Denmark – Sweden	2,345,208	3,000	9.13
Finland – Sweden	224,289	920	
France – Germany	2,470,499	61,675	1.34
France – Italy – Monaco ¹⁰²	2,534,976	27,868	
France – Spain – Andorra ¹⁰⁶	2,471,414	4,080	
Cross-border Region	Total Workers in 1999	Frontier Workers in 1999¹⁰⁷	Percent Annual Increase¹⁰⁸
France – Switzerland	2,652,460	97,520	1.71
France – UK	977,443	2,702	
Germany – Netherlands	4,330,847	33,107	7.73
Germany – Switzerland	2,374,404	33,302	1.17
Ireland – Northern Ireland	811,710	11,500	
Italy – San Marino	305,362	4,324	
Italy – Switzerland	1,610,557	34,106	-1.38
Liechtenstein ¹⁰⁹	492,241	18,540	
Luxembourg ¹¹⁰	1,675,118	79,188	9.71
Norway – Sweden	1,588,371	2,210	
Portugal – Spain	2,754,152	4,000	
Subtotal	40,095,312	496,982	
Double Count	-5,792,409		
TOTAL	34,302,903	496,982	3.95
		1.4% of workers	

¹⁰⁶ Although they are included with other countries, Andorra and Monaco nevertheless have important populations of transmigratory workers. Together with Luxembourg, they are the destination of 8.6% of all European frontier workers. Hirtzelsberger, Reuter & Steinle, *supra* note 4 at 30. Their active participation in the international labour force may be due to the small size, making their borders more easily accessible to their population.

¹⁰⁷ Belgium–Netherlands, Finland–Sweden, Germany–Netherlands, and Italy–Switzerland are figures from 2000. Denmark–Sweden’s figures are from 2001.

¹⁰⁸ Missing figures are the result of an unavailability of data for the previous year.

¹⁰⁹ Including Austria and Switzerland, but discounting Austrian commuters to Liechtenstein and Switzerland. Hirtzelsberger, Reuter & Steinle, *supra* note 4 at Annex II, 3.

¹¹⁰ Including Germany, France, and Belgium. *Ibid.*

The above table outlines the influence of cross-border workers in certain regions. Assessing each border region separately, apart from the rest of the country, it is easier to see just how great an impact trans migratory workers have on border regions both socially and economically. Nearly 1.5 percent of all workers living in border zones cross the border daily, which is a striking number considering the more than 34 million people living in border zones in Europe. This is a conservative estimate and does not take into account all the workers in the border economy, such as any customs inspectors, toll operators, and so forth, whose livelihoods depend on the continued existence of the border. The figures above reflect a low-end estimate of those workers who cross the border regularly in the course of their employment.

Regulations among EU states vary depending on the nature of the work to be done.¹¹¹ Theoretically, citizens of one EU country working in another country are subject to the host country's regulations regarding wages¹¹² and working conditions.¹¹³ However, this is not always applied, as a result of the Posting of Workers Directive,¹¹⁴ which limits the enforcement abilities of host countries.¹¹⁵ The number of transborder workers, living in one country and working in another, is presently unknown in the EU.¹¹⁶ The EU Directives on the free movement of workers makes it easier to both engage in transborder work (as right of entry into one EU country may not be denied to the citizen of another EU country) and to completely emigrate to another EU country (as EU nationals have the right to live in the country where they are working).¹¹⁷

The EU has implemented several regulations that apply to cross-border workers. First, frontier workers are entitled to the same protection

¹¹¹ Jon Erik Cremers & Peter Donders, *The Free Movement of Workers in the European Union*, CLR-Studies 4 (The Hague: Reed Business Information, 2004).

¹¹² Wages, however, are in practice controlled by statutes or *erga omnes* collective agreements. Sometimes they are even controlled directly by the home country's standards. See EC, *Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services*, [1997] O.J. L 18/1 [96/71/EC]; Dølvik & Eldring, *supra* note 97 at 3.

¹¹³ Dølvik & Eldring, *supra* note 97 at 2.

¹¹⁴ 96/71/EC, *supra* note 112.

¹¹⁵ Dølvik & Eldring, *supra* note 97 at 3.

¹¹⁶ As stated above in regards to Table 1, although such estimates have surfaced, estimates are extremely conservative and difficult to track.

¹¹⁷ Citizens Information Board, *supra* note 4.

as the nationals of the country in which they are working.¹¹⁸ They have the same rights to apply for jobs, enjoy the same working conditions protection, and receive the same social benefits.¹¹⁹ For example, if a worker pays social security in the country in which he works, he is subject to the legislation of that nation even though he is the resident of another country.¹²⁰ Generally, this rule is applied so that the country where insurance was last paid provides short-term benefits, while long-term benefits are paid proportionately by all states in which insurance has been paid during the individual's working life.¹²¹ The country of employment pays short-term or partial unemployment benefits whereas the country of residence pays long-term unemployment benefits.¹²² In this way EU countries effectively share the benefits and liabilities associated with cross-border workers.

III. REACTIONS & RESULTS

One of the most striking results of transmigratory labour movements is the direct impact on the society and culture of the region. There is often a cultural blending, such as the bilingual abilities of residents in both affected border communities,¹²³ manifested in signs posted on streets in both relevant languages.¹²⁴ Transborder work can lead to many other activities, as well. Crime, of course, is an associated issue.¹²⁵

However, cross-border movements can also contribute to the receiving country's economy, both in taxes and as the recipient of increased consumer spending.¹²⁶ In the Laredo–Nuevo Laredo border region, for example, it is estimated that forty cents of every dollar earned in the Nuevo Laredo *maquiladora* industry ends up in the Laredo economy.¹²⁷ A similar situation has arisen in El Paso and Ciudad Juárez, where El Paso residents will often cross the border to Ciudad Juárez to

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.* However, individuals who are employed (or self-employed) in two EU member states pay their social security contributions only to the state of residence.

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ Rodriguez & Hagan, *supra* note 8 at 93.

¹²⁴ *Ibid.* at 96.

¹²⁵ *Ibid.* at 94. See also Augusta Dwyer, *On the Line: Life on the U.S.-Mexican Border* (New York: Russell Press, 1994).

¹²⁶ See, e.g., Rodriguez & Hagan, *supra* note 8 at 97.

¹²⁷ *Ibid.* at 98 (quoting the general manager of CODEIN).

buy products not normally available to them (such as youths buying alcohol and cigarettes) or buying products at a discounted price for resale in El Paso (such as tortillas or cloth that is later used to make dresses).¹²⁸ Approximately forty percent of the Ciudad Juárez population crosses the border into El Paso to do some of their shopping.¹²⁹

Another potential result of daily transborder labour movements is that it may lead to an eventual increase in immigration. Companies employing inexpensive out-of-country contractors may eventually decide to take them on as additional permanent staff.¹³⁰ The EU in particular provides an interesting example of what happens when countries open their borders completely to transnational labour. In that situation, countries and companies alike must adjust to dynamic supply, demand, and cost structures.¹³¹

The ease of moving entirely to another country due to working there may also affect the numbers of workers classified as transborder workers. In many other border situations, such as the U.S.-Mexico border, obtaining the necessary visa to take up permanent residency in the host country is much more difficult than obtaining the visas necessary to cross the border daily for work. This creates a fundamental impediment to changing residency, an impediment that is not present in the EU border situation. This begs the question of whether open borders not only encourage transborder employment, but whether they also encourage migration in general. The relationship between an increase in transborder employment and migration and how an open or closed border affects this relationship is an interesting trend that both politicians and corporations will perhaps look into in the future as migration debates rage on.

Open borders may also foster labour movements from countries with more restrictive labour regimes to those with more relaxed regulations.¹³² Whether this trend is positive or negative depends entirely on the individual country's economic, social, and political situation. In a country with liberal social rights and freedoms and a strong economy

¹²⁸ *Ibid.* at 102 (describing activities of El Paso and Ciudad Juárez residents, such as crossing the border regularly to purchase cheaper gasoline).

¹²⁹ *Ibid.* at 103.

¹³⁰ Dølvik & Eldring, *supra* note 97 at 4.

¹³¹ The "supply, mobility, and costs of foreign labour is contingent on the interrelated strategic choices of domestic companies, their collective associations, unions, and public regulators as to how the new competitive situation is to be met, i.e. on the demand effects of choices made by domestic actors and policymakers." Dølvik & Eldring, *supra* note 97 at 4.

¹³² *Ibid.* at 5.

such as the United States, such labour movements might pose threats to the existing labour force. However, in many developed nations the labour force is actually decreasing, such that an increased flow of labour into the country may in fact be a positive trend.¹³³ Specifically, in the European Union, external borders are likely to decrease in importance as time progresses and more countries become Member States.¹³⁴

Furthermore, opening borders in one way may lead to opening borders in other ways. For example, as the United States opens its border to Mexican truckers, it is predicted that regulations on Mexican waterborne shipping may also eventually relax.¹³⁵ It is also likely that the opening of borders to one nation will lead to the opening of borders to other nations, as has occurred in the EU, where new countries added to the Union increase the number of countries in the region with open borders.

One rather interesting view of cross-border migratory flows is the reaction of the same people who have the opportunity to become migrants themselves, but choose not to.¹³⁶ Approximately ninety-eight percent of the European population chooses not to function as transnational workers, but they have good reasons for this.¹³⁷ Some experts postulate that this is due mostly to indifference as regards other markets. It could also be a sense of orientation in (and identity within) the workers' current locations that inhibits their desire to function in a transnational capacity.¹³⁸ However, the reason may be much simpler; most people in a nation do not live close enough to a border to comfortably cross it for employment. There is a statistical correlation between population density and the level of commuting, which supports this theory.¹³⁹ Quite simply, the more people there are living near the border, the more people will commute across it. Many people simply do not have a desire to travel long distances for work or to be away from home for long periods of time. Also, there is not always a real motivation for people to pursue these types of jobs, as there are often appealing jobs available in close proximity to one's home base, so that traveling to find work is neither necessary nor desirable.

¹³³ *Ibid.*

¹³⁴ Giovanni Delli Zotti, "Transfrontier Co-operation at the External Borders of the European Union: Implications for Sovereignty" in Liam O'Dowd, James Anderson & Thomas M. Wilson, eds., *Borders, Nations and States: Frontiers of Sovereignty in the New Europe* (Portland, OR: F. Cass, 1996) at 61.

¹³⁵ American Maritime Officer, *supra* note 41.

¹³⁶ Van Houtum & Van Der Velde, *supra* note 94 at 100.

¹³⁷ *Ibid.* at 104.

¹³⁸ *Ibid.*

¹³⁹ Hirtzelsberger, Reuter, & Steinle, *supra* note 4 at 33.

The reaction to transborder work movements is not always positive. The EU policy of opening labour markets to virtually unhindered¹⁴⁰ labour movement has sparked heated debates about the impact of such movements on “employment, migration, skill formation, wages, working conditions, and national regimes of labour market regulation in Europe.”¹⁴¹ Indeed, in many countries xenophobia is not uncommon¹⁴² and often results in citizens turning a blind eye to physical abuses of illegal immigrants.¹⁴³ The natural result of this process is that the population is less shocked by violent conduct.¹⁴⁴ This means that violence even toward legal aliens is not looked on as shocking or terrible conduct.¹⁴⁵ This negative attitude is one that many transnational workers must face.¹⁴⁶

Unfortunately, while providing a sense of safety to the natives of the land, border security measures do not always have such positive outcomes.¹⁴⁷ B’tselem, the Israeli Information Center for Human Rights in the Occupied Territories has reported on abuses of Palestinians by Israeli soldiers – including beatings – although B’tselem does note that the majority of reported instances of abuse were minor, such as slaps.¹⁴⁸

¹⁴⁰ Sweden, the United Kingdom, Ireland, and all “new” European Union member states opened their borders immediately. The remaining “old” member states have imposed transitional restrictions on the eight Central and Eastern European countries, which are to be lifted on May 1, 2011. These transitional provisions, however, do not apply to transnational provision of services, such that only a portion of the worker movements examined in this article are affected by these provisions. See Dølvik & Eldring, *supra* note 97 at 2. Only Germany and Austria are exempted from the requirement for free movement of services, due to the documented threat of serious disturbances this would cause. *Ibid.* at 5.

¹⁴¹ *Ibid.* at 2.

¹⁴² See, e.g., Donnelly & Shirk, *supra* note 3.

¹⁴³ Steve Helfand, “Desensitization to Border Violence & the Bivens Remedy to Effectuate Systemic Change” (2001) 12 *La Raza L.J.* 87 at 93.

¹⁴⁴ See generally Alicia D. Kalamas & Mandy L. Gruber, “Electrodermal Responses to Implied versus Actual Violence on Television” (1998) 125 *Journal of General Psychology* 31; John P. Murray, “Children and Television Violence” (1995) 4:3 *Kan. J. L. & Pub. Pol.* 7; Dr. Amy Aidman, “Television Violence: Content, Context, and Consequences” (1997), online: Hi-Ho <<http://www.hi-ho.ne.jp/taku77/refer/tvvio.htm>>.

¹⁴⁵ See, e.g., Helfand, *supra* note 143.

¹⁴⁶ For anecdotal evidence on this subject, see generally Michael Huspek, Roberto Martinez, & Leticia Jimenez, “Violations of Human and Civil Rights on the U.S.-Mexico Border, 1995-1997: A Report” (1998) 25 *Social Justice* 110 at 110.

¹⁴⁷ Helfand, *supra* note 143.

¹⁴⁸ Jessica Montell, Executive Director of B’tselem, Address (Seminar given at Aish HaTorah, Jerusalem, Israel, 26 December 2006) [unpublished]. B’tselem, “Beatings & Abuse” (21 August 2006), online: B’tselem

Amnesty International describes the United States' Immigration and Naturalization Service ("INS") as having "a long and troubled history in the U.S.-Mexican border region, with many allegations of officer misconduct such as unlawful lethal shootings, physical assaults and ill-treatment of detainees in custody."¹⁴⁹ Transborder commuters across the U.S.-Mexico border typically have less to worry about than their undocumented counterparts, although there is a well-known fear that Border Control personnel will confiscate border commuter cards.¹⁵⁰

All these factors combine to make cross-border employment an increasingly important concern for multinational companies. As companies expand operations, the option of hiring employees in a transnational capacity will grow in importance. Allowing employees to live in one country while working in another affords companies much more flexibility in hiring. If a corporate employee is permitted to continue living in his native country even while working in a foreign country, it will be easier for companies to hire experienced foreign employees with families, thus enlarging their employee experience base.

Another way transmigratory employment stands to benefit companies is as regards employment considerations. Many companies today are placing a greater emphasis on the diversity of their employees for a number of important reasons. Great diversity leads to increased networks, improving international business contacts. It also enhances cross-cultural understanding, which in turn leads to more successful transactions and negotiations. Finally, diversity among employees often attracts a greater and more diverse applicant pool, allowing a company to be more selective in its hiring and giving it many more options. The practice of allowing employees to live in one country and work in another makes the possibilities for a diverse workplace virtually endless, as residents of nearly any country can now work almost anywhere.

Yet another way companies stand to benefit from transmigratory employment trends is in the field of immigration law. Corporations may find it much easier to grapple with the challenge of obtaining visas for employees if those visas are classed only for work and do not include residency requirements. This, of course, depends on the country and the border situation, but it theoretically need not be limited to daily border

<http://www.btselem.org/english/Beating_and_Abuse/20060821_Rise_in_security_forces_violence.asp>.

¹⁴⁹ Amnesty International, "United States of America: Human Rights Concerns in the Border Region with Mexico," AMR 51/003/1998 (May 1998) at 3, online: Amnesty International

<<http://www.amnesty.org/en/library/info/AMR51/003/1998/en>>.

¹⁵⁰ Rodriguez & Hagan, *supra* note 8 at 101.

crossing permits. As transportation and communications technologies continue to improve, there are more opportunities for workers to commute longer distances on a daily or weekly basis. Not only does this trend afford attorneys the opportunity to work with a greater variety of immigrations laws, it also gives legislators more options when it comes to dealing with hot-button immigration bills. Transmigratory flows present a compromise of sorts, where the host country is able to benefit from foreign workers filling gaps in employment without having to admit those individuals as residents.

IV. CONCLUSION

With the advent of improved communications and transportation technology, the instances of transborder employment are likely not only to increase in general, but to greatly expand in scope. No longer are cross-border workers restricted to living in one border town and working in another. Today, cross-border workers can be found to be living and working in countries all over the world.¹⁵¹ The political, social and economic importance of transnational labour movements is already important and will only become more so in the future. In addition to the questions raised in this paper, new questions concerning transnational labour movements arise every day in both politics and the legal field. Businessmen, politicians and attorneys alike must be ready, capable and willing to handle these complex problems as they come up. Be prepared – and start packing your bags!

¹⁵¹ Clothier, *supra* note 2 (describing the lifestyle of Owen Kelly, who lives in Sydney, Australia and works in Dubai, spending about half of his time in each country and predicting that cross-border work from the United Kingdom is most likely to increase with Marrakech, Barcelona, Dubrovnik, Hanover, Stuttgart, and Verona).