

Multilateral approaches to managing migration¹

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One of the most contentious issues in international relations is the extent to which independent states agree to relinquish certain powers to control the admission of foreign nationals into their territories and to dictate the terms and conditions of their stay. The general resistance of states to yield autonomy over immigration matters is reflected in what has been referred to as the “thin layer of formal multilateralism” in the governance of migration (Betts 2010). In this essay we review the status of multilateralism in the management of migration. In the Report of the World Commission on the Social Dimension of Globalization at the ILO, co-chaired by Tarja Holonen, president of the Republic of Finland and Benjamin William Mkapa, president of the United Republic of Tanzania at the International Labour Organisation in February 2004, the protection of migrants was established as a crucial necessity:

A major gap in the current institutional structure for the global economy is the absence of a multilateral framework for governing the cross-border movement of people... The issue...should now be placed firmly on the international agenda. ...The objectives of such a framework should be: to facilitate mutually beneficial ways of increasing migration opportunities, with due regard to States’ legitimate interests to ensure that the process is fair to both sending and receiving countries; to make the process orderly, predictable and legal; to eliminate trafficking and other current abuses where women are especially vulnerable; to ensure full protection for the rights of migrant workers and facilitate their local integration; and to maximize the developmental benefits of international migration. (World Commission on the Social Dimension of Globalization 2004)

Multilateralism and free movement of people

It is clear that the degree to which multilateralism may be said to exist depends crucially on what powers and prerogatives of states are considered subjects of multilateral agreement and whether one speaks of global or simply regional agreements. One may define it broadly as agreement by some or several states to adhere to certain common principles in their policies and practices on the admission of non-citizens into their territories and their treatment. So defined, multilateralism would easily include a number of examples such as regional agreements to allow free movement of each other’s citizens in each other’s territory as in the EU (European Union), ECOWAS (Economic Community of West African States), ASEAN (Association of Southeast Asian Nations), or the Andean countries. However, if multilateralism is defined more narrowly to include only truly global treaties then one is hard put to provide a real example other than the regime created by the 1951 Refugee Convention which has 144 signatory states.

Slow pace of multilateralism

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Unlike the case of trade and finance the development of a global regime on migration has been painstakingly slow. Böhning (2008) recounts how the creation of the ILO in 1919 at the Peace Treaty of Versailles marked the first attempt at giving an international organization a mandate on migration. However this mandate did not extend to matters of immigration but only to the treatment of those whom states have decided to admit. The Preamble to the ILO Constitution mentions its role to protect “the interests of workers when employed in countries other than their own.” During the interwar years there were various initiatives, notably led by the Italian Government and the European and Chinese trade union federations, to get the ILO to actively engage in protecting the rights of migrants but, for a variety of reasons including the Great Depression, the efforts did not yield significant results. It was not until 1939, on the eve of World War II, that an international instrument on migration, ILO Migration for Employment Convention (No. 26), was adopted, committing ratifying states to guarantee migrant workers equality of treatment with their own nationals. Unfortunately this never came into force for lack of ratification when the world was convulsed in war. An amended version of C. 26, Migration for Employment Convention Revised (No. 97) eventually came into force in 1949. Today some 49 states have ratified the Convention.

The 1951 Refugee Convention and the 1967 Protocol which extended its coverage were undoubtedly the most significant breakthroughs in establishing multilateral rules for managing what everyone recognized as multilateral if not global problems created when people are forced to flee their countries due to persecution for their beliefs and opinions. Widespread violence was later added as another justification. While there are differences in the policies of states regarding asylum-seekers and how they determine who qualify as refugees, all signatory states have bound themselves to cooperate with the Office of the UN High Commissioner for Refugees in supervising the application of the Convention. The refugee regime is unique in that UNHCR is mandated to assist individual refugees directly and can declare an asylum-seeker a “refugee” even where states fail to do so. In 2009 the UNHCR reported that there were some 10.5 million refugees all over the world, the large majority of them in developing countries, notably in Africa and South Asia.

Multilateral approach prompted by irregular migration

Initiatives to foster multilateralism in the management of migration took a more serious turn as concerns grew especially in Western Europe over the failure of governments to contain the growth of clandestine or irregular migration. In the mid-1970s a new convention was negotiated in the ILO which further articulated the principle of equal treatment of regular migrant workers while urging member states to take measures to suppress clandestine migration. This became the ILO Migrant Workers Convention, No. 143, which, however, suffered from poor ratification. Because it disappointed some states that wanted a convention that would specify equal rights even to irregular migrants, a new initiative commenced, this time in the United Nations, to formulate a new convention on the rights of migrant workers. It took almost a decade and a half before these led to the adoption by the United Nations of the 1990 Convention on the Rights of Migrant Workers and Members of their Families (Böhning 1991, 2009). It took 13 years for it to be ratified

by a sufficient number of states to finally come into force and even now few would argue that it has made any difference to the multilateral governance of migration due to lack of ratification from major migrant-receiving countries.

Reducing clandestine migration has proven even more elusive as demographic and economic factors combined to motivate more people to migrate in spite of heightened risks. The rapid ageing of populations in Europe and Asian countries like Korea and Japan has sharply reduced traditional supplies of labor in important sectors like agriculture, construction, and services and created expanding markets, often informal, for foreign labor. At the same time many of the world's poorest countries have fallen even farther behind the richer ones and this has added pressures, especially for the young and the better educated, to seek fortunes outside their countries. Over the last decade concerns in Europe over these pressures have led to new initiatives to promote cooperative management of migration, at bilateral as well as multilateral levels. Governments of European countries bordering the Mediterranean, notably France, Italy, and Spain have engaged their counterparts in the Maghreb as well as in sub-Saharan Africa in joint efforts to control clandestine migration. In 2001 the Government of Switzerland launched the so-called "Berne Initiative" with the stated purpose of promoting cooperation among states in improving the management of migration. Under its auspices regional consultations were organized: in Addis Ababa for Africa, in Budapest for Europe and Central Asia, in Guilin for Asia and the Pacific, and in Santiago de Chile for the Americas region. These sought agreement on principles that states should follow in protecting the human rights of migrants, and in managing labor migration, integration, irregular migration, trafficking in human beings and migrant smuggling, trade and health issues, and return as well as migration and development. The "Declaration of The Hague on the Future of Migration and Refugee Policy" was the result of a similar initiative taken by the Society for International Development of The Netherlands in 2002 with support of the Government.

In 2003 at the urging of the Governments of Sweden, Switzerland, Brazil, The Philippines, Morocco and Egypt, the UN Secretary General, Kofi Annan, created the Global Commission on International Migration (GCIM). The Commission's mandate was "to provide the framework for the formulation of a coherent, comprehensive and global response to the issue of international migration." Some interpreted this mandate to mean making recommendations on the "institutionalization" of the governance of migration at a global level, akin perhaps to the functioning of the World Trade Organization (WTO), which promotes global trade through multilateral agreements on reduction of tariffs and other barriers to commerce. In 2005 the Commission issued its report, which recommended the establishment by the UN of a "global migration facility" which could formulate the comprehensive global response (Global Commission on International Migration 2005). As of this date no such facility has yet been established.

What we need is a World Migration Organization that oversees, monitors and feeds into the public domain systematic reviews of nations' policies regarding all types of migrations so that we see impartial and authoritative reviews of nations' entire policies towards migrants and so that those who behave in draconian fashion can be shamed into better practices suggested by the better nations' practices: a suggestion that I have made over the

years. The creation of such a WMO would fill a shameful lacuna in the international infrastructure of institutions today that look after issues transcending nation states and reflecting their interdependence. (Bhagwati 1999)

What the UN Secretary General has so far managed to do is to encourage continuing dialogue among states through an intergovernmental program called the Global Forum on Migration and Development (GFMD). The GFMD was intended to be a platform for dialogue, not a decision-making process. Belgium took the initiative to organize the first meeting of the GFMD, which was held in Brussels in July 2007. This marked the start of a new global process to produce concrete and action-oriented outcomes, including new policy recommendations, innovative pilot programs, the development of partnerships, and the possibility to learn from each other's experiences. Since then three other fora have been organized, in Manila in 2008, in Athens in 2009, and in Puerto Vallarta (Mexico) in 2010.

Understanding what motivates cooperation in migration governance

Alexander Betts of the Global Economic Governance Programme at the University of Oxford offers an explanation for the reluctance of states to pursue formal multilateralism (2010). He argues that not all areas of migration governance are “global public goods.” Because some forms of migration governance “vary in the qualities of ‘excludability’ and ‘rivalry’ that define a global public good.... one might expect alternative forms of cooperation – such as bilateral or regional cooperation – to emerge... .” He argues, for example, that in the case of low-skilled labor and irregular migration, effective governance can be taken as a “club good.” While regulating irregular movement has benefits that are “non-rival,” the benefits of governance are geographically confined within a particular regional context. This explains, in his view, why there are more examples of formal multilateralism in migration governance at bilateral and regional levels, rather than at the global level.

Multilateral governance at the regional level

The members of the European Union did indeed embrace the idea of a multilateral approach to the management of refugees and illegal migration, a clear example of the need for cooperation to avoid the “free rider” problem that arises when benefits are non-excludable. The European Council has sought to develop a common approach to the admission of third country nationals, the prevention of irregular migration and sharing of the burden of securing EU's common borders, and cooperation with developing countries of origin. However, except for the last item progress has been slow. Individual states still zealously guard national autonomy in matters of admission of foreign nationals despite the fact that it has been two decades since the Maastricht Treaty guaranteed all citizens of the member states the right to European citizenship, to move and live in any EU state, and to vote in European and local elections in any country. Agreement on a common admission policy vis-à-vis third country nationals and a common approach to irregular migration has been elusive. For example, the liberal policy of Spain in recently regularizing the status of

hundreds of thousands of irregular economic migrants, mostly from Africa and Central America, has been widely criticized by the other member states.

In Africa there have also been bilateral as well as multilateral treaties with the stated objective of removing barriers to trade and facilitating the movement of people. Among the more significant ones are the free movement agreement of 1975 among 15 member states of the West African Economic Community (ECOWAS); the 1997 agreement to remove obstacles to free movement among the 15 member states of the Southern African Development Community (SADC); the 1999 agreement among five states in East Africa to establish the East African Community (EAC); and the Libya-initiated Maghreb Union. ECOWAS adopted a Protocol on Free Movement and Right to Residence and Establishment in 1979. ECOWAS member states are Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo. Mauritania, a former signatory state, opted out of ECOWAS in 1989. The first stage of abolishing visa formalities for nationals of member states has been easily achieved, no doubt due also to the fact that the establishment of national borders by emerging states after independence never really stopped the historical circulation of people, often across borders, as they searched for livelihood. In Southern Africa the nine member states of SADC signed a Protocol on free movement eight years after the SADC treaty came into force but maintained restrictions on length of allowable stay and the pursuit of economic activity. Angola, for example, requires all private firms to reserve 80 percent of jobs in their establishments for Angolan citizens (Ammassari 2006). Aside from concerns over displacement of nationals in the labor market, the presence of very large refugee populations in some countries also discourages further liberalization of immigration rules. Asylum-seekers like Rwandans in East Africa who have been refused refugee status tend to disappear and become stateless.

Since 2001 the four member states of Comunidad Andina in Latin America, namely Bolivia, Colombia, Ecuador, and Peru have entered into a number of multilateral agreements aimed at eventually unifying their labor markets. Travel within the subregion by citizens of the member states was first facilitated by recognizing national identification documents as valid for travel, then in 2007 they adopted the Andean Migration Card (TAM) as a standardized immigration control document. Another agreement insured that the social security rights and entitlements of their citizens are not impaired when working or residing in each other's territory. They also adopted a common Andean Passport for travel of their citizens outside the subregion, and agreed to provide consular protection to each other's nationals in case of need. Not quite falling under the category of an agreement but equally significant as an effort to promote cooperation in migration management is the so-called "Puebla Process" which was put into place in 1997. Participants include not only Central American countries, but also the main receiving countries, namely the United States and Canada. Its importance derives from the rapid growth of migratory movements, especially irregular ones, between and among the countries and the recognized need for establishing a process for consultation among the national authorities concerned.

Bottom-up approach to cooperation?

This brief review of multilateralism in the global governance of migration shows meager accomplishments over almost a century of initiatives. So are there any promising prospects for

the future? In a report for the Global Commission on International Migration Kathleen Newland of the Migration Policy Institute considered it ironic that national governments have been extremely reluctant to relinquish formal authority over migration or even to discuss common principles for international cooperation because “states have never had full sovereign control over migration and have lost much of what little they had in the era of globalization” (Newland 2005).

Almost everywhere laws and policies have failed to curb unauthorized immigration and employment, which are organized by formal and informal intermediaries in response to demand. A bottom-up approach to the international governance of migration, such as the one articulated by Anne Marie Slaughter of Princeton University, stands a better chance of succeeding in Newland’s view. Slaughter has argued that “particular types of international organizations—secretariats, commissions, agencies—can evolve or be created largely to facilitate the work of horizontal government networks” (Slaughter 2004: 16). This perspective seems to draw inspiration from the experience of the European Union but whether or not this will work beyond regional levels remains to be seen. The Global Migration Group (GMG) formed by a number of international organizations in response to the call by the Global Commission on International Migration for a “migration facility” has yet to show that the activities of the organizations themselves can be coordinated.

SEE ALSO: Bilateral labor agreements; Global trade and international migration; Guest workers, 1970s to present; Human rights, activism, and migration; ILO and the rights of migrant workers

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