

Chapter 20

Regional Migration Governance

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Unlike with flows of goods and finance, where states have established global institutions to coordinate their market-based policies, no parallel development has taken place with regard to the international mobility of persons. At the multilateral level, states have traditionally avoided international obligations in this sensitive field. This contrasts with the regional level where migration has increasingly been addressed in a cooperative manner.

With some earlier exceptions, such as the European Union (EU) and Economic Community of West African States (ECOWAS), the proliferation of regional migration frameworks started in the 1990s. These regional regimes take two different forms. The first, regional integration frameworks such as Association of Southeast Asian Nations (ASEAN), ECOWAS, Southern Common Market (MERCOSUR) or North American free Trade Agreement (NAFTA), have addressed the (partial) liberalisation of internal mobility flows as part of their broader market-building efforts. These mobility-enhancing initiatives sometimes address migrant rights and draw on the formal institutional framework of the regional integration processes. In parallel to this, we see the emergence of a second type of migration regimes, the so-called Regional Consultation Processes (RCPs). RCPs are informal transgovernmental networks usually detached from the regional integration bodies. Rather than promoting economic mobility, RCPs focus on the security aspects linked to migration and in particular the control of unwanted migration flows, especially from outside the regions.

In this chapter, we map the variety of regional migration governance arrangements and examine the factors behind their emergence. Regional migration regimes, entailing both formal and informal structures of cooperation, have developed through the interplay between regionalism, trans-regionalism and global institutions more broadly. Countries which have already been engaged in encompassing regional integration frameworks are more likely to consider regional approaches to the regulation of migration. An example is the EU, which, as compared to “lighter” regional treaties like NAFTA, has engaged first in the regulation of internal migration and has later started coordinating external migration policies. The liberalisation of internal mobility flows has to a certain extent diffused across those regions aspiring at deeper regional economic integration, yet some have followed "lighter" templates limiting mobility rights to highly skilled professionals, as also codified in the WTO's General Agreement on Trade in Services (GATS). This integration has sometimes gone in parallel with the diffusion of social rights for migrants, yet these rights have often remained without effective enforcement mechanisms. Finally, for developing countries, it is frequently the support and/or power interest of a receiving country that leads to the development of a regional governance regime.

While regional free movement schemes have thus largely proliferated as a side aspect of regional integration and through policy diffusion, state interests and power differentials seem to be the driving forces behind external migration control policies. In contrast to internal mobility regimes, which are codified within regional units, cooperation on external migration control occurs through informal governance arrangements, the RCPs, which tend to be strongly influenced by the interests of major immigration countries in the region or outside, such as the EU towards Africa and the US towards Latin America. In sum, while regional schemes underline to some extent the willingness to cooperate on migration, our analysis also underlines the prevalence of sovereignty concerns as a limit to deeper integration.

After a brief discussion of the emergence of global and regional migration cooperation this chapter analyses the institutional design of regional migration governance in Europe, Africa, the Americas, and Asia. Its emphasis is on an original typology of regional migration regimes with a focus on the main initiatives on each (sub-) continent. This is complemented by an analysis of the trans-and inter-regional layer of migration governance that has materialised in the EU-African relations. The third section reviews the regional and trans-regional processes through the lens of integration and diffusion theories. The effects of regional regimes on migration flows and legislation are addressed in section four. The conclusions highlight the importance of regional migration governance in the global context.

< h1> Emergence and Institutional Design of Regional Migration Regimes

Regional migration governance has evolved in tandem with international developments.¹ The cornerstones of global migration governance have their origins in regional initiatives in the post-World War II era. The global system today provides the basic legal and institutional framework in which new regional initiatives unfold. The international level of migration governance can be split into two categories: legal agreements and international organizations. Two central characteristics of international law relating to migration are its fragmented nature, a phenomenon coined as "substance without architecture" (Aleinikoff, 2007); and the fact that most commitments stem from the inter-war or the immediate post-World War II period (Betts 2011a). In the absence of a comprehensive international regime, existing instruments target only subsets of migrants. No centralized UN migration organization exists. The strongest form of legal codification addresses refugees, with the UN High Commissioner for Refugees (UNHCR) in charge of implementing the 1951 Convention on the Status of Refugees (Betts et al., 2012). The International Labour Organization (ILO) has issued resolutions on the social rights of migrant workers; it does not however affect these persons' access to states' territory.

In other areas—such as irregular migration and the admission of labour migrants —states predominantly act unilaterally, or develop bilateral or regional cooperation. For both irregular and labour migrants, the International Organization for Migration (IOM) — a body that exists outside the UN system — provides a range of services to states to support managed flows; however, its role is primarily as an implementing organization. It has almost no normative function.

The fragmentation of the international legal order on migration is captured by three general approaches (cf. Lahav and Lavenex, 2012): an economic approach focusing on facilitating mobility; a rights-based approach focusing on the rights of migrants; and a security-based approach emphasizing the imperatives of migration control and the fight against irregular flows. A formal, institutional dimension can be added to these three substantive dimensions that defines the extent of legalization or of limitation of regional norms.

A complication in the definition of regional migration regimes is the parallel development of two different structures of cooperation: formal policies in the context of broader regional integration frameworks and informal Regional Consultation Processes (RCPs) that often involve the same countries but operate through different venues, with a much weaker degree of institutionalization. A particular feature of RCP is their greater reliance on soft modes of network governance rather than formal integration (chapter 3 Börzel, this volume).

Table 20.1 below defines on a four-value scale different scopes of regional integration in each of the three substantive dimensions together with the institutional dimension of legalization.²

Table 20.1 Dimensions of Regional Migration Regimes

	Liberalisation / Mobility	Control / Security	Protection / Rights	Legalisation
Very strong	All citizens, full market access, unlimited stay	Harmonized entry requirements, joint external border management, exchange of liaison officers, readmission	Harmonization exceeding the UN Convention on Migrant Workers and their Families	Supranational commitments, independent monitoring, supranational judicial review
Strong	All citizens, market access, limited stay	Common rules on entry requirements and border management, operational cooperation	Harmonization based on the UN Convention on Migrant Workers and their Families	International law commitments, judicial and political review mechanism
Partial	Selected workers, selected market access, limited stay	Common rules on entry requirements and border management	Common rules on specific social and economic rights for workers	International law commitments, no monitoring, no review mechanisms
Weak	Facilitated entry procedures, no market access	Exchange of best practices on immigration control systems	Exchange of best practices on migrant rights protection	Soft law coordination with or without monitoring
Not covered				

In the following, we analyse regional migration regimes along these four dimensions. The cases discussed here represent the most far-reaching approaches to regional migration governance identified throughout Europe, the Americas, Africa and Asia respectively, revealing the wide variety of existing migration regimes across the world.

<h2> Europe

Among the regional integration frameworks, the EU has the most comprehensive migration regime addressing mobility, social rights, security and providing for supranational enforcement mechanisms.³ In terms of mobility liberalization, the free movement of workers (later “people”) was included from the start, with capital, goods and services as one of the

four fundamental freedoms of the European single market (Art. 18 EC). The Treaty of Rome included three types of economic activity in the free movement provisions: work (Article 39 EC, ex. Art. 48); self-employment (Article 43 EC, ex. Art. 52); and service provision (Article 49 EC, ex. Art. 59). All occupations were opened up to workers from other member states with the exception of occupations in the public service. The full free movement of workers was introduced in 1968 with Regulation 1612/68. Following the decision in the 1987 Single European Act to realize the single market by 1992, the free movement norm was extended from the group of workers to the economically inactive and today covers all EU citizens and their foreign relatives. With the Maastricht Treaty (1992), these rights became a cornerstone of the newly introduced European citizenship. EU migrant workers and their families have the right to the same taxation and shall enjoy the same social advantages as compared to their fellows in the host state (e.g. child raising allowances). EU Member States have coordinated social security systems and established a framework that mutually recognizes qualifications (Deacon et al., 2011). Social rights for 3rd country nationals have been addressed in the EU Long Terms Residents Directive (2003/109/EC) and the EU Family Reunification Directive (2003/86/CE).⁴ A strong symbol of the free movement regime finally is the abolition of controls at the internal borders of the EU, decided in the 1985 Schengen Agreement and realised in 1996.

This abolition of internal border controls was taken as impetus for cooperating on external migration. Addressed first in intergovernmental fora outside EU institutions, this cooperation has gradually been communitarised (Geddes, 2012). Today, the conditions for crossing the EU external border, visas for stays shorter than three months, and wide sections of asylum policy are regulated by EU rules. Although the EU lacks a full-fledged competence on economic immigration from third countries, directives have been adopted concerning specific groups such as the highly skilled, students, researchers, or seasonal workers. The EU has also

developed an active external migration policy that impacts on other regions, in particular in its periphery and Sub-Saharan Africa (see below).

In institutional terms, the EU's supranational bodies and in particular the Commission and the European Court of Justice assure the monitoring and enforcement of EU law. Through the preliminary rulings procedure, the Court has also played an important role in the full realization of the internal mobility regime (chapter 23 Alter and Hooghe, this volume). Today, the EU's free movement regime is the most comprehensive model covering mobility for all citizens and guaranteeing equal social rights. Cooperation on external migration policies has also evolved considerably over time. Today, the EU disposes of a common visa policy; a harmonised system of external border controls; common standards for dealing with asylum claims; and directives on legal migration including the rights of long-term resident third country nationals in the EU, family reunification, and common rules on the admission of highly skilled workers, researchers, students and intra-corporate transferees. The EU's supranational structures finally assure a high level of legalization. In addition to this internal integration, migration has also become an issue of EU foreign policy as exemplified in the establishment of a dense web of trans-regional ties, especially towards the EU neighbourhood and African states (see below).

<h2> South America: MERCOSUR and the South American Conference on Migration (SACM)

In South America, labour mobility has gradually evolved and it is now embraced as a basic freedom attached to citizenship (Mármora, 2010). This “open door” approach to regional migration (Acosta and Geddes, 2014, 23) has first developed within MERCOSUR and has recently extended to the whole subcontinent. It is promoted by three processes, not always well-coordinated. MERCOSUR’s initial Treaty of Asunción (1991) stated that the free

movement of factors of production (including labour mobility) is one of the main objectives of the Common Market. The Common Market Group introduced a tripartite Working Group No.10 composed of representatives of labour ministries, unions and employers associations to deal with labour migration and employment issues. In 1998, the Social-Labour Declaration was adopted that, emulating many of the provisions of the 1990 UN Migrant Workers Convention, provides the main plan of action of the Working Group No. 10.

While this group has focused on the free movement of workers, the portability of social security benefits or mutual recognition of qualifications, a second process of free movement promotion was launched with the Residence Agreement signed in 2002 (Ceriani, 2015). This agreement entered into force in 2009 and grants MERCOSUR citizens, as well as nationals of Bolivia and Chile the right to work and live within the territory of the State Parties provided that they have no criminal record within the past five years. This right of residence and work initially issued for two years may be transformed into a permanent one. The Residence Agreement guarantees migrant workers equal civil, social, cultural and economic rights as compared to nationals (Art. 9). The right of residence can be transferred to members of the migrants' families irrespective of their own nationality (Maguid, 2007). The other South American countries Bolivia, Colombia, Ecuador, and Peru have also adhered to the Residence Agreement, thus rendering parallel initiatives in the Andean Community obsolete (Santestevan, 2007). The culmination of these efforts is the adoption of a Statute of Regional Citizenship in the MERCOSUR Council Decision in Foz de Iguazú in December 2010 with a plan of Action that shall be completed by 2021, MERCOSUR's 30th Anniversary.

The third process entailing a liberalisation of internal mobility is the trade agenda. In 1998 the Council of the Common Market approved the inclusion of a specific provision on the movement of service providers under the Protocol of Montevideo on Trade in Services. The last (7th) round of services liberalization was concluded by MERCOSUR members in 2009,

covering temporary mobility of several categories of service providers (such as independent professionals, graduate trainees, contractual service suppliers, ICTs, business visitors, technicians. The services liberalization process exceeds current commitments under the GATS.

While freedom of movement has been formally adopted, and cooperation on social rights is developing, the aspect of external migration policy and control has not been taken up by regional organizations. The South American consultative process is the SACM launched in 2000. The SACM is based on annual meetings at the level of foreign ministers and encompasses all 12 South American countries that also constitute UNASUR (chapter 8 Bianculli, this volume). Its main outputs have been the adoption in 2010 of the Declaration of Migration Principles and Guidelines and the South American Plan for the Human Development of Migrants. Addressing issues such as respect for the rights of migrants, human mobility, citizenship, return and reintegration, and emphasizing the positive impact of migration and the regional integration processes, the plan constitutes SACM's main working document and shall inspire the development of national migration policies. In stark contrast to other RCP's focus on migration management and security questions, the SACM – in line with MERCOSUR Residence Agreement – focuses on the human rights of migrants regardless of their status and highlights migrants' contribution to development in countries of destination. The loose institutional structure and low density of SACM meetings however limit its regulatory potential when compared to other RCPs. Its main function seems a declaratory one, promoting a positive vision of migration. Eventually, this loose structure could be merged with the parallel organization of UNASUR which, for some time now, has been reflecting about the introduction of a "South American Citizenship" (Harns, 2013, 42), a process that would parallel the developments envisaged in MERCOSUR.

Monitoring compliance with the regional commitments on mobility is done through MERCOSUR's intergovernmental institutions (chapter 8 Bianculli, this volume). There is no coercive intra-regional body to ensure implementation, nor an independent supranational juridical body (Acosta and Geddes, 2014).

In short, while the question of external migration has not [yet] been addressed, mobility within MERCOSUR and the associated countries is regulated by a very liberal regime (at least formally), comparable to EU's free movement model. Nevertheless, the level of legalization is relatively weak, and, without independent monitoring and legal enforcement mechanisms, implementation is patchy.

<h2> North America: NAFTA and the Regional Conference on Migration (RCM)

Mobility provisions within NAFTA are fully governed by the trade agenda, similar to the WTO GATS model (chapter 7 Duina, this volume). NAFTA facilitates movement of selected categories of workers, for limited periods of stay among the member states. Chapter 16 of the Agreement establishes criteria and procedures for the temporary entry of business people, covering business visitors; traders and investors; intra-company transferees; and professionals in specific sectors (Appendix 1603.D.1). It should be mentioned that until 2004 Business Visitors from Mexico entering the US under NAFTA were limited to 5,500 per year, later the quota was lifted. In addition, a special non-immigrant visa category - Treaty NAFTA (TN) - has been created by the US for temporary stays of professionals from Mexico and Canada who possess certification of employment. For certain professions (i.e. accountancy, architecture and engineering), the parties have also concluded Mutual Recognition Agreements.

Social rights and labour issues within NAFTA are covered in a side agreement, the North American Agreement on Labour Cooperation (NAALC). While focusing on the domestic

implementation of labour rights vis-à-vis own nationals, the NAALC states that the Parties must provide “migrant workers in a Party's territory with the same legal protection as the Party's nationals in respect of working conditions” (Annex 1 principle 11). The agreement establishes sanctioning mechanisms if a labour right complaint is accepted by the appropriate institution (the National Administration Offices in Mexico and Canada or the Department of Labour’s Office of Trade and Labour Affairs in the U.S.; NAALC Annex 39, 41B). Analyses of NAALC's implications for the rights of Mexican workers in the US have shown a limited effectiveness of this mechanism (Russo, 2010). Referring to NAFTA and the NAALC, the American Court of Human Rights had got involved with the US refusal to extend basic labour rights to undocumented Mexican workers. Reflecting provisions of the UN Migrant Workers Convention and the position of Latin American Countries (see section on MERCOSUR), the Court held in an Advisory Opinion (Oc-18/03) in 2003 that the rights to equality and non-discriminatory treatment are *jus cogens* and applicable to any resident of a state regardless of that resident’s immigration status.

Commitments under the NAFTA Treaty are binding for member states and subject to dispute settlement mechanisms. However, concerning a refusal to grant temporary entry, dispute settlement provisions can be invoked only for matters that involve a pattern of practice and once the natural person has already exhausted the available administrative remedies (Nielson, 2002). The treaty has also established a Working Group on Temporary Entry, comprising representatives of each Party, including immigration officials, which meets every year to monitor implementation and discuss possible options to facilitate temporary entry of business persons on a reciprocal basis. The Group has brought some modifications to the TN categories, but it has not agreed on major changes so far (Malpert and Petersen, 2005).

As in South America, regional integration in North America is accompanied by an RCP linking the NAFTA members with eight Central American neighbours.⁵ The RCM created in

1996, focuses not only on migrants' rights and fostering the links between migration and development, but it has also a clear security dimension, consisting in strengthening the integrity of each member country's migration laws, borders and security (Kunz, 2011). Compared to other RCPs, the RCM is strongly institutionalised. Its decision-making body is the Annual Meeting of the Vice-Ministers of key government agencies (foreign affairs and interior/security). These meetings are prepared for and followed up by semi-annual meetings at the senior technical level as well as two more operational networks of liaison officers deployed in the different countries. The RCM has a technical secretariat, hosted by IOM, ensuring the follow-up and coordination of its activities.

Liberalization in NAFTA covers selected categories of (skilled) workers, with limited market access and duration of stay. The side agreement NAALC covers labour rights of migrants but it is seen to be ineffective. Control and security issues attached to migration are not in the ambit of NAFTA but are subject of a consultative framework, the RCM. On the procedural dimension, NAFTA commitments are binding international provisions, and may qualify for dispute settlement mechanisms.

<h2> Southeast Asia: ASEAN and the Bali Process

A second region in which labour mobility has been addressed exclusively from the trade angle is Southeast Asia. Mobility of service providers was not part of the original Declaration establishing ASEAN (1967). However, it has become an important topic with the 1995 Framework Agreement on Services (AFAS), adopted in the same period as the WTO/GATS. Members agreed that “there shall be a freer flow of capital, skilled labour and professionals among Member States” (AFAS art.4). In 2012 Members have signed the Agreement on Movement of Natural Persons (MNP) that basically incorporates all mobility commitments initially included in the AFAS. Mobility is linked to investment and business flows,

facilitating the temporary movement of highly skilled professionals. Intra-regional mobility is also promoted via Mutual Recognition Arrangements for professional services, covering engineering, accountancy, architecture, surveying, nursing, dental and medical practitioners, and tourism. Traveling within the region for up to 1 month is visa-free for ASEAN nationals, but work visas remain subject to domestic regulations.

Migrant workers' rights are covered in the regional Declaration on "Protection and Promotion of the Rights of Migrant Workers" signed in 2007 by ASEAN leaders. It aims to safeguard the rights of migrants and their families in accordance with national laws and regulations and calls for appropriate employment protection, wages, and living conditions; as well as for coordination on anti-trafficking policies. The Declaration has not yet been ratified domestically, however the proposed timeline envisages progress to be made by 2015. There are also a few intra-ASEAN bilateral memoranda of understanding, specifying conditions for domestic migrant workers related to duration of stay, language requirements, or immigration procedures.

Regarding legalization, commitments on mobility inscribed in AFAS are binding. However, ASEAN is an intergovernmental organization without an independent body responsible for monitoring of implementation and enforcement (Jurje and Lavenex, 2015; Nikomborirak and Jitdumrong, 2013; chapter 11 Jetschke and Katada, this volume).

The main RCP covering the ASEAN region is the so-called Bali Process. Created at the Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime held in Bali in 2002, it has a limited focus on security related to people smuggling and trafficking. Co-chaired by Australia and Indonesia, the Bali Process is based on biennial ministerial conferences and a follow-up monitoring and implementation structure guided by a Steering Group composed of the governments of Australia, Indonesia, New Zealand and Thailand, as well as IOM and UNHCR. The Process is closely linked to the

International Convention against Transnational Organized Crime and its Protocols on Smuggling and Trafficking which approximately one third of the Bali Process members have yet to ratify or accede to. Recently, the Bali process has widened its focus to the fight against irregular migration among its members with the 2011 agreement to set up a corresponding Regional Cooperation Framework and Regional Support Office (Harns, 2013, 62).

The ASEAN mobility liberalization, similarly to NAFTA, covers only selected categories of skilled natural persons, for limited periods of stay, and limited market access. Migrants' rights are mainly dealt with bilaterally, complemented by dialogues and exchanges of best practices at the regional level. Cooperation on security aspects takes place in a separate RCP, the Bali Process. The intergovernmental structure of ASEAN and the consultative nature of the RCP do not entail any supranational law enforcement or monitoring bodies.

<h2> Africa: The Economic ECOWAS and the Migration Dialogue for Western Africa (MIDWA)

The free movement of people is seen as essential to achieve regional integration on the African continent (chapter 13 Hartmann, this volume). Here, we focus on the Economic Community of the West African States which is the sub-region where migration cooperation has developed furthest (Deacon, 2011; Nita, 2013). ECOWAS was one of the first regional integration initiatives to address freedom of movement. Already its founding Treaty of Lagos (1975) addressed the issue. The “Protocol Relating to Free Movement of Persons and the Right of Residence and Establishment” of 1979 devised three phases in which mobility should achieve full liberalization over a period of 15 years.

The first step (1980-1985) addressed the right of entry (up to 90 days of visa-free travel; citizens must possess a valid travel document and an international health certificate). Member States retained discretionary powers to refuse entry to citizens who are deemed unacceptable

based on reasons of security, health and behaviour. In the second phase (1985-1990), a supplementary protocol was negotiated including the right of ECOWAS citizens to reside within the territory of another member state for the purpose of seeking and carrying out employment (ECOWAS, 1986). It entered into force in July 1986 upon ratification of all member states (Adepoju, 2011). Finally, the third phase (1990-1995) would grant the right to establishment of ECOWAS citizens, as well as to set up and manage enterprise and companies under the same legislation as for nationals. However, the protocol for this latter phase has not yet been ratified (Nita, 2013). Cross-border transit for ECOWAS citizens is facilitated through a common identity travel card introduced in 1987 or the ECOWAS passport (IOM, 2007).

The "Establishment of a common market through the removal of obstacles to the free movement of persons, goods, services and capital and the right of residence and establishment" was reiterated in the Revised ECOWAS Treaty of 1993 (Art. 3) as a reaction to the illegal expulsion of some 1.2 million ECOWAS workers by the Nigerian government in the mid-1980s.

Regarding social rights, in 1993 the Social and Cultural Affairs Commission of ECOWAS adopted the General Convention on Social Security to ensure equal treatment of cross-border workers and the preservation of their rights while living abroad (Robert, 2004; chapter 18 Van der Vleuten, this volume). Member states have also developed a Regional Labour and Employment Policy and a Plan of Action adopted in 2009⁶, which supports labour market flexibility and human capital development (Africa and Europe in Partnership, 2012). Though implementation of policies remains limited, regional Ministers have committed to promoting the rights of migrant workers, cooperation in labour migration, and geographic and occupational mobility (Klavert, 2011).

In institutional terms, all 15 ECOWAS members have ratified the 1979 Free Movement Protocol, which becomes directly applicable in national law. The ECOWAS Court of Justice has juridical power to enforce compliance with the Revised Treaty and all other subsidiary legal instruments adopted by Community and it has issued several rulings concerning the implementation of the freedom of movement (Open Society, 2013). Nevertheless, and despite the reiterated expression of political, precarious domestic harmonization, the fact that many ECOWAS migrants do not possess valid travel documents as requested by the Protocol, harassment at border checks, and at times mass expulsion of nationals remain important obstacles today (Awumbila et al., 2014). Studies thus concur that in order to promote effective implementation, independent monitoring with periodic studies would be needed (Awumbila et al., 2014).

Extra-regional migration and the security aspects of cooperation have been addressed outside ECOWAS in a Regional Consultation Process. The Migration Dialogue for Western Africa was launched in 2000 among the ECOWAS countries in order to promote cooperation on matters of common concern. Initially flagging out a broader agenda, addressing migrant rights, cooperation in MIDWA has clearly focused on border management and the fight against irregular migration. An interesting development is the gradual rapprochement between ECOWAS as an institution and MIDWA. Originally separate processes, ECOWAS has taken over most of the concerns addressed in MIDWA with its 2008 Common Approach on Migration, a non-binding document providing an action plan to promote effective migration management in West Africa (Awumbila et al., 2014). This integration took a further step with the decision in 2012 to strengthen MIDWA's institutional capacity by anchoring it more strongly in the framework of ECOWAS (ECOWAS, 2012).

<h2> Trans and Inter-Regionalism in the European-African Super-Region

The processes of active policy transfer underpinning the diffusion of regional migration governance (chapter 5 Risse, this volume) addressed above indicate not only the importance of external influences on regional integration, but also the existence of overlapping integration structures beyond the neat separation between global multilateralism and (contained) regionalism (chapter 26 Ribeiro Hoffmann, this volume). Spurred by the dynamic external migration policy of the EU and its member states, Europe, West Africa, Southern Africa, plus—to a lesser extent—Central and Eastern Africa, increasingly form a trans-regional "super-region" addressing migration governance. It is in this “super-region” that the relationship between the regional integration drivers and the international facilitator organizations (mostly the IOM) is strongest. The basic dynamic here is comparable to that within each region, where all parties are willing to cooperate to at least some minimal degree and one actor with resources takes the lead in setting up agreements and institutions that make governance possible, with the EU and IOM increasingly taking a central role. Part of this projection of Europe's internal demand for migration management is the propagation of corresponding governance concepts beyond its borders, particularly in RCPs (Betts, 2011b; Lavenex and Stucky, 2011, 124).

The four African sub-regional organizations with which the EU works most intimately on migration⁷ illustrate the range of ways the EU promotes regional migration governance. As Betts (2011b) argues, the EU has incited existing cooperation processes through bilateral cooperation processes and via the intermediary of the IOM to address migration control and has promoted such cooperation where it did not previously exist.

Inter-regional governance between ECOWAS and the EU has been less decisive than with the other sub-regions especially because of ECOWAS long-standing migration agenda and the strength of existing regional institutions. The EU has actively contributed to capacity-building

and cooperation on migration, in particular through MIDWA. The launch of the 26-million Euro EU-funded project on migration with ECOWAS in 2014, will clearly support the merger between MIDWA and ECOWAS by financing the development of "efficient migration policy", including aspects of data management, border management, labour migration and counter-trafficking.⁸

Both given geographical distance and the presence of South Africa, EU cooperation with SADC has been less intensive. With South Africa's accession to SADC, implementation of Article 5 of the 1992 founding Agreement foreseeing freedom of movement in the region came to a halt before being completely abandoned with the 1997 reform. Cooperation on migration instead shifted to a more security-focused approach with the establishment of the parallel Migration Dialogue for Southern Africa MIDSA, an RCP created on the initiative of the IOM and with support of both the EU and South Africa in 2000 (Betts, 2011b).

Stronger inter-regional links have been established with two regions that compared to ECOWAS and SADC have relatively weak institutional capacities. One is the EAC that has a forum and oversight mechanism for migration, the Chief Immigration Officers' Meeting and a secretariat. Although EAC has developed an impressive set of norms on free movement, it lacks institutional capacity (Nita, 2013). The EU has intensified cooperation to shape the regional migration policy agenda and to train and equip boarder control officials from EAC countries (Betts 2011b, 38-39).

A similar form of trans-regionalism can be observed regarding the Intergovernmental Authority on Development (IGAD), the newest and least politically stable of Africa's sub-regional organizations. In the absence of a regional agenda on migration and of established governance capacities, the EU strongly influenced how the migration question has been addressed in the first place. The states in the region created IGAD primarily as a mechanism to improve their shaky political stability. Furthermore, IGAD countries—especially

Somalia—are migrant sending and transit countries, not migrant receiving countries, so they have little domestic incentive to address migration governance. It is hardly surprising that IGAD lacks an institutional forum for migration cooperation, and that its poor member states are not willing to devote scarce resources to building migration management capacity. The EU, through the IOM and less directly through its aid to the African Union, essentially created IGAD's engagement with regional migration governance from scratch. The IOM, with EU funding, has provided staff for IGAD's migration secretariat, which occasionally is representing IGAD at regional migration forums. The EU has sponsored similar training and capacity support as for the EAC (Betts, 2011b).

These four organizations and their interaction with the EU illustrate how African regional organizations, the EU, and the IOM fit together into what can be coined as a trans- or inter-regional form of migration governance. To curtail irregular migration to Europe, the EU enthusiastically supports African efforts to regulate their own borders. The IOM acts as a "transfer agent" for EU policies (Stone, 2004; Lavenex, forthcoming). Funded largely by the EU, it works to fill in the administrative, legal, and technical gaps in African states' and regions' ability to govern migration effectively. Though fuelled by self-interest, this relationship is potentially influential in propagating a "Western" vision of migration governance, diffusing policy templates and promoting shared regional visions on how to address immigration from abroad – ultimately promoting regionalism.

How can we explain this diversity of regional migration regimes? How far do their features respond to prerogatives in the respective regions, or to external influences? The next section addresses these questions through the prism of theories of regional integration and policy diffusion.

<h1> Drivers of Regional Migration Regimes

The variety of regional migration regimes highlighted above indicates that there are no uniform drivers. Drawing on regional integration theories (chapter 3 Börzel, this volume) and the literatures on policy transfer and diffusion (Simmons et al., 2007; Gilardi, 2012; Sharman and Marsh, 2009; chapter 5 Risse, this volume), we discuss four potential drivers of regional migration cooperation, two “internal” ones: functional spill-overs and domestic politics, and two “external” ones: policy transfer and emulation. The different substantive dimensions of regional migration regimes follow different dynamics. While the liberalisation of (economic) mobility is mainly driven by domestic concerns, the proliferation of social rights instruments is best explained by processes of emulation, and the multiplication of RCPs focusing on security aspects results from active policy transfer on the part of major destination countries, with support from international organisations.

The first approach emphasizes functional spill-overs from regional market integration. Accordingly, regional liberalisation of labour mobility is an intrinsic part of economic regionalism and reflects the level of market integration achieved. This perspective finds support in the founding documents of regional integration processes, usually the flow of workers or people being included in the clauses establishing a common market. The timing of liberalisation steps, however, contradicts this functionalist logic. In ECOWAS mobility of persons has progressed faster than the mobility of goods, services and capital (Nshimbi and Fioramonti, 2013). In MERCOSUR, the Residence Agreement, providing for a very liberal approach to intra-regional migration, was adopted (2002) and implemented (2010) in a period of stagnation on the way to a real customs union or beyond. The link between economic integration and migration cooperation is stronger in the more limited area of service-related mobility where indeed trade liberalisation goes hand-in-hand with the facilitation of related mobility flows. A second type of spill-over can occur between mobility liberalisation and

cooperation on social rights. However, this cooperation has remained very patchy and implementation clearly limps behind formal rule adoption. Finally, while EU's cooperation on extra-regional migration and security has been justified with the negative externalities of the Schengen agreement, on other continents cooperation on external migration has remained detached from the formal regional integration processes.

Rather than spill-overs from the economic integration project, domestic priorities in the participating countries provide an alternative "internal" explanation. This intergovernmentalist perspective carries a long way in explaining the timing and form of the regimes introduced. In ECOWAS, freedom of movement preceded the launch of the integration project, and responds to the fact that the repartition of ethnic groups and nationalities does not concur with territorial borders (Awumbila et al., 2014). The reinforcement of the free movement agenda with the 1992 Revised Treaty was motivated with a regional crisis of this regime triggered by the massive expulsion from Nigeria. In Mercosur, adoption of the Residence Agreement also responded to a very concrete situation: the need to address numerous irregular migrants from neighbouring states especially in Argentina. The Agreement was a means to overcome the legacy of highly restrictive domestic immigration laws inherited from the period of military rule and was adopted in tandem with an agreement on the regularisation of irregular migrants from MERCOSUR and associated countries (Giupponi, 2011; Ceriani, 2015). Finally, the Agreement's strong human rights orientation and its commonalities with the UN Migrant Workers Convention mirror the political ideology of current political leaders in leading countries, above all Argentina and Brazil (Acosta and Freier, forthcoming). The absence of strong interest in liberalising mobility among leading countries in NAFTA and ASEAN (e.g. Indonesia) explains the limited nature of these provisions. Finally, intergovernmentalism also explains well the development of security-oriented RCPs in Northern/Central America and South-East Asia: led by major regional

hegemony and destination countries, the RCM (led by the US) and the Bali Process (led by Australia) reflect the priorities of the latter vis-à-vis their periphery.

The intergovernmental perspective is less pertinent for understanding the diffusion of migrant rights instruments across regions and for the proliferation of RCPs in Africa (chapter 5 Risse, this volume). These are the two aspects that seem to be most influenced by external dynamics, in particular emulation processes in the case of social rights and policy transfer in the case of African RCPs. Emulation dynamics go beyond social rights and affect also mobility regimes and RCPs.

Whereas the sequence of first mobility liberalisation and then social rights cooperation suggests a type of functional spill-over, the introduction of migrant rights in the different regions reflect a more general "wave" that is related to the global debates surrounding the UN Migrant Workers Convention and the advocacy of the ILO. MERCOSUR's 1998 Social-Labour Declaration is most explicit in its reference to the UN Convention. The UN Convention has also inspired ASEAN's 2007 Declaration on "Protection and Promotion of the Rights of Migrant Workers" and ECOWAS' 1993 General Convention on Social Security, processes in which also the ILO has played an important advisory role (Klavert, 2011). The fact that these declarations and conventions iterate the UN treaty but – with the exception of Argentina and few other "convinced" Latin American countries - largely lack implementation (Acosta and Freier, 2014) confirm the phenomenon of de-coupling underlined by the theories of policy emulation and institutional isomorphism (Meyer and Rowan, 2001).

The diffusion of mobility provisions related to trade – while more tightly linked to economic integration agendas – also shows elements of emulation and decoupling. The WTO GATS agreement adopted in 1995 provides the template that inspired subsequent regional initiatives. This is clearly the case for MERCOSUR which while having embraced the services agenda,

has hitherto made very little progress in practice. ASEAN too has been influenced by the GATS, with regional provisions mirroring commitments taken at the multilateral level. Whereas emulation processes certainly play a role in the diffusion of security-related cooperation in RCPs, the latter are clearly shaped by power dynamics and active policy transfer on the part of regional hegemons, frequently via the intermediary of the IOM as "transfer agent". The Bali-Process in South-East Asia was launched on the initiative of Australia in conjunction with the IOM, and although formally Indonesia assumes the role of co-chair, the RCP's agenda has been reflecting Australian priorities (Kneebone, 2014). A similar hegemonic role can be attributed to the US in the RCM in its relations with southern neighbours (Kunz, 2011). The same is true for the EU, which has extended its migration regime to countries of origin and transit at its eastern and southern borders (Lavenex and Uçarer, 2002; Lavenex 2006). In the case of the Americas and Southeast Asia, the regional hegemons are embedded in the region, at last through the RCP. However, in the case of the African RCPs, the hegemonic influence comes from the neighbouring continent, pointing at the emergence of transregionalism as an additional element of the multi-layered international migration regime (Kunz et al., 2011; chapter 26 Ribeiro Hoffmann, this volume).

<h1> Effects of regional migration regimes

As noted by Tanja Börzel in this volume, "(t)he broader effects of regionalism on domestic policies, institutions, and political processes have so far only been systematically explored and theorized for the case of the European Union" (chapter 3 Börzel, this volume). Figures on EU internal mobility flows show a slight increase over time, in particular after the 2004 and 2007 enlargements, thus indicating an effect of liberalisation. Yet, with overall ca 2.7 percent of the EU population residing in another EU member state (European Commission, 2014), aggregate figures are still relatively low. This is especially the case when compared to

mobility within the US where, on average, each American moves 11 times in his or her life (World Bank, 2012). Effects of EU migration control policies on immigration from third countries are difficult to estimate. Studies have documented a decline in levels of irregular immigration to the EU as a function of tighter border control policies and EU enlargement (Moorehouse and Blomfield, 2011). At the same time, these policies have also led to a dislocation of flows and have raised serious human rights issues.

Outside Europe, authors have cast doubt on the effectiveness of regional cooperation on migration. In his analysis of regions and regionalism in migration policy Andrew Geddes states that “(a)side from the EU, it is often the case that migration and free movement provisions have been agreed upon and ceremonially signed, but then not implemented” (2012, 590). Indeed our analysis above has substantiated the gap between formal regional commitments and actual domestic regulations in most regions, which coincides with the generally low level of legalization of regional commitments.

It seems safe to say that the relationship between the development of regional migration policies and actual migrant flows is a complex one and that there is generally no direct causality between policies and flows (Castles, 2004). The cases covered in this chapter illustrate this well: generally speaking and beyond the EU's special case, regions with ambitious free movement regimes have not seen major increases of migration flows – whereas ironically, it is the regions with thin internal mobility norms which have seen the steepest rise of intra-regional migration, yet often on an irregular basis. The latter is the case of NAFTA. As outlined above, the agreement does not tackle intra-regional migration in a comprehensive manner. While opening up for particular categories of highly skilled persons, North American economic integration has gone along with an overall decrease of regular migration flows from Mexico to the US but, at the same time, a steep increase of irregular flows. In 1993, the year before NAFTA went into effect, approximately 3.9 million undocumented Mexican

immigrants lived in the U.S. In 2009, there were 11.1 million, an increase of almost 300% (Van Horn, 2011). An ever steeper increase of intra-regional mobility has been stated for ASEAN, another region with mobility provisions only applying to a very limited number of highly skilled migrants. In absolute terms, intra-ASEAN migrants increased from 1.5 million to 6.5 million between 1990 and 2013 (ILO/ADB 2014, 84; Wailerdsak, 2013). Clearly, this development is not due to the development of migration provisions within ASEAN but has more complex causes.

This observation is corroborated by the counter-factual: Those regions having ambitious mobility regulations do not document an increase in internal mobility flows. In Mercosur, the adoption of the Residence Agreement was a way especially for Argentina to put an end to the presence of large numbers of irregular migrants from neighbouring countries on its territory (Ceriani, 2015). According to the Argentine government, some 423,697 persons have been regularized under the Agreement from 2006 until the end of 2008 (Siciliano, 2013). Beyond regularization, the Residence Agreement has not led to a major increase of intra-regional flows. Between 2001 and 2010, permanent legal immigration within MERCOSUR and the associated states did not reach beyond 1% of the countries' respective population (OECD/IDB/OAS, 2012).

With the traditionally high mobility within the region, the case of ECOWAS, the second region with comprehensive free movement rules, is slightly different from MERCOSUR. According to a recent study, with more than 3% of the regional population circulating within ECOWAS, migration within West Africa is more prolific than intra-European mobility (Awumbila et al, 2014, 21). Yet it seems that this internal mobility pre-dated the formalisation of a free movement regime, which is also corroborated by the fact that the domestic transposition and implementation of free movement norms still lags behind (Adepoju, 2011).

Summing up, existing evidence yields at best ambiguous results on the effects of regional migration governance. It should however be noted that studies assessing these effects are still very rare and are often constrained by the lack of pertinent data.

<h1> Conclusion

Regional migration regimes have developed most of their norms in a broader context of global economic integration. Regional frameworks aiming at deeper economic integration have embraced rules liberalising internal mobility flows. While some regions such as MERCOSUR and ECOWAS have followed the EU comprehensive model of free movement, other regions like ASEAN and NAFTA have been much more selective, following the GATS model of highly skilled mobility rather than full free movement.

The introduction of regional mobility regimes has often spilled over to cooperation on social rights. Pertinent regional policies have also been the outcome of broader diffusion processes, spreading in particular from the work of ILO and UN on promoting migrants' rights. Beyond legal emulation, however, these provisions have often been left without binding instruments for enforcement.

Beyond intra-regional mobility, regional frameworks have also started to address control of external migration flows. Apart from traditional sovereignty concerns about controlling the entry of non-nationals, fears linked with terrorism and the impact of refugees from war-torn areas often play a role in the way governments respond to this policy area. Interestingly, these security aspects have usually been addressed by informal Regional Consultation Processes (RCPs), which are not directly connected to broader regional integration frameworks.

Frequently, these RCPs have been sponsored by major migrant destination countries towards their neighbours, such as the EU, US or Australia, and they perpetuated through the agency of an international organization, the IOM.

In sum, except for the EU model, which has developed the most encompassing approach to migration, the other regional frameworks are more limited in their scope of cooperation. While documentation on the effects of this regional integration is scarce, preliminary evidence shows that the relationship between regional policies and actual migration flows is highly complex. At the same time, achieving broader regional integration on mobility, rights and security seems difficult given the asymmetry of interdependence and power among the states involved. The regional structures thus highlight several limitations on states' capacity to cooperate on migration. There is no uniform template that drives regional migration regimes. This creates a situation where migration remains a policy area lacking in uniform measures that would provide coherent policy options or international norms for both sending and receiving countries.

[Caption List

Table 20.1: Dimensions of Regional Migration Regimes. Compiled by authors.]

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Notes

¹ Sections two and three of this Chapter introducing the typology of regional migration regimes and discussing their driving forces draws on the research project "Exploring the Diffusion of Migration Norms in Regional Integration Frameworks" led by Sandra Lavenex and Flavia Jurje in the context of the Swiss National Centre for Competence (NCCR) Trade Regulation <http://www.nccr-trade.org/phase-3/wp4-1/412-1/>, funding by the Swiss National Science Foundation is gratefully acknowledged. In the framework of this project, some 95 expert interviews have been conducted by the two authors in the regions analyzed.

² The coding scheme draws on previous work by Jurje and Lavenex (2014).

³ The European Free Trade Area and Nordic Council incorporate non-EU countries like Norway, Iceland and Switzerland into most of the free market regimes with other EU countries. Iceland and Norway are part of the Schengen free movement area through the Nordic Passport Union and Switzerland has joined the Schengen as part of a treaty with the EU.

⁴ The EU has not ratified the UN Convention on Migrant Workers.

⁵ RCM members: Belize, Canada, Costa Rica, El Salvador, United States, Guatemala, Honduras, Mexico, Nicaragua, Panama and Dominican Republic. Argentina, Colombia, Ecuador, Jamaica and Peru have observer status.

⁶ The UN Convention on the Protection of Migrant Workers' Rights and Members of their Family is not directly invoked, but eight of the ECOWAS Member States (Burkina Faso, Cabo Verde, Ghana, Guinea, Mali, Niger, Nigeria, and Senegal) have ratified it. Benin, Liberia, Guinea Bissau, Sierra Leone and Togo have signed but not ratified the Convention. Gambia and Côte d'Ivoire have not signed it.

⁷ These are: ECOWAS, the Southern African Development Community (SADC), the East African Community (EAC), and the Intergovernmental Authority on Development (IGAD).

⁸ See http://www.ilo.org/addisababa/whats-new/WCMS_242035/lang--en/index.htm.