



Multilayered Governance: Gains for International Migration? Looking Back – Looking Ahead

**27 – 28 April 2016, University of Bern, Switzerland
Conference Report**

The nccr—on the move and the Institute of Public Law of the University of Bern convened a two-day conference, which took place from 27-28 April 2016 at the University of Bern, Switzerland. The aim was to bring together academics and policy-makers from a wide range of disciplines to evaluate the efficiency gains (diffusion, permeability, protection) and legitimacy risks (fragmentation, escapism) associated with the concept of multi-layered governance in particular when framing migration law & policy-making.

The conference asked under what conditions “layering” was desirable and how to prevent governance gaps within nested structures. The research question, investigated by all contributors, was whether fragmentation is necessarily negative – or how governance, particularly if multi-layered – could lead to positive outcomes increasing regime competition, policy diffusion and

compliance and so enhance access, development and rights protection. Key interrogations were the role of different institutions (UN, regional, multilateral etc.) in migration governance, the optimal layer for regulating particular aspects of migration policy (visa, border control, labor standards) or the manner in which the dialogue between the different layers should be organized.

A Forum for Interdisciplinary Debate

Talking across disciplines' were legal, sociology, anthropology, economic, International Relations scholars working on migration and governance from Asia, Africa, the US, Europe, notably Alex Betts, Oxford University, Andrew Geddes, Sheffield University, Tiziana Caponio, Turin University, Sandra Lavenex, University of Geneva, and representatives from think tanks, such as Sergio Carrera from CEPS (Brussels), public officials from immigration and foreign affairs offices most notably Eduard Gnesa (Switzerland), and international organizations – UN (Colleen Thouez), ICMPD (Martin Hofman), ILO (Marie-José Tayah).

A general finding of this truly interdisciplinary debate was that research in Public International Law, is further advanced in identifying how “linkages”, or how layers interact, but International Relations is more advanced on identifying the dominant frames and conceptualizing the observed mechanisms (hierarchy, network, behavioral, functional) . Recently, the debate has shifted to a study of layering and its effects on compliance. This debate has only begun in the migration governance literature, with contributions on measuring domestic/regional liberalization commitments and openness of markets for migrant workers for countries having signed up to GATS WTO commitments or on the embedding of labor mobility provisions in trade agreements having been published (see for example Lavenex and Jurje; Chanda; Trachtman; Panizzon). IR scholars have moreover, argued that the added-value of MLG is to pursue a hybrid mix of hierarchical mechanisms, with networked, horizontal structures (Stubbs), whereas legal scholars have worked on how linkage could be organized in terms of hierarchy, subsidiarity, systemic interpretation, *lex specialis* or mutual supportiveness. Both perspectives are necessary for a functioning multi-layered governance.

The Advantages and Pitfalls of Layering in International Migration Governance

In his keynote speech, Alex Betts (Oxford University), framed governance in regime theory and challenged the intrinsic value of governance—is it a self-fulfilling instrument or one shaped by power and interests? On the basis of the EU-Turkey deal, he further advanced a centric type of governance for migration, in view to de-fragment the “piecemeal” approach to international legal and policy regime for migration, which accounts to governance gaps, increased vulnerability and migrant discrimination. Sympathetic to the layering structure, in particular for the gains from transregional cooperation as a laboratory for fostering global collective action, he also identified the pitfalls of nested, self-contained transregional structures are that they fail to make space for policy diffusion and hamper compliance with universal values, including human rights.

The question of how best to govern migration at the global level sparked a vivid debate. Colleen Thouez (UNITAR, NYC) – relying on the upcoming UN Secretary General Report on Large

Movements of Refugees and Migrants – advocated a “sovereignty modern” approach and the continuity of the state-led governance, orchestrated by a centralized authority, represented in the UN system, as the only means to govern large movements of migrants and refugees. Others argued for more polycentric organization implying a hybrid governance model, which is more proximate to migrants’ adaptive strategies and life courses, and more inclusive of private actors, universities, civil society (Stefan Rother, University of Freiburg i Brsg; Sandra Lavenex, University of Geneva, Marion Panizzon, University of Bern, Sergio Carrera, CEPS Brussel). Yet, how can the flexibility of layering bring about a commitment towards rights-based approach to migration and shared responsibilities?

At the sub-national level it appeared that scaling up or down and switching venues is a widespread phenomenon in migration governance, as, for example, the issue of access to social & health services, or migrant recruitment, is frequently devolved to the local level, such as transnational city networks (Tesseltje de Lange, Tiziana Caponio, Romana Careja, Micheline van Riemsdijk). Moreover, increasingly readmission arrangements are being concluded between cities in host countries and sending country governments to circumvent anti-immigrant-biased national layers (Natasja Reslow, Sergio Carrera, Daniela Vitiello). An example of switching venues from one issue area to another is the embedding of migration issues in alternative, non-migration venues, such as labor migration in multilateral trade agreements of the WTO/GATS (Flavia Jurje) or environmental migration in climate change conventions (Walter Kälin). The risk of the switching-approach is the further fragmentation of migration law.

Towards a Behavioral Turn in Governance Study?

Another interesting finding of the conference was that governance research is experiencing a behavioral “turn”, as scholars are interested in questions, such as, are certain behaviors, resource allocations, capabilities by immigration officials more conducive to minimize risk to migrants (Tobias Eule, Andrew Geddes)? And, more generally, how do those affected by migration govern it, how do those governing migration perceive governance and transform it (Stefan Rother, Andrew Geddes)?

In the public lecture on Thursday evening, Andrew Geddes (Sheffield University), most notably shifted the discussion away from the neo-functionalist frame to a behavioral approach. Drawing on extensive fieldwork in the scope of the MIGPROSP project with immigration ministries across four regions (N-America, S-America, Asia, Europe) he asked how the behavior, bias, beliefs of bureaucrats, elites and other epistemic communities about migration risks and uncertainty shape knowledge and data, but also migration law and policy and thus, migration governance. When does a behavior, a practice or a linkage among norms amount to governance?

Gains of the MLG Perspective at Large

Lastly, the gains from MLG were clearly seen in the potential to interlink layers—and identify the layer most proximate to human rights protection and migrant self-reliance and resilience. How does the inter-regional cooperation between ECOWAS and the EU (Amanda Bisong) or the EU-Turkey

deal (Seçil Elitok), or the transnational exchanges among networked cities bring about more coherence (Micheline van Riemsdijk, Tiziana Caponio, Tesseltje De Lange)? Are certain layers more efficient, e.g. the local level-supranational/EU level coalitions for access to social services for migrants in Italian cities (Lorenzo Piccoli)? Is the regional layer more legitimate and efficient when compared to the elusiveness of international law (Sandra Lavenex, Marek Wieruszweski, Barbara von Rütte) and its low compliance rates, or do unilateral practices developing bottom-up prospectively more holistic than the bilateral agreements in South-East Asia (Gabriela Marti)?

With 50 participants, and more for the public lecture, including attendants from the Swiss Agency for Development, Foreign Affairs, but also locals from the neighborhood, university students, scholars from nccr – on the move, NCCR-Trade, the conference provided an excellent forum for exchange on governance and migration and hopes to add to the theory of governance and practice of migration law-making. A special issue is planned as a publication outlet.

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