

Global Mobility and the Quest for an International Migration Regime

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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. “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 (Krasner 1983a: 2).”¹ The number of international regimes has increased greatly over the past few decades in an expanding breadth of areas, including global trade and finance (Krasner 1983; Keohane 1984; Findlayson and Zacher 1988), international security (Jervis 1983; Van Ham 1993), human rights (Sikkink 1993), the environment (Young 1989; Haas 1989); transportation and communications (Cowhey 1990; Zacher 1996), and the internet (Franda 2001).

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. In contrast, there is no international migration regime. If one follows the UN definition of international migration as referring to

¹ International regimes were initially defined as “mutual expectations, rules and regulations, plans, organizational energies and financial commitments, which have been accepted by a group of states (Ruggie 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” (Krasner 1983a: 2).

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 Ghosh (2000) of the International Organization for Migration (IOM), and the Migration Working Group convened in 2002 by former Assistant Secretary General Michael Doyle, whose report (UN 2003) was then submitted to former UN Secretary General, Kofi Annan. The International Labor Organization (ILO) 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.

In sum, these 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 (see e.g. Ghosh 2000; Straubhaar 2000). International migration is not alone as an important issue area where there appears to be “demand” for a regime but a regime has not formed. The international migration “nonregime” joins other international nonregimes in policy areas such as proliferation of tactical nuclear weapons; information privacy; deforestation and coral reef management (Dimitrov, Sprinz, Digiusto, and Kelle 2007).

As policymakers have come to recognize that economic development in many source 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 (see e.g. Ghosh 2000; Straubhaar 2000; Appleyard 2001; Ogata and Cels 2003; Düvell 2005; Hatton 2007). Regardless of the arguments for and against the formation of an international migration regime, a 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 because they are able to acquire migrant labor on a unilateral basis; 2) there is no inherent reciprocity in terms of the value of labor market access that is similar to that of market access for goods in international trade agreements; 3) major migration destination states are not providing the leadership necessary for regime formation. Despite the increasing calls for international cooperation on migration, for the most part, these obstacles to increasing cooperation remain.

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 191 million migrants (UN 2006), there are billions of border crossings by tourists, students, business people and commuters who travel internationally for stays of less than a year. The UN’s World Tourism Organization estimates that the number of international tourist arrivals, which includes travel for leisure, business and to visit friends and relatives, increased from 846 million in 2006 to 898 million in 2007 (UNWTO 2008). If all of these individuals returned home, their return trips home add another 898 million border crossings, totaling close to two billion border crossings. 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.

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

linkage - see e.g., Ceyhan and Tsoukala 2002; Tirman 2004), 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 changed its visa policies and border control processes in ways that have reverberated around the world. US authorities are demanding passenger manifests and passenger name records of US-bound travelers. They are also 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. In some cases, these changes have prompted diplomatic conflicts and retaliatory measures. For example, in response to US border authorities’ collection of biometrics, Brazil required US nationals traveling to Brazil to submit fingerprints. In other cases, such changes in US border control policies have elicited increased international cooperation as, for example, with the EU.

The US and EU member states are increasingly viewing international cooperation, however difficult it may be, as the only option to increasing their own security. In the conclusion of its report, the National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission) argued that, “[t]he U.S. government cannot meet its own obligations to the American people to prevent the entry of terrorists without a major effort to collaborate with other governments. We should do more to exchange terrorist information with trusted allies, and raise U.S. and global border security standards for travel and border crossing over the medium and long term through extensive international cooperation (9/11 Commission, 390).” In the aftermath of the July 2005 London bombing, the European Council emphasized that counter-terrorism is a “worldwide agenda” and that “The European Union will continue to work closely with the United States, other partners and key international bodies (European Council 2005: 9).” When, for example, US authorities demanded passenger name record (PNR)

data of US-bound travelers from non-US based airlines, European airlines became subject to conflicting EU data protection regulations and the US and EU negotiated an agreement in order to permit the airlines to submit data to the US authorities without violating EU law.

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 cooperative efforts on this front. 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.

The political constraints and opportunities for international cooperation on global mobility are substantively different than international cooperation on migration. For example, major obstacles to international cooperation on labor migration may not necessarily apply to international cooperation on travel. 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 tourists and businesspeople while increasing the security of their entry. While there may be no inherent reciprocity with respect to labor migration, many policymakers and their constituencies view flows of international tourists and business people differently, thereby injecting a different set of considerations into international negotiations. Although major migration destination states are not providing the leadership necessary for the formation of an international regime to facilitate labor migration, some have clearly expressed the importance of international cooperation on international travel and they have taken initiatives along the lines called for by the 9/11 commission and the European Council.

Moreover, expanding the scope of international cooperation from 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 the IOM’s Bimal Ghosh (2000) 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 (see Allison 2004). Before September 11th, the security threats posed by illegal migration and human smuggling were that of “disruptive movements of people” (Ghosh 2000: 221) that could provoke immediate border security problems because of the scale of such movements or adverse domestic political reactions to perceived governmental “loss of control” of borders. Now the 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. There is an established international refugee regime, an emerging 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.

I will elaborate on these arguments in the following sections. First, I will compare and contrast the political dynamics of cooperation on international labor migration and global mobility by offering several reasons for why an international migration regime has not developed and how similar obstacles may not exist for international cooperation on international travel. Second, I argue that limitations to unilateral measures of states to halt illegal migration, human smuggling and trafficking have led to significant international cooperation that has furthered the development of an international travel regime. Third, I will describe post – September 11, 2001 border security initiatives of states and international cooperation on international travel security. Fourth, I examine the role of state leadership in regime formation and assess the prospects for leadership in the formation of global mobility regimes. Finally, I will explore the possibility of

linking international cooperation on securing international travel to international cooperation on labor migration under the rubric of a General Agreement on Migration, Mobility and Security. The scope of analysis is limited to multilateral cooperation at the global level and does not include bilateral agreements and regional migration regimes that exist, for example, in Europe and that I have extensively analyzed elsewhere (Koslowski 1998; 2000).

Cooperation on Migration vs. Cooperation on Travel

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 Zolberg (1991; 1992) and James Hollifield (1992) 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-wide (Staubhaar 2000) and insuring poorer migrant source countries' access to richer migrant destination country markets for the sake of international development and reducing global inequalities (UNDP 1992). 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 (Freeman 1995). 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 (Hatton 2007). 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 (see

e.g. Smith 2005) 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 (1973), Robert Gilpin (1981) and Robert Keohane (1984) 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 1				
The Ten Countries with the Highest Number of International Migrants (in millions)				
Source: UN 2006				
Rank	1990		2005	
1	United States of America	23.3	United States of America	38.4
2	Russian Federation	11.5	Russian Federation	12.1
3	India	7.4	Germany	10.1
4	Ukraine	7.1	Ukraine	6.8
5	Pakistan	6.6	France	6.5
6	Germany	5.9	Saudi Arabia	6.4
7	France	5.9	Canada	6.1
8	Saudi Arabia	4.7	India	5.7
9	Canada	4.3	United Kingdom	5.4
10	Australia	4.0	Spain	4.8

The US is has the largest migrant population in the world (see Table 1) 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. 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 191 million migrants (see Table 1), 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.²

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 (UN 2003).

² 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.

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 a global regime that facilitates the arrival 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.

Over the past decade, international tourism has steadily grown in numbers of tourists as well as in terms of an industry in many countries of the world. Not only is international tourism becoming a major share of the economies of certain developing countries but it is becoming an increasing important component of the post-industrial service economies of many developed countries and especially of particular regions and cities of these countries. The governments of many UN member states, their regions and cities spend millions of dollars to actively promote their attractions to international tourists.

<p style="text-align: center;">Table 2 International Tourist Arrivals (in millions, ordered in 2006 ranking)³</p>								
Rank		1995	2000	2002	2003	2004	2005	2006
	World	535.0	682.0	702.0	691.0	761.0	803.0	846.0
1	France	60.0	77.2	n/a	75.0	75.1	75.9	79.1
2	Spain	34.9	47.9	n/a	50.8	52.4	55.9	58.5
3	US	43.5	51.2	43.6	41.2	46.1	49.2	51.1
4	China	20.0	31.2	36.8	33.0	41.8	46.8	49.6
5	Italy	31.1	41.2	n/a	39.6	37.1	36.5	41.1
6	UK	23.5	25.2	n/a	24.7	27.7	28.0	30.7
7	Germany	14.8	19.0	n/a	18.4	20.1	21.5	23.6
8	Mexico	20.2	20.6	19.7	18.7	20.6	21.9	21.4
9	Austria	17.2	18.0	n/a	19.1	19.4	20.0	20.3
10	Russia	n/a	n/a	n/a	20.4	19.9	19.9	20.2
	Turkey	7.1	9.6	n/a	13.3	16.8	20.3	n/a

³ Source: UNWTO 2005; 2006; 2007.

Arrivals of international tourists have increased from 535 million to 846 million, or 58%, from 1995 to 2006 in 2006 (see table 2). Of those 846 international tourist arrivals, 51% travelled for the purpose of leisure, recreation and holidays; 27% for purposes such as visiting friends and relatives, religious reasons/pilgrimages, health treatment; 16% for business and the purpose of remaining 6% was not specified (UNWTO 2007). It is important to point out that many individuals travel internationally several times per year. Therefore, the 846 million international tourist arrivals does not equate to 846 million individuals who have travelled internationally in one year. Most of the world's 6.3 billion people have not and probably will not ever leave the country of their birth.

Those 846 million international tourists generated \$733 billion of revenue distributed across the world with 75 states receiving at least one billion dollars (UNWTO 2007). Nevertheless, \$369 billion, more than half of the total, went to the top ten recipient countries (see Table 2), most of which are states with highly developed economies and, with the exception of China, all members of the OECD.

<p style="text-align: center;">Table 3 International Tourism Receipts (\$ billions, 2006 ranking)⁴</p>							
Rank		1995	2000	2003	2004	2005	2006
1	US	63.4	82.4	64.3	74.5	81.8	85.7
2	Spain	25.2	30.0	39.6	45.2	48.0	51.1
3	France	27.6	30.8	36.6	40.8	42.3	42.9
4	Italy	28.7	27.5	31.2	35.7	35.4	38.1
5	China	8.7	16.2	17.4	25.7	29.3	33.9
6	UK	20.5	21.9	22.7	28.2	30.7	33.7
7	Germany	18.0	18.7	23.1	27.7	29.2	32.8
8	Australia	8.1	9.3	12.3	15.2	16.9	17.8
9	Turkey	5.0	7.6	13.2	15.9	18.2	16.9
10	Austria	12.9	9.9	13.9	15.3	16.0	16.7

⁴ UNWTO 2006; UNWTO 2007

Six of the top ten migration destination countries (the US, Russia, Germany, France, the UK and Spain) are also in the top ten destination countries of international tourists (compare tables 1 and 2). Although these major migration destination countries need not consider multilateral cooperation in order to get migrant workers because they are in abundant supply, the supply of international tourists cannot be similarly be taken for granted. Tourists can opt to travel to other countries or simply travel within their own countries. Moreover, the money that international tourists spend can shift away from states that erect barriers to international travel toward those states that do not.

For example, international tourism to the US peaked in 2000 at 51.2 million international arrivals (\$82.4 billion in receipts) then dropped to 41.2 million (\$64.3 billion) in 2003. This was the year that the Department of Homeland Security was formed, that the Iraq War began; that many provisions of the Enhanced Border Security and Visa Entry Reform Act of 2002, such as mandatory interviews for visa applications with submission of biometrics, went into effect; and that The United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program was deployed at all airports and seaports to collect facial and fingerprint biometrics from individuals traveling to the US on a non-immigrant visa. It has taken six years until 2006 for the US to regain the level of international tourist arrivals and exceed receipts of 2000 (51.1 million and \$85.7 billion respectively). In the same six years, the world total of international arrivals increased 24%; Spain overtook the US second place ranking as international tourist arrivals to Spain increased from 47.9 million to 58.5 million and arrivals to China increased from 31.2 million to 49.6 million, bringing China within striking distance of surpassing the US third place ranking.

This fact has not been lost on the US tourist industry as evidenced by testimony on border security measures submitted by the Travel Industry Association (TIA) at a January 2004 Congressional hearing. “International business and leisure travel to the US is a vital component of our national economy....Overseas travel to the U.S. was down 31.8 percent in 2003 compared to 2000 levels. This decline has drastically reduced the flow of tax revenue to all levels of government and reduced our international balance of trade. Since 2000, the loss of international travel to the U.S. has cost our economy \$15.3 billion in expenditures.... While some of the causes are beyond the reach of an individual country, actions by the U.S. government can either enhance or harm our nation’s ability to attract increased international travel to the U.S. and create more jobs and economic opportunities for states and cities across the country. For this reason, the US–VISIT program must be implemented with traveler facilitation as one of its primary goals. Otherwise, international travelers might not wish to return to the U.S., or may be deterred from visiting in the first place (US House 2004)” The title of recent press release by the Travel Industry Association (TIA) hammers home the tourist industry’s message to members of Congress: “Double-Digit Decline in Overseas Travel to the United States Persists Through 2007: Overseas Travel to the United States is 11 Percent Below Pre-9/11 Levels Despite Weakening U.S. Dollar and Booming International Growth, According to Travel Industry Estimates, The United States Lost Nearly 50 Million Visitors 2002-2007 (TIA 2008).”

The distribution and visibility of the economic benefits of international tourism are rather different than that of international labor migration. The economic benefits from international labor migration go to the migrants themselves, the businesses in migration destination states that profit from lower labor costs and their customers who enjoy lower costs for the goods and services produced. Receipts from international tourists benefit the lodging, restaurant and

entertainment businesses and can be directly tied to jobs in these industries. While a decline in labor migration may most visibility reflected in declining remittances to home countries, a decline in a country's international tourism is often made visible in rising unemployment rates and declining tax revenues in that country's major tourist destinations. While politicians who advocate maintaining or increasing labor migration may face significant opposition from those constituents who face wage competition from migrants, advocacy for increasing international tourism is not only uncontroversial but it is a common mantra of economic development policies of many cities and regions in most countries of the world. While it may be very difficult for a politician in a major migration destination state to support international agreements that would commit a country to accept certain levels of labor migration regardless of economic conditions, advocacy for international cooperation that may facilitate international tourism would not be difficult. Indeed, depending on how much international tourism contributes to the economy of the politician's constituency, taking a leadership role in furthering international cooperation to facilitate tourism would most likely be very popular among many businesses people as well as those who work in the hospitality industry.

A fundamental difference between international cooperation on migration and global mobility is that the world's 200 million migrants are primarily people from lower socioeconomic classes who went abroad to take difficult, dirty, dangerous and undesirable jobs; international tourists and business travelers are primarily from middle and upper socioeconomic classes. Those international tourists from lower socioeconomic classes are primarily migrants returning home to visit their family or migrants' relatives visiting them. While liberal immigration policies and international cooperation on facilitating labor migration primarily benefits migrant workers and their extended families back home who receive remittances; liberal visa and border

security policies as well as international cooperation to facilitate international travel primarily benefits middle and upper class people who wish to take their holidays abroad as well as attend business meetings and conferences. While there are politicians in migration destination states who advocate liberal immigration policies to protect the human rights of migrant workers and for the sake of economic development abroad through remittances, it is much easier for politicians to advocate liberal visa and border control policies that reduce the inconveniences of international travel for their own well-to-do constituents while at the same time making international travel for migrants easier.

With respect to reciprocity, nationals of migration destination states might not be particularly interested in gaining access to the labor markets of migrant origin countries, however, those who have the financial resources, personal and business interests that would enable and motivate them to travel abroad are generally interested in access to the widest range of countries for leisure and business travel. Indeed, visa policy has historically been reciprocal in nature.

Reciprocity is also a key principle of visa waivers which enable visa-free travel. As the volume of international travel increased dramatically in the 1980s and 1990s, several states dropped visa requirements for short term visits on a bilateral reciprocal basis. The US Visa Waiver Program (begun as a pilot program with the UK and Japan in 1988 and made permanent in 2000) permits travel to the US for purposes of business or pleasure for up to 90 days without a visa by nationals of 27 states that similarly permit visa-free travel by US nationals. Nationals of EU member states do not need visas to travel to other EU states. All EU member states adhere to common visa policy that includes a list of 36 countries whose nationals may travel to any EU member state without a visa for short stays and 126 countries whose nationals must apply for and

receive visas in order to travel. Seven of the top ten international tourist destination states (France, Spain, US, Italy, UK, Germany and Austria) have reciprocal visa free travel arrangements. When states require visas of other states' nationals, those states will oftentimes reciprocate with matching visa application fees, as for example is case with Chinese application fees for travelers from the US.

International practices of visa reciprocity have over time developed into international norms that have been codified under the GATS to help govern a major share of international travel – namely the 131 million international arrivals for the purposes of business in 2006 (UNWTO 2007). The GATS delineates the four possible forms of service delivery covered by the agreement, which includes the “presence of natural persons,” also referred to as “Mode 4.” WTO members’ commitments under Mode 4 are to provide for temporary admission of foreign nationals who provide services, as outlined in the GATS “Annex on movement of natural persons supplying services under the Agreement” (WTO 1994). The scheduled horizontal mode 4 commitments made by some 100 member states are irrevocable and primarily deal with business visitor visas that are generally limited to 90 day stays (WTO 1998, 13).

At the same time that many OECD and other countries with relatively high GDPs per capita permit visa-free travel to nationals from similarly wealthy countries, these same countries have maintained visa requirements for the nationals of relatively poorer countries (Neumayer 2006). Commitments to offering business visas under the GATS are more universal but are limited to travel by business persons who in most countries tend to be from higher socioeconomic classes and must, in any event, provide sufficient proof to consular officers that their proposed travel is truly for business purposes and that they have sufficient resources and reasons to return to their origin countries after the term of their visa expires.

One of the major challenges to states that liberalize their visa policies is the abuse of those visas by tourists and business travelers who do not abide by the terms of their visas (or visa free travel), whether these individuals work after entering on tourist visas or they stay without authorization beyond the terms of their visa. If those who overstay their visas stay long enough, this is how a significant share of international travel becomes international migration of the illegal sort. As the percentage of international travel that becomes illegal migration grows, political support for liberal visa and border controls wanes. As such political support wanes, the domestic political dynamics favorable to international cooperation on international travel shift and obstacles can quickly develop that are similar to those in the way of international cooperation on labor migration.

International cooperation to combat illegal migration, human smuggling and 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.⁵ 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

⁵ For official definitions of human trafficking and human smuggling, see UN 2000.

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.

Contrary to popular perceptions, a relatively high percentage of illegal migrants in major destination countries entered legally but overstayed their visas. It has been estimated that between 40% and 50% of the roughly 12 million illegal migrants in the US overstayed their visas (Pew 2006) and that over half of the 8 million illegal migrants in the EU are visa overstayers (European Commission 2008). States endeavor to reduce visa overstays by increasing thresholds and tests for successful visa applications, identifying those who have overstayed their visas, deporting them and barring them from receiving visas in the future, or at least for several years. Many states require international travelers to fill out arrival/departure cards that are collected by border control officers at the beginning and end of the travelers' visit. Data gathered from these cards can be used to determine whether an individual has overstayed his or her visa. Such data are useful to border control officers who enforce immigration laws by detaining and deporting illegal migrants. When tallied, such data can also be used to identify those origin states whose nationals have high overstay rates. Accurate calculations of overstay rates are useful to consular officers who use country of origin metrics in making their decisions to approve or deny individual visa applications as well as to policymakers determining which states should be on visa-free travel lists.

When computers are used to automate the processing of arrival/departure card data, the resulting automated entry-exit system, can be a very powerful tool to identify visa-overstayers, as Australian experience amply demonstrates. Australian border officials have been collecting entry and exit data since 1981. Not only does every incoming international traveler fill out an arrival/departure card and give it to border control officers upon entry and exit, Australian border control authorities now electronically record the entry of everyone entering Australia (whether a foreigner or Australian citizen), usually with an automated passport reader. Inspectors similarly capture passport data from everyone leaving and the system matches exit records with corresponding entry records. If the system determines that someone has overstayed his or her visa, he or she will be referred to secondary inspection for an interview. In secondary inspection, border control authorities can retrieve digital images of the handwritten arrival cards that were scanned shortly after arrival then compare the information and handwriting with the corresponding departure card submitted. If an individual has overstayed his or her visa and did so for more than 28 days, the person is informed that he or she will not be granted a temporary visa to travel to Australia for three years. This automated entry-exit system enables Australian border officials to easily determine the number of people who have overstayed their visas (47,500) as well as which countries they come from – the largest number being from the US (4,940).⁶

In 1996, the US Congress mandated development of a similar automated entry-exit control system that would “collect a record of every alien departing the United States and match the records of departure with the record of the alien’s arrival in the United States.” (US House 1996: section 110.a.1). US business groups, states, and localities bordering Canada and Mexico

⁶ As of June 30, 2005 (DIMA 2005: 77).

argued against the new entry-exit data collection requirements noting that registering every person who crosses into the US from Canada or Mexico, even using then-existing smart card technology, would still require enough processing time to back up traffic at the border for hours, especially at the US-Canadian border crossing between Detroit, Michigan and Windsor, Ontario, impair international movement of goods and people, thereby costing billions of dollars in lost trade and tourism receipts to the US (US Senate 1998). In response to this lobbying, Congress pushed back the impending deadline for implementation of the law in 1998 (Cohn1999) and then in 2000, pushed back the deadline once again and limited data collection to that which was already being collected by existing authorities of law and disallowed collection of any new entry-exit data (US GPO 2000). The resulting entry-exit tracking system primarily covered passengers arriving by air and consisted of a paper arrival/departure form stamped at the port-of-entry, which was supposed to be collected by the airline upon departure, given to immigration authorities and entered into a database. Due to lost forms, incomplete or inaccurate data entry, exit by land border, and incomplete deployment of the system, missing exit data corrupted the database, leaving immigration inspectors with no effective way of knowing if individuals had overstayed their visas (Bromwich 1999).

In the wake of the September 11th attacks, the US Congress mandated the development of an automated biometric entry-exit tracking system. The United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program collects digital photograph and fingerprint scan biometrics from individuals traveling to the US on a non-immigrant visa or those arriving in the US who are nationals of countries in the Visa Waiver Program. Biometrics submitted with visa applications are matched to those of the individual presenting him or herself for admission into the US at the port of entry. In the four years since the initial deployment of US-VISIT at the

beginning of 2004 to March 2008, biometrics have been collected from 113 million individuals entering the US and run against watchlist databases (Chertoff 2008). Exit data beyond that received from airline and ship manifests are not yet collected, therefore, US-VISIT is not yet a fully functioning entry-exit system such as that used by Australian authorities. In November 2007, Japan deployed its biometric entry-exit system that requires all foreign nationals above 16 (with some exceptions) to submit facial and fingerprint biometrics upon entry (Immigration Bureau 2007). In February 2008, the European Commission announced its plans for an automated biometric entry-exit system, projected to be deployed by all Schengen member states by 2015 (European Commission 2008). Without exit data collection capabilities, which most major destination countries have yet to develop, it is difficult to identify visa overstayers or bar them from future entry, let alone prosecute them for immigration law violations. Australia demonstrated some time ago that deployment of an effective automated entry-exit system is technological feasible; whether other states develop similar capabilities to reduce visa overstaying is largely a function of budgetary priorities and political will.

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.

The League of Nations and then United Nations have long served as fora for international cooperation against the trafficking of women and children – going back to international cooperation to combat “white slavery” at the beginning of the 20th century (see Sculley 2001). During the 1990s, Austria took the lead in encouraging fellow UN member states to pass laws that specifically criminalize human smuggling and draft an international convention on the smuggling of illegal aliens (Schuessel 1997). 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 April 2008, the anti-trafficking protocol had 119 state parties and the anti-smuggling protocol had 111 state parties.⁷

⁷ 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/crime_cicp_signatures.html

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.

The UN Office on Drugs and Crime (UNODC) functions as the secretariat of the Convention on Transnational Organized Crime and the UNODC's Global Programme against Trafficking in Human Beings (GPAT) assists countries in their efforts to combat this crime. Additionally, UNODC launched the Global Initiative to fight Human Trafficking (UN.GIFT) in March 2007 in order to raise awareness and increase the knowledge base about human trafficking; build commitment to partnerships with governments, the international community, NGOs, the private sector, civil society organizations and the media; and implement projects to fight human trafficking on a local, regional and international level.

The IOM has also emerged as a major actor with respect to international cooperation in the area of human smuggling and trafficking despite the fact that it has a smaller membership⁸

⁸ 122 states as of January 2008.

than the UN and is much more specialized and limited as a forum for migration policymaking than regional organizations such as the EU. Indeed IOM played a significant role preparing the way for negotiations that led to the anti-trafficking and anti-smuggling protocols. At a 1994 IOM-sponsored meeting in Geneva, which brought together representatives from source, transit and destination countries, participants asked the IOM to advance the policy discussions of migrant trafficking, organize regional meetings, collect and disseminate information, analyze the problem of trafficking in women for prostitution and contribute to policy harmonization (IOM 1994). Since then, the IOM has been sponsoring regional processes dealing with irregular migration and migrant trafficking in Europe, the Americas, East and Southeast Asia. While the IOM has emerged as the leading international organization in the area of research and policy dialogues devoted to human smuggling in general,⁹ operational programs have primarily focused on trafficking in women and children for forced prostitution, whether in terms of publicity campaigns to discourage women from turning to traffickers or return programs with which the IOM is very experienced.

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

⁹ In addition to the quarterly bulletin, *Trafficking in Migrants*, see the book by IOM staff member, Bimal Ghosh (1998).

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 (IOM 2008).” 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.

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 report details linkages between human smugglers and Al-Qaeda and other terrorist groups in need of travel facilitation (9/11 Commission 2004a; 61). Investigations into the Madrid bombing produced reports demonstrating that Ansar al-Islam, an al Qaeda-affiliated group linked to the attack, has 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 (Simpson, Crawford and Johnson 2004). As intelligence screening and visa security is tightened so as to stop terrorists from entering legally with valid visas, the threat of clandestine entry of terrorists using smuggling organizations will increase and so to will the security imperatives of the international cooperation to combat human smuggling.¹⁰

By providing legal instruments for law enforcement cooperation on border controls, the U.N. 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 an international 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

¹⁰ For a review of international cooperation on human smuggling, see Koslowski 2001.

travel. Hence, such international cooperation on border controls can be considered critical components of an emerging international travel regime.

International Cooperation to Secure International Travel

Despite the fact that many states, including the US, built up their border control capabilities in the 1990s by hiring more officers and providing them with increasingly sophisticated technology, these proved insufficient to stop the Sept. 11 attacks, as Al-Qaeda systematically studied and trained to compromise existing border controls. Al-Qaeda operated a “passport office” at the Kandahar airport to alter travel documents and train operatives, including Mohamad Atta (9/11 Commission 2004: 169) and at least two, and perhaps as many as eleven, of the September 11th hijackers used fraudulently altered passports. Three of the hijackers had stayed in the US after their visas expired and several purchased fraudulent identity documents on the black market that primarily services illegal migrants (9/11 Commission 2004a: 138-39). Contrary to much of the early discussions in the media that all of the hijackers entered legally and that border controls were irrelevant to their entry, the 9/11 Commission concluded that “15 of the 19 hijackers were potentially vulnerable to interception by border authorities” (9/11 Commission 2004: 384).

In the aftermath of the September 11th attacks, many governments, led by the US, initiated measures to increase the security of international travel but, at the same time, they wished to avoid hindering legitimate travel. It is very difficult, however, to simultaneously facilitate international tourism and business travel while securing movements of people across borders without multilateral cooperation and many states have adopted policies toward securing international travel with this in mind. Most notably, the European Commission and the US

Department of Homeland Security have been taking international cooperation into sensitive areas of state sovereignty dealing with border controls, government surveillance, data collection and exchange that before September 11, 2001 would have been unthinkable. The emerging international travel regime is centered in the transatlantic area, developing rather quickly and leading to even deeper and broader global international cooperation on travel document security, passenger data sharing and electronic travel authorization.

ICAO member states agreed in 1980 to standards for the issuance of machine readable travel documents, which most states began to issue in the 1980s and 1990s. Although the original objective was to enable border control authorities to cope with the increased number of passengers that arrive at ports of entry at the same time due to increased capacities of much larger wide-bodied jets such as the Boeing 747, machine readable travel documents provided increased security because data in the machine readable zone could be checked against the biographical data typed on the document itself, thereby making fraudulent alterations more difficult.

In reaction to the Sept 11th attacks, the US Congress passed the October 2001 USA PATRIOT Act, which among other things required states that participated in the US Visa Waiver Program to issue machine readable passports by 2003. Then after British national Richard Reid boarded a transatlantic flight in December 2001 with only his passport and tried to detonate a bomb in his shoes, members of Congress called for the elimination of the US Visa Waiver Program (VWP) that enables nationals of 27 states (including 15 EU member states) to travel to the US without a visa.

Instead of abolishing the Visa Waiver Program, the US Congress required that all passports of Visa Waiver Program countries issued after Oct 26, 2004 contain biometrics. As

one State Department official put it, the US used the “leverage” of its Visa Waiver Program to push for a “common agenda on biometrics.”¹¹ Many countries signaled that they could not meet this deadline and former Secretaries Tom Ridge and Colin Powell asked Congress for a postponement to December 2006 (Powell and Ridge 2004). Congress responded with legislation, however, it only allowed a one year extension to Oct. 26, 2005.

The US Congress deferred to ICAO on setting the biometric standard and it was not until May 28, 2003 that the ICAO announced an agreement - facial recognition plus optional fingerprints and/or retina scans stored on a contactless integrated circuit (IC) chip (ICAO 2003). The contactless IC chip is part of a Radio Frequency Identification (RFID) system in which data on a chip or tag is transmitted via radio waves to a reader. As opposed to machine-readable travel documents that contain data on magnetic strips, a passport with an RFID chip can be read by the reader at a distance, therefore allowing faster transfer of data from the passport. As envisioned, holders of new biometric passports issued by Visa Waiver countries will give their passports to inspectors who will simply bring the passport close to the reader. The reader will capture the personal data and the digitized biometric. This information can then be checked against terrorist and law enforcement watch lists. A year later, ICAO arrived at a technical standard for the IC chips that ensured interoperability between chips and readers (ICAO 2004), leaving only five months for countries to purchase and install the necessary equipment for their e-passport programs.

When it appeared that many Visa Waiver Program countries would not be able to meet the original deadline, the US Congress granted an extension to Oct. 26, 2005 but it soon became clear that many countries could not meet this deadline either. Therefore, Congress relaxed the

¹¹ Marc Meznar of the US Mission to the EU, quoted in EurActiv.com 2006.

biometrics requirement so a digital photo embedded in the passport cover would count as the required biometric for another year. All Visa Waiver Program countries were able to meet this requirement except for Italy and France, which meant that those Italian and French citizens who received their passports after Oct. 26, 2005 were required to get visas in order to travel to the US, that is, until the Italian and French e-passport programs came on-line. The situation improved markedly within the next year as 24 of 27 Visa Waiver Program countries met the Oct. 26, 2006 deadline for all new passports to have biometrics on RF-enabled IC chips – including all EU member states in the Visa Waiver Program.

Over forty states have communicated their intention to ICAO that they will upgrade to biometric e-passports by 2008¹² and approximately 15 million e-passports were issued worldwide in 2006 and it is expected that an additional 35 million to 40 million will be issued in 2007 (Card Technology 2007). Although US homeland security policies have driven implementation of e-passport programs in the EU and other countries in the Visa Waiver Program, the EU is now setting security standards for e-passports that are higher than those set by the US. EU members have collectively agreed to an EU requirement that new e-passports will eventually include fingerprints in addition to facial biometrics (European Commission 2004). This EU requirement is a step that has hardly been even broached by current DHS officials let alone discussed in Congress. It is therefore unlikely that the US e-passport would meet the agreed-to EU standard in the near future, if at all.

Transatlantic cooperation emerged through US security initiatives and negotiations with the EU that have set up a variety of arrangements and more formal agreements, most notably,

¹² Andorra, Australia, Austria, Belgium, Brunei, Canada, Czech Republic, Denmark, Finland, France, Germany, Hong Kong Special Administrative Region of China, Hungary, Iceland, Indonesia, Ireland, Italy, Japan, Republic of Korea, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Monaco, the Netherlands, New Zealand, Nigeria, Norway, Pakistan, Portugal, San Marino, Serbia and Montenegro, Singapore, Slovenia, South Africa, Spain, Sweden, Switzerland, the United Kingdom, United States (ICAO 2006).

with agreements on the transfer of Passenger Name Record (PNR) data, which provide the data that many border security information systems need to function. The 2001 US Aviation and Transportation Security Act requires that airlines with US-bound international flights submit electronically a passenger manifest and mandates that “the carriers shall make passenger name record information available to the Customs Service upon request (US GPO 2001: Section 115).” PNR data is created each time a passenger books a flight and it is stored in the airlines reservation systems. To comply with these regulations, US-based airlines gave access to their PNR databases to the US Customs Service.¹³ Many opted to simply give database passwords to US Customs, which allowed Customs to “pull” all PNR data rather than select and “push” a subset of that data which met specific Customs requests. The US Customs Service also requested PNR data from European-based airlines, but several resisted, contending that it would be a violation of EU data protection rules. Essentially, European airlines were presented with the choice of either breaking US laws, facing fines and potentially losing landing rights, or violating EU and EU member state data protection laws and facing fines.

Discussions between the European Commission and the US Customs Service yielded US compliance extensions for these airlines until March 5, 2003, by which time the EU and the US arrived at an interim arrangement (European Commission 2003; CBP 2003). After extensive negotiations, in 2004 the European Commission and the Bureau of Customs and Border Protection (CBP) secured an agreement in the form of a Commission “adequacy decision” (European Commission 2004a) that data were adequately protected, and corresponding “undertakings” issued by CBP (2004), which promise that data would receive agreed-to treatment (Bolkestein 2003). Key features of the agreement restrict data use to preventing and

¹³ The U.S. Customs Service was merged into the Department of Homeland Security (DHS) formed in March 2003 and its former staff and resources are primarily in the Customs and Border Protection and Immigration and Customs Enforcement branches of the DHS.

combating terrorism and serious crimes that are transnational (i.e. not domestic crime); limit retention of data for up to 3.5 years; and provide redress to passengers through a new DHS Privacy Office, with the possibility of EU data protection authorities representing EU citizens (Bolkestein 2003; DHS 2003).

Despite this arrangement, the European Parliament called upon the Commission to withdraw the draft decision, arguing that the Commission's decision "Presents the risk that millions of European passengers will be subject to comprehensive surveillance and monitoring by a third country (European Parliament 2004)." When the Commission did not withdraw from the agreement, the European Parliament referred the issue to the European Court of Justice, which ruled in May 2006 against the Commission, annulling the legal basis of the agreement (but not ruling against the substance of the agreement itself), and stipulated that this annulment would go into effect in October 2006. Just in time, the EU and the US arrived at another interim agreement that could remain into effect until July 2007. A new agreement was finally reached in June 27, 2007 talks between European Union Justice and Security Commissioner Franco Frattini, German Interior Minister Wolfgang Schaeuble and US Homeland Security Secretary Michael Chertoff.

Transatlantic cooperation on PNR data collection and exchange as well as the setting of biometric standards requires acceptance of mutual constraints on the range of state action in the area of border control – one of the defining aspects of territorial sovereignty. Further cooperation, however, may be interrupted by differing legal regimes governing privacy and personal data protection. Given the increasing concerns of the European Parliament (and national parliaments) over the privacy of PNR data, there may be major limitations to further transatlantic PNR data transfer without global multilateral agreements. Partly motivated by the

fact that Canada and Australia, in addition to the US, have also passed legislation requiring advanced submission of PNR data, the European Commission opted to take a global approach to the issue (European Commission 2003a). Ireland, on behalf of the EU, put forward a proposal for an international framework for the transfer of PNR data to the International Civil Aviation Organization (Ireland 2004). ICAO subsequently developed a set of guidelines for PNR data transfer that went into effect as a “recommended practice” on July 11, 2005 (ICAO 2005).

The next frontier of border controls may be electronic travel authorization systems, first pioneered by Australia in the mid-1990s. Australia maintains a *de facto* universal visa regime whereby those travelers for whom a visa is not required must apply for and receive an Electronic Travel Authority. To receive an Electronic Travel Authority, those intending to travel to Australia electronically submit the biographical data on their passports either through travel agents or by themselves through a web portal. Automated watch list checks are executed and usually within minutes an Electronic Travel Authority is issued for travel to Australia or the applicant is referred to apply for a visa at an Australian consulate.

The US Congress mandated the development of an Australian-style Electronic Travel Authorization system in 2007 as a condition to reforming the Visa Waiver Program and expanding the number of states in the program. The US Electronic Travel Authorization system has major implications for the development and use of border control information systems globally, as the European Commission has also announced plans that the EU will develop a similar system (European Commission 2008). The proposed US Electronic Travel Authorization system not only requires transmission of biographical data of travelers (name, date of birth, passport number, etc.), it also requires an “exit system that records the departure on a flight leaving the United States of every alien participating in the visa waiver program” and that the

system shall “match biometric information of the alien against relevant watch lists and immigration information; and compare such biometric information against manifest information collected by air carriers on passengers departing the United States to confirm such individuals have departed the United States (US Senate 2007: Section 501).” If the US, EU member states, Canada, Japan, and other countries were to join Australia in using Electronic Travel Authorization systems, the resulting advanced passenger data exchange may yield a collective increase in the security of visa-free travel among these states. To achieve this collective increase in security, however, many other border security measures, such as implementing exit controls, may be necessary and be much more difficult to achieve without even more international cooperation.

The development of biometric entry-exit systems, electronic passports, passenger data sharing agreements and electronic travel authorization systems by an increasing number of states (although primarily only relatively wealthy OECD member states), offers a glimpse of how future secure international travel regime may operate in practice. Each state would collect biometrics through the visa application process and then again for comparison at the port of entry. Nationals of those states issuing passports with biometrics meeting ICAO standards may be exempted from visa requirements but they would be required to submit their biographical data from their passports in advance of their travel or not be allowed to board. And when they did arrive in another state, their biographical data and biometrics would be captured and stored upon entry. Border control authorities would amass tremendous amounts of biographic and biometric data in digital format, which could then be mined to detect anomalies that could then be flagged for further investigation. Depending on the level of law enforcement cooperation among origin, transit and destination countries involved, these investigations of individual travelers may

involve international law enforcement cooperation. Such collaboration yields its own intelligence on terrorist travel and the sharing of border control best practices that, in turn, increase individual state border control capabilities.

State Leadership and International Travel Regime Formation

Multilateral cooperation on human smuggling and transatlantic cooperation on securing international travel do not, in and of themselves, add up to the formation of an international regime that regulates travel and migration at the global level. Such cooperation can only be considered possible steps toward a set of global mobility regimes. Only if these regimes come into being in the future, will historians be able to determine which of the various forms of cooperation discussed above in fact served as precursors to such global mobility regimes. Hence, the remaining discussion in the rest of this paper is highly speculative and is not intended to be prescriptive. I will describe various scenarios and possible strategies based on international regime formation in other issue areas and suggest ways in which they may be relevant in this case. Moreover, there may be other routes toward the realization of global mobility regimes that may prove to be more successful than the suggestions found in the following ruminations.

As discussed above, international trade and monetary regimes were put in motion with the hegemonic stability provided by the US in aftermath of WWII. Formation of an international travel regime will most likely also require similar 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.

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 has been reluctant to request funding to fully implement border security measures at US ports of entry (see Koslowski 2005), let alone underwrite a major expansion of international law enforcement institutions. For example, the Intelligence Reform and Terrorism Prevention Act of 2004 authorizes increasing the number of full-time Border Patrol agents by 2,000 per year for five years and increasing the number of full-time Immigration and Customs Enforcement investigators by 800 per year for five years, but it does not authorize increasing the number of CBP inspectors at the ports of entry.

The Department of Homeland Security is often depicted in the international media as an overly large organization with a greatly expanding budget. To put the things in perspective, the

border control divisions of EU member state interior ministries are collectively much larger than their US equivalent, the Bureau of Customs and Border Protection (CBP). Table 4 provides a rough comparison of US Bureau of Customs and Border Protection staffing with that of just two of the 27 EU member states. CBP staffing is quite modest compared to border control agencies of other advanced industrialized countries with large-scale immigration flows such as Germany, especially in relation to the length of their respective land borders and traveler flows through border crossing points.

Table 4 Border Control Agency Staffing			
Country	US	Germany	Poland
Area (in square miles)	3,794,083	137,846	120,728
Land borders (in miles)	7,521	2,263	1,742
Border crossing points	341 ¹⁴	274 ¹⁵	68 ¹⁶
Entries (annual estimates)	440,000,000	218,000,000 ¹⁷	100,000,000 ¹⁸
Total staff (approx.)	44,000	40,000	16,000 ¹⁹
Staff per mile of land border	5.8	17.7	9.2
Staff per border crossing point	129	146	235
Entries per staff member	10,000	5,450	6,250

¹⁴ There are 327 official ports of entry in the United States and 14 preclearance offices in Canada and the Caribbean. See CBP: <http://www.cbp.gov/xp/cgov/toolbox/contacts/ports/>

¹⁵ This figure includes 135 airports, 65 seaports and 74 land border crossing points with Switzerland. See European Commission 2004b.

¹⁶ This figure includes 20 airports, 19 seaports and 29 land border crossing points with Russia, Belarus and Ukraine. See European Commission 2004b.

¹⁷ This estimate is arrived at taking roughly one half of Germany's total entries and exits: 436,580,484, as reported in *Bundesgrenzschutz Jahresbericht 2002*. P. 28.

¹⁸ Author's interview with senior Polish Guard official, May 12, 2006.

¹⁹ William J. Kole, "EU expansion to isolate poor neighbors," *Seattle Times*, April 11, 2004.

The CBP has 44,058 employees, of whom 14,923 are Border Patrol agents working between ports of entry and 15,850 are CBP officers at ports of entry.²⁰ This is roughly comparable to the size of Germany's Bundesgrenzschutz (Federal Border Police), now Bundespolizei (Federal Police), with 40,000 employees (30,000 of whom are officers).²¹ As German border controls with Poland and the Czech Republic were lifted on January 1, 2008, border controls are still enforced (at least nominally) at the 74 land border crossing points with Switzerland.

Switzerland, however, joined the Schengen Convention in 2004 and these border crossing points were lightly staffed, if at all, even before then. More important for port of entry operations is the flow of travelers entering the country. While the US has the greatest number of entries, Germany has about half the number, at 218 million, with roughly the same overall staffing capabilities. At 100 million, Poland has less than a quarter of the flow of the US yet over 35% of US staffing capabilities. Meanwhile, due to their shorter land borders and the lifting of border controls among these Schengen states, there is less need for staffing between ports of entry in Poland and Germany. While CBP is responsible for inspecting the entry of many more travelers and for patrolling many more miles of border between ports of entry than that of Germany and Poland, the border control staffing capabilities of just these two countries, not mention the entire European Union, significantly exceed that of the US.

If domestic politics and budgetary priorities constrain the US government from providing leadership necessary to form global mobility regimes, the EU could potentially fill the role, especially given that the EU has extensive experience in the institutionalization of international

²⁰ Figures for end of FY 2007 (i.e. Sept 2007) in DHS 2008: 24, 27.

²¹ Although roughly comparable, the *Bundesgrenzschutz* is not composed of the same array of functions as the CBP in that it also includes the Federal Railway Police (the U.S. counterpart would be Amtrak Police), but it does not include customs inspectors, which CBP does. See "*Bundespolizei: Aufgaben und Organsation*" at: http://www.bundespolizei.de/nr_719704/EN/_Home/Brochure/InfoformationBrochure_en_down.templateId=r aw.property=publicationFile.pdf/InfoformationBrochure_en_down.pdf

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 more border control staff than the US, as internal borders with new member states have been lifted, many border control officers, particularly German officers, will need new tasks. New European integrated border management arrangements may permit some to join in patrolling the EU's new external borders but some could be 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. This brings us to the question of what stake, if any, migration origin countries may have in a global efforts to secure international travel and thereby further the establishment of an international travel regime.

A General Agreement on Migration, Mobility and Security (GAMMS)?

Given that international regime theory largely developed to help explain international cooperation outside of formal international organizations, as was the case with the GATT, analogies to the GATT for thinking about an international migration regime can be useful, as several authors have demonstrated (Harris 1995; Ghosh 2000; Straubhaar 2000; Hatton 2007). Most have envisioned rounds of negotiations toward an overarching agreement that links the well-established refugee regime and cooperation in trade in services, or even international trade in general (Hollifield 2000: 101), to areas of international migration that have not been subject to international regulation. Given that migration destination countries have not been particularly responsive to economic and human rights arguments for the initiation of such rounds of negotiations, perhaps the security implications of accelerating international mobility may provide increased impetus toward broader cooperation that links cooperation on labor migration desired by source countries to cooperation on securing international travel desired by destination countries.

Discussions of an international migration regime based on an agreement similar to the GATT have focused on a principle of “regulated openness” as opposed to labor market protectionism through the exclusion of migrants as well as to the liberal doctrine of unfettered free movement of labor across the boundaries of sovereign states (Ghosh 2000: 25). An all-embracing global regime for the orderly movement of people would involve a bargain in which

destination countries would permit legal migration of labor while source countries would agree to do what they could to suppress illegal migration as well as accept orderly repatriation of their nationals who migrated illegally, despite the source countries' best efforts to dissuade that. From the destination countries' perspective there is little incentive for international commitments to keep labor markets open to immigrants. There is no compelling reason to change the status quo when legal labor migration can be permitted (and illegal migration tolerated) on a unilateral basis in periods of economic growth and shut down in time of recession. From the source countries' perspective this bargain is inherently problematic. Not only do their economies increasingly depend upon remittances from legal and illegal migrants alike but there is relatively little that a state can do to prevent its nationals from leaving without at the same time transgressing international human rights norms and possibly also infringing on citizens' constitutional rights. Starkly put, from the source countries perspective, if destination state governments largely condone employment of illegal migrant workers and are having difficulties controlling their borders, it is not the source countries' problem.

In the wake of Sept 11, 2001, the stakes in establishing a regime for secure international travel are much higher for the US, EU member states and other migration destination countries than past incentives for establishing an international labor migration regime. For source countries, participation in and compliance with an international travel regime would involve the practical implementation of international norms on document security and biometrics, information exchange and international cooperation among border control authorities and law enforcement agencies that may be prohibitively expensive and administratively very difficult. As currently pursued by the US and EU, the envisioned global border security cooperation makes heroic assumptions regarding the identity documentation of much of the world's population. If

identity and travel documentation systems of the US and other advanced post-industrial states are so susceptible to fraud and counterfeit, what are we to expect of less developed countries? Kamal Sadiq's work on "documentary citizenship" (Sadiq 2003; 2005) demonstrates that document fraud is not only widely used in illegal migration between countries in the developing world but also enables illegal migrants to vote in the states in which they illegally reside. In many parts of the world, where the registration of births is far from systematic, national ID systems are weak or non-existent and bureaucracies corrupt, a person's possession of a passport may be more indicative of illegal status than citizenship. Similarly, international information exchanges have been enabled by the internet, however, they rely on a state's capacity to collect, store and retrieve required data. Finally, the international cooperation on border control and law enforcement required for an international travel regime may involve source and transit countries' acceptance of US and/or EU border control officers in their airports and seaports and that may be considered by many domestic political actors as an intolerable infringement of state sovereignty. Hence, it may be politically difficult for many migrant source countries in the developing world to agree to regime for secure international travel. Even if such agreement is reached, implementation may be just as, if not even more, difficult to achieve.

If US and EU vital security interests are at stake in an international travel regime, and if cooperation on document security and law enforcement for securing international travel is linked to orderly international labor migration, perhaps a more all-encompassing *General Agreement on Migration, Mobility and Security* (GAMMS) could be negotiated. Incorporation of a labor migration regime into a package of global mobility regimes would require leadership of the US in expanding legal immigration of migrant labor while at the same time enforcing employer sanctions to dry up demand for illegal migrant labor. It would require that those EU member

states that have resisted opening their labor markets to immigrants to do so and agree to an EU framework for labor migration. In return, source countries in the developing world would agree to rapid implementation of ICAO travel document standards, automated information exchanges and increasing international border control and law enforcement cooperation.

Trading labor market access for cooperation in combating terrorist travel may very well prove unworkable. Destination countries advocates for border security may argue that reducing terrorist mobility increases the security of all states and should not need to be tied to agreements on labor migration. In many developing countries, the threats of malnutrition and disease overshadow concerns over border security, terrorist travel and the prospect of truck bombs detonated in front of hotels that cater to foreigners. Origin state advocates for increasing opportunities for international labor migration may reject any linkage that “securitizes” migration and prefer to focus instead on convincing destination countries of the benefits of legal labor migration.

Nevertheless, there may be opportunities for international cooperation of a more narrow scope in certain areas where there is a convergence of interests between destination and origin states. One such point of convergence could be in the area of public administration reforms that reduce the cost and increase the security of passports as well as the vital records used in the passport application process. While the above discussion explains why high quality passports issued through secure administrative processes are in the interest of destination states concerned with border security, if such passports can also be made affordable, they are also in the interest of origin states that hope to facilitate the travel and migration of their nationals. A World Bank study (McKenzie 2005) of passport fees in 127 countries, found that high costs of acquiring a passport have become a barrier to migration from many states. Passports cost more than \$100 in

nine of the countries surveyed with the most expensive fee of \$333 charged for a Turkish passport. High passport fees relative to the income of the applicants are even greater barriers to emigration. In 23 countries, passports cost more than 5% of annual per capita income with the highest cost being found in the Democratic Republic of Congo, where the \$150 passport fee represents 125% of annual per capita income. Moreover, lengthy application and administrative processes often become opportunities for corruption as unscrupulous officials charge extra fees for “express” service. The spread of such corrupt practices also present opportunities for human smugglers to purchase genuine passports through fraudulent processes. If destination countries were to help finance administrative reforms to issue secure passports through shorter processing times and at lower costs to citizens, origin countries will be in a position to offer their citizens proper travel documents at affordable costs. Such international cooperation and development assistance would help all participating states combat human smugglers and document counterfeiters.

Similar international cooperation could emerge from the convergence of interests to improve the administration of vital records such as birth certificates upon which passport application processes depend for applicant identification. Fraudulently acquired birth certificates or counterfeit birth certificates serve as “breeder documents” used to obtain genuine documents such as passports and to commit identity fraud to obtain social benefits (see e.g. HSS Inspector General 2000) and are increasingly considered a major security vulnerability among travel and migration destination states (Johnson 2005; Kefauver 2007). In many migration origin countries in the developing world, systems for the registration of births and issuance of birth certificates are very weak. They are so weak that world-wide an estimated 48 million children under the age of five were not registered at birth (UNICEF 2005), thereby challenging

the right to an identity as articulated in article 7 of the Convention on the Rights of the Child and the 2002 General Assembly Resolution, “A World Fit for Children.” Those not fully registered and not provided with a birth certificate are “denied the right to a name and nationality, a situation that may also lead to barriers in accessing other rights including health care, education, or social assistance. Later in life, identity documents help protect children against early marriage, child labour, premature enlistment in the armed forces or, if accused of a crime, prosecution as an adult. Registration also enables the individual to access further identity documents, including a passport (UNICEF 2005).” Some countries such as Mexico have committed themselves to systematic registration of children and have developed an online population register which enables anyone with internet access to check if he or she is properly registered.²² If destination countries were to help finance similar administrative reforms to enable origin countries to register all children and provide them proper birth certificates as well as strengthen vital records management systems and secure birth issuance processes, it would help reduce travel document fraud using breeder documents while at the same time helping origin countries to provide children their rights to identity, nationality and corresponding social and educational benefits that all nationals of these states are entitled to receive.

If international cooperation to secure international travel does not embrace major origin countries in the developing world and remains limited to the transatlantic area it will not be as effective as a package of global mobility regimes that secure international travel worldwide. Source countries in the developing world may resist imposition of biometrics in their documents and foreign law enforcement officers in their airports, however, some states will cut bilateral

²² See eCURP website at: http://www.gobernacion.gob.mx/CurpPS_HTML/jsp/CurpTDP_080208.html For additional information see SEGOB 2006.

deals that facilitate travel of their nationals and trade through their ports. With increasingly globalized economies, those states that resist cooperating with the US and EU on border security may suffer significant economic costs from decreasing mobility of their nationals and exports.

International cooperation on migration and mobility, whether on a global or regional basis, need not necessarily lead to liberal outcomes that make it easier for prospective migrants and asylum seekers to cross borders. A package of global mobility regimes would facilitate travel of tourists, businesspeople and migrants deemed legitimate and “wanted” by the states receiving them. At the same time, it would strengthen state capabilities to not only intercept suspected terrorists but also to decrease the “unwanted” migration of illegal workers and asylum seekers.

Given the requirements for leadership necessary to establish such global mobility regimes and the domestic political barriers to governments seeking to assume that leadership, the steps toward establishing global mobility regimes may not go much further. If they do, however, source countries in the developing world will have choices forced upon them. There may be opportunities for collective actions that translate into additional broader cooperation on international labor migration in the form of a General Agreement on Migration, Mobility and Security. The prospects for such cooperation, however, may only be slightly better than the past efforts toward global cooperation on migration that have yet to produce very much.

Conclusion

As the migration and development agenda within the UN has moved forward, there has been increasing discussion among academics and policy analysts alike over the possible development of a migration regime at the global level. Despite the increasing calls for

international cooperation on migration, an international migration regime is unlikely to form largely because major migration destination states have no reason to make multilateral commitments to keeping their labor markets open when migrant labor is readily available on a unilateral basis; they see little value in reciprocity of labor market access; and, not surprisingly, they are not providing the necessary leadership.

Global mobility is a more all-inclusive category for understanding the dynamics of international migration that also widens the scope of regime analysis to include international cooperation on international travel. Given that increasing international travel is a growing border security concern that engenders a different set of state interests, the political constraints and opportunities for international cooperation on travel are substantively different than international cooperation on migration.

Perhaps the best way to approach the longstanding quest for an international migration regime is to think in terms of global mobility and development of a set of interacting global mobility regimes. An international refugee regime is already established, an international travel regime is emerging and an international labor migration regime does not exist but has a potential that may be realized through linkage with the established and emerging regimes.

The above analysis suggests that refocusing research on global mobility may be more useful for understanding international cooperation than the current focus on the linkage of migration to international development. Sustained systematic and comprehensive analysis of the economic, political and security dimensions of global mobility could contribute to a better understanding of international cooperation on refugees, international travel and migration through the prism of global mobility regimes. Improved understanding of the dynamics of international cooperation may, in turn, facilitate better global governance of travel and migration.

References:

9/11 Commission (2004) *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States*, New York: W.W. Norton 2004.

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

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

Appleyard, Reginald (2001) "International Migration Policies: 1950-2000," *International Migration* 39 (6), 7–20.

Bolkestein F. (2003) "Frits Bolkestein Member of the European Commission in charge of the Internal Market, Taxation and Customs EU/US talks on transfers of airline passengers' personal data Address to European Parliament Committees on Citizens' Freedoms and Rights, Justice and Home Affairs and Legal Affairs and the Internal Market Strasbourg, 16th December 2003," Commission of the European Communities, *RAPID*, SPEECH: 03/613.

Bromwich, M.R. (1999) "Statement of Michael R. Bromwich before the House Judiciary Committee, Subcommittee on Immigration and Claims, March 18, 1999.

Card Technology (2007) "E-Passports: The First Wave" *Card Technology*, Vol. 12 No. 2 March 2007.

CBP (2004). "Undertaking of the Department of Homeland Security Bureau of Customs and Border Protection (CBP)," annex I to European Commission 2004a.

Ceyhan, A. and A. Tsoukala (2002) "The Securitization of Migration in Western Societies: Ambivalent Discourses and Policies," *Alternatives*, Vol. 27.

Chertoff, M. (2008) "Remarks by Homeland Security Secretary Michael Chertoff at the U.S. Department of Homeland Security Fifth Year Anniversary" Department of Homeland Security Press Release, March 6, 2008.

Cohn, T. H. (1999), "Cross-Border Travel in North America: The Challenge of US Section 110 Legislation," *Canadian American Public Policy*, (Occasional Paper Series of the Canadian-American Center, University of Maine at Orono), no. 40 (October 1999): 25-38.

Cowhey, P.F. (1990) "The International Telecommunications Regime: The Political Roots of Regimes for High Technology," *International Organization*, Vol. 44, Nr. 2.

Dimitrov, R., D. Sprinz, G. M. DiGiusto, and A. Kelle (2007), "International Nonregimes: A Research Agenda" *International Studies Review*, vol. 9 (2), 230-258.

DHS (2003) "Fact Sheet: Homeland Security and European Commission Reach PNR Agreement," U.S. Department of Homeland Security, Office of the Press Secretary, December 16, 2003. Downloaded Jan. 20, 2004 at <http://www.dhs.gov/dhspublic/display?content=3036>

DHS (2008) *Homeland Security Budget in Brief: Fiscal Year 2009*. Accessed April 1, 2008 at: http://www.dhs.gov/xlibrary/assets/budget_bib-fy2009.pdf

DIMA (2005) Department of Immigration and Multicultural Affairs, Australian Government, *Population Flows: Immigration Aspects, 2004-05 edition*.

Düvell, Franck (2005) "Globalisation of migration control. A tug-war between restrictionists and the human agency?" in Holger Henke (ed.) *Crossing Over: Comparing Recent Migration in Europe and the United States*. (New York: Lexington Books).

EurActiv.com (2006) "EU withdraws proposal for biometric chips in visas," *EurActiv.com*, March 22, 2006. Accessed June 20, 2007 at: <http://www.euractiv.com/en/security/eu-withdraws-proposal-biometric-chips-visas/article-153614>

European Commission (2003) "Establishing a European Agency for the Management of the Operational Co-Operation at External Borders," RAPID Press Release IP: 03/1519, Nov. 11, 2003.

European Commission (2003a) "Transfer of Air Passenger Name Record (PNR) Data: A Global Approach" Communication from the Commission to the Council and the Parliament, COM, 2003) 826 final, Brussels 16.12.2003.

European Commission (2004), "Proposal for a Council Regulation on Standards for Security Features and Biometrics in EU Citizens Passports" COM (2004) 116 Final, 2004/0039 (CNS), Feb. 18.

European Commission (2004a) "Draft Decision on the Adequate Protection of Personal Data Contained in the PNR of Air Passengers Transferred to the United States' Bureau of Customs and Border Protection," European Commission, C5-0000/2004.

European Commission (2004b) "Proposal for a Council Regulation establishing a Community Code on the rules governing the movement of persons across borders," COM(2004) 391, final 2004/0127 (CNS), Brussels, 26.5.2004.

European Commission (2008) "New tools for an integrated European Border Management Strategy," Press Release, MEMO/08/85, February 13, 2008.

European Council (2005) Extraordinary Council Meeting, Justice and Home Affairs, Press Release, Brussels, 13 July 2005, 11116/05 (Presse 187).

European Parliament (2004) “Motion for a Resolution on the Draft Commission Decision noting the Adequate Protection of Personal Data Contained in the PNR of Air Passengers Transferred to the United States’ Bureau of Customs and Border Protection (C5-0000/2004)” Committee on Citizens’ Freedoms and Rights, Justice and Home Affairs, Feb. 17, 2004.

Findlayson, J.A. and M.W. Zacher (1988) *Managing International Markets: Developing Countries and the Commodity Trade Regime*, New York: Columbia University Press.

Franda, M. (2001) *Governing the Internet: The Emergence of an International Regime*, Boulder, Co.: Lynne Rienner Publishers).

Freeman G.P. (1995) “Modes of Immigration Politics in Liberal Democratic States, *International Migration Review*, 29, No. 4.

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

Ghosh, B. (1998) *Huddled Masses and Uncertain Shores: Insights Into Irregular Migration*, The Hague: Martinus Nijhoff.

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

Haas, P.M. (1989) “Do Regimes Matter? Epistemic Communication and Mediterranean Pollution Control,” *International Organization*, Vol. 43: 377-404.

Harris, N. (1995) *The New Untouchables: Immigration and the New World Worker*, London; I.B. Tauris.

Hatton, T. J. (2007) “Should we have a WTO for international migration?” *Economic Policy*, Vol. 22, No. 50.

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

Hollifield, J. F. (2000) “Migration and the ‘New’ International Order: The Missing Regime,” in Ghosh 2000.

HHS Inspector General (2000). Birth Certificate Fraud, Office of the Inspector General, Department of Health and Human Services, OEI-07-99-00570, September 2000.

ICAO (2004) “Biometrics Deployment of Machine Readable Travel Documents,” International Civil Aviation Organization, ICAO TAG MRTD/NTWG Technical Report Version 2.0, May 21, 2004.

ICAO (2005) "Guidelines on Passenger Name Record (PNR) Data Transfer to States," Air Transportation Committee, 175th Session of the Council AT-WP/1995, 5/5/05.

ICAO (2006) International Civil Aviation Organization, *ICAO MRTD Report*. 1(1).

Immigration Bureau (2007) "Outline of New Immigration Procedures: Requirements for the Provision of Personal Information" Immigration Bureau, Ministry of Justice, Japan at: <http://www.moj.go.jp/NYUKAN/nyukan64-2.pdf>

IOM (1994) "Seminar on International Responses to Trafficking in Migrants and the Safeguarding of Migrant Rights," International Organization for Migration, Geneva 26-28 October 1994.

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

Ireland (2004) "An International Framework for the Transfer of Passenger Name Record (PNR) data," Working Paper, Presented by Ireland on Behalf of the European Community and its Member States, Facilitation Division, ICAO Cairo, Egypt, 22 March to 2 April 2004.

Jervis, R. (1983) "Security Regimes," in Stephen D. Krasner, *International Regimes*, Ithaca, NY: Cornell University Press.

Johnson, Michael L. (2005) Statement at Hearing on "Vulnerabilities in the U.S. Passport System Can be Exploited by Criminals and Terrorists" before the Committee on Homeland Security and Governmental Affairs, United State Senate, June 29, 2005.

Kefauver, Barry (2007) "The Importance of the Integrity of Breeder Documents for the Issuance of IDs and Travel Documents, Presentation at the Third Symposium and Exposition on ICAO MRTDs, Biometrics and Security Standards, ICAO Headquarters, Montreal Canada October 1-3, 2007.

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

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

Koslowski, R. (1998) "European Migration Regimes: Emerging, Enlarging and Deteriorating," *Journal of Ethnic and Migration Studies*, Vol. 23, No. 4, 735-749.

Koslowski, R. (2000) *Migrants and Citizens: Demographic Change in the European States System*, Cornell University Press.

Koslowski, R. (2001) "Economic Globalization, Human Smuggling and Global Governance," in D. Kyle and R. Koslowski, eds., *Global Human Smuggling in Comparative Perspective*, Johns Hopkins University Press.

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

Krasner, S. D. (1983) *International Regimes*, Ithaca, NY: Cornell University Press).

Krasner, S. D. (1983a) "Structural Causes and Regime Consequences: Regimes as Intervening Variables," in Krasner, ed., *International Regimes*, Ithaca, NY: Cornell University Press.

McKenzie, David J. (2005) "Paper Walls Are Easier to Tear Down: Passport Costs and Legal Barriers to Emigration," World Bank Policy Research Working Paper 3783 (Washington, DC: World Bank).

Neumayer, E. (2006) "Unequal Access to Foreign Spaces: How States Use Visa Restrictions to Regulate Mobility in a Globalised World, *Transactions of the British Institute of Geographers* 31 (1), pp. 72-84.

Ogata, Sadako, Johan Cels (2003) "Human Security-Protecting and Empowering the People," *Global Governance*, Vol. 9.

Pew (2006) "Modes of Entry for the Unauthorized Migrant Population," Pew Hispanic Center, Fact Sheet, May 22, 2006.

Powell, C. and T. Ridge (2004) "Letter to Jim Sensenbrenner Jr., Chairman, Committee on the Judiciary, House of Representatives," Mar. 17, 2004. Downloaded Mar. 29, 2004 at: <http://www.house.gov/judiciary/ridge031704.pdf>

Ruggie, J.G. (1975) "International Responses to Technology: Concepts and Trends," *International Organization*, Vol. 29, Nr. 3.

Sadiq, K. (2003) "Have Documents, Will Travel: The Role of Documents in Illegal Migration," paper presented at the International Studies Association Convention, Portland, Oregon, Feb. 25-Mar. 1, 2003.

Sadiq, K. (2005) "When States Prefer Non-Citizens Over Citizens: Conflict Over Illegal Immigration into Malaysia, *International Studies Quarterly*, 49 (1), 101-122.

Schuessel, W. (1997) "Statement by Austrian Vice-Chancellor and Federal Minister for Foreign Affairs, Wolfgang Schuessel, to the fifty-Second Session of the United Nations General Assembly, New York, 25 September 1997," Austrian Information Service, Washington, DC.

- Sculley, E. (2001) "Cold War Traffic in Sexual Labor and Its Foes: Some Contemporary Lessons," in D. Kyle and R. Koslowski, eds., *Global Human Smuggling in Comparative Perspective*, Baltimore, MD: Johns Hopkins University Press.
- Sikkink, K. (1993) "Human Rights, Principled Issue Networks and Sovereignty in Latin America," *International Organization*, Vol. 47, Nr. 3,.
- Simpson, G.R., D. Crawford and K. Johnson (2004) "Crime Pays, Terrorists Find: Group in Europe Smuggles Immigrants and Forges Passports," *The Wall Street Journal*, April 14, 2004.
- Smith, Robert C. (2005) "Migrant Membership as an Instituted Process: Transnationalism, the State and the Extra-Territorial Conduct of Mexican Politics," in Rey Koslowski (ed.) *International Migration and the Globalization of Domestic Politics*, London: Routledge.
- Straubhaar, T. (2000) "Why do we Need a General Agreement on Movments of People (GAMP)?" in B. Ghosh ed., *Managing Migration: Time for a New International Regime*, Oxford: Oxford University Press.
- TIA (2008) "Double-Digit Decline in Overseas Travel to the United States Persists Through 2007: Overseas Travel to the United States is 11 Percent Below Pre-9/11 Levels Despite Weakening U.S. Dollar and Booming International Growth, According to Travel Industry Estimates," Travel Industry Association, Press Release, February 21, 2008.
- Tirman, John ed. (2004) *The Maze of Fear: Security and Migration After 9/11*, New York: New Press.
- US GPO (2000) *Data Management Improvement Act of 2000*, Public Law 106-215, Washington: Government Printing Office.
- US GPO (2001) *Aviation and Transportation Security Act*, Public Law 107-71, Nov. 19, 2001. Washington: Government Printing Office.
- US House (1996) *Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, *US Congressional Record—House* (September 28, 1996): H11787.
- US House (2004) "Integrity and Security at the Border: The US-VISIT Program," Hearing Before the Subcommittee on Infrastructure and Border Security of the Select Committee on Homeland Security, House of Representatives, January 28, 2004.
- US Senate (1998) Senate Judiciary Committee Report, submitted with *The Border Improvement and Immigration Act of 1998*, Senate Report 105-197.
- U.S. Senate (2007) "Improving America's Security Act of 2007," S.4.
- UN (2000) United Nations Convention against Transnational Organized Crime, General Assembly United Nations A/RES/55/25, November 15, 2000.

- UN (2003) Migration Working Group, “Background Report on Migration Prepared for the Senior Management Group,” Draft, United Nations, March 18, 2003.
- UN (2006) Trends in Total Migrant Stock: The 2005 Revision, United Nations Department of Economic and Social Affairs, Population Division. POP/DB/MIG/Rev.2005/Doc February 2006.
- UNDP (1992) *Human Development Report*, New York: Oxford University Press.
- UNWTO (2008) *UNWTO World Tourism Barometer*, UN World Tourism Organization, Vol. 6, No. 1 (January).
- UNWTO (2007) *Tourism Highlights*, UN World Tourism Organization.
- UNWTO (2006) *Tourism Market Trends*, UN World Tourism Organization.
- UNWTO (2005) *Tourism Market Trends*, UN World Tourism Organization
- Van Ham, P. (1993) *Managing Non-Proliferation Regimes in the 1990s: Power, Politics and Policies*, London : Pinter Publishers with the Royal Institute of International Affairs.
- WTO 1998. Presence of Natural Workers (Mode 4), Background note, Secretariat, World Trade Organization, Council for Trade in Services, S/C/W/75 December 8, 1998.
- WTO 1994, Annex on movement of natural persons supplying services under the Agreement, World Trade Organization, at: http://www.wto.org/English/tratop_e/serv_e/8-anmvnt_e.htm
- Young, O.R. (1989) “The Politics of International Regime Formation,” *International Organization*, Vol. 43, Nr. 3.
- Zacher, M.W. (1996) *Governing Global Networks: International Regimes for Transportation and Communications*, Cambridge: Cambridge University Press.
- Zolberg, A. R. 1991. “Bounded States in a Global Market: The Uses of International Migration Regimes,” in P.B. and J.S. Coleman, eds., *Social Theory for a Changing Society*, Boulder, Colorado: Westview Press)
- Zolberg, A.R. 1992. “Labour Migration and International Economic Regimes: Bretton Woods and After,” in M.M. Kritz, L. Lean Lim, H. Zlotnik, eds., *International Migration Systems: A Global Approach*, Oxford: Clarendon Press.