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Multilayered Governance: Gains for International Migration?

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Paper Abstracts

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How does the division of labour impact the International Migration Regime legitimacy? The case of International Organization of Migrations projects in the Horn of Africa

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The International Organization for Migrations (IOM) is an intergovernmental organization whose jurisdiction revolves around globally implementing migration management projects. It is a peerless example of a supra national institution, which operates on an extreme fragmentation of projects implemented in cooperation with a complex stratification of actors and institutions within partner host states. Dealing with a wide spectrum of projects including human trafficking, migration data raising, refugee resettlement, vocational training for refugees, migrants' sensitization campaign, border management for state police officers, or crime scene investigation, the organization cooperates with all levels of individuals and collective actors, public and private organizations, local, national and international institutions; such as civil associations, State Department, Heads of high schools, Department of Police, Regional Organizations and so forth.

How does the organization manage to overcome the two main pitfalls that lie in wait? How does the organization manage to avoid both the incoherence due to the fragmentation of its action and its corollary the lack of jurisdictional legitimacy? What holds altogether the action from both a practical and an ideological point of view? What values and what devices allow the process of multi-layered governance to produce a legitimate and coherent action? To what extent these issues of multi layered governance processes are linked to the process of devolution of power from the host state to the supranational institution?

This paper proposes a contribution concerning the substantive dimension of multilayered governance implemented by IOM in the Horn of Africa based on 11 months of participant observation as a civil servant both in UNHCR and IOM between 2012 and 2013 in Djibouti. Indeed, since the 1990s the Horn of Africa has been the stage of a military and humanitarian device securing the circulation of people from the international community lead by the central states notably the United States of America, the European Union and Japan. This device is expected to limit the spread of transnational terrorism from the Arabian Peninsula to the Horn of Africa, and thus halt people, weaponry and drug trafficking as much as the spread of piracy in the Red Sea. The international strategy is based on the belief that the stability of some countries, Djibouti in this case, could not only determine the fate of its region but also affect the international stability. Central states thus delegated in the early 2000 to IOM and UNHCR the implementation of an international regime of legitimate circulation of people in the Horn of Africa focusing notably on Djibouti.

This paper tackles the substantive dimension of the devolution of power from the host state to a supra national institution. It acknowledges the fact that the division of labor within the project implementation is the corner stone of coherent plurality and legitimacy for the International Migration Regime based on MLG. For the purpose of the argument the paper builds on an ethnographic comparison between UNHCR and IOM opposite type of governance at the local level. The paper demonstrates that the division of labor based on the norm of national community- as it is in IOM- instead of being based on policy issues- as it is in UNHCR- veils the devolution of power from the host state to the supra national institution while generating a sense of coherence and a legitimacy to the greater public. This general process thus decreases the power of the central state and fosters the power of a few individual state actors. It conveys a general sense of legitimacy to IOM's action and designs a feature of sovereignty-based action widely appreciated by the host state's actors. Conversely, UNHCR's action based on policy issues and associated with ethical and universal goals leads to a general distrust and gladiatorial relationship with the host state's actors and the general population.

After describing to which extent we can analyze in terms of MLG the action of both UNHCR and IOM the article presents two ideal typical divisions of labor within both institutions: the first one based on universal policy issues and the second one based on a national-cultural identity perspective. We then describe how the form of division of labor builds the local actors' subjectivity and how finally it impacts the cooperation process with the various actors involved.

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Theorising the "European Refugee Crisis": A Multi-layered Migration Governance Approach

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In the context of the "European refugee crisis", there is widespread recognition that the policy responses of national governments, the European Union, and the United Nations have been an abject failure, even against the benchmark of their own criteria. An unprecedented number of asylum seekers have arrived in Europe and there has been a lack of international cooperation, with state responses being predominantly characterised by free-riding on the provision of others. Yet, so far, there has been little attempt by academics to step back and conceptualise the politics of the response. How can we theoretically make sense of the evolution of the policy response? How can we explain national, regional, and multilateral responses, and their interactions?

Drawing upon the insights of a multi-layered migration governance approach, this paper will take the first steps towards theory by developing a heuristic framework for thinking about contemporary refugee politics. Drawing upon Frieden, Lake, and Schultz's simplified model of considering world politics in terms of interactions, interests, and institutions, the paper considers what each of those look like from the standpoint of European asylum politics. First, in terms of interactions, is suggests that power in the global refugee regime is shaped by primarily by proximity. The nearer a state to a country of origin, the weaker its bargaining position. These asymmetries have historically only been overcome through issue-linkage or border closure. Second, in terms of interests, state preferences are shaped by a two-level game of domestic level preference aggregation altering the scope for intergovernmental bargaining. Third, and most relevantly, these configurations of power and interests are mediated through multi-layered migration governance. Rational states engage in institutional choice to maximise returns but the increasing fragmentation of refugee and migration governance has undermined the capacity of key referent institutions such as the EU and the UN to create meaningful collection action that addresses the asymmetric power relations and 2-level game dynamics inherent to refugee politics.

The paper empirically substantiates this framework by engaging in process tracing to analyse the evolution of the political response to the European refugee crisis between April 2015 and April 2016. It empirically focuses on two distinctive pathways of institutional response: 1) the European Union and 2) United Nations responses showing the role of multi-layering, institutional choice, and fragmentation as central elements underlying the teleology of institutional failure relating to the crisis. The paper suggests that the theoretical framework and empirical accounts help to understand the failure of the crisis as more than an idiosyncratic failure of leadership, and guide us towards better theory of the international politics of refugees and migration.

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Making a case for regional migration governance in West Africa

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Migration is an important topic in domestic and international discourse and migration governance has been predominantly a unilateral affair. The concept of multi-layered governance has become widely accepted in multi-lateral settings such as trade, energy and labour. It is slowly being accepted in the field of migration. Several authors Betts, Panizzon, Cottier, Sieber, make a case for the emergence global/ multi-layered governance in migration for the benefit of the migrants, the sending and receiving states. However, States view migration as one of the last vestiges of their sovereignty in a world which is increasingly adopting global governance. Few examples of multi-layered migration governance exist, where existent the regimes are characterized by their flexible nature in order to avoid interference with states sovereignty. For various reasons – economic, political, religious, migrants are on the increase. States are increasingly aware of the need for a united front in addressing the issues of migration, such as is obtainable in other sectors as the environment, trade, security amongst others.

West Africa is a key region in international migration because of its highly mobile population and its role in international migration dialogue. Countries in the region rank high among migrant sending countries especially to Europe and the rest of the global north. While regional mobility and migration within the continent is high, there has been a change in the migration patterns, motivated by the security challenges in the region and other factors such as the collapse of Libya which was a key destination for low skilled workers from West Africa. Regional economic integration plays a key role of in migration especially in establishing rules for labour mobility and free circulation of persons within the region. The Economic Community of West African States (ECOWAS) has taken determinant steps towards ensuring the free movement of persons in the region through establishing policy guidelines and community protocols. The region in addressing the challenges of irregular migration adopted the ECOWAS Common approach to migration which creates a framework of binding principles for its Member States in migration management. However, the region still lacks a regime for regional migration governance.

The article provides an overview of the current state of play in regional migration governance and the implications for West Africa. It will further examine the role of regional institutions in supporting the emergence regional migration governance. Undertaking a review of the literature on multi-layered governance and regional migration governance, the article seeks to set the context for further discussions on regional migration governance in West Africa.

This article firstly reviews the existing literature on regional migration governance and multi-layered migration governance using a blend of the traditional and systematic review. It goes on to create a framework for analysing regional migration governance looking at the trend in

the literature on migration governance. Finally, the paper discusses the policy implications of the various positions for regional migration governance in West Africa.

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Beyond the nation state? Perspectives on Transnational City Networks facing the migration challenge

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In the literature on the local dimension of migration policy-making, one can see an emerging interest towards transnational cities networks (TCNs). Networks such as Eurocities are regarded as policy venues that go beyond the limits of vertical relations between national governments and local authorities to directly lobby EU institutions. Futhermore, TCNs can offer opportunities for policy exchange and learning, leading to the diffusion of policy innovations and best practices. TCNs seem to represent 'new coalitions' in the European MLG of migration, linking directly cities to EU institutions and thereby circumventing the traditional primacy of the nation-state on migration.

However, evidence on the concrete relevance of TCNs in migration policy-making is still scarce. Studies carried out in other policy fields such as urban development and climate-change mitigation, show puzzling evidence, and demonstrate how national authorities continue to remain key gatekeepers for access to the resources needed to undertake local policies. The capacity of TCNs to promote a new MLG of migration is more often evoked than empirically investigated.

Drawing on the – still scarce – existing literature on TCNs, in the migration as well as in other policy fields, this paper intends to build a theoretical framework for the analysis of cities' transnational mobilisation on a multifaced and global phenomenon such as international migration. The results of a pilot study carried out on two highly internationally mobilised Italian cities, i.e. Milan and Turin, will be considered. The main hypothesis underlying this paper is that TCNs, rather than simply circumventing the state, actually seem to somehow revitalize and even instrumentalize its role, leading to a complex MLG configuration, where transnational mobilisation is intrinsically entrenched in local policy networks and national-local governments relations.

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'Readmission cooperation with third countries in the EU: Experimental governance and the Blurring of Rights

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The idea would be to describe the continuous search by EU Member States on 'what works' in readmission cooperation with third countries - including on the implementation on the practical level - and how the EU venue is used in that search. The paper would be looking at the so-called 'more for more' conditionality approach in the European migration agenda (which frames cooperation on readmission as condition for cooperation in other domains), and the roles, views and positions by relevant EU actors, in particular inside different DGs in the Commission and External Action Service.

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Making the good citizens: Local authorities' integration measures between national policies and local realities,

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Denmark has often been presented as an exemplary case in which the national government and local authorities are sharing the responsibilities for integration policies: while the national government carries the task of formulating the policies, the cities have clear implementation responsibilities. For example, the latest turn in integration policies explicitly emphasizes the importance of labour market integration and knowledge about Danish culture and values. Cities, consequently, implement an orientation course, language courses and a vocational orientation program for newly arrived immigrants. The 1999 legislation made participation in the programs is mandatory for all newly arrived refugees and family- reunified persons in order to be eligible for social security benefits. The municipalities are responsible for providing this program, which lasts up to three years. Permanent residence is also conditioned on the participation in the integration. Other categories of immigrants, such as green card holders, students or all EU citizens are subject to a different set of rules: they are offered an introduction program, also provided for by the municipality, but this is not compulsory. At the same time however, there is an agreement among observers of political developments in Denmark that the 2000s have been characterized by an increase in the anti-immigrants mood and by a corresponding toughening of demands on immigrants.

Using an actor centered institutionalism perspective and the city of Odense as a case-study, this paper aims to explore how the local authorities mitigate between the demands of national-level integration policies and the local realities - limited resources, large demand for services, different groups of immigrants. Particular attention will be paid to the local authorities cooperation with other local actors (such as NGOs, firms or immigrant associations) for provision of services and development of local initiatives.

Actor centered institutionalism is likely to provide a fruitful avenue for understanding the interactions between actors at different levels and with different scopes. In this approach, institutions are shaping, but not determining the actors' actions. Thus, legal framework which governs the interactions between national and local level institutions (and their responsibilities) is seen as a frame which opens and closes opportunities for action. In this frame, actors' interactions are determined by their own preferences, resources and capabilities as well as their own interpretation of the situation regarding immigrant integration needs at local level.

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Overlapping Migration Regimes in Europe: Toward a more Coherent Framework?

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The refugee crisis in Europe prompted by the war in Syria has focused attention on the adequacy or inadequacy of the existing regime of visa and asylum rules in the EU, but the operation of EU law can only be fully understood in the light of differentiation within EU rules and the relationship of EU rules to international law rules, including those of the Council of Europe, applicable to refugees. The regime governing asylum and immigration in the EU is a more recent aspect of European integration, beginning at intergovernmental level at Maastricht, and then undergoing gradual, but not complete, supranationalisation as reflected in Article 78(3) TFEU. Its application is complicated by its operationalisation depending in practice on application of the Schengen rules, which Ireland and the UK do not apply. The Council of Europe has adopted several relevant instruments, principally the European Agreement on the Abolition of Visas for Refugees and the European Convention on the Legal Status of Migrant Workers, which have a wider geographical reach than EU rules. This paper explores how overlapping rules applicable to the migration crisis might be rationalised to provide a more coherent framework. Specifically, it examines: the interaction of EU visa and asylum rules in the area of Freedom, Security and Justice with the Schengen framework; the extent to which the reaction to the current crisis justifies either more supratnationalisation or contrarywise a reversion to some more intergovernmental elements in order to mediate resistance at national level to EU rules in this sphere; and the possibility for greater use of the Council of Europe framework to enhance coordination between the EU and Council of Europe regimes to facilitate participation by non-EU States in European cooperation, for example, as a framework within which to review the Dublin Regulation of the EU.

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Migration Governance and Social Protection of Migrants: bilateralism v. regionalism

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How do judgements by actors in migration governance systems (such as political leaders, officials, business groups, NGOs and think tanks) about the scale and impact of international migration shape current and future institutional responses? On what basis are such judgements formed? What factors are seen as the key drivers of migration? Are these drivers likely to remain constant or might new drivers emerge? How does cognitive reasoning about causes and effects of migration connect with normative assessments of what should be done? By knowing more about these issues we can know more about the drivers of migration governance, yet relatively little is known about the content of these assessments and their implications. This gap matters because judgements about the 'foreseeable future', of what is 'normal' and what, by extension, is a 'crisis' or a 'new normal' – will play an important role in shaping institutional responses to international migration in all its forms. These judgements must also account for risks and uncertainties that are inherent in any decision-making procedure and that abound in the area of migration governance. Drawing from original interview material with around 180 elite level actors in the EU, US and Canada, the lecture will explore how migration crises in Europe and North America must also be understood as political crises precisely because of the essentially political character of the cognitive and normative processes that produce and apply these understandings. These issues matter for three reasons. First, theoretically, focusing on the context of choice and decision facilitates analysis of issue 'framing' and its relation to broader systemic dynamics. Second, methodologically, there is a justifiable tendency for research into migration governance to focus on the outputs of migration governance systems (such as laws and policies). What is less justifiable is to then, on the basis of these observed outputs or outcomes, to work backwards to make assumptions about the views and motivations of actors within these systems. And third, empirically, while there can be little doubt that international migration will remain a key issue in international politics there is scope for significant variation within and between regions in terms of policies and approaches plus significant uncertainty about the future development of these governance systems with attendant risks attached, i.e. closely linked to ideas about normality and crisis.

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The Role of Private Companies in Migration Governance: Regulating the Admission of Skilled Migrants into the UK

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This paper examines the interplay between economic mobility norms codified in multilateral and bilateral trade agreements, part of the General Agreement on Trade in Services (the so-called GATS mode 4) of the World Trade Organization (WTO) on the one hand, and national legislation on the other. To assess how labour migration regulations unfold in this multilayerd system of governance, the study scrutinizes the enforcement of GATS-related mobility commitments in one of the main destination economies in the "West", the UK. It analyses the national immigration reform, by looking at the diverse policy interests of the public and private stakeholders involved and their impact on the domestic legislation. Based on expert interviews and document analysis, corroborated with various statistical measures, the empirical evidence reinforces arguments about immigration politics moving "beyond states" and the proliferation instead of new actors and spaces for migration governance. Private firms, in particular transnational companies (TNCs), have become powerful regulatory agents, actively engaging in labour migration governance both domestically and internationally. At the national level, TNCs are strongly lobbying governments for a more permissive approach to corporate mobility. Internationally, within the WTO/GATS negotiations, it was mainly the services industries of developed economies pushing for wider commitments on the movement of business persons. As shown by the UK case, company-related mobility represents the main source of labour migration from outside the EU. With high economic interests at stake, the private sector has managed to uphold an open door to this type of mobility in an otherwise extremely restrictive British immigration system. The outcome observed is a privatized model, where companies participate both in policy formulation and implementation, acting as de-regulators for certain categories of skilled labour and at the same time as "sponsors" for incoming third country nationals. As the current immigration policy is entirely closed to non-EU low skilled migrants, this grants TNCs *de facto* control over international migration to the British labour market. The broader implications of this study highlight an important devolution of power and control in migration governance from the state to the market, with private companies taking over some of the policy prerogatives which traditionally have been placed within the authority of governments. This increases efficiency and leads to more liberalization for a segment of labour migration. Nevertheless, mobility outside the company realm, without pre-defined international norms or very few openings, remains considerably constrained by national policies.

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The EU and its (future) multilayered regulation of the admission of TCN entrepreneurs

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The purpose of this paper is twofold: its first aim is to achieve better comprehension of the multilayered governance of the EU's existing, but diffuse and little studied, legal instruments applying to the admission to the EU of Third Country Nationals (TCN) as entrepreneurs. Secondly, it aims to present some thoughts for debate on the harmonization of national laws applying to the admission of TCN entrepreneurs. It is one of the Dutch EU Presidency's objectives for the first half of 2016 to develop EU regulation on the admission of self-employed migrant workers, thus adding an additional layer to the agglomeration of existing EU framework, national regulations, and bi- and multilateral agreements. The idea of, for instance, an EU Directive on the admission of self-employed TCN could be seen as the EU's answer to the myriad of national investor permits, while making use of the selective migration policy debate.

In this paper I start by exploring existing EU legal instruments that deal with the (temporary) admission of self-employed migrant workers such as, among others, the Association Treaty between the EEC and Turkey, the mobility rights for TCN under the Long Term Residence Directive, and "Mode 4" mobility as understood in the General Agreement on Trade and Services. Coherence is most definitely lacking in this policy field. The concept of multilayered governance is used as a means to depict the fragmented reality.

Following this overview, the analysis focuses on the tools used in three EU member states' regulation of the admission of TCN entrepreneurs: Germany, the Netherlands and Canada. Designed to attract TCN entrepreneurs, these instruments provide a framework for engaging in a dialogue on Europe's admission policy for TCN entrepreneurs. The analysis continues with an exploration of the main features of the tools used, investigates the criteria for selecting the TCN entrepreneurs whose presence will be beneficial to the national economy, investigates if, and if so to what extent, the instruments empower non-state actors, and identifies the similarities and differences between the strategies devised.

In the final section of this paper I will attempt to situate the national instruments within the broader selective migration debate, and within the Dutch initiative for EU policy in this field. Which models can the EU choose from when adding another layer to the existing framework? This question pertains to the legal form of the extra layer (soft law or hard law), to the selection criteria, and to the role of non-state, regional, and national actors, or a combination thereof.

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Regional migration governance – building block or alternative to global initiatives?

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In the absence of an international migration regime, regional frameworks addressing migration have proliferated. Three – hitherto rather unconnected – types of regional frameworks can be distinguished: human rights courts and regional conventions relating to the rights of refugees, regional integration framework promoting, to different extents, intra-regional mobility, and Regional Consultation Processes adopting a more open-ended perspective on migration policy coordination.

Drawing on the workshop's general notion of "Multi-level governance" this paper seeks to conceptualize the basic functioning of each of these three types of regional governance and their relations with global, national and transnational institutions aspiring at migration governance. Distinguishing between refugee protection, labour migration, and migration control, we seek to contribute to answering the question how far and in which respects regional frameworks complement, follow-up on or sometimes precede international provisions, and why.

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Multilayered Migration Governance in Southeast Asia: Labour Migration from the Philippines and Indonesia to Singapore and Malaysia

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Southeast Asia is characterised by large intra-regional flows of labour migrants. These labour migrants are either highly skilled, semi-skilled, or low-skilled workers, and they migrate from labour sending states, such as Indonesia and the Philippines, to high-growth receiving countries in the region, such as Singapore and Malaysia. In Singapore and Malaysia, there are a significant number of "low-skilled" migrant workers from Indonesia and the Philippines working in domestic work, construction, and the manufacturing industry. This paper examines the legal frameworks governing low-skilled Indonesian and Filipino workers in Singapore and Malaysia. The paper adopts a multilayered governance approach to the labour migration of Indonesians and Filipinos to Singapore and Malaysia, and asks whether and how governance at multiple levels and by multiple actors (rather than purely national forms of governance) might contribute to a strengthening of the legal protection of low-skilled migrant workers within the region.

In both Singapore and Malaysia, low-skilled migrant workers are subject to strict immigration regulations, and enjoy very limited employment rights. Despite the economic importance of labour migration for both the countries of origin and destination, there are relatively few bilateral agreements regulating labour migration, in Southeast Asia. Notably, the diverging interests of the sending states, on the one hand, and the receiving states, on the other hand, have often prevented the conclusion of bilateral agreements or memoranda of understanding (MoU) in the area of labour migration. However, with regard to domestic workers in particular, Indonesia and Malaysia concluded a MoU on the Recruitment and Placement of Indonesian Domestic Workers in 2006. A number of years later, in 2009, following a series of cases of abuse of Indonesian domestic workers in Malaysia, the Indonesian government placed a moratorium on Indonesian citizens seeking employment as domestic workers in Malaysia. The MoU between Indonesia and Malaysia was subsequently amended in 2011, but the amendment has been criticised as failing to provide a number of required protections with regard to the low wages and high recruitment fees for domestic workers.

The Philippines, as a major labour sending state, has undertaken a number of further (unilateral or bilateral) initiatives to enhance the protection of its overseas workers. For example, since the Philippines was unable to reach a bilateral agreement with Singapore at the governmental level with regard to the wages of Filipino migrant domestic workers, it has found an alternative solution: The Philippine Embassy has negotiated an agreement with a group of private employment agencies in Singapore. According to this agreement, employment agencies in Singapore are permitted to place Filipino domestic workers only if

they are accredited by the Philippine Overseas Employment Administration (POEA), and the accredited agencies must mandatorily use a standard employment contract issued by the POEA. This arrangement has the potential to significantly strengthen the legal protection of Filipino domestic workers in Singapore, since the standard employment contract stipulates, inter alia, a minimum wage, daily and weekly rest, paid vacation leave, and medical insurance.

At the regional level of the Association of Southeast Asian Nations (ASEAN), there have equally been a number of initiatives in order to address transnational labour migration. In January 2007, ASEAN adopted the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. In particular, the Declaration stipulates that the relevant ASEAN bodies will develop a binding ASEAN instrument on the protection and promotion of the rights of migrant workers. So far, however, the planned instrument has not yet been adopted. Due to the "ASEAN Way" to regionalism – notably, the principles of consultation and consensus-building, as well as non-interference into Member States' domestic affairs – the mechanisms developed by ASEAN are comparatively weak. Furthermore, although ASEAN has adopted a Human Rights Declaration in November 2012, ASEAN has no human rights convention or human rights court, to date.

Moreover, international human rights instruments, as well as international instruments relating to migration, have overall been poorly ratified, by states in Southeast Asia, particularly by authoritarian receiving states such as Singapore and Malaysia.

In light of the weak bilateral and regional mechanisms in place, with regard to labour migration within ASEAN, this paper inquires whether and how multilayered governance may contribute to the strengthening of the protection of low-skilled migrant workers migrating from the Philippines and Indonesia to Singapore and Malaysia. It appears that although the potential for initiatives at the level of ASEAN to improve the legal protection of labour migrants within the region is considerable, in practice these initiatives continue to fail, in the face of the institutional characteristics of ASEAN, and the diverging interests of the various ASEAN Member States. Furthermore, the conclusion of bilateral agreements and MoUs is often hindered by the diverging interests of the sending and receiving states. Nevertheless, initiatives such as the agreement between the Philippine Embassy and the employment agencies sector in Singapore – which can be characterised as a "transnational" public-private agreement – have the potential to remedy the weak legal protection offered to workers in the receiving states. The paper examines efforts such as the mentioned agreement, as well as other examples of governance beyond the nation-state, and their contribution to an improved rights protection of low-skilled migrant workers in Singapore and Malaysia.

EU migration law shaping international migration law in the field of expulsion of aliens: the Empire strikes back?

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As a result of multi-layered governance (MLG), international migration law (IML) divides into global norms and fragmented features, including regional regulatory frames. This paper fits into the exploratory dimension of MLG which aims at examining how to construct coherence for IML and to find more plural structures. It deals with the interactions of functionally differentiated normative layers, the supranational level (EU law), the universal level (especially UN law-making) and other regional settings (Council of Europe).

During the last 25 years, EU law became more open to international law and engaged with it in different forms of interactions. Looking at those interactions from the inside out perspective, one can witness an ever increasing treaty-making activity of the Union and the EU's various attempts to shape the international legal order. The Lisbon Treaty graved this norm-generating approach into primary law (cf. Articles 3(5) and 21 TEU). The active role of EU law in international law-making can now be perceived in various domains.

The contribution of EU law to influence universal norms finds its way through different legal channels and techniques, e.g. within international organisations such as the United Nations and its specialised agencies, in agenda setting in international fora, or during international conferences leading to the adoption of multilateral treaties, coupled with exporting its own approaches to the functioning of international law. The paper thoroughly scrutinizes the impact of EU law on the conceptualization and the development of a particular field of international migration law. This is the rapidly growing international legal regime applicable to the 'expulsion of aliens' (term used by the International Law Commission) or 'return law/policy' as called in the EU context. EU Justice and Home Affairs field, where return law and policy belong to, has happened to play the role of a kind of "laboratory" of innovative ideas and can thus be conceived as a forerunner in the further development of EU integration and the creation of new EU concepts. Along similar lines, those EU migration law concepts can be helpful and useful when codifying and progressively developing a given domain of international migration law.

The impact of EU return law on the international legal regime governing the expulsion of aliens can be best analyzed through the work of the International Law Commission (ILC) on the expulsion of aliens. For the ILC's approach, it has come a long way from the mere ignorance of EU law and the EU Commission's submissions by the special rapporteur in the early stages of the codification work until gradually taking into account major EU migration law concepts in ILC reports. After several reports, 10 years of work within the ILC and many controversies (some States were criticising the whole exercise), the draft articles were

adopted at second reading by the ILC in August 2014, which have been in many aspects inspired and influenced by EU law, especially the Return Directive (2008/115/EC), which is the only legally binding and enforceable regional legal instrument on this matter (see e.g. promotion of voluntary departure, procedural safeguards, human and dignified conditions of detention). Similarly, in a regional framework, the Council of Europe's (CoE) standard-setting activities have been tangibly influenced and shaped by EU developments in this area of law, too. This will likely continue, as the CoE plans to elaborate European Immigration Detention Rules by the end of 2017, largely building upon EU norms. Remarkably, however, the analysis of the EU's contribution to the conceptualization and development of this specific branch of IML, either on the universal or the regional level, has not yet received much academic attention. In this paper, I will meticulously explore the inroads EU return law made in the universal law-making (notably with regard to the ILC draft articles on the expulsion of aliens) and briefly on the regional level (in CoE soft law norms related to return and readmission of illegal migrants). Besides identifying and critically evaluating the tangible impact of EU law on the international regulation of the expulsion of aliens, it is worth paying attention to the unsuccessful normative attempts on the international plane as well, i.e. which EU proposals could not be put through the mechanisms of international law-making and why. Finally, this topic also illustrates nicely as a microcosm the current debates of horizontal character within the International Law Commission whether the ILC should adopt "draft articles", which could later lend themselves to incorporation into a hard-law convention, or the ILC had rather limit itself to prepare framework principles and adopt just "guidelines". This leads us evaluate at which level of regulation these issues would best be addressed. I conclude in this piece that co-shaping international law has been essential for the EU from the very beginning of the integration process, which tenet holds particularly true through the lenses of the EU's strategically exercised normative influence on IML in the field of expulsion of aliens. Looking at EU law, being a regulatory framework once borrowing much from international migration law, now shaping it as a major norm-exporter; one may wonder: does the Empire strike back?

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(Dis) Continuity with Past? Turkey's 'sui generis' position in Regional Migration Governance

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The 2000s witnessed the restructuring of the Turkish migration policy particularly under the influence of the EU integration. This paper intends to analyze the Turkish policy making in the field of migration and asylum from an historical perspective using multiple public policy theories as its conceptual tool. Instead of applying theory to form the policy, this paper explains the practice through the lenses of public policy theories, namely: incrementalism, multiple streams theory and garbage can model (organized anarchies). Looking in depth the sub-periods of Turkish migration history (from two-way immigration and emigration circulation in 1920s, emigration boom since 1950s, emergence of new migration patterns in 1980s to new forms of migration governance since 2000s), this paper is structured around the paradigmic shift from nationalism and nation state to transnationalism and globalization. The shift in paradigm in the migration policy of Turkey over the last century will be analyzed according to its impact (impact of Turkish migration policy on the EU membership and vice versa), its symbolic versus substantive evaluation, impact of actors(public sector, NGOs, third sector)on the policy and constraints(financial and administrative).

Within this framework; specific migration policies will be analyzed in order to present these policies' connection and/or disconnection with Turkish migration policy making's heritage both institutionally and theoretically(ethno religious nationalism). Turkey's role in global migration governance will be discussed through Syrian refugee crisis, re-admission agreement as well as ongoing migration diplomacy with the EU.

Catch me if you can : Why Multilayered Governance matters for international migration law and policy

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Governance is often considered a structure and a process to unsettle conventional centers of state sovereignty. Governance theories are thus qualified in accordance to which mechanisms they propose to alter State-society relations, including layering and linkage, networks and partnerships. For this paper, we focus on the twin drivers of multilayered governance (MLG): "layering", defined as adding layers in an effort to bypass dysfunctional ones and "blurring" of divides in view to escape to new spaces. On the basis of case studies we seek to understand which when and why layering is more efficient, legitimate and conducive to collective action as opposed to central government or universal values. The mixity between hierarchy and networks, center and periphery, continuity and change shaping MLG predestines it for international migration research. Like migratory trajectories, MLG too aims for alternatives to (state) centricity, shares an affinity for transgressing established structures—facts, which we credit to the high flexibility of MLG. Combining a literature survey of MLG and select related theories, including fragmentation and coherence, and through three case studies, we evaluate the criteria indicating when MLG is conducive to collective action and under which circumstances it cumulates legitimacy and efficiency or inversely, when such hybrid structures merely aggrandize the unpredictable, divisive, disintegrative ambiguity equally associated with MLG and how it affects international migration law and policy.

The paper is construed as an overarching framework for discussing the preliminary results coming out of the different projects working at the intersection of governance and migration research coming out of the NCCR - On the Move research project "From 'Traditional' to 'New' Migration: Challenges to the International Legal Migration Regime". On the basis of different disciplinary backgrounds, it investigates to what extent MLG could be a governance model for managing migration internationally. Like most governance theories, MLG amounts to a legal and political projection premised on enhancing efficiency and legitimacy. But its high flexibility and hybrid nature, combining vertical "layering" – with horizontal "linkages", including systemic interpretation – distinguish MLG as particularly apt for promoting an interdisciplinary focus including international relations, law, economics and sociology.

A first part introduces into the functions (and less the institutions or actors) of MLG theory, but combines these with ancillary concepts of policy diffusion, embedded regimes, venue-shopping on the one hand, and the legal theory of fragmentation and coherence on the other. At the same time, we describe select major transformations in international migration law and policy and explain why are some of these governance issues? A final research question asks what are the gains of approaching through MLG the legal, political, economic, sociological upheavals unleashed by migrant trajectories? Could "linkages" to other regimes (trade,

investment, education, health, environment) foster coherence and de-fragment existing and evolving divides? Or should governance be normatively re-programmed so as to reconcile hierarchy with a flatter world order? The merits of MLG or so it seems, are its ability to explain (and promote) linkages and legal transplants so as to connect migration to trade, investment, education, health, anti-terrorism and security, a diffusion which distributes risks and costs more evenly among the different actors and institutions. On the downside, the risks and costs of casting IML in a MLG framework is escapism to other layers, and ultimtately, disintegration, on the one hand, and technicalization, expert-based management on the other.

On the basis of three case studies each focusing on a "mechanism", the paper discusses in the following order: readmission agreements for layering (legitimacy), labor migration for linkages to non-migration regimes (efficiency). In so doing, it tests the hypothesis that MLG's flexibility transforms migratory risk regulation into rights protection (health, civil status, nationality, citizenship, labor market access). In conclusion we find that MLG's hybrid purpose reconciles the "last bastion of sovereignty" so essential to migration management, with the polycentric structure and plural values incremental to any migrant trajectory. Both features promote MLG as the unique governance concept for understanding international migration—not least because MLG unlike other governance models accommodates and accentuates the diverse disciplinary backgrounds framing migration studies, in particular MLG is born out of a combination between law and IR. In the final analysis, MLG reconciles territorial, sovereignty based structure with fluid processes culminating in a mobile range of normative intensity—starting out with local practice and legal projects, moving on to regional laboratories over to global institutions.

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Keeping the state at arms' length: why and how Italian and Spanish regions multi-layer access to social rights for undocumented migrants

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The protection of individual rights in Europe has traditionally been understood as an exclusive competence of state governments. In the last few decades, however, the political institutions at the sub-state level have also been shown to be relevant players in the definition of civil, political, and social rights for individuals. However, in spite of the empirical salience of this question, few studies exist on the role of regional governments in the production and contestation of these rights. By focusing on the unit of the region and on the contested legislation regarding social rights for noncitizens, this paper sets out to answer the following question: Why and how do regional governments modify access to health care for undocumented immigrants in Italy and Spain? The comparison between these two cases in the realm of the unequal access to public health constitutes a paradigmatic example of the complexity of regulating rights that have been traditionally associated with citizenship. The paper demonstrates that within-country differences in access to rights can be as relevant as those reported across different countries.

EU external migration policy as multi-level governance? The case of the Mobility Partnership

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Starting in the early 1990s, the concept of multi-level governance has been applied to many aspects of the EU polity (see Stephenson, 2013 for an overview). Multi-level governance has been praised for capturing the complexity of EU policy-making more accurately then traditional theories of European integration. However, it has not often been applied to complex issues of high politics, such as foreign policy (Stephenson, 2013, p.828). While multi-level governance has been discussed in the context of migration policy (Guiraudon, 2009), it is not clear if it can account for a policy such as EU external migration policy, which combines migration policy and foreign policy. Indeed, there seem to be some potential problems with applying this concept to EU external migration policy. Firstly, multi-level governance in the EU context has often been conceptualised as the diffusion of powers away from nation-states, towards supranational and subnational actors (Conzelmann, 2008; Committee of the Regions, 2009). There is thus an assumption of which the important actors are (EU institutions, member state governments, and regional and local authorities), and a loss of powers for the national level is assumed. For the case of EU external migration policy, this seems to overlook an important actor, namely the international level – in other words, the non-EU countries with which the EU cooperates on migration issues. EU external migration policy thus raises questions for the concept of multi-level governance and its applicability when an extra layer of governance is added. It is also worthwhile problematizing the statement that nation-states are losing powers, to test whether this is necessarily the case. Secondly, Schmitter and Kim (2005, p.5; emphasis added) define multi-level governance as "an arrangement for making *binding decisions* which engages a multiplicity of politically independent but otherwise interdependent actors". The question then is to what extent multi-level governance is applicable to EU external migration policy, which is made up largely of non-binding policy instruments? This deserves further investigation. Finally, Blom-Hansen (2005, p.628) criticises the concept for confusing multi-level *involvement* in EU decision-making with multi-level *governance,* i.e. failing to explain which actors will be important, when and why. In responding to this criticism, case studies of particular policy areas will be important. Despite these challenges, one major advantage of the concept of multi-level governance is that it evolved from studies of the implementation of EU policies (Stephenson, 2013), and this is precisely the aspect of EU external migration policy that is under-studied: there is a wealth of literature on decision-making in EU external migration policy, but little on how those decisions once taken are put into practice (except Wunderlich, 2013a; 2013b; 2012; Reslow, 2015).

Within this context, this paper addresses some of the central research questions of the conference. It focuses on one particular instrument of EU external migration policy, namely

the EU Mobility Partnerships. These partnerships are the central framework for cooperation between the EU and non-EU countries on migration issues, and 8 partnerships have been signed since 2008. The paper is based on interviews with policy-makers and in-depth document analysis. The first part of the paper deals with decision-making, and explains which actors are involved in Mobility Partnerships and what the relations are between them. It conceptualises this decision-making process as a three-level game between EU member states, the EU institutions, and the non-EU countries. The various actors' interests and motivations are important for explaining policy outcomes. The paper shows that, contradictory to the assumptions of the multi-level governance concept, member states have retained control over important aspects of EU Mobility Partnerships. This is due in large part to the non-legally binding nature of this policy instrument. Member states' influence over policy content is reflected in the focus on irregular migration (rather than the facilitation of legal migration). The second part of the paper looks at how multi-level governance works in practice, by examining the implementation of EU Mobility Partnerships. Here the focus will be on policy content and the actors involved in implementation.

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Governance of International Skilled Migration: Attracting Engineers to Norway's Petroleum Industry

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The attraction and retention of highly skilled migrants is a central policy issue in high-income states. These migrants are in demand in today's global knowledge economy, as they fill labor shortages and are believed to contribute to economic development and innovation. Governments try to balance demands for open markets, open borders, and liberal standards with calls for immigration control. At the same time, employer associations, labor unions, and other nonstate actors try to shape skilled migration regulations to their advantage.

Studies of migration governance have predominantly examined the involvement of states and supranational actors in policymaking, paying less attention to the influence of nonstate actors at the national and local scale. This paper brings together literatures on migration governance and policy networks to better understand the actual practices of scaling, rescaling, and networking in migration governance. In particular, this paper investigates the participation of nonstate actors in skilled migration governance in the petroleum industry in Norway. These actors have the potential to influence decision-making through scalar politics and network strategies at the national and subnational scale.

The paper aims to make two key theoretical contributions to literatures on migration governance and theories of scalar politics and network relations: 1) The research combines literatures on scale and networks to investigate the intersections and articulations between scalar politics and network practices of state and nonstate actors in the governance of skilled migration. Thus, the study takes up the challenge to develop "complex-concrete analyses that are systemically, reflexively attuned to the polymorphy of sociospatial relations" (Jessop et al., 2008, 392). This analysis helps us better understand the actual practices of scaling, rescaling, and network modes of governance in international skilled migration. 2) The research refines traditional macro studies of international labor migration through the inclusion of stakeholders at "lower" geographic scales. Sub-national actors rarely are in a position of much power (Peterson, 2003), but they can initiate collaborations to "scale up" an issue to national governments or international institutions, or "shift out" an issue to create more inclusive modes of governance (Cohen and McCarthy, 2014 in Norman et al. 2014).

This article examines the petroleum industry, selected for its dependence on foreign-born engineers. Norway is the seventh largest producer of oil in the world, and the third largest producer of natural gas (Ministry of Petroleum and Energy). The petroleum industry contributes over 20 percent of Norway's GDP and almost half of its exports (Statistics Norway, 2015b). This economic importance provides the petroleum industry considerable political influence.

The empirical findings are based on fieldwork research conducted in Oslo and Stavanger in summers 2011, 2012, and 2013. The two selected cities house petroleum-related companies that depend on skilled migrants to fill labor shortages. The author conducted in-depth, semi-structured interviews with six policymakers, seven labor union representatives, three employees in the Business Association of Norwegian Knowledge- and Technology-Based Enterprises, three representatives for the Chambers of Commerce in Oslo and Stavanger, two leaders in Oslo Technopole (now Oslo Business Region), three employees in Knowledge Oslo, the President of the Oslo International Club, two conference organizers, and five conference presenters to investigate their involvement in skilled migration governance.

The interview questions asked about collaborations, partnerships, and other networking strategies, and examined the (re)scaling of skilled migration issues. The interview data provided insights into collaborations between stakeholders and lobbying efforts of private actors. The author also attended four conferences in 2012 and 2013 that discussed how Norway could attract and retain more skilled migrants. These conferences provided opportunities to observe interactions between delegates, and to discuss their involvement in skilled migration governance. Data from interviews and observations were supplemented with scholarly works on scalar politics, policy networks, and migration governance, and online news sources. The interviews and observation notes were transcribed and used to reconstruct stakeholders' network connections and scalar relationships.

The paper makes three arguments about the governance of international skilled migration. First, government actors have clearly delineated the spheres of influence in skilled migration policymaking. These boundary-setting practices ensure that the state remains in charge of key domains related to international migration and employment. Second, expertise is a salient component in the scaling and networking practices of stakeholders in international skilled migration. This expertise informs policy briefs and is used as leverage to gain access to influential decision makers. Third, the findings confirm the emergence of new, private actors that transcend scalar hierarchies through public-private partnerships. The paper concludes that public-private partnerships enable state actors to extend their influence to the private sector. The most influential state actors, however, refrain from these alliances to remain neutral in politically charged issues. Thus, the state retains considerable decision-making power in skilled migration and employment-related issues.

The Global Forum on Migration and Development (GFMD) – talk-shop or stepping stone for multilayered global migration governance?

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Over the last fifteen years, migration has finally entered the global political arena, but James Hollifield's (2000) verdict that the issue is characterized by a "missing regime" still holds true. Unlike the refugee regime complex, there is no central global body or authority dealing with migration. Instead, the institutional landscape is characterized by a myriad of often competing institutions.

Nevertheless, in the wake of unsuccessful attempts to bring migration governance into the United Nations (UN) system, a new forum has emerged: The Global Forum on Migration and Development (GFMD) has become the major global space for deliberations on migration. The forum is situated outside the U.N. system, state-led, informal and non-binding, and thus lacks major qualities to become a building block for institutionalized global migration governance. But the GFMD may function as a stepping stone for a more robust, multi-layered and networked global migration governance. First of all, while it is state-led and the respective hosting state has influence over the agenda and modalities of the meeting, the GFMD is a multi-stakeholder forum. It brings together representatives of states, international organisations, the U.N. and to a lesser degree the private sector. There is a separate meeting for migrant civil society – the Civil Society Days (CSD) – and an interface/common space bridging the CSD and government meeting.

There is justified criticism of the forum being a mere talk-shop with no specific outcome. But the informality and the focus on the more positively connoted "migration and development nexus" have been prerequisites to set a process in motion where even predominantly receiving states of migrants (none of which have so far ratified the UN Migrant Worker Convention) are willing to talk about migration in a multilateral setting. Civil society actors have seized this opportunity and space and over the years contributed to a significant broadening of the scope of the agenda. While in the first United Nations High-Level Dialogue on Migration and Development (UN-HLD) in 2006 and the initial annual GFMD meetings from 2007 onwards, a human-rights-based approach to migration was largely absent from the debate, it has now become a regular part of the agenda. The same holds true for topics such as irregular migration or migration and climate change.

The GFMD has thus the potential to socialize states in two ways that are conducive to establishing a multilayered global migration governance: First, states are exposed to discourses on migration as a truly global issue. While this perspective may seem self-evident, it is often absent from concrete policy-making: Many states still consider control over

the entry and exit rules to their territory as a national policy, prefer to negotiate on migration at a bilateral level (and often in the form of a nonbinding Memorandum of Understanding) and shy away from multilateral agreements which would provide countries of origin with more bargaining power. Even within the EU, often considered a regional migration regime, unilateral policies have been dominant in the current refugee crisis.

Dialogue on migration at the global level can lead to first tangible outcomes in the form of "best practices". These are already being compiled for the migration and development nexus, and a further project that arose in the context of the GFMD is the initiative called Migrants in Countries in Crisis (MICIC) started by the USA and the Philippines. By June 2016, MICIC is supposed to define principles and practices in support of migrants in crisis areas. This initiative also highlights how the global level is connected to the regional level, since several regional consultations took place between the GFMD meetings. More institutionalized and regular regional meetings on a wider range of issues could increase the governance capacity of the GFMD.

The second way in which the GFMD process can socialize states is in the interaction with migrant civil society, thus potentially "blurring" previously distant if not openly antagonistic relations. This holds true for destination, transit and origin states of migrants alike. It cannot be assumed that states of origin governments automatically represent the interests of "their" migrants, since their policies might have been the reason for the decision to migrate in the first place. Due to their transnational status, migrants thus often lack any representation of their interests and this paper argues that providing participatory spaces and allowing agency for migrants and their organizations is not a mere optional future but a crucial component for global migration governance. In this regard, the GFMD can be seen as a trust-building measure and it has to be seen if this dialogue on the global level will have an effect on the regional and national level as well.

The question remains whether the GFMD can play a role in the "layering" of global migration governance by offering the opportunity to "bypass dysfunctional venues" – or if it rather runs danger to become such a dysfunctional venue itself. It is therefore argued that for the GFMD to become not just a stepping stone but a building block for global migration governance, it has to evolve into an institution comparable to the tripartite structure of the ILO, with strong regional and thematic layers.

The paper is based on extensive fieldwork at the regional and global level, including participation in all GFMD meetings since 2008, the UN-HLD in New York in 2013 and several other fora, and parallel as well as counter-events.

The role of the UN in multilayered migration governance

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Abstract: The story of how migration governance has evolved at the United Nations is one of cautious advancement. Factors that have worked to keep migration policy-making outside the multilateral sphere include the will of powerful states, the influence of bilateral strains, and more generally but equally important the divide between the global South and North on this issue.

This gradual evolution is marked by two important break-throughs: first, the recognition that migration is a field requiring multilateral cooperation as recommended by the Global Commission on International Migration 10 years ago, which contributed to the establishment of the annual inter-governmental meeting (outside the UN) known as the Global Forum on Migration and Development (GFMD). Second, the greater willingness of governments (and the UN itself) to address migration within the UN context as evidenced by the cyclical UN High Level Dialogue on International Migration and Development (HLD), which while development-focused moves beyond the scope of the bi-annual deliberations on "migration and development" in the 2nd Committee of the General Assembly.

Significantly, the announcement in November 2015 by the UN Secretary-General of the convening of an UN Leaders Summit on Addressing Large Movements of Refugees and Migrants for Heads of State on 19 September 2016 at the UN in New York marks a new turning point. In addition to its political significance, it suggests a new willingness to seek solutions to one category of movement that is at the heart of forcible displacement compelling us to, at minimum, understand the needs and rights of those forced to flee who do not fit the legal definition of refugees. Some consider this political mobilization and the expected attention it will bring, as a window of opportunity that is not likely to be seen again for decades to come.

As thinkers and other vested stakeholders try to formulate what may come about for the 19th of September and beyond it, it is in this context that we may hypothesise on a number of considerations regarding the migration and refugee regime as a whole that are of relevance to this conference.

One such consideration is whether the state's scope of authority is abating or indeed is in need of strengthening, what has been called by K. Newland "reanimating sovereignty". For instance, can a newly defined, more functional "shared responsibility" (be it for refugees or for refugees and other migrants at risk) take place without states' formal commitments?

A related consideration pertains to efforts to include other actors, non-state actors and sub-national governments, in search of sustainable operational solutions to meet the needs of migrants and refugees in transit and at destination. Alternative models of cooperation or

multi-stakeholder partnerships are being initiated where civil society and the private sector play a leading role. How do such arrangements interface with host and donor government(s) so as to ensure accountability (on both sides)? Can hybrid models such as Canada's private resettlement scheme, or Sweden's approach of matching labour market needs through a private sector-led demand-based system for labour immigration, provide more impact?

Last, it is generally acknowledged that there are deficiencies with regard to our understanding of migration in relation to other areas for e.g. security, trade, environment, health policy studies. While there have been efforts to develop coordinated knowledge capacity within this field (including through the Global Migration Group and World Bank KNOMAD), there is no systematic intellectual engagement in a coordinated fashion by which migration policy is analysed and assessed from the perspective of other fields of study. This is despite the fact that migration governance is a relatively new area of study (beyond its genesis in history, anthropology and sociology) that can potentially benefit from elements of other governance models. What can we learn about effective governance from other fields? And how can we engage more systematically in such an analysis?

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Can a Regulatory Agency Enhance the Multilayered Governance of International Migration in Europe? The Role of FRONTEX in the EU's Integrated Border Management and External Action

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Incorporating migrants' advocacy in global migration governance is the challenge of our times. At the EU level, the Lisbon Treaty reflects this, setting forth a strong normative agenda in the field of human rights, mobility, distributive justice, and solidarity, capable of affecting both internal migration policies and related external actions. The completion of the Common European Asylum System and the availability of a multilevel system for the protection of individual rights – whose implementation is guaranteed through the judicial dialogue between the ECJ and the ECtHR and which is accessible to Third Country nationals in the European legal space – have been important steps in strengthening the Union's 'normative power'. This could enable the EU to defend its founding principles in transactions with Third Countries while contributing to the overall 'coherentisation' of the international migration regime through the strengthening of a noyeau dûr of shared core values in migration governance. However, this strong legal foundation is all but dismissed as far as the EU implementing actions are concerned. As a matter of fact, notwithstanding policy innovations attempting to re-adapt the Global Approach to Migration and Mobility to the qualitative and quantitative transformation of migration patterns, this cooperative platform has remained anchored in a traditional double-standard approach, based on hierarchical, EU-centric relations and asymmetric commitments. The economic downturn, coupled with the ongoing migratory crisis, has only increased the preference for emergency mechanisms, further hindering the EU's capacity to perform effective cooperation and deliver on 'good global governance' (see Art. 21, para. 2, lett. h), TEU) in the field of migration and asylum. In the attempt to better address the emerging challenges related to the international movement of people, the European Commission has backed the empowerment of the EU Agencies operating in the Area of Freedom, Security and Justice. Among them, Frontex has exercised an increasingly influential function, being in charge – inter alia – of coordinating the EU's integrated border management and steering the operational cooperation with the relevant authorities of Third Countries bordering the Union. At the present stage of its development, Frontex is formally a component of the EU multi-level administrative system, practically behaving as a primary actor in European policy-making. On the one hand, due to its hybrid nature as a specialised and independent 'layer' of the EU administration, the Agency has been granted the capacity to bypass dysfunctional domestic venues in performing its tasks, promoting the consistent application of existing rules on the treatment of migrants by all actors involved in joint operations deployed under its coordination, fast-tracking European integration in the field of border management and acting on the edge of the traditional international/national divide through the conclusion of 'working arrangements' with third parties. On the other hand, its de

facto intergovernmental structure, coupled with a wide-ranging 'watchdog' mandate and a substantial lack of transparency, has complicated the assessment of its action in terms of efficiency, legitimacy and accountability. Drawing on the case study of Frontex's mandate and considering the scope and content of its operative instruments, including the legal framework of joint operations it coordinates, the impact of its risk analysis and monitoring activities on the setting of the EU's agenda on migration, and finally the Agency's modus operandi and procedural fairness, this paper queries to what extent Frontex's leverage on EU migration policy is promoting flexible responses, transnational linkages and the positive blurring of national sovereignty or it is instead strengthening EU-centric sovereignty-based approaches to territorial and border control that simply contribute to a race-to-the-bottom of European standards of human rights protection. The recent Commission's proposals to bolster Frontex's mandate, devolving to the Agency not just tasks but powers, will be evaluated in light of the results of this previous analysis to show the potential consequences of expanding the competences of an Agency 'without agency'.

The End of a Domaine Réservé – The Increasing Impact of International Human Rights Law on Nation State's Sovereignty in Nationality Matters

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Questions of nationality are in principle within the reserved domain of a State. That was the opinion of the Permanent Court of International Justice its landmark opinion on the *Nationality Decrees Issued in Tunis and Morocco* of 1923. It was no surprising ruling at that time. It perfectly reflected the general conception that nationality matters are a prerogative of the sovereign nation state. It was for each state to determine according to its own domestic legislation who is a citizen, who can become a citizen and who cannot and what requirements need to be fulfilled for that purpose. Nationality was considered a so called *domaine réservé*, a matter that is determined by domestic law and outside the realm of international law.

This does not mean that nationality is entirely regulated on by domestic law. There are international legal instruments on nationality matters, such as the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws but also 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness which aim at avoiding and limiting conflicts states on nationality matters. However, those instruments are based on the understanding of nationality as a legal bond which in principle links an individual to a state and to one state only. According to these multilateral conventions, as well as the ICJ case law, instances where an individual has legal bonds to more than one state, as in case of double or multiple nationality, or to no state at all, i.e. if a person is stateless, should be avoided. Rather than limiting nation states' discretion on nationality matters the existing international treaties in that field thus leave the regulation of acquisition and loss of nationality to the states' domestic legislation.

In the last decades the exclusive competence of nation states in nationality matters was however increasingly challenged – both on a factual as well as on a legal, regulatory level. Globalization has led to new political, economic and cultural links between states. The number of persons migrating across international borders and living in a state they are not a citizen of, sometimes just for a few months or years, sometimes for generations, has increased drastically. These developments have affected the position of nation states on a legal level. Most notably international human rights law has – in addition to national constitutional rights – created obligations for states towards individuals irrespective of their nationality. In parallel, individuals are no longer seen as purely objects of international law belonging to their state of nationality but as autonomous subjects of international law. These factors have led to a situation where the formerly undisputed sovereignty of nation states in

nationality matters is questioned. Even though international law knows only few rules directly concerning nationality and the few existing instruments are ratified by a little number of states, the remaining room for maneuver of states is increasingly limited. When regulating the acquisition and loss of nationality in domestic law they are bound by certain limits imposed by international human rights law, most notably the principle of non-discrimination, the prohibition of arbitrariness, certain fair procedure guarantees and the duty to reduce statelessness.

Nationality might not be a paradigmatic example of multilayered governance (MLG) as it is still primarily regulated on the level of the nation state. Furthermore, on a horizontal level there is hardly an involvement of private actors in nationality issues. Nevertheless, nationality can serve as an example in case to illustrate how globalization and the transformation of international law undermines states' sovereignty even in areas which – like migration – were thought to be strongholds of national sovereignty and increased the influence of the international level.

This paper wants to illustrate the shift in competences away from the nation state and to show which guarantees of international human rights law, on the basis of treaty law and the respective case law, currently limit states' sovereignty in nationality matters. The paper aims at evaluating the impacts of this interplay between the international and the national level. The assumption is that an increasing importance of international law strengthens the rights of individuals and close protection gaps. Moreover, this development could improve the legitimacy of nationality laws for persons affected due to higher transparency and in the long run make the regulation of nationality matters more coherent. On the negative side the involvement of the international level in addition to the national level could affect the effectiveness of nationality regulation, as can be shown in the case of the Swiss multilevel citizenship involving sub-state levels.

Multilayered Central Government: Why is reform of Japan's immigration policy so slow?

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The policy making process in Japan has been studied both within and from outside of Japan. Especially, it has been criticised that the central government has been inactive in promoting social cohesion while it has been left to specific local governments where immigrants dominantly concentrate. However, the mutilayered governance on migration policies in Japan can also be found in the central government itself: different ministries hold different authorities on migration policies and this makes migration reform incredibly slow in the country. This research focuses on the less known multilayered governance in the central government and reveal how it affects migration reform.

Key actors in the policy making process of central government are the lifetime-employed bureaucrats; who are metaphorically and collectively called Kasumigaseki, named after the location of their offices (like No 10 for the British Prime Ministers). Systematic bureaucracy is a well-known feature of Kasumigaseki, however, its policy making process and the role of Kasumigaseki in immigration debates have not been investigated in the previous scholarly works, although migration policy has a potential power to significantly change Japanese society.

In the context of the world's fastest ageing and declining population, together with severe global economic completion, the need to accept large numbers of immigrants has been pointed out in Japan (e.g. Liberal Democratic Party of Japan, 2008; Keidanren, 2015). Nonetheless, immigration policy has not been drastically reformed nor such a discussion has yet emerged. The lack of urgency in the government under such an urgent social change has remained a mystery, especially for western researchers. Further research on policy process in Kasumigaseki is needed to frame the debate in this field.

This research firstly attempts to illuminate this unknown policy making process through interviews with 14 migration experts (Kasumigaseki bureaucrats, business sectors, members of government advisory boards and so forth). The particular originality and unique contribution of this research is that the interviews were conducted with high ranking officers across Ministries (higher than Director level) who are often hard to reach and include former officials who have engaged with the policy; the research includes current and former actors. The main questions dealt with are three-fold; how immigration policies are multilayeredly discussed in Kasumigaseki; what are unique features of the immigration policy making process in this multilayered discussion; and, why this makes migration reform so slow.

Eventually, this research will reveal inherent barriers in Japan's migration policy decision-making process, beyond the stereotyped bureaucracy and will propose some more effective ways to move forward and develop responsive migration policies.

The Europeanisation of Asylum law: A rights-enhancing process?

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Over the past thirty years, the Member States of the European Union (EU) have gradually built a set of institutions to coordinate and, increasingly, regulate their migration and asylum policies and to deal collectively with migration challenges. The Common European Asylum System (CEAS) aims firstly at creating a level-playing field among national asylum regimes in order to guarantee equal protection throughout the EU. Secondly, it addresses the unequal distribution of asylum-seekers and refugees among the Member States. This new layer in the asylum regulatory system adds a governance level that, in theory, should allow to harmonize the interpretation of the 1951 Geneva Refugee Convention and of European Human Rights Law under the European Convention of Human Rights across the Member States.

The current wave of forced migration towards the EU, however, has put the freshly reformed CEAS to the test. Is the human right to asylum effectively protected under the EU'S asylum governance framework? What is the impact of the European integration of refugee law on asylum protection in the EU Member States?

The prevalant discourse in academia has been to consider European integration in asylum policy as dominated by national budgetary and security interests, rather than as rights-enhancing. The resulting governance framework has thus been the focus of much criticism from non-governmental organisations (NGOs) and international organisation for its lack of coherence with the spirit and often the letter of international refugee law. Sociological institutionalism (esp. Huysmans, 2000) considers that, at the national level, a combination of concerns for security, the welfare State, and cultural integrity led to the 'securitization' of asylum policy. Rational institutionalism (Guiraudon, 2001) argues that law and order officials built and exploited political venues favourable to furthering their agenda (monopoly of policy making, no parliamentary or judicial scrutiny, trans-border action). They could "use the EU-level strategically to strengthen their own domestic position and to initiate processes of vertical and horizontal policy transfer that helped the introduction of more restrictive asylum rules" (Thielemann, 2001). Based on different premisses, most researchers reach the conclusion that integration has led to the creation of a regime that secures the primacy of State interests over the human rights of asylum-seekers and refugees. New perspectives are however emerging. Recent papers provide evidence that the new EU standards have a differentiated effect on asylum protection in various Member States, depending on the national asylum frameworks (Thielemann & El-Enany, 2009) and that "higher EU standards (…) have generated significant adaption pressures" (Thielemann & Zaun, 2012).

Between 2009 and 2013, the EU adopted a new set of rules aimed at addressing a number of failings in existing law, and codifying a significant body of jurisprudence. These reforms were carried out under new procedural conditions since the 'ordinary procedure' involving

qualified majority voting in the Council of the European Union, and equal legislative competencies with the European Parliament, is now in force. The reformed provisions were meant to be transposed into domestic law by 2015. In the context of the biggest refugee crisis since World War II, domestic reforms were carried out in an explosive political climate.

My research confronts the existing literature with new data on the implementation process of the last EU asylum package. In this paper, I will assess the extent to which regional integration has allowed for better coherence among the national asylum regulatory systems. Specifically, I will compare how EU Member States have implemented the new provisions of EU law (Directive 2013/33/EU) concerning access to healthcare during administrative detention, with a particular focus on persons with special needs. The comparison of domestic reform processes should allow to account for varieties of implementation and thus for the resulting variation of compliance with international asylum law.

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Humanitarian Schengen Visa: A Migration Law Transplant to Resolve the Refugee Crisis?

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The common visa policy and harmonized rules on asylum procedures were both introduced as a 'compensatory measure' to abolish internal border controls. Whereas the Schengen and Dublin conventions had both initially been concluded outside the EU Treaty framework, the entry into force of the Amsterdam Treaty allowed to incorporate the visa and asylum legal system into EU law and to the effect that legislative power over visa policy was transferred from the intergovernmental to the supranational level. Both the Schengen visa regime and Dublin asylum policy compose a part of the European Union's area of freedom, security and justice and are coordinated by one and the same EU Commissioner responsible for Migration, Home Affairs and Citizenship whereas at the national level, those competences are often divided between authorities responsible for home affairs (asylum) and foreign services (visa). The decision on which nationals must hold a visa or are exempt from the visa requirement when crossing the EU external border is taken – within the framework of the ordinary legislative procedure – by the EU Council of Ministers responsible for internal and justice matters (JHA Counsellors). It demonstrates clearly the dominance of the security-based approach towards visa policy.

The process of shifting competences on visa policy upward – from nation states to the supranational level – is based on various motivations. They range from administrative efficiency and economic benefits to removing the visa issue from the national debate ("escape to Europe"). In certain cases the Member States accepted the transfer of the sovereignty in visa matters as necessary or even unavoidable step to maintain certain privileges (Norway, Iceland) or to gain access to the common area avoiding geographical isolation (Switzerland, Liechtenstein).

With so many similarities, the question is why these two regimes – Dublin and Schengen continue to drift apart, and what drives how they interact. The question is relevant because it seems that the Schengen system is increasingly solicited for making up for some of the deficiencies of Dublin and failures of the External Dimension of EU Migration Policy more generally.

Interestingly, the current migration crisis in Europe, which is caused by the incapacity of the Dublin system, has increasingly put into question the Schengen rules. It seems to be expected that the Schengen system compensate for the shortcomings in the common asylum procedures mostly by providing an increased border monitoring to prevent illegal entry into Schengen territory; however, beyond such security-based rationales, the Schengen system's wide margin for national discretion has been related to by certain

Member States to provide a humanitarian, rather than securitarian answer to the current migration crisis, mostly by offering access to temporary protection through a Schengen-based visa.

Whereas it is true that visa policy is closely related to the asylum policy and has a strong impact on the rights of people seeking international protection, it creates, at the same time, a sort of additional burden for those who would most probably wish to request asylum. On the other hand, the very reasons which force people to escape their place of residence triggers the introduction of the visa obligation.

Clearly Schengen as such does not dispose of the administrative and institutional capacities for handling an increased refugee influx. Waiving the visa obligations may on the other hand lead to an increase in the number of asylum applications as has happened in case of some Balkan countries in the year 2009. However, the same measure in relation to eastern European countries in the 1990s did not result in an application growth. Yet, comparable occurrences took place in Europe even before Schengen entered into force; for example the existence of internal borders controls did not stop massive inflow of refugees into Germany during the Balkan War. The reintroduction of border controls between member states would have very little impact on the movement of asylum seekers into the EU, but the reinstatement of border controls would probably be tantamount to the end of the common market. It demonstrates how crucial the solving of refugee crisis is – not only for potential asylum seekers but also for the future of the European Union. Apart from ongoing essential debates on reforming the asylum procedure all possibilities based on existing legal framework should be taken into account.

An important question in this context is to what extent the visa policy could be used in order to facilitate and fast-track the asylum procedure. What scope of manoeuvre does a Member State have in a common visa policy to achieve specific goals in the field of asylum? Can it transplant visa rules to improve the asylum procedure? The paper wants thus to explore to what extent the margin of discretion inherent in the Schengen common visa rules predispose these for legal transplants, i.e. for modifying the securitarian rationale and embedding these into an asylum/temporary protection context.

The first part of the paper concentrates on the evolution of the supranationalisation of the visa policy, demonstrating the gradual shifting of the authority over this policy from states to the European Union level.

The second part will focus on unique practices introduced by the Swiss government issuing Schengen visas to Syrian nationals fleeing civil war in their country and thus on the very opposite dimension, a so-called re-nationalization or of the Schengen visa for ancillary purpose of fast-tracking the asylum process, rather than securitizing borders. In the period from September to November 2013, the Swiss foreign missions in Amman, Beirut, Istanbul and Ankara issued 4673 Schengen humanitarian visas for Syrian citizens who left Syria after the outbreak of the civil war in March 2011. Additional 1000 visas will be issued in the year 2016. The procedure was based on Art. 25 of the Schengen Visa Code allowing for the Member States to derogate from some entry conditions laid down in the Schengen Border

Code, and was facilitated by the ICRC as a civil society actor engaged to increase the access to rights of refugees The European Commission was critical to this practice stating that the Visa Code is not the right instrument to issue visas to persons in need of international protection as they do not intend to enter for short stays and that Switzerland had misused a margin of appreciation by blurring the divide between short-term migration visa for labour, tourist or family reunification on the one hand, and asylum procedures. The Swiss practice demonstrates a renationalisation of supranational governed visa regime caused by the inability to agree on common position between Member States.

This paper concludes by highlighting the interface between the Swiss practice of ongoing discussion of Protected Entry Procedures as part of the long-standing Swiss tradition of granting protection to people in need through the consular asylum and the current debate on reforming the Schengen Visa Code. In particular, the Swiss Schengen visa practice displays all elements of MLG in migration: firstly it adds a layer of national governance to the supranational one; secondly it blurs the boundaries between asylum and visa law, between territorial security and sovereignty rationales and the access to rights discourse; thirdly, there is an instance of non-state actors involvement, with the ICRC having been involved in processing the Swiss visa practice, and thus what Abbott and Snidal would label "orchestration". In sum, we find that layering and blurring of the Schengen visa to tailor it for humanitarian needs of access to asylum has increased the efficiency and legitimacy and rights-based rationale of this procedure, to the effect that one can rightly speak of a gain rather than a failure of EU migration governance—at least if it permits a margin of discretion for devolution and national digression.