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## Global Migration Govern- ance and Mixed Flows

Implications for Development-centred Policies

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### **Global Migration Governance and Mixed Flows. Implications for Development-centred Policies**

Managing migration and forced displacement presents great challenges to many industrialised countries, and even more so to emerging and developing economies. Governments feel torn. While continuing to regard refugee and migration policy as a “domaine réservé” of core national sovereignty, they are well aware that their scope for unilateral action is limited and that they can no longer tackle their migration and refugee problems in isolation.

These difficulties are exacerbated by the increasing mixing of refugee and other migratory movements, with the distinction between the two becoming increasingly blurred. Yet it is a distinction that the signatories of the Geneva Refugee Convention are required to make: They are obliged to protect refugees but free to decide as they wish whether to accept migrants. They find it particularly difficult to deal appropriately with people who have been forced to leave their home country but fall outside the criteria of the Geneva Refugee Convention. This has given rise to a protection gap that is affecting an increasing number of people.

Such mixed migrations amplify the need for international cooperation in refugee and migration policy, or global migration governance. At present that cooperation is incomplete, fragmented and ineffective, and fails to meet the challenges. Against this background, great hopes are placed in the ability of development cooperation to reduce the causes of migration, support partner states and promote cooperation. But it often remains unclear in what ways forced displacement, migration and development are inter-linked, and what development cooperation can effectively achieve.

So on the one hand, it is clear that voluntary and regular migration contributes to the development of countries of origin and destination and should therefore be promoted. For example, remittances form an important income stream for family members and for countries of origin, while immigration can help destination countries to address labour shortages. On the other hand, unregulated and involuntary movements create development risks. These principally affect developing countries, which in global terms host most of the refugees and displaced persons. Additionally, in

the absence of legal pathways much of South-North migration takes place by irregular channels, creating its own risks for those involved, as well as for the transit and receiving countries. Whether movements have positive or negative development impacts depends not least on whether they are complemented by development interventions.

In practice, development cooperation is increasingly aimed at enhancing migration control – although from a development perspective, it would be better to first ask which migration and refugee policies best assist partner countries' development. To date the international framework has failed to facilitate the systematic inclusion of development aspects. While the international community has put considerable efforts into establishing stable international structures in policy areas like climate change, trade and finance, the equivalent for global migration governance remains lacking. While the refugee protection regime – despite being threatened by erosion – is firmly institutionalised and rooted in international law, migration policy remains a patchwork of regional and bilateral agreements and coordinating mechanisms.

This dichotomy has historical origins, and is shaped by the power imbalance between countries of origin, transit and destination. From a development perspective, migration governance in particular leaves much to be desired, because the current institutional structures lack normative orientation, are unsuited for cooperative partnership between states, and fail to adequately protect the rights of migrants. The structures for refugees are better developed, yet also entail deficits. Against this background, it is obvious that a committed cooperation on refugee and migration questions with binding norms, responsibilities and institutions would create added value in development. A development-led global order for refugees and migration would secure the rights of migrants and refugees; define minimum standards for refugees, migrants and integration; and enable a fair reconciliation of interests between countries of origin, transit and destination. Such cooperation could contribute to reducing the causes of forced migration, convert more irregular movements into regular ones, and offer a framework for local integration, return and reintegration.

Important institutional and policy changes are currently under way, with the Sustainable Development Goals (SDGs) adopted by the United Nations in 2015 introducing binding targets and indicators for migra-

tion. And in September 2016 the international community decided to prepare two global compacts – one for migration, one for refugees – within the space of two years. Both will have repercussions for the international institutional setup. On the one hand, they will reconfigure the relationships and division of responsibilities between the three central organisations in the field of migration and refugees: the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Organisation for Migration (IOM) and the International Labour Organisation (ILO). On the other, it is foreseeable that the existing intergovernmental consultative forums will continue to gain in political weight and fill new roles in the international governance of migration. This applies in particular to the Global Forum for Migration and Development (GFMD) and the UN High Level Dialogue on Migration and Development (HLD).

The German government needs to position itself in all these processes. There are three principal options for the future institutional set-up of global migration governance: (1) consolidation of the existing structures; (2) expansion of the remit of IOM; and (3) establishment of a UN migration secretariat. The German government should weigh up the pros and cons of each of these options and get behind the one that offers the best prospects of creating a viable and development-led structure for global migration governance. Such engagement can potentially consolidate Germany's international reputation as a significant actor in questions relating to migration and forced displacement – and ultimately lay the groundwork for coping better with Germany's own refugee and migration challenges.

# Mixed Migration and Development

Many countries struggle with the increasingly blurred line between forced and voluntary migration. The motivations and routes of refugees and migrants are getting harder to differentiate, with the traditional distinction between forced movement of refugees and voluntary migration now rarely adequately describing the realities. Many people leave their home countries involuntarily since they find themselves forced to migrate after losing their livelihoods through political and economic upheavals or climate change. In addition, refugees and migrants tend to face similar dangers during their often irregular journeys. But only those who can prove they suffered individual persecution in their home country are entitled to international protection under the criteria of the Geneva Refugee Convention. The question of taking in migrants and admitting them to the labour market, on the other hand, is a sovereign and interest-led matter for the respective country of destination.<sup>1</sup> This results in protection gaps for particular groups of migrants and forcibly displaced persons. The phenomenon is by no means restricted to Europe or Germany. According to UNHCR, mixed migration is growing in the Mediterranean region, the area around the Gulf of Aden, Central America and the Caribbean, South-East Asia, and the Balkans.<sup>2</sup>

<sup>1</sup> Jørgen Carling, Anne T. Gallagher and Christopher Horwood, *Beyond Definitions: Global Migration and the Smuggling-trafficking Nexus*, Discussion Paper 2 (Nairobi: Regional Mixed Migration Secretariat, November 2015), 1, [http://www.regionalmms.org/images/DiscussionPapers/Beyond\\_Definitions.pdf](http://www.regionalmms.org/images/DiscussionPapers/Beyond_Definitions.pdf) (accessed 7 March 2017). Of course mixed migrations are not an entirely new phenomenon, and were already attracting academic and political attention during the early 1990s in connection with the global rise in refugee movements. In the course of the 2000s the term found increasingly currency among international organisations and forums such as the UN General Assembly and the EU's High Level Working Group on Asylum and Migration (HLWG) (along with the broader term "asylum and migration nexus").  
<sup>2</sup> UNHCR, *Mixed Migration: A 10-Point Plan of Action*, (2007), <http://www.unhcr.org/mixed-migration.html> (accessed 7 March 2017). Also World Bank, *Forcibly Displaced – Toward a Development Approach Supporting Refugees, the Internally Displaced, and Their Hosts* (2016), 34, <https://openknowledge.worldbank.org/bitstream/handle/10986/25016/9781464809385.pdf?sequence=2&isAllowed=y> (accessed 7 March 2017).

Two developments in particular exacerbate the difficulties of distinguishing refugees and migrants. First of all, the causes of forced displacement have changed since the Second World War. In line with its historical context, the Geneva Refugee Convention of 1951 concentrated above all on persecution of individual and groups by state actors. In the interim, however, other grounds have gained prominence, especially general and gender-specific violence. And more people today leave after losing their livelihoods through economic troubles or ecological disaster. Like climate change, these causes are not taken into account in the existing international treaties; instead they are treated as migration push factors.

The second change is that refugees and migrants increasingly use the same (irregular) routes and seek the assistance of the same traffickers, principally because most industrialised countries and emerging economies fail to offer adequate legal pathways. On the contrary, increasing numbers of states are restricting the legal options for refugees to seek protection by introducing restrictive new national asylum legislation. This applies in the EU as well as in many other regions of the world.<sup>3</sup> Similar restrictive trends are seen in migration, despite countervailing experiments in certain countries, such as the anti-cyclical opening of the Swedish labour market in 2009. Most industrialised countries lack legal immigration options and their governments pursue restrictive policies for domestic political reasons – even if demographic and economic considerations indicate a need for more immigration. When confronted with these realities, many migrants make pragmatic decisions, weighing up whether irregularity or an asylum application offers more promising prospects. Some then seek to obtain residence through the asylum system.

This mixing of refugee and migration movements heaps yet more pressure on an already overstretched asylum system and ultimately delegitimises both

<sup>3</sup> Jennifer Hyndman and Alison Mountz, "Another Brick in the Wall? Neo-Refolement and the Externalization of Asylum by Australia and Europe", *Government and Opposition* 43, no. 2 (2008): 249–69, and James Hollifield, Philip Martin and Pia Orrenius, eds, *Controlling Immigration: A Global Perspective*, (Stanford: Stanford University Press, 2014).

asylum and migration policy. The respective governments and the international organisations dealing with refugees and migration are well aware of the problems. Yet in practice there is still a lack of concepts and practical approaches for untangling refugee and migration movements in such a way as to preserve refugee protection, satisfy the migration interests of the countries of origin and destination, and respect the rights of all people on the move.

## Global Migration Trends

Knowledge about the international migration situation has improved greatly in recent decades, but important gaps remain. Many countries still lack reliable data on immigration, on numbers of refugees and migrants, and on their socio-economic impacts. Internationally comparable statistics remain rare,<sup>4</sup> and future migratory movements virtually impossible to predict. As well as hampering migration management, this also presents obstacles to an assessment of the economic, social and security-related consequences, and to the preparation of development strategies.<sup>5</sup> Nevertheless, those statistics that do exist permit us at least to outline the basic trends in international migration.

According to United Nations estimates, more than one billion people globally are migrants of some kind: 244 million live as refugees and migrants outside their home countries; another 740 million are internal migrants or IDPs. Altogether the number of international refugees and migrants has risen by 41 percent over the course of the past fifteen years. The rise is principally accounted for by population growth, with the proportion in relation to global population having increased only slightly over the past five decades, from 2.5 percent in 1965 to 3.3 percent in 2015.<sup>6</sup> A considerable portion of these cross-border movements occurs between poorer countries, rather than towards indus-

trialised countries.<sup>7</sup> A smaller group does move to industrialised countries, but even here most do not leave their home region. This applies equally to refugees and to labour migrants, although the proportion seeking protection or employment in geographically distant locales has been growing.

At the end of 2016 the Office of the United Nations High Commissioner for Refugees (UNHCR) was responsible for 17.2 million international refugees, the United Nations Relief and Works Agency for Palestine Refugees (UNWRA) for another 5.3 million.<sup>8</sup> These figures do not include internally displaced persons (which UNHCR estimates put at about 40 million) or asylum-seekers (2.8 million). And only very rough estimates are available for the number of people working elsewhere within their home country as internal migrants. In China the figure is reported to be more than 277 million, or about one-third of the working population.<sup>9</sup>

Altogether the international migration situation is characterised by simultaneous regionalisation and globalisation. Both regional and global migratory movements are on the rise, with the former quantitatively more significant than the latter. Africa and Asia especially have witnessed increasing and diversifying internal and international movements, with trends including feminisation of migration,<sup>10</sup> rapidly growing rural-to-urban migration,<sup>11</sup> and increasing labour migration between economically less and more developed regions.<sup>12</sup> A considerable proportion of migra-

7 In 2015 there were 85.3 million refugees and migrants from developing countries living in industrial and emerging economies, but 90.2 million in other developing countries. So with a global share of 37 percent, movements between developing countries (South-South) exceeded those from developing to industrialised countries (South-North) by 2 percentage points. Global Migration Data Analysis Centre (GMDAC), *Global Migration Trends Factsheet 2015* (Berlin, 2016), 7.

8 UNHCR, *Global Trends: Forced Displacement in 2016* (19 June 2017), <http://www.unhcr.org/5943e8a34> (accessed 21 June 2017).

9 "Migrant Workers and Their Children", *China Labour Bulletin* (Hong Kong), 2015, <http://www.clb.org.hk/content/migrant-workers-and-their-children> (accessed 7 March 2017).

10 Katharine M. Donato and Donna Gabaccia, *Gender and International Migration: From the Slavery Era to the Global Age* (New York, 2016), 19–37.

11 International Organization for Migration, *World Migration Report 2015 – Migrants and Cities: New Partnerships to Manage Mobility* (Geneva, 2015), 52–55.

12 UN Department of Economic and Social Affairs, Population Division, *International Migration Report 2015, ST/ESA/SER.A/384* (New York, September 2016), <http://www.un.org/en/development/desa/population/migration/publications/migrationreport/>

4 Steffen Angenendt, David Kipp and Anne Koch, *Many Refugees, Poor Data: Development Cooperation Requires Higher-Quality Data*, SWP Comments 2016/C37 (Berlin: Stiftung Wissenschaft und Politik, August 2016).

5 World Bank, *Forcibly Displaced* (see note 2), 13–18.

6 UN Department of Economic and Social Affairs, Population Division, *Trends in International Migrant Stock: The 2015 Revision* (2015), [http://www.un.org/en/development/desa/population/migration/data/estimates2/data/UN\\_MigrantStockTotal\\_2015.xlsx](http://www.un.org/en/development/desa/population/migration/data/estimates2/data/UN_MigrantStockTotal_2015.xlsx) (accessed 7 March 2017).

tion on both continents can be attributed to political factors such as war and conflict, and in some cases also ecological factors. But these similarities aside, international migration movements and the associated challenges are extremely heterogeneous.

## Development Impacts of Migration and Refugee Movements

Development and international migration are intimately bound up together, with cause and effect hotly debated for decades.<sup>13</sup> The relationship between refugee movements and development, on the other hand, has only come onto the political radar in recent years. At the same time it is obvious that the development effects of all such movements depend decisively on their political management. Fundamentally, the effects of irregular movements on countries of origin and destination are less positive and conducive to development than those of regular movements. Opportunities for refugees and migrants themselves are also scarcer when cross-border movements are not accompanied by appropriate political measures.

In discussions about the interlinkages between cross-border movements and development, positive and negative assessments have alternated periodically, with the dominant interpretation of the day always shaping the way movements are treated in development policy. This is especially clear in the migration debate, where migration was viewed overwhelmingly positively in the 1950s and 1960s – above all as a balancing mechanism between labour markets with different supply and demand structures. It was assumed that labour migration – in Western industrialised countries during that period above all that of unskilled and semi-skilled workers for mining and industry – contributed to growth in countries of origin and destination.<sup>14</sup> During the 1970s and 1980s this optimism was superseded by a more pessimistic line, dominated by criticisms that labour migrants

were exploited and that the process siphoned off skilled workers who were needed at home (“brain drain”). Financial transfers by migrants were also regarded as problematic, as it was assumed that remittances were spent largely on consumption rather than promoting development.<sup>15</sup>

The pendulum has swung back again since the early 1990s, with the “new economics of labour migration” paradigm attributing migration a positive influence on development processes.<sup>16</sup> This optimistic assessment of the relationship has not been restricted to academia, and has also left its mark on the debates in international organisations and forums, as well as initiating institutional changes.<sup>17</sup> Well into the 1990s it was also widely assumed that migration from poorer to richer regions of the world could be reduced using the tools of development cooperation, and that more development would lead to less migration. This theory was succeeded by the idea of the “migration hump” from development economics: that development processes initially cause migration to increase.<sup>18</sup> One reason for this lies in the wider availability of the material resources required for cross-border movements, another in improved access to education and training, which become available to wider circles in the course of development but often without a matching expansion of employment opportunities in the country concerned. Young people in particular then seek their fortune abroad.

**15** Demetrios G. Papademetriou and Philip L. Martin, eds, *The Unsettled Relationship: Labor Migration and Economic Development* (Westport, CT, 1991); Reginald T. Appleyard, “Migration and Development: Myths and Reality”, *International Migration Review* 23, no. 3 (1989): 486–99; John R. Lewis, “International Labour Migration and Uneven Regional Development in Labour Exporting Countries”, *Tijdschrift voor Economische en Sociale Geografie* 77, no. 1 (1986): 27–41.

**16** Oded Stark and David E. Bloom, “The New Economics of Labor Migration”, *American Economic Review* 75 (1985): 173–78; Douglas S. Massey and Emilio A. Parrado, “International Migration and Business Formation in Mexico”, *Social Science Quarterly* 79, no. 1 (1998): 1–20; J. Edward Taylor, “The New Economics of Labour Migration and the Role of Remittances in the Migration Process”, *International Migration* 37, no. 1 (1999): 63–88.

**17** Kathleen Newland, *The Governance of International Migration: Mechanisms, Processes and Institutions* (Global Commission on International Migration, September 2005).

**18** Hein de Haas, “Turning the Tide? Why Development Will Not Stop Migration”, *Development and Change* 38, no. 5 (2007): 819–41; Philip L. Martin and J. Edward Taylor, “The Anatomy of a Migration Hump”, in *Development Strategy, Employment, and Migration: Insights from Models*, ed. J. Edward Taylor (Paris: OECD, Development Centre, 1996), 43–62.

docs/MigrationReport2015.pdf (accessed 7 March 2017).

**13** Ernst Spaan, Ton van Naerssen and Felicitas Hillmann, “Shifts in the European Discourses on Migration and Development”, *Asian and Pacific Migration Journal* 14, no. 1/2 (2005): 35–69; Hein de Haas, “Migration and Development: A Theoretical Perspective”, *International Migration Review* 44, no. 1 (2010): 227–64.

**14** Michael P. Todaro, “A Model of Labor Migration and Urban Unemployment in Less-Developed Countries”, *American Economic Review* 59 (1969): 138–48.

Most recently signs have appeared of yet another turn, now challenging the optimistic migration and development paradigms of the past two decades.<sup>19</sup> This critique is based on the observation that the positive assessment of migration and development is driven by a neoliberal agenda. It argues that recognition of remittances and diaspora engagement releases states from their responsibility for migrants and refugees, and that a positive take on circular migration coincides with the interests of rich destination countries. The risk in both cases is of losing sight of the fates of individual migrants, for it is they who ultimately bear the social and economic burdens.<sup>20</sup>

The debate over the development impacts of refugee movements is more recent. Traditionally, refugee situations have been regarded as temporary emergencies falling under the remit of humanitarian aid. This fundamental assumption has also heavily influenced the international regime, which has always defined the response to refugee movements primarily as a humanitarian matter. On the other hand there is an obvious need for refugee-related development cooperation: in 2015 89 percent of all refugees and 99 percent of all IDPs worldwide were living in developing or emerging economies.<sup>21</sup> The average duration of refugee situations has also steadily increased.<sup>22</sup> Protracted refugee situations raise important development-related questions: How to prevent refugees from becoming permanently dependent on aid? Which types of support permit recipients to develop perspectives for self-reliance? And how to address the development

risks that refugee situations pose for receiving communities?

Another hotly debated question is how to close the gap between humanitarian emergency response and longer-term development cooperation in refugee situations,<sup>23</sup> and how to tackle the coordination problems between the two policy areas.<sup>24</sup> One important aspect here is that as time passes, refugees in protracted situations are increasingly unlikely to experience any of the three traditional solutions: return, resettlement, and local integration. In particular, the countries receiving large-scale refugee movements are frequently unwilling to grant permanent settlement. In such cases receiving states should be encouraged to grant at least temporary integration – to offer protection and at the same time enable refugees to support themselves for the duration of their stay through access to employment. The question of how to create new development instruments and programmes that also strengthen the receiving communities is currently under discussion. One priority here is the long-neglected entrepreneurial potential of refugees.<sup>25</sup>

Altogether the academic discourse on migration, refugees and development has become more specific over the course of time. Five issues form the core of the debate.

### Reducing the cost of migration

The net economic effects of migration are today assessed to be overwhelmingly positive, on the basis of new empirical findings on financial transfers and diaspora relationships. Migrants' remittances are not only worth many times more than official development assistance; they have also – unlike foreign direct investment – proven astonishingly crisis-resistant.<sup>26</sup>

**23** Jeffrey Crisp, "Mind the Gap! UNHCR, Humanitarian Assistance and the Development Process", *International Migration Review* 35, no. 1 (2001): 168–91.

**24** For Germany: Lioba Weingärtner et al., *Die deutsche humanitäre Hilfe im Ausland: Gemeinschaftsevaluierung* (Berlin: Bundesministerium für wirtschaftliche Entwicklung und Zusammenarbeit und Auswärtiges Amt, 2011).

**25** Alexander Betts et al., *Refugee Economies: Rethinking Popular Assumptions* (Oxford: Refugee Studies Centre, University of Oxford, 2014).

**26** Dilip Ratha, Supriyo De, Sonia Plaza, Kirsten Schuettler, William Shaw, Hanspeter Wyss, and Soonhwa Yi, "Migration and Remittances – Recent Developments and Outlook", *Migration and Development Brief* 27, April 2017, (World Bank: Washington, D.C., April 2017), <http://www.knomad.org/sites/default/files/2017->

**19** Alan Gamlen, "The New Migration-and-Development Pessimism", *Progress in Human Geography* 38, no. 4 (2014): 581–97.

**20** Ester Hernandez and Susan Bibler Coutin, "Remitting Subjects: Migrants, Money and States", *Economy and Society* 35, no. 2 (2006): 185–208; Madeleine Wong, "The Gendered Politics of Remittances in Ghanaian Transnational Families", *Economic Geography* 82, no. 4 (2006): 355–81; Rahel Kunz, "Remittances are Beautiful? Gender Implications of the New Global Remittances Trend", *Third World Quarterly*, 29, no. 7 (2008): 1389–1409; Kavita Datta et al., "The New Development Finance or Exploiting Migrant Labour? Remittance Sending among Low-paid Migrant Workers in London", *International Development Planning Review* 29, no. 1 (2007): 43–67.

**21** Zara Inga Sarzin, *Stocktaking of Global Forced Displacement Data*, Policy Research Working Paper WPS 7985 (Washington D.C.: World Bank Group, 2017) <http://documents.worldbank.org/curated/en/788961488290408116/Stocktaking-of-global-forced-displacement-data>.

**22** James Milner, "Protracted Refugee Situations", in *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford: Oxford University Press, 2014), 151–62.

A great deal less is known about transfers by refugees.<sup>27</sup> But whatever the type of movement, remittances boost savings and investment in countries of origin and improve recipients' credit standing, which in turn encourages investment in agriculture and setting up small businesses.<sup>28</sup> However, transfers to LDCs, especially those originating from other developing countries, frequently incur heavy charges.<sup>29</sup> Reducing these costs would considerably boost the development impact of remittances. Development actors could support this by making it easier for migrants and refugees to access normal banks (which usually charge lower fees than wire transfer agencies) and strengthening competition between different providers.

In the case of labour migrants, the costs incurred in connection with job search or recruitment also vary enormously depending on the migration channel. Especially for low-skilled job-seekers, such as domestics and construction workers, visa fees, agency charges and travel costs frequently add up to several months' wages. This can create long-term debt and in the worst case lead to modern forms of servitude.<sup>30</sup> Countering such risks requires comprehensive regulation of recruitment practices. Promising proposals include: always having agency fees paid by the employer; improving transparency and comparability of providers by promoting internet-based recruitment platforms; and defining international guidelines for good recruitment practices and promoting standard employment contracts based on them. Each of these proposals requires concomitant monitoring structures and complaints mechanisms. Lowering recruitment costs is a complex business, but also promises a significant development dividend: Every reduction in costs

05/MigrationandDevelopmentBrief27\_1.pdf (accessed 22 June 2017).

**27** Carlos Vargas-Silva, *Literature Review: Remittances Sent to and from Refugees and Internally Displaced Persons*, KNOMAD Working Paper 12 (Washington, D.C., March 2016), <http://www.knomad.org/publication/remittances-sent-and-refugees-and-internally-displaced-persons-literature-review> (accessed 22 June 2017).

**28** John Connell and Richard P.C. Brown, *Remittances in the Pacific: An Overview* (Manila: Asian Development Bank, 2005), 33ff.

**29** Dilip Ratha, *Leveraging Remittances for Development*, Policy Brief 3 (Washington, D.C., 2007), 11, <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1110315015165/LeveragingRemittancesForDevelopment.pdf> (accessed 7 March 2017).

**30** Jureidini Ray, *Ways Forward in Recruitment of Low-skilled Migrant Workers in the Asia-Arab States Corridor* (Geneva: International Labour Organisation, 2016), [http://www.ilo.org/wcmsp5/groups/public/-arabstates/-ro-beirut/documents/publication/wcms\\_519913.pdf](http://www.ilo.org/wcmsp5/groups/public/-arabstates/-ro-beirut/documents/publication/wcms_519913.pdf) (accessed 7 March 2017).

permits migrants to send more money home, where it benefits families directly and can create perspectives on the ground.

### Diaspora engagement

Numerous studies now demonstrate that diasporas can deepen relations between countries of origin and destination and support development processes. They also supply micro-credits to those who are otherwise excluded from access, contribute to improving infrastructure, assist knowledge and technology transfer, support the acquisition of foreign direct investment, and facilitate the recruitment of staff for newly founded ventures in countries of origin.<sup>31</sup> Yet for all the development opportunities, diasporas can also present development risks, for example where they are instrumentalised in domestic political conflicts in the home country and pressured into collecting donations or recruiting supporters.<sup>32</sup> The same also applies to refugees, as demonstrated by many examples of mobilisation and militarisation especially in long-established refugee camps.<sup>33</sup> Cases have been documented – especially in southern Africa – where extremists have used their stay to prepare acts of violence in the country of origin (and sometimes even in the receiving country).<sup>34</sup>

**31** Yevgeny Kuznetsov, ed., *Diaspora Networks and the International Migration of Skills: How Countries Can Draw on Their Talent Abroad*, (Washington, D.C.: World Bank, 2006); Kathleen Newland and Erin Patrick, *Beyond Remittances: The Role of Diaspora in Poverty Reduction in Their Countries of Origin* (Washington, D.C.: Migration Policy Institute, 2004); Devesh Kapur, "Diasporas and Technology Transfer", *Journal of Human Development* 2, no. 2 (2001): 265–86; OECD, *Perspectives on Global Development 2017: International Migration in a Shifting World* (Paris: OECD Publishing, 2016), 205, [http://dx.doi.org/10.1787/persp\\_glob\\_dev-2017-en](http://dx.doi.org/10.1787/persp_glob_dev-2017-en) (accessed 6 March 2017).

**32** Robin Cohen, "Diasporas and the Nation-State: From Victims to Challengers", *International Affairs* 72, no. 3 (1996): 507–20.

**33** Sarah Kanyon Lischer, *Dangerous Sanctuaries: Refugee Camps, Civil War and the Dilemmas of Humanitarian Aid* (London: Cornell University Press, 2005); Hazel Smith and Paul Stares, eds, *Diasporas in Conflict: Peace-Makers or Peace-Wreckers?* (Tokyo: United Nations University Press, 2007); Judith Vorrath, *Engaging African Diasporas for Peace: Cornerstones for an Emerging EU Agenda*, EUISS Occasional Paper (Paris: European Union Institute for Security Studies, July 2012), [http://www.iss.europa.eu/uploads/media/OP\\_98\\_Engaging\\_African\\_Diasporas.pdf](http://www.iss.europa.eu/uploads/media/OP_98_Engaging_African_Diasporas.pdf) (accessed 6 March 2017).

**34** Juris Pupcenoks, "Migration of Violence", presentation at the 50th Annual Convention of the International Studies Association, New York, 15 to 18 February 2009 (unpublished manuscript).

### Brain drain or “brain gain”?

Today the possibility of migration causing a brain drain is subject to more differentiated assessments. Mass emigration of highly qualified young workers (especially from the healthcare sector) certainly does cause grave difficulties for developing countries. Their absence is felt directly in the home labour market, while more broadly such an exodus questions the usefulness of further state investment in the tertiary education sector.<sup>35</sup> On the other hand, if remittances are invested in education and health this can promote the formation of human capital in the country of origin.<sup>36</sup> And especially in the case of circular migration there are reasons to hope that the countries of origin may eventually profit from the skills and qualifications migrants acquire abroad, turning the brain drain into a “brain gain”.<sup>37</sup> Above and beyond this, new approaches also aim to tie the emigration of skilled migrants directly to the training of skilled workers for the respective country of origin. For example the Center for Global Development (CGD) proposes “transnational training partnerships” to train skilled workers for the needs of both the sending and the receiving country.<sup>38</sup> Investing in training in the country of origin can contribute to creating internationally competitive training institutions. Where such partnerships are well designed, both countries of origin and countries of destination can profit from skilled labour matching their respective labour market needs. This would reduce costs, since training can be provided a great deal cheaper in countries of origin than in the developed world. Such partnerships would ultimately also benefit those migrants who later decide to return to their home country, with the qualifications acquired abroad improving their chances in the labour market there. This effect has already been observed in

<sup>35</sup> OECD, *Perspectives on Global Development 2017* (see note 31), 198–201.

<sup>36</sup> Oded Stark, “Rethinking the Brain Drain”, *World Development* 32, no. 1 (2004): 15–22.

<sup>37</sup> Jean-Baptiste Meyer, “Network Approach versus Brain Drain: Lessons from the Diaspora”, *International Migration* 39, no. 5 (2001): 91–110; Anna Lee Saxenian, “From Brain Drain to Brain Circulation: Transnational Communities and Regional Upgrading in India and China”, *Studies in Comparative International Development* 40, no. 2 (2005): 35–61.

<sup>38</sup> Michael Clemens, “Transnationale Ausbildungspartnerschaften für Fachkräfte”, in: *Migration gerecht gestalten: Weltweite Impulse für einen fairen Wettbewerb um Fachkräfte*, ed. Bertelsmann Stiftung (Gütersloh, 2015), 275–83.

the context of development-related return programmes.<sup>39</sup>

Refugee movements also often cause brain drain. When faced with the threat of persecution, repression and civil war it is often the more affluent and better educated who flee first, as they tend to be more mobile than the rest of the population. Every refugee crisis is therefore also associated with a loss of skilled workers, which often proves to be irreversible even after the situation improves. Especially those whose qualifications would enable them to contribute most to reconstruction have by then frequently established a new life abroad and are no longer considering return as an option.

### Protecting the rights of migrants and refugees

Civil society organisations in particular never tire of underlining the central importance of protecting the rights of migrants and refugees. The fundamental human rights are codified in the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), and the International Covenant on Economic, Social and Cultural Rights (1966). Nevertheless, irregular migrants and asylum-seekers frequently experience grave violations. The Geneva Refugee Convention guarantees safeguards for refugees, but for migrants there is a gap in the protection afforded by international law. In political debate, rights-based and development-oriented perspectives on migration and forced displacement are often presented as fundamentally opposed, with the former foregrounding the situation of the individual, while the latter focuses on the overall socio-economic development in the country of origin. This distinction is false, and unhelpful in practice. In fact, protecting the rights of migrants and refugees – for example in connection with land rights and access to the labour market, or in relation to freedom of movement – often represents a precondition for leveraging development benefits.<sup>40</sup> In order to exploit the

<sup>39</sup> Anna Goos, *Manual on Circular Migration Scheme* (Tbilisi: Public Service Development Agency/Center for International Migration and Development and Deutsche Gesellschaft für Internationale Zusammenarbeit GmbH, 2016), [http://migration.commission.ge/files/pcms\\_en\\_final.pdf](http://migration.commission.ge/files/pcms_en_final.pdf) (accessed 7 March 2017).

<sup>40</sup> Richard Mallett et al., *Journeys on Hold: How Policy Influences the Migration Decisions of Eritreans in Ethiopia*, ODI Working Paper 506 (London: Overseas Development Institute, February 2017).

positive development potential of cross-border movements, protecting fundamental rights alone is not enough. Instead an active policy is needed that places participation front and centre and opens up opportunities for the individual.

### Return and reintegration

Return and reintegration represents another important and contested set of issues. In destination countries like Germany, rising numbers of immigrants have generated growing political pressure to enforce returns, in particular of irregular migrants and rejected asylum-seekers, in order to shore up the legitimacy of the official asylum and migration policy. From a development perspective it would be warranted to consider instead whether the effects of return will promote or hinder development. To date there are no reliable research findings on the conditions for successful state-driven return and repatriation, although there is a consensus among researchers that voluntary participation improves the chances of successful permanent return. There is also agreement that development measures accompanying return migration can promote reintegration – as long as they go beyond pure financial incentives and the often associated windfall effects and instead encourage training, self-reliance and labour market reintegration.<sup>41</sup> Forced returns without development support on the other hand threaten to generate foreign policy and security risks. Especially where a government seeks to maximise the number of returns to an authoritarian regime, there is a danger of it becoming dependent on that regime. Strengthening authoritarian regimes materially or morally is, however, generally counter-productive to development.

Summarising the state of research, it must be noted that there is still no general consensus concerning the relationships between migration, forced displacement

and development – which comes as no surprise when considering the very different normative starting points in development research. Pessimists and optimists do agree on a number of points, though: migration, forced displacement and development are closely bound up together; development impacts of population movements depend on their political management; and creating a positive framework for development requires an intense and dependable cooperation with partner countries.

<https://www.odi.org/sites/odi.org.uk/files/resource-documents/11336.pdf> (accessed 7 March 2017).

<sup>41</sup> Rued Ruben, Marieke Van Houte and Tine Davids, “What Determines the Embeddedness of Forced-Return Migrants? Rethinking the Role of Pre- and Post-Return Assistance”, *International Migration Review* 43, no. 4 (2009): 908–37; Zachary Whyte and Dan V. Hirsland, *Assisted Return of Rejected Asylum Seekers – How Can We Create Sustainability?*, DIIS Policy Brief (Copenhagen: Danish Institute for International Studies, May 2013), [https://www.diis.dk/files/media/publications/import/extra/pb2013\\_assisted\\_return\\_of\\_rejected\\_asylum\\_seekers\\_whyte\\_webversion.pdf](https://www.diis.dk/files/media/publications/import/extra/pb2013_assisted_return_of_rejected_asylum_seekers_whyte_webversion.pdf) (accessed 7 March 2017).

## Structures and Trends in International Cooperation

International cooperation in the field of migration and forced displacement is fragmented. While the refugee protection regime is firmly anchored in international law and institutions, migration policy remains a patchwork of regional and bilateral agreements and coordinating mechanisms.<sup>42</sup>

### Dichotomy: Separate Regimes for Refugees and Migration

The fragmentation of global migration governance has historical roots.<sup>43</sup> The foundations of the “international travel regime” that still exists today was laid in the 1920s with the standardisation of travel documents and visa agreements.<sup>44</sup> But it was the aftermath of the Second World War that created an urgent need for new institutional arrangements, in order to cope with the huge movements of displaced persons in Europe.

In this situation two competing designs emerged. The International Labour Organisation (ILO) volunteered to operate as the central agency placing work-seeking European migrants and refugees seeking to settle abroad. The ILO had been working for the rights of migrant workers and recognition of their contribution to development since its establishment in 1919.<sup>45</sup>

<sup>42</sup> T. Alexander Aleinikoff, “International Legal Norms on Migration: Substance Without Architecture”, in *International Migration Law: Developing Paradigms and Key Challenges*, ed. Ryszard Cholewinski, Euan Macdonald and Richard Perruchoud (Cambridge: Cambridge University Press, 2007), 467–79; Alexander Betts, “The Global Governance of Migration and the Role of Trans-regionalism”, in *Multilayered Migration Governance: The Promise of Partnership*, ed. Rahel Kunz, Sandra Lavenex and Marion Panizzon (New York, 2011), 32–42.

<sup>43</sup> Rieko Karatani, “How History Separated Refugee and Migrant Regimes: In Search of Their Institutional Origins”, *International Journal of Refugee Law* 17, no. 3 (2005): 517–41.

<sup>44</sup> Rey Koslowski, “Global Mobility and the Quest for an International Migration Regime”, *Center for Migration Studies Special Issues* 21, no. 1 (2011): 103–43.

<sup>45</sup> The initial target group was restricted to those displaced within Europe following the end of the Second World War. The umbrella term chosen by the ILO – “surplus population of Europe” – and its focus on finding employment abroad suggests that a hard and fast distinction between refugees and migrants

Under this model the UN would have been responsible for protecting the legal rights of all migrants (including refugees). But certain major donor governments – first and foremost the USA – were concerned that this approach could water down state sovereignty over migration matters, and the ILO proposal was rejected.

Instead a binary structure was created in 1950 and 1951. On the one side, the UN refugee agency UNHCR emerged, with an initial three-year mandate that has been successively extended ever since. On the other, the Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICMME) – the precursor of today’s International Organisation for Migration (IOM) was established.<sup>46</sup> The Geneva Refugee Convention of 1951 granted UNHCR an international mandate to protect refugees, while PICMME was set up largely to help states cope with the logistical challenges related to huge migratory movements and was designed intentionally without a normative mandate, as an intergovernmental organisation outside the UN framework.<sup>47</sup>

This created the basis for a separation of international structures for migrants and refugees that essentially persists to this day, with clear differences in their legal foundations, their funding, their methods and the participating actors. From the outset the

was not being made at this juncture. Katy Long, “When Refugees Stopped Being Migrants: Movement, Labour and Humanitarian Protection”, *Migration Studies* 1, no. 1 (2013): 4–26.

<sup>46</sup> The work of both organisations was initially restricted to Europe. That changed for UNHCR in 1967 with the Additional Protocol to the Geneva Refugee Convention, which lifted the geographical and temporal restrictions contained in the original text. In the case of PICMME (Intergovernmental Committee for European Migration [ICEM] from 1952), its renaming in 1980 to Intergovernmental Committee for Migration (ICM) marked the end of its exclusive focus on Europe. It became IOM in 1989. Richard Perruchoud, “From the Intergovernmental Committee for European Migration to the International Organization for Migration”, *International Journal of Refugee Law* 1, no. 4 (1989): 501–17.

<sup>47</sup> Fabian Georgi, “For the Benefit of Some: The International Organization for Migration and Its Global Migration Management”, in *The Politics of International Migration Management*, ed. Martin Geiger and Antoine Pécoud (Basingstoke, 2010), 45–72, analyses the political background and historical development of PICMME/IOM.

Geneva Refugee Convention gave UNHCR a clear humanitarian mandate to represent the interests of asylum-seekers and recognised refugees vis-à-vis the governments of the receiving countries. Every year UNHCR calculates its probable funding requirements for the coming year and on that basis requests voluntary contributions from the member states. While this creates a fundamental dependency on the financial contributions of the donors, UNHCR possesses considerable scope to set its own priorities for operations and activities.<sup>48</sup>

UNHCR's work with refugees in developing countries and crisis regions is driven by the humanitarian identity of the organisation, often concentrating on initially short-term support in the context of large camps.<sup>49</sup> This approach focussing on "care and maintenance" often draws criticism from the development community for failing to offer longer-term perspectives and often leading to years of "warehousing" in camps instead.<sup>50</sup> UNHCR has long been seeking to bridge the gap between emergency humanitarian aid and longer-term development cooperation.<sup>51</sup> In many donor countries this topic continues to define the development debate about emergency aid.<sup>52</sup>

Whereas the experience of the Second World War led to far-reaching multilateral commitments on refugee protection, agreements in the area of migration were largely restricted to the bilateral level. The main obstacle to further-reaching international cooperation on labour migration was then – and remains now – the absence of incentives for prosperous destination countries to submit to global governance structures. Instead they can recruit bilaterally from the global oversupply of low-skilled labour as demand requires, without having to commit themselves to keeping their borders open when the economic situation deteriorates.<sup>53</sup>

48 Gil Loescher, "The UNHCR and World Politics: State Interests vs. Institutional Autonomy", *International Migration Review* 35, no. 1 (2001): 33–56.

49 Michel Agier, *Managing the Undesirables: Refugee Camps and Humanitarian Government* (Cambridge, 2011).

50 Merrill Smith, "Warehousing Refugees", *World Refugee Survey* 38 (2004): 38–56.

51 Crisp, "Mind the Gap!" (see note 23).

52 For Germany: Auswärtiges Amt and Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung, *Leitfaden zur Erläuterung der Aufgaben des Auswärtigen Amtes (AA) und des Bundesministeriums für wirtschaftliche Zusammenarbeit und Entwicklung (BMZ) in den Bereichen der Humanitären Hilfe und der Entwicklungsfördernden strukturbildenden Übergangshilfe* (Berlin, 2014).

53 Aristide R. Zolberg, "Labour Migration and International

Unlike UNHCR, the mandates of the IOM precursors PICMME, ICEM and ICM were therefore purely technical, concentrating on measures implementing the migration plans of member states: the logistics of migrant registration, medical tests and transport. To this day IOM is primarily a service provider for its donor countries, which it supports in pursuing their own migration interests. While fundamental human rights naturally also apply to migrants,<sup>54</sup> IOM does not possess a mandate to oversee and encourage their observance. It therefore possesses no power to tell states what kind of migration policy they should pursue.

While IOM acquired a central logistical support role for migratory movements, the ILO ceased to play any operational part in migration management after the rejection of its proposal for a joint refugee and migration regime. It now concentrated instead on strengthening the rights of migrant workers. The two central legal instruments in this area are ILO Conventions No. 97 (Migration for Employment Convention, 1949) and No. 143 (Convention Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975). The former contains provisions concerning ex-

Economic Regimes: Bretton Woods and After", in *International Migration Systems: A Global Approach*, ed. Mary M. Kritz, Lin Lean Lim and Hania Zlotnik (Oxford, 1992), 315–34; Koslowski, "Global Mobility and the Quest for an International Migration Regime" (see note 44).

54 As well as the Universal Declaration of Human Rights (1948), the relevant norms include the International Covenant on Civil and Political Rights (1966), the Convention Relating to the Status of Stateless Persons (1954), the Convention for the Suppression of Traffic in Persons and the Exploitation of the Prostitution of Others (1949), the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), and the Convention on the Elimination of All Forms of Racial Discrimination (1965). The applicable rights include the right to life, protection against torture, rights in criminal proceedings, freedom of thought, conscience and religion, and the right to family life. The International Covenant on Economic, Social and Cultural Rights of 1966 lists further rights applicable to all regardless of citizenship: the right to work ("the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts"), the right to just and favourable conditions of work, the right to social security, the right to an adequate standard of living, the right to health, and the right to education. The prohibition on discrimination fundamentally applies to migrants and citizens alike. But there are exceptions: for example under the International Covenant on Civil and Political Rights certain types of unequal treatment are permissible in pursuit of listed legitimate objectives such as ensuring public order.

change of information between states, support and information for migrants, and rules on healthcare and anti-discrimination. The latter supplements these provisions and commits countries of destination to protect migrants' human rights. Even though their provisions are couched in very general terms, the conventions have to date been signed by only a handful of industrialised countries.<sup>55</sup> The same applies to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), which has yet to be signed by any major industrialised country.

The ILO's record on migration-related norm-setting is therefore sobering, and some critics place the blame not on governments but within the organisation itself.<sup>56</sup> Nonetheless, its tripartite structure gives the ILO an inherent potential to make important contributions to future global migration governance through dialogue between representatives of governments, workers and employers.

In essence, the international institutional framework for refugees and migration that emerged in post-war Europe sought primarily to provide humanitarian assistance to refugees while preserving state sovereignty over migration. But large numbers of asylum-seekers, growing labour mobility and rising demand for labour – especially in Europe – generated a growing need for additional migration management instruments. By the early 1990s the discourse had changed and new forms of supranational cooperation were emerging.

### **Adjustment Processes in Migration Policy: Regional and Global Cooperation**

The international migration debate really got rolling in the course of the 1990s, with the number of participating actors increasing significantly. Regional

<sup>55</sup> By October 2016 ILO Convention no. 97 had been ratified by forty-nine states (including ten industrialised countries), ILO Convention no. 143 by twenty-three (including five industrialised countries). Their marginal status is reflected in their omission from the ILO's own list of the eight central conventions that guide its work. ILO, *Conventions and Recommendations* (2016), <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang-en/index.htm> (accessed 7 March 2017).

<sup>56</sup> Virginia Leary, "Labour Migration", in *Migration and International Legal Norms*, ed. T. Alexander Aleinikoff and Vincent Chetail (The Hague, 2003), 228–39.

cooperation processes grew in importance,<sup>57</sup> and in 1994 the UN International Conference on Population and Development in Cairo laid down the first markers for closer cooperation on migration at the global level.<sup>58</sup> These intergovernmental processes were accompanied by a growing involvement of NGOs and private-sector actors in shaping global migration policy and action.<sup>59</sup>

### **Regionalisation of cooperation: Integration processes, networks and interregional cooperation**

Regional migration cooperation takes place in three different formats. Firstly, in the scope of regional integration processes, governments seek to move towards regional freedom of movement and joint stances vis-à-vis third states; secondly they participate in informal regional consultative processes (RCPs); and thirdly they engage in interregional cooperation processes.<sup>60</sup>

#### **Regional integration processes**

One early example of cooperation in a context of regional integration processes is the European Union's efforts to institute freedom of movement within its borders. Free movement of workers was already a stated objective of the Treaty of Rome of 1957. The privilege has been gradually expanded to include other groups, and today represents a crucial aspect of the EU citizenship introduced in 1992. Since then, a complex – and in certain respects still inadequate – system of EU directives and regulations has sprung up to regulate cooperation in refugee and migration policy.<sup>61</sup> Here too, cooperation on asylum matters is much more comprehensively regulated than migration.

<sup>57</sup> Colleen Thouez and Frédérique Channac, "Shaping International Migration Policy: The Role of Regional Consultative Processes", *West European Politics* 29, no. 2 (2006): 370–87.

<sup>58</sup> Newland, *Governance of International Migration* (see note 17).

<sup>59</sup> *The Migration Industry and the Commercialization of International Migration*, ed. Thomas Gammeltoft-Hansen and Ninna Nyberg Sørensen (New York, 2013).

<sup>60</sup> Sandra Lavenex et al., "Regional Migration Governance", in *The Oxford Handbook of Comparative Regionalism*, ed. Tanja A. Börzel and Thomas Risse (Oxford: Oxford University Press, 2016), 457–85.

<sup>61</sup> Kees Groenendijk, "Recent Developments in EU Law on Migration: The Legislative Patchwork and the Court's Approach", *European Journal of Migration and Law* 16, no. 3 (2014): 313–35.

The dismantling of Europe's internal borders and the increasing importance of the common external borders have stimulated a growing willingness to cooperate in external asylum and migration policy. This external dimension frequently draws criticism for instrumentalising development cooperation to control migratory movements. Ideas as to how migration could be used to promote development are present in the concepts, critics note, but they play little role in political practice.

Countries in Asia, Latin America, North America and Africa have in recent decades also undertaken numerous attempts to channel cooperation on migration and freedom of movement in the context of regional integration groupings. Examples include the then Commonwealth of Independent States (CIS) with its 1996 Conference on Refugees and Migrants; ASEAN's Declaration on the Promotion and Protection of the Rights of Migrant Workers in 2007;<sup>62</sup> and the South American Common Market with the MERCOSUR Residence Agreement of 2002 relating to freedom of movement, and ongoing debates on a South American citizenship.<sup>63</sup> African states have discussed asylum and migration issues in frameworks including the Southern African Development Community (SADC), the Economic Community of West African States (ECOWAS) and the East African Community (EAC).<sup>64</sup> Here the focus of interest has been freedom of movement. The African Union has also been active in this area since 2002, continuing the efforts of its predecessor, the Organisation of African Unity (OAU). African regional organisations have played a pioneering role in the area of refugee rights. The definition of the term "refugee" in the OAU Refugee Convention of 1969 – unlike the Geneva Refugee Convention – includes those who have left their home country because of "external aggression, occupation, foreign domination or events seriously disturbing public

order".<sup>65</sup> The African Union's Kampala Convention, which came into force in 2012, is the first regional legal instrument to require the protection of internally displaced persons. In practice, however, participating states fail to live up to these commitments.

### Regional networks

The second form of regional migration cooperation takes place via informal intergovernmental dialogues in the guise of regional consultation processes (RCPs). One early example is the Budapest Process, which was established in 1991 in the context of the spike in east-west movements following the fall of the Iron Curtain. It was driven by a realisation on the part of the European Union that close cooperation with its Eastern neighbours would be vital in coping with the ensuing challenges.<sup>66</sup> This cooperation was then gradually extended to the countries of the Black Sea region and finally to Afghanistan, Bangladesh and Pakistan.

Since the mid-1990s such regional consultation processes have emerged in almost all parts of the world at the initiative of individual states or international organisations; there are currently eighteen active RCPs and four inactive ones. Their principal activities are intergovernmental information exchange and discussion of refugee- and migration-related challenges. UNHCR and IOM participate in these processes, with IOM providing secretariat functions to more than half of all RCPs, allowing it to influence the agenda of their consultations. The advantage of RCPs over other forms of cooperation is that they function largely informally, without a cumbersome apparatus, and are flexible in their agendas and timeframes.<sup>67</sup> Often, however, not least because of their informal and intergovernmental nature, such consultation processes focus on security aspects and questions of border management and the repatriation of rejected asylum-seekers. Aid organisations often criticise a lack of transparency on the part of the participating governments and regard these processes as drivers of restrictive asylum and migration policies.<sup>68</sup>

<sup>62</sup> Gloria O. Pasadilla, *Social Security and Labor Migration in ASEAN*, Research Policy Brief 34 (Tokyo: Asian Development Bank Institute, 2011).

<sup>63</sup> Diego Acosta, *Free Movement in South America: The Emergence of an Alternative Model?* (Washington, D.C.: Migration Policy Institute, 23 August 2016), <http://www.migrationpolicy.org/article/free-movement-south-america-emergence-alternative-model> (accessed 7 March 2017).

<sup>64</sup> *Regionale Migrationspolitik auf dem afrikanischen Kontinent: Aktuelle Situation und Zukunftsperspektiven*, sef-Studie (Bonn: Stiftung Entwicklung und Frieden, October 2016), [http://www.sef-bonn.org/fileadmin/Die\\_SEF/Publikationen/SB/sb\\_studie-2016\\_de.pdf](http://www.sef-bonn.org/fileadmin/Die_SEF/Publikationen/SB/sb_studie-2016_de.pdf) (accessed 7 March 2017).

<sup>65</sup> Article 1.2 of the 1968 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, [http://www.achpr.org/files/instruments/refugee-convention/achpr\\_instr\\_conv\\_refug\\_eng.pdf](http://www.achpr.org/files/instruments/refugee-convention/achpr_instr_conv_refug_eng.pdf) (accessed 7 March 2017).

<sup>66</sup> International Centre for Migration Policy Development (ICMPD), *20+ Years of the Budapest Process: An Analysis of Over Two Decades of Migration Dialogue* (Budapest, 2013).

<sup>67</sup> Thouez and Channac, "Shaping International Migration Policy" (see note 57).

<sup>68</sup> Lavenex et al., "Regional Migration Governance" (see note 60),

### Interregional cooperation

As well as these regional forms of cooperation, there are also a series of interregional forums, especially in connection with refugee- and migration-specific agreements between European and African states. One example of these are the EU's mobility partnerships, which aim to bring together labour market, foreign policy, security and development aspects in such a way as to benefit all involved. In reality the mobility partnerships concluded since 2006 (with Armenia, Azerbaijan, Belarus, Cape Verde, Georgia, Jordan, Moldova, Morocco, and Tunisia) have failed to fulfil these expectations. Although the partnerships have promoted dialogue on migration and the establishment of refugee- and migration-related capacities in partner states – and in some cases also realised smaller-scale pilot projects on labour migration – they have not as yet been used to agree major migration programmes which constitutes the key priority for most partner countries.

In practice the existing partnerships still often concentrate one-sidedly on reducing irregular migration.<sup>69</sup> This approach ignores the opportunity to achieve the widely discussed “triple win” of enabling and shaping labour migration in such a way that the individuals involved, the countries of origin and the destination countries all benefit.<sup>70</sup> This leaves the development-promoting potential of migration untapped, and instead places a growing burden on countries of origin where legal migration options remain absent. This applies above all to countries with a large youth bulge, where the younger generation finds it especially hard to establish a livelihood.<sup>71</sup>

Human rights organisations express similar criticisms of the newest instrument in the external dimension of EU migration policy, the so-called migration partnerships or compacts. This strategy, proposed in June 2016 by the European Commission, seeks to

encourage African and Arab countries of origin and transit countries along the most important current routes to cooperate more closely with the EU. What the Commission is seeking is cooperation in fighting the causes of forced displacement. Critics see this as a means to stop irregular movements and encourage partner states to take back citizens who have entered the European Union by irregular channels. This is, they say, also clearly reflected in the processes initiated by the EU to strengthen migration cooperation with African states – above all in connection with the Rabat Process with West African states and the Khartoum Process with the states along the migration routes originating in the Horn of Africa.<sup>72</sup>

The EU migration partnerships provide for closer administrative cooperation, financial aid and technical support for African and Arab countries to create incentives to stem irregular migration. The tools also encompass trade agreements and visa liberalisation programmes: States that refuse to cooperate must expect trade agreements to be suspended and development cooperation funding cut. Ethiopia, Mali, Niger, Nigeria, and Senegal are the first selected partner countries; an expansion of the scheme to further countries is under discussion.<sup>73</sup>

### Developments at the global level

While cooperation on refugee- and migration-related questions was firmly on the agenda by the early 1990s, change lagged at the global level. Institutional rivalry between UNHCR and IOM sharpened during the 1990s, with UNHCR coming under increasing pressure. It faced enormous practical challenges in protecting and caring for refugees, while at the same time finding itself confronted with demands from states wishing to see refugee numbers reduced. In addition, difficult new challenges were emerging for UNHCR, above all in connection with the increase in protracted refugee crises and the rising numbers of internally displaced persons – for whom UNHCR is not strictly speaking responsible but has become increasingly in-

457–85; Geiger and Pécoud, eds. *The Politics of International Migration Management* (see note 47).

<sup>69</sup> Sergio Carrera and R. Hernández i Sagrera, “Mobility Partnerships: ‘Insecurity Partnerships’ for Policy Coherence and Migrant Workers’ Human Rights in the EU”, in *Multilayered Migration Governance*, ed. Kunz et al. (see note 42), 97–115.

<sup>70</sup> Steffen Angenendt, *Triple-Win Migration: Challenges and Opportunities*, German Marshall Fund/Robert Bosch Stiftung Migration Strategy Group on Global Competitiveness Framework Paper (Berlin, April 2014).

<sup>71</sup> Steffen Angenendt and Silvia Popp, *Jugendüberhang: Entwicklungspolitische Risiken, Chancen und Handlungsmöglichkeiten*, SWP-Studie 12/2013 (Berlin: Stiftung Wissenschaft und Politik, June 2013).

<sup>72</sup> Stephan Dünwald et al., *Aus den Augen, aus dem Sinn: Externalisierung und Regionalisierung von Migrations- und Flüchtlingspolitik* (Berlin: Brot für die Welt, June 2016).

<sup>73</sup> European Commission, *Factsheet on Migration Partnership Framework*, [https://eeas.europa.eu/sites/eeas/files/factsheet\\_ec\\_format\\_migration\\_partnership\\_framework\\_update\\_2.pdf](https://eeas.europa.eu/sites/eeas/files/factsheet_ec_format_migration_partnership_framework_update_2.pdf) (accessed 7 March 2017).

volved at the request of states.<sup>74</sup> Within UNHCR a paradigm shift emerged during this phase, with growing criticism of the perception of refugees as helpless victims and passive recipients of aid. Now there were increasing calls to take account of their entrepreneurial potential and enable them to find independent livelihoods and perspectives outside the camps.<sup>75</sup> In practice, however, such objectives were realised only occasionally.

At the same time the previously much smaller IOM expanded massively, with the tally of member states rising from 38 in 1990 to 165 in 2016. Today IOM employs more than nine thousand staff in 480 offices around the globe. This rapid expansion was driven by strong state demand for IOM services relating primarily to the return of irregular migrants, the reintegration of returnees and the enhancement of border security. This orientation has drawn repeated criticism from human rights organisations, alleging that it prioritises the interests of its donors over those of migrants in contradiction to its own motto (“managing migration for the benefit of all”).<sup>76</sup> IOM has also pursued expansion beyond the areas described above, leading to overlap with the activities of UNHCR.<sup>77</sup>

Beyond these two central actors, the Programme of Action adopted in 1994 by the Cairo UN International Conference on Population and Development marked the beginning of a slow turn to more international cooperation by the international community.<sup>78</sup> A series of important changes occurred around the turn of the century, both within and outside the United Nations. The UN Commission on Human Rights appointed a Special Rapporteur on the Human Rights of

Migrants, the ILO made migration the focus of its 2004 conference, and the WTO’s Doha Round took up the issue of trade in services. Around the same time, the World Bank and numerous regional development banks recognised the significance of remittances for development and intensified their research activities in that sphere. Two consultative processes outside the UN structures spurred developments. In the context of the Hague Process launched in 1999, civil society actors discussed the opportunities and potentials of migratory movements. The Berne Initiative, which ran from 2001 to 2004, offered the first forum for governments from all over the world to discuss the challenges associated with migration and its management.

In the course of these debates the Global Commission on International Migration (GCIM) was established in 2003 at the initiative of the UN Secretary-General. Within the space of two years it conducted a stocktaking of migration problems and structures; its final report in 2005 contained recommendations for strengthening global migration governance. Three concrete outcomes implemented in 2006 were the appointment of a UN Special Representative for International Migration, the convening of the first UN High-level Dialogue on International Migration and Development, and the founding of the Global Migration Group (GMG). The remit of the GMG is to promote closer cooperation between UN agencies dealing with migration issues and foster a deeper problem-driven exchange on migration questions between them.<sup>79</sup> The consolidation of contacts in working groups has transpired to be advantageous, as these provide a forum for expert discussion and sharing of information about plans and projects. One drawback of the GMG is that the issues addressed depend strongly on the chair, which rotates annually regardless of how intensely the respective agency is involved in refugee and migration questions. In recent years the chairing agencies have often set the agenda according to their own needs and interests, rather than to those aspects of greatest importance to the membership as a whole. One consequence of this is that the outcomes (in the form of joint reports) have not generated the levels of public and political interest that would have been achievable given more focussed planning. Opportu-

<sup>74</sup> The *Guiding Principles on Internal Displacement* of 1998 represented a significant normative advance in this area: <http://www.unhcr.org/protection/idips/43ce1cff2/guiding-principles-internal-displacement.html> (accessed 7 March 2017).

<sup>75</sup> Alexander Betts and Naohiko Omata, *Humanitarian Innovation and Refugee Protection* (University of Oxford: Refugee Studies Centre, 2012).

<sup>76</sup> IOM, *Managing Migration for the Benefit of All: The International Organization for Migration in Brief* (Geneva, 2014). Ishan Ashutosh and Alison Mountz, “Migration Management for the Benefit of Whom? Interrogating the Work of the International Organization for Migration”, *Citizenship Studies* 15, no. 1 (2011): 21–38.

<sup>77</sup> Anne Koch, “The Politics and Discourse of Migrant Return: The Role of UNHCR and IOM in the Governance of Return”, *Journal of Ethnic and Migration Studies* 40, no. 6 (2014): 905–23.

<sup>78</sup> “International Migration”, in United Nations Population Fund (UNFPA), *Programme of Action of the International Conference on Population and Development* (2014), <http://www.unfpa.org/publications/international-conference-population-and-development-programme-action> (accessed 7 March 2017).

<sup>79</sup> Antoine Pécoud, “‘Suddenly, Migration Was Everywhere’: The Conception and Future Prospects of the Global Migration Group”, *Migration Information Source* online journal, 5 February 2013, <http://www.migrationpolicy.org/article/suddenly-migration-was-everywhere-conception-and-future-prospects-global-migration-group> (accessed 7 March 2017).

nities have been wasted here, especially with respect to the practical aspects of migration cooperation.

At the global level, the Global Forum on Migration and Development (GFMD) founded in 2007 has grown into the central discussion format for migration and development issues. It came into being at the initiative of the then UN Special Representative for International Migration, Peter Sutherland. As a multilateral forum, it allows the participating states to informally exchange experience on best practices and capacity-building and to find inspiration for bilateral cooperation. But its specific organisational form as an inter-governmental process means that non-state actors (such as the business sector and trade unions) initially only played a marginal role in the GFMD. This has changed over the years and has gone hand in hand with a broadening of the thematic scope of the forum, which now includes previously excluded issues like the human rights of migrants and return and reintegration. The future organisational shape of the GFMD, its function and its orientation were addressed by the second High Level Dialogue in October 2013, which found a broad consensus behind strengthening the GFMD process. Also in 2013, the Global Knowledge Partnership on Migration and Development (KNOMAD) was founded under the auspices of the World Bank, initially to run for five years. This research initiative, funded largely by Germany and Switzerland and structured into thematic working groups, is dedicated to knowledge exchange in the area of migration and development.

### Beneficiaries and power shifts

Non-state actors play an important role in refugee and migration policy and action, and migration management is a growth sector from which various entities profit. On the one side, the interaction of increasing cross-border movements and state efforts to manage it boosts demand for control technologies and migration-related support services. The financial volume of both sectors has grown strongly since the 1990s and the spectrum is correspondingly diverse.<sup>80</sup> Transnational corporations like Boeing, G4S and Halliburton supply technologies and services for border security, while law firms and private agencies offer legal and practical assistance for legal immigration – and

<sup>80</sup> Gammeltoft-Hansen and Sørensen, eds., *The Migration Industry* (see note 59).

trafficking organisations operate the illegal routes. The expansion in this branch is not restricted to the private sector, with international agencies taking related commissions from states. Above all the rapid growth of the IOM and the International Centre for Migration Policy Development (ICMPD) in the past two decades illustrates the growing demand for migration-related goods and services. This commercialisation of migration influences the options available to states, yet since it is driven by economic interests it frequently runs counter to development objectives. Certain states have also found ways to profit from growing demands for control of migration: witness the expanded negotiating power vis-à-vis Europe enjoyed by the governments of Turkey and various North African countries (such as Egypt and Tunisia). Promises to prevent irregular movements of migrants and refugees to Europe (and threats to cease doing so) crop up with increasing frequency in negotiations over bilateral assistance.

### Current Trend: Consolidating International Cooperation

Cooperation on refugee and migration questions, which had hitherto developed incrementally, experienced a sudden boost in 2015/2016, as reflected in the growth of relevant processes and forums.

The Sustainable Development Goals (SDGs) adopted unanimously by the UN General Assembly in September 2015 follow the principle of “leaving no one behind” and as such are relevant in their entirety for migration and refugee issues. This represents a clear advance over the Millennium Development Goals, which neglected the situation of marginalised groups to which many refugees and migrants belong.<sup>81</sup>

At various points the SDGs also refer directly to the connection between migration and development. Target 10.7 is central: as part of the goal of reducing global inequality, it calls on the international community to “facilitate orderly, safe, and responsible migration”. Target 8.8 addresses labour rights and safe and secure working conditions for all, explicitly “including migrant workers”. Target 10.c calls for the transaction costs of remittances to be reduced to less than

<sup>81</sup> UNGA Report A/69/302, 4, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/501/96/PDF/N1450196.pdf?OpenElement> (accessed 10 March 2017).

3 percent.<sup>82</sup> In many areas, however, there is still a lack of meaningful indicators for assessing progress made by individual countries.<sup>83</sup> If migration is to be granted practical relevance in the post-2030 agenda, further efforts need to be made.

The surge of refugees into the EU in 2015 put the topic of migration in the headlines for months. It became obvious that international migration and refugee cooperation was in many respects inadequate. In this situation two international summits were convened: the United Nations General Assembly high-level meeting on addressing large movements of refugees and migrants on 19 September 2016 (the United Nations Summit) and US President Barack Obama's Leaders' Summit the next day.<sup>84</sup>

The UN Summit represented the General Assembly's first discussion of this set of issues, fulfilling a demand raised repeatedly since the Cairo International Conference on Population and Development of 1994. The Summit ended with the unanimous adoption of the New York Declaration,<sup>85</sup> dedicated to the shared challenges of migration and forced displacement and already regarded as a milestone in international migration policy. In it, states commit to the human rights and protection of all migrants and forcibly displaced persons, regardless of their legal or immigration status. With respect to the latter, the Declaration calls for more support for countries receiving large numbers of refugees and for global burden-sharing in major refugee crises. In relation to migrants it underlines the rights of those who do not

fall under the criteria of the Geneva Refugee Convention but have nevertheless been forced to leave their home country or require protection after leaving voluntarily. In this sense the New York Declaration is relevant to the phenomenon of mixed migrations described above, and the associated deficits. The Declaration does however contain a serious deficit of its own, in that its declarations of intent exclude the large category of internally displaced persons.

It is nevertheless a step forward, because it opens up opportunities to further strengthen international cooperation on questions related to migration and forced displacement. In particular, states resolved to negotiate two new agreements: The Global Refugee Compact will be drafted under the auspices of UNHCR and seeks to improve international responsibility-sharing in the area of refugee protection.<sup>86</sup> The content of the planned Global Migration Compact is still largely open, pending a broad consultation process. Finalisation of both agreements is scheduled for late 2018. So the UN Summit of 2016 marked the starting shot for two years of negotiations, giving new actors an opportunity to contribute to the future architecture of global migration governance.

The UN Summit also provided the opportunity to complete another fundamental change to the international migration regime: at the meeting the IOM was officially admitted into the UN family. This step had been repeatedly discussed in the preceding years, and had been promoted by developing countries in particular. Important donor countries and the IOM itself responded cautiously to the proposal, because closer integration into the UN threatened to call into question the organisation's flexibility and service-oriented identity, which the main donors valued. It was the adoption of the migration-relevant Sustainable Development Goals that tipped the balance, as without UN membership IOM would have been excluded from the process of preparing indicators and implementing and monitoring the Goals. The chosen form of a "related agency" (comparable with the status of the WTO) only apparently resolves this dilemma however: inclusion in the UN offers the IOM access to central processes of international migration policy, but its mandate and structure remain unaffected.

<sup>82</sup> As well as these three explicitly migration-related targets, a string of other goals are implicitly relevant. One example would be target 16.9, to "provide legal identity for all, including birth registration", which addresses a central issue of internal displacement and statelessness. The fulfilment of the post-2030 Agenda would therefore also eliminate many of the current reasons for involuntary migration.

<sup>83</sup> UNSTATS, *Tier Classification for Global SDG Indicators* (21 September 2016), <http://unstats.un.org/sdgs/files/meetings/iaeg-sdgs-meeting-04/Tier%20Classification%20of%20SDG%20Indicators%20Updated%2023-09-16.pdf> (accessed 7 March 2017).

<sup>84</sup> At the Summit participating states made concrete promises concerning resettlement, access to education, and access to the labour market. White House, Office of the Press Secretary, *Fact Sheet on the Leaders' Summit on Refugees* (20 September 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/09/20/fact-sheet-leaders-summit-refugees> (accessed 7 March 2017).

<sup>85</sup> UN General Assembly, *Seventy-first Session*, "New York Declaration for Refugees and Migrants", (13 September 2016), [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/71/L.1](http://www.un.org/ga/search/view_doc.asp?symbol=A/71/L.1) (accessed 7 March 2017).

<sup>86</sup> Annex I of the New York Declaration, 17–22, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/71/L.1](http://www.un.org/ga/search/view_doc.asp?symbol=A/71/L.1) (accessed 7 March 2017).

From a rights-based perspective this represents a missed opportunity.<sup>87</sup> The New York Declaration underlines the non-normative identity of IOM and completely avoids impinging on its independence, for example not imposing any reporting duties. The reason for this failure to connect full rights to participate in UN processes with a normative mandate is to be found in the interests of the IOM's main donors. Ultimately the conceptual and operational hole in the international migration regime remains, and IOM's biggest deficit from the development perspective is perpetuated.<sup>88</sup>

The ambitious plan to negotiate a new and comprehensive migration agreement at the highest level of the UN was preceded by a series of initiatives and consultation processes. These aimed to improve protection and support for those who fall outside the Geneva Refugee Convention, and to bring about durable solutions for refugees. The Ten-Point Plan of Action on Refugee Protection and Mixed Migration presented by UNHCR in 2006 formulated the first concrete and rights-based recommendations for dealing with mixed migratory movements. The Nansen Initiative initiated in 2012 by Switzerland and Norway held regional consultations to prepare new standards of protection for people forced to leave their homes due to natural disaster or climate change. In October 2015 these consultations produced the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change (Protection Agenda), endorsed by 109 governments. Its implementation is

<sup>87</sup> Nicholas R. Micinski and Thomas G. Weiss, *International Organization for Migration and the UN System: A Missed Opportunity*, Future United Nations Development System Briefing 42 (New York, September 2016), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2841067](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2841067) (accessed 7 March 2017).

<sup>88</sup> The preservation of the organisation's non-normative character is emblematic of the persistent and strong reservations against binding obligations in the sphere of migration. The UN "treaty event", where states were encouraged to sign international treaties and conventions (and to address existing reservations), was held in 2016 in parallel to the UN Summit and explicitly highlighted mobility in its title: "Towards the Promotion of the International Legal Framework on Human Mobility". But out of the seventy-nine accessions and ratifications only two were directly related to the migration/refugee complex, namely Guinea-Bissau's accession to the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. United Nations, *2016 Treaty Event: Towards the Promotion of the International Legal Framework on Human Mobility: Final Report* (19–23 September 2016), [https://treaties.un.org/doc/source/events/2016/final\\_report-2016.pdf](https://treaties.un.org/doc/source/events/2016/final_report-2016.pdf) (accessed 7 March 2017).

now being advanced by a follow-up initiative, the Platform on Disaster Displacement. The Migrants in Countries in Crisis Initiative (MICIC), founded in 2014 with a secretariat located within IOM, is developing "non-binding, voluntary principles, guidelines and effective practices for States and other stakeholders to better prepare for, respond to, and address the longer-term consequences of migrants caught in countries experiencing conflicts or natural disasters". The Solutions Alliance was also founded in 2014, with a secretariat at the Danish Refugee Council, to bring together humanitarian and development actors to prepare sustainable solutions for protracted refugee situations.

Alongside these specifically refugee- and migration-related processes, the issues are increasingly percolating into other policy areas too. For example, the Addis Ababa Action Agenda (4A) adopted at the Third International Conference on Financing for Development in July 2015 contains explicit migration-related targets. The Paris climate agreement of 12 December 2015 named protecting the rights of migrants as a central challenge and called for the establishment of a Task Force on Displacement. The World Humanitarian Summit in June 2016 addressed questions of displacement and asylum, while migration and forced displacement are also on the agenda of the G20 summit in summer 2017 and the International Labour Conference 2017 features labour migration as a priority.<sup>89</sup> More broadly, the European Commission maintains an ongoing interest in the issues, currently focussing on border security. It remains questionable whether the interplay and cross-connections between these different areas will lead to a further consolidation of the international migration regime – or instead to its fragmentation. It also remains open which of the perspectives – development, trade, economy, human rights or security – will rise to the top and come to define the future course of negotiations at the international level.

<sup>89</sup> ILO, *Agenda of the 106th Session of the International Labour Conference* (21 November 2016), [http://www.ilo.org/ilc/ILCSessions/106/reports/reports-to-the-conference/WCMS\\_535469/lang-en/index.htm](http://www.ilo.org/ilc/ILCSessions/106/reports/reports-to-the-conference/WCMS_535469/lang-en/index.htm) (accessed 7 March 2017).

# The Deficits of International Migration Cooperation

The existing international migration regime suffers a string of structural deficits that are particularly problematic from a development perspective. These include institutional fragmentation, a structural power imbalance between countries of origin and countries of destination, and a lack of normative standards. These deficits are interconnected – not separate – problems. The improvement of global migration governance is further hindered by the fact that many other policy areas influence the dynamics of cross-border movements.

## Institutional Fragmentation

As the preceding overview demonstrates, international migration cooperation operates within a multitude of parallel and overlapping institutions and consultative forums. While this existence of parallel memberships and mandates grants states flexibility in addressing individual migration-related challenges, it makes it harder to develop comprehensive solutions at the regional and global level.<sup>90</sup> Instead of supplying a clear framework for intergovernmental negotiations, this structure encourages “venue-shopping” in the sense that states are free to choose the institutional context that offers the best prospects of achieving one’s own political objectives.<sup>91</sup> Governments of affluent destination countries are particularly prone to pursue this strategy, seeking to tighten their control over migratory movements.<sup>92</sup> In practice this frequently leads to short-term security objectives overshadowing longer-term (and more sustainable) development perspectives. This is the principal reason for the global lack of coherent migration agendas that are coordinated between the various relevant institutions.

<sup>90</sup> Lavenex, “Regional Migration Governance” (see note 60), 457.

<sup>91</sup> The term “venue-shopping” was coined by Frank R. Baumgartner and Bryan D. Jones, in *Agendas and Instability in American Politics* (Chicago: Chicago University Press, 1993).

<sup>92</sup> Virginie Guiraudon, “European Integration and Migration Policy: Vertical Policy-making as Venue Shopping”, *Journal of Common Market Studies* 38, no. 2 (2000): 251–71; Sandra Lavenex, “Shifting Up and Out: The Foreign Policy of European Immigration Control”, *West European Politics* 29, no. 2 (2006): 329–50.

## Persistent Imbalance of Power

The institutional fragmentation of migration cooperation reflects both the incremental evolution of governance structures and the imbalance of power between countries of origin and countries of destination. The power relationship is revealed where industrialised countries tie issues together in ways that extract a high price if a developing country violates their migration interests, for example by linking trade agreements to migration constraints.<sup>93</sup> Another expression of the power imbalance is arrangements that make development aid conditional on curbing migration, which development actors frequently criticise.<sup>94</sup>

In the past, informal and opaque consultation processes at regional level in particular have enabled industrialised countries to assert their migration interests.<sup>95</sup> Whether the destination countries are interested in international arrangements depends on how controversial labour immigration is domestically and whether trade unions and other organisations press for observance of international norms. Numerous examples can be found where proposals for international regimes to facilitate labour migration – such as free trade arrangements with a freedom of movement component – encounter resistance from those who fear a loss of income and opportunities for the existing population. Against this background, restrictive tendencies often gain the upper hand, because the potential macroeconomic gains of migration are

<sup>93</sup> Flavia Jurje and Sandra Lavenex, “Trade Agreements as Venues for Market Power Europe? The Case of Immigration Policy”, *Journal of Common Market Studies* 52, no. 2 (2014): 320–36.

<sup>94</sup> Stephan Dünnwald, “Remote Control? Europäisches Migrationsmanagement in Mauretanien und Mali”, *Movements: Journal für kritische Migrations- und Grenzregimeforschung*, (January 2015): 1–32, <http://movements-journal.org/issues/01.grenzregime/08.duennwald-remote-control-mali-mauretanien.html> (accessed 7 March 2017).

<sup>95</sup> Jobst Köhler, “What Government Networks Do in the Field of Migration: An Analysis of Selected Regional Consultative Processes”, in *Migration, Nation States and International Cooperation*, ed. Randall Hansen, Jobst Koehler and Jeannette Money (New York, 2011), 100–127; Patrick A. Taran, “Human Rights of Migrants: Challenges of the New Decade”, *International Migration* 38, no. 6 (2001): 7–51 (25ff.).

experienced less directly than the individual losses to autochthonous workers facing pay cuts or unemployment.<sup>96</sup>

But the distribution of bargaining power can change too. In the context of European efforts to persuade African states to tighten control over migration, we have observed the governments of countries of origin and transit leveraging the EU's fixation on border security to their advantage. If enough pressure is applied, countries of origin may be able to ensure the enforcement of international agreements on labour migration, as was the case with regard to the Global Code of Practice on the International Recruitment of Health Personnel, which the World Health Organisation adopted in 2010 at the demand of countries of origin.<sup>97</sup>

### Lack of Normative Framework

The negative impacts of fragmentation and power imbalance are further exacerbated by the lack of normative standards. International consultation processes are – as described above – frequently kept deliberately informal and avoid seeking normative limits to the interest-driven negotiation of bilateral and multilateral migration agreements. UNHCR's internationally binding mandate applies only to asylum-seekers and refugees, while the work of IOM is not based on a human rights mandate anchored in international law. As described, there are of course international legal principles that are relevant to the protection of migrants, including both general human rights instruments and the ILO and UN conventions on protection of migrant workers. Yet the conventions have little influence on the actual practice of international migration policy, as they have only been ratified by a small group of states, most of them countries of origin. Moreover, the origins of the conventions lie in the era of labour recruitment beginning in the 1950s, and often fail to adequately address the modern realities of mixed and irregular migration.<sup>98</sup>

<sup>96</sup> Koslowski, "Global Mobility and the Quest for an International Migration Regime" (see note 44), 108.

<sup>97</sup> Steffen Angenendt, Michael Clemens and Meiko Merda, *The HO Global Code of Practice – A Useful Guide for Recruiting Health Care Professionals?* SWP Comments 2014/C22 (Berlin: Stiftung Wissenschaft und Politik, May 2014).

<sup>98</sup> Antoine Pécoud and Paul de Guchteneire (UNESCO), *Migration, Human Rights and the United Nations: An Investigation into the Low Ratification Record of the UN Migrant Workers Convention*, *Global*

Over the past decade forums like the GFMD have generated a broad consensus on issues like ethical recruitment practices, transferability of social insurance entitlements and improving terms for remittances. This has gone hand in hand with an acknowledgement of the need to further strengthen the labour and social rights of migrants – especially with respect to family unification and residence status. One possibility would be to reinforce binding multilateral arrangements like the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. Another – possibly preferable – option would involve concentrating on the implementation of existing norms and standards and pursuing pragmatic "soft law" approaches such as proposed in the Nansen Initiative's MICIC project. Certain challenges, such as fair and ethical recruitment, can only be dealt with multilaterally, while in other areas – such as the issue of climate and migration – regional approaches combined with "soft law" elements are more promising ("mini-multilateralism"). Such approaches can pursue a medium- to long-term objective of achieving multilateral agreement and as such contribute to ending the fragmentation of migration policy.

Researchers point to the fact that there is as yet no separate legal framework for the protection and support of "survival migrants" or "crisis migrants", in the sense of those forced to leave their home country by poverty, natural disaster or lack of perspectives.<sup>99</sup> This further exacerbates the development risks inherent in the phenomenon of involuntary migration.

### Influence of Other Policy Areas

What makes it so difficult to establish an effective global migration regime is that migration policy is influenced by a multitude of other policy areas. In the literature this phenomenon is referred to as "overlap-

*Migration Perspectives 3* (Geneva: Global Commission on International Migration 2004); *Migration in an Interconnected World: New Directions for Action*, ed. Global Commission on International Migration (Geneva, 2005); Judy Fudge, "Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers", *Comparative Labor Law and Policy Journal* 34, no. 1 (2012): 95–132.

<sup>99</sup> Susan Martin, Sanjula Weerasinghe and Abbie Taylor, "Crisis Migration", *Brown Journal of World Affairs* 20, no. 1 (2013): 123–37 (123); Alexander Betts, "Survival Migration: A New Protection Framework", *Global Governance* 16, no. 3 (2010): 361–82; Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement* (Ithaca and London, 2013).

ping regimes”.<sup>100</sup> So there are for example interdependencies between the global refugee protection regime and the international agreements on human rights, labour migration, humanitarian assistance and security.<sup>101</sup> The environment for labour migration is in turn influenced by trade regimes, human rights, labour regulations and criminal law.<sup>102</sup> Conversely, this places tight limits on the effectiveness of migration policy in the narrow sense. Focusing solely on border controls is not sufficient for influencing migratory movements in the long run. Conditions in countries of origin and destination are just as important – and these are influenced by trade policy, agricultural and fisheries policy, environmental policy, and security policy.<sup>103</sup>

In the absence of a coherent overall approach this leads to a situation where development efforts aiming to create perspectives on the ground and thus reduce migration pressure are contradicted by activities in other policy areas. EU trade and fisheries policy supplies one negative example that has come in for sustained criticism: The EU’s fisheries policy and trade agreements with African states have generated migration push factors by depleting African fishery stocks, making local agricultural and consumer goods uncompetitive, and destroying employment opportunities and livelihoods. Involuntary migratory movements are often another symptom of such mistaken economic and trade policies.

In summary, many of the current global governance deficits are problematic from a development perspective. The lack of binding rights for migrants means that yardsticks for the substance of migration policy are lacking. Intergovernmental negotiations restricted to selected issues where it is easiest to achieve political agreement contribute little to solving the

wider problems.<sup>104</sup> Only if the difficult questions are tackled systematically and with an eye to a coherent overall approach will it be possible to substantially improve international migration cooperation and adapt it to the needs of all relevant actors. Against the background of these challenges, the question now is what model of global migration governance would be desirable from a development perspective.

**100** G. Kristin Rosendal, “Impacts of Overlapping International Regimes: The Case of Biodiversity”, *Global Governance* 7, no. 1 (2001): 95–117.

**101** Alexander Betts, “The Refugee Regime Complex”, *Refugee Survey Quarterly* 29, no. 1 (2010): 12–37 (22).

**102** Fudge, “Precarious Migrant Status and Precarious Employment” (see note 98), 95; Chantal Thomas, “Convergences and Divergences in International Legal Norms on Migrant Labor”, *Comparative Labour Law and Policy Journal* 32 (2011): 405–41.

**103** Amy Hong and Anna Knoll, “Strengthening the Migration-Development Nexus through Improved Policy and Institutional Coherence”, Background Paper for the KNOMAD Workshop on Policy and Institutional Coherence, Paris: OECD Conference Centre, 4/5 December 2013 (2014), 37–40.

**104** Wies Maas and Khalid Koser, *Towards Global Governance of International Migration: 15 Years of Intergovernmental Recommendations and Conclusions: A State of the Art Review* (The Hague, 2011).

## Perspectives for Global Migration Governance

At the present time, efforts are under way to consolidate international refugee and migration cooperation and to join up existing processes both substantively and institutionally. This opens a window of opportunity for deeper reforms. In fact the international migration regime could potentially advance from laggard to forerunner of international cooperation.

It is above all the 2030 Agenda for Sustainable Development, adopted by the UN General Assembly in 2015, and the United Nations Summit for Refugees and Migrants in September 2016 that have injected new life into international cooperation on refugee and migration policy. The planned global compacts on refugees and migration offer good starting points for improvements. These developments can be expected to impact on the division of responsibilities between UNHCR, IOM and ILO, and to add to the political weight of the existing intergovernmental consultative forums, especially GFMD and the High Level Dialogue. So global migration governance looks set to gain growing momentum in the coming years.

The upcoming modifications to global refugee and migration governance involve both the legal norms and the shape of the institutional structures. While UNHCR's responsibility for the refugee compact is uncontested and there is no debate over its central, normative role in international refugee protection, the planned migration compact will be associated with significant changes. The final declaration of the UN Summit accords both IOM and the UN Secretariat a role in supporting the compact's drafting, with contributions from relevant UN agencies and civil society actors flowing into the process.

This approach represented a pragmatic compromise to get talks on the migration compact started and secure the participation of relevant actors. Questions regarding how exactly the tasks will be distributed after the compact has been negotiated and which actors will lead its implementation and monitoring remain undecided – yet will be decisive for the future shape and efficacy of global migration governance, and are as such also politically relevant for Germany. What is needed from a development perspective is a normative and institutional reordering of global

migration policy, to put it in a position to fulfil at least five tasks:

- ▶ (1) To enable a fair reconciliation of interests between countries of origin, transit and destination;
- ▶ (2) To ensure rights-based policies that protect the fundamental rights of migrants and refugees, prevent discrimination against them, and permit their economic and social participation;
- ▶ (3) To define minimum standards for migrations and integration – for example in the areas of recruitment and family unification – and to provide structures to monitor observance of same;
- ▶ (4) To promote safe pathways for refugees and migrants to reduce irregular movements;
- ▶ (5) To offer a framework for local integration and reintegration.

In the following we outline three possible options for developing global migration governance in that direction: firstly, a consolidation of the existing structure with a strengthening of regional processes; secondly, a comprehensive reform of IOM; and thirdly an add-on to the existing structures by establishing a viable migration secretariat. Each has its own advantages and drawbacks.

### Option 1: Consolidation and Regionalisation

The first option would be to consolidate the present structures, while improving regional capacities. This would continue the road already taken by the UN General Assembly in September 2016, when it granted IOM the status of a “related agency” without giving it a normative mandate. This upgraded IOM and granted it access to the UN negotiating processes, which is relevant in particular for the drafting of the planned migration compact and the implementation of the SDGs. Its global presence makes IOM the best-placed organisation to tackle the operational challenges associated with the management of migration movements. In the course of the past fifteen years a functioning division of labour has emerged between UNHCR and IOM, which already complement one another in many crisis situations. And finally, IOM is

predestined to strengthen regional processes, as it already functions as the secretariat for a string of regional consultative processes and could further advance the expansion of these structures. The advantage of regional approaches is their confidence-building effect; and agreeing on common standards is easier at the regional level than at the global. Moreover, in the regional context it is frequently possible to achieve cooperation gains – for example in the form of regional freedom of movement – that are impossible at global level.

At first glance retaining today's global migration architecture and further strengthening regional processes would appear less conflictual than a sweeping reform. Yet keeping the existing structure would actually involve considerable risks. IOM is in no position to mediate effectively between the interests of countries of origin and destination, as it lacks both the normative foundation and the requisite financial autonomy. That problem will only worsen if the status quo is preserved. Only a global governance framework capable of setting minimum standards and defining responsibilities can effectively tackle the challenges created by mixed migratory movements – as well as by the changing patterns associated with new phenomena such as climate-driven migration and growing temporary and circular migration.

The SDG target of maximising the positive development impacts of migration is also relevant. Meeting it will require a coherent and internationally coordinated approach that orientates migration policy more strongly on development needs (and as such contributes to fighting the causes of refugee flows).<sup>105</sup> Bilateral and regional coordination processes encounter limits here. They are undoubtedly important components in any reform of global migration governance, but in the absence of a global framework will remain inadequate.

## Option 2: Reform and Expand IOM – “IOM 2.0”

A second option would be a comprehensive reform of IOM to turn it into a true “global migration organisation”. It would have to fulfil at least four basic functions: (1) to accumulate and process expertise, above

<sup>105</sup> Steffen Angenendt and Anne Koch, “Fluchtursachenbekämpfung: Ein entwicklungspolitisches Mantra ohne Inhalt?”, in *Ausblick 2016: Begriffe und Realitäten internationaler Politik*, ed. Volker Perthes (Berlin: Stiftung Wissenschaft und Politik, January 2016), 41–44.

all by gathering and analysing migration-related data and conducting its own research; (2) to document, compare and evaluate migration policies at the level of individual states, as well as regionally and globally; (3) to supply migration-related services on behalf of member states and UN agencies; and (4) to provide strategic planning and prioritisation for global migration policy, including early warning of migration risks and deficits in migrant protections. The agency would need to be guided by a normative mandate, by a “mission statement” defining which tasks it takes on and which it does not.

In its present form IOM cannot satisfy such requirements. For one thing, it possesses no mandate under international law; for another it is constrained by a project-based funding structure that forces it to pursue permanent – and often uncritical – funding acquisition. If IOM were to be expanded into a global migration organisation it would therefore need a rights-based mandate that permitted it to address the existing gap in migrant protections. And it would require secure basic funding to make it immune to short-term national interests. The example of evaluation illustrates the importance of this. Despite decades of project experience there is still a lack of understanding of the conditions for successful reintegration, because the states interested in enforcing returns are often not interested in funding evaluations. A financially independent IOM would be able to plan for the longer term and become a driving force for a new sustainable migration policy.

But addressing these issues would create tensions between the operational and normative functions of an “IOM 2.0”. The usefulness of concentrating all migration-related questions in a single global agency is also questionable, as the issue touches on many areas where other UN agencies possess a long track record of expertise, for example in relation to development (UNDP), labour (ILO), human rights (OHCHR), demographics (UNFPA) and environment (UNEP). If the issue is dealt with by a single agency acting in isolation, there is a risk that important aspects will be neglected, or even counterproductive outcomes produced.

### Option 3: Establish a Viable UN Migration Secretariat

The third option would be to establish a viable, permanent UN migration secretariat. The parallels to other policy areas such as climate protection are obvious. While initially charged with supporting and coordinating the intergovernmental talks on a Framework Convention on Climate Change, the focus of the work of the UN Climate Change Secretariat has shifted in the interim. Now it concentrates on providing technical expertise to assist the signatories in implementing the convention. Comparable tasks will be on the agenda when it comes to implementing the migration-related SDGs and negotiating and implementing the planned global migration compact. A comparable UN migration secretariat will therefore need powers that go beyond mere process coordination and instead prioritise monitoring and technical support.

The secretariat could be created from scratch or assembled out of existing structures. One obvious starting point would be the Global Migration Group (GMG), which was in fact originally set up to improve coordination of the UN's migration-related activities. To date, however, it has – not least on account of its inadequate resourcing and the conflicts of interest between the participating UN agencies – only been able to provide limited support for reciprocal exchange between the UN agencies. The model's advantage would be that the GMG already brings together most of the UN institutions dealing with questions of migration. One alternative would be to upgrade and formalise the Global Forum on Migration and Development. In his March 2017 report on the future of international cooperation in the sphere of migration, then UN Special Representative for International Migration Peter Sutherland proposed expanding the role of GFMD in the evaluation of state migration policy and establishing a permanent GFMD secretariat for that purpose. Here it should be noted that the forum's present informal character represents added value, as it offers states a confidential venue to discuss controversial issues. One variant on these models might be to use the World Bank's expertise platform KNOMAD to support the work of a future migration secretariat. KNOMAD could supply the knowledge required for the work of the secretariat and conduct accompanying evaluations of the implementation of the SDGs and the Global Migration Compact. This variant would involve strengthening KNOMAD's structures and finances.

Regardless of the specific institutional details, the secretariat model would offer a number of advantages over the option of concentrating all migration issues in a single organisation. A secretariat would have direct recourse to the expertise of all the relevant UN actors, and it would be in a position to operate as an "honest broker" offering a forum where countries of origin, transit and destination could negotiate as equals – for example on the details and implementation of mobility partnerships, labour migration agreements and transnational training partnerships. Such a structure would enable migration and refugee issues to be anchored as cross-cutting issues in all aspects of the UN's work. Finally, the secretariat model could represent an inclusive approach creating openings to bring in civil society and the private sector.

Like the first two, this option also has a number of drawbacks. In view of the size and operational capacities of IOM there is a danger of duplicating structures and creating rivalry between two migration-specific organisations. This problem could be defused by having IOM concentrate on its role as an implementing organisation, without having to bear responsibility for policy formulation at the same time. Generally speaking, a secretariat would only be productive from the development angle if the new organisation – again analogously to the international Climate Change Secretariat – also became the guardian of an ambitious global migration compact.

## Consequences for German Politics

Germany has come to be regarded as a major player in international refugee and migration policy, not least on account of its acceptance of a large number of refugees in 2015/2015. That decision drew criticism from many other EU governments but was viewed as exemplary by governments in other parts of the world – and by civil society actors worldwide. This new prominence also means that the German government has to position itself with regard to fundamental questions of refugee and migration policy – and is expected to take the lead in some of these areas.

The German government has already responded by stepping up its participation in relevant international processes: a leading role in European refugee policy and in cooperation with African states in the context of the Valetta and Khartoum processes; 2017/2018 co-chair of GFMD with Morocco; and support for IOM's new Global Migration Data Analysis Centre (GMDAC) in Berlin. This level of visibility and the associated expectations of German politics can be expected to endure. They could even intensify in connection with the process of implementing the SDGs and preparing the global and migration compacts.

Not all states agree on the need to modify global governance structures in this field. The experience of cooperation to date demonstrates how cautious states are to relinquish real or supposed powers of decision-making and intervention in migration policy. This reserve will in all likelihood continue to apply in future cooperation – especially given that it is anything but clear what line central actors like the United States will take on multilateral structures in refugee and migration policy. In fact, the power of the state is often an illusion, because today many areas of migration policy are influenced more strongly by economic and political globalisation and regional integration processes than by the policies of individual states.

The SDG process and the global compacts on refugees and migration open up new vistas for global migration governance. The latest developments offer governments and civil society a hitherto unique opportunity to reshape future international cooperation. The blurring of traditional divisions countries of origin, transit and destination opens doors to new coalitions.

The German government should engage in this process by signing the migration-related ILO and UN conventions, and persuading European partners to do the same. A commitment to the ILO Multilateral Framework on Labour Migration and its application would also send a constructive message by furthering the international dissemination of a rights-based approach to labour migration. The GFMD – especially in the context of the German/Moroccan co-chair – could contribute to that process because its informal structure offers space for discussion of difficult and controversial questions. The forum could stimulate ideas for norm-setting and disseminate migration-related expertise. That means making the negotiations as inclusive as possible and systematically bringing in civil society and private-sector actors.

In institutional terms the German government should weigh up which of the outlined options offers the best framework for effective and development-promoting global migration governance. Whichever is chosen, it must be ensured that the new structure enables effective implementation and evaluation of the migration-related SDGs and the global compacts on refugees and migration that are currently under negotiation. Should a secretariat solution be chosen, Geneva would be an ideal location, with relevant expertise already present there in the form of IOM, ILO, UNHCR, UNDP and smaller initiatives on IDPs. If the UN were to seek a different host country, Germany could certainly offer its services.

## Abbreviations

ASEAN	Association of Southeast Asian Nations
EAC	East African Community
ECOWAS	Economic Community of West African States
GCIM	Global Commission on International Migration
GFMD	Global Forum on Migration and Development
GMDAC	Global Migration Data Analysis Centre
GMG	Global Migration Group
ICEM	Intergovernmental Committee for European Migration
ICM	Intergovernmental Committee for Migration
ICMPD	International Centre for Migration Policy Development
IDP	internally displaced person
ILO	International Labour Organisation
IOM	International Organisation for Migration
KNOMAD	Global Knowledge Partnership on Migration and Development
MERCOSUR	Mercado Común del Sur
MICIC	Migrants in Countries in Crisis Initiative
OAU	Organisation of African Unity
OECD	Organisation for Economic Cooperation and Development
OHCHR	Office of the United Nations High Commissioner for Human Rights
PICMME	Provisional Intergovernmental Committee for the Movement of Migrants from Europe
RCP	Regional Consultative Process
SADC	Southern African Development Community
SDG	Sustainable Development Goal
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFPA	United Nations Population Fund
UNHCR	United Nations High Commissioner for Refugees
UNWRA	United Nations Relief and Works Agency for Palestine Refugees
WHO	World Health Organisation