Global Migration Governance

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Introduction

International migration represents one of the most obvious contemporary manifestations of globalization. With growth in trans-boundary interconnections, there has been a rapid increase in human mobility across international borders. Between 1970 and 2005, the number of international migrants increased from 82 million to 200 million, comprising 3% of the world's population (GCIM 2005). In most policy fields which involve trans-boundary movements across borders, such as climate change, international trade, finance, and communicable disease, states have developed institutionalised cooperation, primarily through the United Nations (UN) system. In relation to these other trans-boundary issues, states have developed a range of international agreements, often overseen by international organizations. These have been created based on the recognition that collective action and cooperation are often more efficient in meeting states' interests than unilateralism and inter-state competition.

However, despite the inherently trans-boundary nature of international migration and the interdependence of states' migration policies, there is no formal multilateral institutional framework regulating states' responses to international migration. There is no UN Migration Organization and no international migration regime, and sovereign states retain a significant degree of autonomy in determining their migration policies. International migration divides into a range of different policy categories: low-skilled labour migration, high-skilled labour migration, irregular migration, international travel, lifestyle migration, environmental migration, human trafficking and smuggling, asylum and refugee protection, internally displaced people, diaspora, remittances, and root causes. Each of these is regulated differently at the global level. They vary along a spectrum in terms of the degree of formal institutional cooperation that exists – from asylum and refugee protection, which has a formal regime and a UN organization, to labour migration, which is largely unregulated at the global level. Yet, overall, the degree of institutionalised cooperation that exists in all of these areas is relatively limited in comparison to many other trans-boundary issue-areas.

Yet this is not to say that there is no global migration governance. Despite the absence of a 'top down' multilateral framework, there is a rapidly emerging 'bottom-up' global migration governance framework. In the absence of coherent multilateral institutions, states are creating *ad hoc* forms of multi-level migration governance. An increasingly complex array of bilateral, regional and inter-regional institutions is emerging, enabling states to selectively engage in different forms of informal cooperation with different partner states. Aside from the emerging bilateral and regional institutions, a number of multilateral institutions that regulate other policy areas have significant implications for states' responses to migration despite not explicitly being explicitly labelled as 'migration'. The global governance of trade, health, and human rights, for example, indirectly regulate states' responses to migration. The picture that emerges is of a complex and fragmented tapestry of overlapping, parallel and nested institutions.

As with all issue-areas, the nature of global governance has implications for the international politics of migration. With little coherent migration governance, sovereign states are largely able to determine their own migration policies in accordance with their own economic and security interests. This means that some states retain a significant degree of autonomy in determining their own migration policies. Relatively powerful, predominantly migrant receiving states, are able to accept migrants they regard to be a net benefit and to reject those they regard to be a net cost. Meanwhile, other less powerful states are compelled to accept the

implicit regulatory framework that emerges from the constraints created by the policies of other states. The fragmented nature of global migration governance serves to reinforce the centrality of power in the international politics of migration, allowing relatively powerful states to engage in forum-shopping, choosing between different institutions that selectively include and exclude partner states from cooperation on a pragmatic basis.

However, although the global governance and international politics of migration have important implications for both states and migrants, they remain poorly understood and under-researched. International Relations, as a sub-discipline of Political Science, has examined the global governance and international politics of a range of issue-areas including security, the environment, human rights, trade, terrorism, health, energy, and development. However, despite its inherently political nature – involving states according rights to non-citizens - and its inherently international nature – involving movement across borders - mainstream International Relations has largely bypassed the study of international migration (notable exceptions include the work of Koslowski 2000; Rudolph 2006; Lavenex 1999; Lahav 2004). This has limited inquiry into a range of significant questions relating to the international politics of migration.

This book represents a starting point for addressing two significant gaps – the first on an academic level and the second on a policy level. On an academic level, it attempts to provide a starting point for understanding how international migration is regulated at the global level and what implications this has for the international politics of migration. On a policy level, it attempts to work towards the development of a vision for a normatively desirable and politically feasible framework for global migration governance. Each chapter explores the institutional, political and normative dimensions of an aspect of international migration.

This introduction serves to contextualise and outline the approach of the book. It begins by explaining exactly what the book means by global governance and offers an overview of the global governance of migration. It then outlines the main three sets of analytical questions explored by the chapters in the book. It explains the institutions of global migration governance, the politics of global migration governance, and the normative implications of global migration governance. In each case, the introduction sets out the main concepts and analytical tools that the book uses in its analysis. Finally, the introduction concludes by outlining the chapters in the book.

Global Governance

At the outset, there is a need to clarify what the book means by 'global governance'. One of the central challenges of International Relations emerges from the distinction between domestic politics and international politics. In domestic politics there is a sovereign who can uphold order within a state. In international politics there is no sovereign and international politics has therefore been characterised by 'anarchy' – not in the sense of chaos but in the sense of the absence of world government (Morgenthau 1948). It is essentially this distinction between domestic and international, and the pursuit of order in the absence of world government that defines International Relations as a distinct discipline.

Where govern*ment* exists at the domestic level, global govern*ance* has been pursued at the international level. 'Global governance' is a murky and often poorly defined term. However, it is generally used to refer to regulation that exists over and above the level of the nation-state, whether at the international, supranational or trans-national level. Govern*ance*

distinguishes itself from govern*ment* insofar as there is no single authoritative rule-maker. The genesis of the concept of 'global governance' has roots in both policy and academia sense.

The policy-level genealogy of global governance can be found in the Global Commission on Global Governance, convened during the 1990s. Its role was to reflect on the emerging challenges stemming from an increasingly interconnected world in which trans-boundary issues cannot be adequately addressed by individual sovereign states acting in isolation. The 1994 report of the Commission, *Our Global Neighbourhood* set out a an agenda for how states might cooperate in order to address a range of new threats and challenges in areas such as the environment, trade, trans-national crime, finance, and conflict. Building on this report, 'global governance' has subsequently become part of the mainstream policy-level vocabulary used to describe the whole range of roles that international institutions and international organizations play in regulating processes that transcend the jurisdiction of the nation-state.

The academic-level genealogy of global governance emerges from attempts within International Relations to understand the role of international institutions in world politics. In particular, regime theory represents a branch of International Relations that attempted to understand the role that regimes – as norms, rules, principles, and decision-making procedures – play in influencing the behaviour of states in particular issue-areas (Krasner 1983; Hasenclever 1997). It tried to explore questions relating to the emergence and effectiveness of regimes, and how they are negotiated, implemented, monitored and enforced. However, from the late 1990s, dissatisfaction with the explanatory power of regime theory and its rationalist origins led to a focus on the broader concept of 'global governance', within which specific research topics have emerged focusing on issues such as the role of international organizations (Barnett and Finnemore 2004), compliance (Raustiala and Slaughter 2002), global public goods theory (Barrett 2007; Kaul 2000), the rational design of institutions (Koremenos et al 2003), and the role of international law in world politics (Chayes 1998; Goldstein et al 2001).

The use of the phrase global governance is not unproblematic. In contemporary International Relations, the policy and academic origins of the term have increasingly merged. The definition of global governance, the levels of governance and what it regulates, and how, are not always explicit in the burgeoning literature on the subject. The term also frequently carries with it an implicit normative bias, often assuming that 'more' governance is both necessary and desirable. These caveats highlight the need for analytical rigour in understanding what global migration governance is, and where it can be found, and what normative claims are implicit in making a case for particular types of governance. Nevertheless, the concept of global governance is useful insofar as it highlights the move away from individual nation states having absolute authority over policy-making towards a situation in which the behaviour of states and other actors is constrained and shaped by a range of institutions which exist beyond the nation-state.

There has been a proliferation in global governance since the Second World War. The most obvious source of global governance is multilateral institutions (Ruggie 1993). States have created a range of multilateral institutions to regulate a host of issue-areas. A dense tapestry of international agreements comprising public international law have been negotiated and implemented in areas ranging from security to human rights to trade. Furthermore, a range of international organizations have been created to oversee the implementation of these international agreements. The United Nations and its specialised agencies have been the most

obvious source of multilateral institutions, representing the forums within which many agreements have been reached and the bodies with the mandate for overseeing implementation and enforcement. Beyond the immediate scope of the UN system, the affiliated institutions of the World Bank, IMF and the WTO have been significant sources of multilateral global economic governance. In all of these areas, states have agreed to delegate sovereignty in exchange for other states reciprocating.

The logic underlying the creation of multilateral institutions has been to overcome so-called collective action problems, in which there is a disjuncture between a course of action that would be collectively rational, on the one hand, and how actors behave when they consider their interests in isolation from one another, on the other hand (Olson 1965). To take the example of climate change, the reasoning underlying the creation of international institutions is that cooperation to reduce greenhouse gas emissions is in states' collective interest but, acting in isolation, it would be individually rational for one state to free-ride on the emissions reductions of other states. International institutions contribute to overcoming collective action failure and enable joint gains to be derived from cooperation because they reduce the costs and increase the benefits of international cooperation. For example, by providing information, reducing the transaction costs of cooperation, providing surveillance, creating stable conditions for multilateral negotiations, increasing the value of reputation, and creating a context within which mutually beneficial issue-linkage can take place, institutions facilitate cooperation (Keohane 1984; Axelrod 1984; Hurrell 2007: 68).

It has also been increasingly recognised that the scope of global governance goes far beyond the formal multilateral institutions that exist within the structures of the United Nations. On a regional level, institutions have emerged to facilitate cooperation inside the regions and to enhance bargaining power outside. While the European Union represents the most obvious example of regional integration, regionalism is an emerging phenomenon throughout the world, with NAFTA, APEC, ASEAN, IGAD, the African Union, MERCOSUR, and COMESA being amongst the range of regional institutions with a wide range of functions and degrees of policy integration (Mattli 1999; Fawcett and Hurrell 1996).

Yet, it is also important to be aware that global governance is not confined to inter-state cooperation. While some issue-areas are predominantly statist, being negotiated and implemented by states, an increasing range of issue-areas are characterised by what Scholte (2004) describes as a 'polycentric' mode of governance. In other words, they involve a growing range of non-state actors in negotiation, implementation, monitoring and enforcement. For example, as well as NGOs, private sector actors such as multinational companies are increasingly active political actors within global governance. The Global Compact, the Extractive Industries Transparency Initiative (EITI) and the TRIPS negotiations, for example, all significantly involved the role of private actors within global governance (Ruggie 2005; Haufler 2006; Sell 2003; Falkner 2007). Within this context, International Administrative Law is increasingly being used to describe standard setting at the international level that falls short of the definition of pubic international law but nevertheless serves as a significant form of regulation at the global level (Kingsbury 2007). An example of this type of standard setting is the work of International Standards Organization (ISO) (Mattli 2003).

As well as formal institutions, other sources of regulation may represent implicit forms of global governance. For example, under certain conditions, one state's domestic policies may represent an implicit form of global governance. This will be the case when policy interdependence means the behaviour of one state serves to constrain the behaviour or policy

choices of another state. This is likely to be especially true in the case of migration policy in which, for example, one state's policy choice in relation to skilled labour immigration, the regulation of remittances or its diaspora will necessarily represent a regulatory constraint on the behaviour of other states. Furthermore, dominant ideas – for example, about the nature of state sovereignty – may represent important sources of informal norms which maintain order and serve to regulate behaviour.

All of these examples serve to highlight that in looking for sources of global migration governance it is necessary to go beyond simply describing the formal multilateral institutions that exist at the inter-state level. Global migration governance, as is explained in this chapter and throughout the book, comprises a complex range of formal and informal institutions existing on a range of levels of governance and involving a host of states and non-state actors.

Global Governance and Migration

Global governance has been developed particularly in response to the emergence of trans-boundary issues. A range of issues are inherently trans-boundary insofar as the nature of the problem is one that crosses borders and cannot be addressed by a single state acting in isolation. Climate change, international trade, communicable disease, transitional crime international financial markets, and terrorism, for example, are amongst these trans-boundary issues and, as such, states have developed forms of institutionalised international cooperation to address these issues.

Globalization – in terms of growing trans-boundary interconnectivity – has therefore created a growing need for governance that goes beyond the nation-state. The demand for global governance is closely associated with globalization and the need to address cross-border spill-overs and externalities. However, although international migration is one of the most striking contemporary manifestations of globalization, and it is, by definition, a trans-boundary issue that no state can address individually, it has not developed a coherent, multilateral global governance framework. Instead, it has remained largely the domain of sovereign states without a formal multilateral institutional framework.

This is not to say that there is no global migration governance – but that what exists is fragmented and incoherent in comparison to most trans-boundary issue-areas. Global migration governance is a complex picture (Newland 2005; Ghosh 2000). International migration is not regulated by a single formal multilateral structure in the way that health, monetary stability or trade are regulated through the WHO, IMF and WTO frameworks, for example. Although the International Migration Organization (IOM) exists in the area of migration it exists outside of the UN system and mainly as a service provider to individual states that pay for its services. The IOM has no clear mandate provided by the international community, in the way that most UN agencies have a statute that provides them with normative authority. Perhaps more importantly, with the exception of asylum and refugee protection, there is no formal migration regime in the sense of a formal set of inter-state agreements. This contrasts with the global governance of most trans-boundary issue-areas in which the main international organizations' work is underpinned by a mandate to uphold a particular normative framework based on international law.

Global migration governance is instead based on a range of different formal and informal institutions, operating at different levels of governance. States' responses to the various different categories of migration addressed in this book are regulated in different ways. The

institutions that regulate states' responses to human trafficking and smuggling are not the same as those that regulate states' responses to skilled labour migration. In each category of migration, there is a complex range of multilateral, regional, inter-regional, and bilateral agreements, with different levels of governance having greater importance in relation to some categories of migration than others. For example, while refugee protection is predominantly regulated through multilateral and regional governance, labour migration is predominantly regulated through bilateral and regional governance, and diaspora relations are predominantly regulated through the extra-territorial scope of individual states' policies. In different categories of migration, regulation in different issue-areas matters to a greater or lesser extent. In the case of environmental migration, for example, the global governance of climate change matters; in the case of labour migration, ILO conventions on labour rights and WTO law matter; in the case of refugee protection and IDPs, human rights law matters. Furthermore, in the different areas of migration, different actors matter to different degrees. The relevant international organizations, private sector actors and NGOs vary.

The complexity and variation in global migration governance makes mapping the institutional landscape at the global level an important but challenging task. One of the central purposes of this book is to provide a comprehensive overview of global migration governance. This is important because the way in which migration is regulated at the global level matters significantly for the international politics of migration, and this in turn has implications for both migrants and non-migratory communities. Indeed the regulatory framework within which states determine their migration policies matters because it affects individuals' and communities' access to human rights, human development, and security.

Mapping and understanding the institutions that regulate states' responses to international migration also has wider implications for understanding global governance. The complexity of global migration governance points to a different type of global governance beyond the formal and inclusive multilateralism that characterised the post Second World War consensus. In the absence of a comprehensive UN framework, it highlights an environment in which institutional proliferation has created a complex, multi-level tapestry of diverse and contested institutions. This form of plurilateralism, in which a range of institutions with different degrees of inclusivity and exclusivity coexist, is increasingly becoming the norm in a range of issue-areas and global migration governance offers an extremely salient case study within which to explore international politics in the context of a dense framework of overlapping, parallel and nested institutions.

One of the challenges of mapping and exploring global migration governance is to divide empirical analysis of 'migration'. Although human mobility within states is an important aspect of migration, the book's focus is on international migration. This is not because internal mobility is not significant but because it is analytically very distinct from both a global governance and a political perspective. With the exception of internal displacement, internal mobility is almost exclusively the domain of individual state sovereignty and domestic politics.

In focusing on the global governance of international migration, however, a key challenge is how to cut the cake of 'global migration governance' into analytically meaningful slices. While Koslowski (2008) divides global migration governance into three 'global mobility regimes', focusing on the refugee, travel and labour migration regimes, this book takes a slightly different approach. It instead divides international migration into a range of policy categories into which international migration is often divided: low-skilled labour migration,

high-skilled labour migration, irregular migration, international travel, lifestyle migration, environmental migration, human trafficking and smuggling, asylum and refugee protection, internally displaced people, diaspora, remittances, and root causes, and has a chapter on the global governance of each.

This approach has both advantages and disadvantages. One advantage is that the approach offers comprehensive coverage of nearly all aspects of international migration. Another significant advantage is that, by following the dominant policy categories, it allows the different politics and governance of each area to be explored in ways that are excluded by aggregating the categories. Because the categories themselves reflect differences in policy and governance across the areas of international migration, they are themselves indicative of the differences in institutions and politics that the book is trying to explore. The disadvantages are that the approach is less parsimonious than the 'global mobility regimes' approach and that the 'policy categories' approach risks overlap and repetition. For example, certain institutions and organisations will arise in similar ways in the governance of different policy categories. The 'policy categories' approach also risks reifying categories which may have been created for policy purposes but have far less empirical or analytical relevance. However, as a starting point for understanding a largely under-research area, the book chooses to sacrifice parsimony for empirical depth.

The selection of contributing authors to the book is also a reflection of the desire for empirical depth. Rather than inviting political scientists or international relations scholars with little or no knowledge of the empirical side of international migration, the book draws together scholars from a range of social science backgrounds who have in common that they have in-depth empirical knowledge of a given aspect of international migration. The authors have in common a background in migration studies rather than in international relations, and come from backgrounds in law, geography, anthropology, sociology, economics, political science and international relations. The intention is that, as well as offering stand alone overviews of the global governance of different areas of migration, the chapters will provide a rigorous and well-informed starting point from which will serve as a starting point for more conceptual work on the global governance and international politics of migration.

Each of the empirical chapters in the book attempts to respond to the same three broad sets of questions, relating to the institutional, political and normative dimensions of global migration governance. Firstly, on an institutional level, the chapters attempt to map out how states' behaviour is regulated at the global level. They respond to the question of *what regulation exists* in relation to each policy category of migration? Secondly, on a political level, the chapters try to explain and characterise the international politics of each area of migration. They respond to the question of *why does the regulation exist in the way it does?* and *what consequences does the existing regulation have for the international politics of migration*? Thirdly, on a normative level, the chapters explore what type of global migration governance would be most desirable in relation to the given area of migration. They respond to the question of *what is the normative case for institutionalised cooperation and what type of cooperation should it be*? In particular, they attempt to unpack what the case might be for a more coherent multilateral framework as opposed to the existing fragmented structure. The next three sections set out the questions in more detail and provide an overview of the institutional, political and normative dimensions of global migration governance. They also set out the analytical tools available to shed light on these different aspects of global migration governance.

The Institutions of Global Migration Governance

The first and arguably most important task of the book is to map out global migration governance. There is a need to descriptively outline the institutional framework that regulates states' responses to the different areas of international migration. How important are different levels of governance? What are the different multilateral, regional, inter-regional, bilateral institutions that shape governance? What role does the global governance of other issue-areas such as trade, human rights and health play in regulating migration? To what extent are the institutions that regulate states' migration policies formal or informal? What are the most relevant actors in the governance of each area of migration? Which IOs and non-state actors (NSAs) are involved in the negotiation, implementation, monitoring and enforcement of different areas of global migration governance?

This section provides an overview of institutions of global migration governance. It argues that what exists at the formal multilateral level is limited. However, it suggests that global migration governance has two defining characteristics. Firstly, it is *embedded* in the sense of being regulated by areas of global governance that are not explicitly labelled as 'international migration' which nonetheless regulate states' responses to international migration. Secondly, it is *multi-level* in the sense of involving a range of institutions at the bilateral, regional, inter-regional, and informal networks of states and other actors.

Multilateral Governance

There is no UN Migration Organization and no explicit migration regime (Bhagwati 2003; Ghosh 1999). The exception to this is in the area of asylum and refugees protection, in which states have created a formal refugee regime, based upon the 1951 Convention on the Status of Refugees, which is overseen by a specialised UN agency, the Office of the United Nations High Commissioner for Refugees (UNHCR). Aside from the 1951 Convention, the 1990 UN Convention on the Rights of Migrant Workers is the only formal multilateral agreement within a UN framework that relates to international migration. Yet, although the position of the UN Special Rapporteur on the Rights of Migrants was created in 1999 within the framework of the UN Human Rights Commission, the treaty has only been ratified by a relatively small number of predominantly migrant sending states.

Since the 1990s, the IOM has grown rapidly from being a small members' organisation for migrant receiving states to being the most prominent international organization working on international migration. However, it is not a UN agency, and it does not have fully inclusive membership. In contrast to UNHCR, its work is conducted in the absence of an underlying regime. It therefore has no normative basis for its work in the form of either a clear mandate or regime in the way that most UN organizations do. It exists mainly as a service-provider to states, providing advice on best practice and running migration-related projects in areas such as migration management, facilitating migration, migrant health, and the movement of people in post-conflict settings. In many ways IOM's approach is nearer to a private firm than a typical IO. For example, its Director-General sets the goals for the organization, which since 2000 has been institutional expansion. Beyond meeting its own institutional aims and providing services to meet states' own interests, it has very little normative vision of its own. One of the areas in which IOM has, however, acted very much like a typical IO is in attempting to facilitate international cooperation on migration through, for example, the role of its IOM Council and supplementary initiatives such as its so-called International Dialogue on Migration (IDM).

The growing politicisation of international migration in the late 1990s and early 2000s, however, led to growing debate on the need for greater multilateral cooperation in the area of international migration. Focused debate on reform of the global governance of migration began in 1994 with calls at the International Conference on population and Development (ICPD) for a dedicated migration conference. Building upon this, and in response to the growing politicisation of migration, UN Secretary-General Kofi Annan convened a working group on migration to be led by Assistant Secretary-General Michael Doyle. In 2002, the so-called 'Doyle Report' was submitted to the Secretary-General, recommending that further analysis of the issue was required in order to inform a debate on global migration governance. In 2003, the Secretary-General therefore convened the Global Commission on International Migration (GCIM) as an independent commission mandated to report back to the UN in order to explore the nature and scope of international migration. The GCIM's focus was largely research based, attempting to provide an overview of the nature and scope of international migration. It reported in 2005, making a series of recommendations and offering a set of principles to guide migration policy. The aftermath of the GCIM led to the 2006 UN High Level Dialogue on Migration and Development being convened in New York City. However, the dialogue led to disagreement about the UN Secretary-General's idea of developing further institutionalised multilateral cooperation in relation to migration through a Global Forum in Migration within the UN system. The preference for the U.S., and for European states, was to maintain flexibility and to work regionally and bilaterally rather than through committing to formal multilateral agreements.

In the aftermath of the High Level Dialogue, a Global Forum on Migration and Development (GFMD) was convened to maintain multilateral dialogue in the area of migration. It held its first meeting in Brussels in 2007 with the participation of 156 states and will meet again in Manila in October of 2008 and in Athens in 2009. However, most states regard the GFMD more as a forum for information sharing and dialogue than as the basis for inter-state negotiation on the creation of a formal multilateral migration regime. It focused on developing roundtable discussions on relatively uncontroversial themes. A significant reason for this is that the U.S. refuses to participate and only allowed the Forum to go ahead on the insistence that it was a) outside of the UN framework and b) would have no permanent secretariat.

Within the UN framework, there are few formal multilateral structures relating to international migration. The exceptions to this were created in the context of the GCIM. In the first instance, the UN Secretary-General appointed a Special Representative on Migration and Development, Peter Sutherland, in 2006. In the second instance, a Global Migration Group (GMG) was created in 2003 with the intention of facilitating more joined-up collaboration across the UN system. It has attempted to allow inter-agency collaboration across the range of international organizations that provide services to states in the area of migration - IOM, UNHCR, ILO, the World Bank, UNITAR, UNFPA, and UNDP, for example. However, in practice, the GMG has done little more than engage in information-sharing activities.

These recent activities notwithstanding, with the exception of the global refugee regime, there is virtually no formal multilateral framework explicitly regulating states' responses to international migration. However, this is not to say that there is no global migration governance. There is; however, it is complex and difficult to identify. In particular, the institutions of global migration governance can be identified in two areas. Firstly, areas of global governance that are not explicitly labelled as 'international migration' which

nonetheless regulate states' responses to international migration; secondly, *ad hoc* institutions that exist at different levels: bilateral, regional, inter-regional, and informal networks of states and other actors.

Embedded Governance

A common assumption in international relations is that a regime, by definition, regulates only a single issue-area. In other words, there is a health regime that regulates health, a trade regime that regulates trade and a climate change regime that regulates climate change (Hasenclever et al 1997). In practice, regimes are not this discrete and institutions created to regulate one issue-area can have implications for the politics of other issue-areas. In particular, much of global migration governance is not explicitly labelled as 'migration'. Nevertheless a range of institutions in other issue-areas have profound implications for how states behave towards international migration.

At the deepest level, the sovereign state system defined by the Seventeenth Century Peace of Westphalia shaped the nature of how states perceive international migration by defining the nation-state structure that constitutes the very idea of international migration. Sovereignty represents the constitutive norm of the international system and creates the concept of exclusive political community, on which the very concept of international migration is premised. Without the system of institutions – including, for example, Article 2(4) and 2(7) of the UN Charter - that uphold the primacy of state sovereignty, states would not have a basis on which to legitimate the limitations that most states place on human mobility (Biersteker and Weber 1996).

Beyond sovereignty, it has been increasingly argued that one can conceive of 'international migration law' (IML). Although there are very few formal multilateral treaties relating explicitly to migration, a range of formal treaty obligations in other issue-areas have implications for how states can behave in relation to migration. Indeed, states' relevant obligations in relation to WTO law, labour rights, international human rights law, and international refugee law can be conceived to amount to a basis for IML. Aleinkoff and Chetail (2003) and Cholewinski et al (2007), for example, have compiled the range of international norms that might represent the contours of an embryonic IML.

In trade governance, the WTO's General Agreement on Trade in Services (GATS) attempts to prevent WTO member states from discriminating against service providers on the basis of their country of origin. It sets out four 'modes', which relate to different aspects of service provisions. Mode 4 relates to migration insofar as it prevents member states from discriminating against the temporary movement of 'natural persons' (workers) across borders to provide services. GATS Mode 4 guarantees access to four categories of person: services salespersons, intra-corporate transferees, business visitors, and independent contract suppliers. Service providers are not granted access to the local labour market and they cannot be unemployed; their visa and right to stay are dependent upon employment. At the moment the scope of Mode 4 is dependent upon the specific, agreed commitments of individual states, and is generally confined to high-skilled labour. Although, it has the potential to be greatly expanded, negotiations on the implementation of GATS Mode 4 have stalled. For many migrant sending countries, is interpreted as being about facilitating circular migration. For most migrant receiving countries, it is simply seen as a means of facilitating the intra-firm movement of staff and service providers.

In labour governance, the ILO has concluded a range of conventions relating to labour rights since its creation in 1919, which set out standards and principles on how states can treat labour – including migrant labour. Fundamental labour conventions include: the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). In 1998, the ILO Labour Conference adopted the Declaration on Fundamental Principles and Rights at Work, which consolidated many of the previous ILO Conventions. This declaration identified four issue areas as "core" or fundamental international labour standards on freedom of association and collective bargaining, discrimination, forced labour, and child labour. These core or fundamental standards have been ratified by the overwhelming majority of ILO member states and are in any case binding on all ILO member states. The ILO exists to oversee and promote respect for these norms.

Similarly, even though states rarely openly acknowledge the fact, they have obligations to ensure that migrants' human rights are upheld. The UDHR, ICCPR, ICESCR, CAT, CRC, and CEDAW, for example, all have application to migrants just as they do all other human beings. Meanwhile, customary international norms such as the principle of *non-refoulement* have application beyond 'recognised refugees'. These rights include the procedural guarantees to have access to legal recourse and to be able to appeal against unfair or discriminatory treatment, which migrants so often lack access to.

Collectively, all of these areas of IML have the potential to one day be consolidated within a soft law framework. If they could be summarised and drawn together in a coherent way then the strands of IML might represent a viable starting point for creating the normative underpinnings of a global migration regime. A precedent for creating soft law out of the consolidation of existing legal standards in other areas of law is offered, for example, by the way in which the *Guiding Principles on Internally Displaced Persons* were compiled and drafted on the basis of International Human Rights Law and International Humanitarian Law (Phuong 2004; Weiss and Korn 2007).

In addition to these embedded norms, a range of international organizations provide services to support states in areas in which their mandates overlap with aspects of human mobility. For example, the World Bank works enabling states to use remittances and circular migration to facilitate economic development. UNFPA works on the relationship between gender and migration insofar as it relates to its wider work on gender and fertility. UNDESA has a migration unit as part of the broader work it does on population, which focuses on compiling a range of statistics and data for states. As part of this function, it also plays a coordinating role on international debates on migration within the UN secretariat in New York. UNITAR has developed a training programme on migration for diplomats and civil servants within the UN system, playing an important knowledge dissemination role.

Multi-level Governance

Global migration governance is emerging as a 'bottom-up' structure rather than a 'top down' treaty-based structure. A complex range of overlapping, parallel and nested institutions are emerging on a bilateral, regional, and inter-regional basis. They are being created in ways that

allow states the flexibility to selectively establish new forms of temporary and *ad hoc* cooperation that includes and excludes other actors on the basis of the participating states' immediate interests.

A dense set of bilateral agreements exist between states in the areas of migration – relating to reciprocal agreements on readmission, extradition, visa agreements, privileged access to temporary labour migration. These bilateral agreements often link to wider bilateral conditionalities in relation to trade or development. Prominent examples, along North-South lines include the migration partnerships between Italy and Libya, Spain and Morocco, France and Senegal, the U.S. and Mexico, and Australia and Indonesia. Many of these bilateral agreements link migration to a range of other issue-areas such as market access and development assistance in ways that enhance the bargaining power of Northern states to get concessions in relation to migration control.

On a regional level, the EU, NAFTA and ASEAN have developed regional cooperation in relation to migration. The EU's regional cooperation on asylum and immigration represents by far the most developed of these – having both an internal element designed to facilitate the free movement of labour within the Union and an external dimension designed to reinforce migration control coming into the EU through external cooperation with third countries.

However, the most apparent form of international cooperation in relation to migration relates to a set of *ad hoc* informal structures that are emerging on a regional and inter-regional basis known as Regional Consultative Processes (RCPs) (Nielsen 2007). The first RCP is widely regarded to have been the Inter-governmental Consultations on Asylum and Immigration (IGC), created in 1985 by 16 destination countries in the West, with a permanent secretariat, in order to facilitate information-sharing initially in relation to asylum and now, increasingly, in relation to migration in general. Similar processes have emerged elsewhere in the world, sometime as stand alone processes and some times as processes nested within wider regional institutions. The Colombo Process initiated a dialogue on labour migration in South Asia, which expanded in 2008 to become the so-called Abu Dhabi Dialogue and to include India, China, the Gulf States, Malaysia, and Singapore. These processes have discussed general principle relating to temporary labour migration, working to develop common standards on issues such as labour rights and best practice, and to enhance their bargaining power in labour migration negotiations with other states. Meanwhile, the six East African states that comprise IGAD have also begun a regional dialogue on developing common labour migration practices.

RCPs have also emerged on an inter-regional basis, most notably as a means to facilitate improved *ad hoc* international cooperation between migrant sending and migrant receiving states on a North-South basis. The Rabat and Tripoli summits of 2006 and 2007, for example, initiated EU-Africa dialogue on migration, attempting to develop partnership agreements to address European concerns with trans-Mediterranean migration. In this context, the so-called '5 plus 5' process has also developed dialogue between Northern and Southern Mediterranean states. The Ibero-American dialogue on migration met in Cuenca in April 2008 to develop a dialogue on labour migration between Spain, Portugal, Andorra and the Latin American migrant sending states. One of the oldest but most significant North-South RCPs is the Puebla Process, which has attempted to develop cooperation on migration between NAFTA and the Central American states.

These bilateral, regional and *ad hoc* structures have two related features. Firstly, they are generally exclusive. Unlike formal multilateralism with a UN framework, not all states participate in all of the governance structures. Rather, the range of structures allow powerful Northern states to include and exclude partner countries on their own terms, generally excluding the global South from meaningful participation. When there is a need for partnership of agreement with a certain set of states, an institutional forum which allows for the desired level of inclusivity or exclusivity can be selected by the relatively more powerful states. Secondly, the structures' fragmented nature enables Northern receiving states to engage in forum-shopping, selectively shifting between different unilateralism, bilateralism, regionalism, and *ad hoc* governance structures to facilitate cooperation on their own terms. These types of cross-institutional strategies reinforce power asymmetries by giving the powerful states a range of forums within which to select the types of international cooperation that meet their interests (Busch 2007; Alter and Meunier 2008).

The Politics of Global Migration Governance

Aside from mapping out the institutions that regulate states responses to migration, this book also tries to characterise the politics of international migration. It tries to ask what configuration of interests, power and ideas has led to the existing regulatory framework and determines the international politics of each area of migration. In particular, this book poses two important and related political questions. Firstly, it asks *why migration is regulated as it is*? What have been the historical and political circumstances that have led each area of migration to be regulated in the way that it is? What have been the barriers and impetuses to greater multilateralism? Secondly, it asks: *how can the international politics of each area of migration be characterised given its institutional structure*? What strategies do states adopt in the international politics of migration given the presence or absence of certain types of institutional structure and why?

In order to explore what drives the politics of international migration, and the prospects for inter-state cooperation, a number of concepts can be drawn from International Relations. In particular, one could expect to find an explanation for the types of international cooperation that exist, and their consequences, by looking at interests, power and ideas.

Interests

International relations attempts to explore where states' preferences come from and how the co-called 'national interest' emerges. It is an important question for global governance because it defines the prospects for mutually beneficial international cooperation. However, identifying and explaining how states define their interests in relation to the international politics of migration is complicated and challenging. Rationalist approaches to international relations tend to assume that the nation-state can be conceived as a 'black box' which can be assumed to be interested in maximising its own interests (Waltz 1979; Keohane 1984).

This type of approach offers some analytical utility in relation to international migration. States might be assumed to formulate their migration policies on the basis of attempting to maximise their economic and security interests. They attempt to attract 'desirable migrants' who meet the economy's labour market needs, while deterring 'undesirable migrants' who offer little economic benefit and who are perceived to be a threat to that society's security (conceived in the broadest sense). A heuristic starting point might then be to regard states' interests in the international politics are being based on maximising their economic and

security interests. Where these interests are best met through international cooperation, one might expect a state to have a preference for cooperation; where they are best met through competition, one might expect as preference for competition.

However, in the area of international migration, it is also clear that states' interests are significantly determined by intra-state politics and there is a need to look within the state. Lobbying and interest group formation within the state play an important role in determining states' positions within the international politics of migration (Moravcsik 1997). Indeed, a political economy approach to the international politics of migration would recognise the need to disaggregate the state and explore the different interests emerging within domestic politics and through the role of the private sector (Drezner 2007). This poses a challenge that if one is to understand the international politics of migration, there is a need to identify the sub-state actors that define the positions of the powerful migration states.

Bureaucratic politics is an important element of understanding the interests involved in the international politics of migration. Few states have dedicated migration ministries. In practice, a range of different government ministries work on different aspects of migration: labour, justice and home affairs, foreign affairs, and development ministries all play different roles and have different mandates in relation to migration. There is rarely policy coherence across government. Consequently, different ministries have different relationships with different international organizations. For example, labour ministries work closely with ILO, trade ministries work with the WTO, development ministries with the World Bank and UNDP. Meanwhile, a range of different ministries work with IOM and UNHCR. Furthermore, much of the inter-state politics of migration does not take place between elected officials but rather between civil servants (Slaughter 2000; Koehler 2008). This has the effect of making the politics more 'depoliticised' and technocratic, and also means that a significant proportion of the politics relies upon social networks.

It is also crucial to be aware that in the area of international migration, states' interests may also be strongly influenced by the politics of other issue-areas shape. Indeed migration policy may be closely intertwined with interests relating to security, development, human rights (Betts 2008). Similarly, interests in relation to one area of migration may shape the politics of another area of migration. For example, the politics of asylum and refugee protection has been increasingly shaped by states' interests in relation to irregular migration.

There is also a need to take into account the interests of international organizations themselves. UNHCR, IOM and ILO have their own institutional interests, which have helped to shape global migration governance. As bureaucracies, they have not simply implemented the preferences of states but have also had their own institutional strategies (Barnett and Finnemore 2004). For example, at different times they have attempted to expand their organisational size and the scope of their work, sometimes competing with one another for authority in relation to different areas of migration.

The interests that matter for global migration governance will vary in different areas of migration. However, what is clear is that, in most areas, they involve a complex range of actors and different sets of interests. To understand which interests become relevant and influential, there is a need to explore the role of power.

Power

Power is central to understanding the international politics of migration. As with other areas of world politics, the international politics of migration can be conceived to be 'anarchical', in the sense that there is no overarching global authority. Consequently, states can engage in self-help and attempt to maximise their own interests subject to the constraints created by the behaviour of other states. In many other issue-areas, coherent multilateral institutions serve as an additional constraint on the self-interested behaviour of states.

In the case of the international politics of migration, the absence of a coherent and comprehensive multilateral governance framework means that states can competitively act in their own self-interest. Rather than being constrained by any clear institutional framework, powerful states are able to define their migration policies in accordance with their interests. They can admit the migrants they regard as 'good migrants' and reject the migrants they regard as 'bad migrants'. They will determine their migration policies on the basis of reconciling their economic and security interests. Economically, receiving states are concerned to meet their labour market needs while sending states are concerned with remittance income and the loss of skilled labour. In terms of security, receiving states are concerned to minimise the perceived threat to security from admitting non-citizens.

Within this context, powerful states define the terms of global migration governance. Their policies and the *ad hoc* institutions they create shape the constraints faced by other less powerful states. 'The rest' – especially sending states in the South – are 'takers' of the implicit regulatory framework created by dominant receiving states' migration policies. This power game of competing for 'good migrants' (those who meet their labour market needs and can integrate) and competing to avoid 'bad migrants' (irregular and forced migrants) applies mainly between Northern and Southern states, but also applies on a regional basis in both a North-North and a South-South context in which regional hegemons are often able to determine the terms of global migration governance. For example, within their regions, South Africa, Mexico, Russia, Nigeria, and Libya are all able to set the terms of regional migration governance vis-à-vis sending states in Southern Africa, Central America, Central Asia, West Africa, and the Horn of Africa.

In this context, the *ad hoc* institutions created on a bilateral, regional and inter-regional level often serve to reinforce asymmetric power relations. They are often created as exclusive institutional frameworks which allow participating states to pragmatically include and exclude partner states on a pragmatic basis. The dense network of ad hoc institutions creates possibilities for powerful states to engage in forum-shopping, selecting the institutional context for cooperation in accordance with their interests. However, it is also important to recognise that weaker states frequently develop strategies for overcoming power asymmetries. For example, a number of Regional Consultative Processes have been conceived by Southern states as a means to enhance their global bargaining position. Meanwhile, Southern states are also engaging in strategies such as issue-linkage, connecting migration to issues such as trade and development in ways that enhance their bargaining power vis-à-vis the North (Betts 2008).

Ideas

It is also important to be aware that ideas also shape the international politics of migration. Notions of sovereignty and the nation-state frame the ideational context in which international

migration is perceived. Unlike the movement of goods, services or capital, the movement of people challenges national identity and goes to the core of statehood. It is something that many states regard to be the basis of sovereignty.

The way in which states understand the nature of the migration 'problem' is influential in terms of how they approach the international politics of migration. As the negotiation of the global governance of climate change demonstrates, states are generally very reluctant to commit to multilateral institutions when there is uncertainty about the nature of the issue. Future migration patterns remain uncertain and the likely distributive consequences of future human mobility are also uncertain. Institutionalised cooperation therefore represents a particularly risky undertaking for states in comparison to maintaining flexibility in the context of uncertainty.

Perhaps more problematic for the prospects for international cooperation relation to knowledge, is the fact that different states perceive migration in very different ways and through different cultural and ideational lenses. What 'migration' means for China, India, Europe or the United States is not identical and hence the absence of a common understanding of the issue represents barrier to multilateral cooperation.
To take an example, in the context of the Abu Dhabi Process, it became apparent that there is no word in Arabic for 'migration' other than with connotations of permanence and citizenship. In debates on temporary labour migration, it was therefore necessary for IOM to adjust its conceptual language and use the term 'mobility' instead. These types of regional variation in perception have important implications for international cooperation that have often been neglected by Western academic approaches to international politics (Acharya 1997).

The Normative Implications of Global Migration Governance

So what would be the case for developing a multilateral global migration governance? How would this case differ from the normative case for the flexible, fragmented and multi-level *status quo*? In order to make the case for regulation rather than competition at the global level, International Relations tends to analogously draw on the case that economists make for identifying the conditions when regulation leads to better outcomes than competition. Drawing upon these types of arguments, one can make the case for developing a multilateral framework for migration governance on either efficiency or equity grounds. However, the real challenge is not only to identify the case for 'more' or 'less' global governance but to identify what type of global migration governance is normatively desirable and from whose perspective.

Efficiency

In international relations, the case for institutionalised international cooperation is generally based on efficiency (Keohane 1984). The case for global governance is generally analogous to the case for government intervention at the domestic level. At the domestic level, economists assume that the free market will maximise collective welfare by ensuring that all resources are efficiently allocated through the market mechanism. However, they also recognise that 'market failure' can arise when a society is not at its most efficient point (Pareto Optimality) in the absence of a regulatory framework.

Market failure most commonly occurs when the full costs and benefits of a given actor's choices do not accrue to that actor but are passed on, as positive or negative externalities, to other actors that are not included in the decision-making. The problem with negative externalities is that, in the absence of a regulatory framework, an actor will have little incentive to take into account the negative impact of their choices on other actors, even if the gain to the decision-maker is small and the cost to the other actors is large. The potential problem with positive externalities is that if the benefits of a given choice accrue to a range of actors, while the costs are exclusively born by the decision-maker, there will be little incentive for actors to individually provide the good in question. An individual actor would be better off free-riding on another actor's choices.

In the case of both positive and negative externalities, society will be collectively worse off if the actors make their choices in isolation, or within a competitive environment, than they would be if they cooperated through the creation of a common regulatory framework. The domestic analogy of market failure has been applied to the realm of international politics to analyse situations in which states are collectively worse off acting in isolation that they would be if they developed institutionalised forms of cooperation.

The most common case of a need for global governance based on externalities arises when there are *global public goods*. A global public good, like street lighting at the domestic level, is one that, once provided, its benefits are non-excludable and non-rival between actors. Non-excludability refers to the notion that the benefits extend to all states irrespective of whether they contribute to its provision; non-rivalry refers to the notion that one state's consumption does not diminish that of another state. Because of the non-excludable nature of the benefits, in the absence of a strong institutional framework, states will have an incentive to free-ride on the contribution of other states and the good will be under-provided. This applies to, for example, climate change mitigation, creating a vaccine for polio or the international monetary system. In these instances, even though all states value their provision, they will have little incentive to actually contribute to providing those goods. In the absence of an institutional framework to ensure reciprocity, the goods will be under-provided and states will be collectively worse off than they would have been had they cooperated to share the costs of providing the global public good (Barrett 2007; Kaul et al 2003).

Some authors have tried to make the case that international migration represents an international public good (Hollifield 2008). This, of course, is not true. While the provision of refugee protection might be considered to be a global public good insofar as states collectively value its provision but have little incentive to be the provider because of the partly non-excludable nature of the humanitarian and security benefits of protection, the same logic does not apply to labour migration (Betts 2003; Suhrke 1998). This is because the costs and benefits of labour migration are at least partly excludable because they accrue almost exclusively to the admitting state, the country of origin or both, but rarely to a wider group of states. Furthermore, there is little that is non-rival about international migration given that one state's decision to admit a given migrant generally prevents that migrant from simultaneously being admitted to another state at the same time.

However, this is not to say that there is no efficiency case for global migration governance based on externalities. There is a case; it is simply not based on global public goods theory. Rather, the efficiency case comes the broader argument that states' migration policy decisions create *externalities*, albeit externalities that, unlike global public goods, do not accrue to all

states simultaneously, but are more likely to be dyadic or have effects on small groups of states.

In the case of individual states' migration policy decisions, these inherently confer positive or negative externalities on other states. Because a decision by one state to admit a migrant is a decision that removes an individual from another state, and a decision to reject a migrant is a decision for that migrant to be in another state, migration policy decisions confer externalities. In other words, there is policy interdependence (Moravcsik 1997). For example, when individual migrant receiving states make policy decisions about skilled labour immigration or the regulation of remittance, these choices have external consequences for the relevant migrant sending state. Equally, when migrant sending states make decisions about their policies towards their diaspora, these choices have implications for migrant sending states.

The existence of policy interdependence and externalities resulting from policy decisions represents a normative basis for developing institutionalised cooperation insofar as it results in the choices that are made leading to outcomes that are sub-optimal in comparison to those that would have maximised the aggregate welfare of the society of states. Put simply, when states make decision on migration in isolation, they impose externalities on one another and so increase their collective costs and reduce their collective benefits. Acting in isolation, states have little incentive to be concerned with the external costs they impose, while deriving external benefits is likely to make them free-ride on cooperation from other states. In contrast, if they were to cooperate rather than compete, they might be able to maximise the benefits of international migration and then redistribute these benefits in ways that made everyone better off.

Equity

Beyond efficiency, one might also build a less commonly pursued case for global migration governance based on equity. It is not only the case that states are collectively worse off in a competitive environment, but also the case that the costs of competition are not distributed equitably. In the absence of formal multilateral governance, it is the relatively powerful states that are able to determine the basis of global migration governance. Powerful Northern states are able to take the migrants they want and leave the migrants who they do not want. This means that the majority of the world's refugees and IDPs are in the South, the majority of skilled labour migration is South-North, and the terms on which remittance are regulated is dictated by the North. While the relatively powerful states in both a North-South and regional North-North or South-South context reap the benefits of the status quo, the costs are shifted on to the weaker states and on to migrants who have little in terms of a human rights framework provided by the existing global migration governance. There may therefore be a normative case based on equity grounds for alternative forms of global migration governance.

The challenge, though, if one is to construct a normative case for a more inclusive, equitable global migration governance, how one would ground this on a normative level. Theories of justice based on the application of Rawls to the international level might be one basis (Beitz 1979; Rawls 1972). Similarly, it might be possible to ground theories of justice in ethical theories based on either consequentialist (Singer 2002) or communitarian arguments (Walzer 1983). These approaches would have very different implications for how one conceived a normatively defensible global migration governance, and the extent to which it leaned towards 'open borders' or 'migration management'. However, the key challenge, which is so often neglected in work on global governance, is to make the normative case for different

approaches to global governance explicit and to lay out the range of different options that would flow from grounding the analysis in different normative perspectives.

In making a normative case for 'more' or different approaches to global migration governance, there is also a challenge to go beyond the argument that institutionalised cooperation offers efficiency gains but to say *what kind* of institutionalised cooperation is normatively most desirable. In particular, what are the normative arguments that might make more formal top-down governance more or less desirable than the predominantly 'bottom-up' status quo that is emerging through flexible bilateral, regional and inter-regional agreements?

The Chapters

Each of the chapters in the book addresses the global governance of a given area of international migration. Each of the authors has been chosen for their expertise in that particular area of migration. In order to divide international migration into analytically meaningful areas, the chapters address different 'policy categories' of migration: low-skilled labour migration, high-skilled labour migration, irregular migration, international travel, lifestyle migration, environmental migration, human trafficking and smuggling, asylum and refugee protection, internally displaced people, diaspora, remittances, and root causes. Although in reality migration does not neatly fit into these categories, taking policy categories offers a useful division of analytical labour. This is because, firstly, the different policy categories broadly reflect the different structures of global migration governance and, secondly, they partly reflect the division of academic expertise.

The chapters each address the same three broad areas outlined in this introduction, reflecting upon the institutional, political and normative dimensions of the global governance of the different areas of international migration. The chapters are intended to offer a stand alone introduction to the global governance and international politics of different aspects of international migration. However, they are also intended to represent a starting point for developing new analytical and conceptual tools for understanding global migration governance. The first set of chapters analyse different areas of labour migration (skilled and unskilled). The second considers other categories of voluntary mobility (irregular migration and lifestyle migration). The third set examines categories of forced migration (asylum and refugee protection, human smuggling and trafficking, and internal displacement). The fourth group reflect upon a range of new and emerging areas of global migration governance (environmental migration, remittances and the diaspora, and root causes). Finally, the book concludes by attempting to integrate the insights of the different empirical chapters. On an academic level it attempts to unpack the insights of the book for understanding international politics and global governance of migration. On a policy level, it reflects upon what a normatively desirable and politically feasible global migration governance might look like.

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