

BACKGROUND PAPER WMR 2010

Migration Governance: Alternative Futures



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Migration Governance: Alternative Futures

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IOM International Organization for Migration

FOREWORD

This paper is one of 19 background papers which have been prepared for the IOM, 2010 World Migration Report which is entitled the “Future of Migration: Building Capacities for Change”. The 2010 report focuses on likely future trends in migration and the capacities that will be required by States, regional and international organizations, civil society and the private sector to manage migration successfully over the coming decades.

Over the next few decades, international migration is likely to transform in scale, reach and complexity, due to growing demographic disparities, the effects of environmental change, new global political and economic dynamics, technological revolutions and social networks.

The 2010 World Migration Report focuses on capacity-building, first because it is good governance to plan for the future, especially during a period of economic downturn when the tendency is to focus on immediate impacts and the short-term period of recovery. Second, capacity-building is widely acknowledged to be an essential component of effective migration management, helping to ensure the orderly and humane management of migration.

Part A of the World Migration Report 2010 focuses on identifying core capacities in key areas of migration management. The aim is not to recommend “one size fits all” policies and practices, but to suggest objectives of migration management policies in each area, to stimulate thinking and provide examples of what States and other actors can do.

Part B of the World Migration Report 2010, provides an overview of the latest global and regional trends in migration. In recognition of the importance of the largest global economic recession since the 1930s, this section has a particular focus on the effects of this crisis on migrants, migration and remittances.

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INTRODUCTION

Unlike many other transboundary issues such as trade, the environment and finance, migration lacks a coherent and easily identifiable institutional framework at the global level. There is no UN migration organization. States remain the primary actors in migration governance, and the circumstances under which they delegate responsibility for migration to regional or international institutions remain comparatively limited. The areas in which States have cooperated through intergovernmental institutions have emerged and have been adapted according to specific historical concerns, as and when they have arisen. What has emerged is a fragmented tapestry of global, regional and national governance, with degrees of formal institutionalized governance varying between different geographical regions and across areas of migration. A large number of international organizations, such as the International Organization for Migration (IOM), the United Nations Population Fund (UNFPA), the United Nations Department of Economic and Social Affairs (UNDESA) and the United Nations Institute for Training and Research (UNITAR), have mandates that touch upon issues relating to migration, and a host of institutions and treaties – from International Human Rights Law, to International Maritime Law and regional trade agreements – have implications for how States can and do respond to the movement of people across borders (Betts, 2011).

Within this context, there has been a growing attempt by academia and policymakers to understand what migration governance is and to explore what it could and should look like. Within academia, a growing number of academic projects – such as the MacArthur-funded Global Migration Governance¹ project – are exploring what migration governance is and the politics underlying it. Meanwhile, at the policy level, commissioned reports such as the so-called Doyle Report (United Nations, 2002) and the Global Commission on International Migration (GCIM, 2005) have made recommendations relating to migration governance. Furthermore, forums such as the Global Forum on Migration and Development (GFMD) are focusing increasingly on the structures of migration governance in their work.

The *World Migration Report's* focus on migration futures offers a unique occasion to reflect upon what migration governance is and what it should be. It represents an opportunity to set out a much-needed vision for the future of global migration governance. Given what already exists in migration governance, and the emerging trends and challenges that one might expect to observe in international migration in the coming years, what gaps exist in migration governance and how can they be addressed?

To answer this broad question, however, it is important to first define what we mean by migration governance and how one would identify a gap in it. Doing so is central to any analysis of, or vision for, the future of migration governance. It is impossible to speak meaningfully about migration governance without a) analysing what migration governance is and b) normatively identifying criteria by which to judge what “better” or “more effective” governance would imply.

¹ This background paper is based partly on the insights of that project. A major output of the project is Betts, A (2011), *Global Migration Governance* (Oxford University Press).

What is migration governance?

Governance relates to rules, norms and practices that constrain or constitute behaviour, and it is generally distinguished from “government” by the absence of a single overarching authority. By definition, it is something that goes beyond a purely State-led form of regulation. It has become increasingly common to speak of “global governance” as regulation that exists above and beyond the nation State. However, in practice, institutions exist at a range of levels – global, regional and national – and these levels interact and intersect. Governance also relates to actors involved in the regulatory process – whether public or private – in the negotiation, implementation, monitoring and enforcement of regulations. This basic definition of governance, however, begs a number of challenging questions, as addressed in the following sections.

1) Regulating *what*?

It can be a challenge to distinguish between migration governance and non-migration governance. The line between migration and other policy fields is extremely blurred: much of migration governance is what can be described as embedded governance (Betts, 2011). In other words, the regulation that shapes human mobility and the response of States to migration are not always explicitly labelled as migration. In terms of norms, International Migration Law (IML) acknowledges that the rules that govern States’ responses to migration are found in bodies of law as disparate as International Human Rights Law, International Maritime Law, and World Trade Organization (WTO) Law (Cholewinski, 2007). Similarly, at the regional and national level, migration is shaped by legislation across a range of policy fields. In terms of actors, the international organizations, government ministries and private actors engaged in regulating migration also often do not have migration as an explicit part of their mandate. There is also a question of whether the governance of travel has been included within migration governance (Koslowski, 2011), and whether regulation of the underlying causes of migration (including the governance of development and security (Castles and Van Hear, 2011) and regulation of its consequence (including remittances, diasporas and integration) are part of migration governance (Gamlen, 2011; Lindley, 2011).

2) Regulating *whom*?

It is equally challenging to identify the targets of migration governance. In particular, does this mean looking at the regulation of mobility and migration itself or of States’ responses to migration? Although the two are not mutually exclusive, there is a crucial difference in emphasis. In the former case, governance is aimed at facilitating the managed and orderly movement of people. Structures such as the development of border management capacity or the development of common standards relating to travel documents fall into this category. In the latter case, governance is based on norms, reciprocally agreed by States, that constrain or constitute what is acceptable practice by States in relation to migration. Structures, based on treaties such as the International Human Rights Law or GATS Mode 4,² fall into this category.

3) Regulating *how*?

² See <http://www.iom.int/jahia/Jahia/about-migration/developing-migration-policy/migration-trade/GATS-mode-4>

Often when one thinks of governance, the focus is on formal governance – on the rules, norms and decision-making procedures that are agreed upon by governing State or non-State actors. However, a significant proportion of migration governance falls outside of these formal structures. Rather than simply constraining the behaviour of actors through inducement or coercion, much of the governance framework that shapes how States respond to migration operates at an informal level and, rather than creating rational incentives for behaviour, operates at the level of good practice, using ideas, knowledge, persuasion, emulation and authority as the basis on which behaviour is shaped. Since global migration governance is generally characterized by the absence of formal, binding inter-State norms, the networks (e.g. regional consultative processes on migration (RCPs)), dialogues (e.g. the GFMD) and organizations (e.g. IOM) that make up the core of global migration governance operate primarily through the development of coordination, standard-setting and consensus-building around good practice. Yet this is an area of governance that is easily sidelined by standard interpretations of “governance”, which focus on formal structures such as inter-State treaties.

What is a gap in migration governance?

In the search for alternative futures for governance, this paper aims to identify existing gaps and how they can be addressed through alternative visions of global migration governance. However, what constitutes a gap depends on one’s perspective. It is a highly normative issue that relies upon an explicit recognition and open assessment of the underlying issues and values that one is endeavouring to enshrine in migration governance. Thus far, there has been no open, frank debate about the normative underpinnings of migration governance. Yet such a debate is absolutely necessary for the development of a coherent vision for the future of migration governance. Identifying gaps therefore involves looking at the actors involved and their respective perspectives.

1) Gaps from *what perspective*?

Migration governance is not an end in itself. Ultimately, it aims to enhance i) security; ii) the economy; and iii) rights. (Collectively, these might come under the heading of human development (Betts, 2011). Yet these three underlying aims are not always mutually reinforcing. Frequently, they contradict one another and tradeoffs and choices are made. The identification of a gap depends upon making an explicit choice about which values will take precedence and about what the ultimate goals of the governance structure should be. What is the purpose of migration governance? What tradeoffs are acceptable and under what conditions? If one gap is addressed, what new gaps might result and which perspective is served by the structural change?

2) Gaps from *whose perspective*?

Identifying any lack of governance also depends on the perspective of a given actor. Is it a matter of identifying gaps from the point of view of States, and, if so, which States? Not all States will have the same perspective; there may be trade-offs, even if some forms of governance are rhetorically billed as “win-win” for the sending country, the receiving country and the migrant. Alternatively, if we go beyond States and consider gaps from an individual

(human security) perspective, are migrants' or citizens' claims to be privileged and, if so, which migrants and which citizens?

Migration inherently involves reconciling competing claims to rights and entitlements, which means that there is rarely a single normatively neutral vantage point from which to identify gaps. Nevertheless, despite the challenges of defining migration governance and gaps, it should be possible to define the basis of a vision for global migration governance – a vision that, together with a frank debate on the values and direction of migration governance, is long overdue. This report attempts to address that gap. It is divided into three sections: the first identifies the existing structures of migration governance; the second outlines the new challenges that are emerging in international migration and what this means for the identification of possible gaps in the governance framework; and the third concludes with a set of concrete recommendations about alternative futures of migration governance.

EXISTING MIGRATION GOVERNANCE

There are different ways of analytically dissecting migration governance – for example, according to levels (e.g. global, regional and national), or in terms of types of migration. The difficulty with slicing it according to levels is that, in the area of migration, they are highly cross-cutting, with significant proportions of migration governance being transregional, based on formal or informal agreements or dialogues between groups of States across regions, and often transgovernmental, in the sense of bringing together groups of sub-State-level actors (Koehler, 2009). It therefore makes more sense to analyse migration governance according to issue area.

Adapting Rey Koslowski's distinction between three global mobility regimes – refugees, travel and labour migration (Koslowski, 2009) – one can broadly conceive of three areas of migration governance: i) refugees, broadly relating to rules governing States' responses to people who cross borders fleeing serious human rights violations; ii) irregular migration, broadly relating to rules governing people who cross borders outside of legal channels; iii) and labour migration, broadly relating to rules governing the movement of people for the purposes of work. In practice, these intersect, exclude certain important areas such as family migration, and represent a crude division. However, they offer a simplified way of identifying what governance exists and a basis for mapping new challenges and gaps. What is interesting about these three areas is that they vary in the type and level of governance through which they are primarily regulated. They exist on a spectrum in terms of the degree of formalized inter-State governance that exists in relation to each.

Refugees – multilateral governance

Refugee governance is primarily multilateral, as it is the only area of migration governance to have a formal treaty-based regime with a specialized organization. The refugee regime is based on the 1951 Convention on the Status of Refugees, which defines who is a refugees and the rights to which they are entitled, and which most States have adopted into domestic legislation. The Office of the United Nations High Commissioner for Refugees (UNHCR) has responsibility for monitoring States' implementation of that Convention. The refugee regime is unique in being an area of migration governance in which nearly all States have agreed to delegate authority to a formal, treaty-based governance framework (Betts, 2009a).

Irregular migration – regional governance

Irregular migration governance has no such formal, multilateral governance framework. Nevertheless, there are increasing layers of both formal and informal inter-State cooperation on irregular migration that are emerging on a range of levels – particularly at the regional level. Regional economic communities (RECs), notably based on the precedent of the European Union (EU), have grouped together to manage the clandestine movement of people across international borders from other regions. Other RECs that have developed internal regional integration have followed the EU example by developing strengthened cooperation on the control of their common external borders. This is the case in, for example, the NAFTA, ECOWAS and SADC regions.³

On an informal level, regional and interregional groups have developed regional consultative processes on migration (RCPs) (Nielson, 2007). Although the RCPs have focused on a range of issues including labour migration and trafficking, they have become an important means of governing irregular migration. Rather than engaging in “norm-dissemination” in the way that many formal governance mechanisms do, they have primarily engaged in “practice dissemination”, attempting to develop common standards of good practice relating to border management. Through informal, behind-closed-doors information-sharing, they have enabled the coordination of border management standards to emerge within a primarily regional context. IOM has played a central facilitation role in developing this type of informal regional governance mechanism.

Labour migration – unilateral/bilateral governance

Labour migration is the area of migration governance with the least formalized structures of global governance. The primary locus of labour migration governance remains at the level of individual sovereign States, which control entry into their national labour markets. The exception to this is at the regional level, at which some parts of the world, following the example of the EU, have worked towards the free movement of labour within the region. However, labour migration is generally governed by individual States making choices about liberalization in relation to their own labour markets, in accordance with their own interests and the interests of their domestic interest groups (Panizzon, 2009).

Even where multilateral coordination mechanisms such as GATS Mode 4 exist, progress on liberalization is limited and States are reluctant to delegate authority on labour migration. Within GATS Mode 4, for example, most concessions made have been in sectors and numbers that relate to States’ own unilateral economic interests (Betts and Nicolaidis, 2009). The reluctance of States to create binding, formal mechanisms of governance in this area is illustrated by the fact that most migrant-receiving States refuse to ratify the UN Treaty on the Rights of All Migrant Workers and Their Families, or to formally link the GFMD to the UN system (Betts, 2011).

³ The North American Free Trade Agreement (NAFTA) is an agreement signed by the governments of Canada, Mexico and the United States, in January 1994, creating a trilateral trade bloc in North America; the Economic Community of West African States (ECOWAS) is a regional group of 16 countries founded in 1975 to promote economic integration; and the Southern African Development Community (SADC) was formed in 1980 as a loose alliance of nine majority-ruled States in Southern Africa, to coordinate development projects in order to lessen economic dependence on the then-apartheid South Africa.

The GFMD represents an emerging means through which issues relating to labour migration are discussed and debated. However, its approach is primarily based on dialogue and debate, with States retaining the option to engage in formalized bilateral cooperation, on the basis of such dialogue. Nevertheless, there is evidence of a trend in the development of bilateral labour migration treaties, particularly those based around inter-State partnerships on circular migration, which may also include other aspects of migration (Nellen and Stucky, 2009).

Why this spectrum of governance?

From States' perspectives, there is a certain logic to this spectrum of migration governance. On the basis of a mainstream institutionalist understanding of international relations, the reason why there is so little global migration governance is actually fairly straightforward and relates primarily to the nature of the externalities involved within the three broad categories of migration.

It is generally understood that there the demand for particular types of international regimes results from the nature of the externalities involved – in other words, to what extent different States are positively or negatively affected by a given transboundary movement (Keohane, 1982). In issue areas in which one finds so-called “global public goods” – goods for which i) the benefits or costs are non-excludable between actors and ii) the benefits are non-rival between actors – one would expect to find highly institutionalized forms of cooperation (Barrett, 2008). However, where this was not the case, one might expect alternative forms of cooperation – such as bilateral or regional cooperation – to emerge.

It is important to clearly distinguish between the various types of goods that different aspects of migration governance represent (see table 1), as follows.

- i) The governance of refugee protection represents, to some degree, a global public good. Although the benefits of refugee protection being provided (in terms of security and human rights) are asymmetrically distributed among States, the benefits accrue to all States, to some extent, and the enjoyment of those benefits by one State is largely undiminished by another State's enjoyment. One would therefore expect a multilateral regime.
- ii) The governance of irregular migration, on the other hand, is not a global public good. It represents a “club good” in the sense that, while regulating irregular movement has benefits that are “non-rival” (i.e. they are not diminished by one states enjoyment of those benefits), the benefits are, to some extent, excludable in the sense of the benefits of governance being geographically confined within a particular regional context. Hence one would expect cooperation within “clubs” – regional, interregional or transregional.
- iii) The governance of labour migration, on the other hand, is different. Like the governance of irregular migration, its costs benefits are highly excludable, accruing almost exclusively to the sending State, the receiving State and the migrant. Unlike the governance of irregular migration, however – in the case of skilled labour, at least – the benefits of labour migration are “rival” (i.e. the benefits are diminished by another State's enjoyment of those benefits) because there is a finite supply of skilled labour.

One would therefore expect the dominant form of cooperation to be through unilateral liberalization or bilateralism.

Recognizing the different types of goods represented by different aspects of migration governance is fundamental to any understanding of why migration governance is structured as it is, and why it is desirable – from a State perspective – to bring about reforms (Betts, 2011).

Table 1: Types of migration governance and their related goods

TYPE OF MIGRATION GOVERNANCE	MAIN LEVEL OF GOVERNANCE	TYPE OF GOOD
Refugees	Multilateral	Public good
Irregular/low-skilled migration	Regional	Club good
Highly-skilled labour migration	Unilateral/bilateral	Private good

NEW CHALLENGES AND GAPS

Within each of these three broad areas of governance, new challenges are emerging. This section highlights some of those new challenges and what they mean for the identification of gaps in migration governance.

Refugees

One of the most significant challenges of the twenty-first century will be the growth in “survival migration” – people who are outside of their country of origin because of a threat to their survival in their home country. The refugee regime was created at a very specific historical juncture and exists to protect people fleeing individualized persecution and, to some extent, generalized violence (Betts, 2010a; Betts 2010b). However, the “refugee” definition does not cover the new range of circumstances under which people are forced to leave their country of origin in search of a destination that will respect their most fundamental human rights. The spectre of climate change and environmentally induced displacement are just one aspect of this broader issue of survival migration (Boano et al., 2008). Around the world, from Iraq and Haiti to North Korea and Zimbabwe, people have been forced to flee their country due to a combination of State fragility, livelihood collapse, and environmental disaster (Betts and Kaytaz, 2009; Betts 2010a).

A significant problem, however, is the absence of a clear normative and institutional framework for the protection of non-refugee survival migrants – such as, for example, the 2 million Zimbabwean migrants who fled to South Africa between 2005 and 2009. The absence of a coherent national or international response, in that case, illustrates a significant gap in governance (Human Rights Watch, 2008). Similarly, the absence of a protection response to the 400,000 Congolese migrants deported by Angola in brutal conditions between 2003 and 2009 demonstrates the failure of the international community to develop adequate protection mechanisms for survival migrants (OCHA, 2009). While, in theory, the human rights norms exist within international human rights law, there is currently no coherent institutional mechanism for guaranteeing enforcement of those rights. Yet as environmental displacement, State fragility and increasing threats to livelihoods increasingly interact, a new governance framework in this

area will become crucial. The significant gap in the existing refugee regime (in terms of burden-sharing) will also need to be addressed, so that States can better share the responsibility for the forced migration flows of the future (Betts and Kaytaz, 2009).

Irregular migration

There is increasing mobility around the world, not only South–North but also South–South. That mobility will continue to increase on both a temporary and a permanent basis. As people increasingly establish transnational connections – on a social, economic and cultural level – they will desire to move more (GCIM, 2005). Yet the current reality of migrant mobility is not reflected in the political rhetoric on migration in developed migrant-receiving States, which continues to insist on migration control and practices of exclusion. While a shift to completely open borders is not a realistic option, there is a fundamental need for States to acknowledge the reality of global integration and the limitations of migration control. Migration cannot be stopped but the processes can be managed. One of the most fundamental gaps in migration governance is therefore within the perceptions and imagination of States and their incomplete understanding of all aspects of migration.

A significant challenge in the area of irregular migration relates to the inequality of border capacities in different regions of the world. In many parts of the world, borders are porous and border officials lack training. Many developing countries continue to rely on repressive practices of internal policing and detention to manage immigration, rather than developing the capacity to engage in sustainable and human rights-based practices of migration management. While a number of projects have been set up to build immigration capacity in the developing world, they remain limited; meanwhile, projects have tended to focus on issues relating to forensics and document security, while human rights training in areas such as trafficking and refugee protection have been neglected (Betts, 2009b).

In the area of irregular migration, both developed and developing countries alike frequently perpetuate practices of migration control that violate fundamental human rights. The number of deaths at sea in the Mediterranean, the Sahara Desert, and the Gulf of Aden, for example, highlight the human costs of existing border control structures and the ongoing failure of States to develop acceptable practices of facilitated, legal migration that would greatly reduce the need for migrants to resort to smugglers and dangerous, illegal routes of entry (UNHCR, 2007). The development of new channels of circular migration – established through embassies – might allow viable for the development of alternatives that bypass treacherous and clandestine routes.

Labour migration

There will be ever-increasing patterns of circular migration during the twenty-first century (Newland et al., 2008). As mobility and circulation increase, the lives of increasing numbers of people will become transnational. Yet, at the moment, social contracts remain State-centric and ill-adapted to a transnational world. Education, health care, pensions and taxation systems remain rigidly fixed to particular States and territories. Over time, there will be a need to conceive of ways in which the provision of social services – such as those relating to taxation, government expenditure, pensions and qualifications – can be adapted to be mobile across

international borders in a transnational world. Structures of governance will therefore need to facilitate the mobility of labour rather than penalizing those who move.

As circular migration becomes increasingly important, it will need to be reconciled with important issues of family unity and the doctrine of acquired rights (Carrera and Hernandez, 2009). At the moment, circular migration is too often seen as exclusively temporary, and generally for the individual migrant. This flexibility is desirable because it allows States to “turn the tap on and off” according to their labour needs at any given time. However, it poses fundamental ethical and legal questions about how the temporary nature of mobility can and should be reconciled with the human right to family unity and the way in which people inevitably develop family and private lives over a period of time within a country. Consequently, as circular migration becomes increasingly important, governance will need to adapt mechanisms whereby the temporary can become permanent, and the economic rationale can be reconciled with a rights-based rationale.

In this area, there will be ongoing governance challenges relating to integration. Given the fundamental limitations of attempting to control migration, States will increasingly need to adopt clear and structured approaches to engage with the consequences of mobility. In other words, rather than simply regulating movement, there will be an increasing need to develop good practice in managing the consequences of that movement to the benefit of both migrants and citizens. Such issues will also need to be mainstreamed into the migration governance debate.

Global structures

One of the problems with governance, in general, and with global governance, in particular, is that, as new problems arise, new institutions are created to address those problems, often on an ad hoc basis. In the area of migration, the emergence of new challenges, and the politicization of those challenges, has contributed to a rapid proliferation of new institutions. The result is a dense and fragmented tapestry of regional, interregional, transregional, bilateral, formal and informal institutions. The difficulty with institutional proliferation is that it can lead to overlap, duplication or even contradiction across mechanisms of governance, rendering the overall structure incoherent.

Global migration governance is currently made up of a range of informal RCPs; formal RECs engaging in regional integration; international dialogues such as the GFMD and the UN High-Level Dialogue on Migration and Development; coordination mechanisms such as the Global Migration Group (GMG) and the UNDESA Migration Annual Meeting; and a range of international organizations often competing over resources and mandates. At the moment, these structures lack coherence and are not based on a rational institutional design aimed at addressing the realities of migration in the twenty-first century. They are simply the product of incremental, historical adaptation to new circumstances. There is therefore a need to proactively consider what a coherent and coordinated global migration governance framework should look like. The starting point for achieving that must be an open, transparent, non-exclusive forum within which an open and frank debate on global migration governance can take place (Betts, 2010).

RECOMMENDATIONS

I. An institutional framework for migrant protection

The biggest single gap in migration governance relates to the protection of vulnerable migrants. Filling this gap is at the core of addressing institutional gaps that emerge from climate-related displacement (Betts and Kaytaz, 2009; Betts 2010a; Betts 2010b). While refugees have a clear normative and institutional framework governing their access to rights, there is no such mechanism through which non-refugee migrants can get access to protection. The growth in survival migration due to environmental disaster, State fragility and livelihood collapse in places such as Zimbabwe and Haiti requires the delineation of a clear and transparent institutional division of responsibility for the protection of non-refugee survival migrants. While migrants have rights under international human rights law, those rights are inadequately recognized and migrants, unlike refugees, are not covered by any organization with a mandate to protect them. This becomes particularly problematic as the world grapples with new challenges such as the consequences of climate change. Addressing this gap starts with making existing norms and institutions work better.

a) On a normative level, “soft law” provides a particularly useful way of consolidating existing norms into a consolidated framework without having to develop new formal agreements. One precedent for how the emerging challenges of migrant protection could be addressed is the *Guiding Principles on Internal Displacement*,⁴ which applied and consolidated existing human rights and international humanitarian law norms within a single document. Such an approach might be developed for particular groups of vulnerable irregular migrants, such as survival migrants.

b) On an institutional level, better coordination and a clear division of responsibility between international agencies is needed to address these gaps. Although the Office of the High Commissioner for Human Rights (OHCHR) is, in theory, the UN protection agency, it lacks significant presence in the field, where actors need to be involved in the protection of vulnerable groups of migrants who fall outside the framework of the refugee regime. A number of institutional options exist for making existing norms and institutions work better to address new emerging challenges. Any of these options could be applied to a particular group that currently has inadequate protection, such as survival migrants or other groups of vulnerable irregular migrants:

Option 1: The “cluster approach”⁵ of the Inter-Agency Standing Committee (IASC), developed in the context of UN humanitarian reform, could be applied to the situation of particular groups of vulnerable migrants.

Option 2: A single agency – such as UNHCR or IOM – could expand its mandate to take responsibility for the protection of vulnerable migrant groups such as survival migrants who cannot return home.

⁴ See http://www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html

⁵ See <http://www.humanitarianinfo.org/iasc/pageloader.aspx?page=content-products-products&sel=18>

Option 3: A small, streamlined UN agency – along the lines of UNAIDS⁶ – could be created with a mandate to address and facilitate coordination on a clearly defined issue.

Option 4: Special Representative to the Secretary-General (SRSG) positions might be created to oversee coordination between existing agencies and advocate on behalf of particular groups of vulnerable migrants.

Option 5: An issue-based consultative process could be created. At the moment, RCPs are conceived on a geographical basis. However, there is no reason why the same model could not be applied to develop global discussion on particular issues, out of which new forms of coordination might emerge.

2. A normative basis to global migration governance

IOM is currently the main international organization working on migration. However, it is a service-provider to States, its work lacks a normative basis, and it has inadequate capacity-development expertise. In many other issue areas, global governance has a normative basis that serves to guide the work of the main international organization. This is important because it allows for leadership, direction and long-term planning. For example, UNHCR's work is normatively grounded in International Refugee Law, and the work of the International Committee of the Red Cross (ICRC) is normatively grounded in International Humanitarian Law. In the area of migration, International Migration Law is emerging as the normative basis of what might be considered to be an embryonic global migration regime. However, IOM has not yet adopted formal responsibility for the surveillance and monitoring of International Migration Law in the way that UNHCR's Statute gives it formal responsibility for surveillance of States' implementation of International Refugee Law. The development of a normative international organization in migration governance would give greater direction and normative clarity to the trajectory of migration governance.

3. An inclusive, multilateral and open forum for dialogue

There is currently no single, permanent and inclusive forum for inter-State dialogue on migration. Although the GFMD partially fills this role, it has a number of weaknesses: i) it is not yet permanent; ii) it remains outside of the UN system; iii) it is conceived to be exclusively informal; iv) it is theme-based, which means that only certain issues and concerns can be placed on the agenda, often with little continuity or follow-up; v) the "migration and development" focus of the GFMD includes certain aspects of migration (e.g. remittances and circular migration) but arbitrarily excludes other issues (e.g. forced migration and, to some extent, the human rights of migrants); and vi) it is not fully inclusive of States, international organizations and NGOs. There is therefore a need for a permanent forum within which migration issues can be openly debated and discussed – ideally, but not necessarily, within a UN framework. Such dialogues would not necessarily need to replace the GFMD or other dialogues, but could be an

⁶ Joint United Nations Programme on HIV/AIDS

additional complementary forum where issues that might otherwise be excluded could be raised. The creation of such a global space where all aspects of migration could be put on the agenda and debated by all actors could play a valuable role in facilitating information-sharing and the development of common standards and practices.

There remain a number of political barriers to developing such a fully inclusive and open forum. Many States are suspicious of the language of “global governance” in relation to migration and are reluctant to engage in multilateral debates that might lead to formal and binding norm-creation. Consequently, despite its limitations, the GFMD may offer the most realistic means of gradually developing more inclusive collective action on migration. Northern States, in particular, prefer to develop “partnerships” that meet their needs on a case-by-case basis, and it seems likely that collective action will continue to emerge among “clubs of States” in relation to specific issues, rather than through large-scale norm-creation. Nevertheless, the creation of a more inclusive and transparent international forum would not preclude a gradualist approach to developing coordination and collaboration through inter-locking sets of bilateral and regional partnerships.

4. Improved coordination

The principal inter-agency coordination mechanism on migration is the Global Migration Group (GMG), which facilitates regular meetings among the main international organizations working on migration. Inter-agency coordination is particularly important in the area of migration because of the “embedded” nature of the policy field. Because it touches upon so many other areas – security, development, health, human rights, humanitarianism – it cuts across the mandate and work of many different actors. However, the agencies currently involved have generally expressed dissatisfaction with the work of the GMG. This is partly a reflection of unrealistic expectations, since the GMG is simply intended to be a meeting point for international organizations and not a comprehensive coordination mechanism for migration governance.

Nevertheless, it is clear that migration governance requires a better set of coordination mechanisms. In the absence of a single overarching migration organization and, given the range of expertise required to address migration, coordination mechanisms are crucial. Recommendation 1, above, provided some examples of different coordination mechanisms that can be adopted to address specific aspects of migration; in general, coordination is likely to be more effective if specific types of coordination mechanisms are adopted for specific areas of migration (e.g. lead agency, cluster, specialized agency, SRSG), rather than addressing migration as a single area. However, in addition to migration issue-specific mechanisms, some options exist to develop overarching coordination mechanisms. These might include: i) reform of the GMG, with particular emphasis on the scope of its role; ii) a permanent inter-RCP meeting, building upon the precedent of IOM’s Bangkok meeting in 2009; and iii) designating more SRSGs to the task of working across different international organizations and ensuring that gaps are identified and addressed.

5. A coherent but realistic vision

One of the challenges in making recommendations relating to migration governance is to reconcile the need for long-term vision with the constraints of reality. There is clearly a need for

debates on migration governance to develop a coherent vision, without which governance will continue to be ad hoc, piecemeal and uncoordinated. Leadership is urgently required to build a vision that is not constrained by narrow or short-term political interests.

Nevertheless, any vision must also take into account a number of important observations about the realities of migration governance, without which it will quickly become irrelevant.

- i) *Political constraints.* The prospects for developing migration governance exclusively through formal UN-based multilateral channels are not necessarily realistic or even desirable. Powerful States want to develop collective action through sets of bilateral and regional partnerships. The challenge, then, in building a vision for migration governance, is not one of multilateral institutional design but that of highlighting problems that States cannot solve by acting in isolation and identifying the appropriate coordination and collaboration among specific groups of States that can resolve those problems. In some cases, the most appropriate forms of collective action may be inclusive and multilateral; in other cases, this may not be so.
- ii) *Normative constraints.* Migration governance inherently involves normative and political trade-offs and choices. There is no single, universally desirable form of “better” migration governance. In some cases, it may be possible to improve governance in ways that are mutually beneficial for migrants, citizens and States. More often, however, migration governance involves privileging certain perspectives over others. Upholding security, economic prosperity and rights cannot always be simultaneously attained, and sometimes governance implies sacrificing one for the other. It is important that any vision actively engage with, rather than hide from, these normative trade-offs and choices.
- iii) *Practical constraints.* Many States continue to engage with migration as though it is possible to prevent people from moving across borders. States’ migration policies are frequently created with the intention not of having a sound rationale but in order to speak to domestic audiences and for politicians (in developed or developing countries) to legitimize themselves vis-à-vis their electorates. There is a need for States to acknowledge that there are limitations to migration control and to shift towards more strongly evidence-based policy-making. Here, international organizations such as IOM can play a role by helping States to become better informed about migration and its consequences.

Engaging with these challenges of how to develop a coherent but realistic vision also involves building analytical and leadership capacity – within States, international organizations, foundations, NGOs and universities.

REFERENCES

Barrett, S.

2008 *Why Cooperate: Incentives to Supply Global Public Goods*. Oxford University Press, Oxford.

Betts, A.

2011 Introduction: Global Migration Governance. In: *Global Migration Governance*. (A. Betts, ed.). Oxford University Press, Oxford.

2010a Survival Migration: A New Protection Framework, *Global Governance*, Vol. 16(3), 361-382.

2010b Towards a Soft Law Framework for the Protection of Vulnerable Irregular Migrants. *International Journal of Refugee Law*, Vol. 22(2), 209-236.

2009a *Protection by Persuasion: International Cooperation in the Refugee Regime*. Cornell University Press, Ithaca.

2009b The Global Governance of Migration: The Role of Trans-regionalism. Paper presented at workshop on Migration Partnerships as an Element of International Migration Governance, Lucerne, 25 September.

Betts, A. and E. Kaytaz

2009 *National and International Responses to the Zimbabwean Exodus: Implications for the Refugee Protection Regime*. UNHCR Working Paper No. 175, UNHCR, Geneva.

Betts, A. and K. Nicolaidis

2009 The trade-migration linkage: The impact of GATS Mode 4. Paper presented at Princeton University, 19 February 2008.

Boano, C. et al.

2008 *Environmentally displaced people: understanding the linkages between environmental change, livelihoods and forced migration*. Refugee Study Centre (RSC) Forced Migration Policy Briefing No. 1, University of Oxford, Oxford.

Carrera, S. and R. Hernandez

2009 The external dimension of Europe's labour immigration policy: Towards mobility or insecurity partnerships? Paper presented at workshop on Migration Partnerships as an Element of International Migration Governance, Lucerne, 25 September.

Castles, S. and N. Van Hear

2011 Root causes. In: *Global Migration Governance* (A. Betts, ed.). Oxford University Press, Oxford.

Cholewinski, R. (ed.)

2007 *International Migration Law: Developing Paradigms and Key Challenges*. T.M.C. Asser Press: The Hague.

Gamlen, A.

2011 Diaspora. In: *Global Migration Governance* (A. Betts, ed.). Oxford University Press, Oxford.

GCIM

2005 *Migration in an Interconnected World: New Directions for Action*. Global Commission on International Migration (GCIM), Geneva. See www.gcim.org/en/finalreport.html (accessed on 26 July 2010)

Hollifield, J.

2009 Regulating migration in an era of globalization: A public good approach. Paper presented at the Global Mobility Regimes workshop on 27 April at the Aspen Institute, New York.

Human Rights Watch

2008 *Neighbors in Need: Zimbabweans Seeking Refuge in South Africa*. Human Rights Watch (HRW), New York. See <http://www.hrw.org/en/reports/2008/06/18/neighbors-need-0> (accessed 27 July 2010)

Keohane, R.

1982 The Demand for International Regimes. *International Organization*, Vol. 36(2): 332-355.

Koehler, J.

2009 How States organize themselves into RCPs. Workshop on Migration Partnerships as an Element of International Migration Governance, Lucerne, 25 September.

Koslowski, R.

2011 International travel. In: *Global Migration Governance* (A. Betts, ed.). Oxford University Press, Oxford.

2009 Global mobility regimes. Paper presented at the Global Mobility Regimes workshop on 27 April at the Aspen Institute, New York.

Lindley, A.

2011 Remittances. In: *Global Migration Governance* (A. Betts, ed.). Oxford University Press, Oxford.

Loescher, G., A. Betts and J. Milner.

2008 *UNHCR: The Politics and Practice of Refugee Protection into the Twenty-First Century*. Routledge: Oxford.

Médecins Sans Frontières/Doctors Without Borders

2007 Ten women tell of their Angolan ordeal.
<http://doctorswithoutborders.org/news/article.cfm?id=2232&cat=field-news> (accessed 27 July 2010)

Nellen-Stucky, R.

2009 EU mobility partnerships: New wine in old wine skins? Paper presented at workshop on Migration Partnerships as an Element of International Migration Governance, Lucerne, 25 September.

Newland, K. et al.

2008 *Learning by Doing: Experiences of Circular Migration*. Migration Policy Institute (MPI), Washington, DC.

Nielsen, A-G.

2007 Regional consultative processes. In: *International Migration Law* (R. Cholewinski, ed.). Kluwer Law International.

OCHA

2009 Point sur les Expulses d'Angola au 15.10.09, on file with the author

Panizzon, M.

2009 France's pacts and Spain's cooperation agreements on migration: Framing or faking a partnership approach? Paper presented at workshop on Migration Partnerships as an Element of International Migration Governance, Lucerne, 25 September.

UNHCR

2007 Gulf of Aden and Mediterranean: More deaths at sea. UNHCR Briefing Notes, 10 July. See <http://www.unhcr.org/46934f9e2.html> (accessed 27 July 2010)

United Nations

2002 *Strengthening the United Nations: An Agenda for Further Changes*. Report of the Secretary-General ("Doyle Report"), A/57/387. UN General Assembly, New York.



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