

Global Mobility Regimes: A Conceptual Framework

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To appear in Rey Koslowski, ed. *Global Mobility Regimes* (Palgrave Macmillan, 2011).

Introduction

Advances in transportation and communications technology increase the potential for international migration around the world. As international migration becomes less inhibited by physical or economic constraints and becomes more of a function of legal constraints imposed by states, it becomes an increasingly important issue in politics among states. As such, international migration is an issue area for possible international cooperation within international organizations or through the formation of less formal international regimes, initially defined by John Ruggie as “mutual expectations, rules and regulations, plans, organizational energies and financial commitments, which have been accepted by a group of states.”¹ An international refugee regime based on the 1951 UN Convention and 1967 Protocol on the Status of Refugees as well as the ongoing activities of the United Nations High Commissioner for Refugees (UNHCR) is well established.² In contrast, there is no international migration regime. If one follows the UN definition of international migration as referring to those who have lived outside of their country of nationality or birth for more than one year, there is relatively little international cooperation on international migration at the global level.

The limitations of international cooperation on migration on the global level have been well-surveyed in the project on the New International Regime for Orderly Movements of People (NIROMP) directed by Bimal Ghosh³ for the International Organization for Migration (IOM),

and the Migration Working Group convened in 2002 by former Assistant Secretary General Michael Doyle, whose report⁴ was then submitted to former UN Secretary General, Kofi Annan. Under the auspices of the International Labor Organization (ILO), the United Nations has long had conventions on the rights of migrant workers but they are undersubscribed by UN member states, especially by migration destination states. The International Organization for Migration (IOM) has expanded beyond its historic role in postwar repatriation of refugees toward a more general mission of migration management and has increased in membership but it is outside of the UN system and has largely been limited to service provision by member states on a project basis. Under the WTO's General Agreement on Trade in Services (GATS) some 100 member states have made commitments to temporary admission of foreign nationals who provide services but these commitments mostly involve business visitor visas that are generally limited to 90 days and intra-company transfers that range between two and five years and usually involve highly-skilled managers, engineers and professionals. Given the UN's one year threshold for defining international migration, it can be argued that commitments made under GATS provide a set of norms that are liberalizing policies toward migration, however, only that of the highly-skilled and only for "temporary" migration of up to five years in duration.

As policymakers have come to recognize that economic development in many migration origin countries is facilitated by migrant remittances and that destination countries increasingly look to immigrants to care for and financially support aging populations, academics and policy analysts alike have increasingly discussed the possible development of a migration regime at the global level in both positive and negative terms.⁵ Nevertheless, existing agreements do not involve significant commitments on the part of a majority of the world's states to accept labor migration. They do not add up to a regime facilitating the international movement of labor

similar to the international trade regime based on the General Agreement on Tariffs and Trade (GATT) and subsequently the World Trade Organization (WTO), to which cooperation on international migration has often been compared.⁶

If we think about international migration as a subset of all movements of people across international borders, the possibilities for cooperation among states expand. In contrast to the UN definition of migration, “global mobility” refers to movements of people across international borders for any length of time or purpose. In addition to the world’s estimated 214 million migrants,⁷ there are probably billions of border crossings each year by tourists, business people, students and cross-border commuters who travel internationally for stays of less than a year. One can only guess at the total because many entries of international travelers are not counted or, if they are, are not collected into international statistics. The total number of travelers would also include unauthorized border crossers whose entries are uncounted. As will be discussed in chapter 3 below, the total number of international travelers who pass through official border crossings of all UN member states could be counted but they are not, leaving us with rather incomplete estimates.

Given that contemporary migration often begins as tourism, study or temporary work abroad, global mobility is a more all-inclusive category for understanding the dynamics of international migration and the potential for its regulation by states. Expanding the issue area of consideration from international migration to global mobility also widens the scope of regime analysis to include international cooperation on international travel in general and the activities of the international organizations concerned with it.

A longstanding but somewhat latent international travel regime exists given that states have been cooperating with each other on passports and visa policy for close to a century. Such

cooperation enabled international travel, even in times of war and political tension, but has gone largely unnoticed by international relations analysts and migration scholars. The growth of international travel over the past few decades to billions of border crossings per year involved even more international cooperation and its institutionalization within international organizations. Cooperation on international travel may be closely related to cooperation on migration but it is not the same. Often, cooperation on international travel takes place in international organizations and international fora that do not deal with immigration and refugee policies (see Table 1.1) but may nevertheless have a significant impact on international migration and asylum-seeking. For the most part, cooperation on international travel has historically focused on facilitating cross-border movements of ever larger volumes of tourists and business people, however, the hijackings of the early 1970s and the suicidal/homicidal hijackings of September 11, 2001 brought security considerations to the fore of international cooperation in this issue area. As transnational organized crime and terrorism have raised security concerns within states, they have increasingly turned to international cooperation to secure international travel while maintaining levels of travel flows.

The politics of cooperation on international travel also differ fundamentally from the politics of cooperation on international labor migration and refugees. Major migration destination states may not be very interested in making commitments to multilateral cooperation to facilitate labor migration but these very same states may be inclined to join an international regime that facilitates the arrival of international travelers who do not come to work but rather to spend money on lodging, meals and leisure activities. While there may be no inherent reciprocity between states that send and receive labor migration, international tourism has as a different array of political constituencies that produce different political dynamics with respect to

international bargaining among states. Just as international travel is a part of the process of international migration, asylum seeking and refugee resettlement, international cooperation on travel and the politics surrounding that cooperation has significant consequences for migration and asylum.

Moreover, expanding the scope of international cooperation from cooperation on international migration to global mobility may even provide opportunities for linking cooperation on international travel to cooperation on international labor migration. Essentially, the “international regime for orderly migration” proposed by Bimal Ghosh⁸ and discussed below by Rudolph (Chapter 10) and Hollifield (Chapter 12) in particular, increased in value to many policymakers who, in the wake of the September 11, 2001 attacks, viewed the prospect of non-state actors acquiring and smuggling a nuclear or biological weapon of mass destruction into their country as one of greatest security threats they face.⁹ Before September 11th, the security threats posed by illegal migration and human smuggling were that of “disruptive movements of people”¹⁰ that could provoke immediate border security problems because the scale of such movements or adverse domestic political reactions to perceived governmental “loss of control” of borders. Now security threats may come from small groups, or even individuals, within larger legal and illegal flows of people across international borders. By increasing the share of international migration that is orderly, properly-documented, pre-screened and comes through ports of entry rather than around them, an international migration regime can help border authorities focus their limited resources on travelers and visitors that potentially pose the greatest security risks. Since the legislatures and publics of many major migration destination countries are very interested in maintaining global mobility in terms of business travel and tourism, while

at the same time increasing security, cooperation on secure international travel may also serve as a stepping stone toward broader cooperation on international migration in general.

Perhaps the best way of approaching the issue under consideration is to think in terms of a set of interacting global mobility regimes (as outlined in Table 1.1). There is an established international refugee regime, a latent but strengthening international travel regime and a non-existent but potential international labor migration regime. Although the issue areas of these three regimes overlap somewhat and this overlap can lead to misunderstandings and policymaking at cross purposes, potential issue linkages can also be leveraged for widening the scope of international cooperation in the quest of the illusive labor migration regime.

(“[Table 1.1 about here]”)

Given the extensive existing analysis of the international refugee regime, past examinations of international labor migration regime formation and discussions of linking international cooperation on refugees to cooperation on labor migration,¹¹ I will primarily focus this introductory chapter on the latent but strengthening international travel regime and its linkages to the labor migration non-regime. Likewise, this volume has a section of five chapters devoted the theme of securing international travel and a section of four chapters exploring the potential for labor migration regime formation but has only one chapter devoted to the international refugee regime. The scope of analysis is limited to multilateral cooperation among states at the global level. International migration regimes do exist at the regional level, for example, in Europe, but I have extensively analyzed European migration regimes elsewhere.¹² This analysis is also limited to state-to-state interactions and eschews extensive analysis of non-state actors and transnational relations, despite my criticism of state-centric international relations theory¹³ and advocacy of incorporating domestic politics and non-state actors in

understanding change in world politics.¹⁴This approach has been taken largely been taken in order to make the hard case of demonstrating state-to-state interaction and cooperation at the global level rather than describing the extensive international activities of non-state actors that are germane to governance of migration, travel and refugees at regional and global levels. This omission should not be interpreted as a position holding that non-state actors do not play significant roles in the global governance of migration but rather a limitation of the scope of analysis that it is hoped may someday be broadened with subsequent research by myself and others.

In the balance of this chapter, I will, first, offer explanations for why an international migration regime has not developed at the global level and suggest that cooperation on international travel differs. Second, I examine international cooperation to secure international travel, most notably cooperation on human smuggling and trafficking. Third, I assess the prospects for state leadership in the formation of an international travel regime. Finally, I give a brief overview of the remaining volume chapters and foreshadow some of my conclusions regarding the possibility of linking international cooperation on securing international travel to international cooperation on labor migration.

The Lack of International Cooperation on Migration

There has not been sufficient cooperation on international labor migration to produce and international migration regime primarily due to the structuring of economic and political interests. An international migration regime has not formed at the global level for at least three reasons: 1) migration destination states have no reason to join an international regime to facilitate labor migration; 2) there is no inherent reciprocity similar to that of international trade; 3) there

is no leadership from major migration destination states. These obstacles defy the best efforts of international organizations, international non-government organizations (INGOs) and migration origin states to promote cooperation and binding international commitments on labor migration. In contrast, the structure of economic and political interests within many states differs with respect to the international travel of tourists. Hence, obstacles to international cooperation on international migration may not be operative for cooperation on global mobility.

First, the fundamental obstacle to international cooperation on labor migration, as Ari Zolberg¹⁵ and James Hollifield¹⁶ have pointed out, is that migrant destination countries have little incentive to join such a regime because foreign labor, especially low-skilled labor, is in abundant supply. If labor shortages develop during periods of economic growth, states can get as much labor from abroad as they like with bilateral agreements or simply by opening labor markets to migrants while at the same time avoiding any commitments to keep labor markets open during economic downturns. A global migration regime that lifts state restrictions on international migration, much as the GATT reduced tariffs on international trade, may make sense in terms of increasing economic efficiency world-wide¹⁷ and insuring poorer migrant source countries' access to richer migrant destination country markets for the sake of international development and reducing global inequalities. For individual migration destination states, however, the additional economic gains of joining such an international regime are primarily realized by the migrants themselves and reduced labor costs due to migration are distributed across the economy as a whole. The broadly dispersed economic gains from reduced labor costs are concomitant with very concentrated wage competition experienced (or perceived) by certain native-born workers, who, in turn, are much more politically motivated against immigration than the broad population of consumers who enjoy lower prices for goods and services. Moreover, the broad

economic gains from immigration may be negligible in comparison to the non-economic costs of large-scale immigration on a migration destination country's security, society and culture. Such non-economic costs, whether real or just perceived, have domestic political consequences that make a policy of multilateral engagement on migration even more difficult for destination state policymakers to sell to skeptical publics than international free trade agreements.

The second reason for the lack of global cooperation on labor migration is that bargaining between states on labor migration is not inherently conditioned by reciprocity.¹⁸ In order to shore up support in favor of international bargains to reduce tariffs, politicians in favor of free trade agreements can argue that the gains in profits and growth of employment in export industries and agricultural sectors from opening up foreign markets make up for the loss in profits and jobs due to cheaper imports in other sectors of the economy. In contrast, workers in developed countries do not benefit much from gaining access to labor markets in migrant origin countries of the developing world. Politicians in developed countries who need the votes of workers threatened by the wage competition of migrants do not have a corresponding constituency akin to "exporters" and workers in export industries. Hence, international negotiations over the liberalization of immigration policies are not about realizing comparative advantage as in trade but rather primarily about the merits of advantages realized by migrant origin countries.

One potential point of reciprocity would be for migration destination states to agree to international commitments to legal labor migration in exchange for migrant origin states agreeing to stop their nationals from illegally migrating and working abroad. There are, however, often constitutional and human rights limitations to what many migrant origin states can do on this front, given that the freedom to leave one's country has been considered a

cornerstone of human rights, as prominently articulated by the US government in the Jackson-Vanik amendment to the 1974 Trade Act, which denied most favored nation trading status to countries that denied their citizens the right to emigrate. Migrant origin states could (and many do) cooperate with migration destination countries by agreeing to readmit their nationals who are apprehended while living and working illegally in another state as well as provide travel documents (if needed) to facilitate receiving state deportation of their nationals. Depending on the migrant origin state regime type, this may be politically difficult as illegal migrants working abroad may be sending home large financial remittances upon which the migrant origin state economy may depend. Even more poignantly, illegal migrants working abroad may be constituents and major political campaign contributors to the migrant origin state politicians who are supposed to enact readmission agreements that facilitate deportations of their nationals.

Thirdly, there is little leadership among migration destination states to propel international cooperation on labor migration forward. As Charles Kindleberger,¹⁹ Robert Gilpin²⁰ and Robert Keohane²¹ have argued, the postwar international monetary regime required the “hegemonic stability” provided by the US as a “lender of last resort,” and postwar expansions of free trade under the GATT depended upon a US tolerance of “free-riding” by states in Europe and East Asia that took advantage of US market openings to imports, but retained measures to protect their own markets.

(“[Table 2.2 about here]”)

The US has the largest migrant population in the world (see Table 2) but the US government has not demonstrated similar leadership with respect to fostering global cooperation in the area of labor migration nor has the US been among the states that have sponsored recent efforts such as the Berne Initiative and the Global Commission on International Migration

(GCIM). US based foundations, NGOs and American citizens working within international organizations may try to foster international cooperation on migration but this is no equivalent to the US government's convocation of states at Bretton Woods and its follow-up actions to support the International Monetary Fund, World Bank and the GATT.

Similarly, none of the top ten migration destination countries, which collectively host over half of the world's 214 million migrants (see Table 2), has taken up the cause of international commitments to liberalizing immigration policies. In January 2008, however, Labor Ministers of Afghanistan, Bahrain, Bangladesh, China, India, Indonesia, Kuwait, Malaysia, Nepal, Oman, Pakistan, the Philippines, Qatar, Saudi Arabia, Singapore, Sri Lanka, Thailand, United Arab Emirates, Vietnam and Yemen met in Abu Dhabi to constitute the "Ministerial Consultation on Overseas Employment and Contractual Labour for Countries of Origin and Destination in Asia." Inasmuch as Saudi Arabia, India and the Gulf states (collectively) are major migration destination countries, the "Abu Dhabi Dialogue" appears to be indicative of another potential source of leadership toward the formation of an international labor migration regime. The "Abu Dhabi Declaration of Asian Countries of Origin and Destination," however, was carefully worded to refer to "expatriate and contract labour" and "contractual labour mobility" not "migration" and there are no references to any multilateral commitments to keeping labor markets open to migrants or contract laborers.²²

For all of these reasons, there appears to be relatively little interest among UN member states, especially migration destination states, to expand the global legal and normative framework for migration policies despite the increasing number of international conferences on the subject. This was reflected, for example, in answers to a questionnaire posed to UN member

states in which only 47 favored convening a global conference on the issue while 26 opposed and 111 did not reply.²³

Such obstacles to international cooperation on labor migration may not necessarily apply to international cooperation on travel. As I will explain in more detail below in chapter 3, international cooperation to facilitate international travel reaches back to the League of Nations and the 1920 Paris Conference on Passports and Customs Formalities and Through Tickets. Although migration destination states have no reason to join an international regime to facilitate labor migration, these very same states may be very interested in joining a global regime that facilitates the arrival of foreigners who do not come to work but rather to spend money on lodging, meals and leisure activities. While there may be no inherent reciprocity between states that send and receive labor migration, international tourism has a different array of political constituencies that produce different political dynamics with respect to international bargaining among states. Moreover, major migration destination states are not providing the leadership necessary for the formation of an international regime to facilitate labor migration but some have clearly expressed the importance of international cooperation in securing international travel while maintaining cross-border travel flows.

International Cooperation on Border Controls to Secure International Travel

From a border security standpoint, the increasing number of travelers is a challenge to border control officials who attempt to identify dangerous individuals within the flows of legitimate travelers. This included the 19 hijackers who on September 11, 2001 attacked the World Trade Center and the Pentagon, 17 of whom entered on tourist visas, one on a business visa and one on a student visa. The 9/11 hijackers were not immigrants to the US. Most of

them were tourists. Contrary to the arguments of certain politicians and certain media outlets made after 9/11 that connected immigrants to terrorism (as well as the academic analysis of this linkage²⁴), migration is not the “new security issue;” it is increasing global mobility, which is primarily tourism and business travel.

In response to the Sept. 11th attacks, the US stiffened its border controls by demanding passenger name records of US-bound travelers as well as requiring all non-immigrant visa applicants to be interviewed at US consulates and submit facial and fingerprint biometrics at that time and then again when entering. Likewise, an increasing number of UN member states are adopting visa and border control policies similar to that of the US and they are joining into international cooperation to facilitate international travel while increasing its security. UN Security Council Resolution 1373 (2001) requires states to combat terrorist travel through improved border controls and measures to prevent travel document fraud. The UN Convention on Transnational Organized Crime’s “Protocol against Migrant Smuggling,” calls on states to strengthen border controls and intensify cooperation among border control agencies as well as ensure the integrity of their travel documents upon which other states depend to establish the identity (and therefore help gauge the risk) of an international traveler. ICAO member states have agreed to issue travel documents with biometrics on Radio Frequency Identification (RFID) chips and agreed to procedures on electronic submission of advanced passenger information and the sharing of passenger name record data. A growing number of states are increasingly sharing data on lost and stolen passports through programs sponsored by INTERPOL. The US and the EU adoption of the Electronic Travel Authority (ETA) system, first developed by Australian authorities to collect passport data from inbound travelers who have not applied for a visa, may signal the next international trend in border security that will require additional international

coordination and cooperation. Such international cooperation on border controls can be considered critical features of a somewhat latent but strengthening international travel regime. While the international travel regime had largely been devoted to travel facilitation; in the wake of the September 11, 2001 attacks international cooperation has increasingly focused on cooperation to secure travel, as extensively detailed in part two of this volume.

Although the post-September 11, 2001 counter-terrorism agenda led many states to step up their efforts to secure international travel, much of the international cooperation on border controls was initially undertaken to combat illegal migration, human smuggling and human trafficking. Illegal migration can be the result of individuals entering states through authorized ports of entry by fraud or concealment within conveyances, crossing states' borders without authorization between ports of entry or entering through ports of entry with appropriate authorization and/or a visa but then overstaying the terms of entry. Human smuggling involves unauthorized border crossings facilitated by paid smugglers. International human trafficking occurs when an individual who has been smuggled across a border is coerced, especially into forced labor or prostitution.²⁵ As the declining travel costs reduced the geographical barriers to international travel, visa applications and border controls imposed by states became the primary barrier to entry. As increasing numbers of individuals attempted to enter destination countries without authorization in the 1980s and 1990s, these states tightened their visa and border control policies as well as increased the staffing, funding and legal authority of border guards. States can unilaterally address the problem of individuals overstaying their visas with stepped up worksite and internal law enforcement. In contrast, reducing clandestine migration between ports of entry and smuggling through them are much more difficult without international

cooperation. Therefore, cooperation among states on illegal migration, smuggling and trafficking has developed to a considerable extent at the global level.

States endeavor to reduce clandestine entries between ports of entry as well as unauthorized entries through concealment in conveyances or through document fraud at ports of entry by increasing the number of border control officers, supplying them with better technology and changing laws and regulations to enable more aggressive pursuit of clandestine border crossers as well as to turn back those individuals suspected of identity and document fraud. The challenge faced by states on this front is much greater than those posed by visa overstaying because unauthorized border crossers are able to purchase the assistance of professional smugglers and it is extremely difficult to combat human smuggling without international cooperation.

As migration destination countries tightened border controls during the 1990s, an increasing percentage of illegal migrants and asylum seekers paid human smugglers for assistance to circumvent border controls or pass through them using fraudulent travel documents. Moreover, many of those who thought they were simply being smuggled found themselves coerced into forced labor and prostitution. The increase in human smuggling and trafficking was a dark side of the rapid growth of international travel during the 1990s and it called into question measures taken to facilitate international travel and promote development through international tourism, a small percentage of which became international travel undertaken in order to purchase relatively inexpensive sex with women and children who had been trafficked.

In response, policymakers from the major migration destination countries such as US, Germany, Canada, Australia, the UK, France, Italy and Austria became increasingly concerned with the trafficking in persons, particularly women and children into forced prostitution. Given

that measures taken by states to tighten border controls did not necessarily stem the flows of illegal migrants due to increasing sophisticated smuggling techniques, migration destination countries increasingly viewed the smuggling of migrants across their borders as a security issue of “uncontrollable” borders.

Although such migration destination states have demonstrated little interest in joining an international regime to facilitate labor migration, these very same states were very active in efforts to foster international cooperation on human smuggling and trafficking. While there may be no inherent reciprocity between states that send and receive labor migration, UN member states, whether primarily countries of origin, destination or transit could agree on the evils of trafficking in women and children across international borders. Moreover, most UN member states have also come to recognize that they could not collectively combat human trafficking, in which individuals are coerced into forced prostitution and forced labor, if they did not also address human smuggling in which individuals simply pay smugglers to illegally cross international borders. States to which migrants were increasingly smuggled and trafficked also acknowledged that they cannot combat human smuggling and trafficking on a unilateral or even bilateral basis due to the fact that human smuggling often involves several transit countries and smugglers and migrants from more than two countries and, therefore, many of these states have embraced international cooperation on the regional and/or global level.

In December 1998, the UN General Assembly initiated an Ad Hoc Committee that was charged with drawing up a comprehensive international convention against transnational organized crime and in November 2000, the “UN Convention against Transnational Organized Crime,” as well as its “Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” and the “Protocol against the Smuggling of Migrants by Land,

Sea and Air” were adopted by the U.N. General Assembly. Once receiving a sufficient number of ratifications, the Convention went into effect September 29, 2003, the anti-trafficking protocol on December 25, 2003 and the anti-smuggling protocol on January 28, 2004. As of June 2010, the anti-trafficking protocol had 137 state parties and the anti-smuggling protocol had 123 state parties.²⁶

The objectives of the anti-trafficking protocol are to prevent and combat trafficking in persons as well as protect and assist the victims of such trafficking. The objectives of the human smuggling protocol are twofold - establishing the smuggling of migrants as a criminal offense and facilitating cooperation in the prevention, investigation and prosecution of the crime of smuggling migrants. In order to meet those objectives, the two protocols provide rules for interdicting and boarding ships suspected of carrying illegal migrants, approves of state use of carrier sanctions, encourages information programs directed at the customers of traffickers and smugglers as well as information exchanges between states that enable more effective law enforcement. The protocol also calls on states to strengthen border controls and intensify cooperation among border control agencies by establishing and maintaining direct lines of communication, ensuring the integrity of travel documents that they issue and respond to requests to verify the validity of those documents.²⁷

Not only are there limitations on what states can do by themselves to identify and apprehend unauthorized border crossers, states also encounter new challenges when they successfully apprehend unauthorized border crossers and visa overstayers, especially in high numbers. That is, destination states may encounter difficulties returning such individuals without the cooperation of their origin countries, especially if they no longer have valid passports or other travel documents. In some cases, origin countries have opted not to acknowledge the

nationality of failed asylum seekers and apprehended illegal migrants and have failed to supply travel documents necessary for an orderly return of these individuals. Many destination countries have, therefore, negotiated bilateral readmission agreements with origin countries to facilitate the voluntary return of those who were never authorized to enter or had lost their authorization to remain in the destination country.

Except for the commitments of states that have signed and ratified the UN Refugee Convention to not return individuals who have a well-founded fear of persecution, there are no international norms or multilateral agreements on readmission at the global level. Nevertheless the international cooperation that has enabled the IOM to grow in terms of state membership, budget, staffing and activities has produced an international organization that facilitates readmission by helping states with its practicalities. The IOM offers Assisted Voluntary Return (AVR) services to states and individuals that provide “pre-departure, transportation and post-arrival assistance to unsuccessful asylum seekers, migrants in an irregular situation, migrants stranded in transit, stranded students and other persons under similar circumstances....The assistance typically provides information, referral, arrangement of travel to the home location and limited support towards reinsertion.”²⁸ On its website, the IOM lists 128 Assisted Voluntary Return projects involving destination countries such as the US, Australia, Mexico, Switzerland, Norway and a majority of EU member states, including Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Romania, Slovenia, Spain, Sweden and the UK.²⁹

The prospect of terrorists being smuggled into target states was considered as a potential threat in some law enforcement circles but it was not until after the Sept. 11, 2001 attacks in New York and Washington and the Mar. 11, 2003 attacks in Madrid that human smuggling was

viewed as a security threat in a qualitatively different way. For example, it became clear that terrorists could take clandestine routes that transnational criminal organizations use to smuggle illegal migrants into the US. The 9/11 Commission staff detailed linkages between human smugglers and Al-Qaeda and other terrorist groups in need of travel facilitation³⁰ Investigations into the Madrid bombing produced reports demonstrating that Ansar al-Islam, an al Qaeda-affiliated group linked to the attack, had been running a human smuggling and document fraud operation to fund terrorist actions as well as to smuggle its own members into countries like Spain and Iraq.³¹ As intelligence screening and visa security is tightened in order to stop terrorists from entering legally with valid visas, the threat of clandestine entry of terrorists using smuggling organizations will increase and so will the security imperatives of the international cooperation to combat human smuggling.

Within weeks of the September 11, 2001 attacks, the UN Security Council “Acting under Chapter VII of the Charter of the United Nations,” issued resolution 1373 (2001) on threats to international peace and security caused by terrorist acts that included a provision that “all States shall:…Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents.”³² The Security Council established a Counter-Terrorism Committee Executive Directorate (CTED) in 2004 to strengthen and coordinate the process of monitoring the implementation of resolution 1373 (2001). CTED has five technical groups, one of which is responsible for “border control, arms trafficking and law enforcement” and this technical group, working with international organizations such as ICAO, INTERPOL, the International Maritime Organization and the World Customs Organization, identifies border security best practices, conduct assessments of

UN member state implementation of resolution 1373 and facilitates the provision of technical assistance by serving as an intermediary in matching donors to those states in need of capacity building in this area. Given that UN member states are under the obligations of Chapter VII of the UN Charter, the CTED has authority for information requests and site visits in conjunction of CTED assessments of member state progress in implementing the resolution.

Regime Formation and State Leadership

Given that international travel cooperation stretches back to the League of Nations, one can say that the international travel regime is older than the refugee regime. Nevertheless, the international travel regime has gone unnoticed because it has been rather latent until the recent burst of state activity in using its organization frameworks to bolster travel security. By providing legal instruments for law enforcement cooperation on border controls, the UN Transnational Crime Convention's "Protocol against the Smuggling of Migrants by Land, Sea and Air" provides a set of norms and principles that are constitutive of this strengthening international travel regime. By convening regional meetings devoted to facilitating international cooperation to realize the objectives of the protocols against trafficking and smuggling, the IOM is playing a critical role in fostering regime formation, at least on the regional level. By assisting states with voluntary return, the IOM is also helping states border control efforts directed at illegal migration and human smuggling. To the extent that these state efforts and corresponding international cooperation enables states to maintain "control over their borders" (or at least the perception of control among the publics of destination countries) they foster political dynamics in favor maintaining liberal visa policies and international cooperation to

facilitate international travel, in effect, the other main objectives of the international travel regime.

Although international norms and regulations governing international travel may have a direct bearing on international migration and have a long history, cooperation on international travel takes place within international organizations and fora along with regulatory actions of certain international organizations that are not always considered as international cooperation on migration, per se. Such international cooperation on border control shapes the processes of international migration but is not international cooperation on migration policy. Border control encompasses state exercise of control over all cross-border movements of conveyances, goods, people and other organisms. International cooperation on border control takes place in UN organs and international organizations such as the UN Security Council, ICAO, the International Maritime Organization (IMO), the World Customs Organization (WCO), INTERPOL and the World Health Organization (WHO). These forms of international cooperation on border controls and the international organizations within which cooperation on border controls takes place have not generally been included in recent discussions international cooperation on international migration, which tends to focus more exclusively on immigration, refugee and development policymaking and primarily involves international organization officials and state representatives from foreign ministries with portfolios in these areas. Hence, well-established international organizations and international fora have become focal points for increased international cooperation on travel.

Further institutionalization of an international travel regime will most likely require hegemonic stability with a leader that will facilitate standardization of secure travel documents and biometrics, pay the initial development costs of new border control technologies, initiate

deployments of new documents and systems, underwrite the institutionalization of international law enforcement cooperation and be willing to extend foreign assistance to states that may wish to participate in such regimes but do not have the requisite border control capabilities. At the same time, the hegemonic leader must maintain international mobility by keeping its own ports of entry open to legitimate travelers and migrants and spending additional resources to ensure that new security requirements and technologies do not significantly slow legitimate travel flows. If the resulting cooperation on border security significantly impairs the ability of those with a well-founded fear of persecution to get asylum or be protected, the hegemonic leader would also need to spearhead increased cooperation to provide asylum and protection in place.

Given all of the post-Sept. 11th border security initiatives and transatlantic cooperation described above, it appears that the US government is committed to international leadership on border security, however, it is not clear that the US is properly equipped to do so, or that the President and the US Congress is politically willing to change that. The US has taken a leadership role in standardizing requirements for travel documents and biometrics in ICAO but it has been slow to implement systems that impose new biometric requirements on its own citizens, or even that of its neighbor, Canada. Although the US Congress has passed legislation requiring an automated entry-exit system that collects facial and fingerprint biometrics of foreigners who travel to the US, it has not passed legislation requiring US citizens who leave or enter the country to be enrolled in the system. The Bush administration was reluctant to request funding to fully implement border security measures at US ports of entry,³³ let alone underwrite a major expansion of international law enforcement institutions, and the Obama Administration has not changed these budgetary trajectories. The US Department of Homeland Security is often depicted in the international media as an overly large organization with a greatly expanding

budget and rapidly growing ranks of Border Patrol Agents. Although a total of 80,329 Department of Homeland Security employees³⁴ are devoted to border security and immigration (with 58,575 employees in Customs and Border Protection; 20,876 in Immigration and Customs Enforcement and 10,878 in US Citizenship and Immigration Services), this number pales in comparison to the 400,000 border guards of the 27 EU member states.³⁵

If domestic politics and budgetary priorities constrain the US government from providing leadership necessary to institutionalize the international travel regime in order to better secure international travel on a global basis, the EU could potentially fill the role, especially given that the EU has extensive experience in the institutionalization of international law enforcement, cooperation on border controls and building border security capacity in the new EU member states. While US lawmakers are skittish of proposing the establishment of a national ID card, let alone one with embedded biometrics, many European societies are very accustomed to ID cards, some of which have included fingerprints for some time now. Moreover, EU member states agreed to include fingerprints in their e-passports whereas US policymakers have not even broached this topic. Not only does the EU collectively have much more border control officers than does the US, as internal borders with new member states have been lifted, many border control officers, particularly German officers, need new tasks. New European integrated border management arrangements and coordination through FRONEX have enabled some joint operations to patrol the EU's external borders, for example, to assist Spain in the Canary Islands, but some officers could be also detailed to broader international cooperation efforts focusing on terrorist travel and document security. Moreover, the European Commission surpassed US diplomacy on the Passenger Name Record issue when it opted for a global approach and led the international community by proposing a framework for cooperation in ICAO.

A third alternative would be transatlantic hegemonic leadership. That is, if the US, Canada and the EU could each agree to lead on issues where they are best able and the others follow that lead in turn, one could imagine a core group of states that push the agenda of international cooperation on global mobility as well as support it through exemplary implementations, financial contributions and political muscle. This scenario may offer the greatest possibility for regime formation but it is also the most diplomatically complex and would require that the domestic constituencies of a relatively large number of states do not resist either of the two steps of such international cooperation. Moreover, such transatlantic agenda setting offers little to those states outside the core group and could prompt significant diplomatic resistance from the rest of the world should transatlantic hegemonic leadership actually take shape.

Volume Chapters

In light of the broadened approach of considering the three interacting regimes (refugees, travel and labor migration), chapter contributors evaluate obstacles that have stood in the way of realizing an international labor migration regime and consider possible ways in which obstacles to more international cooperation on global mobility could be overcome, especially through linkages among these three issue areas. The volume is organized into three parts. Part one offers an overview of existing international cooperation on migration, travel and refugees and explores relationships among them. In chapter two, Susan Martin examines cooperation on migration among states within international organizations operating at the global level with an eye to evaluating the quality of that cooperation within and outside of the UN system. The chapter considers attempts within the United Nations to improve coordination, particularly through the

UN High Level Dialogue on Migration and Development and the formation of the Global Migration Group as well as the sequence of State-sponsored initiatives, from the Berne Initiative to the Global Forum on Migration and Development, to enhance cooperation, discussing the advantages and disadvantages of the approaches taken to date. In chapter three, I then turn to the international travel regime by examining the historical development of international cooperation to facilitate and secure international travel and the more recent broadening array of international fora involved. I consider the relationships between international travel, migration and asylum and specifically focuses on the politics of linkages between the increasingly robust international travel regime and international cooperation on labor migration as well as cooperation on asylum and refugees. In chapter four, Alexander Betts suggests that the refugee regime may initially appear relatively straightforward, comprising the 1951 Convention on the Status of Refugees and the Office of the United Nations High Commissioner for Refugees (UNHCR). He goes on to argue, however, that the refugee regime is inter-connected to and influenced by a range of other issue-areas, and focuses particularly on the historical emergence of issue-linkages between refugee protection and other aspects of human mobility during the last twenty years. Betts then analyses the effect that these issue-linkages have had on the politics of refugee protection and on the prospects for international cooperation in the refugee regime.

Part two of the volume turns to an aspect of the international travel regime that has recently come to the fore - increasing cooperation among states to secure international travel, particularly in the wake of the September 11, 2001 al Qaeda attacks on the United States. In chapter five, Jason Ackleson examines state-to-state cooperation to establish robust, coordinated border control systems and procedures that effectively screen out illicit transnational threats such as terrorists and criminals but also facilitate the swift entry of legitimate goods and people.

Ackleson uses the concept of risk to analyze key case studies of policy conflict and cooperation on border security matters between the US and Canada and the US and the EU and advances the argument that greater cooperation among states to secure global mobility may be fostered through the development of “security communities” and “sovereignty bargains.” Ackleson’s analysis is complemented by Mark Salter’s treatment of international cooperation on travel document security in chapter six. Salter examines the rise of the biometric passport; the debate over data sharing between the EU and the United States; the shape of a common visa regime and alternate kinds of travel documentation, including national identity cards and refugee status papers. He argues that within the international ‘space of flows,’ travel documents provide the structure of identity certification and authentication that make risk management possible and that functional international cooperation has had wide-ranging political effects. George Gavrilis turns our attention to the developing world in chapter seven as he examines border control assistance in states recovering from collapse and conflict. Given that weak borders are magnets for insurgents, terror groups, and smugglers, an array of international actors are bankrolling, training, or equipping border authorities of troubled states in the Balkans, the Horn of Africa, the Caucasus, Central Asia, Iraq and Afghanistan. After examining these programs and assessing their chances of achieving secure and open borders, Gavrilis argues that technocratic initiatives are more likely to create well-managed borders than those programs that focus on military and technology assistance. In chapter eight, Kamal Sadiq picks up on some of the issues and actors discussed by Salter and Gavrilis by considering the goal of developed states to develop a standardized and secure travel document and database regime to effectively regulate global mobility in light of the inability or unwillingness of developing states to cooperate in an international “documentary” regime that effectively regulates the mobility of their citizens.

Sadiq argues that the emergence of such a “documentary” regime in developing countries rests on a substantial enhancement of their weak “citizenship infrastructure,” effective control of corrosive illicit networks, and a harmonization of conflicting state goals. In chapter nine, Susan Ginsburg and Hiroyuki Tanaka bring the analysis back full circle to the UN as they demonstrate that efforts to secure international travel have taken place squarely within the UN, as evidenced by UN Security Council sanctions resolutions that impose travel bans to constrain terrorist travel. Ginsburg and Tanaka examine the legal basis and institutions set up to implement UN travel bans as well as the legal, procedural, implementation and political problems they face.

Part three of the volume examines international labor migration, explores various dimensions of international cooperation and evaluates the prospects for realizing an international labor migration regime. Drawing on international relations scholarship on regimes and institutions, in chapter ten, Christopher Rudolph draws lessons from the World Trade Organization (WTO) and argues that it is highly unlikely that a comprehensive, highly institutionalized migration regime similar to the WTO will be established anytime soon. He goes on to argue that gradually establishing a myriad of smaller regimes governing different aspects of mobility need not lack coherence if incremental institutionalization is accompanied by de-politicized dialogue. In chapter eleven, Philip Martin points out a dilemma confronting advocates of international cooperation to facilitate migration from developing to industrial countries. Since there are relatively few highly skilled workers, countries seeking them generally admit them with families and often lay out a clear path to settlement. Since there are far more low-skilled migrant workers, many countries restrict their rights to settle. Given that the international migrant rights regime does not make distinctions between high- and low-skilled migrant workers, equality of treatment can lead a trade-off between migrant rights and migrant

numbers at the low end of the labor market. With a negatively sloped demand for labor and with equal rights for migrants raising labor costs, more rights can mean a decreased demand for migrant workers. Martin illustrates this dilemma with debates during the WTO's GATS negotiations over whether migrant service providers must be paid minimum or equal wages in the countries in which they work. James Hollifield develops a public goods approach to labor migration in chapter twelve. By considering labor mobility in terms of an international public good, Hollifield sets out to understand how sending and receiving states shape and control labor flows for strategic gains, the relationship between trade and the mobility of labor and capital, the substitutability and complementarity of trade and migration, and how states can overcome free rider problems and externalities to cooperate in the regulation of migration and mobility. In chapter thirteen, Joseph Chamie and Barry Mirkin investigate why the United Nations has convened a variety of global conferences but it has not done so on international migration. Based on UN surveys of member state positions, Chamie and Mirkin argue that the wealthier labor-importing industrialized countries have consistently resisted convening a global conference on international migration. If such a conference were to be convened, they fear that the more numerous labor-exporting nations might succeed in having the United Nations adopt a program of action, similar to those adopted at the Cairo population conference, the Beijing women's conference and the Rio environment conference, that would set norms, establish principles and advocate recommendations concerning international migration. Given these political circumstances, Chamie and Mirkin argue that it is likely that United Nation member states will rely on high-level dialogues within the United Nations and non-binding global forums outside the organization as the primary mechanisms to address international migration.

Finally I conclude the volume by drawing out policy implications and assessing the prospects for international cooperation. I suggest that international cooperation on securing international travel can be linked to international cooperation on labor migration under the rubric of a General Agreement on Migration, Mobility and Security. While such linkage offers openings for cooperation between migration origin and destination states, there are many political obstacles to such grand bargains. Similar but more focused linkages on smaller specific issues, such as reducing the cost of genuine passports while making travel document acquisition less susceptible to fraud, should have greater potential to be realized.

¹John Gerard Ruggie, "International Responses to Technology: Concepts and Trends," *International Organization*, 29, no 3 (1975):570; Later, a "consensus definition" by a group of leading international relations scholars emerged: "Regimes can be defined as sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors expectations converge in a given area of international relations. Principles are beliefs of fact, causation and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice" Stephen Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," in ed. Krasner, Stephen, *International Regimes* (Ithaca, NY: Cornell University Press, 1983).

²Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis*, (Oxford: Oxford University Press, 1993); Gil Loescher and Laila Monahan, *Refugees and International Relations* (Oxford and New York: Oxford University Press, 1989); Claudena Skran, "The International Refugee Regime: The Historical and Contemporary Context of International Responses to Asylum Problems," *Journal of Policy History*, 4, no. 1 (1992): 8-35; Laura Barnett, "Global Governance and the Evolution of the International Refugee Regime," *International Journal of Refugee Law*, 14, nos. 2-3 (2002):238-262; Jeff Crisp, "A new asylum paradigm? Globalization, migration and the uncertain future of the international refugee regime," (Working Paper no. 100, New Issues in Refugee Research, UNHCR, December, 2003)

³ Bimal Ghosh, ed., *Managing Migration: Time for a New International Regime* (Oxford: Oxford University Press, 2000).

⁴ United Nations Migration Working Group, “Background Report on Migration Prepared for the Senior Management Group,” Draft, United Nations, March 18, 2003.

⁵ See e.g. Bimal Ghosh, *Managing Migration*); Thomas Straubhaar, “Why do we Need a General Agreement on Movements of People (GAMP)?” in ed. Bimal Ghosh ed., *Managing Migration: Time for a New International Regime* (Oxford: Oxford University Press, 2000); Timothy J. Hatton, “Should we have a WTO for international migration?” *Economic Policy*, 22, no. 50, 2007; Reginald Appleyard, “International Migration Policies: 1950-2000,” *International Migration* 39 no.6 (2001): 7–20; Franck Düvell, “Globalisation of migration control. A tug-war between restrictionists and the human agency?” in ed Holger Henke, *Crossing Over: Comparing Recent Migration in Europe and the United States*. (New York: Lexington Books, 2005); Sadako Ogata and Johan Cels, “Human Security-Protecting and Empowering the People,” *Global Governance*, 9, 2003.

⁶ See Bimal Ghosh, *Managing Migration*; Thomas Straubhaar, *Why do we need a General Movement*.

⁷ United Nations, *International Migration Wallchart*, (UN publication no. E.09.X111.8, New York: United Nations Department of Economic and Social Affairs, Population Division, 2009).

⁸ Bimal Ghosh, *Managing Migration*.

⁹ Graham Allison, *Nuclear Terrorism: The Ultimate Preventable Catastrophe* (New York Times Books, 2004).

¹⁰ Bimal Ghosh, *Managing Migration*, 221.

¹¹ See, e.g. the discussion of the idea of merging UNHCR and IOM in *Migration in an Interconnected World: An Agenda for Action*, Report of the Global Commission on International Migration, 2005.

¹² Rey Koslowski, “European Migration Regimes: Emerging, Enlarging and Deteriorating,” *Journal of Ethnic and Migration Studies*, 23, no 4 (1998): 735-749. Rey Koslowski, *Migrants and Citizens: Demographic Change in the European States System* (Ithaca: Cornell University Press, 2000).

¹³ See e.g., Rey Koslowski, *Migrants and Citizens*.

¹⁴ Rey Koslowski, “Understanding Change in International Politics, Again and Again and Again,” *On Rules, Politics and Knowledge: Friedrich Kratochwil, International Relations, and Domestic Affairs* (New York: Palgrave Macmillan, 2010).

¹⁵ Aristide R. Zolberg, “Bounded States in a Global Market: The Uses of International Migration Regimes,” in ed. James S. Coleman, *Social Theory for a Changing Society*, Boulder, Colorado: Westview Press, 1991); Aristide R. Zolberg, “Labour Migration and International Economic Regimes: Bretton Woods and After,” in eds., Mary M. Kritz, L. Lean Lim, Hania Zlotnik, *International Migration Systems: A Global Approach* (Oxford: Clarendon Press, 1992).

¹⁶ James F. Hollifield, “Migration and International Relations: Cooperation and Control in the European Community,” *International Migration Review*, 26 no 2 (1992).

¹⁷ Straubhaar, “Why do we Need a General Agreement on Movements of People (GAMP)?”

¹⁸ Hatton, “Should we have a WTO for international migration?”

¹⁹ Charles Kindleberger, *World in Depression, 1929-1939* (Berkeley: University of California Press, 1973)

²⁰ Robert Gilpin, *War and Change in World Politics* (Cambridge, UK: Cambridge University Press, 1981).

²¹ Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton, NJ: Princeton University Press, 1984).

²² Abu Dhabi Declaration of Asian Countries of Origin and Destination, accessed March 14, 2008 at:

http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/brochures_and_info_sheets/abu_dhabi_declaration_eng.pdf.

²³ For a more detailed examination of several surveys of UN member states on this question, see the analysis of Joseph Chamie and Barry Mirkin in chapter 13 below; United Nations Migration Working Group, *Background Report*.

²⁴ See, e.g., Ayse Ceyhan and Anastassia Tsoukala “The Securitization of Migration in Western Societies: Ambivalent Discourses and Policies,” *Alternatives*, 27 (2002): 21-40; John Tirman, ed. *The Maze of Fear: Security and Migration After 9/11* (New York: New Press, 2004).

²⁵ For official definitions of human trafficking and human smuggling, see UN 2000.

²⁶ For treaty texts, signatures and ratifications, see “UN Signatories to the UN Convention against Transnational Crime and its Protocols” at: <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

²⁷ For further elaboration, see Rey Koslowski, “Economic Globalization, Human Smuggling and Global Governance,” in eds., David Kyle and Rey Koslowski, *Global Human Smuggling in Comparative Perspective*, second edition, Johns Hopkins University Press, forthcoming.

²⁸ International Organization for Migration, “Return Assistance to Migrants and Governments” (International Organization for Migration, 2008). Accessed March 1, 2008 at: <http://www.iom.int/jahia/Jahia/pid/747>

²⁹ See “Return Assistance to Migrants and Governments” page at: <http://www.iom.int/jahia/Jahia/activities/by-theme/regulating-migration/return-assistance-migrants-governments>

³⁰ 9/11 Commission, “9/11 and Terrorist Travel: Staff Report of the National Commission on Terrorist Attacks Upon the United States,” (2004):61, Downloaded Aug. 19 at: http://www.9-11commission.gov/staff_statements/index.htm

³¹ Glenn R. Simpson, David Crawford and Keith Johnson “Crime Pays, Terrorists Find: Group in Europe Smuggles Immigrants and Forges Passports,” *The Wall Street Journal*, April 14, 2004.

³² United Nations Security Council Resolution 1373 (2001), (S/RES/1373, United Nations, 28 September 2001).

³³ Rey Koslowski, *Real Challenges for Virtual Borders: The Implementation of US-VISIT*, (Washington, DC: Migration Policy Institute, June 2005).

³⁴ See FY2011 DHS Budget-in-Brief. www.dhs.gov/xlibrary/assets/budget_bib_fy2011.pdf

³⁵ See Ilkka Laitinen, Executive Director, Frontex, “ Keynote Speech for European Border Guards’ Day” (Warsaw, Poland, May 25, 2010). www.ed4bg.eu/files/Ilkka_Keynote_Speech_for_ED4BG_24_May2010.rtf. The categories compared are only roughly equivalent in function, e.g. the EU figures include the German *Bundesbahnpolizei* (railway police) whereas the corresponding Amtrak Police are not in the DHS. On the other hand, the DHS figures include officers devoted to customs enforcement while the EU border guard figure does not include customs officers of EU member states.