With globalization, migration regulation has shifted from the State to international organizations, to the market, and to more specialized venues such as environment, sea, trade, and health. As a result, international migration law divides into global norms and fragmented features, offering an example in case for deepening the theory of multilayered governance. What are the advantages and deficits of multilayered governance for conceptualizing international migration law and is it possible to construct coherence?

**Multilayered Governance: Contouring International Migration Law (Marion Panizzon)**

Despite cultivating a multistakeholder expectation, international migration law (IML) had been host country-controlled rather than reciprocal. Consensus-finding was discouraged by the fact that host, home and transit countries’ positions over migratory issues diverged. With the devolution of power to sub and supra-state levels and the blurring of boundaries between private and public, IML has transformed into a potentially plural body of norms. Fragmentation into bilateral, regional, multilateral layers continues, but meanwhile a global consensus is emerging over “select migration topics” (labor, development). This project traces the transformation of IML from asymmetry to diversity and queries how the theory of multilayered governance (MLG) contributes to constructing coherence.

The project investigates: (1) Whether the fragmentation (and absence of contours) is a result of hegemonic host-country control or delineates a new plurality; (2) Why IML, because it fragments into multilateral, regional/supranational, bilateral layers and embedded venues should resolve the challenges of migration in a more optimal way, than if it were a unified body of law; (3) If global, regional and national legal instruments concerning migration have adapted to recent changes in society/market/state; (4) At which level of regulation these changes would best be addressed and how IML should be structured to govern new forms of migration. We will examine these legal challenges on the basis of three subprojects dealing with civil status recognition, questions of nationality and visa.

**Migratory Challenges to Civil Status Recognition (David de Groot)**

Civil status is defined as “the legal identity of a natural person – based on his life events – for the State.” Due to the free movement rights, certain “family members” get privileged rights to access and residence in the host State. However, it is not always certain that the host State will actually consider the persons concerned as family members, as they have a civil status that does not exist – or at least not in that form – in the State concerned. Since the 1990s, new civil statūs have been created to facilitate new family formations. Furthermore, the creation of EU citizenship has led to case law concerning recognition of certain civil statūs. This case law has also changed the discussion concerning other civil statūs. Problematic, for example, are cases of same-sex marriages, registered partnerships and the Konkubinat that have a status in increasingly more States, however, not in all (EU Member)
States. It remains unclear whether cases of non-recognition will be tolerated by the Court of Justice of the European Union or by the European Court of Human Rights as it could be considered a restriction of the right to family life amongst others. Meanwhile, other International Organizations, such as the International Commission on Civil Status and the Hague Conference on Private International Law, have drafted conventions to solve the issue concerning civil status recognition. Unfortunately, few States have ratified these conventions, leaving the issue of non-recognition of civil status unsolved; not only in the EU, but also in Switzerland. This sub-project will examine to what extent and on which level the issue on civil status recognition can and should be solved.

Citizenship and Human Rights (Barbara von Rütte)

This project analyzes how the status and concept of nationality in both Swiss and international law have evolved in the light of increasing global mobility. In international law, nationality has for a long time been considered as a "domaine réserve", a matter which is within the sovereign, domestic sphere of nation states and that is not subject to obligations based on public international law. States were considered to be free in deciding who is a national, who is not and under which conditions one can acquire a nationality. The growing importance of international and supranational law – namely human rights that apply to all persons alike irrespective of their nationality – have increasingly limited nation states’ sovereignty in citizenship matters. In the last decades international courts have found states to be bound by certain human rights guarantees, for example the principle of non-discrimination, when regulating citizenship matters. This project aims at analyzing which human rights guarantees are of particular importance for citizenship matters. It further aims at illustrating which guarantees states have to respect when regulating namely the acquisition and the loss of citizenship. It will also examine under which circumstances individuals might claim a right to a citizenship.

New European Visa Policy (Marek Wieruszewski)

The creation of a common visa policy through the Schengen legislative governance package is an example in case for MLG: Rule-making has shifted from the national to the supranational level through the adoption of the Schengen Visa and Border Codes, whereas implementation and enforcement of the Schengen visa remain within national jurisdiction. However, there is the possibility for transferal of consular competencies to another Schengen State through conclusion of an intergovernmental (bilateral) visa representation agreement in what figures as de-territorializing or de-centralizing of consular (visa) services. The thesis traces the evidence of MLG in Schengen Visa Policy, for example the supranational delegation when it comes to the approximation of some aspects of the visa issuance process by empowering the European External Action Service to take charge of certain consular services. It discusses the deficit and merits of the Schengen visa enforcement and implementation remaining under national jurisdiction (i.e. how documentation, fees, right to refuse a visa vary widely from Member State to Member State) thus accounting for a fragmented, and at times even discriminatory application of Schengen visa rules. It addresses the emergence of private actors in the visa process, raising the question of de-responsibilization. The final part will demonstrate how MLG mechanisms contribute to achieve (or not) the goals of a Schengen Visa policy.

Methodology

The project is mainly based on understanding primary sources (case law, legislation and conventions) and discussing secondary sources (analysis of existing academic literature). It examines relevant international, European and domestic legal instruments, policies and jurisprudential interpretations pertaining to migration governance and conducts comparative legal analysis illustrated through case studies.

Publications