

# Global Governance: Fear and Desire

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## Executive Summary

Contemporary states are ambivalent about global governance of migration: They desire more of it because they know they cannot reach their goals by acting alone, but fear the necessary compromises on an issue that is politically charged, on terms they may not be able to control.

The actions that states can take on migration are constrained by the realities of global forces that no state can control unilaterally. *Global governance is the set of collaborative practices that states and other actors adopt in order to bring about the best attainable outcomes and reduce the likelihood of the most feared outcomes materializing* from global forces. It is global in the sense that the forces whose effects it seeks to tame are global, not because it operates at the global level. The efforts that national governments undertake to collaborate in global governance are more modestly referred to as *international governance*. But there is still no consensus on whether global governance of international migration is really needed, what form it might take, and how it should develop — or what really is meant by “global governance.”

Movement toward greater international collaboration on migration was slow in the 1990s, but picked up pace rapidly after 2000. A number of conferences and consultative processes were initiated, such as the Global Forum on Migration and Development and the High Level Dialogues on Migration and Development in the UN General Assembly, and multilateral organizations showed a new or renewed interest the topic. Through the growing number of meetings and some joint activities, officials and institutions began to develop habits of cooperation and consultation on migration issues with counterparts in other countries, forming policy networks that have proved to be useful informal vehicles for collaboration.

No broad consensus has developed about what global governance of migration should accomplish, but it has been possible to agree on some common goals among groups of countries, among them: the need for more knowledge and better understanding of migration phenomena, fewer deaths of migrants in transit, a reduction in the influence of criminal networks, the minimization of tensions between migrant and host communities, greater safety and dignity for migrants, increased national security, and a general capacity to implement policies that have been adopted.

Given some agreement among states on such goals, several specific areas for cooperative action can be identified:

- Development of flexible partnerships among states, with the assistance of regional or international organizations where needed.
- Stronger cooperation among international agencies, especially the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM), and more generally among the agencies participating in the Global Migration Group (GMG).
- More cooperation between public and nongovernmental institutions, including the private sector.
- Forward movement on specific issues by states that are willing to work together even in the absence of a broader consensus.
- A serious effort to capture more and better data on mobility.
- Investment in greater capacity of regional consultative processes.

States will benefit from taking a long view of their needs, defining common priorities, and both identifying and working with the most influential governments and civil-society actors on a given issue. Their investment is likely to pay off over time.

## I. Introduction

Contemporary states both fear and desire the global governance of international migration. They desire it because they recognize that, as unilateral actors, optimal outcomes from international migration are beyond their reach; they fear it because they know that other states whose cooperation they need have different, often incompatible, goals in this sphere. Entering into any genuine negotiation, formal or informal, carries risks, given that negotiators have different aims. Successful negotiations emerge from compromise, and compromise often feels like (or is portrayed as) loss in the highly charged realm of migration policies and politics.

Attitudes are further complicated by uncertainty about what the international governance of migration actually means. Some officials (and their constituents) simply use it interchangeably with “government” and imagine (and usually fear) a set of authoritative supranational institutions that actually rule states, or at least impose boundaries on their behavior. This view reifies the authority of multilateral institutions; in reality, they do not govern states but are the framework through which states agree to govern themselves in their interactions with other states. The view of governance as government is popular among those who would like to see real, enforceable constraints placed on the behavior of sovereign states.

Another common view of governance equates it with the creation and maintenance of international regimes, as “norms, rules, principles and decision-making procedures around which actor expectations converge.”<sup>2</sup> The trouble with regime theory as a basis for the governance of international migration is that not all actor expectations do converge, and the willing participants in the regime have little power to compel those states that choose not to comply — or even to act as spoilers. In general, the record of the “international community” in trying to bring non-cooperating states to heel offers little evidence of the efficacy of collective enforcement, even by military means.

Nonetheless, “coalitions of the willing” that do agree on the terms of state behavior in a field such as migration can bring more cooperation and coordination to their interactions within the coalition. The visible benefits of their collaboration might inspire other states to imitate them, or even join them in a “race to the top.”

Today, the actions that individual states can take on migration matters are not constrained by supranational institutions or by “norms, rules, principles and decision-making procedures” — but by *reality*. States — and particularly those states accustomed to thinking of themselves as leading the international system — are buffeted by forces and prospects that defy unilateral control by even the most powerful. These forces are global, whether private capital movements that can undermine a nation’s economy or global warming that can destabilize the environment on which nations’ productivity and quality of life depend. Another of these forces is international migration,

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<sup>2</sup> Stephen D. Krasner, “Structural Causes and Regime Consequences: Regimes as Intervening Variables,” in *International Regimes*, ed. Stephen D. Krasner (Cornell: Cornell University Press, 1983).

which is also an object of governments' fear (of uncontrolled flows) and desire (for the best and the brightest immigrants).

States turn to international governance or, more simply, collaboration when unilateralism fails them, and they come to believe that their purposes can be better served by collaborating with others. In this framework, global governance can be thought of as the set of collaborative practices that states and other actors adopt in order to bring about the best (most desirable) outcomes attainable and reduce the likelihood of the most feared outcomes materializing from global forces. It is global in the sense that the forces whose effects it seeks to tame are global, not because it operates at the global level.

In fact, collaboration might take place at many levels and with many different kinds of partners — not exclusively among states. (For example, states collaborate with international carriers to prescreen travelers and with nongovernmental organizations [NGOs] to resettle refugees.) It might be bilateral, through conventional channels of foreign ministries or through departmental connections across governments. Regional, multilateral, and cross-regional groupings are also channels for collaboration. NGOs, including civil-society groups, private-sector businesses, trade unions, local governments, religious organizations, and others are also actors in the global governance of migration. For this reason, when discussing efforts by national governments to obtain the best outcomes from international migration, the author prefers to talk about *international* governance rather than global governance.

States that are motivated to take a serious look at international governance are not being constrained or regulated by multilateral institutions or even, necessarily, by other states. States find their realities shaped by actors who are not, in most cases, regarded as powerful, individually, in the international system. What is most striking about the rising interest in the international governance of migration is that it is brought about by the actions of millions of migrants, who take their savings and often their lives in their hands to move; by employers who decide to hire migrant workers; by intermediaries who specialize in placing workers in jobs abroad; by smugglers who help those without authorization to enter other countries; by criminals who mislead and betray migrants into conditions of virtual slavery; by migrant communities that support the migration of members as a form of insurance; by migrant families that decide to live together in a destination country even if they are not officially allowed entry; and so forth. Most governments were caught by surprise when the global economic crisis that began in 2008 accomplished something that restrictive policy measures had failed to do — bring about an actual decline in immigration.

Not all movement that states fear is illegal. State laws and regulations on family reunification, for example, which are based on humanitarian values, set in motion “chain migrations” that governments in liberal democracies have difficulty predicting, much less controlling. Domestic anti-immigrant sentiments, which put pressure on policymakers, rarely discriminate between legally present and unauthorized immigrants. For governments concerned about international migration, the path toward a more desirable and less frightening future is collaborative, and begins with a better understanding of the nature of the global forces they face and their own capabilities.

## II. Twenty Years of Evolving Governance of International Migration

The opening of the current chapter in the history of the international governance of migration can be (somewhat arbitrarily) traced to 1990, when the United Nations (UN) General Assembly passed a treaty on the rights of migrant workers and their families. It was an inauspicious start, since the treaty could not attract the 20 ratifications needed to bring it into force, and languished for 13 years before finally reaching that threshold.<sup>3</sup> Attention to international migration in the 1990s was sporadic and largely fruitless. The chapter on migration in the Program of Action formulated for the 1994 International Conference on Population and Development was endorsed by 160 governments and then more or less ignored in practice. Repeated calls for a UN conference dedicated to migration were rejected by the major migrant-receiving countries, which feared a bruising North-South confrontation over issues of access to their territories and labor markets and issues of migrants' rights. In 1996, a regional conference on migration in the former Soviet Union and contiguous countries was held in Moscow, but its impact was limited as the participating countries had basic differences that remained unresolved. The conference did, however, put in place some structures for continuing dialogue that have been useful.

No UN agency in the 1990s had migrants or migration processes as priorities — not even the International Labor Organization (ILO), with its historic mandate for the protection of migrant workers going back to 1919. Migration was seen as too political and divisive a topic for the agencies to tackle. The International Organization for Migration (IOM), which operates outside the UN system, was held to a fairly narrow portfolio of service provision by its Member States. Despite the growing concern that migration was escaping the control of even the most capable governments, collaboration on common problems was confined to a handful of groupings of mostly wealthy countries.

All of this changed quite abruptly around the turn of the millennium. Suddenly, migration was everywhere one looked in the UN system and beyond. Between 1999 and 2011, the UN High Commissioner for Refugees (UNHCR), the World Trade Organization (WTO), and ILO all put migration-related issues high on their policy agendas (through attention to “mixed flows,” trade in services, and the International Labor Conference, respectively); several high-level consultations were established (including the Berne Initiative, the Global Commission on International Migration [GCIM], and IOM’s International Dialogue on Migration); and the Migrant Workers Convention drew its twentieth ratification and came into force in 2003, triggering the creation of a new treaty-monitoring body serviced by the Office of the UN High Commissioner for Human Rights (OHCHR).

In 2002, UN Secretary-General Kofi Annan established a working group in his office under Assistant Secretary-General Michael Doyle, to examine and report back to him on options for the UN system to address international migration issues more systematically. Unable to propose a solution that it felt was politically feasible at that time, the working group recommended further study by a state-led deliberative body. The governments of Sweden and Switzerland took the lead in creating GCIM,

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<sup>3</sup> The *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* entered into force on July 1, 2003. To date, 46 countries have ratified the convention, mostly countries from the global South. United Nations General Assembly, *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, resolution 45/158 of 18 December 1990, [www2.ohchr.org/english/law/cmw.htm](http://www2.ohchr.org/english/law/cmw.htm).

which met from 2003-05. The commission recommended that an interagency group prepare the ground for an ill-defined “Global Migration Facility.”<sup>4</sup>

The Bretton Woods Institutions (especially the World Bank) and several multilateral regional development banks discovered that migrant remittances surpassed the world’s total official development assistance (ODA) and started a research effort to understand how these flows of funds could have a greater impact on development.

Recognizing the regional character of most international migration flows, almost every region of the world, except for the Middle East and North Africa (MENA), established some kind of regional consultative process (RCP) on migration.

Despite this flurry of activity, it remained clear that the major donor countries, which were also among the major countries of immigration, had no interest in creating a new UN agency, or any other kind of global institution, to help govern international migration. Some argued that regional processes (where regional powers could set the agenda and dominate the proceedings) were the most appropriate setting for the discussion of international migration. Some also maintained that IOM, with its limited mandate to deliver migration services, provided all that was needed to foster cooperation on migration issues. Many states of the global South continued to advocate in favor of bringing the discussion of international migration into the United Nations.

## **A. Innovations in International Governance**

Secretary-General Annan’s response to the lack of consensus among states was threefold. He established the Global Migration Group (GMG), eventually comprised of 16 international agencies that work on some aspect of international migration, including IOM. Annan persuaded the General Assembly to convene a High-Level Dialogue on Migration and Development in September 2006. And he appointed a special representative, Peter Sutherland, to act on his behalf to move the process along. But the question remained: what kind of process was to be established?

The outcome of the High-Level Dialogue in 2006 was a decision to establish the Global Forum on Migration and Development (GFMD) outside of the UN system. The scope of the forum was limited to the relationship between migration and development to gain the acquiescence of the major migrant-receiving states, which had no interest in rehashing the divisive debates on migrants’ rights and illegal immigration that had polarized UN debates on international migration (although, as noted below, the strictures on the GFMD agenda were relaxed over time.). States met for the first GFMD in 2007 and annually thereafter through 2012; after a hiatus for the second High-level Dialogue in 2013, the GFMD will meet again in 2014 and is expected to continue annually thereafter. By the fourth GFMD, in 2010, more than 160 states participated. The number of participating states has fluctuated since.

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<sup>4</sup> Global Commission on International Migration (GCIM), *Migration in an Interconnected World: New Directions for Action* (Geneva: GCIM, 2006), [www.gcim.org/en/finalreport.html](http://www.gcim.org/en/finalreport.html); Part IV of this volume, Rita Süssmuth and Christal Morehouse, “The Global Commission on International Migration: Experiences, Lessons Learned, and Ways Forward” in *The Governance of International Migration*, eds. Bertelsmann Stiftung and Migration Policy Institute (Gütersloh, Germany: Verlag Bertelsmann, 2011).

The GFMD generated both satisfaction and discontent: many states were pleased that a genuine international discussion on global migration had taken place without rancor among countries of origin and destination, but others were disappointed that relatively little real international cooperation — in the sense of collective action — had emerged from GFMD. Responding to this disappointment, the GFMD states established a “Platform for Partnerships” in 2010, on which states could come together to collaborate on concrete projects, and two projects were launched. In 2011, an evaluation of the GFMD process was conducted. In the UN framework, the General Assembly agreed to hold the second High-Level Dialogue on Migration and Development in October, 2013.

## **B. What Have We Learned from the Past 20 Years?**

The evolution of discussion and debate on international migration over the past 20 years has not produced the definitive result that some participants have called for, such as the interagency “Global Migration Facility” foreseen by GCIM. But this is not to say that it has been unproductive. A number of basic realizations about international cooperation on migration have come to be shared among a broad group of states — in some cases articulated but most often implicit. The debate in settings such as the GFMD and some of the RCPs (although not necessarily the UN General Assembly and its committees) is less confrontational and more practical. States that used to see themselves on opposite sides of a sending/receiving country divide (such as the United States and Mexico) now appear to realize that they face many challenges in common. Some sense of reciprocity in dealing with migration issues seems to be evolving, especially in the context of comprehensive approaches such as the European Union’s (EU’s) “Global Approach to Migration and Mobility,” (which combines policy approaches to legal migration, illegal immigration, and migration and development), although many migrant-origin states remain skeptical that reciprocity will move much beyond rhetoric.

Some of the important realizations about international collaboration include the following:

- Words do not bring about major change in practice if they are not the product of real commitments that reflect the perceived interests of the parties that must collaborate to make an agreement function. This has been the experience of both the International Conference on Population and Development (ICPD) and, more importantly, the ILO Conventions dealing with migrant labor as well as the Migrant Workers Convention. The conventions suffer from low rates of ratification, and are not widely implemented, even by states that are parties to the conventions. Whether formal or informal, agreements can only be effective if states make a serious commitment to implementation.
- Interagency cooperation cannot be brought about by declaration. GMG has not been able to achieve its purpose of coordinating action on migration across the UN system, because there is no serious incentive for the member agencies to alter their priorities and modes of work. Despite the fact that the same governments serve on the governing boards of the agencies, they have not given budget or line authority over the group as a whole to any institution. This in large part reflects the lack of collaboration among different national level agencies .
- The disconnect between the long-time horizons of migration dynamics (influenced by patterns of demographic change, for example) and the short-time horizons of political cycles creates serious obstacles for collaboration. National governments will pursue cooperative arrangement when they perceive it to be important for solving an immediate problem, but find it difficult to take unpopular positions for a long-term benefit. But short-term cooperation may build good habits that are beneficial in the long term.

- International forums have value in achieving common understandings and building trust among states and other actors even if they do not produce concrete actions. Processes such as GFMD and the RCPs are often criticized as “talking shops,” but a continuing conversation is the basis of policy networks that may eventually result in real collaboration. The Regional Conference on Migration (RCM), or Puebla Process, is an example of a so-called talking shop that has produced cooperative action.
- Subnational governments are important players in cross-border collaboration. Migration policy is usually a national-level responsibility, but experiments in making it work on the ground often fall to state/provincial or municipal governments. Some of the most successful experiments in migration practice derive from the local level, such as the program to protect the rights and promote the welfare of temporary migrant workers in the strawberry fields of Huelva, Spain, or the Canadian provincial migration programs that tailor temporary migration to local labor markets in the Canadian West and Quebec.
- Civil society can play an important role in monitoring migration processes, advocating for improved frameworks, and proposing practical solutions for migration problems, but in many countries they do not have good communications with the state. Many civil-society groups have grassroots experience of how migration works in reality, and can elevate that experience to create an evidence-based platform for policy reforms. They need to bring rigor and clarity to this process (separating observation and aspiration). Some civil-society groups have no interest in partnering with governments, being more comfortable in the role of a critic, but those that are willing to combine pragmatism and idealism provide an essential element of governance: a reality check on whether policies and programs are actually achieving their objectives.

### III. Existing Tools and Their Effectiveness

#### A. International Law

Public international law includes a small number of instruments that specifically provide for the protection of international migrants and establish states’ obligations to one another. The 1951 *UN Convention relating to the Status of Refugees* is the most widely ratified, with 148 states party to either the convention itself or the 1967 Protocol that incorporated the 1951 Convention and extended its scope. Other migration-specific legal instruments have far fewer signatories, almost none of which are migrant-receiving countries.<sup>5</sup> Their limited acceptance radically restricts their effectiveness.

A few other, more widely ratified instruments have a direct bearing on migration, but are restricted in their scope, such as the General Agreement on Trade in Service (GATS) under the WTO, which provides a framework for members to agree on the movement of service providers. Thus far, it has

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<sup>5</sup> These include *ILO Convention 97, Migration for Employment Convention (Revised)*, 1949, which has 42 signatories; *ILO Convention 143, Migrant Workers (Supplementary Provisions) Convention*, 1975, which has 18 signatories; and the *UN Convention on the Rights of Migrant Workers and Members of their Families*, which has 44 ratifications. ILO, *Convention 97, Migration for Employment (revised)*, 1949, date of coming into force 1952, [www.ilo.org/ilolex/cgi-lex/convde.pl?C097](http://www.ilo.org/ilolex/cgi-lex/convde.pl?C097); ILO, *Convention 143, Migrant Workers (Supplementary Provisions) Convention*, 1975, [www.ilo.org/ilolex/cgi-lex/convde.pl?C143](http://www.ilo.org/ilolex/cgi-lex/convde.pl?C143).

been applied to only a few categories: the very highly skilled or employees being transferred by multinational companies. The new ILO Convention Concerning Decent Work for Domestic Workers, which was passed on June 16, 2011 and will come into force on September 5, 2013 shows promise of being widely accepted, although its impact will depend entirely on how serious governments are about enforcing its provisions. In addition, the “Palermo Protocols” to the *Convention on Transnational Organized Crime*<sup>6</sup> standardize the basic legal framework regarding human trafficking and the criminal smuggling of persons; collaboration among states on these issues is relatively advanced.

International administrative law governs the passport regime and the increasingly stringent regulation of international travel, much of it coordinated by the International Civil Aviation Organization (ICAO). For example, administrative law codifies standards, many of which are badly out of date, for fair treatment of passengers on international carriers (for compensation for lost luggage, for example). It also sets the framework for consular protection of people who travel or live outside the country of their nationality, which is one of the most widely accepted (if not always honored in practice) modes of protection for international migrants. But for migrants from countries with weak administrative capacity and limited overseas representation, consular protection cannot be relied upon to protect their rights.

## **B. Global Multilaterals**

The global governance of international migration (of a particular type: refugee movements) has one convincing prototype in the office of UNHCR. As noted above, its foundational treaty enjoys ratification at a level several times higher than other migration-specific instruments, perhaps because it emerged directly from the horrors of the Holocaust and the aftermath of World War II. Many states that are not party to the *Refugee Convention* nonetheless cooperate closely with UNHCR. Despite wide acceptance of its mandate for refugee protection and humanitarian relief (as well as the pursuit of durable solutions for refugees), UNHCR has seen the regime it supports erode under the pressure of financial constraints, changing forms of displacement, the persistence of large refugee populations for long periods of time (the average length of displacement for refugees is now 17 years), and most importantly, the unwillingness of many states to admit refugees to their territory. The principle of *non-refoulement* is being undermined by the practice of *non-entrée*. This is most graphically illustrated by the interception of refugees and asylum seekers at sea, border closures, and the detention of asylum seekers under conditions so harsh that they can only be described as deterrent in intent. Nonetheless, UNHCR is taken seriously as an interlocutor by states, and has an influence over their actions.

The other international organizations specifically tasked with governance functions in international migration do not have UNHCR’s degree of authority. ILO is hampered by its structure as a tripartite organization made up of representatives of states, employers, and labor unions. If states have been reluctant to cede authority to institutions in which their decision-making power is diluted by other states, they are even more wary of an institution in which authority is shared with foreign nonstate entities. The low ratification rate of the ILO migrant labor conventions demonstrates this reluctance.

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<sup>6</sup> UN General Assembly, *Convention Against Transnational Organized Crime*, Resolution 55/25 of 15 November 2000, [www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf](http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf).

IOM lacks the normative authority associated with treaty-based organizations (if the treaties are widely ratified), and is often dismissed as a mere service provider to governments. But governments increasingly are turning to IOM to help them establish their own structures (such as border protection agencies); to advise and assist on program implementation, such as temporary migration programs; to service RCPs; and to assemble relevant information through migration profiles or regional observatories, among many other functions. Its services have also expanded, for example, in being called upon to help repatriate stranded migrants or migrants displaced by conflict in countries where they have gone to work, as in Libya during the Arab Spring. This plethora of functions may be building IOM into a more authoritative institution as governments come to trust and rely on it. In addition, in recent years it has been cooperating with UNHCR on an expanding range of issues, which is strengthening both organizations. It might be hoped that this cooperation, which rests jointly on the will of the current High Commissioner for Refugees and the Director-General of IOM, will be institutionalized.

The International Centre for Migration Policy Development (ICMPD) is a small (15 members), relatively new (founded in 1993), and ambitious multilateral organization that bears watching. It started as a regional Western European organization (founded by Austria and Switzerland) tasked with bringing order to relations with Central and Eastern European countries on migration issues in the aftermath of the collapse of the Soviet bloc. It still serves its European members, which now include Central European states, in ways analogous to some of IOM's services, but its arena of action has now expanded to North Africa, the former Soviet republics, and the Middle East.

Many other UN organizations serve a global clientele and therefore deal with international migrants in very specific ways. GMG is meant to coordinate the actions of its member agencies; but without either budget or line authority, it has relatively little influence over their programs or procedures.

The World Bank has taken the global lead on information and knowledge management on migration and development, broadening its focus beyond the most recognizable mechanism through which migration contributes to poverty reduction and fiscal stability in countries of origin, namely remittances. Its Knowledge Platform for Migration and Development (KNOMAD), created in 2012, addresses a comprehensive range of migration and development issues. Other international financial institutions and regional development banks are also developing practical migration-related activities, but no coherent framework unites them.

### **C. Regional Economic Organizations and Free Trade Agreements**

Many regional organizations make provisions for liberalized movement among their member states. EU Member States have gone furthest by establishing freedom of movement, work, and residence within the bloc. But other regional organizations also have seen members liberalize movements to a lesser extent (and with varying degrees of implementation), notably the Economic Community of West African States (ECOWAS) and the Common Market of the South (MERCOSUR). Australia and New Zealand also permit free movement between them. The North American Free Trade Agreement (NAFTA) liberalized some kinds of movement, whereas other regional groupings, such as the Southern African Development Cooperation Council have long flirted with the idea but have not been able to achieve an agreement.

The short list of success stories illustrates a very basic point: freedom of movement is an option that governments accept only when the economic level of the partners is similar, and even then it can be difficult to sustain.

## **D. Regional Consultative Processes**

Regional consultative processes (RCPs) have emerged since the mid-1980s as structures for states to share concerns, information, experiences, and ideas about immigration-related issues. Interregional forums (IRFs) came along somewhat later (mostly after 2000), as a commonsensical response to the fact that many pressing issues in migration policy could not be resolved without cooperation among countries at both ends (and in the middle) of various migration corridors.

The topics addressed in RCPs vary widely, but all the processes have a few characteristics in common:

- They meet at least part of the time in closed sessions, attended only by representatives of the participating governments and the secretariat (if there is one).
- They are informal, meaning that they do not produce negotiated statements or formal agreements, but rather operate on the basis of consensus *or* an agreement to disagree if no consensus is reached.
- They are nonbinding, meaning that participating states can decide not to follow any consensus decisions that emerge from the meetings without sanction, and can easily leave the group without going through formal procedures of withdrawal.
- They are both led and “owned” by the participating states rather than a multilateral or nongovernmental body. For that reason, they are independent of other bodies such as UN agencies or regional organizations, although they frequently cooperate with such bodies. (Several multilateral institutions, including ICMPD, UNHCR, and most prominently IOM, provide or house secretariats for some of the RCPs).
- Because of their informal nature, they show great flexibility in setting their agendas, establishing their procedures, and designating participants or observers.

RCPs range from very broad in scope to quite specific. The RCM, or Puebla Process, for example, deals with migration enforcement and return, the human rights of migrants, refugee protection, migration and development, and a number of other issues. By contrast, the Cross-Border Cooperation Process, or Söderköping Process, deals only with aligning the asylum and migration legislation of three states bordering the European Union with EU standards and practices; the Bali Process is focused solely on combating human trafficking and criminal smuggling. The diversity of RCPs in structure, format, and goals is a strength, in that they can be designed or adapted to fit the needs of a specific context.

IRFs share many of the characteristics of RCPs, but they are somewhat more formal, and are more likely than RCPs to involve both countries of destination and origin, as well as transit countries (although a number of RCPs also involve all categories). In reality, both IRFs and RCPs operate across a spectrum of formality, although none employs sanctions against participants who fail to fulfill agreements.

## **E. Policy Networks**

It is difficult to see what would compel states to create a supranational authority to actually govern international migration in the foreseeable future. The small number of states that have been willing

to ratify international legal instruments on migration speaks to the lack of consensus on a normative level. Even where the need for greater cooperation and coordination among states is acknowledged, a supranational organization is not seen by many states as the preferred avenue of international governance.

As an alternative, *international governance from the bottom up* stitches together the common threads of governmental responsibilities for problem-solving purposes. It is built on the basis of intensive interactions among government officials (bureaucrats, regulators, legislators, judges, and so forth), with similar functional portfolios — often interacting with nongovernmental stakeholders such as employers, human-rights advocates, and experts. These “policy networks” have been described by Anne-Marie Slaughter as the building blocks of world order for the age of globalization.<sup>7</sup>

Formal, set, legally binding, and negotiated agreements are not the *modus operandi* of government networks. Rather, government officials continuously devise (and may revise) terms of agreement and are themselves responsible for implementing them. Coordinated solutions to common problems are sought through the constant exchange of information, the development of best practices, and the formulation of nonbinding codes of conduct.

The European Union offers an example of government networks developing, over time, into supranational institutions with legislative, judicial, and executive responsibilities. The European Commission, in the early days of the European Communities, was chiefly a secretariat to intergovernmental meetings. As it grew in stature because of its expertise, both technical and political, the Member States gave the European Commission a seat at the negotiating table, then a right to co-initiate legislation, and subsequently the right of sole initiative. As a result of the European Union’s recent move to majority voting, the European Commission behaves much like a supranational body. Nonetheless, ultimate decision-making power still resides in the European Council, made up of heads of national governments; in the functional councils, made up of ministers with corresponding portfolios; and in the European Parliament, which has the right of veto over almost all legislation. The European Union is a highly evolved government network, and the European Commission has developed authority by serving its needs — not least in the development of a common migration and asylum policy.

The EU experience illustrates the power of government policy networks to expand the area of consensus over time through a functional approach to migration policy. A declaration of principles concerning migration was more than 35 years in coming after the Treaty of Rome; in the meantime, a capacity to solve real problems, while allowing members to opt out of provisions with which they were uncomfortable (as Britain and Ireland have done with respect to the removal of internal border controls) has produced a relatively high level of joint governance of many migration issues. Member States have come to rely on the European Commission to formulate solutions to problems, by drafting proposals that, once accepted by the European Council, are binding. With respect to non-EU citizens (and citizens of new Member States during transitional periods), however, national governments continue to determine levels of admission and length of stay. Rather than starting from principles and trying to wrest sovereignty from reluctant governments through binding

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<sup>7</sup> Anne Marie Slaughter, *A New World Order* (Princeton: Princeton University Press, 2004): 16.

agreements, the European Union's migration policy continues to evolve gradually, in response to felt needs and converging objectives.

## IV. Conclusions

There has been some movement in the past decade toward the concept of shared global responsibility on migration — including the appointment of a UN Special Rapporteur on the Human Rights of Migrants and a UN Special Representative for Migration; the gradual, though still ineffective, ratification of the UN Migrant Workers Convention; and the establishment of both GFMD and GMG. But there is still no consensus on whether global governance of international migration is really needed, what form it might take, and how it should develop — or what really is meant by “global governance.” Simultaneously, the landscape of actors has expanded, with groups of states developing regional consensus — and in some cases regional frameworks for migration management, as in the European Union — and with nongovernmental actors, such as private employers (not to mention smugglers), acting as independent players with an expanded role.

The evolution of an international regime for the governance of migration will need to be underpinned by a conceptual basis that evolves at least as fast as the realities of population movements. This is not to be taken for granted. The term *migration management* now seems slightly old-fashioned, reflecting a preglobalization assumption of state control over migration processes, and is now less commonly used.

Today, it is more useful to think in terms of a *global mobility regime* — in which states are only one of a number of important actors — than in terms of an interstate regime of migration management. One simple reason is that short-term movements (such as for temporary work contracts, family visits, seasonal labor, or study), which are not considered migration, are part of the package that must be included in the full range of policy instruments for the governance of international migration. Another, more complex, reason is the proliferation of actors who make decisions about international mobility independently of state frameworks.

Scholars have long maintained that asymmetric power is the main factor that makes international governance difficult because powerful states can get what they want without negotiating or compromising. In international migration, that translates as taking the best and brightest migrants and excluding the rest. But the United States, said to be the most powerful country in the world, has about 11 million unauthorized migrants and faces increasing competition for highly skilled immigrants. The EU Member States, both individually and collectively, face the same dilemmas.

Perhaps the most fundamental shift in thinking that is needed is the recognition that the international governance of migration is not an erosion but a reclamation of sovereignty by states. If national governments cannot agree on the rules of the game, these rules will increasingly be set by actors who operate outside of the framework of public policy, and perhaps even of the law.

### A. Emergent Issues

By 2011, several issues (some longstanding and some new) had emerged as the ones most in need of international governance:

- “Brain waste” and the associated need to streamline credentialing for skilled immigrants.
- The dearth of legal migration channels for people with low- or mid-level skills, despite persistent demands for their labor.
- The lack of reliable information about the movement of people across borders and the composition of immigrant communities.
- The penetration of organized crime into the migration “industry” and the integration of human trafficking into its broader “business plan.”
- The separation of families as a norm of migration management.
- The lack of widely observed minimal standards of employment and protections for low-waged migrant workers, especially domestic workers.
- The erosion of the asylum system established after World War II.
- The need for new modes of collaboration on mixed flows (labor migrants traveling with refugees), stranded migrants, trapped migrants, third-country nationals, and other groups of migrants that do not fall into standard categories.
- The possibility of large-scale “survival migration” associated with dysfunctional economic policies, poor governance, armed conflict, political repression, high population growth in very poor countries, resource scarcity (in part the effect of global warming), and very unequal distribution of income in several regions.

These issues will play out against a backdrop of broader challenges that will confront states over the next decade, and quite possibly beyond. A slow and erratic recovery from the global financial crisis of 2008 is keeping domestic unemployment high and prolonging the fiscal crises of many major countries of destination. This exacerbates the backlash against immigration and immigrants that has fueled the rise of right-wing parties across Europe and generated floods of anti-immigrant legislation in the United States, particularly at the state and local levels.<sup>8</sup> It also masks part of the underlying dynamic of global migration for the coming century and may therefore delay policy responses to the aging populations and shrinking labor forces of a large number of wealthy industrialized countries. Climate change may reduce productivity and resilience in many parts of the world, making a significant number of states unable to absorb many new migrants. Terrorism is likely to persist, absorbing the attention and resources of governments. Under such circumstances, it would be hard to throw off the political constraints on the expansion of international governance.

## **B. Recommendations**

States have not yet reached a consensus on the overarching purpose of international cooperation on migration, but they have come to recognize some common problems and needs. The search for enhanced multilateral governance of international migration should begin with a consideration of what functions it would need to carry out for the good of countries of origin, destination, and transit, and for migrants. A platform for the development of international governance of migration will have to begin with a limited number of widely agreed functions that respond to the felt needs

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<sup>8</sup> According to the National Conference of State Legislatures (NCSL), US state legislatures adopted 1,227 immigration-related laws and resolutions in just six years (2005-10) — the majority of them restrictive. See NCSL, “State Laws Related to Immigration and Immigrants,” [www.ncsl.org/default.aspx?tabid=19897](http://www.ncsl.org/default.aspx?tabid=19897).

of states and address real issues in the societies affected by migration. A short list to begin with would likely include the following nine functions:

- data collection, dissemination, and analysis; monitoring of trends;
- policy research and development;
- technical assistance and training (capacity building);
- provision of services;
- platform for discussion;
- support for negotiations that members choose to enter;
- anti-trafficking initiatives;
- promotion of migration-related development initiatives; and
- coordination.

To move beyond cooperation toward international governance of migration, national governments and other actors will have to acknowledge that different states have different goals, to compromise where possible, and to start building on recognized, common objectives that lead to mutual benefit from migration. These common objectives include the need for more knowledge and a better understanding of migration phenomena, fewer deaths of migrants in transit, a reduction in the influence of criminal networks, the minimization of tensions between migrant and host communities, greater safety and dignity for migrants, increased national security, and a general capacity to implement policies that have been embraced. Some of the more specific areas for action that might rally states and nongovernmental institutions to a collaborative effort include the following:

*Develop and give content to flexible partnership arrangements.* A new interest in partnerships between origin and destination countries attempts to tap into the motivations of all states involved in a particular migration relationship. The rhetoric of partnership assumes that all parties have something to gain and to give in the relationship, and might represent a welcome recognition that this is, in fact, true — even if the power relationships among the states involved remain asymmetric. Early stages of these migration partnerships, such as the “co-development” model, prompted a certain amount of cynicism, as they were seen as merely adding some fairly limp carrots to the sticks of migration control. The promise of development assistance in return for readmission agreements and the policing of departures did not seem to be a true partnership, but rather a reward for good behavior at best and a naked bribe at worst.

More sophisticated partnership arrangements have been developed in the past few years. The EU mobility partnerships are extremely flexible, with one source country and as many as 13 EU Member States developing ways of cooperating on mobility issues. The disadvantage of mobility partnerships is that they require considerable effort to arrange, and thus far only three have been implemented (with Moldova, Cape Verde, and Georgia).<sup>9</sup> The advantage is that they are extremely adaptable, allowing the issues of all partners to be put on the table for consideration. They still appear to be quite heavily balanced in favor of the destination countries’ concerns. But at least one

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<sup>9</sup> For more on EU mobility partnerships, turn to Part III in this volume, Agnieszka Weinar, “EU Mobility Partnerships: A Model for International Cooperation?”

state, Moldova, has expressed enthusiasm for the arrangement, as much perhaps for the dialogue, learning, and trust building it facilitates as for the actual content of the agreements. The challenge for this model is to scale up the number of agreements that can be implemented without losing the specific features of each, and to infuse them with more content so they can add practical accomplishments to their record of building relationships.

***Strengthen cooperation among international agencies, especially IOM and UNHCR.*** The GMG seems to contribute little to greater coherence in migration policy at the international level. The institutional logic of the GMG member organizations might not support much more than information exchange, but the member governments of these organizations should consider whether they want more from the arrangement. If so, it is up to them, through the governing bodies of the organizations, to insist on greater collaboration within a global, integrated framework.

Within GMG, UNHCR and IOM appear to be moving closer to a complementary and cooperative relationship, and have now signed a memorandum of understanding to give a more formal basis to their cooperation. The two organizations' ad hoc collaboration in the context of the Libyan crisis in 2011 showed the complementarities between them. Member governments of both organizations can encourage this by establishing a clearer division of labor between the two and exercising oversight to make sure the boundaries are respected (with some flexibility in situations where IOM and UNHCR make the case that the cooperation is productive and does not create overlapping activities).

***Build routine collaboration between public and nongovernmental institutions, including the private sector.*** States and nongovernmental institutions too often take a reflexively adversarial stance toward each other on migration issues. The governance of international migration would benefit from greater communication and cooperation between them, while still recognizing their differences. Migrant organizations are an unparalleled source of information and ideas about how migration processes actually work. Private businesses understand the day-to-day workings of the labor market in a way that governments do not, and public institutions have a longer-term and broader view of labor market dynamics than many businesses.

Many governments and international organizations do have institutionalized means of consultation with nongovernmental bodies, but some of these have become empty rituals. Public institutions need to reach out constantly to new partners and insist that the time invested on both sides has real value — beyond checking the box for civil-society engagement. For both practical and normative reasons, the views and knowledge resources of civil-society organizations, private businesses, migrant organizations, and expert bodies should be incorporated into policy discussions on international migration. For this to be productive, however, nongovernmental institutions need to elevate their experience and networks to contribute to a rigorous evidence base for policy formulation.

Knowing what works, what does not, and what motivates migrants and their communities of origin is an essential element of governance. Nongovernmental institutions need to be transparent about their representativeness, the sources of their expertise, and their goals. As monitors, evidence gatherers, agenda setters, and problem solvers, they can be serious partners of public institutions without giving up either their own priorities or their idealism.

**Identify coalitions of the willing on discrete issues, and forge ahead.** Success is likely to attract new partners. Moises Naim coined the term “minilateralism” for a new kind of coalition of the willing formed around particular issues. He describes it as:

*“... a smarter, more targeted approach: We should bring to the table the smallest possible number of countries needed to have the largest possible impact on solving a particular problem. Think of this as minilateralism’s magic number. The magic number, of course, will vary greatly depending on the problem. Take trade, for example. The Group of Twenty (G-20), which includes both rich and poor countries from six continents, accounts for 85 percent of the world’s economy. The members of the G-20 could reach a major trade deal among themselves and make it of even greater significance by allowing any other country to join if it wishes to do so. Presumably, many would. Same with climate change. There, too, the magic number is about 20: The world’s 20 top polluters account for 75 percent of the planet’s greenhouse gas emissions”<sup>10</sup>*

What is the magic number for international migration? A minilateral approach to mobility would need to engage the major countries of destination and origin to identify real problems that are widely recognized by these crucial players.

**Capture more and better data on mobility.** Australia and New Zealand are the only countries that routinely capture both entry and exit data on citizens, immigrants, and visitors by assigning a unique number to each at the time of his or her first border crossing. The lack of such data elsewhere makes it very difficult to understand actual patterns of mobility, especially of circular migration by individuals (such as dual nationals) who have unrestricted legal entry to two or more countries. The obstacles to such comprehensive data collection for large, nonisland states is formidable, but it is worth exploring better ways of tracking international movements. The European Union is currently developing proposals to better capture entry and exit data, and has done extensive work to make statistics comparable and data collection more uniform.

**Build the capacity of RCPs.** Many RCPs are handicapped by having very little (if any) long-term staff and infrastructure. As a consequence, both institutional capacity and institutional memory suffer. Many RCPs have outsourced their management to a multilateral institution such as IOM, ICMPD, or UNHCR. While this may be efficient, it dilutes the leadership and ownership of the RCPs by national governments. (Multilateral institutions can and do provide logistical and technical assistance to an RCP without having this effect.) The most effective RCPs tend to be those that have a secretariat with staff seconded or hired by participating states, such as the Intergovernmental Consultations on Asylum, Refugees, and Migration (IGC) and the Puebla Process.

Loss of momentum is a danger to RCPs that meet only once a year or every two years. The use of working groups, workshops, and seminars can make it possible for RCPs to delve deeply into very specific, and sometimes quite technical, issues. Breaking topics down into their component parts and approaching them at the technical, problem-solving level can also defuse contentious issues.

Setting benchmarks, even though nonbinding, is useful to sustain the momentum of cooperation among RCP members. A plan of action or some equivalent allows the members to keep track of progress toward their goals. Member States should certainly monitor one another’s delivery on the

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<sup>10</sup> Moisés Naim, “Minilateralism: The Magic Number to Get Real International Action,” in *Foreign Policy*, July/August 2009.

commitments they have made in the RCP/IRF process and evaluate the impact of their actions — but at the same time it is important to remember that the most valuable products of a consultation process are often intangible. Building trust and developing habits of cooperation among governments may be the most valuable contribution to development in the medium to long term.

Moving forward on these six recommendations for action provides an opportunity for states to develop confidence in themselves and each other's ability and willingness to work together to develop more satisfactory arrangements for global mobility. States must be adaptable in building systems and institutions for international collaboration on migration issues over time. They will benefit from taking a long view of their needs, defining common priorities, and both identifying and working with the most influential governments and civil-society actors on a given issue. These steps represent a substantial investment for governments, but it is an investment that may pay off handsomely, even in the short term.

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