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The Politics of International Migration Management

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William Walters teaches in the Departments of Political Science and Sociology/Anthropology at Carleton University, Ottawa, Canada. His earlier projects include a study of the history of worklessness (*Unemployment and Government*, 2000), a study of the governmentalization of Europe (*Governing Europe*, 2005, co-authored with Jens Henrik Haahr) and of global government (*Global Governmentality*, 2004, co-edited with Wendy Larner). For the past decade he has been researching migrations with a view to understanding them as laboratories of governmental experimentation and political invention.

1

The Politics of International Migration Management

Martin Geiger and Antoine Pécoud

‘International migration management’ has become a popular catchphrase for a wide range of initiatives that aim at renewing the policies pertaining to the cross-border movements of people. It is used by numerous actors, both within and outside governments. At the international level, the term is intensively used by the International Organization for Migration (IOM) (whose motto is ‘Managing migration for the benefit of all’), the International Centre for Migration Policy Development (ICMPD), the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe and other international agencies. At the national level, the approach in terms of ‘management’ pervades, for example, the British government’s White Paper on immigration, ‘Secure Borders, Safe Haven’.

Yet, despite (or because of) its popularity, there have been almost no attempts to understand what ‘migration management’ actually refers to. Most of the burgeoning literature is of an advocacy nature and does not investigate what is happening, but rather what *could* or *should* be done; this is the case with institutional publications (see, e.g. IOM, 2005) and also of more academic work (Taylor, 2005; Martin et al., 2006a,b). Many of these publications are, moreover, produced by institutions that promote migration management or by people who work in close association with these organizations, which leaves little room for independent thinking. This book therefore seeks to understand what migration management is about. It looks both at the empirical trends that are associated with this notion and at the policy approaches it calls for.

One of the central arguments of this book is that ‘migration management’ refers to at least three different trends. First, it is a notion that is mobilized by *actors* to conceptualize and justify their increasing interventions in the migration field. This points to the role played by the agencies mentioned above and to the importance of their strategies and functioning. Second, migration management refers to a range of *practices* that are now part of migration policies, and that are often performed by the institutions that promote the notion; these include, for example, counter-trafficking

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efforts or so-called 'capacity-building' activities. And third, migration management relies on a set of *discourses* and on new narratives regarding what migration is and how it should be addressed. A second key argument is that the actors, practices and discourses of migration management are connected, but only partially and in complex manners. For instance, actors develop discourses to justify their existence and legitimize their practices; yet their actual activities and policy interventions often diverge substantially from the rhetoric underpinning them.

This book brings together contributions that seek to critically evaluate and understand these three fields of migration management. Chapters 2, 4 and 13 (by Sara Kalm, William Walters and Matt Bakker) analyse different aspects of the international policy discourses on migration. Chapters 3, 5, 6 and 12 (by Fabian Georgi, Sabine Hess, Bernd Kasperek and Giulia Scaletarris) investigate some of the dominant actors, namely IOM, ICMPD, Frontex and the United Nations High Commissioner for Refugees (UNHCR). Finally, some of the practices that constitute and arise out of migration management initiatives are documented in Chapters 7–11 (by Martin Geiger, Chiara Marchetti, Antoine Pécoud, Philippe Poutignat and Jocelyne Streiff-Fénart and Claire Inder). This introduction brings together the core arguments of the book and identifies a few cross-cutting themes that run throughout the chapters.

The genesis of migration management

The notion of 'migration management' was first elaborated in 1993 by Bimal Ghosh, following requests from the UN Commission on Global Governance and the government of Sweden (Commission on Global Governance, 1995). In 1997, following his report to the Commission on Global Governance, the United Nations Population Fund (UNPFA), together with the Dutch, Swedish and Swiss governments, financed the so-called 'NIROMP' project (New International Regime for Orderly Movements of People), which was also to be coordinated by Ghosh. Overall, the idea was that, in the post-Cold War era, migration had the potential to generate real crises, and that a global and holistic regime of rules and norms was needed to successfully address the phenomenon, in the way the Bretton Woods and General Agreement on Tariffs and Trade (GATT) regimes had improved the governance of international finance and trade (Ghosh, 2000). The NIROMP project served as a basis for the strategy of IOM, of which Ghosh was an advisor (see Chapter 3).

The most central characteristic of this new international regime for global cross-border mobility and migration was its comprehensiveness. It was indeed planned to cover all types of human mobility, including refugee flows that were already addressed by the existing Geneva Convention and other related international norms and rules. Another key characteristic was the attempt to turn migration into a more orderly, predictable and manageable process, and to make it beneficial for all the stakeholders involved.

This implied both a 'regulated openness' toward economically needed and beneficial flows and the continuation of restrictions regarding unwanted migration. More specifically, Ghosh proposed a three-pillar model. The first pillar was to bring together and possibly harmonize the policies and interests of all states concerned with migration. The second pillar was a new international framework agreement on global mobility and migration. Finally, the third pillar concerned the role of actors other than governments, including intergovernmental and non-governmental organizations, private companies and expert panels, which were to become more influential in migration policy-making and whose activities were therefore to be better harmonized (Ghosh, 2000).

It is worth stressing the connection between the emergence of migration management and a perceived migration crisis – an issue that is addressed by several contributions to this book. Fabian Georgi shows how IOM was favoured by the context following the end of the Cold War, in the early 1990s, which witnessed fears regarding the asylum crisis and the porosity of Western European borders to migration flows from the East (Chapter 3). Philippe Poutignat and Jocelyne Streiff-Fénart document the impact of the dramatic events surrounding irregular migration by boat from West African coasts to the Canary Islands on external policy interventions in Mauritania (Chapter 10). The growth in trafficking-related initiatives is another example of policies developed in reaction to the 'panic' of Western states toward this phenomenon (Berman, 2003, see also Chapter 9 by Antoine Pécoud).

While the concept of migration management has a clear history and a relatively precise meaning, one should, however, note that on other occasions it functions as a kind of empty shell, a convenient umbrella under which very different activities can be regrouped and given an apparent coherence, thus also facilitating cooperation between actors who would otherwise have little in common. The notion seems to lack substance even in the eyes of those supposed to put it into practice. For example, Sabine Hess recounts how ICMPD officials explicitly state that they do not believe in the possibility of 'managing' migration, but that they nevertheless use the notion to promote their role among governments and to convey the reassuring idea that the ICMPD can be part of the 'solutions' to their migration 'problems' (Chapter 5). Fabian Georgi similarly argues that one of the main *raison d'être* of the 'migration management' concept is to bring the wide and confusing range of IOM's activities under a single label (Chapter 3).

Actors

Migration management is a notion that is mobilized by different intergovernmental organizations (IGOs). While migration has long been a neglected topic at the international level, it is now on the agenda of the 'international community' and has therefore become a field of activities for IGOs. Four of

them are analysed in this book: IOM, the ICMPD, UNHCR and Frontex (Chapters 3, 5, 6 and 12).

IGOs active in the migration field present a high level of diversity. UNHCR is an established UN agency with a well-defined mandate to protect refugees worldwide; IOM is also active at the world level, but is situated outside the UN system while implementing a more heterogeneous set of activities; ICMPD and Frontex are both predominantly active at the European level (even if this means going beyond the boundaries of the EU and expanding to the east and south of Europe). They also differ in their status: whereas Frontex was established at the end of 2004 by the European Council and is thus closely linked to EU member states and the Commission, ICMPD is a small IGO established outside the EU system.

The heterogeneity among these IGOs underlines the fragmentation of the field. Since its creation, UNHCR has been challenged by what was to become IOM (Loescher, 2001). Several other IGOs are now also getting involved in migration-related issues; some of them have joined forces within the Global Migration Group¹ (whose usefulness is, however, often questioned: see ICMC, 2009, pp. 7–8), while still others develop migration activities of their own (e.g. the Organization for Economic Co-operation and Development [OECD] and ICMPD). One should further mention the growing role played by regional organizations,² NGOs³ (both at the local and international levels) and think tanks⁴ – which all bring their own views and arguments. Several discussion forums have been created to address migration, such as the so-called ‘Regional Consultative Processes’ (RCPs), the UN High-Level Dialogue on International Migration and Development (HLD) or the Global Forum on Migration and Development (GFMD), and further contribute to fuelling migration debates. Finally, the interest in remittances and the development impact of migration has attracted international financial institutions, including the World Bank, private foundations and for-profit financial institutions (see Chapter 13 by Matt Bakker).

According to Betts (2008), such fragmentation is functional as it enables states to selectively decide what issues they wish to address in which institutional context – thus hampering the elaboration of a coherent international approach. For example, Western states can discuss the links between migration, development and human rights with less developed countries at the UN level, while asking IOM to support border control policies and enforcement in sending states. The same can be said of the gap between the national, regional and international levels: EU states can agree on the need to build broad partnerships with third countries at the GFMD or in European Council meetings, while simultaneously negotiating (or imposing) tough security and control-oriented agreements at the EU-, bi-national or regional level. While there have been discussions surrounding the creation of new institutional arrangements to ensure greater coherence,⁵ the

usefulness of the current fragmented situation is such that it is unlikely to change fundamentally in the near future.

IGOs perform a wide range of migration-related activities. They can play an influential role in shaping governments' decisions, for example, by producing knowledge and analysis deemed relevant to better managing migration, by providing 'scientific', 'technical' or 'managerial' expertise to states, or by facilitating the exchange of information. They can also develop programmes on behalf of governments and directly implement policies, thereby functioning as service providers. As such, IGOs play an enabling role for governments. For example, Chiara Marchetti shows the role of Frontex in making possible what she calls 'preventive *refoulement*' in Italy, that is, the *refoulement* of potential asylum-seekers before they reach the Italian territory (Chapter 8). Claire Inder documents another paradigmatic case of 'preventive *refoulement*', namely the so-called 'Pacific solution', which saw the reliance of the Australian government on IOM and UNHCR to keep Afghan refugees out of its territory while processing their asylum claims (Chapter 11). While such externalization (or outsourcing) policies may not be exclusively attributable to IGOs, they are to a large extent made feasible by their existence, and by their ability to provide international 'migration services' to governments.

It is therefore not surprising to note the growth, both in terms of budget and of scope of activities, of several of these IGOs. IOM, ICMPD and Frontex have, for example, experienced rapid and substantial growth over the last one or two decades (Chapters 3, 5 and 6). This points to the possible transfer of influence and power from 'traditional' state-centred policy-making institutions to organizations outside governments. Sabine Hess provides a micro-illustration of this trend through the telling itinerary of a former Slovenian civil servant, who left an understaffed and under-resourced national bureaucracy to join the competitive and private-like atmosphere of ICMPD (Chapter 5).

Indeed, despite their state funding and intergovernmental status, IOM and ICMPD seem to function almost like private enterprises (Chapters 3 and 5). This is apparent in their managerial rhetoric, the focus on 'efficiency' and the advertising methods, as well as in their 'customer-oriented' approach (according to which states are 'clients' paying for high-quality services). This is also manifest in their budget: these organizations receive little regular funding from their member states and hence depend upon extra-budgetary projects – which, in most cases, are funded by migrant receiving states. This creates competition between these organizations, along with a staff profile that differs from the stereotypical bureaucrats that are often associated with UN agencies: young, ambitious, flexible – and sometimes stressed by the rapid growth of their employer (as is reported in the case of IOM, see Chapter 3). The relative instability of these organizations (and their subsequent fight for survival or growth) also recalls private companies.

The reliance on funding from predominantly migrant-receiving states may be difficult to reconcile with the international mandate of these agencies. For example, IOM aims at developing a global approach to migration while relying heavily on the United States for its financing and leadership. Moreover, given its vital need to attract funds, IOM finds it difficult to refuse governments' requests for certain services; it has to do what pays – regardless of whether or not this fits its declared goal of 'managing migration for the benefit of all' (Chapter 3). Regarding UNHCR, Giulia Scalettaris documents how this organization's work in Afghanistan depends upon geopolitical factors; funding thus increased considerably following the terrorist attacks of 11 September 2001 in the United States and the subsequent 'war on terror' in this country (Chapter 12).

This also feeds the suspicion that has grown surrounding the activities of some of these IGOs. Both IOM and ICMPD are regularly (and sometimes violently) accused of serving the sole interests of the hegemonic 'North' (or 'West') to the detriment of the 'South' (or 'East'). This has to do not only with their dependency upon migrant-receiving states, but also with their notorious lack of transparency. If the activities of UNHCR, for example, are quite well documented, this is not the case with Frontex, IOM or ICMPD – which have not been the object of the same level of scrutiny by external observers. As a result, it is often difficult to understand what exactly these agencies are doing, as their activities either remain completely unpublicized or are framed in a rhetoric that seems to hide their actual purposes rather than explain them (not to mention the lack of evaluation of their programmes and the perceived arrogance sometimes associated with their initiatives). Yet, the strength of these IGOs should not be overestimated. As mentioned, in the recent past IOM often needed to fight to secure its existence, while many of its apparently ambitious projects turn out to be rather modest endeavours, or failures (Chapter 3). Despite its ambitions, Frontex is also fragile at times, as it depends upon the cooperation of sometimes reluctant EU member states that are not willing to cooperate and share intelligence with each other (Chapter 6).

Practices

Migration management is also associated with a range of practices, which include, for example, counter-trafficking efforts; training of civil servants in transit and sending countries in fields such as irregular migration and border control; development of migration policies in countries lacking strategies in the field (or not considering migration as a key priority), under the auspices of foreign-based experts and organizations; return migration and readmission programmes, either forced or voluntary; and development-focused projects aiming at enhancing the positive impact of migrants, diasporas and remittances on regions of origin. Some of these activities

are not new; for example, after the 1973 oil crisis, the French government already attempted to promote the return of guest workers whose presence and work were no longer needed. Yet, whatever their newness, these activities, which are often performed by the actors described above, may have important consequences in terms of local migration realities and policy-making.

Philippe Poutignat and Jocelyne Streiff-Fénart analyse, for example, the role of IGOs in shaping (or creating) a migration policy in Mauritania. This country, which has a long migration history as part of traditional circular mobility patterns and routes in western Africa, progressively became known as a 'transit country' for irregular migration flows to Europe. This attracted international attention and funding, thus prompting the intervention of IGOs. Present in the country since 2006, IOM embarked on a series of activities aimed at forging a 'national' Mauritanian migration policy, which included measures to reinforce border control, train custom officials, create new legal norms (especially as far as human smuggling and trafficking are concerned), and furnish better equipment to check passports and detect fake travel documents. These activities are presented as 'capacity-building' – an obscure and technical term that, in this case, refers to a highly political activity: it is indeed about the introduction of Western (or EU-driven) concerns into domestic Mauritanian policy-making and their progressive internalization into local politics and society. In contrast to the seemingly neutral connotation of the term, 'capacity-building' can thus have strong consequences, for example, by elaborating rules that 'illegalize' part of the foreign population in Mauritania (Chapter 10).

In the case of Albania, Martin Geiger describes how IOM 'invented' a 'national strategy for migration management' in order to 'help' this country on its way towards EU accession – a process in which migration is a stumbling block. IOM's efforts to establish a migration policy thus form part of the 'EU-ropeanization' of Albania. Along with other international non-EU actors, IOM is acting as a 'quasi-governmental' and 'quasi-EU-ropean' actor, as it both elaborates and implements Albania's 'national' migration strategy. This exercise has acquired a strategic value as a so-called 'best practice' and one can therefore expect that it will be reproduced in other countries (Chapter 7).

Antoine Pécoud analyses the elaboration of information campaigns as a tool to prevent irregular migration and human trafficking. He shows how the lack of information is presented, in several institutional reports on international migration, as a key factor that would prevent migrants from behaving in a 'sound' and 'rational' manner. IOM has therefore launched campaigns to inform potential migrants of the risks and dangers associated with unauthorized migration. While such initiatives are presented as promoting orderly and beneficial migration, they actually rather tend to support the objectives of migration control by encouraging people to stay at home (Chapter 9).

A key characteristic of these practices is their multi-level and multi-actor nature. IGOs cannot indeed implement their programmes without the cooperation of domestic actors, including government agencies and NGOs. This leads to complex relations between local actors and foreign-based and globally-active institutions, and to equally complex interplays between their respective strategies and interests. Philippe Poutignat and Jocelyne Streiff-Fénart show how the NGOs that cooperate with IGOs, while being shaped by their concerns and adhering partially to their objectives, nevertheless pursue their own strategies – and how this creates spaces of negotiations and confrontations in the definition and interpretations of ‘migration management’ objectives. This complexity is further enhanced by the influence of donors, which include above all EU states and institutions (along with others such as USAID).

According to the logic of ‘capacity-building’, migration management initiatives are expected to ‘help states’ and to increase their capacity to address migration challenges by themselves (see also Chapter 5 by Sabine Hess). Yet, the massive intervention of IGOs may actually weaken governments by creating parallel structures that compete with helpless political systems and government institutions. Martin Geiger thus argues that actors such as IOM may, in the eyes of the EU, be seen as more competent and reliable in achieving EU-driven objectives and in ensuring that EU policy concerns are properly taken into account in these countries. While some aspects of traditional state sovereignty (e.g. border control) are strengthened, this nevertheless jeopardizes the ability of local actors and governments to influence their own development and to become real sovereign states – especially in the context of their possible EU accession. This results from the fact that the ‘help’ provided to EU neighbouring states (e.g. Albania) cannot be refused, as it is imposed by the EU as a condition for their possible accession.

Discourses

The third pillar of migration management is the production of discourses regarding what migration is all about and how it should be ‘managed’ by governments. Many of these discourses are produced by IGOs, which thus bring in their own views in migration debates and generate the knowledge needed to steer international discussions in favour of migration management. The last decade has witnessed a proliferation of international reports, which have elaborated what could be called a ‘global policy discourse’ on international migration. We can mention in particular the reports produced by IOM (notably its World Migration series), the Global Commission on International Migration (GCIM, 2005) or the United Nations Development Programme (UNDP) (see Chapter 9 by Antoine Pécoud for more details).

While these publications do all not share exactly the same orientation, one can nevertheless identify a few core arguments. As Sara Kalm argues

in Chapter 2, migration is presented as a *normal* and potentially *positive* process. In addition, given its international nature, this global policy discourse needs to take into account the interests not only of a country or a region, but of the world and mankind in general. This motivates the so-called 'triple-win' argument, according to which migration should be turned into a process benefiting all parties (including receiving states, sending countries and migrants themselves). The issue, then, is not whether migration should be authorized or not, but rather how it is to be 'managed' in order to maximize (or 'optimize') its impact. These arguments contrast with long-standing representations of migration as a threat to be combated and with the 'zero immigration' policy goals that have characterized political rhetoric in Europe since the 1990s.

This global policy discourse has comprehensive and holistic ambitions as it aims at addressing all the policy issues connected to migration: development, remittances, the role of diasporic communities, human rights, health, security, labour market, integration, and so forth. 'Migration' is thereby recognized as a field of its own, whereas policy-making in the field has long been scattered between different ministries. This implies that issues that were long kept apart are now (re)connected: asylum and migration (as already advocated by Bimal Ghosh, see above), but also migration and development, for example. William Walters also notes that, in EU documents, labour migration is linked to the 'fight' against irregular migration, as increased legal migration channels are thought to reduce unlawful migration; labour migration programmes, once only associated with labour market needs, thus become part of migration control strategies (Chapter 4). On the other hand, these discourses also create (or re-actualize) categories of thought and action, including the 'migration-development nexus', 'circular' or 'temporary' migration, human trafficking, 'illegal' or 'transit' migration, border management, readmission and return programmes, migration and security and so on.

In this sense, this global policy discourse is performative. It not only describes or analyses reality, but also aims at shaping the way migration is perceived by the actors in charge of managing it. As William Walters further argues, policy-making usually rests upon the traditional understanding that a 'problem' arises and that, in reaction, policy options are to be elaborated to 'solve' it. For example, 'irregular migration' or 'trafficking' would simply 'happen', which would call for policy interventions that aim at fighting them. But policy-making may work the other way round as, in the first place, policies shape the construction of reality and the very perception of the 'problems' to be addressed by governments. Frontex, for example, does not simply control the borders of the European Union. As Bernd Kasperek makes clear, this agency shapes a new representation of what the border is and how it should be governed by, for instance, extending the border from the coasts of northern and western Africa to the interior of the EU

(Chapter 6). William Walters also speaks of the ‘imagined spatiality’ that pervades migration management discourses: for example, irregular migration is viewed as a ‘problem’ coming from ‘outside’ receiving states, thereby ignoring the role of ‘inside’ factors (like the demand for cheap labour) in triggering such flows.

The global policy discourse is thus performative not only in creating the mental categories to apprehend migration ‘realities’, but also in omitting other elements which – however relevant they may be – do not fit into political priorities. In Chapter 13, Matt Bakker shows how the ‘experts’ on migration and development in the US–Mexico situation ignore several policy options such as increased development aid or more flexible immigration policies, and focus exclusively on financial recommendations. William Walters documents how, in its ‘comprehensive’ approach to ‘illegal’ migration, the EU almost never mentions the regularization of irregular migrants as an option, and hardly addresses the need for workplace controls in controlling undocumented migration. In other words, ‘knowledge’ is selectively produced to accompany and legitimize migration management activities and, more broadly, the existence and role of IGOs that generate it. Antoine Pécoud thus notes that most studies on human trafficking are commissioned and produced by institutions that are themselves involved in counter-trafficking policies (Chapter 9). Even though ‘international migration managers’ (to quote Munck, 2008, p. 1232) often call for better data and information gathering to support policy-making, it would seem that knowledge often serves to support policies that are predefined according to political priorities rather than ‘scientific’ expertise.

Relying on the work of Michel Foucault, Sara Kalm argues that discourses produce a ‘truth’ that is indispensable to the exercise of power; knowledge serves as a ‘political rationality’ that supports and justifies the way power is exercised (Chapter 2). In a more empirical manner, Philippe Poutignat and Jocelyne Streiff-Fénart document the function of IOM’s ‘country profiles’ in mapping the migration field in Mauritania and in identifying what policies are needed; external interventions by IGOs and the EU in West Africa cannot take place without such a discursive and cognitive framework that make migration management initiatives meaningful. Yet, this does not imply that practices directly stem from discourses. On the contrary, migration management is characterized by important gaps between what IGOs say and what they actually do on the ground. Antoine Pécoud demonstrates that the policy recommendations concerning information campaigns that can be found in IGOs’ reports are very selectively implemented (Chapter 9). And several contributions in this book illustrate that migration management discourses are usually much softer and more consensual than the policies they inspire and support.

Finally, the production of knowledge by IGOs also challenges the distinction between academic and institutional research. As Fabian Georgi notes,

IOM staff members regularly publish on their fields of expertise and intervene in conferences – thus acting as ‘experts’ (Chapter 3). Several of the reports mentioned above also rely heavily on academics working for IGOs in a consultative capacity (and enjoying symbolic and financial reward in exchange for their input). This leads to awkward results: for example, IOM World Migration reports are partly written by experienced university researchers, but their chapters are juxtaposed with shorter texts that shamelessly (self-)celebrate the success and achievements of IOM. While this should not be read as an argument discouraging academics from sharing their knowledge, it certainly does not facilitate the elaboration of independent and critical thinking on the role of IGOs in migration policy. Fabian Georgi further highlights the lack of studies on IOM, which is indeed astonishing if one considers the controversies surrounding this organization and its visibility in the field. Such a situation may have to do with the close relationships that exist between IOM and many leading migration scholars.

Depoliticizing migration

This discussion shows how knowledge, while presented as ‘factual’, ‘neutral’ or ‘objective’, is actually influenced by political orientations; policy options are presented as solely based on accurate data and expertise, which makes them difficult to question. This points to another central issue raised by several chapters, namely the way migration management depoliticizes migration policy-making.

The very notion of ‘management’ is characterized by its apolitical and technocratic nature, and its popularity (to the detriment of other notions such as ‘the politics of migration’) is in itself a way of depoliticizing migration. Policies would not result from political choices, but from ‘technical’ considerations and informal decision-making processes on the most appropriate and successful way of addressing migration. This depoliticization is further evident in the ‘triple-win’ objective, which negates the existence of divergent interests, of asymmetries of power and of conflicts (both between and within countries). It is also perceptible in the managerial/technical language used by migration management actors. In their view, there are policies that work and policies that don’t work – hence the popularity of notions such as ‘good’ (or even ‘best’) practices. This evacuates questions of power, principles, interests or conflicts. The apparently consensual nature of many ‘migration management’ objectives also contributes to their depoliticization: indeed, who is in favour of disorderly migration, trafficking abuses or the non-respect of migrants’ rights?

Sabine Hess analyses how ICMPD presents its activity as merely ‘technical’. Senior officials explicitly deny their ‘political’ influence, and prefer arguing that they function as ‘neutral’ consultants whose task is to ‘help’ states that wish to be supported in migration policy-making. This rhetoric is

in line with the formal role of IGOs, which are not supposed to challenge governments' role as legitimate policy-making entities or to interfere with democratic or parliamentary decisions. Yet, it negates the actual influence of ICMPD in, for instance, pre-drafting the conclusions of intergovernmental meetings. Moreover, it is challenged by other statements by ICMPD leaders, according to which their role would be to 'rationalize' governments' migration policies: the idea here is that migration is a sensitive and complex issue that politicians would be unable to address properly; they would be afraid of their electorates' perceived sensitivities and would be unable to design 'sound' policies in the field – hence the need for IGOs to instruct them (Chapter 5). In this sense, the depoliticization of migration is functional as it allows for the intervention of actors with little democratic legitimacy (such as IGOs and NGOs).

Claire Inder provides another example of the way political decisions pertaining to migration are depoliticized through the notion of 'hyperlegalism'. In justifying the Pacific Solution, the Australian government indeed relied on the Geneva Convention, and on the notion that any policy deemed compatible with this treaty was 'legal' and hence 'right'. The legal and technical compliance with international law obscured the political and ethical aspects of the policy; the language of law limited political discussions (Chapter 11). This points to what could be called the 'legitimizing' function of migration management. In several chapters, one can see how governments rely on IGOs and on their 'managerial' approach to justify their harsh measures and escape any kind of political debate on the orientations of their migration policy. In the Pacific Solution, the involvement of IOM and UNHCR not only enabled, but also justified, the policy option opted for (even if UNHCR eventually withdrew). Chiara Marchetti describes the Italian government's reliance on external actors such as Frontex to hamper any critical discussion of its choices (Chapter 8). Migration management thus provides a reassuring and legalistic language to accompany and legitimize tough, non-democratic and often inhumane measures of control and enforcement.

Finally, as Fabian Georgi notes, this claim to 'neutrality' and this focus on 'expertise' also hides the interests of IGOs themselves. Promoting 'migration management', in the case of IOM, is not only a matter of 'helping' states or 'improving' migration policies; it is also a matter of promoting the usefulness of this organization to secure its further existence and funding. In other words, depoliticization extends to the actors of migration management, whose interests in the game are ignored or left implicit.

Migration management and human rights

Human rights play a central, albeit ambivalent, role in migration management. One can first observe the almost systematic reference to international human rights law within international migration management discourses.

They all emphasize the need to respect the human rights of migrants and most refer to international conventions for that purpose. Human rights also serve as a cross-cutting reference to a wide range of different actors – thereby playing an important role in building the common understandings that enable cooperation. Philippe Poutignat and Jocelyne Streiff-Fénart show how all actors in the Mauritanian ‘migration management’ scene converge to formulate their objectives and strategies in a ‘human rights-inspired’ language – regardless of the differences in their underlying strategies.

Yet, despite the central role granted to international human rights law, migration management initiatives have not so far produced any binding commitment for states. As a matter of fact, they have even tended to avoid relying on the existing international law instruments that pertain directly to migration;⁶ these conventions are all notoriously under-ratified and, while they could be understood as serving the ends of migration management (by, e.g. creating common standards), they are far from being at the centre of migration management (Pécoud, 2009). Migration management rather favours informal norms, such as ‘recommendations’ or ‘best practices’, which have nothing to do with international law (and leave room for states wishing to avoid any firm commitment).

A common characteristic of several IGOs in the field is their lack of reference to any kind of normative framework or protection mandate. While UNHCR’s work relies on the standards contained in the Geneva Convention, and while the whole UN system is broadly based on the Universal Declaration of Human Rights (and all the human rights instruments that derive from it), agencies such as IOM, ICMPD or Frontex are not committed to such binding treaties and are therefore only responsible to their member-states. IOM is regularly criticized for this, especially in the context of its competing relationships with UNHCR (which, by contrast, is perceived to be too rights-based and protection-oriented by many governments). As a matter of fact, migration management is sometimes used by states that wish to avoid the obligations imposed by international law, as in the cases of ‘preventive *refoulement*’ referred to above.

While not obsessed by international human rights commitments, migration management initiatives nevertheless heavily mobilize humanitarian arguments to justify their activities. Many measures to stop unauthorized migration or to prevent refugees to claim asylum are, for example, presented as ‘necessary’ to fight human smuggling and trafficking (see notably Chapters 10 and 11). Antoine Pécoud also shows how information campaigns are justified by the need to ‘protect’ the potential ‘victims’ of ‘smugglers’ or ‘traffickers’ (Chapter 9). This victimhood approach seems to have replaced any kind of binding commitments to safeguard migrants’ rights. This fuels the confusion between humanitarian, development and security agendas, while also reinforcing the depolitization mentioned above: how

can one contest migration management initiatives meant to 'protect' people? It is as if the concepts of 'human smuggling' or 'trafficking' had been invented to provide a humanitarian flavour to the control of migration.

That said, one should keep in mind that international law may quite easily be by-passed by international migration management initiatives or, worse, that it can even serve to justify political measures that have little to do with the protection of migrants' rights. Claire Inder argues that the Australian government deliberately and disingenuously misused international law; it justified the harsh measures taken as part of the Pacific Solution by claiming that this policy was compatible with the Geneva Convention, thereby taking advantage of the flexibility of international law (and of the difficulty of overseeing its implementation) to legitimize its political objectives (Chapter 11). Giulia Scalettaris shows how the Geneva Convention is actually of little use in the case of Afghan refugees in Iran and Pakistan: these countries do not apply the Geneva Convention in their domestic law (even if Iran has formally ratified it) and the 'refugee' category internationally defined by this Convention is therefore not accessible to the millions of Afghans who live there. The 'protection' granted to them is not the product of the implementation of international law, but of political negotiations between UNHCR and the governments concerned (Chapter 12). This points to the role of UNHCR in the *politics* of asylum and to its flexible adjustments to differing local contexts.

Migration management and neoliberalism

Several chapters refer to the embeddedness of international migration management in neoliberalism. Migration management is fundamentally about making migration economically beneficial, notably by connecting the supply of labour in the less-developed South with the demand for migrant workers in the North – what the IOM 2008 World Migration report calls 'a broad and coherent global strategy to better match demand for migrant workers with supply in a safe, humane and orderly way' (IOM, 2008, p. 11). Migration management thus fits well into the emergence of a global labour market in which border controls should be compatible with the circulation of workers. As Boucher notes, in the global policy discourse on international migration, 'the structure of the global capitalist system in its neoliberal form is taken for granted, and not taken as part of the problem' (2008, p. 1462); for example, the role of the corporate sector – in creating the conditions for both the emigration of workers and their exploitation in destination states – is ignored. In a more empirical way, Fabian Georgi describes in Chapter 3 how, throughout its history, IOM has accompanied the spread of capitalism and the trends towards de-regulation (by, e.g. welcoming refugees from Communist states or responding to the migration flows generated by the penetration of free trade in sending regions).

Relying on Michel Foucault's work on neoliberal governmentality, Sara Kalm notes that migration management echoes the felt need to reduce the role of the state and to avoid 'too much' government intervention (Chapter 2). In market-based societies, growth and wealth depend predominantly upon individuals' freedom to take economic initiatives, and states are therefore invited to avoid interfering with such dynamics. This is most apparent in the policy discourses analysed by Matt Bakker in Chapter 13, in which the focus is as much on what states should *not* do as on what they should do: in accordance with neoliberal beliefs, the influence of states on the economy should be as limited as possible and the role of government bureaucrats should rather be to accompany market forces. This goes along with a call for migrants themselves to become full 'economic actors' and agents for the development of their home countries, for example, by using their remittances in favour of private investments (with the support of banks rather than of states). It follows that power, far from resting exclusively in the hands of governments, is multi-centred and that the state is itself the object of constraints by other actors such as the private sector.

On the other hand, migration management is keen on keeping states at the centre of the picture. After all, a genuine *laissez-faire* approach to migration would sooner or later refer to 'open borders' and to free movement as ideal goals (Harris, 2007). But migration management – while often advocating *more* freedom – never envisages full freedom of movement. Bimal Ghosh (2007) even explicitly establishes the superiority of an approach in terms of managed migration over free movement. Rather than organizing the disappearance of states, migration management is in this sense an attempt to find new ways for them to retain their influence over migration flows. This is apparent in Sabine Hess' analysis of ICMPD, whose senior officials believe in the need for state regulation and explicitly wish to keep migration dynamics away from the sole market; governments, they argue, should remain the key actors in governing migration flows, which also explains their emphasis on fighting irregular migration – understood not as a symbol of migrants' sense of initiative, but as the chaotic and undesirable product of states' inability to control their borders.

Management, freedom and control

This question of the respective role of neoliberal laissez-faire and government interventionism in international migration management points to the complex interrelationships between management, freedom and control. Both the discourses and practices inspired by migration management display a 'post-control' spirit; they pretend to move beyond the narrow security-oriented policies of border control to envisage and promote proactive policies organizing (rather than restricting) the mobility of people. This sometimes generates lyrical calls for freedom, as illustrated by the words of

the Belgian executive director of the first Global Forum on Migration and Development, Regine de Clercq:

Now we wonder why in the previous century so much money was spent on customs control, and why we took so many years to break the trade walls. Could it be that 20 years from now we might wonder why we were spending so much resources on controlling immigration – often with so little success? . . . If you draw a line in the sand, the wind will sweep it away in a matter of hours. If you build a fence through a globalizing labour market, will it withstand the pull and push forces on both sides?

(Cited by Sara Kalm in Chapter 2)

In other words, it would appear that migration management outdates the obsession with migration control.

But reality is not that simple. First, 'freedom' has an ambivalent meaning in migration management. While, as mentioned, international migration managers challenge some of the dominant policy views by calling for more freedom of movement, this does not usually question the predominance of economic factors in determining whether people should be 'free' to migrate. Freedom is therefore not an end in itself, but a tool to achieve labour market objectives – what Sara Kalm refers to as 'governing through freedom'. The best example of this approach can be found in the calls for temporary labour migration schemes, which are frequent in the global policy discourse on migration (Castles, 2006); they are presented as tools for more flexible and more selective migration policies, which would enable citizens from less developed countries to have access to migration opportunities. But such proposals are also in line with the interests of receiving states (in having access to flexible foreign labour force and avoiding integration challenges) and of sending countries (in exporting workers abroad in exchange for remittances while guaranteeing their return and avoiding brain drain). Situations in which migrants would wish to exercise their increased 'freedom' and stay longer than planned in destination states are hardly taken into account.

'Control' is therefore not only about stopping or coercing people; it is also about steering them. Research on migration control has long privileged a 'law and order' perspective, which is in line with the harsh measures taken to deter irregular migration (such as the construction of walls, the detention of undocumented migrants in closed centres, their forced expulsion, etc.). But a focus on such top-down strategies of control by actors belonging to the security field cannot capture the place of control in migration management, which is of a different nature. Several authors rely on the conceptual tools provided by Michel Foucault to understand how control expands into other fields of social life and how normative guidelines indirectly shape the way individuals think and act. Migration management thus

emerges as a kind of population control at the world level. In Chapter 6, Bernd Kasperek mentions the illustrating metaphor developed by a Frontex official, according to which this agency's task could be compared to medical prophylaxis, that is, managing borders to prevent irregular migration (which, in this case, is probably the 'disease'). This recalls, in a striking and almost literal way, Foucault's classical writings on the 'government' of societies and people.

The global policy discourse is full of normative assumptions of how actors should behave. In the ideal world of 'migration management', governments in sending and transit countries cooperate with destination states, IGOs and experts to adopt policies that take into account the interests of all; 'good' migrants are well-informed, respectful of the law, flexible to market needs, ready to circulate and eager to contribute to the development of their home country; researchers develop policy-relevant knowledge to inform migration policies; NGOs contribute to migrants' rights and well-being through properly steered activities; diasporas take 'development-friendly' initiatives with the help of intergovernmental and governmental agencies. Clearly, these normative guidelines on who should do what, how and why, relate to new and subtle forms of control, in which the steering of migration is not confined to the field of police or security, but penetrates other domains of social life. And as Martin Geiger adds, one of the tasks of IGOs is to 'teach' governments and civil societies of less developed countries how to 'manage' migration according to these norms (Chapter 7).

Specifically, both Sara Kalm and Matt Bakker emphasize how migrants are actively incited to become 'development agents' (Chapters 2 and 13). This includes various measures to reinforce the ties between migrants and their countries of origin in order to maximize the impact of migration on sending countries. While mobility is celebrated, this never questions the ties between migrants and their country of origin – a contradiction that is at the heart of the so-called 'migration and development' nexus. This also implies promoting what Matt Bakker calls 'neoliberal subjectivities' among migrants, for them to become economic actors making full use of banks and financial services to foster the development of their country of origin – in what he also refers to as 'migrant self-management'. One could conclude that migrants are perhaps free (or at least freer), but above all that they are free to make the 'right' choice – that is, the choice that is understood as best serving the interests of the states in-between which they live.

Conclusion

Arguably, many of the characteristics of migration management are not new. Producing 'expert' knowledge to justify political choices; granting people more freedom while diffusing normative guidelines to steer their behaviours; balancing state interventions with market dynamics; studying and analysing

the population to better govern it; shifting control modalities from the 'law and order' to other social spheres; depoliticizing decisions through the use of victimhood, assistance and humanitarian rhetoric: from the perspective of social and political sciences, these are well-known processes, mechanisms or tactics of the exercise of power.

What is perhaps more challenging is the application of such methods to the control of migration, which has long been thought of as a 'law and order' process. But the development of migration management discourses and practices contributes to the invention of new forms of surveillance that remain largely unexplored. What is also interesting is the elaboration of a worldwide discourse on international migration, which necessarily needs to go beyond national or regional interests. The governance of population has long been a national process, while migration management contains elements that point to the governance of the world population – which is in line with a neoliberal and globalizing era characterized by the necessity of human mobility.

Migration management also functions as a standard discourse, with notions that serve as predefined concepts and fields of activities and are used by different actors in different regions. This could lead to a possible convergence in practices and to a 'globalization' of migration debates and policies. This could eventually lead to a generalization of the premises and objectives of policies throughout the world, on the basis of a few principles largely dictated by Western states, and supported by IGOs. This recalls the Washington Consensus, that is, the set of economic prescriptions that have long inspired the interventions of the World Bank and the International Monetary Fund in less developed countries. While the comparison may appear as exaggerated or premature, the importance of migration concerns in the eyes of powerful states is a factor that would seem to favour the emergence of such a 'world migration order'.

Finally, the last issue raised by migration management is of course whether or not migration can at all be 'managed'. As Crisp writes:

Migratory movements involving refugees and asylum seekers are inherently chaotic and unpredictable, involving individuals and groups of people with strong fears, emotions and aspirations. While the notion of 'migration management' has a reassuringly technocratic ring to it, we can be sure that the reality will prove to be considerably more complex, controversial and costly than this concept implies.

(Crisp, 2003, p. 14)

While this observation pertains to asylum, it could easily concern all forms of human mobility. This would call for modesty when claiming to manage the movement of people, and for greater recognition of the inherently political nature of all the discussions pertaining to migration, and how it should be approached.

Notes

1. The Global Migration Group (GMG) was created in 2006 and has 14 members: the International Labour Organization (ILO), the IOM, the Office of the High Commissioner for Human Rights (OHCHR), the UN Conference on Trade and Development (UNCTAD), the UN Development Programme (UNDP), the UN Department of Economic and Social Affairs (UNDESA), the UN Educational, Scientific and Cultural Organization (UNESCO), the UN Population Fund (UNFPA), the UNHCR, the UN Children's Fund (UNICEF), the UN Institute for Training and Research (UNITAR), the UN Office on Drugs and Crime, the World Bank and the UN Regional Commissions. It grew out of the Geneva Migration Group, which was established in 2003 and brought together the ILO, the IOM, the OHCHR, the UNCTAD, the UNHCR and UNODC.
2. Apart from the EU, these include notably the OSCE, the North American Free Trade Agreement (NAFTA), the Organization of American States (OAS), the African Union (OAU) and the Association of Southeast Asian Nations (ASEAN).
3. We can in particular mention Amnesty International, Human Rights Watch and the International Catholic Migration Commission (ICMC).
4. The Migration Policy Institute (MPI), Demos or the Centre for European Policy Studies (CEPS) are some examples.
5. For example, the Global Commission on International Migration (GCIM) mentioned the possibility of merging the IOM and the UNHCR (GCIM, 2005: 75).
6. These include above all the 1990 UN *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, as well as ILO Conventions no. 97 (1949) and 143 (1975). See Cholewinski et al. (2009) for more information.

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2

Liberalizing Movements? The Political Rationality of Global Migration Management

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Introduction

The past few years have seen the emergence of a global policy discourse on international migration. A number of international commissions and independent initiatives have explored the causes and consequences of worldwide migration, as well as its implications for policy-making. Various international and nongovernmental organizations now approach international migration from their respective points of view. And since 2007, states from all corners of the globe now meet on an annual basis to discuss the question in the newly established Global Forum on Migration and Development (GFMD). The emerging 'global governance' of international migration now displays a complex pattern of agents and forums that operate at and between the national, regional and global levels, with sometimes overlapping goals and mandates.

Migration was long a neglected subject on the global policy agenda. For other issues that cross international boundaries, such as trade, finance, climate change and contagious disease, states have developed cooperative institutions, often through the United Nations (UN) system. In contrast, states have until recently refused to even discuss migration in global forums. An exception is the refugee regime, where long-standing cooperation is based on the Geneva Convention and centred on the work of the United Nations High Commissioner for Refugees (UNHCR). But the issue of labour migrants and other non-refugees, who constitute the vast majority of international migrants, did not ascend the global policy agenda until the turn of the millennium.

A trend in migration policy at all levels, including the global, is to talk of migration as something which should be 'managed'. This signifies at least a rhetorical shift away from the emphasis on control which has long dominated affluent countries' attitude towards migration. Since the early 1970s, migration has increasingly been perceived as a problem and associated with

illegality, abuse of welfare systems and a range of other social problems. This tendency has been strengthened by first, the end of the Cold War with the fears of uncontrolled inflows from the former Soviet Union, and second, the fears of global terrorism after 11 September 2001. Consequently, destination states have pursued ever more restrictive policies in the attempt to limit and control inflows. Against this background, migration management is often taken to indicate a softer and more liberal, realistic and constructive approach to migration (Taylor, 1998).

Policy discourses at the national and regional levels tend to approach migration in terms of the interests and goals of the nation or region in question. The emerging global policy discourse, in contrast, takes the needs and well-being of both origin and destination areas into account. Here, it is a commonplace assumption that migration – if managed in appropriate ways – can have win-win-win outcomes; that is, be beneficial for both origin and destination states as well as for migrants themselves (ILO, 2004b; GCIM, 2005). The main concern for global migration management is how to secure these mutually beneficial effects – to design appropriate migration programmes, create suitable forums for consultation and cooperation and achieve the correct mix of incentives and control. The belief in the capacity of migration policy to bring about these outcomes gives migration management discourse a ‘technocratic ring’ (Crisp, 2003, p. 13), thereby depoliticizing migration by framing it as a largely technical problem to be addressed by various management strategies (Channac, 2007, p. 14). The optimistic outlook is a welcome shift in a policy area which has long been dominated by suspicion, fear and resulting processes of exclusion, and the ambition to make migration work for all is laudable in several respects. But the technocratic and depoliticizing character of the discourse seems to beg for analysis of power.

The aim of this chapter is to explore the power relationships and processes of social ordering that enable global migration management, and that are furthered and transformed by it. The problem descriptions and the policy solutions suggested in migration management are approached by way of a Foucauldian analytics of government, which is concerned with the conditions under which certain governing practices emerge and appear rational, are maintained and transformed (Dean, 1999, p. 20). In a similar vein, the general ambition of this chapter is to understand the relationships of power that allow for ‘migration management’ to emerge as a project of global governmental activity, and that are maintained and transformed as a result. Crucially, an analytics of government extends the realm of power to include not only the domination of one actor by another, but also the creation of knowledge through policy discourse and the associated formation of specific desired subjectivities and action-orientations.

I will use the term ‘global’ in this chapter to denote a level of politics which differs from the national and the regional. The material used in

this chapter is composed of texts on migration and migration policy that are published by international organizations, commissions, forums and initiatives that operate at this global level. 'Global migration management' refers to the empirical knowledge and policy prescriptions in these documents. As will be detailed below, I will approach global migration management as a 'political rationality', by which I understand a specific although not necessarily homogeneous discourse on how to govern a particular field: global migration management relies on a specific knowledge about the object of government (i.e. migration), establishes appropriate roles for authorities and defines governmental goals (cf. Foucault, 1991b; Gordon, 1991; Rose and Miller, 1992; Rose, 1999). Political rationalities are heterogeneous, overlapping and often transformed as a result of the shifting constellations of related practices and mentalities of governing existing in the surrounding policy landscape. The argument in this chapter is that global migration management must be understood in relation to other more general complexes of power-knowledge, most importantly neoliberal governmentality.

The first section provides a brief account of how migration has come to figure more prominently in global policy discourse, and presents the main actors and forums at the global level. The second section develops the analytical framework. The political rationality of global migration management is mapped in the third and fourth sections. The fifth and last section sums up and discusses the findings.

Migration on the global policy agenda

Compared to other areas of international relations, migration is characterized by a low level of institutionalized international cooperation. There is no binding international regime, and there is no UN organization devoted exclusively to migration (Tamas and Palme, 2006).

While states are still the paramount actors, a range of actors and forums are now exerting influence in this area. The 1990s saw the establishment of Regional Consultative Processes (RCPs) around the globe. The RCPs are informal and non-binding forums for consultation and exchange of best practices for governmental officials from geographically defined member states (Klein Solomon et al., 2008). But while RCPs mushroomed in different regions in the 1990s, migration was still largely absent from the global policy agenda.

Yet, around the year 2000, it was suddenly 'everywhere one looked, in the UN system and beyond' (Newland, 2005, p. 1). Kofi Annan mentioned in his reform proposal for the United Nations the need to 'take a more comprehensive look at the various dimensions of the migration issue' (UN, 2002b, p. 10). On his initiative, the independent Global Commission on International Migration (GCIM) was established in 2003, mandated to place migration on the global agenda, identify gaps in existing policy-making, investigate the linkages between migration and other issues, and finally to

offer recommendations on how to improve the governance of migration (GCIM, 2005). Besides the GCIM, two other global commissions have contributed to drawing attention to migration: the Commission on Human Security (CHS, 2003), and the World Commission on the Social Dimension of Globalization (ILO, 2004a).

A few ad hoc independent initiatives have also aimed at improving migration policy and fostering cooperation between states in different regions. One is the state-owned Berne Initiative, which was launched by the Swiss government and worked by means of regional consultations. Its main outcome, the International Agenda for Migration Management (IAMM), consists of 'common understandings' as well as 'effective practices' (IAMM, 2004). Another is the Hague Process, which included government representatives, international and non-governmental organizations in its consultations. The final document is known as the Hague Declaration (UN, 2002a) and consists of 21 principles for migration governance (Martin, 2005, pp. 34–7).

The General Assembly held a High-Level Dialogue on Migration and Development (HLD) in September 2006. The stated ambition for the Dialogue was to 'discuss the multidimensional aspects of migration and development in order to identify appropriate ways and means to maximize its developmental benefits and minimize its negative impacts' (UN, 2004, p. 4). Its main outcome was that states decided to follow the recommendation in the report of the Secretary-General (UN, 2006a) and set up a forum for continued dialogue (Martin et al., 2007).

In 2007 the GFMD was arranged for the first time. The objective of the GFMD is to 'make new policy ideas more widely known, add value to existing regional consultations, and encourage an integrated approach to migration and development at both the national and international levels' (UN, 2006c). Following intense disagreements on its organizational forms, the GFMD has been established outside the UN system. It is characterised as a voluntary, informal and state-led arena for policy-makers to discuss, exchange information and express ideas concerning migration and development, and it is hence not intended to take binding decisions (Matsas, 2008). Nevertheless, the belief is that the GFMD will result in shared understandings on migration globally (GFMD, 2007, p. 158). Its first meeting took place in Brussels in 2007, the second in Manila in 2008 and the third in Athens in 2009.

There is no UN migration organization at the centre of global migration governance, in the way that the UNHCR is for refugees and the World Trade Organization is for trade. The International Organization for Migration (IOM) is exclusively dedicated to migration, but it stands formally outside the UN system and mainly works as a service organization for states. Over the past ten years, an increasing number of international organizations have become involved with migration from their respective perspectives. For instance, the International Labour Organization (ILO) is concerned with

labour migration, the World Health Organization (WHO) with the migration of health workers and the UNHCR with the interface of refugees and migrants. Since 2006, there is a certain coordination between the 14 major agencies in the 'Global Migration Group' but it is clear that the institutional structure lacks a clear centre (Matsas, 2008).

There is no question that states are still the paramount actors within global migration governance. Yet, as has been sketched above, the last decade has seen the emergence of various agencies and forums in the field. To Alexander Betts, the proliferation of forums at different levels reinforces the asymmetric relationship between the developed and developing world, as it 'allows Northern states to include and exclude partner countries on their own terms, generally excluding the Global South from meaningful participation' (Betts, 2008, p. 14). It seems unquestionable that the South is being dominated by the North in this sense. But the next section will develop a framework for analysing the power relations in global migration management from a different perspective, taking into account the close connection between power and knowledge.

Analytics of government

Foucault coined the term 'governmentality' – a composite of 'government' and 'mentality' – in his lectures on the genealogy of the modern state in the 1970s. It has since been taken up and developed in a range of social scientific studies as a means of understanding contemporary exercises of power. As Sørensen and Torfing explain, such analyses do not primarily focus on who is doing the governing, or whether a specific mode of governing is efficient or legitimate. Instead, the main objective is to 'denaturalize' government by exposing its historical and contingent character, revealing how relations of power are implicated in its processes, and attempting to understand how a given area of intervention is constituted as governable (Sørensen and Torfing, 2005, pp. 115, 127). Consequently, the aim of this chapter is to find out how relations of power are implicated in the constitution of migration management as a project for global governmental activity, and how these are modified as a result.

This section develops an analytical framework for this endeavour. Governmentality is used in two different ways within the literature (Dean, 1999, p. 16). In its broad sense, it offers a general understanding of the exercise of power which is focused on the relationship between power and knowledge (ibid., p. 19). In its more specific sense, it denotes a particular way of thinking about and exercising power that emerged in early modern Europe, and which is distinguished by holding the *population* as its main target (Foucault, 1991a, p. 102). The broader sense is presented in the first part of this theoretical framework while the specific sense is introduced in the second part.

Government and power

'Government' has a broader meaning in this theoretical tradition than its common usage in political science. Foucault retrieved the meaning with which the term was invested in the early modern period. In those times 'the form of governing that can be applied to the state as a whole' did hold a special status in political thought. But one also talked of the government of children, of souls and consciences, of a household, or of oneself (Foucault, 1991a, p. 91). Foucault defines government in this wider sense as 'the conduct of conduct', covering all more or less conscious attempts at guiding and steering human actions and behaviours (1994b, p. 341). From this wide conceptualization of government follow two important implications. First, power does not emanate from a single centre. The 'conduct of conduct' is not only practiced by state institutions, but by a range of other actors, among them religious organizations, professional and voluntary associations, the market, as well as individuals themselves. The state is for Foucault not the origin but the end result of decentred power relations that traverse all levels of society (Sørensen and Torfing, 2005, p. 123). This leads us to the second implication, which is the widened definition of power. Foucault recognized the existence of forms of domination or oppression, those 'that people ordinarily call "power"', but he saw power as operating also in their absence. Hence, the 'conduct of conduct' includes not only the measures of influence that affect behaviours directly and that are backed by force or by law, but also the indirect and less visible techniques that work on individuals' self-regulation, techniques that are all the more important to study since it is often through them that enduring forms of domination are established and maintained (Foucault, 1994a, p. 299). Government hence 'encompasses not only how we exercise authority over others, or how we govern abstract entities such as states or populations, but how we govern ourselves' (Dean, 1999, p. 12).

In the context of migration politics, the direct forms of exercising power are easily recognizable: the militarization of borders, the forcible deportation of irregular immigrants, or the enclosure of asylum seekers in camps are telling examples. Migration management is often presented as a contrast to control, as a softer and more liberal alternative. The definition of government as 'conduct of conduct' highlights that power is at work also when such control measures are absent and hence offers a more subtle way of grasping the power of migration management.

While 'government' is concerned with influencing behaviour in the widest sense, 'mentality' denotes how the practices of government are immersed in existing knowledges, philosophies, beliefs and opinions (Dean, 1999, p. 16). Together the two terms highlight the interrelation between power and knowledge. Foucault wrote:

...in any society there are manifold relations of power which permeate, characterize and constitute the social body and these relations of power cannot themselves be established, consolidated, nor implemented without the production, accumulation and functioning of a discourse. There can be no possible exercise of power without a certain economy of discourses of truth which operates through and on the basis of this association. We are subject to the production of truth through power and we cannot exercise power except through the production of truth.

(Foucault, 1980, p. 93)

To produce truth by way of discourse is hence an exercise of power. In this chapter, I will approach migration management as a particular form of discourse, a political rationality.

Migration management as a political rationality

Rose and Miller argue that government has two separate but interdependent sides: political rationalities and governmental technologies. Governmental technologies represent the practical and operative side of government: the various means, calculations, techniques and procedures through which government is effected (1992, p. 183). But this chapter is mainly concerned with how the government of migration is being reflected upon in migration management discourse, and therefore concentrates on its political rationality. Rose and Miller define political rationalities as

the changing discursive fields within which the exercise of power is conceptualized, the moral justifications for particular ways of exercising power by diverse authorities, notions of the appropriate forms, objects and limits of politics, and conceptions of the proper distributions of such tasks among secular, spiritual, military and familial sectors.

(Ibid., p. 175)

In this theoretical tradition, rationalities are seen as manifold and relative, not absolute and transcendental. The main objective, therefore, is not to determine whether a given practice conforms to rationalities, but to 'discover which kind of rationality they are using' (Foucault, 1994b, p. 299). Hence, 'rationality' refers to historical practices of governing and the knowledge that is part of those practices. Thomas Lemke explains that 'a political rationality is not pure, neutral knowledge which simply "represents" the governed reality. It is ... an element of government itself which helps to create a discursive field in which exercising power is "rational"' (Lemke, 2002, p. 55). The main concern is not to determine whether a particular political rationality presents an adequate representation of reality, but rather to map

how it produces new knowledge, invents new concepts and notions that contribute to the government of the field in question (ibid.). From this perspective, the assumptions and solutions of migration management are not 'objective' but implicated in relations of power, which enables this particular description of reality and attendant policy advice to appear rational.

When tracing the political rationality of migration management, I will concentrate on what Rose and Miller call its epistemological and moral dimensions. The 'epistemological' dimension refers to the fact that political rationalities are always expressed on the basis of a particular knowledge of that which is to be governed. In particular, political rationalities express a particular knowledge of the people that are to be governed. All political rationalities correlate with specific forms of individual and/or collective identity, and although they do not determine them, they foster the formation of these identities by either presupposing them or trying to bring them about (Dean, 1999, p. 32). The 'moral' dimension, on the other hand, refers to the way political rationalities express certain convictions regarding how government is to be exercised. They are concerned with the ideals government should try to obtain (freedom, justice, equality, active citizens, economic efficiency, growth, etc.), the forms it should take (if, how and when to intervene), and with the appropriate distribution of duties between different authorities (religious, political, technical, etc.) (Rose and Miller, 1992, pp. 178–9). In this chapter, these two dimensions will be mapped under the headings 'migration' and 'migration policy', respectively. The former will concentrate on the knowledge of migration, and the latter with its proper government, as expressed in the discourse emerging at the global level.

A political rationality is a broad discourse distinguished by a shared vocabulary, the existence of generally accepted facts and agreements on central problems. It is not necessarily uniform in the sense that there is consensus on each detail, but there is a certain consistency which allows different positions to communicate with each other (Rose, 1999, pp. 26–8). From this follows an important caveat: when tracing a political rationality one seeks the general points of convergence rather than the points of divergence. As a result, internal differences are to a degree downplayed. In the case of migration management, it has been pointed out that the different actors operating globally are not equally committed to migrants' human rights (Grugel and Piper, 2007). This is an example of a point which, though undeniably important from another perspective, will not be emphasized in this chapter.

Governing populations

Although political rationalities have a systematic character, they are not enclosed entities, but are constituted and modified by the complexes of power and knowledge that exist in their surroundings. While it is possible to trace an internal coherence in global migration management, it therefore

cannot be understood on its own. Instead, I argue, surrounding governmentalities, most importantly neoliberalism, have made it possible for global migration management to emerge and become, within their limits, rational.

In his work on the modern state Foucault identified a number of general forms of power. These can be regarded as different historical configurations of the general power-knowledge nexus. They are thus very general mentalities of government, social regularities which do not determine what people do or what happens, but which make some social possibilities more likely than others (O'Farrell, 2005, p. 101; Raffnsøe and Gudmand-Høyer, 2005, pp. 155–6). In what follows, I will introduce Foucault's thoughts on the centrality of population for modern power, and then turn more specifically to neoliberal governmentality.

Foucault referred to governmentality in its specific sense as a particular modern way of thinking about and exercising authority, which first emerged in the late Middle Ages but came to fruition in the nineteenth century. Earlier, 'sovereign' power was essentially exercised over territory, and its main aim was the preservation of the principality. To this end, it required submission to the sovereign, and its main instrument was the law. This new form of power, in contrast, has the population rather than territory as its main target of intervention. Another contrast is that it had a plurality of ends: it becomes the task of government, for instance, to produce wealth, to provide for the subsistence of the population, allowing it to reproduce and so on (Foucault, 1991a, pp. 90–5). This modern power has targeted the population in two main ways. 'Disciplinary' techniques are microscopic in that they target individual bodies. They are exercised by means of spatial separation and enclosure, regulation and training, continuous surveillance and normalization. In contrast, techniques associated with 'bio-politics' are macroscopic in that they are concerned with the well-being and enhancement of the entire population. The population is here conceived of as a biological entity with its own laws and regularities (mortality, nativity, etc.), as a variable which is dependent on economic and sociological factors. Bio-political techniques seek to foster and guide its natural processes, and extend to, for instance health, education and welfare systems (Foucault, 1994a). Together, they illustrate the dual imperative for modern forms of government; that is, they must be concerned with both the level of the individual and the level of the collective at once (Foucault, 1991a, p. 102; 1994b, p. 311).

Policy-makers and researchers tend to approach migration in its relation to variables such as development, labour market needs, social integration, trade policy and so on. But governmentality in the specific sense encourages us to explore how the regulation of migration is implicated in the government of populations. In this chapter, I will approach the political rationality of global migration management as a particular solution to the question of how to govern the global population. When doing so, I will pay particular attention to influences from neoliberal governmentality, which

is thought of as in many ways a dominating discourse today (Rose, 1999; Fraser, 2008).

While migration is often understood as a policy field which is 'lacking' in liberalism, this has not always been the case. The International Emigration Conference declared in 1889: 'We affirm the right of the individual to the fundamental liberty accorded to him by every civilized nation to come and go and dispose of his person and his destinies as he pleases' (quoted in Harris, 1995, p. 6). In the late nineteenth and early twentieth centuries there seems to have been a general attitude in the international community that liberalism required freedom of movement, and migration was largely unregulated (Torpey, 2000). This changed with the outbreak of the First World War. After that, the openness of the pre-war era was never restored. Now, migration governance is often understood as being strangely at odds with the dominance of liberalism within international relations. Emigration is considered a human right while immigration is not, which creates a 'liberal asymmetry' (Cole, 2006). Moreover, the past decades have seen the gradual removal of barriers to the cross-border movements of trade and investment flows, but not to the movement of labour. To economist Jaghdish Bhagwati, this is therefore 'the most compelling exception to liberalism in the operation of the global economy' (quoted in Andreas, 2000, p. 2).

Neoliberal governmentality

Over time, governmental power merges into liberal and neoliberal forms of power (Gordon, 1991). Liberalism is usually understood as a philosophy that calls for the limitation of government on the basis of a prior commitment to individual rights and freedoms. Foucault instead regarded liberalism as a particular art of government, marked by the constant suspicion that one may be governing 'too much' (Foucault, 1994a, p. 74). He explained that the liberal art of government 'needs' these individual liberties for the operation of the economic and societal processes which are understood as both external to government and vital for its ends. Nikolas Rose and others have argued that there is a tendency to govern through freedom, especially in advanced liberal democracies. Government increasingly takes place 'at a distance' by mobilizing and steering the free action of individuals rather than trying to suppress it, by relying on other authorities than that of the state itself, and by stimulating appropriate forms of self-regulation (Rose, 1999, p. 49). Researchers within this tradition have studied different forms of promotion of individual choice, empowerment and self-entrepreneurship in spheres which have previously been subject to more direct regulation (e.g. Cruikshank, 1999; Rose, 1999; Brown, 2003). But liberal governmentality is not necessarily concerned with removing all constraints; instead it is constantly in the process of defining the limits of these freedoms. Liberal government is therefore concerned with producing and organizing freedoms, rather than guaranteeing freedom

as an abstract principle. This means that liberal freedoms are conditional on the development and deployment of advanced systems for overseeing the exercise of these freedoms (Foucault, 2004, pp. 65–8).

In the context of North–South relations, neoliberalism is sometimes criticized as a hegemonic order through which global markets overpower poor countries. From this perspective liberal government is instead seen as a technique of power which is concerned with the management, or ‘re-management’ of populations (Ong, 2007, p. 5), in which, for instance, international financial institutions prescribe for developing countries the production of highly educated subjects rather than the production of goods (ibid.). Neoliberal governmentality, in general, is distinguished by its extension of market incentives and disincentives to more and more societal spheres and by the promotion of entrepreneurialism and efficiency in institutions as well as in individuals, who are encouraged to maximize their ‘human capital’ (Fraser, 2008, p. 127). Foucault explicitly mentioned that neoliberalism promotes mobile subjects, subjects who are encouraged to be prepared to move as part of their human capital maximization strategies (2004, p. 236). But neoliberalism has so far not promoted this kind of mobility when it occurs over borders. When examining the political rationality of global migration management we will see to what extent it does so today.

Migration

This section introduces the epistemological dimension of the political rationality of global migration management, as traced from within the policy discourse on international migration that is currently evolving among agents and forums at the global level. In this context, the epistemological dimension refers to the specific way that the phenomenon of migration is known. The implications for government, that is, the moral dimension of this political rationality, are discussed in the next section.

In a fundamental sense, ‘international migration’ is already formed as a category of governmental intervention before discussions in global forums even begin. A first condition of possibility is the arrangement of the world into separate states, without which ‘international migration’ would not make any sense (nor ‘emigrants’, ‘immigrants’, ‘irregular migrants’, etc.). A second is the distinction drawn in international law between forced and voluntary movements. This distinction shapes on the one hand the category of the refugee, whose movement is perceived as involuntary and who is therefore the object of compassion and international protection, and on the other hand the economic migrant who is supposed to be motivated by pull rather than push factors and whose possibilities for movement depend on the will of individual states (cf. Hayden, 2006).

There are two points that stand out in the more specific way that migration is understood in the global policy discourse: first, it is now understood as a

normal and permanent feature of world affairs, and second, it is now addressed as a potentially positive phenomenon. I will introduce and discuss these in turn.

People are mobile

A starting point for many of the policy documents published at the global level is that international migration is now not an exceptional but a normal phenomenon. For instance, it is argued in the Hague Declaration that 'It is essential to understand migration as a normal fact of life for individuals, families, communities and states' (UN, 2002a, p. 5). The 2009 Human Development Report regards movement as 'a natural expression of people's desire to choose how and where to lead their lives' (UNDP, 2009, p. 18). In some instances, history is invoked to underline migration's perennial character:

Since human beings first emerged from the African continent many thousands of years ago, every part of the world has been subject to overlapping waves of immigration. It has thus been a central part of human history – shaping and reshaping societies, cultures and economies. The twenty-first century is no exception. The millions of migrants who circulate around Asia or Africa, or who travel from developing to developed countries today, are just the latest bearers of an age-old tradition.

(ILO, 2004b, p. 17)

If one regards migration as a historical constant, it appears as a natural activity, as something for which humans have an innate disposition. In this discourse, it is a commonly held assumption that globalization provides the conditions under which this disposition is actualized. 'Migration is inherent to human nature', said the President of the General Assembly at the opening of the HLD, continuing: 'It has become a major aspect of modern societies in the face of globalizations' (UN, 2006b).

In the context of globalization, migration is now understood as naturally circular in character. The GCIM, for instance, 'concludes that the old paradigm of permanent migrant settlement is progressively giving way to temporary and circular migration. Each year, for example, some two million Asian workers leave their own countries to work under short-term employment contracts both within and outside the region' (2005, p. 31).

Globalization does not abate migration but enhances it. This is partly because of the persisting economic disparities between the rich and poor regions of the world, but also because of the increased awareness of these disparities, brought about by developments in information and communications technology as well as by the global reach of the media. Another important factor is the availability of means to overcome the disparities, including improved and cheaper transport as well as the establishment of migrant networks and the operation of the migration industry

(legal or illegal), which facilitate the actual movement and seem to defy any governmental regulative effort. The World Commission on the Social Dimension of Globalization regards the fact that international migration has increased despite a tightening of border controls in industrialized countries as

... clearly linked to increasing globalization. Declining costs of transportation and the advent of cheap mass travel have greatly reduced one important barrier to movement. The ICT revolution and the universal reach of the media have meant a vast diffusion of awareness of differences in living standards between rich and poor countries that has added to the allure of migration. New market institutions have emerged which facilitate the process, in the shape of intermediaries and agents.

(ILO, 2004a, p. 96)

The recognition that migration is an integral part of globalization marks a breakthrough in the understanding of the relationship between migration and other dimensions of economic globalization. In the Washington Consensus period, the belief was that the incorporation of poor countries into the global market for trade would increase growth and eventually offset the need for migration among their populations (Massey et al., 1998, p. 284; Nayyar, 2002, p. 157). Thus, the belief was that economic liberalization could substitute for migration. In contrast, the current global policy discourse sees migration as 'an integral feature of a rapidly globalizing world' (IAMM, 2004, p. 23). Although the economic crisis may decrease migration temporarily, with its recovery 'many of the same underlying trends that have been driving movement for the last half-century will resurface, attracting more people to move' (UNDP, 2009, p. 8).

The understanding of cross-border migration as a natural activity also diverges from state system governance. To Barry Hindess, the state system can be seen as 'a dispersed regime of governance' which renders the human population governable by dividing it into the subpopulations of particular territorial states. The result of this division is that national sedentariness has come to appear as the norm and migration as the exception: 'the system of territorial states and the techniques of population management developed within it have turned the movement of people around the world into an exceptional activity, something that can and should be regulated by the states whose borders they threaten to cross' (Hindess, 2000, p. 1494). From this perspective, it is quite remarkable that the current policy discourse understands international and circular migration as a normal instead of exceptional activity. The objects of government now resemble Foucault's neoliberal subject in that they are potentially boundlessly mobile instead of normally sedentary. The task for government is then to govern these mobile subjects.

Migration as a potentially positive phenomenon

A second feature of the description of migration is that it is now increasingly described as a (potentially) *positive* phenomenon. In the summary of the first GFMD, it was stated that the Forum had 'established a new approach to migration' by 'promoting legal migration as an opportunity for development of both origin and destination countries, rather than as a threat' (GFMD, 2007, p. 16). The Hague Declaration, for its part, reads that '[w]e believe that migration is a normal phenomenon which can contribute positively to economic and social development, cultural richness and diversity' (UN, 2002a, p. 4). Migration is now seen as having win-win potential: 'migration is not a zero-sum game. In the best cases, it benefits the receiving country, the country of origin and migrants themselves' (UN, 2006a, p. 8). The UNFPA sums up the benefits that migration can have for everybody involved:

Economic migration can... yield significant benefits to origin and destination countries and of course to migrants themselves. For destination countries, labour migration rejuvenates the workforce and expands the human capital resource base, thus enhancing productivity and prosperity. For countries of origin, labour migration relieves labour market pressures (unemployment and underemployment) while generating remittances, transfers of skills, knowledge, FDI and creating other positive feedback effects. For migrants, the ability to seek economic employment abroad constitutes an opportunity to improve economic standing, enhance skill levels, and it provides a means for migrants to support family members in their home countries. Furthermore, labour mobility through regular channels also may reduce irregular migration, migrant trafficking and smuggling.

(UNFPA, 2004, p. 51)

The movement of migrants is now thought of as potentially benefitting not only themselves but also host and origin states. Migrants are now often described in entrepreneurial, and sometimes even heroic terms: 'Throughout human history, migration has been a courageous expression of the individual's will to overcome adversity and to live a better life' (UN, 2006a, p. 5). They have an 'entrepreneurial spirit and are motivated by a determination to succeed in life' (GCIM; 2005, p. 48). Moreover, there are certain suggestions on how this entrepreneurialism can be fostered in order for it to benefit both origin and destination countries (cf. UN, 2006a; GFMD, 2007).

This discourse also pays attention to migration's problematic consequences. One such is the brain drain problem: the loss in human capital stock resulting from 'the departure of a country's brightest, best-educated and most entrepreneurial citizens' (GCIM, 2005, p. 23). Another

concerns irregular migration, in the forms of trafficking, smuggling and other unauthorized movements. These forms of migration challenge state sovereignty and also make migrants vulnerable to exploitation by employers as well as smugglers (ILO, 2004b, p. 60; GCIM, 2005, p. 34).

The global discourse draws attention to some of the possible problems related to migration. Yet, the image of migration which appears here is a far cry from the perceptions of migrants as socially disruptive and as threatening to the welfare and security of receiving states, which have dominated affluent countries' immigration policies in the post-Cold War era. Instead, migration is overwhelmingly conceived of in positive terms, and migrants themselves appear as ideal neoliberal subjects, whose cross-border movement testifies to their adventurous character and their willingness to invest in their human capital.

Migration management

We will now turn to the recommendations for governing migration, that is, the 'moral' dimension of the political rationality of global migration management. Three different themes will be covered in turn: the recommendation to liberalize migration, the specific recommendation to encourage more 'circular migration', and the fostering of specific and responsible migrant subjectivities.

Liberalizing but managing movements

While the conceptualization of migration as a permanent phenomenon suggests that we cannot control it, the recognition of migrants' contributions suggests that we shouldn't – at least not in the sense of complete prevention. Staying within the control paradigm in such a situation would be not only unrealistic but also economically unsound. As explained by the IAMM (2004, p. 34), 'Debates regarding whether to have immigration or not are being replaced by debates on how to manage migration to maximize the positive effects that migration – skilled and unskilled, temporary and permanent – can have'.

Quite remarkably, there seems to be an emerging consensus within the global policy discourse on migration that the world as a whole would gain considerably from liberalizing movement. Barriers to the movement of people now appear outmoded. The Belgian executive director of the first GFMD, Regine de Clercq, in her concluding address compared migration control to earlier-day trade barriers: 'Now we wonder why in the previous century so much money was spent on customs control, and why we took so many years to break the trade walls. Could it be that 20 years from now we might wonder why we were spending so many resources on controlling immigration – often with so little success?' (De Clercq, 2007, p. 6). Controlling movement of labour in an economically integrated world appears

both irrational and futile. De Clercq continued: '[i]f you draw a line in the sand, the wind will sweep it away in a matter of hours. If you build a fence through a globalizing labour market, will it withstand the pull and push forces on both sides?' (De Clercq, 2007, p. 7).

But this form of liberalization does not mean that migration is to be left completely free, which could be considered the most liberal suggestion of all (Moses, 2006). States are by no means about to let go of their monopoly on the 'legitimate means of movement' (Torpey, 2000). Nor is that what is advocated: The 2009 Human Development Report speaks of a 'properly designed programme of liberalization' (UNDP, 2009, p. 18). There is hence a perceived need for steering and guiding the proposed liberalized movement, in order to reap migration's possible benefits while avoiding the possible negative consequences for sending and receiving countries as well as for migrants themselves. As Brunson McKinley, the former Director-General of IOM, emphasized (McKinley, 2004, p. 3):

If properly managed, migration can be beneficial for all states and societies. If left unmanaged, it can lead to the exploitation of individual migrants, particularly through human trafficking and migrant smuggling, and be a source of social tension, insecurity and bad relations between nations. Effective management is required to maximize the positive effects of migration and minimize potentially negative consequences.

Management here appears to be the key to achieving the goal of maximizing the positive contributions while at the same time minimizing the negative consequences (cf. IOM, 2003, p. 52; GCIM, 2005, p. 23). Migration management implies that migration still needs to be guided in a top-down manner, and it also seems to suggest that such government is possible (Newland, 2005). Several of the documents at hand call for greater coordination among different agencies of government, for increased involvement by other actors (international and nongovernmental organizations as well as the private sector), and for interstate cooperation. According to the Berne Initiative, it is a 'common understanding' that 'All States share a common interest in strengthening cooperation on international migration in order to maximize benefits' (IAMM, 2004, p. 23). Interstate dialogue and cooperation is needed to maximize economic and developmental gains, but also to enhance human rights protection and fight irregular migration (UN, 1995, para. 10.2; ILO, 2004a, pp. 95–6).

In this discourse state authority to control migration is never questioned. Instead the goal is to preserve this authority in a world of mobile people. The summary of the first GFMD sums up the task from policy-makers' point of view: 'The real challenge lies in how best to structure a policy that allows for proper enforcement of immigration laws while letting immigration continue as a positive force for economic prosperity' (GFMD, 2007, p. 4).

The arguments for liberalization and the negative view of border control measures convey the fear of governing 'too much' – one has to allow for the movement of migrants in order to bring about objectives related to development, growth and so on. It may seem contradictory to suggest a managed form of liberalization, or a 'well regulated liberalization' as the Global Commission expresses it (GCIM, 2005, p. 17). But if liberalism is approached as an art of government, it appears less confusing. It is not a question of guaranteeing freedoms in an absolute sense but of using certain freedoms for governmental ends: in this discourse, freer migration is understood to support development growth and other goals. The freedoms produced under liberalism need to be organized and overseen. The claims for improving management techniques and international cooperation can be seen in this context.

Circular movement

In what ways are these new freedoms of movement to be organized? The favoured policy recommendation in the global policy discourse on migration and development is to increase circular or temporary, as opposed to permanent, movement (ILO, 2005, p. 18). In GFMD discussions, circular migration is defined as the 'fluid movement of people between countries' (GFMD, 2007, p. 75). It is seen as being able to 'respond to the needs and constraints of social and economic equilibrium in countries of destination' (ibid., p. 77).

Enhancing circularity is increasingly found as a solution to the brain drain problem. Since the 1990s, the term 'brain circulation' has entered the idiom: the goal is now to convince the highly-skilled to come back home after a period abroad, during which they are assumed to have improved their skills and knowledge (GCIM, 2005, p. 31). This can lead to an improvement in human capital formation, which 'in a world characterized by high mobility of skilled migration... should be seen increasingly as an international and not only a national policy concern' (UN, 2006a, p. 20).

But, more strikingly, circularity is now also recommended for low-skilled migrants – the group which has so far been subject to the heaviest restrictions (see, for instance, UN, 1995, para. 10.5; IAMM, 2004; ILO, 2004b, p. 118; ILO, 2005, p. 18). For the GCIM, the starting point is that there is a coincidence in the demand for cheap and flexible labour in developed countries, and an abundant supply of Third World workers willing to take these jobs. In the developed countries, the competitiveness of the global economy has created a need for 'a flexible labour force' that 'is prepared to work for low wages and under difficult conditions'. This is the kind of work that the native populations are not prepared to take, and that is already de facto provided by irregular migrants (2005, pp. 6 and 16; cf. IAMM, 2004, pp. 40–1; ILO, 2004b, p. 12). It therefore makes sense to introduce regularized temporary programmes not only to control the inflow but also to

provide migrants with secure legal status. Temporary migration is preferable to permanent as it is thought to be more acceptable to the host country populations. It is also better for sending countries: 'temporary migrants whose families remain in the country of origin are more likely to remit and repatriate their savings when they return than those who settle abroad. Furthermore, temporary migrants are more likely to return... and to contribute to the development of communities of origin' (UN, 2006a, p. 71). This therefore appears as a win-win situation, and the GCIM consequently proposes 'carefully designed temporary migration programmes as a means of addressing the economic needs of both countries of origin and destination' (2005, p. 16).

When governing mobile and entrepreneurial subjects, circular migration programmes is the preferred way of organizing freedom of movement. For Foucault, biopolitical arts of government approach the population as a natural or biological phenomenon with its own laws and regularities. In this particular discourse, today's migratory movements are seen as circular rather than permanent in character – so the circular and temporary programmes are only a way of capitalizing on this movement that already exists. The GCIM, for instance, 'underlines the need to grasp the developmental opportunities that this important shift in migration patterns [circular movement] provides for countries of origin' (2005, p. 31).

One can note that the current structure of the global economy is taken for granted in this discourse. For instance, temporary migration programs are rational in this context precisely because economic inequality has created the supply of this labour, which is wanted because it is cheap. Many argue that the liberalization of the global economy has created migrants, by uprooting people from agriculture and depriving them of state support. But in this discourse, economic liberalization is never fundamentally questioned. According to Gerard Boucher, 'Not only are capitalists and the global capitalist system not part of the problem, the solution involves more capitalism in the form of neoliberal policies to deregulate states' control over the free mobility of migrant labour' (Boucher, 2008, p. 1464).

Shaping development agents

Besides the elaboration of circular migration programmes, another crucial but more subtle strategy for managing these mobile subjects is to foster migrants and diasporas into responsible development agents – that is, into agents that are willing and prepared to contribute to the development of their home country.

The migration-development nexus depends on, and therefore fosters, the moral sentiment that is a sense of commitment to a collective group – those who can be developed elsewhere... The mobile governable subject of migration-development, in this reading, is both required to move in

order to strategise their human capital, but also to act morally for the collective good of a distant place/community.

(Raghuram, 2009, pp. 109–10).

In order for remittances to be sent home, and in order to make circular migration programs work so that migrants come back with acquired skills after some time abroad, it becomes a crucial governmental goal to instil a sense of moral responsibility towards the homeland. In order to continue attracting diaspora investment, this sense of responsibility needs moreover to be continued across generations: the GFMD discussions include descendants of emigrants in their definition of the diaspora (GFMD, 2007, p. 103). As Bakewell has observed, the discourse on migration and development 'is overlaid with an expectation that migrants *should* want to maintain their links with the country of origin and, moreover, want to contribute to its development' (Bakewell, 2008, p. 1354). A migrant should not get 'too' integrated into the receiving society, nor should he or she direct loyalties elsewhere. Instead, the suggestions in the global policy discourse on international migration depend on, and foster, the particular sense of commitment between the migrant and his or her descendants on the one hand, and the home community on the other.

This cannot be done by force but by voluntary consent – while restricting *immigration* (including through the use of force, if necessary) is a state prerogative in international law, *emigration* is now understood as a human right. A sending state can therefore not force people to stay home, or move them around at will as in earlier forms of governing population. Instead, one must make use of softer and more indirect measures in order to make sure that mobile subjects continue to identify with and be loyal to their country of origin. To avoid losing 'its' people, the state has to engage in various 'bonding strategies' (Chander, 2006) with its emigrant population. Such strategies are already practiced by many states, not only in the South but also in several Northern states (Gamlén, 2008). The GFMD recommends that governments identify existing diaspora networks, encouraging them to participate in development-related activities and educate their leaders in project management. Other suggestions are various sorts of tax incentives for returning emigrants, and allowing for dual citizenship and voting from afar (2007, pp. 103–10). Existing state practices of this sort also include special representation of the diaspora in parliaments, programmes for diaspora youth to return and get to know their country, official proclamations and celebrations of migrants as 'heroes', institutionalizations of 'migrants' day' and so on (cf. Barry, 2006).

Such practices do not just capitalize on existing diasporas but partake in shaping them (cf. Brubaker, 2005, p. 12). In the words of Aihwa Ong, similarly: "There is nothing "natural" about "diasporic groups". They have to be constructed by actors invoking an ethnic grammar and connected

through techno-material forms that enable global reach' (Ong, 2006, p. 233).

All political rationalities correlate with a certain form of individual or collective identity that they either presuppose or try to bring about. Liberal governmentality often takes place 'at a distance', steering and guiding individuals' free actions and stimulating forms of responsabilization and self-regulation. In this particular discourse, migrants are understood and fostered on the one hand as neoliberal subjects, prepared to move, and on the other hand as responsible subjects, concerned with the development of the home community.

Concluding remarks

The last few years have seen the emergence of a policy discourse on migration management among actors at the global level. This chapter has approached global migration management from a Foucauldian analytics of government. Global migration management has been perceived as a particular discourse, a 'political rationality' which is marked by a relative internal coherence, yet is affected by other more general complexes of power and knowledge. In this chapter, I have particularly focused on the influence of neoliberal governmentality.

Political rationalities assume that recommendations for policy are based on a particular form of knowledge about the object that is to be governed. The exercise of power is based on the general acceptance of such knowledge, which can never be neutral, but is itself constituted by relations of power. The political rationality of global migration management understands migration as a normal and permanent phenomenon in a globalizing world. Migrants are described as entrepreneurial, 'neoliberal' subjects who are ready to move to improve their lives. Moreover, migration is understood as potentially beneficial, not only for the migrant him/herself, but also to origin and destination countries and communities. In this situation, trying to prevent or control migration would be unrealistic and economically unwise. The recommendation, therefore, is to liberalize movement by offering more legal channels for migration. The preferred policy recommendation is the elaboration of circular migration programmes.

The global discourse on international migration differs from current practices in its positive attitude towards migration. The optimism extends to low-skilled labour migrants, whose movements have heretofore been subject to most forms of control. Yet, the proposed liberalization does not amount to giving up the authority to control.

Foucault's understanding of liberal governmentality helps to understand the somewhat contradictory form of this liberalization. Liberal governmentality is not about guaranteeing liberties as a good in itself, but seeks to promote certain freedoms for the purpose of reaching other

governmental aims. Therefore, freedoms must be organized, managed and overseen. In the current policy discourse, migration is not liberalized for the sake of migrants' autonomy, but because it can simultaneously bring about development, growth and protection. Migration appears as an independent variable that can be managed and influenced in order to intensify development of both sending and receiving countries (Skeldon, 2008). Although migration is thought of as a positive force for development, it cannot simply be left free – instead it has to be made to work, it must be managed and guided in a variety of ways. States have by no means given up the prerogative to control; instead it is constantly emphasized that migration needs to be orderly and authorized. Enhancing international cooperation can be understood as a means of reaching this.

One way in which these new or extended freedoms are managed is through the creation of development-minded migrants and diasporas. The understanding of migration as normal and permanent breaks with the assumption of people as normally sedentary which is associated with the Westphalian state system. Yet these mobile people are still supposed to identify with and feel loyalty to their national community. In fact, they *must* do so in order to obtain the developmental benefits from freer migration; therefore, the state-citizen bond needs to be reinforced in an emigration context. What appears as a tension between territorialized national identities and neoliberal governmentality may, however, be interpreted as a modification within the latter. In Foucault's understanding of neoliberal governmentality, people are not only created as economic subjects. Instead, the egotism and potentially boundlessly mobile 'homo economicus' of neoliberalism is tamed by the idea of an indissoluble bond to a particular and locally-rooted civil society to which he supposedly belongs (2004, pp. 177–9, 195–8, 301). What is new in the global discourse on international migration is that these particular societies now are conceived of as transnational in character. When cross-border mobility becomes the norm, this bond appears tenuous and vulnerable, in need of constant reinforcement.

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3

For the Benefit of Some: The International Organization for Migration and its Global Migration Management

Fabian Georgi

Introduction

On 8 August 2003 a few hundred activists of the Sixth Anti-racist Border Camp in Germany made their way from their tents in the Rhine meadows in Cologne to nearby Bonn. Here they demonstrated in front of the office of the International Organization for Migration (IOM), an intergovernmental organization with 127 member states and an annual budget of more than 1 billion US Dollars (USD) in 2008. Its central motto is 'Managing Migration for the Benefit of All' (IOM, 2008a). The demonstrators contested this. For them, IOM always acted 'in the interests of governments and against autonomous migration and unwanted refugees' (Anti-racist Border Camp, 2003, p. 3, translation F.G.). The rally was the finale of a 2-year campaign under the slogan 'Stop IOM! Freedom of movement versus global migration management' organized mainly by the Noborder Network, comprised of leftist and immigrant groups from different European countries. A day of action in October 2002 targeted the IOM offices in Berlin, Vienna, and Helsinki. During the G8 summit in Evian in May 2003 so-called anti-globalization activists demonstrated outside the IOM headquarters in Geneva, hurling stones. Police reacted with tear gas (interview No Border activist, 25.04.2009). At the same time, the NGOs (non-governmental organizations) Amnesty International (AI) and Human Rights Watch (HRW) denounced IOM for violating the rights of migrants: 'Our research and the research of colleague organizations [...] has revealed a range of ongoing IOM activities that appear to obstruct, in whole or in part, the rights of the very people IOM is tasked with assisting' (HRW, 2003, p. 3; cf. Amnesty International/Human Rights Watch, 2002). For a while, IOM was at the centre of a critical inquiry on practices and implications of international migration control. Since then IOM has avoided the spotlight.

This chapter takes IOM's claim to 'benefit all' as the starting point for a re-engagement. Migration management, IOM claims, can produce win-win situations: 'Well managed migration can enhance development and progress in ways that profit both origin and destination lands as well as individual migrants and their families' (McKinley, 2006). The sharp criticism directed against IOM by leftist organizations, migrant groups, NGOs and academics makes it clear that the beneficiaries of IOM's activities are not so easily established. The aim of the chapter is, therefore, to answer the *cui bono* question: IOM migration management – for the benefit of whom?

This chapter will address its question from a historical and a materialist perspective. It employs concepts from neo-Gramscian international political economy (cf. Jessop, 1990; Morton, 2007; Gill, 2008) and insights from the current debates on a materialist theory of the internationalization of the state inspired by the writings of the French-Greek theorist Nicos Poulantzas, a disciple of Louis Althusser (cf. Bretthauer et al., 2010). Beyond theoretical catchphrases, such an approach carries with it at least one central assumption relevant to the question of this chapter: it is not sensible to speak and think indiscriminately, as IOM often does, of benefits to 'countries of origin', to 'countries of destination' or to 'migrants' as a whole. Instead societies, and also migrants, are divided deeply by partly antagonistic contradictions of class, but also of gender, race, citizenship or education. Thus an answer to the *cui bono* question must be framed with regard to the material dynamics, historical conditions and social struggles that underlie these contradictions and divisions.

The chapter is divided into three sections: The first section gives a brief introduction to IOM, its current structure and activities, and provides a brief sketch on the state of research of the organization. The second and main part describes the historical development of IOM and its migration management concept. It focuses on IOM as an institution and contextualizes it within wider economic and political processes. The third part addresses the apparent contradictions between IOM's practices and rhetoric by analyzing in more detail its financing mechanisms. It then interprets IOM's migration management discourse as part of a political project that struggles over hegemony in international migration policy. The chapter will conclude with three hypotheses that form a preliminary answer to its central question: IOM migration management – for the benefit of whom?

IOM: Structure, practices and state of research

Today, IOM is the second-largest intergovernmental organization in the field of migration (the United Nations High Commissioner for Refugees [UNHCR] is bigger). As of February 2010 it had 127 member states with a further 17 states and 77 NGOs and IGOs as observers. It has more than 440 field locations and about 7000 staff members that work on around 2000

projects all over the world. The IOM claims to provide flexible services ‘to address the migratory phenomenon from an integral and holistic perspective [...] in order to maximize its benefits and minimize its negative effects’ (IOM, 2007, p. 6). Unlike UNHCR, however, IOM is not part of the UN system and not legitimized or mandated by international law. Thus some NGOs and academics stress that IOM has ‘no protection mandate’ (Amnesty International, 2003, p. 8) and no ‘normative authority’ (Betts, 2008, p. 6), meaning that the organization is structurally responsible only to its member states’ governments and is acting in their interest. Thus, IOM is a deeply ambivalent organization. This is demonstrated, too, by the contradictory variety of its activities which may be divided into five categories (cf. IOM, 2009a):

- (1) *The IOM supports the movement of emigrants, migrant workers and resettled refugees:* Based on its traditional activities in the post-war period the organization supports emigrants, migrants and refugees in a direct way. It advises emigrants and migrant workers before and after their travel, sells discounted airline tickets and offers language courses. It transports people from refugee camps to (Western) host countries; it places migrant workers with employers abroad, and develops systems for simplified remittances of wages.
- (2) *The IOM builds up the capacities of states for migration control:* Under the label of capacity-building for migration management IOM conducts training seminars for civil servants, politicians or border guards. It offers practical advice on migration policy and drafts laws and administrative guidelines for its member states. In this way IOM helps states to expand, and often to build up in the first place, the political, institutional and cultural conditions and bureaucratic capacities for migration control.
- (3) *The IOM itself takes a role in operative migration control:* IOM assumes an operative role in the control of migration in all of its phases: With so called ‘mass information campaigns’ comprising posters, press or TV adverts, IOM tries to deter people from irregular migration or warn them of the dangers of ‘trafficking’ (cf. Nieuwenhuys/Pécoud, 2007). With concrete policy-relevant studies, IOM produces the knowledge that state institutions need to adapt their controls to the changing tactics of migration movements. After people have crossed a border, they might be received in reception, detention or deportation camps run by IOM in conjunction with the local authorities, for example, in Indonesia or the Ukraine. When states try to expel unwanted persons from their territory (rejected asylum-seekers, illegalized workers, victims of ‘trafficking’), IOM conducts (much criticized) ‘assisted voluntary return’ programmes, in which people receive financial assistance if they ‘voluntarily’ return to ‘their home countries’ (cf. Human Rights Watch, 2007, pp. 5–6).

- (4) *The IOM is a competitor in the humanitarian market place:* In close cooperation with UNHCR and other agencies, IOM takes part in humanitarian emergency operations after natural disasters and (civil) wars. Here, IOM is mostly in charge of rapid evacuations and the transportation of people and goods. Starting in the 1990s, these operations have partly expanded into long-term reconstruction and development projects, for example, after the 2004 tsunami in Asia. In 2008 these activities comprised 55 per cent of IOM's operational budget (including the resettlement of refugees). This kind of operation, however, has been controversial among IOM's member states because, as some members claim, IOM is straying away from the core tasks laid down in its Constitution.
- (5) *The IOM engages with discursive practices in the struggles over hegemony in international migration policy:* IOM conducts various knowledge practices with which the organization takes part in the discursive political struggles over the direction of international migration policy. Each year IOM publishes dozens of policy briefs, research reports, magazines and books; a major example is the World Migration Report (IOM, 2003b). Its staff members take part in academic conferences as participants and speakers, thereby blurring the boundaries between academic and governmental knowledge production. The organization often functions as the secretariat for government-led conference processes at the regional and global level and it takes part as observer in major intergovernmental conferences inside and outside the UN system, issuing its own political statements.

With the concept of 'migration management', IOM attempts to hold these very different activities programmatically and strategically together (cf. Georgi, 2009). According to IOM, migration management can achieve four key goals: maximize the economic growth potential of migration (*migration and development*), facilitate and assist the legal migration of tourists, students and legal labour migrants (*facilitating migration*), combat unwanted and illegal immigration (*regulating migration*) and keep forced migration movements under control and help refugees and displaced persons (*forced migration*) (IOM, 2009a).

At the top of the organization's structure stands a Director General (DG), a position that – with one exception – has always been occupied by US officials, who often come from the diplomatic service of the US State Department (IOM, 2009c). The DG is elected by the IOM Council. It meets twice a year and each member state has one vote. He reports to the Council and the smaller Executive Committee with 33 member state representatives. He additionally directs the activities of the local IOM missions worldwide and heads the different headquarter departments, among them 'Migration Management Services', 'Migration Policy and Research', 'Operations Support' and 'External Relations'.

To finance its basic infrastructure, like the headquarters in Geneva, IOM receives annual assessed contributions by its member states, calculated according to their different economic strengths. The overwhelming majority of this operative budget is financed by rich industrialized countries. Thus in 2008 the G7 countries alone accounted for 72 per cent of the organization's core budget of 33.4 million USD (IOM, 2009b, pp. 25–7). The bulk of the budget, however, was always collected by project grants or fees for the use of IOM's services. In 2008 the top ten donor countries (Western states plus Japan and the US allies Peru and Colombia) provided around 67 per cent of the operative budget (IOM, 2009b, p. 43). In the last decade the gap between the administrative budget of regular contributions and the rapidly growing operative budget has increasingly widened. According to the annual financial reports, the administrative budget in 2000 still comprised 7.2 per cent of the whole budget. By 2008 this number had halved to about 3.4 per cent.

Given the size of IOM and the controversies surrounding it, the state of research on the organization is surprisingly weak. Existing secondary literature includes: a few older and scattered studies on different aspects of IOM (cf. Perruchoud, 1989, 1992); a monograph published by IOM itself on the event of its 50th anniversary (Ducasse-Rogier, 2001); and several descriptions that were written in the context of the heightened sensibility and suspicion towards IOM around 2003 (Amnesty International/Human Rights Watch, 2002; Amnesty International, 2003; Düvell, 2003; Human Rights Watch, 2003; Antirassismusbüro Bremen 2004). Only in the last few years have more detailed studies shed greater light on some aspects of IOM's work (among them Nieuwenhuys/Pécoud, 2007; Human Rights Watch, 2007; Betts, 2008; Geiger 2008; Georgi, 2009; ICMC, 2009; Schatral 2009; see also Christensen, 2009). The present chapter aims to contribute to this growing body of literature. It builds on the existing secondary literature as well as 'grey' sources (i.e. IOM's annual reports, financial reports, public meeting notes, etc.) and on data gathered during 12 semi-structured interviews with IOM staff members and representatives of UNHCR and different NGOs. It presents the preliminary results of an ongoing research project, thereby offering its arguments as a provisional starting point for further debate.

The historical development of IOM and the migration management project

The Cold War decades: An anti-communist logistics agency

The following part describes the historical development of IOM and locates it within broader social, political and economic processes and conflicts. While the first sub-section sketches IOM's history in the Cold War decades, the focus lies on its development since the 1980s, which is then analyzed in the four following sub-sections.

The organization we know today as IOM was founded in 1951 as the Provisional Intergovernmental Committee for the Movements of Migrants from Europe (PICMME). It was founded in December 1951 at a conference in Brussels, only a few weeks after UNHCR was established. Both were successor organizations to the International Refugee Organization (IRO) that was charged with assisting the millions of refugees and displaced persons uprooted by Second World War. The United States, and especially its conservative congressional majority, saw the UNHCR and the International Labour Organization (ILO) – which also tried to become active in labour migration programs – as potentially uncontrollable and under communist influence. Therefore, the US government initiated the founding of another, competing organization, PICMME, a Western counter-institution to the UNHCR and ILO, and during the first decades after its founding, also an anti-communist logistics agency for emigration and refugee transport. PICMME's constitution stipulated that only countries who supported the principle of 'free movement' could become members, thereby excluding Eastern Bloc states that prohibited the emigration of their citizens. In October 1952, it was renamed the International Committee for European Migration (ICEM), a name it would bear for nearly 30 years. The organization's original 16 members included western European countries, from which emigrants left, and their new home countries in North and South America, as well as Australia. Its stated task was to organize the emigration of the so-called 'over-population': persons displaced by the war, many former inmates of German concentration camps, unemployed workers, and later, refugees from Eastern Bloc countries (Perruchoud, 1989, pp. 502–5; Ducasse-Rogier, 2001, pp. 14–19; Loescher, 2001, pp. 57–62; Christensen, 2009, pp. 61–2).

These early activities of ICEM were limited mainly to logistics, focusing on only a few rather technical programmes. ICEM's founding members had originally assumed that the organization would only exist temporarily as it was expected to complete its task to support the emigration of the European 'over-population' within a few years. But once it had been established, the momentum of a bureaucracy, fighting for its own survival during the changing historical circumstances, made ICEM a more permanent apparatus (Perruchoud, 1989, p. 505; Ducasse-Rogier, 2001, pp. 19–21). Instrumental in the continuation of ICEM was the decision taken by many people from eastern Europe and the Soviet Union to leave the Eastern Bloc. ICEM was given the additional role of running reception camps for these refugees, who fulfilled an important propagandist function in the Cold War, and organizing their transport to Western host countries. Then in 1956, the Hungarian Uprising and its following repression allowed ICEM to prove its continued usefulness to Western governments. The organization quickly began a massive relief effort for dissidents, who were fleeing from the tanks in the streets of Budapest and the waves of arrests. ICEM organized immediate relief

and later resettlement for about 180,000 persons (Ducasse-Rogier, 2001, pp. 36–41; Christensen, 2009, pp. 63–71).

From the early 1960s onwards, however, ICEM experienced a severe crisis. The relief effort for Hungarians was completed. The fortifications at the inner-German border and the western border of Czechoslovakia and Hungary and, above all, the construction of the Berlin Wall in August 1961 decreased considerably the number of refugees from Eastern Bloc countries. And the 'Golden Age' (Eric Hobsbawm) of Western capitalism, with full employment and expanding welfare states, greatly reduced the number of western Europeans deciding to leave the continent for an uncertain future in the unstable countries of South America. Thus, economic growth and the 'iron curtain' threatened ICEM's institutional existence. Its necessity was questioned by, among others, the governments of Canada and Australia. Both countries left the organization in 1962 and 1973 respectively. The two states' governments claimed that it was unnecessary and even unwelcome to have an international organization dealing with a deeply national topic like immigration (Holborn, 1963; Hawkins, 1991, pp. 161–3). ICEM's response was to expand into new areas (Ducasse-Rogier, 2001, pp. 44–69): it initiated the 'Selective Migration to Latin America' programme that aimed to support development through the immigration of highly-skilled migrants from Europe. It began for the first time to organize research projects and international seminars on migration issues. Finally, the organization managed to break out of its confinement to Europe as it became useful in managing the massive refugee flows that resulted from the repression of what Immanuel Wallerstein has called the 'world revolution of 1968' (Wallerstein, 2004, pp. 84–5), referring to the crushing of the Prague Spring in August 1968 by Soviet tanks, the Pinochet coup against the socialist government of Salvador Allende in Chile in September 1973, and the thousands of Vietnamese and Cambodian boat people, fleeing the consequences of the Vietnam War after the fall of Saigon in April 1975. In all of these (and other) cases, ICEM cooperated closely with UNHCR and other agencies to provide transportation and resettlement services from non-European countries to mostly Western host states (Ducasse-Rogier, 2001, pp. 54–62).

But while ICEM managed to secure its basic institutional existence, its political status remained precarious. In the mid-1970s, Director General John F. Thomas failed to convince sceptical member states to make ICEM a permanent and more secure organization by reforming its constitution (cf. Perruchoud, 1989, pp. 506–7; interview IOM staff, 21.09.2009). The compromise that emerged at the time was an unofficial name change in 1980: the reference to Europe was dropped and Intergovernmental Committee for Migration (ICM) would be the organization's name in the following 9 years. It was only during the 1980s that yet again the changing historical conditions ensured the agency's institutional existence and the massive growth and expansion that were to come later.

The IOM's historic opportunity: Post-Fordist globalization and the breakup of the Eastern Bloc (1980s–1993)

A comprehensive reform of the ICM came into force on 14 November 1989, following years of internal conflicts between member states and by a strange coincidence, taking place only 5 days after the fall of the Berlin Wall. It was renamed International Organization for Migration (IOM), received from its member states an extended, broader mission and was transformed formally into a permanent body, symbolized in the name shift from a 'committee' to an 'organization'. Its official mandate was widened considerably. The IOM was now given the task of promoting the organized transfer and the regulated mobility of migrants, migrant workers, refugees, displaced persons and other individuals in need of international migration services. Research and conference activities were to be strengthened and the membership increased (Perruchoud, 1989, p. 508; Perruchoud, 1992; Ducasse-Rogier, 2001, pp. 88–91).

With this reform, Western states responded to dramatic changes in migration processes. The onset of the world economic crisis in 1973 was the historical starting point for this development. In terms of regulation theory (cf. Gill, 2008), the global recession of 1973 was the final crisis of the Fordist mode of regulation of Western post-war capitalism, characterized by class compromises and relatively strong workers' movements. The restructuring of this mode of regulation in the next two decades was accompanied – especially in Western Europe – by the end of active recruitment of migrant workers and political attempts to block and prevent further immigration. Traditional immigration countries (i.e. the United States, Canada and Australia) made the entry of refugees and migrants increasingly difficult or more dependent on economic criteria. However, the political forces that supported reduced immigration (conservatives, as well as trade unions and social democrats) were defeated – in part due to capital factions representing economic sectors that profited from continuing immigration, especially if precarious or illegalized, but also due to the relative 'autonomy of migration' itself (cf. Kanak Attak 2004; Papadopoulos et al., 2008): movements of migration that had established themselves in the post-war period could not be turned off like a water tap. People continued to move, using new means: family reunification, asylum, tourist visas or irregular border crossings.

Additionally 'neoliberal reforms' (deregulation, privatization, financialization and free trade, later summarized in the Washington Consensus) were pushed through in bitter political battles from the 1970s onwards. They created the conditions for even greater international mobility. Western European states established the Common Market, the G7 countries and transnational corporations promoted the globalization of production and trade, and capital markets were largely deregulated (cf. Harvey, 2004, 2007; Klein, 2008). In short, the 'accumulation strategy' (Jessop, 1990, p. 198) of intensified economic globalization increased the international mobility of

labour. In large parts of the so-called developing world, millions of people reacted with community-supported migration projects to the 'shock strategy' (Naomi Klein) of International Monetary Fund (IMF) structural adjustment programs that followed the debt crisis of the early 1980s. Economic reforms and the political manipulation of crises resulted in an 'accumulation by dispossession' (Harvey, 2004): People could no longer survive as small-holder farmers in competition with international agribusinesses. Millions were driven from their lands, or lost jobs after public companies became privatized, public sector spending was reduced, or when 'uncompetitive' firms could no longer survive after their local markets were opened to Western transnational corporations. Thus, as a reaction to the establishment of a new, intensely globalized accumulation regime and its 'neoliberal' mode of regulation, millions of people began to move from villages to cities and from peripheral countries to capitalist core regions.

The post-War migration control apparatuses of Western industrialized countries, among them ICEM/ICM, were no match for these new migration movements that flexibly adapted to new political regulations by subverting or circumventing them. Moreover, different capital factions and political forces within the industrial countries disagreed sharply over tightened migration controls. These conflicts often resulted in lax enforcement and the tacit, if controversial, acceptance of immigration as long as migrant workers and refugees were actively illegalized by state policies (cf. Genova, 2002). In this situation in the 1980s, Western countries began to establish dozens of new institutions for migration control and migration research and exhibited for the first time a serious interest in international cooperation in the field. Thus, the reform and expansion of ICM/IOM was a part of a complex process in which hegemonic forces in Western industrialized countries tried to shift the balance of forces between their migration control capacities, on the one side, and the mobility strategies that populations, movements and individuals employed as a reaction to 'neoliberal' reforms on the other.

The implosion of the Eastern Bloc from 1989–91 and, thereby, the disappearance of the migration blockade within Europe accelerated and intensified these processes, the consequences of which gave IOM a historic opportunity. The organization provided Western states with studies and statistics on new East-West migration routes and background information on movement processes, mostly described together as 'smuggling and trafficking' (Ducasse-Rogier, 2001, p. 166). Starting in 1992, IOM established in rapid succession offices and projects in Eastern Europe and the CIS countries, including Albania and Romania, which were regarded by Western governments as particularly unstable (Ducasse-Rogier, 2001, pp. 117–20). Next to the end of the Cold War, the First Gulf War in 1990/91 was the single most important event at that time for IOM's subsequent expansion. The IOM prevailed over a politically weakened UNHCR and was made lead agency by the United Nations to support nearly one million migrant workers who had fled

after the Iraqi invasion of Kuwait (Loescher, 2001, p. 267). At the time, the major Western donor countries of UNHCR were unhappy with what they considered a too liberal position in what they perceived to be an escalating 'asylum crisis' (Loescher, 2001, p. 247).

The IOM and UNHCR have a long history of rivalry about competencies and government money and a general animosity growing from conflicting political assignments and philosophical worldviews (interview UNHCR staff, 05.10.2009). For IOM, the Gulf War signified a big moment as the organization engaged for the first time with many Middle Eastern countries, to which migrant workers had fled to from Kuwait, and with other home countries in South Asia and other regions. Many of these countries had previously viewed IOM with suspicion, seeing it as a tool of the US government (interview IOM staff, 05.05.2009). Shortly thereafter, several of these countries became IOM members, for example, Egypt (1991) and Pakistan (1992), or they joined as observers like India (1991), Jordan (1992) and Iran (1993). As a further result of IOM's constitutional reform and its active involvement in the Gulf Crisis, it acquired official observer status at the United Nations (in 1992) and was formally involved in the coordination of UN humanitarian operations.

Steady growth and collection of experiences in the crisis of migration control (1994–2000)

The early 1990s witnessed a burst of Western migration control activities: asylum laws were tightened with the concept of safe third countries; visa requirements were introduced for almost all developing countries; border controls were strengthened, leading to the death of thousands of people seeking a better life or a safe haven in Western countries. New research centres, state institutions and international organizations were founded, among them the European intergovernmental organization of the International Centre for Migration Policy Development (ICMPD) in 1993 (cf. Georgi, 2007), the Brussels-based think tank Migration Policy Group in 1995 and the International Metropolis Network in 1996. Existing institutions like IOM were also strengthened. Thus, while the IOM annual budget was almost stable from 1990 to 2000 (around 280 million USD), the organization doubled its membership from 39 to 79 in the same period. The new members from Europe, Africa, the Middle East and also Asia slowly opened 'new markets' for its services. The IOM consequently expanded into new areas of activity; for one, its research and policy functions were strengthened. The 'fight against illegal migration' and 'trafficking' also became completely new areas of activity. Under the label of 'capacity-building' IOM was active in the construction and modernization of state apparatuses for migration control, especially in Central and Eastern Europe and the CIS countries (Ducasse-Rogier, 2001, p. 106). At the same time, IOM became engaged by states and the United Nations in humanitarian operations worldwide, for example, after the civil wars in Mozambique, Tajikistan, Bosnia and Haiti

(Ducasse-Rogier, 2001, pp. 146–61). Within the IOM membership, these operations were – and to a certain degree still are – very controversial. Advocates of a strengthened IOM were set against states that wanted IOM to focus on the traditional areas of IOM's 'expertise', or areas of more direct interest to themselves (Ducasse-Rogier, 2001, p. 134; interview IOM staff, 02.10.2009).

Migration policy was debated with greater intensity in a whole series of regional forums, among them the Budapest and the Puebla Process, the large annual IOM Seminars and within the European Union. But IOM and other actors of the emerging international migration policy community considered the asylum laws, visa regulations and border controls established in the 1980s and early 1990s to be partially ineffective, badly coordinated, and too focused on walling-off Western countries, especially in Europe (cf. Georgi, 2007, pp. 33–5). Experts spoke about the 'global migration crisis' (Weiner, 1995), lamenting Western policies as ineffective and incoherent. They argued for an approach to migration that aimed to utilize the economic benefits that regulated migration could bring to industrial countries. Thus, in the 1990s migration became, for the first time, a relevant topic in international diplomacy at a global level and within the United Nations. Evidenced, for example, in its involvement at the UN International Conference on Population and Development (ICPD) in Cairo (cf. Purcell, 1994), IOM became very much involved in these processes. Shortly after this, the controversial Commission on Global Governance made migration one of its topics and engaged IOM adviser Bimal Ghosh to suggest the contours of a new international migration regime (Ghosh, 1995). Subsequently, some developing countries called for a UN world conference on migration as part of the series of major UN conferences at the time. Industrial countries, however, were strictly opposed to this idea, fearing that to debate such a 'sensitive' topic in a UN framework would lead to escalating conflicts between them and the Global South. Consequently, they delayed the political drive to hold such an official, high-level conference within the UN framework for over a decade. Partly as a reaction to this, IOM tried strategically to establish so-called regional consultative processes (RCPs) (interview IOM staff, 21.09.2009; interview UNHCR staff, 05.10.2009; cf. Hansen, 2010). RCPs are explicitly informal, government-led processes of conferences and workshops in which governments (and sometimes IGOs and NGOs) share information on migration movements, try to find partial consensus on regional migration policies and initiate cooperative projects. The IOM became the secretariat for some RCPs or supported them in an informal way, as with the Puebla Process in the Americas or the Colombo Process in South Asia (cf. Thouez/Channac 2006; Hansen, 2010). This regional approach became a hallmark for IOM's work, helping the organization to acquire contacts and new projects. It has been criticized, however, for its lack of transparency and de-democratizing working pattern (Overbeek 2002, p. 12; Betts, 2008, pp. 13–14).

It was in this economic and political context that the term 'migration management' emerged, first as a diffuse catch word. Then the term was used from 1997–2001 as a key concept within the IOM project New International Regime for the Orderly Movement of People (NIROMP). The aim of the project, coordinated by IOM adviser Bimal Ghosh, was to sketch out the contours of a binding international regime in which all forms of international mobility would be comprehensively managed in a coherent and efficient way on the basis of (primarily) economic criteria. A series of workshops was organized and reports were written. The book *Managing Migration: Time for a New International Regime* (Ghosh, 2000a) was the central result of the project. It helped to popularize the migration management concept: From around 2000, it was used by IOM in virtually all of its statements and publications, and in countless capacity-building projects and training seminars. While certainly not alone, IOM can be seen as the single most important actor in anchoring the migration management concept with its diffuse technocratic and economic notions into the emerging global elite consensus on migration policy. The emergence of the migration management concept must be understood, however, within the wider context of an increasing hegemony of 'managerial' concepts over many areas of public and even private life. The 1990s marked the decade in which the protagonists of 'New Public Management' became influential in shaping state practices. Migration policy was only one field. Other examples include education management, water management, or security management. With countless guidebooks on efficient time-, self- and stress-management, the managerial mindset became inscribed deeply in individual subjectivation processes (cf. Boltanski/Chiapello, 2007). It should come as no surprise that migration also came to be understood by politicians, bureaucrats and academics as something that could and ought to be managed.

IOM on the offensive: The McKinley era (2000–08)

Massive growth and expansion

The years from 1999–2001 marked the transition to a new phase in IOM's history. The demand by governments for IOM's services in migration control was greater than ever. The dominant strategies for economic and political transformation of the previous two decades continued to let millions of people choose international mobility as a counter-strategy over harsh social and political conditions. In Europe the experiences of the wars in Bosnia and Kosovo, the temporary dominance of centre-left governments, the upcoming Eastern EU enlargement and the strengthened role of the European Commission in migration control after the Amsterdam Treaty and the Tampere Programme created favourable conditions for IOM's further expansion. From 1998 to 2008 IOM's membership almost doubled from 67 to 125 (China and Russia remain only observers as of February 2010). The

number of field offices more than tripled from 119 to about 400. The annual budget quadrupled from about 240 million USD to more than one billion. And the number of employees increased nearly sixfold from about 1100 to over 6000, with 196 working in the Geneva headquarters (Swing, 2008, p. 8). A quote from the 2002 annual report highlights the optimism of those years:

Services expanded into new geographical territory, new offices were opened and existing offices were strengthened. New areas for priority action were identified and existing areas of migration management given new life and dimension. Existing partnerships were enhanced and new ones formed. IOM's role as provider of policy advice and a forum for discussions [...] was confirmed and enhanced.

(IOM, 2003a, p. 1)

This expansion was not only the outcome of favourable conditions. It was also to a large degree the result of a deliberate growth strategy initiated by the new IOM Director General Brunson McKinley, who had succeeded James N. Purcell in October 1998 (Betts, 2008, p. 9; interview IOM staff, 05.05.2009). McKinley, a former US ambassador to Haiti, conducted an offensive strategy of IOM expansion in new regions and fields of activity, thereby marking a new chapter in IOM's history. Despite all the changes in the previous decade, IOM maintained its traditional focus on transport logistics and highly-qualified emigration programmes until the end of the 1990s. Under McKinley these traditional activities were pushed to the sidelines (IOM, 2002, p. 1). New areas of work were established that had little to do with IOM's former activities or for that matter with migration; one example is the IOM-coordinated German compensation programme for former forced labourers from 2000–06. The new 'business areas' established during the 1990s gained further monetary and strategic relevance: the 'fight' against human 'trafficking' and 'illegal migration', the establishment of state institutions to control migration, and the so-called 'voluntary repatriation' of rejected asylum seekers or illegalized workers (often forcible deportation out of detention camps for those affected was the only alternative; cf. Human Rights Watch, 2007, pp. 5–6). Finally, IOM became more and more engaged in emergency and post-conflict operations, not least after the US-led wars in Iraq and Afghanistan. New management techniques aimed to make the work of the organization more cost effective, more flexible and faster. And like a transnational corporation, IOM decentralized its structure and shifted the departments of accounting, human resources, IT services and others from the Geneva headquarters to the low-wage locations in Manila (from 2002) and Panama (from 2007) (cf. IOM, 2009d, pp. 75–8).

Another strategic shift initiated by McKinley was to intensify IOM's relations with other actors in international migration policy. From the late 1990s

a whole series of new bodies was created for this purpose. In 1999 IOM created an Academic Advisory Board. In 2005 the Business Advisory Board (BAB) was established. It organized five meetings between the leadership of IOM and 17 current and former CEOs and senior managers of TNCs, like the UK-based Manpower Inc. or the International Organization of Employers (IOE) (IOM, 2010a). As of February 2010, 77 IGOs and NGOs had joined IOM as observer members. Among those that joined were NGOs that had previously been critical of IOM, like AI and HRW. In 2003 IOM initiated the foundation of the Geneva Migration Group, an informal body of six IGOs located in Geneva. The aim was to improve the cooperation between UN agencies and other IGOs dealing with migration issues through meetings of the respective heads of agencies.

While these and other initiatives certainly document the ambitions of IOM, scholars and political activists are well advised not to overestimate the Kafkaesque plurality of these structures: After some initial activity, IOM's Academic Advisory Board fell into disuse (interview IOM staff, 06.10.2009) and its Business Advisory Board had its last meeting in November 2007 (as of February 2010). With the end of McKinley's tenure as Director General, its future is uncertain (interview IOM staff, 02.10.2009). Most importantly, the Geneva Migration Group has run into severe problems after it was transformed into a much bigger body, the Global Migration Group, today comprising 14 IGOs. This shift was initiated by UN Secretary General Kofi Annan in 2006 at the suggestion of the Global Commission of International Migration. But due to conflicting interests and political perspectives among the involved IGOs, many participants now consider it ineffective and without future in its current form (ICMC, 2009, p. 9; interview UNHCR staff, 05.10.2010).

The IOM in close combat: Struggles within and against the organization

The rapid growth of IOM was realized with an effectively stagnant basic administrative budget. Despite massively increased project grants, IOM's rich member states insisted upon a policy of 'zero nominal growth' of the administrative budget and refused to increase their regular annual contributions. Poorer countries often did not pay at all or did so with much delay (e.g. IOM, 2002, p. 72). This resulted in heavy burdens of work for staff members and some dramatic situations. For example, in May 2002 IOM had to abruptly stop its commitment to Afghan refugee camps due to a lack of money (Dietrich, 2004). The staff was particularly affected by the uncontrolled growth. A report on a meeting of the IOM Executive Committee in 2005 records the staff's grievances:

The Staff Association was increasingly concerned about the long-term risks of low staff morale, due largely to contradictory management

decisions; the staff was paying the price for the successful growth of IOM. [...] staff morale and commitment [...] had reached unprecedented lows and a dangerous cynicism had begun to spread.

(IOM, 2005, pp. 8, 10)

With its massive expansion, IOM also came under increasing political pressure. From 2001 on, AI and HRW criticized the violation of human rights by IOM. Among other points, they targeted the organization's programmes for 'voluntary assisted returns' and its involvement in the 'Pacific Solution' in which Australia detained asylum seekers on remote Pacific islands (Amnesty International/Human Rights Watch, 2002; Human Rights Watch, 2003). Many NGOs were concerned that IOM had no 'protection mandate' established by international law and therefore lacked the structural independence and political will to protect refugees and displaced persons during conflict situations, such as in Sri Lanka or Darfur (cf. ICVA, 2004). Leftist groups contributed to this critique by making IOM the target of an international campaign, portraying the organization as the mastermind of global migration control and describing the agency's personnel using epithets such as 'spies and migrant hunters' (Noborder Network, 2002; Antirassismusbüro Bremen, 2004). The German Roma National Congress declared IOM to be its 'enemy' due to its ambivalent role in the compensation programme of former German forced labourers and its support for deportation of Roma people to Eastern Europe (Roma National Congress, 2001). While IOM rose in recognition and influence in international politics, its standing in civil society circles went through the floor.

Migration management: From a concrete project to a diffuse approach

While IOM expanded, its migration management project also changed its form. The NIROMP notions of migration management as a comprehensive binding regime were products of the 1990s and its post-Cold War Global Governance optimism. In 2001 the situation had changed: 'Humanitarian interventions' had failed in Somalia and had not even been attempted in Rwanda; the dotcom bubble had burst; the liberal euphoria about 'the end of history' was over. Above all, after the terrorist attacks of 11 September 2001 and the beginning of the War on Terror, neoconservative political forces gained increasing influence. The Bush Administration in the United States was not at all in favour of establishing global binding regimes or strengthening the United Nations. Thus, the experts – academics, politicians and factions within national and international state apparatuses that wanted to establish such a regime – were sidelined (interview IOM staff, 05.05.2009). Also within IOM, the understanding of migration management as envisioned in the NIROMP project were 'shelved' (interview IOM staff, 21.09.2009), at least officially. Migration management on a working level

meant something more pragmatic for IOM after 2001: It became a label for a rather diffuse and less specific direction in migration policy, holding its diverse and often contradictory services together.

Thus, instead of creating a binding regime, the 2000s saw a whole series of more informal global initiatives on migration that focused on sharing information and 'best practices'. Building on its expertise in regional consultative processes, IOM initiated similar processes on a global level. In 2001 the organization established the annual International Dialogue on Migration (IDM), which is part of the IOM Council meetings that take place each November, and supplemented with several workshops throughout the year. Also in 2001 IOM and the Swiss government started the Berne Initiative, a government-led global debating process, and produced its final report in 2004, titled 'International Agenda on Migration Management', and subtitled 'Common understandings and effective practices for a planned, balanced and comprehensive approach to the management of migration' (Berne Initiative, 2005). The tensions between the modest claim to offer nothing more than 'common understandings and effective practices' and the much grander aims of a 'planned, balanced and comprehensive approach' speak of the ongoing conflicts between the social and political forces that struggled over the future direction of international migration policy.

With these initiatives, IOM tried to put itself in the centre of the slowly emerging *informal* global migration regime. The organization, or at least its ambitious DG McKinley, was therefore not overly pleased about the institutional competition initiated by UN-Secretary General Kofi Annan in his second term of office after 2001. Annan, a former UNHCR employee, wanted to strengthen the UN's role in migration policy (interview UNHCR staff, 05.10.2009; interview IOM staff, 08.10.2009). Among other activities, he established the Global Commission on International Migration (GCIM), a body of academic and political experts, formally independent of the United Nations. Its 2005 final report, 'Migration in an Interconnected World', contained a series of important and often controversial recommendations; for example, a possible merger of UNHCR and IOM, a scenario to which both organizations were adverse (GCIM, 2005, pp. 75–6).

Then in September 2006, the UN General Assembly finally convened to debate the topic of 'migration and development'. This so-called High-Level Dialogue (HLD) was the culmination of the efforts towards a world conference on migration that had been going on since the 1994 International Conference on Population and Development (ICPD) in Cairo. The HLD produced few tangible institutional results. However, the fact that migration could be openly debated on a global diplomatic level without the discussions erupting in antagonistic conflict was noted as a success (interview UNHCR staff, 05.10.2009). It also proved that the efforts of IOM and other actors since the early 1990s to create a global elite consensus on managed migration had not been completely unsuccessful. The continuation of the debate

that began at the HLD, however, was heavily contested. The United States and other industrial countries were still against debating migration within a UN framework. The final compromise was to convene a Global Forum on Migration and Development (GFMD) outside the United Nations and without a permanent secretariat (Betts, 2008, p. 10). The annual GFMD meetings (2008 in Manila, 2009 in Athens, 2010 in Mexico) are limited to non-binding discussions and are described as mere 'talk-shop[s]' (cf. ICMC, 2009, p. 10).

Consolidation: IOM in post-neoliberalism

The year 2008 marked a new phase in IOM's history for two reasons (interview IOM staff, 21.09.2009). Most importantly, as of 1 October the organization was headed by a new DG: William Lacy Swing, a six-time US ambassador and former special envoy for the UN peace-keeping mission in the Democratic Republic of Congo. He was elected in June 2008, competing and winning against three other candidates. One of them was the former DG McKinley, who ran for a third term against the wishes of the US government (Nebehay, 2008; IOM, 2008b, pp. 3–6). Swing's strategy for IOM, as well as his tone, differs from that of his predecessor. In his first speech as DG to member states during the IOM Council meeting in November 2008, he addressed the different grievances that had accumulated during McKinley's term. He promised to take 'the organization's pulse' (Swing, 2008, p. 2) and listen more closely to the wishes of its member states and its staff. The IOM, he said, was 'ripe for change', and it was 'time for adjustment and consolidation' (Swing, 2008, p. 13). While not altering the organization's course, he seemed prepared to refocus IOM on its core mandate as a migration agency. The second reason for conceptualizing 2008 as a new phase in IOM's development is the outbreak of the world economic crisis. In his speech to member states in November 2008, Swing described the crisis as the 'Elephant in the Room' (Swing, 2008, p. 21) about which nobody knew for certain what he would do. While the crisis would not alter migration patterns profoundly, migrant workers would be severely affected. Additionally, the crisis would influence the migration policy priorities of IOM's member states, thereby also influencing the organization (Swing, 2008, pp. 21–30). Thus, while IOM's expansion and growth are unlikely to be as radical as in the 2000s, there are no signs that point towards a diminishing role for the organization in international migration control.

Contradictions of IOM migration management: Material dependence and relative autonomy

The historicization of IOM has made clear that the character, activities and political direction of the organization have shifted several times in the course of its development: It started as a small Western transport agency in the Cold War, went into a severe crisis in the 1960s, and only slowly

diversified its activities and its geographical reach in the turbulent times following the repression of the 'world revolution of 1968'. The IOM's chance for growth and expansion came in the 1980s and 1990s as its major Western donor states made the organization an element of their political reaction to the often unintended migration-related consequences of their 'neoliberal accumulation strategies' (cf. Jessop, 1990, pp. 198–201). The IOM's expansion, then, was part of an attempt on behalf of states to keep under control and harness the international movements with which millions of people, families and communities reacted to the accumulation strategies of intensified capitalist globalization and 'accumulation by dispossession'.

Still, IOM's image remains contradictory. On the one hand, the organization paints a positive image of migration. It speaks the language of migrant rights and claims to work towards 'humane and orderly migration regimes' that benefit all by creating win-win-win situations. On the other hand, its actual actions seem to be much harsher, drawing continued criticism from NGOs, academics and social movements. The organization appears to serve the hegemonic forces in industrialized countries in creating the bitter reality of migration controls characterized by thousandfold deaths at Western borders, by the mass illegalization of workers, and a world of detention camps and deportations. These contradictions cannot be explained alone by IOM aligning its rhetoric to the international human rights discourse, as has been suggested by HRW (Human Rights Watch, 2003, p. 2). Instead the differences between IOM's actions and its ideology should be understood as a contradiction between IOM's financial dependence on (mainly but not only Western) industrialized countries, primarily interested in control, and IOM as an international state apparatus and a large bureaucracy, which has its own political aims, strategic priorities and a relative autonomy from its member states. These factors will be briefly analyzed in the following two sub-sections.

The IOM's material basis: privatization of migration controls and projectization

The IOM's activities and general conduct are strongly influenced by its funding model. Like other public services (energy, water, communications, transportation, security, etc.) migration controls have been privatized and denationalized to differing degrees since the 1980s. In an outsourcing process, elements of reception and detention camps, health checks, the production of migration statistics or even of deportations have been transferred to NGOs, intergovernmental organizations and private companies. This transfer has been mediated by competition in different (partly non-profit) markets. For IOM, these markets are of even greater importance than for many other IGOs, since it does not even receive 4 per cent of its annual budget (in 2008) through the regular contributions of its member states. The administrative budget barely suffices to fund IOM's basic structure. The overwhelming share of 96 per cent was awarded to IOM by way of project

funding by individual states or other IGOs (IOM, 2009b, pp. 2, 43). The dependence on voluntary project grants has been further intensified by the introduction of an accounting method from the business world, called projectization or activity-based costing, after 1994. Projectization means that all 'staff and office costs associated with implementing a project are charged to projects through a time-allocation concept' (IOM, 2010b). Thus, unlike other IGOs, IOM cannot balance activities flexibly within a large regular budget. In practice, projectization implies that IOM is conducting those and only those activities that will definitely be financed by guaranteed project contributions from concrete donors. It might be compared to a company that produces only those goods that have been ordered in advance. Conversely, this means that staff and offices that are no longer financed by concrete projects will be laid off and closed. Thus, IOM is dramatically dependent on the successful acquisition of new projects to save the jobs of its 7000 employees (as of February 2010) and to maintain its influence (interview IOM staff, 02.10.2009). This dynamic creates an instrumental-rational logic that establishes the monetary value of a project as an independent and important factor in addition to its practical use-value or its normative justification. For example, many local IOM missions have no secured permanent funding. Thus, a head of missions is often responsible for constantly procuring new projects to save the jobs of the mission's staff members, along with his or her own job (interview IOM staff, 30.09.2009).

This funding model leads to IOM's strong dependence on its major donors: mostly Western governments of industrialized countries, which largely determine the activities that will be realized. Conversely, this dependence explains the general conduct of the organization: The organization prides itself on being 'entrepreneurial [and] cost-effective' (Swing, 2008, p. 11) and names as its 'Comparative Advantage[s]: Operational ethos; Speed of response; Efficiency of effort; [and] Effectiveness of result' (Swing, 2008, p. 38). The IOM operates and presents itself similarly to a private company. As a result, IOM is an actor that is relatively easy to work with for governments. Unlike many NGOs but also more 'normative' IGOs, like UNHCR or ILO, IOM never publicly criticizes its member states or donors (interview IOM staff, 02.10.2009). A consequence of this conduct is 'the perception that many NGOs (and others) have of IOM as an agency that will do anything as long as there's money with which to do it' (ICVA, 2004).

Struggles over international migration policy: IOM migration management as a hegemonic project

Moving forward from the material basis of IOM's activities to its rhetoric and politics, it is not easy to discern IOM's own political ambitions. Central reasons for this difficulty are IOM's professed apolitical, managerial values of efficiency, professionalism and entrepreneurship. Migration is mostly presented as a technical problem, a challenge – not as a political topic

associated with power struggles and diverging interests. For IOM there are 'policies and practices that have worked and those that have not' (IOM, 2006, p. 2). What previously was politics of migration, with all its connotations – principles, power, interests and conflicts – has been transformed into nondescript, apolitical migration management. By depoliticizing migration and migration control in this way, IOM also implicitly denies its own specific political and institutional interests, its structural and financial dependencies (cf. Ferguson, 1994). To overcome this apolitical view of migration control, it is helpful to distinguish the organized social forces (determined by class interests but also by gender, race and other social relations) with their political, intellectual and moral spokesmen that struggle over dominance in international migration policy (cf. Jessop, 1990, pp. 207–8; Morton, 2007). Without going into theoretical and empirical detail it might be said that there are at least three political projects that aspire to the status of a hegemonic project in international migration policy:

- (1) The strongest one is possibly what might be called the national sovereignty project, probably supported by most governments of industrialized countries. These governments are the material densifications of the relationship of forces supporting the national-social welfare states (Balibar, 2004, pp. 68–9). While agreeing to the sharing of best practices and increased *informal* cooperation in migration control among states, this project stresses the continued centrality of nation-states' power to determine entry, stay and removal of non-citizens on their nationalized territories. The protagonists of this project are thus opposed to any binding international framework on migration and have consequently derailed the attempts to push forward a global governance of migration during the 1990s, as envisioned in IOM's NIROMP-project.
- (2) A second broad project might be identified as the rights-based approach to migration. It might be said to range from social movements demanding a right to migration and global citizenship over the more radical NGOs like Migrant Rights International struggling for the adoption of the UN Convention on Migrant Workers' Rights (cf. Guchteneire et al., 2009) to progressive factions *within* some of the more 'normative' IGOs, like the ILO, UNHCR or UNDP. This project tends to privilege the individual rights of workers, migrants and refugees over nation-states' interest in control and technocratic schemes for a global management of migration. Therefore, this project might be said to materially densify the organized strategies of (mobile) populations, the working classes of developing countries, and the 'progressive-internationalist' forces within industrialized countries.
- (3) The third project could be called liberal global migration governance. Advocates of this project, including IOM, envision a close international cooperation in migration policy and a binding, treaty-based,

even supra-national global regime. This project includes progressive notions of a more humane, just and open regulation of migration, while stressing that this can only be realized within a firm framework of migration governance or migration management. Besides various academics and experts in the international migration policy community, like Bimal Ghosh, Thomas Straubhaar, Theo Veenkamp or the late Jonas Widgren, many big NGOs and international organizations might be said to support this project – even if their donor-driven practices contradict it in part (cf. ICMC, 2009). Additionally, some governments of emigration countries, like Mexico and the Philippines, could be seen as belonging here.

Of course, these three broad projects are a simplification. All contain different and even contradictory positions and currents. Within the third project, the IOM version seems to be characterized by a strong emphasis on the possible economic benefits of migration (cf. IOM, 2007; IOM, 2010c). A central theme of IOM's statements is to end the economically inefficient blockade of migration as well as the tacit policy of mass illegalization of workers and to realize the growth potential of *managed migration*. IOM Director General Swing thus summarized the main challenge facing IOM's member states as: 'How to ensure that the world is better prepared to manage the human component of globalization constructively' (Swing, 2008, p. 33). Migration is seen as positive because and insofar as it is economically beneficial. Thus, the policy objectives of IOM include restrictive border controls and effective deportation systems. These are seen as necessary preconditions for the introduction of effective immigration regimes for the economically desirable and productive. This also includes a 'fair' integration policy and the protection of 'genuine' refugees and asylum-seekers in regional protection areas from which some might be resettled to industrialized countries. The central theme is to enhance the nation-state's capabilities to control unwanted migration to an extent that will make a 'regulated openness' (Ghosh, 2000b, p. 25) towards useful immigration politically feasible. In a pragmatic way, its current activities are understood as necessary steps towards this aim (interview IOM staff, 21.09.2009). The IOM version of migration management/governance privileges the economically-defined utility of mobile people over their rights, hopes and plans. This utilitarian rationality warrants, conceptualizing IOM as supporter of a *neoliberal* current in the global migration governance project.

Conclusion

As this chapter comes to an end: how can the question posed at the beginning be answered? IOM migration management – for the benefit of whom? As has been noted at the beginning, a comprehensive answer to this question

would need to involve more extensive empirical research on actual activities of IOM, especially 'in the field'. Given the rather weak state of research on IOM, however, it makes sense to conclude with three working hypotheses that might serve as starting points for further research and debate:

- (1) *Migration management primarily benefits the hegemonic forces in IOM's major donor states, mostly Western industrialized countries:* Looking with a bird's eye view at IOM's history, it might be said that the organization was one of many instruments used by mainly Western governments to keep migration-related consequences of the central world's historical developments after World War II under control – and utilize them in their interest. The IOM was founded in 1951 to solve the problem of an unproductive and potentially unruly 'over-population' in Europe by facilitating overseas emigration. Soon it acquired a new role within the Cold War. It organized the reception and resettlement of Eastern European refugees who fulfilled a crucial ideological function in the Cold War as they 'proved' Western superiority in the ideological competition with the 'Communist Bloc'. From the 1960s onwards ICEM/ICM then became a useful tool to 'manage' the large refugee flows that resulted from the repression of the 'world revolution of 1968' in the CSSR, in Chile, Vietnam and elsewhere. Finally, from the 1980s onwards the organization's focus shifted again as it served the hegemonic forces in Western countries to control and harness the often unintended migration-related consequences of the accumulation strategies of intensified capitalist globalization and accumulation by dispossession.

It has to be stressed that IOM should not be interpreted as acting in the interest or for the benefit of 'the Western industrialized countries', nor simply in the interest of the governments of those countries. From the perspective of materialist state theory the state is not independent of the social forces struggling in society. Instead it is itself a battlefield for those forces. The state is, as Nicos Poulantzas put it, the material densification of relationships of forces in society (cf. Bretthauer et al., 2010). Thus, the respective hegemonic forces in a given period do not control the state directly as has been thought by orthodox Marxists. Instead the state has a relative autonomy. It has its own materiality and logic. This leads to a transformation and form-changing of social struggles that are fought out on the territory of the state. But because IOM is an international state apparatus it is a 'densification of the second order' (Brand et al., 2008): In its apparatusive materiality it densifies the relation of forces between its member states' governments and their national state apparatuses, whereby the national state apparatuses are already densifications of the relation of social forces in different national and regional settings. As a result, the practices of IOM migration management are conducted in the interest and for the benefit of the dominant or hegemonic social forces

in its major donor states, which are mainly Western industrialized countries. The hegemonic social forces in these capitalist countries (changing compositions of specifically gendered and racialized fractions of capital and organized labour) and their strategic priorities have of course shifted over the six decades of IOM's existence, thereby also transforming the organization and its functions.

- (2) *Managing migration for the benefit of IOM itself*: However, IOM is not only a tool being used. The organization has, like any IGO, or any bureaucracy for that matter, its own dynamic. For a large part of its history it was fighting for secured and permanent institutional existence, and in general for increased influence and expansion. It was taking part in the social and political struggles with its own political and institutional interests and positions. The existence, growth and activities of IOM, then, should not be interpreted only as a result of its usefulness to the hegemonic forces in its Western industrial donor states, but also as the result of the IOM bureaucracy fighting for its own benefit: securing jobs and careers, achieving higher social status and political influence. In short, the operative and discursive practices of migration management benefit IOM in its form as a bureaucracy and relatively autonomous (international) state apparatus. Besides securing jobs for its staff, migration management also advances IOM's 'own' political project which can be described as neoliberal global migration governance.
- (3) *Managing migration to the disadvantage of refugees, migrant workers and the subaltern classes of developing countries*: To give an answer to the question of who is benefiting from IOM migration management, it is also necessary to point out who is not. No doubt, on an individual basis, IOM has benefited many refugees and migrants by providing food, shelter, medical aid, advice or transport services. No doubt, on an individual level most IOM staff members genuinely want to 'help' migrants. While not denying benefits to individual persons, on a more fundamental level it may be argued that IOM is not acting for the benefit or in the interest of refugees and (potential) migrant workers.

Millions of refugees can't reach safety from persecution in Western liberal democracies because these have been surrounded by ever stricter, and ever further externalized border controls, supported by IOM capacity-building and constantly updated by its policy relevant research. The hopes of thousands of asylum-seekers have been crushed in IOM-run detention camps on Nauru, in Indonesia or in the Ukraine. In a similar way, millions of workers are being illegalized as a result of advice and laws drafted by IOM, and are further being deported 'voluntarily' through IOM's much criticized assisted voluntary return programmes. Finally billions of people in the developing countries who are not part of

local elites and who are not deemed to be exploitable as highly qualified workers are effectively imprisoned in 'their' homelands. Etienne Balibar has described this as a 'global apartheid' in which zones of limited mobility are created for the subaltern, 'dangerous' working classes. The world population is divided and distanced along class lines by the surveillance of movements, by border fences, detention camps and deportations – in short, by a system of migration management. The IOM participates in building and reproducing this system, partly because the organization serves the control-interests of the hegemonic forces in its major donor states, but also because its own neoliberal version of global migration governance implies the subordination of the rights, plans and hopes of individuals for a better life under abstract principles of economic utility and a technocratic belief in the 'management' of human mobility. As such, IOM manages migration for the benefit of only some.

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4

Imagined Migration World: The European Union's Anti-Illegal Immigration Discourse

William Walters

Introduction

Conventional approaches to questions of unauthorized or unwanted migration often treat policy as a self-evident response to a prior social and economic problem (Schloenhardt, 2001). As they see it, 'illegal immigration' is something that, for various and perhaps complex reasons, happens; governments have to develop 'solutions' to this 'problem'. However, a notable trend in recent scholarship is to treat the governance of illegal immigration – what I propose to call *anti-illegal immigration policy* – as an 'important object of study in its own right'.¹ According to this reading, migration governance should be examined in terms of programmes, discourses, experts, technologies and interventions which do not simply respond to something already there, but instead operate as an active and constitutive force which shapes the social world in particular ways with particular political consequences. This turn towards analyzing anti-illegal immigration activity as a performative and irreducible regime of practices is evident in the literature in a number of ways. For instance, it is manifest in the growing body of work utilizing the analytics of 'securitization' and 'criminalization' to explain how certain categories of migrants find themselves subject to exceptional and often quasi-authoritarian forms of treatment (Waever et al., 1993; Bigo, 2002; Ceyhan and Tsoukala, 2002; Buonfino, 2004; Huysmans, 2006). It is also apparent in a range of critical studies which examine how policies of heightened border control typically fail to achieve their stated aim – namely the 'prevention' of unauthorized immigration – while instead pushing migrants and refugees ever closer towards situations of human smuggling and perilous and often fatal forms of border crossing (Sassen, 2003; Cornelius, 2005).

This chapter seeks to contribute to this research focus of anti-illegal immigration policy by engaging with one particular case: the formation of a common policy on illegal immigration at the level of the European Union.²

I seek to build on emerging research on this new area of EU governance (Mitsilegas, 2002; Samers, 2004; Geddes, 2005). Much research on the governance of illegal immigration is couched at a relatively systemic level, and involves generalizations about the state, security, neoliberalism, processes of debordering and rebordering and so on. Less common are studies that examine particular programmes, strategies, events and controversies. Yet research that takes a more situated and case-oriented approach has many benefits. For instance, as Ngai (2004) demonstrates in her study of the 'impossible' subjecthood of the 'illegal alien' in the United States, such an approach can offer insights as to variations in the construction of illegality across different social, national and ethnic identities.

Drawing inspiration from this more empirical and case-focused style of engagement with questions of illegalization, this paper seeks to further our understanding of the emergent realm of anti-illegal immigration activity by focusing not on a particular state, but the transnational political regime of the EU. The chapter offers a critical analysis of what the EU sometimes calls a 'combat' against illegal immigration by undertaking a careful reading of some of its key texts (European Commission, 2001a; Official Journal, 2002; European Commission, 2006).

The central theme of this edited collection is that a new politics of migration is emerging in connection with the multiplication of international and regional organizations specializing in the regulation of global mobility. This politics is related not just to the rise of new political and organizational actors, however, but to a new way of framing the question of migration, namely as one of 'migration management'. To date we lack an adequate understanding of the politics of migration management. A critical focus on anti-illegal immigration activity in the context of the EU can be useful in this context in at least two ways.

First, it will focus our attention on what is one of the most (in certain respects perhaps *the* most) crucial issues within the discourse of migration management. This is the question of illegal migration. I argue that illegal migration is far from being the kind of self-evident transgression that policy or media narratives, not to mention certain scholarly accounts, would often have us believe. On the contrary, it is a complex and ambiguous phenomenon. My aim is to explore some of the founding political, ethical and sociological assumptions at work in the EU's 'combat' against illegal immigration. For instance, just what does the EU understand by 'illegal immigration'; what kinds of migrant subjects are being invoked here; and what forms of power and authority are being sanctioned? Is illegal immigration in fact systematically defined, or does it operate, as one critical reading has suggested, more as a 'phantom transgressor' (Challenge, 2005) that haunts the public imagination fuelling a politics of fear and anxiety?

Second, a focus on anti-illegal immigration activity within the framework of the EU will enable me to develop a broader point. This is the claim

that as new actors enter into the field of migration governance they bring with them particular ways of seeing and organizing the world. I argue that the EU's common policy on illegal immigration is about much more than the governance of irregular forms of mobility, or even the social construction of certain forms of mobility, and certain forms of life *as* irregular. It is also about how the EU naturalizes a particular 'imagined world'. Embedded within the 'combat' against illegal immigration is a political imagination in which Europe is cast as a bounded, self-contained region distinct from and confronted by an external world of similarly bounded but far less well-governed political entities. Illegal immigration is at once a major symptom of this asymmetry in governance capacity, and a source of justification for Europe to involve itself in attempts to remake the world beyond it in the image of the well-governed, territorial state. In short, anti-illegal immigration activity is more than a branch of migration management. It is nothing less than state-making in a new form. That Europeans, to put it mildly, have a long history of exporting their image of the state, often with very troubling consequences, is one reason why we should take anti-immigration activity seriously as a political project.

The chapter is organized into two sections. The first surveys key aspects of the context and content of the EU's common policy on illegal immigration. The second offers a critical discussion of this programme that concentrates on teasing out the unspoken assumptions as well as some of the contradictions embedded in its policy narrative. It should be stressed that I have not attempted to provide an exhaustive overview of the policy documents generated by the common policy. Since my objective is to analyze the basic terms, metaphors and concepts which the EU uses in imagining the world it seeks to govern, I have confined my attention to a smaller group of documents and action plans which provided the initial blueprint for the policy, along with a few more recent publications which serve to indicate recent changes in policy priority and focus.

One final caveat is in order. Throughout the chapter I speak of 'the EU' as though it were a relatively unified actor that possesses a policy and a worldview concerning illegal immigration. As any student of the politics of the EU would no doubt object, this move glosses over the fact that the EU is a complex, multilayered and sometimes fragmented political regime. It goes without saying that there are significant differences in the way in which the European Commission, the Council of the European Union, the European Parliament, or executive agencies like Frontex approach the question of illegal immigration. Forging a common policy in areas of migration is therefore a difficult inter- and intra-organizational political activity in its own right. However, it would take a different kind of paper to explore such a politics. This chapter does not offer insights into the institutional politics of forging a common policy within the EU political framework. Instead, it concerns itself with investigating features of the discourse of

anti-illegal immigration that might be held in common across these different institutional sites.

A common policy on illegal immigration: context and content

The onset of a significant degree of 'Europeanization' in the area of migration policy is usually dated to the 1980s when transgovernmental cooperation and cross-border networking amongst experts in the migration field began to gain momentum. This process began outside the formal institutions of the European Community/Union, advancing in such intergovernmental fora as Trevi, the Ad Hoc Group on Immigration, and the Schengen Group (Huysmans, 2000, p. 755). In keeping with the general shift which had occurred in national migration policies, namely from a positive emphasis on the recruitment of foreign labour to the stemming of migratory flows (Guiraudon and Joppke, 2001), these bodies were largely preoccupied with questions of border policing and migration control. Operating at some distance from public scrutiny, they helped to cement a particular framework, a 'European internal security field' (Bigo, 1994). This created an institutional nexus of migration questions with transnational issues of crime, law and disorder. In solidifying this securitized conception of migration, these bodies generated a cognitive and administrative template for the regulation of migration, key elements of which subsequently found their way into the European Union (EU). This is quite evident in the case of the Schengen Group. Schengen did much to formulate a relatively novel distinction between 'internal' and 'external borders' in relation to the question of migration control, just as it helped to incubate a set of technical procedures and protocols pertaining to the practical management of borders (Walters, 2002).

But while questions of illegal immigration and border control were for some time being addressed within these transgovernmental spaces, it was not until the start of the new century that the EU would unveil a common policy specifically regarding illegal immigration. If the Treaty of Amsterdam (1998) was to commit the EU to the development of a common policy in immigration and asylum matters, and provide a legal foundation for remaking Europe as an 'area of freedom, security and justice', then a common policy in the area of illegal immigration has been presented by the EU as 'the missing link' of this ambitious project (European Commission, 2001a, p. 3). From the outset, it should be stressed that the EU's version of anti-illegal immigration policy is legitimated not simply by the claim that it will mitigate unauthorized and unwanted forms of residence and migratory movement, but that this activity is an integral part of establishing a 'comprehensive' European framework for the wider governance of all forms of migratory movement. That said, the fact remains that EU competence in

the area of 'legal' migration, such as its labour migration policy for non-EU nationals, remains weak (Geddes, 2005, p. 797). In the period since the project of a common policy on illegal immigration was first announced, political investment and institutional development in what Geddes calls 'the more coercive aspects of migration policy' has significantly outstripped legislative and political actions directed towards opening the EU more fully to migration from beyond its borders. Meanwhile the so-called 'Hague programme' (2005–10) for developing EU immigration and asylum policy, and justice and home affairs more broadly, has been criticized for according the area of legal migration a 'very low priority' (ILPA, 2004, p. 12).

The criticism that the EU has failed to achieve a more developed and generous policy of labour migration for non-EU nationals, particularly given the case that is often made on demographic and economic grounds for higher levels of permanent migration into the EU, has to be carefully qualified (see, for example, Favell and Hansen, 2002, esp. 595–6). Above all, such criticism needs to be tempered by recognition of the fact that the political and geographical expansion of the EU has already effectively de-restricted key aspects of the immigration policies of the member states. While 'transitional provisions' may presently complicate the prospects of, say, Romanian nationals seeking work in France, in the longer term, the enlargement process will offer them the same opportunity as other EU citizens to migrate and work in all EU member states. But however momentous, this development does not change the fact that there is a very marked imbalance at the EU level between the political capital invested in anti-illegal immigration policy, and that directed towards the opening of labour migration for non-EU nationals.

I stated above that we should be cautious about portraying the EU as a monolithic actor operating in the field of migration governance. But we should also be careful not to imply that it acts alone in developing and implementing its agenda. We have already noted that the initial formulation of an EU programme in the area of border control and anti-illegal immigration did not simply evolve 'within' the institutional parameters of the EU. Instead, key elements took shape within a complex field of security agencies and ad hoc bodies, like the Schengen Group, many of which were located formally outside the EU's institutional matrix. Similarly, the pursuit of anti-illegal immigration activity is, of course, not conducted by the EU alone. On the contrary, it is undertaken in 'partnership', to use one of the favoured keywords, with a variety of intergovernmental agencies, nongovernmental agencies, and private actors. To take but one important example, the International Organization for Migration (IOM) has emerged as a key mediator and a kind of consultant for states in the process of joining, or hoping to join, the EU's privileged club of states. It was IOM who played a leading role in preparing the states of Central and East Europe for accession to the EU in the mid 2000s. Through its expert discourse IOM encouraged

these countries to imagine the governance of migration in new ways: in terms of certain privileged and technocratic concepts like 'migration management'. At the same time, it operated as a key conduit for channelling EU funds into projects aimed at shaping and improving the performance of the migration control 'systems' of the new states, and aligning them with EU standards – as with IOM's involvement in the EU-funded PHARE projects aimed at enhancing 'migration, visa and external border control management' (Bojcun, 2005).

Given that the EU's transnational pursuit of anti-illegal immigration activity mobilizes and co-opts a variety of organizational actors, it would be better to picture its geographical extension into the regions bordering the EU not in classical state to state terms, but as a form of governance at a distance and governance through networks. Duffield (2001) has proposed these terms to make sense of the new forms that international aid and development policy is taking. However, they seem apt in describing the politics of migration management as well. Crucially, the 'network' is not merely a convenient or fashionable metaphor here. Instead, it refers to the infrastructure through which the governance of aid is actually practiced – 'a widening range of contractual tools, performance indicators, partnership frameworks and auditing techniques link metropolitan states – in the same way as donor governments – to a growing number of non-state organizations and commercial companies. As a means of governing at distance, new public management techniques have allowed novel and flexible forms of strategic alliance to emerge that cut across traditional institutional, professional and sector boundaries' (Duffield, 2001, p. 318).

Future research could fruitfully examine anti-illegal immigration activity as a form of networked governance in which the EU is certainly a key node, but by no means the whole story. At the same time, it will be important not to overstate the coherence or consensus between the various agencies that populate these networks. For example, certain disagreements have recently surfaced between IOM and Human Rights Watch (HRW). The latter has protested what it sees as IOM's tendency to reframe its migration policy activities in the language of the humanitarian. HRW is troubled that IOM lacks any formal mandate for monitoring human rights abuses or affording humanitarian protection to refugees. Furthermore, it is concerned that, for example, by sponsoring deportation programmes for certain classes of migrants, IOM could be participating in activities which themselves violate those migrants' human rights (HRW, 2003). Examples like this suggest that these governance networks may appear on first inspection as new spaces of technocratic administration. But they can also be the settings of politicization and conflict. If it is indeed the case that the contemporary scene of migration management is increasingly populated by a host of new migration actors, we should not assume they all pull in the same direction or co-exist in harmony.

Having considered certain key aspects of the context for the EU's common policy on illegal immigration, let us now turn to address its content. Once we begin to examine the substance of the EU's common policy it soon becomes apparent that it remains consistent in key respects with the earlier paradigm, the one formulated within international agencies operating outside the framework of the EU, which saw unauthorized migration largely as a 'problem' of security, and an issue to be addressed first and foremost by measures of improved policing, international and inter-agency cooperation. Certainly there are declarations of the need for a 'balanced' approach that does not sacrifice the commitment to human and refugee rights at the altar of internal security (Official Journal, 2002, p. 14). Nevertheless, at the heart of the common policy on illegal immigration one finds an 'action plan' detailing a series of security-related measures. These are institutional objectives that are to be achieved over specific time periods. While the precise content of this list has evolved with time, the main measures have remained quite stable. They are: a more unified system for administering visa policy across the EU; improved information exchange and analysis between policing agencies (including an 'early warning system' designed to instantaneously communicate incidents of illegal migration); measures relating to border management at the external frontiers of the EU; pre-frontier measures (see below); a readmissions and return policy designed to smooth the removal of illegal entrants and failed asylum-seekers from EU space; and the enhancement and enforcement of legal measures penalizing various actors involved in smuggling, trafficking, and illegal employment, as well as commercial carriers who fail to adequately police the status of their own passengers.

It is important to note in passing that the common policy is being sold to the public on the grounds that it represents a 'comprehensive' approach to illegal immigration. For this reason it is, to say the least, somewhat peculiar that the original list of measures and actions barely mentions one of the most significant policies to be employed in a number of the member states and elsewhere, namely programmes to regularize the residence status of undocumented persons. The virtual absence of any reference to regularization in the original documents gives the impression this was not so much an act of oversight as some kind of political taboo.³

However, if there are certain continuities between the EU's formulation of anti-illegal immigration activity, and the way in which the question of unauthorized migration was being formulated within international agencies in the 1980s and 1990s, there are also certain ways in which the EU's common policy takes anti-illegal immigration policy in new directions. There are two I want to mention here.

The first concerns the theme of 'partnership with third countries' and illustrates the way in which the pursuit of enhanced 'pre-frontier measures' has located anti-illegal immigration activity squarely within the realm of

geopolitics (Samers, 2004; Geddes, 2005). The quest to enlist countries like Libya, Algeria, Ukraine and Belarus in the EU's campaign against illegal immigration was stated most forcefully by the European Council meeting in Seville in 2002 which concluded: 'Any future co-operation, association or equivalent agreement which the EU or EC concludes with any country should include a clause on joint management of migration flows and on compulsory readmissions in the event of irregular immigration' (Geddes, 2005, p. 793). Paralleling this stated objective there is evidence of a whole raft of programmes that have institutionalized this 'external dimension' of anti-illegal immigration activity either within wider international and regional development initiatives, or within entirely new schemes specifically dedicated to migration management. An example of the former is TACIS (Technical Assistance to the Commonwealth of Independent States), which targets states of the former USSR and combines measures to promote anti-corruption and anti-drug smuggling activity with enhanced border management (Samers, 2004, p. 39). An example of the latter is the 'Rabat plan of action' agreed at the 2006 Euro-African Ministerial Conference on Migration and Development (Noll, 2006). Reflecting the way in which irregular migration from and through North Africa is now located at the centre of Europe's imagined geography of illegal immigration, this initiative links repressive measures (such as the comprehensive reinforcement of border control by European and African air, naval and police forces) to a substantial boosting of development aid. For instance, as part of the package, the Europeans have promised to make available \$22.7 billion in development assistance to support their African 'partners' over the next 7 years. This commitment is in part rationalized by the argument that an improvement in the African economic situation would pre-empt the need for emigration. In both these cases one sees the project of anti-illegal immigration becoming linked to the process which Duffield (2001) has called the 'securitisation of development'.⁴

The second observation I want to make at this stage about the common policy on illegal immigration concerns its relationship to 'legal migration'. The EU draws a sharp distinction between 'legal' and 'illegal' forms of migration, and then places these two forms in a particular relationship. This distinction is in many respects foundational to the very possibility of a common policy on *illegal* immigration, and I will discuss its political implications at greater length later. Here I want to comment on the kind of relationship which is observed to obtain between them. In one of the earliest enunciations of the common policy, a relatively cautious position is outlined: it is observed that 'opening or re-opening legal channels for migration cannot be seen as a panacea for illegal immigration' (European Commission, 2001a, p. 6). In later documents a more optimistic position is set out: the establishment of 'clear and transparent EU rules on legal migration' is to be encouraged since this may 'itself reduce illegal immigration by offering

perspectives to those who may otherwise migrate illegally' (European Commission, 2006, p. 3). Elsewhere, a study devoted to the question concludes that there is indeed 'a link between legal and illegal migration but the relationship is complex and certainly not a direct one since a variety of different factors has to be taken into consideration' (European Commission, 2004, p. 20).

Whether or not the link is positive or negative is, for my purposes, not the point. What is more interesting is the very fact that some kind of link is thought to exist, and has been made the object of policy knowledge and political experimentation. For this suggests that we are also witnessing a subtle shift in the political rationality of labour migration policy. In the age of Keynesianism, labour migration policy was largely about meeting the perceived 'manpower' and demographic needs of the economic and social systems. While these objectives remain in place, albeit reformulated in the neoliberal idiom of global competitiveness, it seems that labour market policy is now being accorded an additional function – one of security. Henceforth, labour market policy, now reframed as a central element of 'legal migration', is expected to contribute to the fight to suppress illegal immigration and associated forms of criminality. If anti-illegal immigration activity is contributing to the securitization of development, it gestures also to a parallel movement in which labour migration policy itself becomes an instrument not just of social security but internal security.

But in certain places the EU expresses the wish that the legal/illegal relationship will operate in the other direction as well. 'Effective action against illegal immigration plays an essential part in contributing to public acceptance of admission for humanitarian grounds by preventing misuse of the asylum system' (Official Journal, 2002, p. 25). Not only could a more transparent and perhaps more generous labour migration policy reduce the demand for illegal entry, but a more effective anti-illegal immigration policy could restore public trust in the asylum procedure and foster greater acceptance of other forms of legal migration as well.

While the logic of this argument seems quite reasonable, it rather ignores two things. First, as human rights campaigners have documented, the practical conduct of the fight against illegal immigration threatens to erode Europe's basic commitments and obligations in the area of human and refugee rights (Human Rights Watch, 2002). The growing use of detention as an instrument within the governance of migrants in many European countries has itself been identified as a source of rights-violation. Meanwhile certain anti-illegal immigration measures, such as the extension of the visa regime, are making it harder for refugees to reach European territory in the first place, and therefore lodge claims for asylum.

Second, anti-illegal immigration policy runs the risk of fuelling rather than assuaging public anxieties which associate migration with crime and disorder. The policy seems to assume that undocumented migration can be

engaged as a security issue, and governed through measures of policing and crime-prevention, without this securitization of the undocumented migrant spilling over into the wider field of migration and asylum. It is as though we are asked to believe that the securitization of undocumented migration is a necessary and acceptable price to pay for normalizing and de-dramatizing other forms of migration. But we might wonder whether sceptics and opponents of 'immigration' are always so careful to distinguish between the 'bona fide' and the 'bogus' (den Boer, 1995).

Critical discussion

Having surveyed the context and content of the EU's anti-illegal immigration policy, I want to now move to a more critical discussion that interrogates some of its underlying assumptions. It seems appropriate to begin by examining the very notion of illegal immigration, the object of policy itself. Here we might begin with a question of terminology. It is worth noting at the outset that the EU persists in using the somewhat controversial term 'illegal immigration' despite the fact that many other major policy actors, such as the ILO and IOM, now prefer slightly less pejorative concepts like 'irregular migration'. The fact that 'illegal immigration' conjures associations with criminal elements and law breaking has not, it seems, proved sufficient for the EU to amend its official vocabulary (ILPA, 2004, p. 4).

In addition, we should also note the frequent description of the policy as being a 'fight' or 'combat' with illegal immigration. While the EU does not explicitly identify migrants as an enemy, morally charged terms like 'combat' do seem to nudge anti-illegal immigration activity towards a terrain which Žižek (2004, p. 71) calls 'ultra-politics'. This is a space which posits a radical conflict between an 'us' and a 'them'. Placing the 'them' beyond the pale, outside the space of political dialogue, ultra-politics in fact shades into what I have elsewhere explored as anti-politics (Walters, 2008a). It forecloses the possibility that those deemed 'illegal immigrants' might be capable of assuming the status of political interlocutors. The EU's anti-illegal immigration policy certainly does not cast its subjects as demonic or evil in the way that certain forms of counter-terrorism do. But it does have something in common: it operates with the assumption that the migrants in question have no speaking part to play in the political process. A mere glance at EU White Papers in areas like youth policy shows they are obsessed with the need to foster the participation of young people. To this end they propose the adoption or expansion of various technologies of voice, consultation and dialogue (European Commission, 2001b). Contrast this with the common policy on illegal immigration where there is to be no space for the migrant's own perspective on the migration process.

But aside from this matter of terminology, and what it might tell us about the ultra- and anti-political dynamics of the 'fight' against illegal immigration, and indeed the wider project of migration management, there is the question of just what it is that the EU understands by illegal immigration. If we take the view that anti-illegal immigration activity is not simply a response to a self-evident problem but rather a political, moral and conceptual intervention which actively shapes the social world it encounters, including the very meaning of migration, then how is the EU contributing an influential definition of illegal immigration and with what consequences?

Perhaps we can begin answering this question by noting that although the EU speaks assuredly of illegal immigration as a problem menacing its member states and their citizens, there seems to be a significant degree of ambiguity as to the precise nature of the phenomenon. The point is brought home by one commentary that notes that there is, as yet, no agreed definition in EU law of illegal immigration nor indeed of the irregular migrant (Challenge, 2005). This leads the authors in question to suggest that illegal immigration operates as something of a phantom that haunts the space of migration and security policy. This problem is compounded by the fact that the EU typically places the appearance of the phantom sometime in the future: illegal immigration is discussed as something to be 'prevented' (see, e.g. European Commission, 2001a, p. 9), for example by 'pre-frontier measures', even though 'one cannot logically be an illegal immigrant in a country one has never entered' (Challenge, 2005).

The elusive character of illegal immigration is further confirmed when the EU discusses the difficulty of gauging it quantitatively. In making the case for better information analysis the EU offers the rather startling confession that it is 'by definition impossible to have a clear picture of the scale of the phenomenon of illegal immigration in the Member States of the European Union', and seems to suggest that the best that can be hoped for is an 'estimate' derived from 'hard data' related to such matters as refused entries and deportations (Official Journal, 2002, p. 28).

But while EU law on the subject may be underdeveloped, and statistical practice quite imprecise, this is not to suggest that there exist no working principles or tacit assumptions which give coherence to the EU's version of anti-illegal immigration policy. A careful reading of the relevant documents reveals that there is indeed a particular political, geographical and social imagination of illegal immigration at work. This point can be clarified if we consider first the imagined *spatiality*, and then the imagined *sociality* of illegal immigration that lies behind the EU's various policy measures and prescriptions. As we will see, both entail some rather questionable and problematic assumptions.

The imagined spatiality of illegal immigration

In the EU's version of anti-illegal immigration policy, illegal immigration has a profoundly spatial, and more specifically territorial identity. This is what I call its imagined spatiality. The main policy documents typically begin by recognizing that illegal immigration can occur either on the basis of unauthorized border crossings, often with the facilitation of criminal elements, or by virtue of individuals who violate the terms of their residency (e.g. overstaying on a visa, or taking unauthorized employment) (European Commission, 2001a, p. 7; Official Journal, 2002, pp. 24–5). Yet it takes little more than a glance at the checklist of recommended measures and actions to realize that these are overwhelmingly targeted at stemming unauthorized border crossings into the EU, and at preventing (would-be?) illegal migrants from reaching the EU's frontiers in the first place. Although the EU recognizes that illegal immigration can occur, as it were, through processes 'inside' the EU, in practical terms, most of the institutional and financial resources seem to be targeted on measures like visa policy, external border management, and 'partnership' with third countries. Hence, in the Santiago Action Plan, a mere two out of 102 paragraphs are devoted to the question of illegal employment (Official Journal, 2002, p. 33). A more recent statement on future policy priorities redresses this somewhat when it recognizes illegal employment as a 'key pull factor' (European Commission, 2006, pp. 8–10), while the European Commission is currently investigating the case for a harmonized EU framework for imposing sanctions in employers of illegal migrants (Carrera and Guild, 2007). But overall, the tacit assumption still seems to be that illegal immigration comes from outside the EU, and the best way to 'prevent' it is through the policing of borders, strategic ports and other channels of entry.

While the unauthorized crossing of borders is clearly a significant aspect of unauthorized migration more broadly understood, this imagined spatiality emphasizing the territorial character of illegal immigration is highly problematic. For it is by no means clear that unauthorized border crossing is as central a feature of illegal immigration in Europe as the EU's policy implies. Although data on illegal immigration is, as the EU itself recognizes, far from systematic or comprehensive, and although patterns differ from one country to the next, there is considerable evidence to suggest that a significant number of the persons deemed 'illegal immigrants' enter through authorized channels and only become 'illegal' when their visas expire, their refugee claims fail, and/or they take unauthorized employment. Indeed, in many countries this, rather than illegal border crossing, may constitute the principal source of unauthorized migration.⁵ Considered according to its own criteria, its own definitions of illegal immigration, the common policy is flawed if for no other reason than the fact that it is so preoccupied with 'external' rather than 'internal' sources of illegal immigration. The EU may claim to be combating illegal immigration, but it is more accurate to observe

that it is only concerned with *particular forms* of illegal immigration. The 'illegal immigration' of the American student working off the books in a London pub barely appears on its radar screen. The combat is focused, rather, on the 'illegal immigrants' dramatized by constant TV and newspaper reporting of the 'border spectacle' (De Genova, 2002) – the Africans ferried across the Straits of Gibraltar in small boats, the Chinese 'smuggled' into UK ports in lorries and shipping containers. This is to suggest there are particular assumptions about the racial and class identity of unauthorized migrants that are deeply encoded in the common policy, assumptions that a more politically responsible form of policy would surely want to challenge.

The imagined sociality of illegal immigration

In addition to an imagined spatiality, there is also an imagined sociality that structures the EU's policy discourse on illegal immigration. In using the term 'imagined sociality' I want to draw attention to the fact that any particular policy discourse employs a cast of actors both human and non-human. The cast is always selective: only certain actors make it onto the stage. The identity, assumed forms of behaviour, character and so on, of these figures animate the policy discourse, enabling its assumptions to make sense. A discourse, in other words, comprises its own social world. It is populated by 'psychosocial types' (Deleuze and Guattari, 1994, pp. 67–8) ('the entrepreneur', 'the housewife', 'the delinquent' and so on), but also collective actors ('the welfare state', 'superpowers', 'NGOs'). Interrogating the nature of these identities is essential if one is to confront the more subtle and commonsense ways in which policy is naturalized.

The EU's common policy on illegal immigration relies upon a privileged group of subjects to give it meaning. Many of these are collective actors (for instance, 'criminal networks'). While the particular ways in which these collective actors are imagined and mobilized deserves further analysis, and while we should not overlook the fact that certain actors are barely mentioned even though they are presumably quite implicated in the phenomenon of illegal immigration (e.g. multinational corporations, small businesses), it is not their presence or absence in the policy narrative that interests me here. Instead, it is the fact that in their midst the 'illegal' or 'irregular migrant' appears as a particular psychosocial type. If the common policy contributes to rather than challenges the popular perception of illegal immigration as a phenomenon of unauthorized border crossing and territorial invasion, it also affirms the relatively widespread idea that a specific type of person called 'the illegal immigrant' does exist. Furthermore, it confirms the idea that understanding the motives, the behaviour, the (mis)perceptions of such persons is key to solving the problem of illegal immigration. Consider for a moment how the EU's policy narrative functions to personify illegal immigration, mistaking the effects of social processes like illegalization, territorialization and politicization, for actual,

concrete persons. For instance, the Santiago Action Plan describes the case of 'illegal immigrants' who, once they are unable to pay the price of the smuggling services that brought them to Europe, 'often become victims of traffickers, who employ exploitative means to gain 'reimbursement' for the cost of the journey' (Official Journal, 2002, p. 24). Or consider the frequent and graphic references to 'stowaways' and 'thirsting and starving people' who wash up on European coasts in unsafe boats (Vitorino, 2001). Here the identity of the illegal immigrant approximates that of the victim, a subject who will legitimate the construction of anti-illegal immigration activity as a quasi-humanitarian exercise in protection, and indeed, a morally righteous act of 'combat' against forces of violence and injustice.

Yet it would be wrong to assume that the illegal immigrant is imagined in a singular or coherent way. For in other places, it is the illegal immigrant as rational, decision-making actor that animates and legitimates the policy response. For instance, we are told that 'Irregular migrants take advantage of gaps at border controls and other deficiencies in control measures' (European Commission, 2001a, p. 8). Like savvy entrepreneurs, they soon work out how to profit from the weak points in the regulatory system. Elsewhere, the complexity of irregular migration flows is explained by invoking the choice-making capacities of migrants: 'Illegal migrants seek to reach their *preferred* Member State by transiting other Member States' (European Commission, 2001a, p. 9, my emphasis). Here, their discerning, consumer-like behaviour gives them an identity not unlike that particular obsession of the popular media, the 'asylum-shopper'.

It has to be conceded that the common policy does not rely on a strong version of the psychosocial type. It does not depict 'irregular migrants' as though they are a cohesive group with shared cultural characteristics. It offers nothing as deeply racialized as the image of the Mexican 'wetback' which so perplexed US migration politics in the 1950s (Ngai, 2004; Walters, 2008b). That said, the common policy does nevertheless foster the idea that there exists a discrete type of person, a particular kind of actor called an 'illegal immigrant' whose situation can be juxtaposed with that of the 'legal migrant'. And herein lies the problem. The point is not that violence, deception, coercion, bribery, exploitation, and rule-bending and breaking are not all features of the world in which unauthorized migration takes place. They are. But then these are all features of the life of many legal migrants as well, not to mention countless citizens. The point is that these experiences should not be bundled up, however incoherently, and treated as attributes or experiences of particular types of people.

The micropolitics of illegal immigration

The fallacy of mistaking a legal and sociopolitical category for a social group, and of focusing on the social effects of illegalization processes rather than those processes themselves (De Genova, 2002), can be better grasped if we

consider a concrete case. This will also illuminate the complex relation of anti-illegal immigration policy to labour migration. Calavita and Suárez-Navaz (2003) have undertaken a careful ethnography of migrant workers in the agricultural sector in the region of Andalusia in southern Spain. It traces the impact of changes in Spanish immigration law on migrant identities and relationships between migrants and Spanish citizens. New immigration laws were first introduced in 1985 when they facilitated Spain's 'status-affirming inclusion in the European Community' (100). But they have had the effect of illegalizing many migrants of extra-European origin, migrants who had hitherto worked alongside Andalusian peasants with little controversy. Calavita and Suárez-Navaz suggest that in contrast to the view of the illegal immigrant as a given identity it is necessary to understand that 'Spanish immigration law systematically creates and re-creates illegality while preaching integration, much as the modern state nourishes racial categorizations while at the same time "insist[ing] upon the moral irrelevance of race" (Goldberg, 1993)' (Calavita and Suárez-Navaz, 2003, p. 105).

What I find particularly interesting about this case is the way it troubles the idea that there exists a stable and enduring distinction between the legal and the illegal. This is especially evident in the case of workers who become legal on the basis of certain 'regularization' programmes for illegal aliens. According to Calavita and Suárez-Navaz such regularization programmes '*build in* a loss of legal status unless one can demonstrate, usually on an annual basis, that the original conditions persist (most important and daunting, a formal work contract)' (115; their emphasis). In the case of many Moroccans in Spain, it was not uncommon for employers to withdraw their original contract commitments once faced with the prospect of paying social security or meeting other work-related formalities, exposing the worker to the prospect of re-illegalization at the end of the year. In this way they suggest that 'legal status is always a fragile state and almost inevitably gives way to periods of illegality' (116). Rather than there being a sharp line between two statuses, and certainly instead of there being two distinct social groups, one encounters a fluid movement between the legal and the illegal, with a condition of social precariousness extending across both.

Something similar is evident in the Italian case. Here, Mezzadra has noted how the enactment of the so-called Bossi-Fini law has managed to further complicate the idea of a straightforward distinction between 'the regular' and 'the clandestine'. This law empowers the employer as an authority regarding the migrant worker's legal status in the territory. As such it binds the worker to the 'personal mood of the private entrepreneur' such that 'the "regular" migrant is daily and *explicitly* exposed to the *instability* of his condition, to the threat of falling back to "clandestinity" and thus becoming "expellable" at any moment' (Mezzadra, 2004, p. 274).

These particular examples make quite evident the real proximity of those designated as 'illegal' to the actual world of work – something that is

only very weakly recognized in the EU's common policy. But these two examples – and they could surely be multiplied a thousandfold – are interesting for at least two additional reasons. First, they enable us to clarify the nature of the distinction which we have found to be foundational to EU policymaking. This distinction places legal and labour migration on one side and illegal immigration on the other. These examples allow us to interrogate the move which distributes legal and labour migration to the field of social and economic regulation while locating the illegal fully at the heart of the security paradigm. Instead of a migration world populated by different social types, these concrete cases reveal a continuum of employment and immigration situations wherein the same individual can fluctuate in and out of legal status, sometimes unknowingly.

For this reason it might be more accurate to view the legal/illegal binary not so much as a valid description of social reality but more as a normative distinction embedded in a particular political project. What it clearly expresses is the will of political authorities that migratory phenomena really could be resolved into different categories, with some accepted as economically useful, others protected as genuinely in need, and the remainder efficiently dispatched back to their 'own' homelands. In this respect at least, this quest to differentiate migration embodies the same political dream that animated social policy reformers and charity workers more than 100 years ago. Bemoaning the difficulty of really 'knowing' the poor, they devised tests to properly distinguish between the respectable and the undeserving. The undue faith and political investment which the EU places in costly new technologies like EURODAC – whose promise is to electronically document the biometric identity of all those whose condition it is to be an 'asylum-seeker' (van der Ploeg, 1999) – suggests that the fantasy of dividing the good from the bad cathects itself in new ways and new contexts.

But these concrete examples bring something else to the discussion of illegal immigration. They suggest that it is not enough to recognize illegality as something produced by political and legal processes. One needs to take a further step and recognize that that in any given social and institutional situation illegality can be elicited, circulated, deployed, utilized, threatened and perhaps negotiated. It functions as a site of power relations. It operates not just at the level of policy processes but in particular settings like the employment relationship within a small business. Operating in parallel with national, European and other regional policies regarding illegal immigration, there is then a micropolitics of illegality. Future research will surely want to investigate more fully the contours of this micropolitics, including its lines and acts of resistance (Engbersen, 2001).

A politics of decontextualization

I come now to the last of the critical remarks I want to make about the EU's version of anti-illegal immigration activity. It concerns the particular way

in which anti-illegal immigration policy constructs and positions the EU within the migration field as the innocent victim of an unprovoked transgression. Framing the EU as an innocent victim, it confers upon this political actor an expectation and a sovereign right to respond emphatically to the transgression. In mobilizing this particular play of the active and the passive, the violator and the violated, anti-illegal immigration appears to have certain things in common with contemporary forms of counterterrorism policy (Troyer, 2003). For a significant feature of the common policy is that the EU is framed not as active, but only as *re*-active. In other words, it would be more accurate to describe the action plans to combat illegal immigration as *re*-action plans. These action plans, and the projects and practices they convene, appear as a response to a prior transgression called 'illegal immigration', not an intervention which plays a fundamental role in structuring contemporary forms of human mobility and distributing life and death itself. Europe is cast as a passive bystander whose sovereign territory, at a certain moment, comes to be violated by the intrusion of an uninvited and, to borrow a term from Sassen (2000, p. 65), 'autonomous' migratory force that originates in territories and states bearing an entirely external relationship to Europe. As the starkly geopolitical maps of migration which now frequently accompany media reporting and official documents concerning routeways of illegal immigration and trafficking imply (Walters, 2010), the line always runs in one direction: from the distant, corrupt, chaotic borderlands populated by 'failed states' and 'conflict zones', through the weakly-policed borders and cities of 'transit countries', and into the heart of European territory. Illegal immigration, it seems, is a one-way street.

Nowhere is this narrative enunciated more clearly, nor couched with a greater semblance of technical neutrality, than with the EU's frequent use of the concept of 'actors-in-the-chain' (European Commission, 2001a, pp. 8–9; Vitorino, 2001; Official Journal, 2002, p. 25). This concept was regularly used in launching the common policy to stress that administrative measures and policing actions had to operate across a very wide set of issues. The chain metaphor serves to naturalize an interdependence between a series of bad actors and factors at work in the 'migration process' – crime, smuggling, trafficking, global instability and the like. But it also expresses a spatio-temporal relationship: 'efforts on migration management cannot have their full impact if measures are not implemented at *the beginning of the migration chain* i.e. the promotion of peace, political stability, human rights, democratic principles and sustainable economic, social and environmental development of the countries of origin' (European Commission, 2001a, p. 8, my emphasis).

What is so problematic about this narrative is the manner in which it ascribes an origin to unauthorized migration. For the ascription of origin goes hand in hand with a particular distribution of political responsibility. In this case, the origin is located almost entirely *within* the social, political

and economic affairs of the so-called 'countries of origin'. Indeed, the very terminology 'country of origin' inscribes this assertion into their geopolitical identity – one reason why scholars might want to use such terms more cautiously. The fact that the EU then proposes to govern this 'origin' by means of positive, economic inducements (such as development aid) as well as more coercive means is, in this context, beside the point. What a concept like actors-in-the-chain of course eclipses are all the ways in which historically, economically, politically, culturally and so on, Europe is already 'inside' the so-called countries of origin (just as their peoples and cultures are already inside Europe). It negates the fact that we could cite many reasons – such as neoliberal trade agreements, geopolitical alliances, arms deals, flows of European capital investment and disinvestment, flows of bribery, media and tourism, not to mention all the historical ways in which the project of European colonialism created ties of cultural affinity and antagonism with so many of today's 'sending countries' – why Europe itself might be considered a 'country of origin'. Yet all these lines of interconnection, these spaces of interchange, while they may appear on other maps, never feature within the geographical nor, more tellingly, the mental maps of illegal immigration.

Anti-illegal immigration policy obscures these various ways in which Europe is fundamentally implicated in the 'problem' of illegal immigration. As such it embodies a politics of decontextualization. This politics reframes things so that Europe appears to confront an issue that is somehow external and alien to it.

Conclusion

Let me conclude by observing that in many respects the EU's version of anti-illegal immigration policy, its imagining of a new migration world, can be read as a story about bordering. It is about bordering first of all in a conventional and literal sense: we have seen how it identifies the effective management of Europe's external frontiers as one of the key responses to the 'problem' of illegal immigration. But not content with securing its own perimeter, the EU seeks to contribute to a much wider movement that is today elevating border control to the point where it is typically represented as one of the most vital expressions and responsibilities of sovereign statehood. Alongside other agencies like IOM, and through its 'external dimension', its myriad 'partnerships' and 'dialogues', the EU is clearly engaged in an almost worldwide campaign to promote border control as a central plank of good governance.

But there are other forms of bordering at stake in the EU's common policy. One of these is evident from our discussion of the imagined sociality of illegal immigration. It is a form of bordering that illustrates why research into the discourse of migration management cannot ignore the issues raised by the study of anti-illegal immigration policy. For the latter involves a dream of

drawing a clear line between the legal and the illegal, freedom and coercion, civilization and anarchy. It is a dream that seems to be contrary to, or is perhaps provoked by the tendency of contemporary capitalism which is forever mixing things up, and which finds in the 'twilight zone between the state of nature and civil society' some of its most promising opportunities for new forms of accumulation and appropriation (de Sousa Santos, 2007, p. 9).

But it is still another kind of bordering that is perhaps the most significant and problematic aspect of the EU's anti-illegal immigration programme. This is a more profound kind of bordering because it is rooted not in geographical lines, but in the act of political imagination which constitutes Europe as a bounded, self-contained region/entity, distinct from and confronted by an external world of similarly bounded, but far less well-governed entities. It is within this space that illegal immigration comes to be imagined as a potentially chaotic set of forces emanating from the world's most troubled states and regions, and converging on Europe. Whether in the name of 'open borders', 'no borders' or under the more modest but also more exigent banner of the humanitarian, various experts, groups and many migrants themselves have for some time contested the kind of bordering project which lies at the heart of the EU's anti-illegal immigration policy. The fortunes of these political challenges will surely depend upon their ability to unsettle this last form of bordering, the bordering which divides Europe, despite the talk of 'neighbourhood' or a 'global approach', from the rest of the world.⁶

Notes

1. Here I have paraphrased Hindess (2004) who, in a study of anti-corruption programmes, argues that scholarly attention should be broadened beyond a focus on the social incidence and causes of corruption to examine institutional practices of anti-corruption activity. In the international arena this 'has grown to such an extent that it should now be regarded as an important object of study in its own right'. This important insight is applicable not only to anti-corruption, but to anti-illegal immigration activity, and indeed, a whole range of anti-policies (anti-drugs, anti-terrorism, anti-racism, etc.). For an extended discussion of the theme of anti-policies see Walters (2008) and the essays in the special issue which it introduces.
2. Terms like 'irregular', 'non-status' or 'undocumented migration' are often substituted for 'illegal immigration'. This is in part because of the particularly pejorative connotations of the latter, not least the negative associations it suggests between certain forms of migration, crime and law-breaking. For the most part in this chapter I retain the term 'illegal immigration' since this is the object which the EU has named, and which this chapter takes as its target of criticism. Put differently, my focus is, as Black (2003, p. 42) has put it, on 'migration that is considered "illegal"'.⁷
3. This rather glaring omission has been partially acknowledged in a recent publication on 'policy priorities' (European Commission, 2006, pp. 7–8) where a system for 'mutual information' about national measures of regularization is proposed. This document also mentions the launching of a study to survey the practice of

regularization across member states. This has recently been published by the International Centre for Migration Policy and Development as *Regularisations in Europe: A Study on Practices in the Area of Regularisation of Illegally Staying Third-Country Nationals in the Member States of the EU* (Vienna; ICMPD, 2009).

4. It is in connection with this ongoing 'Euro-African dialogue' on migration and development that we can detect another interesting change in the formulation of anti-illegal immigration activity. This concerns the way its transnational scope and scale is now being reformulated. Initially, terms like 'pre-frontier measures' and 'partnership with third countries' were used to convey the idea that anti-illegal immigration policy could not be confined to the territories of the EU states alone but had to be extended to the countries of 'origin' and transit'. While these modest concepts persist, they have now been resituated within a more ambitious project. This is something the EU calls the 'Global Approach to Migration', a term it now uses to talk up the 'external dimension' of its migration policy agenda. The EU claims that the Global Approach is 'based on genuine partnership with third countries, is fully integrated into the EU's other external policies, and addresses all migration and asylum issues in a comprehensive and balanced manner' (Commission, 2008, p. 2).
5. For instance, Düvell (2006) cites studies that suggest that for all the media panic generated around the image of boats disgorging desperate migrants on Italy's coasts and southern islands, only 10% of the unauthorized population in Italy arrived in Italy by boat. Similarly, one report by the UK House of Lords hints at a discrepancy between popular and statistical profiles of illegal immigration, observing that it is 'quite likely that . . . the largest number of illegal immigrants [in the UK] in the widest sense [come] from countries such as the United States which provide the largest number of visitors' (House of Lords, 2001, p. 11). If true, the UK case would resemble the Australian one where, despite the media and political frenzy about 'boatpeople', it is, as the same report observes, British nationals who constitute the largest category of illegal immigrants.
6. See the excellent lecture by Balibar (2004) that juxtaposes this closed, bordered Europe with an open, mixed and fluid Europe of multiple borderlands.

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5

‘We are Facilitating States!’ An Ethnographic Analysis of the ICMPD

Sabine Hess

‘Where is the added value in the Budapest Process?’ This was the question senior policy advisor Irina Brezna¹ addressed both to herself and to members of her audience – drawn from interior and justice ministries, police forces and secret services – at one of the countless conferences on the topic of ‘migration and border management’ taking place in Southeast Europe in 2007. This question went to the heart of my research interests. Irina Brezna is an old hand in the migration policy business – she had held responsibility for Slovenia’s adaptation to the immigration provisions of the EU. Shortly after the successful accession of Slovenia, she switched sides and began working with the Vienna-based International Centre for Migration Policy Development (ICMPD) in 2004. During the ‘arduous accession period’, as she described it, she came to appreciate ICMPD as one of the few European migration-related political organizations that had provided concrete assistance in managing that difficult process: ‘It was the ICMPD who provided us with knowledge. We relied on them completely.’ She made this point repeatedly during our conversations in ICMPD, where I was able to carry out field research in the years 2006–08. Once Slovenia had been accepted into the EU, Brezna left the ‘chronically understaffed national bureaucracy’ and moved to this much more ‘efficient’ intergovernmental organization, which was founded in 1993 upon the initiative of Austria and Switzerland.

Today ICMPD is one of the leading ‘consultancy institutions’ in the field of migration policy in Europe, with 11 member states² and 60 staff members at its Vienna headquarters. According to its former long-time director general Jonas Widgren (1994–2004),³ it was initiated with the clear aim of strengthening the regulative capacities of the European states and pushing for the Europeanization of migration policies (cf. Widgren, 2002; Georgi, 2007, 16 ff.).⁴ In 2009 the ICMPD website provided a short description of

its aim 'to serve as a support mechanism for informal consultations and to provide expertise and efficient services in the newly emerging landscape of multilateral co-operation on migration and asylum issues' (ICMPD, 2009a).

Brezna's job change from a governmental bureaucracy to a rather small intergovernmental organization, albeit one with 'competent, highly motivated, dedicated as well as customer and team orientated professionals'⁵ – as ICMPD advertised its services on its webpage in 2008 – reflects, in miniature, a general shift within European migration politics over the last 20 years towards 'migration management' (Overbeck, 2002; cf. Georgi, 2007). 'Migration management' seems to have become a catch-all term used by scientists in an analytical sense as well as by political practitioners in a positivistic or descriptive way (cf. Ghosh, 1997; IOM, 2004a).⁶ Here the term 'migration management' denotes, on the one hand, a shift with regard to content and, on the other hand, far-reaching structural as well as practical transformations concerning the political style and the type of actors involved. With regard to content, 'migration management' stands for a turning away from a zero-immigration policy towards a regulative approach of steering migration in a highly selective manner on a global scale, best governed by a 'global migration regime' (Cornelius et al., 1996; Ghosh, 1997; Widgren, 2002). In the words of the leading actors, this political project is mostly paraphrased as creating the global preconditions for 'orderly migration for the benefit for all' (IOM, 2004b). But the term 'migration management' describes far more practical and structural changes. It is said that this project, most commonly defined as neoliberal (Overbeck, 2002; Georgi, 2007), is based on 'new actors of international politics', especially international organizations and private actors such as 'think tanks', who have introduced new forms of political practices, with most analyses highlighting the 'privatization' and 'informalization of politics' (Lahav/Guiraudon, 2000; cf. Düvell, 2002; Georgi, 2007, 67f.). This political change is defined as 'paradigmatic' for a general transformation of statehood and political practice in the age of globalization, which in the context of the EU seems to be emerging under the label of 'European Governance' (Kohler-Koch, 1999; Commission of the European Union, 2001). There is a heated debate on whether the developments should be interpreted as a defeat and retreat of the state or if, instead, it represents a shift and refiguration of statehood in transnational terms (cf. Ferguson/Gupta, 2005). However, most of the analyses study this change and its main actors, like the ICMPD or IOM, from a perspective inspired by theories on democracy, dismissing it as 'technocratic' and 'undemocratic', representing an unconstitutional violation of the separation of powers and as a by-passing of parliamentary control, and thus as a de-politicization of immigration policy (Düvell, 2002; Overbeck, 2002; Georgi, 2007).

However, coming from a Foucauldian reading of power and policy and inspired by newer transnational approaches in the field of political

anthropology (Shore/Wright, 1997; Burawoy et al., 2000; Ferguson/Gupta, 2005; Inda, 2005; Ong/Collier, 2005), I am much more interested in the micro-practices and rationalization techniques of this new mode of governance. Therefore, I focus specifically on the informal policy style and its linkages and attempt to discover from within, as it were, how it works, how it is discursified, and how it serves as a conduit for the creation of policy and power. Here, I owe a particular debt to recent approaches towards a cultural anthropology of the state, approaches that think of the state as an 'effect of everyday practice, representational discourses and multiple modalities of power' (cf. Trouillot, 2001; Sharma/Gupta, 2006, p. 165). Against this background, I developed an accompanying ethnographic policy field and network analysis (see Marcus, 1995; Shore/Wright, 1997). To this end I applied for a type of internship in the small Budapest Process (BP) team consisting, at that time, of a liaison officer and a secretary. Provided with good computer access, I was not only able to look over the shoulders of the staff members while trying to follow their work procedures and discussions, but also had access to all the other teams within ICMPD and was invited to attend the different conferences and workshops. But what is more decisive for this kind of knowledge production, I was able to follow their informal talks, their informal corridor and coffee-break meetings and their informal, flexible and speedy decision making. This seemed to be highly typical for these types of hierarchically organized, semi-private institutions where a young and highly ambitious staff enjoys in practice a marked level of autonomy and self-responsibility (provided they are economically efficient).⁷

In the following pages I wish to draw on this ethnographic analysis of ICMPD as a typical European actor of the transformation of European migration policy. I hope to shed light on the distinctive political practices and discourses of this new mode of (soft) governance by sketching the self-image and political working ethics of ICMPD in relation to questions of migration management. I will concentrate specifically on the above-mentioned BP as well as on a second one, the so-called 'Dialogue on Mediterranean Transit Migration' (MTM). My analysis will show that this new mode of governance of migration is fundamentally knowledge based and is characterized by conflicts, ruptures and frictions, but also by some continuities.⁸ But before I go into detail, I will reconstruct the history of the Europeanization of migration politics from the subjective perspective of ICMPD itself in order to contextualize the specific institutionalization of ICMPD as one of the decisive actors of European migration management. This will not only reveal a different aspect of the process of Europeanization (since most of the classical political science studies tend to focussing on the formal part of politics: the formal EU institutions, the official programmes and hard law); it should also demonstrate that the development of ICMPD is closely linked with the specific history of the Europeanization of migration policy and vice versa.

The Europeanization of migration politics and ICMPD as new political laboratory

In a recent publication on the Europeanization of migration politics, the political scientist Ursula Birsl (2005) again comes to the conclusion that the process of communitarization and harmonization of this policy field, as it was laid out by the treaty of Amsterdam (1998) and the conclusions of Tampere (1999), has failed. And indeed the Den Haag Programme (2004), as follow-up programme to Amsterdam, and most recently the Stockholm programme (cf. Commission of the European Union, 2009), another five-year follow-up plan in the area of Justice and Home Affairs, have had to confess that the previously defined goals were not reached, as, for example, there is still no European Union asylum law or communitarized immigration policy (cf. Birsl, 2005, p. 13f.). But if we look at the far-reaching politics of the externalization of the European border regimes that have recently focused on African and Caucasian countries and consider as well the level of practical adjustments in the fields of border management or visa policies under the hegemony of the Schengen *Acquis*, one is forced to come to a different conclusion (cf. Walters/Haahr, 2005; Transit Migration 2007; Hess/Kasperek, 2010).

In fact, the history of the Schengen *Acquis* is very illustrative of the EU politics of the Europeanization of migration policies in general: laying the politics of informality right in the cradle of the Europeanization process. Put very briefly, the European Union member states started to deal with immigration policy issues on a European level in a highly informal⁹ and multilateral way mainly as a spin-off effect of the launching of the internal market in 1985, with its free circulation of capital, goods, services and persons. In 1985, five interior ministers met at the Belgian village of Schengen to decide on compensatory control measures¹⁰ for the abolition of national border controls in the course of the internal market formation – due to be completed in 1994. Jonas Widgren, the founder of ICMPD and its long-time director general, described the political importance of the Schengen Group retrospectively:

They [the European member states] actually moved only in a non-EU related co-operation forum which surprisingly quickly made the free circulation and the external borders gradually become reality, namely the Schengen co-operation, first encompassing five of the EU members . . . They did indeed trust each other, they were practical, and they did the job not being done in the EU framework.

(Widgren, 2002)

But it required more than 10 years for the Schengen agreement to be integrated into the supranational structure of the EU in the context of the 1998

treaty of Amsterdam. With that move the Schengen agreement became part of the *acquis communautaire* and of the criteria of Copenhagen that the new accession countries had to fulfil in order to be nominated for accession in 2004. Therefore it is not surprising that Jonas Widgren interpreted the Treaty of Amsterdam as a 'revolutionary move':

[Amsterdam] allowed for the big leap: there should be a perfect external border system in place for all the Members, soon to become some 25, by means of integrating the Schengen co-operation into the Union, by moving most of the sovereignty tasks of the Third Pillar into the First Pillar, and gradually by providing the Commission with a unique initiative right. By May 2004 (later called the 2004 deadline) the new architecture should be in place, practically speaking creating a common space for all the Member States, with a common external borders system, a common admission and refugee policy, and with free internal movement for long-term third country residents like Turks in Germany or Algerians in France.

(Widgren, 2002)

The successful story of the 'Schengen agreement', its imperial outreach and its norm-setting power influencing the adjustment processes – nowadays addressing non-candidate countries such as the Ukraine or Mali – can be partly ascribed to the existence and policies of such institutions as ICMPD and the BP (cf. Hess/Karakayali, 2007). Indeed, it was exactly the 'crisis of regulation' of the old, national based migration regime in Europe at the beginning of the 1990s which not only intensified the process of Europeanization and harmonization under the lead of the EC and within the context of the European Union but which also initiated the foundation of consultancy and service organizations like ICMPD¹¹ (Widgren, 2002; Georgi, 2007).¹² Jonas Widgren, who – before he established ICMPD in 1993 – was coordinating one of the few central international discussion platforms in the field of migration policy at that time, the 'Intergovernmental Consultations on Asylum, Refugees and Migration Policies in Europe, North America and Australia' (IGC) founded in 1985 by the UNHCR (Düvell, 2002; Georgi, 2007, p. 14), described very vividly the beginning of the 1990s as a time of political 'nervousness'¹³ due to accelerating political developments in Europe:

We in Europe feared a mass invasion of Russians. Albanians were leaving for Italy en masse in overcrowded boats, and nearly one million Iraqi Kurds had desperately been seeking to enter Turkey, pushed by Saddam Hussein. In Africa and Asia, many of the previous client states of the USSR or the USA, respectively, fell into anarchy, with mass displacements as a consequence. The migration effects of environmental degradation were widely discussed. In Western Europe, again, we were in the midst of what

we conceived as a never-ending asylum crisis, with new and growing forms of trans-continental inflows of applicants with weak claims, paralleled by a surge of anti-immigrant far-right political rhetoric. This all brought the migration issue to the top of the 1991 NATO, OECD and EC/EU agenda, and all this was before the devastating war in Bosnia with its brutal bleeding out of one fourth of its population into Central and Western Europe.

(Widgren, 2002)

Widgren and other leading figures of the European migration policy debate – such as Jan Niessen – believed that the national regulatory capacities were no longer capable of dealing with the new migration realities in Europe as they perceived them. In particular, they were convinced that the asylum regime had reached its limits (Ghosh, 1997; cf. Ogata, 1997; Widgren, 2002). Their central answer to this regulatory crisis was to call for a radical Europeanization under the paradigm of ‘migration management’. And due to a ‘mysterious lack of a rational government response to the anticipated migration challenges’, as Widgren described the political stance of the national (especially interior) ministries which ‘treat the immigration issue as a short-term election gimmick’, he argued for ‘governance instead of government’ (2002).¹⁴ In this respect, Widgren’s job change from a long-serving high-level bureaucrat of the Swedish government to becoming Director General of ICMPD is significant.¹⁵ But as I will show, it would be wrong to interpret this change as a total rupture; rather, I will be able to demonstrate some continuity.¹⁶ Austria and Switzerland were heavily affected by the migration-related developments due to the end of the cold war and were discontented with the performance of the IGC. So in 1992¹⁷ it was they who invited Widgren to build up ICMPD as successor organization for long-term policy development with the main focus on Eastern Europe (cf. Georgi, 2007, p. 17). At the beginning this meant, in concrete terms, a strong ‘concentration on the question of irregular migration’, as Gottfried Zürchner put it (cf. interview Zürchner, 2008).

Although it has widened its activity radius in the last few years, geographically as well as in regard to content (trying to launch projects in South Africa), in global terms ICMPD is still a small and European-based institution when compared to the internationally active organizations such as UNHCR or IOM. However, it came especially to the fore when, in the course of their EU accession and as part of the *acquis communautaire*, Eastern European countries had to adopt EU migration policy. Against this background of its leading role as consultancy organization in the EU-accession process, critical observers defined ICMPD as the ‘spearhead of fortress Europe’ (cf. Düvell, 2002).

Today, it is still active in supporting official EU migration policy – as outlined in the ‘Global Approach on Migration’ by the European Commission

(Commission of the European Union, 2007) – moderating the externalization of the European border regime towards Africa, Central Asia and the Far East (cf. interview Zürchner, 2008). It does so mainly by employing political practices and technologies such as the above-mentioned BP, which is one of the oldest 'regional consultation processes', having started in 1991 (Klein-Solomon, 2005). It is still actively functioning as a so-called 'informal dialogue'. In 1994 ICMPD assumed the role of secretariat and as such has, since 2002, been running another 'process', the 'Dialogue on Mediterranean Transit Migration' (MTM), in cooperation with Europol and Frontex and directed towards the Maghreb and sub-Saharan African countries (MTM, 2008). Even though the processes make up less than 5 per cent of the total ICMPD budget – 90 per cent of which is covered by (third-party) projects mainly in the areas of border management, anti-trafficking, return and readmission politics and visa affairs funded by the EU or national governments (ICMPD, 2009a)¹⁸ – these dialogues nonetheless play a special role in the self-image of ICMPD. Particularly when viewed from a geopolitical and Foucauldian perspective (cf. Foucault, 2004), they function as both centres of spatial production and political laboratories.¹⁹ Thus, the political scientist Fabian Georgi comes to the conclusion that the political significance of ICMPD as a European actor of migration management policy lies predominantly in its political influence in the field of combating irregular migration by means of informal policy advice and coordination of intergovernmental cooperation. Georgi writes: 'Probably its single most important function is its coordination of border expansion in Central, Eastern and South-eastern Europe in the Budapest Process' (2001, p. 61). Before examining the BP in greater detail, I would like first to discuss the self-image and working ethics of ICMPD in relation to questions of migration management.

'We are facilitating states' and the misleading notion of 'migration management'

ICMPD wonderfully qualifies for all kinds of conspiracy theories as we are small and therefore a publically not present organization. However, we have a qualified access to states and intergovernmental cooperation, so we have the image as backroom boys. But this has nothing to do with reality... We are not this kind of border-militarizing-agency and we have ultimately no restrictive positions in relation to migration. [...] Rather, the general approach of the ICMPD can be defined as technocratic vision and we wish, we endorse more participation of migrants and an improvement of their lives. But we believe that the way to achieve this goal is to manage and regulate migration.²⁰

This statement by Martin Hoffmann, who is responsible for policy development and research, well portrays the self-image and political rationale of ICMPD (cf. interview Hoffmann, 2008). Jonas Widgren also defended

ICMPD against all those stigmatizing it as supportive of a 'closed-door policy' by applying 'a realistic discourse' (e.g. Widgren, 2002). He strongly believed in the necessity for regulatory politics, from individual states as well as from supra-national regimes of global governance, in order to compensate for reduced national regulatory capacities (in the good old tradition of the social-democratic parties in Europe standing for an etatistic political project). Both refer to strong anti-immigration sentiments evinced by European populations and the need to strengthen state regulatory performance as 'totally necessary prerequisites' (cf. interview Zürchner, 2008) to prove that migration is under control and to win public support for a more proactive immigration policy. In this respect they legitimize the strong focus on combating irregular migration as a necessary step for laying the ground for a regime of regular migration in the long-run (cf. Widgren, 2002; Georgi, 2007, p. 53ff.; interview Hoffmann, 2008; interview Zürchner, 2008).

However, Zürchner and Hoffmann both reject the classification of implementing a 'neoliberal' project, as 'migration management' policies are often defined (Overbeck, 2002; cf. Georgi, 2007, p. 97 f.). They not only reject the notion of neoliberalism, understood in a classical way as the free play of markets, as a political approach which ignores the dynamics and interests of migration. They also reject it since they strongly support an etatistic model of global governance. As Hoffmann said: 'We do not want to leave migration to the free market, because the free market does not care for the political consequences as well as for the consequences for migrants. The price is too high, we would say, to leave it to the free play of market forces' (interview Hoffmann, 2008).

In the same interview and in a similar vein, Zürchner was highly critical of the whole notion of 'migration management'. Here, he and Hoffman reveal a knowledge formation that approximates the most recent approaches within migration studies that reveal the dynamics and forces of migration and its 'relative autonomy' (cf. Castles/Miller, 2003) vis-à-vis all political attempts to control it:

I am a little bit sceptical whether migration is really a topic for management. Management pretends one has migration under control or as if it is possible to control it, and as if this is only a matter of technique and how to make it more efficient. And this, I doubt quite a lot. Especially since migration management as it is normally understood does not take into consideration the interests of migrants... No, I can not take pleasure in this concept as the term is misleading.

(Interview Zürchner, 2008)

He then offered a very instrumental and tactical understanding of the term which, in his view, can reduce 'complexities' and give the illusion that governments have migration under control: 'For the public it seems to be good to use this term in order to show that the government has migration

under control, but people are not stupid and they notice that it is not true.' However, he and Hoffmann are motivated by a strong belief in governmental regulation. So Zürchner further explicated (ibid., 2008): 'But migration must take a certain direction and the situation should not develop where non-governmental actors are more important than state ones... the balance must not slip to the extent that smuggler organizations or family networks have a far bigger influence on migration than governmental actors.'²¹

Thus Hoffmann prefers to describe the political approach of ICMPD as 'technocratic' and 'etatistic' and draws on a realistic theory of global politics: 'We simply have a legal order which defines governmental actors as the actors authorized to intervene in the process of migration. And we want, when we talk big, we want to support the governmental actors so they can do this task in the best way for themselves but also in the interest of migrants.' Zürchner also stated:

We totally accept the role of the nation state in making decisions as to who comes in and who has to stay outside... this is the foundation of state sovereignty, to determine who are one's own people [...]. This is something that is typical of etatism! And here, I totally accept... I do not adhere to some social utopia as, quite simply, there is no other model... Just look at the European Union, the member states have not abandoned their national prerogatives... and I am not an agitator saying this must be changed.

(Interview Zürchner, 2008)

In this context, Zürchner confessed to genuine annoyance where he got the feeling that nation states were not doing their duty and were passing things over to international organizations: 'The tendency for states to send international organizations in order not to dirty their hands is annoying. You also do not walk down the aisle with a substitute husband', he once remarked in conversation with me. In this respect ICMPD is careful not to allow itself to be manipulated by the states. On the other hand, he became ironical when I posed questions concerning the role of international organization within the new migration management system: 'Ok, first of all you should not overestimate the international actors. And there is no other actor who has a clear mandate except the UNHCR with its mandate of "protection". But "protection issues" and "migration policy" [original in English] are, in terms of scope, two different pairs of shoes... and furthermore the IOM has no mandate to regulate the migration institutions globally.'

Against the background of this political position and reasoning, the strong emphasis in all interviews as well as in the web presentations seems to be coherent in that ICMPD is merely a 'service and consultative institution for the states', with no independent policy making functions. Thus, the general belief is: 'We simply facilitate states' as 'migration policy is still the duty of the states'. For the BP, the motto is that it is 'state driven' or in

'state ownership'. As a secretariat, the role of ICMPD is simply to coordinate, as well as to provide neutral and indeed scientific knowledge. Similarly, the MTM Process describes its guiding principles as '*intergovernmental, informal and state-driven*' (accentuation by ICMPD authors) (MTM, 2008).

Although it is obvious that ICMPD has a specific political agenda and exhibits a relative autonomy vis-à-vis the member states²² (cf. Georgi, 2007), the uncritical way in which all the staff referred to this statement as a central scheme of ICMPD's 'corporate identity' still surprised me. As Hoffmann once described it, 'ICMPD's political ethics is that they never do politics themselves', rather they 'pass on information' as 'a reliable actor for the states'. This would be a main difference to the political approach of IOM, which 'tries to replace the states'.

In fact, it took me quite some time to understand that this narrative is in some respects straightforward and not simply an ideologically driven lie. It denotes the practice of a governmentalization of European migration politics that tries to activate and not to hinder or stop states and their apparatuses but to integrate the states in the project of European migration management. And this is only possible, according to Zürchner, if the actors have the same definition of the problem and its solution, 'speak the same language', 'develop a similar understanding' and make migration management into their own project. To this extent, he is a strong critic of all forms of top-down, coercive political practices 'resembling colonialism', as he put it. He laughed at attempts by some European states that believed that they could force countries of the Global South to adjust to the European migration regime by means of coercive measures.²³ After 500 years of colonialism, such a political style is more than naive and ethically problematic, as Zürchner expressed it.

One central trope of ICMPD staff was 'trust' and trust-building measures such as the informal dialogues. The other narrative was organized around the notions of 'knowledge', 'neutral information' and 'expertise', which played a big role in all of the statements when they tried to explain to me what they were doing instead of politics.

Also, the mission statement on the front page of ICMPD's web presentation in 2008 and 2009 was based on verbs and adjectives addressing knowledge processes:

Analyse the facts and strengthen the competences of individuals and institutions: It is the aim of ICMPD to explore and clarify the complex realities of the migration phenomenon, particularly within Europe and other countries and regions of relevance to Europe. ICMPD provides targeted timely services in migration governance to states and their organizations responsible for the design and implementation of migration policies (author's emphasis).

(ICMPD, 2008)

This mission statement draws heavily on advertising and managerial language usually associated with private consultancies and research institutions. As an intergovernmental consultancy organization, ICMPD can, in this respect, be classified as a neoliberal political project. This is also evident in the advanced economization of its political rationality and practice, especially in the field of the highly competitive market of project funding.²⁴ This not only has massive effects on the criteria and decision-making on which project call to apply for and what kind of project – in this narrative ‘product’ – to design.²⁵ It also has massive effects on the conditions of employment and hence on the type of people working in such precarious but nonetheless demanding jobs.²⁶

But there is more to it than this, as empirical studies on the ‘new soft modes of governance’ in the context of the EU hint at. More and more narratives and instruments are being applied which are knowledge based, allegedly ‘politically neutral’, purely ‘technical’ and ‘scientific’ (cf. Bruno/Jacquot/Mandin, 2006, p. 519).²⁷ The social scientists Isabelle Bruno, Sophie Jacquot and Lou Mandin analyze these practices as ‘technologies of performance’ and modes of ‘governance through knowledge’ (ibid., p. 520) which transform the rationality of the debate and the logic of practice from a political into a managerial one (ibid., p. 528).²⁸ They write: ‘[...] decoding its modus operandi entails understanding how this managerial technique converts political issues into target figures [and how] it translates questionable premises into sound facts’ (ibid., p. 530). The narrative of the ICMPD staff tells of facilitating states only by means of handing over ‘neutral information’ and ‘advice’ – mostly connoted as ‘best practices’ – shows clearly this modus operandi of the new modes of governance, not in the sense of a strategic ideological lie but as a necessary structural false consciousness on behalf of the staff who are subjectified within this neoliberal project.

These empirical studies on the ‘soft modes of governance’ in the context of the EU²⁹ further demonstrate the importance of ‘non-coercive processes based on the will of the participants to agree’ that operate through ‘knowledge-sharing, mutual learning or exchange of “good practices”’ (cf. ibid., p. 520). These are characteristics which define well the specific parameters of ‘informal dialogues’ such as the BP, which I would now like to consider.

Politics as didactics: Processes, dialogues and learning states

The recent web presentation³⁰ of ICMPD defines the BP as an informal dialogue that aims to develop ‘comprehensive and sustainable systems for orderly migration’ (ICMPD, 2010a). It is an institutionalized series of informal conferences, seminars and workshops that by now includes more than 50 countries of origin, transit and destination – including the Western

Balkans, Turkey and the countries of the CIS region – as well as more than ten international organizations, all sitting around the same table. Thus, Gottfried Zürchner is able to proudly describe the BP as the ‘geographically most important migration dialogue on the Eurasian continent’ (cf. Zürchner, 2009). The BP goes back to the so-called Berlin Conference in 1991 when Germany’s Minister of the Interior, Wolfgang Schäuble, invited 26 states to discuss measures against the rising irregular migration from the East (cf. Georgi, 2007, p. 29). This initiated a series of conferences and led to another ministerial conference at Budapest in 1993, giving the process its name. Since 1994 ICMPD has assumed the role of secretariat, which means in practice that a liaison officer and a secretary are constantly working for the process – the other departments only become involved where there is need for a ‘background paper’ or the demand for specialized expertise.³¹ In 2006 the Turkish government took over the chair of the process from Hungary, thereby illustrating the geographical reorientation of the process towards the CIS region as laid out by the fourth ministerial conference of Rhodes in 2004 (ICMPD, 2010b).

In the case of the newer so-called ‘MTM Process’ (Dialogue on Mediterranean Transit Migration), ICMPD has also provided the secretariat since 2002. From its very inception, the MTM Process has had a strong security and law enforcement bias³² including cooperation with Europol and Frontex with, in the words of ICMPD staff, ‘a view to preventing irregular migration and thus creating the conditions for legal migration’ (MTM, 2008).

But let us return to Brezna’s question quoted at the beginning of this chapter querying the added value of the BP – a question that has also dominated my research on the practices of the process. Time and again when I returned home from a field research trip to a meeting of one of the working groups of the BP,³³ my classical understanding of politics had been shaken. Even though they were well organized and moderated by the chair country delegation, it is indeed difficult to escape the impression of a ‘Eurovision of states’, as one delegate of an international organization expressed it in an interview. Also, baffled by the impression of being part of a political brainstorming or pedagogical seminar with variously well informed and variously well chosen delegates from national ministries and executive bodies, I went in search of the ‘real’ locations where the ‘actual policy’ was being made during the meetings. And of course there are the rear stages, the colonnades and coffee breaks; there are the preparations made by the Secretariat in the form of a large script, which is not transparent to many; and there is the diplomatic subtlety of the ‘conclusions’, where ICMPD has a great say and where it is not uncommon for them to be written beforehand. Also some participants – interestingly enough, quite often from international organizations or operational bodies such as Europol – critically enquire as to what is really going on, and complain of a lack of coherence and of the tripling

of initiatives and knowledge pools on the European level of migration politics. There is also the sentiment, as expressed by staff members of the General Directorate on Justice and Home Affairs that, given the advanced tools of the EU's official policy such as the European Neighbourhood Policy (ENP), the BP had outlived its usefulness and should be wound up. Gottfried Zürchner was aware of this 'dialogue fatigue', as he once told me, and quite a number of member states have drawn back due to a lack of concrete outcomes and regarding the process as inefficient.

And yet, from the theoretical perspective of governmentality, it is precisely this informality, openness and the 'pedagogical character' creating an atmosphere of 'equality' between the differently powerfully positioned actors that constitute the 'success' of the BP as a highly effective tool in line with the 'new soft mode of governance'.

Gottfried Zürchner also stressed these characteristics in a recent interview on the work of the BP he gave to 'Euroasylum' (2009). In this interview he described the 'overall objective' of the BP as 'discussion and information sharing among experts on a technical level and in an informal setting'. He went on to say:

In summary, some specific aspects illustrating the added value of information and experience sharing within the BP should be mentioned: The BP is an important framework for dialogue and information exchange; the BP is a framework for states and other stakeholders to meet on equal footing, and address issues of common concern in an informal setting; the informality, the technical focus and un-binding nature of recommendations, opens for discussions of sensitive issues [...].

(cf. 2009).

Thus, he was totally convinced that the BP had not outlived its usefulness – not surprisingly, as he is a particular supporter of this informal method of international cooperation. And he still believed that such informal forums which trigger learning processes, a common understanding built on trust, and which create trusting relationships are a necessary precondition for good results in formal politics later on (see interview Zürchner, 2008). And especially in politically difficult and conflictual situations – for example, with countries like Libya or Syria, not sharing a common political understanding – formal policy is dependent on 'relationship building' beforehand. As he said:

The main aspect of the BP certainly is the preparation, the preparation and creation of a common language, of a common understanding. In this sense it is trust building and eases the phase of formal cooperation later on, which results in bilateral or multilateral instruments and concrete commitments that totally lie beyond such a process. In so far

such processes are a necessary tool of international cooperation but not a sufficient one.

(Interview, 2008)

Against this background, Zürchner himself seems to set different criteria to judge the effectiveness of the process. It is not so much the concrete outcome as the didactic and trust-building dimensions which are important. Zürchner places emphasis on self-guidance and self-conviction on the part of states – this is the governmental recipe for success since ‘measures need to be accepted to become implemented’.

But the BP can also be analyzed as a political technology to create a ‘knowledge network’ since one of its very first governing objectives was and still is the production, exchange and distribution of knowledge on the movements of migration in order to ‘target the domain of migration as governable and administrable’ (also see Hess/Karakayali, 2007; cf. Ican/ Phillips 2008, p. 712).³⁴ Here, one specific practice of knowledge governance in the field of migration policy also dominates the process, which Bruno, Jacquot and Mandin denote as ‘government by numbers’ based on the quantification of political objectives (Bruno/Jacquot /Mandin 2006, p. 528).

Studies on knowledge production in the field of ‘undocumented migration’ have shown the history of statistical and quantifying (demographic) techniques. The field of irregular migration is by its very nature characterized by the impossibility of counting accurately, expressed in the notion of the ‘dark field’ problematic (cf. Karakayali, 2008). Nonetheless, not only academic research on this topic is driven by the ‘numbers games’, but also countless capacity-building projects in the area of migration and border management involve, as the very first step, the introduction of statistical procedures and concrete counting practices at national and local operational level of the states involved (see the project descriptions on the ICMP website, www.icmpd.org). So it was not really surprising that nearly all national presentations during meetings of the BP played with and trusted in the expressiveness of statistical data, graphs and figures presented in the context of mostly unreadable PowerPoint presentations. And the single concrete product of the BP is the annually published ‘Year Book on Illegal Migration, Human Smuggling and Trafficking in Central and Eastern Europe’ consisting of surveys of border management and border apprehension data from 22 states (ICMPD, 2010c). But as I will now show in the closing empirical section, the practice of the Year Book as a central source of knowledge distribution has become a thing of the past.

The dispute over a map

During my participant observation at the ICMPD headquarters, I was able to follow a very informative conflict in the corridors of the office over the

so-called 'I-Map'. What interested me in the conflict were less the internal dynamics and fraction-building-processes – which had even led to some resignations – but rather the rationalizations for and against such a cartography, which again demonstrates the importance of knowledge governance for European migration management.

The I-Map – a collaboration between ICMPD, Europol and Frontex, and the participating states in the MTM dialogue – is an internet based digital map which seeks to map the African and Mediterranean space of migration movements in 'real time' and to establish an archive of relevant data on migration flows. It is an invention of the staff of the MTM Dialogue and initially attracted little interest on the part of the ICMPD leadership, who apparently did not understand the purpose of such visualizations. Today Gottfried Zürchner is an emphatic proponent of this kind of mapping and he ordered its geographical expansion to the east of the globe, an expansion that is about to be realized. However, speaking more or less off the record, employees of the research department expressed opposition to the map due to questions concerning the quality of the data, both in terms of comparability and scientific production standards. The representative of the BP then repeated these arguments when the management issued instructions to launch a similar map for the Eastern European area. Besides the lack of scientific rigour, she considered the I-Map as primarily a technical, male 'plaything'. Despite these worries and criticism, one concrete outcome of the fifth Ministerial Conference of the Budapest Process at Prague in 2009 is the construction of an 'I-Map Eastern Migration Routes' as 'an IT-based information gathering and exchange tool on the migration situation along the Eastern migration route' as it is described in the project application (by the Ministry of the Interior of the Czech Republic together with Hungary, Poland, Romania, Slovakia and ICMPD, 2009). Here, the I-Map is understood as an interactive, user-friendly 'technical support tool to facilitate access to and comparability of information and data' which is accessed in another module of the project, the so-called 'Migration Profile Reports'. This in turn is intended to provide 'information on size and structure of the migration flows (legal, illegal, asylum)' since 'policy development in the area of migration strongly depends on the availability of accessible and comparable information, data and statistics', so the explanation in the project proposal.

In the context of European enlargement, and particularly in the field of migration policy, 'knowledge', together with its production, dissemination, interpretation and implementation, in fact represents a new and increasing problem. Thus, the localization and implementation of EU directives in the corresponding national and local contexts still remains difficult today, while to a growing extent the same may be said of the trans-national knowledge transfer from the EU peripheries to the centres of power. Here, the EU faces problems similar to those experienced by the territorial states of the 19th

century; namely, the need to acquire appropriate knowledge in order to be able to govern – as the above-mentioned application frankly states. Many of the communications issued by the Commission testify to the primary relevance of this factor for the area of migration policy. The numerous EU scientific projects on the problem of statistical demographics show that a European standardization of categories and compilation methods is far from being achieved.

Along with difficulties common to other policy areas, migration policy also produces an additional individual problem; namely, the realignment of migration policy at European level towards an imperial policy, as outlined in the ‘Global Approach’ (Co (2007) 247, 16.5.2007). This means that certain elements at EU level have learnt that migration policy not only begins in the countries of origin, but should also target the movement itself, as is becoming obvious with the ‘migration routes concept’. This means that European migration policy, as practised within the framework of the EU Commission as well as some governmental organizations such as IOM or ICMPD, has itself learned to act in a flexible, deterritorialized and networked way (cf. Tsianos, 2008) with the effect, as William Walters puts it (2009), of a massive geographization of control policies. The I-Map of ICMPD represents this new rationality of the governance of migration and the associated knowledge practices very well. It visualizes the migration routes and feeds in the latest data – which is still very close to the classic control approach of the all-seeing gaze. The productive, governmental stratagem of the ICMPD staff is that, with the instrument of the I-Map, they are not only creating a processual network of widely differing actors, but that, for the first time, they are producing a migration-related identificatory space: ‘Africa-Mediterranean’. In so doing they exploit extensively the interactive possibilities offered by the Internet to ‘stage’ the ‘ownership of the states’ of the region over the map. Their own role, on the other hand, they describe merely as ‘facilitators’. While the MTM-team was not really accepted by the ‘humanitarian wing’ of the ICMPD staff, nevertheless it has, with the help of the I-Map, achieved a sweeping effect in the African region. Indeed, in contrast to the EU top-down processes in which, time and again, individual states such as Algeria or Libya have not been involved, here the North African, Saharan and Sub-Saharan countries sit peacefully around a table with ICMPD, Europol and Frontex, and together prepare the space for the externalization of the migration management-policy, far beyond the borders of the EU.

Reflections on research ethics

In the last two sections I demonstrated some of the dynamics and technologies whereby ICMPD, as an intergovernmental consultancy organization, practices the Europeanization and indeed globalization of EU migration management policy in association with the European Commission, IOM

and various individual Western countries. I have pointed out at least some of the fractures and conflicts: between law enforcement and human rights regimes; and between pedagogical approaches that wish to prevent states evading their responsibilities and others that mimic or even replace the role of the state. As I outlined at the outset and as pointed out in the course of this paper, these insights were only to be gained through participant observation. The conscious interaction with me as scientific observer certainly decreased with the duration of and subsequent familiarization with my stay. However, as described by, for example, George Marcus and Douglas Holmes, the biggest challenge that a contemporary ethnography of expert culture brings with it is the 'going ethnographic' of the field itself, which they term 'para-ethnography' (2005). These findings point to a blurring of boundaries between the knowledge practices of the researcher and the research object, with an increasing assimilation of both knowledge cultures. They also highlight the ease and speed of feedback processes and knowledge loops – which has nothing to do with the classical ethnological notion of 'studying up' but rather with a congruence of knowledge practices. So in my own case, it is clear that ICMPD opened their doors not only because of their wish to appear transparent (and this, again, is a result of earlier criticism, which they referred to repeatedly) but also because they hoped to feed back my findings into their own reflection and evaluation cycles. In addition, I brought with me an equivalent scientific expertise, which they tried to use for their own knowledge work. On the other hand, I often had to restrain myself when, during discussions about methods and tools, I realized that a staff member either did not wish to or simply could not understand the political rationale behind some actions. Or the I-Map, for example, where I had to be careful to avoid showing too much enthusiasm, given my own scientific preoccupation with maps and visualizations in the context of the MigMap production (www.transitmigration.org/migmap). Against this background, further empirical research in and on such knowledge networks needs to reflect more deeply their positioning as well as any unintentional and intentional 'collaborations' (cf. Marcus/Homes, 2005) with these actors and their knowledge–power regime. However, it is getting more and more difficult to draw a line between scientific knowledge production on the one hand and operative knowledge production with the objective of controllability and governmentality on the other.

Notes

1. Name changed by the author.
2. The member states are Austria, Bulgaria, Croatia, Czech Republic, Hungary, Poland, Portugal, Slovakia, Slovenia, Sweden and Switzerland.
3. He died suddenly in 2004. Gottfried Zürcher, a former high-level diplomat of the Swiss government, took over the directorate.

4. In his lecture in 2002 in Cambridge, Widgren still questioned the will of the European nation states to practice 'sound migration management'. In regard to 'this mysterious lack of a rational government response to these anticipated migration challenges', he strongly advocated the political practice of 'governance' instead of 'government' (2002).
5. Today the website formulates the mission statement differently and without the use of advertising vocabulary typical for private consultancies: 'ICMPD strives to improve and facilitate regional and international co-operation in the field of migration policy and migration management, including contact and dialogue among countries of origin, transit and destination and to support ICMPD Member States in achieving their priorities and migration policy goals.'
6. For analytical clarity I use the term 'migration governance' or 'governance of migration' referring to the Foucaudian concept of governmentality.
7. In this methodological regard it is highly informative to compare such ethnographic policy research with the conditions and experiences of ethnographic science and technology study approaches doing research on knowledge production in laboratories as Karin Knorr-Cetina's 'Manufacture of knowledge' (1981) or the research by Stefan Beck (2000).
8. Here, I have recourse to the Foucaudian or Deleuzian concept of 'assemblage' which is being increasingly utilised by more recent cultural-anthropological studies (see Rabinow, 2004; Ong/Collier, 2005; Beck, 2007), as it is capable, firstly, of discerning the multi-dimensionality of processes, actors, discourses and institutionalisations, including new power constellations and, secondly, it always thinks the power constellations as emerging processes and never as fixed or completed; thirdly, it points to emergence as a structural principle of the new imperial logic of power (Beck, 2007; cf. Marcus, 2008). Thus, on the one hand it regards fragility, brittleness or conflictuality as increasing problems of imperial policy, which, as I am about to demonstrate, is also a structural characteristics of the European migration management architecture. But, on the other hand, this approach also makes it possible to think of these processes as central dynamic forces and productive moments.
9. With an 'Ad Hoc Group for Immigration' founded in 1986, and another (established in 1988) for the co-ordination of all the measures necessary for free circulation to function.
10. Especially in the area of border management, asylum and visa policy. Schengen was the start for the externalisation of border control to the external borders of the European Union and far beyond.
11. Another one in the European context would be the 'Migration Policy Group' founded by another main protagonist at that time, Jan Niessen from the Netherlands.
12. In so far it is not surprising that the advent of the paradigm of migration management is also dated back to this crisis of regulation at the beginning of the 1990s.
13. Widgren recalls the 1980s: All of us dealing with migration in Europe really were very nervous at the time [end of the 1980s], and it is hard for me to accept the humiliating and cold hindsight comments of certain scholars, who today contend that European Governments and their agents, like me, were drumming up the formation of a 'Hardliner Coalition', to allow, in time, for the creation of a 'Closed-Door-Europe' (2002).

14. Widgren wrote in 2002: 'Dark clouds are moving over the policy landscape. The big leaders are back in the 1993 "Angst-grip". What happened? They probably do not know this themselves. They have not had time enough to reflect. They continue to treat the immigration issue as a short-term election gimmick, to use as it befits. It is not clear why there is this backlash. Did voters overreact on the UN message on the 13 million? The fear of illegal migration has, since the beginning of the year, again completely overtaken the scene. Of course, there are heavy and even heavier illegal inflows, and now increasingly also from Sub-Saharan countries. But this was to be expected, given the poverty crisis there.'
15. This change also describes the institutional situation of the EU in the field of migration related issues in regard to agencies as well as in regard to knowledge which was at that time still poorly developed (cf. MIGMAP, 2010).
16. Widgren worked as state secretary responsible for immigration issues and gender equality in the Olaf Palme government between 1982 and 1987. And he was member of the Social Democratic Party of Sweden.
17. One reason was the development of the IGC from a discussion forum to a more technical coordination platform in 1992. Another reason was its political limits due to the leading role of the UNHCR that still defended the asylum regime (cf. Georgi, 2007, pp. 16/23).
18. Most of these projects are in the area of 'capacity building' and 'assessments', where the ICMPD mostly works in a consortium.
19. Against this background I concentrated my ethnographic analyses on the practices and discourses of the Budapest Process and the MTM-Dialogue. But I also conducted interviews with staff members of capacity building projects and with the research department.
20. The following quotes of interviews are translations by the author. The originally spoken language is German.
21. I was able follow quite a similar statement during one of the Budapest workshops where the participants were about to brainstorm over the future orientation of the Process. Here one delegate of an eastern European accession country was saying to colleagues: 'The management of migration is out of the control of governments.' His colleague from another Eastern European candidate country agreed: 'Yes, it's self-controlled'. The staff-member continued: 'It's not us, it is organised crime, they influence matching the needs of the labour market and the labour force. Dear colleagues, let's try to really establish a governmental system! Our message should be, do not contact a smuggler or an uncle, contact us, our service' (Protocoll, 2008).
22. In the context of the Budapest Process, for example, through its role in preparing and organising the workshop meetings, inviting experts, presenting 'background papers', and taking a leading role in drawing the conclusions. The annual 'senior officers meeting' as the only decision-making forum of the process is no exception.
23. Such as the signing of readmission agreements made conditional by the EU and linked to questions of development aid and other financing (cf. Widgren, 2002).
24. One of the main guiding principles in this area of competition, according to Zürchner, is not to 'duplicate' initiatives. But during our conversation he expressed annoyance at attempts to lay sole claim to an area: 'This is nothing but "keep the competitors at bay. We want a monopoly here."' He is rather of the conviction that migration is such a broad issue that no organisation can ever claim to cover the whole field (cf. Interview Zürchner, 2008).

25. Thus, many staff members denote their projects as 'products' which have to be placed on the market effectively and efficiently.
26. This also has quite ambivalent effects on the conditions of employment and hence on the kind of people working in such an institution. All of my interviewees were young, highly committed and flexible experts, mostly in the field of international law or relations. They described themselves as 'high performers' in a work environment characterised by a high level of precariousness. Most of them had only project based temporary job contracts without any social insurance or job security, and they had to rely on their own ability to get another project funded, as the informally organised staff association complained.
27. In this regard, it is highly interesting that the ICMPD is very proud to have a strong science department that is academically very active and seems to enjoy a high degree of autonomy from the operational objectives of the organisation. That does not mean that its findings are not of relevance for the organisation – in fact, the director general also seems to be highly interested in critical results and the department is requested time and again to present their findings in projects and meetings of the Budapest Process and to utilise their methodological, empirical skills to generate surveys and statistics.
28. Kerstin Jacobsson too has defined this mechanism as 'governance by standardisation of knowledge' based on the political will to build 'objective' and comparable data at the European level so as to standardise political objectives (cf. Jacobsson, 2001, p. 11).
29. Here I focus on empirical studies which focus on 'horizontal mechanisms' of Europeanisation, as Claudio Radaelli has termed it, 'where there is no pressure to conform to EU policy models' (Radaelli, 2001, p. 124). By concentrating on this I am not saying that the EU does not also operate through coercive measures. As horizontal mechanisms, Bruno, Jacquot and Mandin analyse the political practices and technologies of 'benchmarking', of 'gender mainstreaming' and the 'open method of coordination', which mainly consist of an absence of legally binding constraints and operate positively on the networking of diverse actors and the diffusion of knowledge (cf. Bruno/Jacquot/Mandin, 2006, p. 524).
30. An historical analysis of this self-presentation shows how its self ascribed objectives as well as the general migration related discourse has changed over time. In the mid 1990s it focused the 'prevention of irregular migration and organised crime' as well as on 'control' measures (cf. Düvell, 2002, p. 108).
31. I was quite astonished that cooperation between the different departments and information exchange were quite poorly institutionalised leaving it to personal connections and informal coffee talks.
32. This security bias was the subject of highly controversial debates among ICMPD staff where the opponents of this orientation described themselves as the 'human rights fraction'.
33. At present there are the following working groups: on Irregular Transit Migration through the South East European Region; on Development of Migration Systems; on Irregular Movements and Asylum; on Immigration and Admission Policies; on Return and Readmission; on the Black Sea Region.
34. In the course of the research project *Transit Migration*, Serhat Karakayali and I have shown the importance of the mobilisation, the diffusion and the production of knowledge on migration movements in the context of Turkey's pre-accession period to the EU, where Turkey also had to adjust to the Schengen Acquis (2007).

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6

Borders and Populations in Flux: Frontex's Place in the European Union's Migration Management

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In May 2009, I attended a conference on migration and border management in Berlin, organized by the Heinrich Böll Foundation. Titled 'Fortress or Area of Freedom? Euro-Mediterranean Border Management',¹ the conference juxtaposed the two predominant readings of Schengen Europe. This was achieved in a rather awkward way. While the invitation clearly addressed a rather critical audience which would agree with the thesis of 'Fortress Europe', the conference itself featured a lot of representatives of key organizations and institutions that are part of the project of building the 'Area of Freedom, Security and Justice' declared by the Treaty of Amsterdam in 1997. Not surprisingly, the European Agency for the Management of Operational Cooperation at the External Borders of the member states of the European Union (Frontex), was also present, represented by its Director of Operations Division, Klaus Rösler, who had only joined Frontex permanently less than a year before after having served for many years in the German Federal Police, the former police unit charged with the policing of the German borders. Due to the Schengen agreements, Germany had been rendered virtually borderless (apart from airports and harbours) and that particular police body has subsequently been transformed into a Federal Police force, taking the border inside while also being an active contributor to Frontex operations all over Europe. After the conference, I had a chance to talk to Mr Rösler and also asked if it were possible to have an interview with him concerning my research into European migration policies and their implementation. His reply puzzled me greatly: he stated that of course I could interview him, but immediately added that he might not be an interesting interview partner since Frontex did not deal with migration. He explained that Frontex was only about border management. I replied that there seemed to be a significant amount of overlap in these two fields, which he confirmed without giving up his point about Frontex not dealing with migration.

His statement also did not match public perceptions of Frontex. A news search on Frontex brings up a variety of news articles from all over Europe, indeed the world, mostly mentioning Frontex in connection with measures at the border intended to bar migrants and refugees from entering the European Union's territory. While a lot of articles are mainly descriptive, recently a spate of articles examining the activities of Frontex in a critical manner has also emerged (cf. Frankfurter Rundschau, 2009; Report Mainz, 2009). Further, human rights nongovernmental organizations (NGOs) have put a focus on the immediate effects of operations coordinated by Frontex (cf. Human Rights Watch, 2009), raising the question about access to the European asylum systems guaranteed in the UN Convention Relating to the Status of Refugees (usually referred to as the Geneva Convention). On the other hand, articles connecting Frontex to other areas of border security, like drug trafficking or counter-terrorism, are rare, and most often reflect policy statements made by either European Union officials or their member states' counterparts. The actual practice of Frontex, in the public eye at least, is deeply connected with migration control.

This apparent contradiction gives rise to the question about the role of Frontex in the European Union's migration management strategy. Neither the official title of the agency nor the Council regulations concerning Frontex explicitly mention migration as a specific focus of Frontex. Article 1 of the Frontex Regulation states that the agency 'is hereby established with a view to improving the integrated management of the external borders of the member states of the European Union', continuing that it 'shall facilitate and render more effective the application of existing and future Community measures relating to the management of external borders' (Council, 2004: article 1). Ostensibly, there is no denying that Frontex is first of all an instrument of European border management. Implicitly, that includes migration as a phenomenon which occurs at the borders, but this cannot motivate as yet an analysis which places Frontex as a considerable actor in European migration management. Consequently, the scholarly interest attracted by Frontex so far has mainly seen the agency as an object of policy study in the field of security and the study of the European harmonization process in the area of Justice and Home affairs (Hobbing, 2005; Guild, 2006; Hobolth, 2006; Carrera and Geyer, 2007; Jorry, 2007; Jeandesboz, 2008; Leonard, 2009; Neal, 2009).

In this chapter, I want to discuss a different perspective on the European Union's border agency and the European Union's common external border. I contend that the border is to be considered one of the main technologies devised in the European Union in order to govern migration, and I am interested in exploring the role Frontex both plays in 'doing' the border as well as re-shaping it. My material and arguments draw on my ongoing anthropological research into the European Union's external border as well as migration

policies; the research is carried out mainly in fieldwork, but also includes a fair amount of document analysis.

In referring to the border as a technology, I invoke a Foucauldian reading of the term 'technology'. Rather than seeing it as a mere technical installation (the turnpike and the fence), one rather needs to consider all of the heterogeneous elements of what Foucault has called a *dispositif*: '...discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions – in short, the said as much as the unsaid' (Foucault, 1994). The purpose of the border, then, is to imprint a certain behaviour on individuals and to create relations of power. This renders the border a social relation (Tsianos and Panagiotidis, 2007) which is under constant contestation, being re-shaped at all times by conflicting forces, making it a phenomenon in flux.

To advance an analysis that further captures the heterogeneity of actors involved, it has been suggested that the notion of a regime should be used as the conceptual framework (cf. Transit Migration, 2007). The term 'border regime' refers to the heterogeneity and multiplicity of actors involved with the border at large. It implies that the actors are not ordered in a hierarchy organized by a central logic, but rather that they are entangled in a network which allows for conflict, diverging interests and situative alliances (Scortino, 2004). The absence of a central organizing logic also introduces an understanding of actions undertaken by actors in the regime as improvisations and responses rather than effects of long-term and deliberate planning, conveying a notion of chaos and unpredictability. Scortino has also stressed that action as well as observation are interdependent and feed on each other. The analytical consequence is not only to provide an account of the actions of a specific actor, Frontex in this case, but to also establish an analysis of the way this specific actor observes, researches and probes into its particular field of action and how it interacts with the actors in the field. It is exactly this perspective which avoids the pitfalls of merely describing control policies and thereby inherently reproducing the idea that migration is actually controllable.

Discovering the border

Hess and Tsianos (2007) have identified the Schengen Process as a central element of the Europeanization of migration policies. Frontex is the product of this process. It is the most important process apart from the neoliberal economic harmonization process and the creation of a political union commonly associated with the town of Maastricht and the treaty that was signed there in 1992. The Europe of Schengen, with its focus on territorial harmonization, is part and parcel of the Europeanization of migration policies. While migration policy is not only about borders but includes a vast array of

other policy elements and choices, the Europe of Schengen focuses on the border as a technology of power, while at the same time transforming this technology and re-applying it in other fields. These transformations have a profound effect on migration to Europe and have made the borderlands of Schengen as well as migration itself an even more contested area over the past decade.

In 1997, the Schengen agreements, whose negotiation had started in 1985, were incorporated into the European Union through the Amsterdam Treaty, entering into force in 1999. The Amsterdam Treaty also attached a European policy dimension to the field of asylum and migration policies, hitherto a purely member state domain. The Europe of Schengen had an external dimension from the outset. While abolishing systematic internal border controls, the Schengen process also 'invented' (Walters, 2002) the European common external border, a concept and construct not existent before, adding a notion of territoriality proper to the European Union. This newly conceived European border was a political invention, introducing shared responsibility over an asymmetrically shared border without transferring sovereignty at the border to a genuine European body.

While the European common external border might have been an invention on a political level, it was as much a discovery regarding the actual task of policing the border. Far from intending to naturalize the European border, or to attribute to it an essentialist character thus identifying it as something pre-existent, I use the notion of discovery to convey a sense of the unintended consequences such an invention had and what conceptual as well as practical adjustments it brought about for the European border and migration regime.

For indeed, the increase in irregular migration to Europe since the end of the 1990s across the European border as a whole posed a significant challenge to the European migration and border regime. The struggles for the right to stay, especially the struggles of the French *sans-papiers* (Sans-papiers is the French word for 'irregular' or 'undocumented' migrants), captured a European audience and put the question of migration and inclusion on the agenda. Answers quickly at hand were a call for the establishment of an extritorialized system of detention camps and military interventions in the areas of origin of migration movements in order to establish euphemistically named Regional Protection Areas where would-be refugees could be barred from turning themselves into actual refugees, a literal deep-freeze of migration (Transit Migration, 2007; Nsoh, 2008). These proposals, clearly rooted in a desire to control, did not advance successfully. Although they are still considered significant elements of a European migration policy formulated time and again, they could not constitute an answer to the challenge in time. Furthermore, the control approach had been superseded by the idea of migration management, which had departed from the notion of zero

migration towards a softer regulation of migration, thus accepting migration as a phenomenon of global society.

At the same time, a harmonized European migration policy, as agreed upon in the Amsterdam Treaty in 1997 and at subsequent summits, remained far from reality. There still is considerable reluctance from European Union member states about allowing this essential bit of sovereignty to slip away to the EU at large. As a consequence the interest in the practical aspects of the European border regime increased, since it offered a pragmatic, step-by-step approach. Frontex is the consequence of this approach.

Establishing a border agency

In 2002, the European Commission proposed a European Border Guard Corps, to take over the management of the EU's external borders (European Commission, 2002). According to Hobbing (2005), this was not met with sympathy by the governments of the European Union's member states, who did not want to hand over control over their borders to a European body. The establishment of Frontex must hence be read as a compromise between the Commission's plan for an integrated border management under the auspices of a truly European institution and the reluctance of the national member states to give up such defining and essential control over their respective parts of the common external border shared under the Schengen agreements. Likewise, Frontex reflects both the fragile political balance between the European Union as a political body in its own right and the interests of the Union's member states as sovereign national states.

In 2004, the Council of the European Union passed a regulation setting up the European Agency for the Management of Operational Cooperation at the External Borders of the member states of the European Union with the short name Frontex (Council, 2004). As the reasons for giving the agency such a menacing name are unknown, one can only speculate that Frontex was indeed designed both as a deterrent to those outside and as a message to those inside that the European Union was finally forging ahead on the issue of managing the common external border.

The principal difference between the concept of a European Border Guard as envisioned by the Commission and the actual agency set up in the end are quite substantial. Instead of taking over the day-to-day management of the border, Frontex was merely given the task of coordinating multilateral activities at the border, leaving the actual sovereignty in the hands of the national member states. As will be discussed below, Frontex also acquired some other tasks like technology research and training of border guards. The significance of this shift in tasks becomes apparent when conceptualizing the agency: it is less an actual police force than both a 'think tank' researching future designs and concepts of border and a laboratory gathering experimental knowledge

about the consequences of these re-conceptualizations for applied border management. In the period immediately after the establishment of Frontex, there seem to have been plans that Frontex might gradually develop into the European Border Guard Corps. From the slides of the talk Frontex Executive Director Ilkka Laitinen held at the German Bundeskriminalamt's autumn conference in 2006 (Laitinen, 2006), we can glean that he believed that the time may come where Frontex would take over complete responsibility for the common external border. However, this theme has not reappeared lately in either of the relevant policy documents.

The Council regulation of 2004 was amended by yet another council regulation in 2007 providing for the establishment of Rapid Border Intervention Teams (RABIT), 'comprising specially trained experts from other Member States [...] to assist its national border guards on a temporary basis' (Council, 2007, (6)). To date, this force comprises 693 officers (Laitinen, 2010). Usually referred to as the RABIT regulation, the act has also transferred some executive powers to border police employed in Frontex coordinated operations, unprecedented in European Union law. The Rapid Border Intervention Teams have not been actively deployed since their creation. They may be a reminiscence of the European Border Guard Corps and the seed for such a unit to come.

In the meantime, however, they seem rather like a laboratory for studying the conditions under which the coming European border guards can be deployed. In a series of exercises, extreme scenarios were simulated and acted out. The first exercise was held in 2007 at the airport of the Portuguese city of Porto, including border guards from 16 European member states. The scenario of the exercise developed by Frontex was based on the economic collapse of a Central-American country. It further reads:

The airport of Porto is being reached by a large number of citizens of the fictional island of Central American Republic (CAR), using high quality forged documents obtained from a forgery network operating in that country. From the beginning of October a new route has been established between CAR and Porto. CENTRAL AMERICAN WINGS airline introduced 2 daily flights from CAR to Porto. The airline uses Boeing 747 for every flight, which indicates a capacity of 450 passengers per flight. It is known that the bad economic situation in CAR had driven people to take the decision to leave the country. Due to the hard visa restrictions imposed by the EU, citizens of CAR started using high quality forged documents of European and visa-exempted American countries produced by criminal networks. [...] The Portuguese authorities expect a huge influx of CAR citizens, who will try to enter the Schengen area by using forged or falsified documents. The Portuguese border guard service is not able to deploy officers to the Porto Airport, having required profile and experience.

(Frontex, 2007)

While this scenario is fictional, events like the 2006 Lebanon war, the 2008 South Ossetia war or the potential economic collapse of the Republic of Moldova provide real world examples of situations in which an increased arrival of refugees to the European Union might be expected. Consequently, the latest exercises have been held at the Romanian–Moldavian border (2008), the Slovakian–Ukrainian border and the border triangle of Bulgaria, Greece and Turkey (both 2009), covering areas identified as ‘hot spots’ of migration by Frontex. However, these are extreme deployment cases for Frontex. It is the non-exceptional activities of Frontex, of which these exercises may well be part, that necessitate closer analysis.

The agency

Frontex as an agency of the European Union has a well-defined set of tasks it is supposed to fulfil. They are listed in the Council regulation setting up Frontex. A first glance makes Frontex appear a motley institution, as if it was the result of a wish-list every EU member state had offered. Risk analysis, coordination of operational cooperation, assistance in training border guards and development of common standards, monitoring of research in the field of border control and surveillance, lending further assistance to member states in exceptional circumstances and support in carrying out joint deportations is a wide field of activities. At the end of 2009, Frontex employed 226 staff at the headquarters in Warsaw, a figure expected to rise to 281 in 2010 (Laitinen, 2010). Frontex started with a budget of about 6 million Euros in 2005 (Frontex Management Board, 2005); in 2009, it had already grown to 88.8 million Euros (Laitinen, 2010). Of these, about two thirds are spent on operational expenses. Sea operations cover the biggest part of the operational budget with 36.1 million Euros, land operations cover 4.25 million Euros and air operations 2.65 million Euros. The field of joint deportations covered 5.25 million Euros in 2009, a figure expected to rise to 9.34 million Euros in 2010. Training amounts to 6.8 million Euros and Research and Development to an additional 1.4 million Euros.

According to Frontex, risk analysis is at the core of all activity planned and undertaken by Frontex. The programme of work for 2009 states: ‘Frontex operational activities are intelligence driven and based on threat and risk analyses carried out by Frontex’s Risk Analysis Unit (RAU) on an ongoing (regular) and ad hoc basis’ (Frontex, 2009). The RAU is supported by a European risk analysis network consisting of experts of the member states of the EU. The output is general forecasts for the whole of the European external border as well as so-called Tailored Risk Analyses (TRA) for specific geographic locations or phenomena.

Risk analysis itself is based on the so-called Common Risk Analysis Model (CIRAM), developed by the Risk Analysis Centre (RAC), which merged into

Frontex. Current Frontex Executive Director Ilkka Laitinen was the head of the RAC. Some consideration should be given to this biographical detail. Even when considering that the distribution of high posts in the EU hierarchy is done through an unfathomable process of negotiation, it seems an unlikely coincidence that the top Frontex job went to the person representing the specific approach to border management Frontex is also basing its activities on. It references an understanding of the European external border as an inhabited space of risk and danger whose exploration and mapping is a prerequisite to sound policing. The focus on risk analysis sets Frontex apart from institutions with a pure control approach.

Risk analysis, whatever knowledge it may produce, is not an end in itself for Frontex. Based on the predictions, Frontex is initiating so-called Joint Operations. Although these can also be called for by a member state, Frontex seems to be the driving force behind most operations.

Joint operations are the most noticeable activities of Frontex and are where the agency potentially makes the biggest immediate impact on migration. Under the Frontex Regulation, joint operations might have a different aim from dealing with irregular migration; however, most operations specifically target irregular migration, while the detection of irregular migration is part of every operation carried out by Frontex so far. The concept of joint operations is to bring together forces and resources from different member states and forge them into a common operation. In this respect, joint operations can be described as a concrete experiment into joint European policing of borders.

Frontex clusters its operations by the type of border that is targeted: air, land and sea. Frontex initially had a strong focus on the southern sea borders, initiating small operations that soon turned into a round-the-year effort to deploy additional forces. At the same time, Frontex also started operations at land borders and airports, which by 2009 had matured into a coordinated effort. The framework for land border checks focuses on the south-east and east of the European Union, reinforcing controls at certain border crossings while also maintaining a targeted operation towards highways and train lines. For the air borders, there are two frameworks. While one targets certain routes described as 'high risk', the second is aimed at specific nationalities. Both frameworks are applied in various airports all over the European Union (Rösler, 2009).

Frontex is also involved with following and initiating research and development on border surveillance technologies (in the practical sense). Two concrete outcomes of these programmes are studies on the creation of the European Surveillance System EUROSUR and a recommendation study for the use of biometrics at border crossings. These will be examined more deeply later.

Frontex is further tasked with the organization of joint deportation flights at the request of European Union member states. In 2009, Frontex organized

or participated in 31 such flights, resulting in the deportation of 1570 people from the European Union (IPS News, 2010).

Rebordering from above

As stated, the tasks of Frontex seem a rather mixed bag. Why are all these tasks combined into one body? The practical framework of the activities of Frontex needs to be compared with how border policing is handled in national states. There has rarely been a border control institution that has combined actual policing, secret service-like investigation, technological research, training and deportation so tightly into one body. Surely there have been tendencies towards such a development in the member states, and it is important not to forget that Frontex is indeed the product of the Europeanization of national border policies. The quantum step Frontex represents, however, is the fact that the border is discovered to be a political space of its own, with a population in flux distinct from the citizens of the EU. While before, the border tended to be a field of action attributed to an array of national institutions, the creation of Frontex re-conceptualizes the border as a distinct field of its own in need of policing with a particular set of technologies. Frontex represents the discovery of the European Union's common external border as a space the EU is in dire want of gaining sovereignty over.

The newly discovered border Frontex and the European Union are facing differs significantly from traditional designs of borders, specifically borders between sovereign nation states. In this case, a border was considered a line dividing two distinct territories governed by different political entities. There may have been some degree of cooperation between the two institutional bodies tasked with the policing of the border, but apart from that the border constituted the *limes* from within which sovereignty acted. Outside, beyond the border, there was neither the possibility nor the direct wish of exercising control. The border itself did not constitute a separate *lieu* which necessitated specific form of technologies of power, but was under the responsibility of various governmental institutions: a police unit enforcing the legal constraints on entering a territory, customs exercising oversight over the goods passing, health authorities enforcing disease control, an aliens' office dealing with issues of asylum and so on. The notion of a border as a space, as a borderland external to the actual national territory, is rather associated with the term 'frontier' as it was used in the colonization of the North-American continent. However, that term implied a void space without population, open to be conquered and to be integrated into the national territory.

The re-conceptualization and subsequent transformation of the European external common border is distinct from both concepts, even though it draws on both notions to some degree. Although the Schengen border is still considered the *limes* of European sovereignty styled as an area of freedom,

justice and security, the actual boundaries of jurisdiction, sovereignty and the ability and desire to control are much more blurred and under constant contestation. The regime's response can be captured in two central transformations and re-conceptualizations of the border. For one, the new border is understood to exhibit an attribute of spaciality, being a doubly unbounded space rather than a one-dimensional demarcation. This allows for new forms of sovereignty. The other shift is the implementation of a governmental project of bio-politics that is to leverage power over the population of the Schengen borderlands. For not only is the new border understood as a space, it is inhabited by a population in flux, unlike the largely sedentary population of the European Union. Consequently, other forms of government are necessary.

Spaciality

At conferences, speakers from Frontex often present the so-called 'four-tier border security concept'. It is usually visualized through a slide, featuring four horizontal bars (Laitinen, 2006: 9). Each of the bars represents a zone in the new concept of the European border in need of policing. The out-most bar is labelled 'Beyond the border', representing areas of departure. In this zone, the concept stipulates cooperation between consulates (issuing visa) and other institutions within Europe. The function of this zone is a first filtration, granting the right to legal entry only to those fitting certain specifications. The second bar is referred to as 'across the border'. It is, however, not the classical no man's land – uninhabited and ungoverned. Rather it is the geographical zones surrounding the border line, where the cooperation of the relevant authorities on both sides is called for. Only the third bar is labelled 'at the border', representing the actual, one-dimensional borderline. It is the classical terrain of the border guards, where border surveillance and passport checks are carried out. The fourth bar stands for the entire interior of the European Union. Necessary activities are described as operational cooperation between the member states, joint migration control and joint deportation flights.

This graphic representation of the border points to transformations that have been identified as exterritorialization and deterritorialization of the border (Transit Migration, 2007). Deterritorialization as a more generic term describes the detaching of systems of control from the actual border and its reapplication in different contexts, illustrated by the incorporation of the European Union's territory into the border security concept described above. Exterritorialization conversely describes the movement of the border to the exterior, well illustrated by the example of the Frontex operations Hera and Nautilus.

Hera might be the best publicized operation carried out by Frontex so far. It was also the very first large-scale operation Frontex launched just after its foundation. Hence from its development, we can draw conclusions about

the general direction Frontex is heading in. The reason for Operation Hera is the well-publicized flow of irregular migration to the Canary Islands, Spanish islands about 1000 km south of actual European territory. Migrants from mostly sub-Saharan Africa attempt to reach these islands travelling by small boats, covering a distance of up to 2000 km to reach European territory. Despite their distance from the mainland, the Canary islands are nevertheless a gateway to Europe. The establishment of this route prior to 2005 is a result of the increased attempts by the Spanish state to stop irregular migration crossing the straits of Gibraltar.

Of course the fact that migration seeks ever new routes once the existent ones are closed is no new development. The individual nation state's policy aim might have been exactly to achieve a displacement of migration routes to other states. It is only in the process of Europeanization that this becomes a problem for Europe as a whole. In the eyes of European policy makers, this only reinforces the notion of the need for a commonly managed external border. In this situation, Frontex and the Spanish government jointly initiated the operations Hera I and II in 2006. Hera I was largely a knowledge-gathering exercise where interview experts from the border control authorities of the various member states involved in the operation were deployed to question arriving migrants about their country of origin and the routes they had travelled. It took place from June to October 2006, and of 18,987 migrants having arrived at the Canary Islands during the operation, 6076 were deported (Frontex: Hera). Obviously, the data gathered would be fed back into the risk analysis effort undertaken by Frontex. The data would, however, also serve to facilitate the deportation of migrants, thus playing a vital role in this exercise of control over who has access to the Spanish and, in consequence, European territory. The operation lasted 14 weeks.

Hera II, on the other hand, was not about the 'second line' as border control authorities refer to the task of identifying and questioning migrants. Hera II, taking place from 11 August to 15 December 2006, brought sea vessels, helicopters and planes from various member states in order to effectively hinder irregular migration to the Canary Islands. Initially, there was a lot of public confusion about the exact details of the operation. Many reports (FAZ, 2006) rightly assumed that deploying border checks at the Canary Islands would neither deter migrants nor allow for detention and immediate deportation. The German newspaper FAZ even speculated that border police deployed would merely attempt to convince migrants to return. In December 2006, the BBC (2006) revealed that the patrols under the coordination of Frontex were not carried out close to the Canary Islands but rather in the territorial waters of Senegal, Mauritania and the Cape Verde Islands. The legal background for such an operation, which might be considered a breach of the sovereignty of these states, was transferred to Frontex operations from bilateral agreements Spain had signed with each of the respective countries. In practice, the Frontex operation is stopping the boats from starting their

journey, while in consequence, the European external border has been externalized and pushed south by several thousand kilometres. During Hera II, Frontex claims to have 'diverted' 3887 migrants in 57 boats at the West African coast (Frontex: Hera). Frontex has continued this operation every year since, and has prolonged the duration of the operation as well. Hera 2007 happened in two phases, from April 23 until 15 June 2007 and from July 12 until 31 December 2007 and had a budget of 5.4 million Euros. Apart from the hosting member state Spain, another eight states participated² and seven vessels, one helicopter and one aircraft were deployed in the first phase, seven vessels, two helicopters and three aircraft in the second phase. 6890 migrants were intercepted and 3127 were diverted (Frontex: Hera). In 2009, operation Hera started on 16 March (Frontex: Hera 2009). While the website states the end as 31 December, in a presentation Frontex executive director Ilkka Laitinen has given to the European Parliament, Hera 2009 is described to last until April 2010, with a sequel Hera 2010 operation already announced (Laitinen, 2010: 16). The effects have been a massively decreased arrival of irregular migrants at the Canary Islands. While in 2008, about 14,000 migrants reached the islands, in 2009, this number reduced to about the half (Nouvel Obs, 2009).

Frontex has identified another migration route reaching from the shores of Libya to the European member state Malta and the Italian islands of Lampedusa and Sicily. In order to counter these migratory movements, Frontex, Malta and Italy initiated the so-called Nautilus operation, mainly run from Malta. The operation also started in 2006 and followed a similar pattern. Second-line interviews were conducted to learn about the countries of origins of and routes travelled by intercepted migrants. At the same time, as was the case with Hera II, sea- as well as airborne vessels were deployed in order to stop boats carrying migrants. As in the case of the Canary Islands, the operation initially seemed successful.

In 2007, the operation was supposed to be repeated. However, on 3 August 2007, the European Commissioner for Justice, Freedom and Security, Francisco Frattini, declared the operation an official failure, attributing this to a lack of support by the European member states that had initially pledged they would provide personnel and equipment for the operation (taz, 2007). This statement was well publicized and may have subsequently led to the understanding offered by both the European Commission as well as the Council of the European Union that Frontex ought to have its own equipment at its disposal (Commission, 2008a; Council, 2009). While this problem could be worked out internally in the European Union, there is reason to believe that the lack of support may not have been the only, or even the pivotal reason for the failure of Nautilus in 2007. Frontex spokesperson Michal Parzyszek acknowledged that since the Frontex operation was public knowledge, migration had rerouted to Lampedusa instead (Westfalenpost, 2007). In 2008, a similar situation unfolded. On 21 September 2008, the

Times of Malta reported under the headline 'Frontex chief admits failure' that Frontex executive director Ilkka Laitinen declared the 2008 operation a failure, even wondering whether Frontex was part of the problem rather than of the solution.

This is the saddest part of the story. We have an increased level of operational activities which might be serving as a pull factor for traffickers. Traffickers could be targeting Malta and Italy as an alternative to the Canary Islands. The number of clandestine immigrants reaching the Canaries has fallen considerably since 2006.

(Times of Malta, 2008)

The principal difference between Hera and Nautilus, and the reason why the former succeeded while the latter failed, lies in the outcomes of the attempts to exterritorialize the border and to include Third Countries (the European Union term for non-member states) into the border regime. While Senegal, Mauritania and the Cape Verde Islands were easily pressured into signing a treaty turning their territorial waters into part of the European external border, the Libyan state under Gaddafi was less apt to adopt such an approach. It was only in May 2009 that Italy, negotiating on a bilateral basis with Libya, reached a functioning working agreement with Libya that on the one hand provided for Libya to stop the departure of migrants' boats from Libyan shores and on the other allowed Italy to deport migrants intercepted on the high seas back to Libya. The price of this agreement was the substantial payment of 5 billion dollars to Libya over the course of the next 25 years and also included an unprecedented apology by Italy for the crimes committed during the colonial rule of Libya (La Repubblica, 2008). While the legal basis for the interception on the high seas and the deportation without a check of asylum claims are heavily disputed (UNHCR, 2009b), Italy has carried on with her practice. The number of migrants reaching Italy from Libya has also drastically reduced.

The role of Frontex in these political negotiations is unclear. Frontex has not commented on the matter and only stated that they are not part of the ongoing interceptions and deportations. A recent report by Human Rights Watch (2009) has cast doubt on this statement. It would, however, be no surprise if the Italian practice were indeed modelled on Operation Hera, thus having imported a strategy first tested and elaborated under Frontex in West Africa. Lately, it has been demanded that Frontex be given the authority to negotiate such treaties itself (Council, 2009). At present, Frontex may only negotiate working agreements with the border authorities of Third Countries.

However, the role Frontex plays in enforcing such strategies of externalization was much clearer in the case of Greece. As the routes to Spain and Italy were more and more difficult to travel, the route via Turkey and Greece grew

more important in 2009. Greece experienced a massive arrival of migrants that year. There are mainly two routes that lead to Greece. One way is to cross the border constituted by the river Evros in the North, while the other is to cross over to the Greek islands close to the Turkish coasts. At times, only a few kilometres of narrows of the Aegean Sea constitute the border. The exact geographical position of the borderline is still under dispute between Turkey and Greece while the area in questions spans over several hundred kilometres. In this context, there is little space for the Greek coastguard to effectively inhibit the undocumented crossing of the European external border. The practice which has been established in consequence is one of the utmost brutality, with migrants reporting torture, pretended executions and destruction of their boats on the sea by the Greek coastguard. As condemnable as this practice may be, it does not serve its purpose. It must be read as a desperate attempt to deter further migration (Pro Asyl, 2007).

In the case of the island of Lesbos, where I was able to do some fieldwork in August 2009, I could witness the arrival of large groups of migrants every night in summer. For 2008, a figure of 13,000 arrivals was reported for that island alone (UNHCR, 2009a). Frontex has been maintaining a joint operation in the area called Poseidon since 2006; during my stay, a Romanian coastguard ship was anchored in the harbour of Lesbos, taking to the sea every night and returning in the morning. The ship was stationed there for a whole month and had been preceded by a helicopter of the Austrian border guard forces. Apparently, and unlike the case of Hera, Frontex did not make a difference in the case of Lesbos. Newspaper reports indicate that the resources deployed merely aided in the identification of boats crossing the narrows, while the actual interception, detention and supposed maltreatment of migrants was left to the Greek coastguard. Or, as it was aptly put by an administrator of the Lesbos harbour: Frontex is only here for holidays (FD). This understanding was confirmed by a representative of Frontex who complained that Frontex was not able to act effectively as success in stopping irregular migration hinged on the cooperation of the Turkish coast guard. They, however, had refused any cooperation. Since it was an open secret where the migrants stayed in Turkey before leaving for Greek shores, he further alleged that they were rather part of the problem (FD).

Greece had been calling for the cooperation of Turkey for a long time. In July 2009, the deputy foreign minister of Greece called for a 'six-point plan on illegal migration in the Aegean' (Kathimerini, 2009). It stipulated an extension of the readmission agreement with Turkey (probably to include non-Turkish nationals that had come from Turkey), a Turkish harbour to be designated as a central point for deportations as well as the expansion of Frontex operations. The call went unheeded since Turkey had no real incentive to shoulder the perceived burden for Greece. It was only in September 2009 that it became apparent how, through Frontex, more political pressure could be leveraged on Turkey. After two incidents where a

helicopter of the Frontex operation had violated Turkish airspace and was subsequently rebuffed, Frontex claimed that the Turkish coast guard was actively supporting traffickers, publishing video footage as evidence. Since then, the issue of the extension of the readmission agreement with Turkey and Turkey's supposed responsibility for cooperation in the policing of the European border has surfaced on a European level and has not disappeared since. According to the Greek newspaper *Ethnos* (2009), Frontex went even further and started to secretly negotiate a treaty with Turkey, pursuing the strategy of externalization.

Population

In the field of actual border management, Frontex tends to cooperate with the national border guard units. Frontex has from the onset also sought cooperation with intergovernmental bodies of migration management. In September 2009 Frontex, in cooperation with IOM,³ ICMPD⁴ and the EU SitCen,⁵ published a report titled 'The impact of the global economic crisis on illegal migration to the EU', where predictions about irregular migration to the EU in the near future were made. The report was compiled by the Risk Analysis Unit of Frontex and is described as a Tailored Risk Analysis (Frontex, 2009).

The analysis is largely based on economic statistics and a push-and-pull-model of migration. While this model has been criticized for not being able to explain migration adequately, it is nevertheless noteworthy that Frontex is actually attempting to gain an understanding and prediction of the population dynamics at the specialized border and the factors that shape it. In this approach, irregular migration is no longer a deviation from the norm but an integral phenomenon of the border that needs measuring and monitoring. Consequently, the report does state that border management is a part of immigration policy and even addresses the interdependence of migration and border management by conceding that 'enhanced border management probably keeps in Member States a number of illegal migrants who would have otherwise left' (Frontex, 2009: 4). Curiously, the report does not make explicit policy recommendations, but is more intent on providing relationships between phenomena such as irregular immigration, return migration, general economic developments and labour market situations in the European Union.

Another intergovernmental co-operation with Frontex has been labelled the 'Mediterranean Transit Migration Dialogue' (MTM). The ICMPD website gives a concise overview of the participants in the dialogue:

The countries involved in the dialogue on Mediterranean Transit Migration are comprised of the Arab Partner States (APS) on the southern and eastern side of the Mediterranean, namely Algeria, Egypt, Lebanon, Libya, Morocco, Syria and Tunisia, and, on the Northern shores, of

European Union Member States, Norway, Switzerland and Turkey, called European Partner States (EPS). Moreover, Australia participates as an observer. Officials of the Ministries of Interior, Intelligence and Security Services, Ministries of Foreign Affairs and Development Agencies participate regularly in this informal dialogue. [...] The dialogue also involves EUROPOL and FRONTEX (also partners in the project phase), the DCAF, the European Commission, INTERPOL, IOM, the League of Arab States, UNHCR, UNESCWA and UNODC.

The MTM is a textbook example of migration management. The composition of participants brings together states, representatives of different state institutions as well as intergovernmental organizations with diverging interests. In the first project phases, a common and mutually agreeable definition of problems worth tackling was worked out which led to the implementation of various projects. Frontex was involved in a project called 'Towards a Comprehensive Response to Mixed Migration Flow' together with ICMPD and Europol. Mixed migration flow is one of the current key concepts that identify a challenge faced by all organizations that deal with migration management. Given the heterogeneity of motivations for migration, they are usually binarily reduced so that they are either recognized as legitimate or illegitimate. Then, and this is the challenge, these two categories of migrants need to be separated to administer the different treatments (asylum system or deportation). The project can therefore also be read as a partitioning of migration by creating the categories through various technologies of power, like detention centres, and legal regimes like the Geneva Convention on Refugees. While the project conclusions mention the necessity to uphold international conventions that guarantee the rights of persons in need of protection as a cross-disciplinary element, its main focus is on identifying and intercepting irregular migrants, to dismantle 'smuggling networks', the 'management of reception and detention' and the management of deportations (Frontex, 2007).

Another MTM project Frontex was involved in was the so-called iMap,⁶ the 'MTM Map on Mediterranean and African Irregular Migration Routes'. It is an interactive display mapping migratory movements in the Mediterranean and North Africa, supposedly in real time. Apart from further externalizing the European common external border by visually including the North African states into a joint area impacted by irregular migration, the map also aims at identifying the spatial and temporal configuration of irregular migration *en detail*.

I describe these efforts because we can identify one common element. With the discovery of the spacialized border with its population in flux, Frontex as part of the European migration regime has identified an increased need to gather knowledge about this population, about the individual

motivations for migration and the identification of the routes of flux. As in the case of the report on the impact of the global economic crisis, the objective of this effort is not so much to achieve immediate practical policy recommendations. Rather, it is a bio-political turn that only once fully applied will allow for a governmental project aiming at the population of the larger border area, including an array of actors: statal, intergovernmental, supranational and non-governmental.

This bio-political project, however, does not stop at identifying specific groups within migration. In 2008 the European Commission proposed the so-called 'border package' in three Communications. The package consists of a report on the evaluation and future development of Frontex (Commission, 2008c), an examination of the creation of a European Border Surveillance System (Commission, 2008a) and a Communication titled 'preparing the next steps in border management in the European Union' (Commission, 2008b). The evaluation of Frontex stresses the importance of Frontex, the necessity of further development and growth and the centrality of the agency in the introduction of new technologies at the external border as proposed in the other two Communications. The creation of a European Border Surveillance System dubbed EUROSUR is a proposal to fuse all sorts of existent surveillance technologies into one system. The Commission states that '[t]he role of FRONTEX is crucial for the successful preparation of such a system' (Commission, 2008c: 9), further stating that 'FRONTEX could take on the role as a "hub" for an improved system of exchange of real-time, operational information between member states. In addition, giving Frontex access to surveillance information in a more systematic and structured manner could serve as the basis for the development of a 'FRONTEX intelligence led information system' targeting the external borders of the EU' (ibid.) and explicitly referring to the MEDSEA⁷ and BORTEC⁸ studies carried out by Frontex as a basis for the proposal (Commission, 2008a: 2).

The third Communication proposed a largely biometric entry-exit system for the European Union, drawing heavily on Frontex's BIOPASS⁹ studies. The creation of the entry-exit system would introduce automated biometric border checks and would, through a database recording every entry and exit, allow for the monitoring of individual people crossing the European borders in either direction. While this was mainly argued to be an improvement for 'bona fide travellers', the proposal includes a link to the also biometrized Visa Information System (VIS), established in 2004 and expected to be finally deployed in 2010. In conjunction, the entry-exit system would create the technical possibility of tracking the movements of individuals into the European Union and mainly target so-called 'visa overstayers', people staying in the European Union illegally after the visa used to enter the European Union legitimately has expired. Yet another database-based system, the Electronic System of Travel Authorization (ESTA) would close the tracking gap on nationals that don't need a visa to enter the European Union, forcing

them to register through ESTA beforehand. The Commission states: 'The data could be used for verifying that a person fulfils the entry conditions before travelling to the EU, while using a lighter and simpler procedure compared to a visa'. (Commission, 2008b: 9).

Both proposals rely on the technology of biometrics, allowing for a re-conceptualizing of what constitutes a person's identity through measurements of the human body, to cite the etymology. What is achieved is the possibility of digitalizing individual information, of storing it and thus gaining the ability to track an individual's movement in an unprecedented manner. One practical example suggested in the border package is to detach the entry authorization from a passport and assign its validity to a biometric test. While it might be read as a mere introduction of a new technology into the border guard's tool kit, the implications sketched above demonstrate that the biometric tracking would indeed constitute the real bio-political quantum leap that would allow for a fine-grained, individualized control over the population of Schengenland.

Border regime and migration management

Looking back at the fact that in 2002, the European Commission wanted to establish a European Border Guard Corps and ended up with a service agency in 2004, one might actually argue that the Commission was fortunate with the compromise. The task of building up an actual border police force might, given the strategy of the European Union of drawing on existing national resources, have bogged down due to practical and implementational details. The idea of a European Border Guard Corps was born in a climate of heightened security concerns after the attacks of 11 September 2001. While border security and cross-border crime are still in the mandate of Frontex, the priorities of the agency lie with irregular migration. Frontex, having been barred from taking the development of a police force (at least temporarily), was able to look at even a bigger picture. True to the Schengen process with its focus on borders, the European common external border could undergo a process of conceptual transformation. The transformations, in theory and practice, cannot be solely attributed to Frontex alone, since the process pre-dates the creation of the agency and has also spawned an array of other developments like the Schengen Information System (SIS) or the Schengen border codex as a legal materialization of practices. It is rather that by looking at Frontex and its activities, one can gain a notion of the direction the development of the European migration regime is taking.

Frontex executive director Ilkka Laitinen said in 2007: 'The *raison d'être* of Frontex is not emergency operations but the consistent introduction of well planned regular patrols by member states, in order to limit urgent missions and to integrate the management of borders in all its dimensions defined

by the member states. Doctors say that the best intensive care unit cannot replace prophylaxis; I would say that it applies also to borders' (Laitinen, 2007).

What, then, is the prophylaxis? There is one very common statement often heard about the issue of irregular migration to the European Union: that there must be more possibilities for legal migration to the European Union if one wants to reduce irregular migration. Indeed, it is this that the European Commission and certain member states consider when proffering concepts such as Mobility Partnerships or Circular Migration. These proposals, however, also aim to regain sovereignty over migration, being able to define the conditions under which migration is supposed to occur. Whether this will ever be possible is doubtful, but it is also another debate. If, however, the European Union wants to open an avenue to migration governed by their conditions, for one this avenue needs to be attractive to some degree, and for another all other avenues must be closed or at least sufficiently hard to pursue. Frontex has been created to contribute to these two tasks. Rebordering from above, the spacialization of the border and the bio-political investigation of the fluxes of this other population is precondition to the ability to close all the little geographic doors and holes, while the identification of the population allows for an ever more fine-grained selection mechanism that can allow access to certain groups, restrict others from entering, and will still allow for individual tracking of this population.

Notes

1. http://www.migration-boell.de/web/migration/46_2085.asp.
2. Germany, France, Luxemburg, Italy, the Netherlands, Portugal, Sweden, the UK.
3. International Organization for Migration, cf. Fabian Georgi's chapter in this book.
4. International Centre for Migration Policy Development, cf. Sabine Hess's chapter in this book.
5. European Union's Joint Situation Centre, a situation monitoring service attached to the High Representative of the Union for Foreign Affairs and Security Policy with a focus on counter-terrorism and nuclear weapons proliferation.
6. Public version stripped of real time data available at <http://www.imap-migration.org>.
7. Feasibility study about the creation of the European Patrols Network (EPN), commissioned by the European Council in 2005 and presented by Frontex on 14 July 2006. By 2009, the EPN is operational, incorporating all Frontex sea operations in the Atlantic and the Mediterranean into a bigger framework.
8. Feasibility study about the creation of a European Border Surveillance System, commissioned by the European Council in 2005. The study is not publically available.
9. BIOPASS I and II, evaluation studies of the concept of automated biometric border crossing (Gariup, 2009).

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7

Mobility, Development, Protection, EU-Integration! The IOM's National Migration Strategy for Albania

Martin Geiger

While anxiety over the continuation of unwanted 'illegal' migration movements from and through Albania persists, the EU Commission and a multitude of other international actors (including intergovernmental organizations such as the International Organization for Migration [IOM]) try to strengthen local state institutions to regulate migration in an effective manner. Over the last few years Albania has become the 'testing ground' for numerous activities targeting migration. Since the end of 2004 the country has been implementing a 'National Strategy' specifically designed for managing migration in a more holistic way. The following chapter discusses this strategy against the background of the debate on new discourses, practices and actors in international migration management. As the chapter aims to illustrate, the Albanian migration strategy stands as a paradigmatic case for a new trend in migration policy: the denationalization of migration governance by a far-reaching process of internationalization and simultaneously EU-ropeanization in the field of migration politics or migration management, a process that is driven largely by actors 'beyond' the state, the once 'traditional' actor of regulation.

Albania: a major sending country and migration hub

According to the International Centre for Migration Policy Development's (ICMPD) 2007 Yearbook 'On Illegal Migration, Human Smuggling and Trafficking in Central and Eastern Europe' Albanian authorities in 2008 registered close to 64,000 migration-related border apprehensions, a significantly high number that included its own nationals as well as third country citizens (ICMPD, 2008, p. 7). In the same year 2,400 Albanians were apprehended in one of the other 19 Central and Eastern European countries that delivered data to the Vienna-based International Centre for Migration Policy Development (ICMPD), representing a decrease of around 1,900 apprehended and registered Albanian migrants (ICMPD, 2008, p. 9). Given the fact that

between 2000 and 2005 Albania experienced a significantly high negative net migration of –100,000 people (IBRD/The World Bank, 2007b, p. 296), the country can still be considered an important sending country, notably to the EU and the United States.

It is estimated that more than 1 million Albanians are residing abroad. In a recent report by the European Commission the migrant stock of Albanian migrants legally residing in the EU (EU-25) was estimated at around 780,000, most of the Albanians living in Italy (376,000) and Greece (347,000) (Commission of the European Communities, 2007, p. 75). This Albanian diaspora within the EU is mainly the result of a set of pronounced emigration waves during the 1990s. While emigration was strictly prohibited under Communist rule, up to 600,000 Albanians left their home country when the former Communist system collapsed at the beginning of the 1990s. With regard to illegal emigration, human smuggling and trafficking in human beings, since that time Albania has been perceived as both a major source and a transit country.¹

Emigration, however, is also an important asset for Albania: In 2003, the remittances of Albanian migrants have been estimated at close to 900 million USD – a significantly high amount given that Albania with a per capita gross national income of 2,600 USD (2005) remains one of Europe's poorest countries and is faced with immense problems concerning the employment of its nationals (in 2002 the unemployment of 15–24-year-olds was estimated at 14 per cent) and future demographic developments (in 2005 nearly a quarter of Albania's population was under 15 years old) (IBRD/The World Bank 2007a, p. 125; 2007b, pp. 274, 288–9).

The EU targeting Albania and Albania's migration problem

Given its significance as a major sending country and hub for transit migrants and asylum seekers, Albania in the 1990s was already included in various EU-driven approaches to limit and control irregular flows towards the EU member states. Following the Dayton Peace Agreement (1995) that brought an end to the hostilities in former Yugoslavia, in 1997 Albania, although not a former member of the former Federal Republic of Yugoslavia, became included in the EU's so-called 'Regional Approach' (Commission of the European Communities, 1997).

This policy process covering most South Eastern European countries aimed at politically, socially and economically stabilizing the Balkans as the EU's 'back door'. Soon afterwards Albania, together with Serbia and Montenegro (including Kosovo), Croatia, Bosnia-Herzegovina and the Former Yugoslav Republic of Macedonia was labelled a country of the 'Western Balkans', a new regional entity constructed by the EU institutions and foreseen to become at a somewhat later stage a future integral part of the EU (perspective of future EU membership of Albania).

In order to benchmark the progress of the five 'Western Balkan States' on their way towards taking on EU standards, norms and rules and in stabilizing their political social and economical situation, the EU Commission between 1997 and 1999 issued four 'Conditionality Reports'.² With the help of these reports the EC aimed to structure its bilateral relations with the respective governments in the 'Western Balkans' and to bring in a carrot-and-stick approach in the overall policy process: A closer association (and in the end EU accession as well) was offered in return for administrative and political reforms, the privatization of the economy and successful achievements in order to stabilize the difficult socio-economic (and therefore migration-generating) situation.

In 1999, following the initiation of the international 'Stability Pact for South-Eastern Europe' (including, among other non-EU stakeholders, the US Government), the EU began to follow-up on its 'Regional Approach' and launched a new policy process, the 'Stabilization and Association Process' (SAP) (Commission of the European Communities, 2000). This process came into being as a more definite, and for the participating states also more 'visionary process' explicitly outlining the further alignment with the EU. In the same year, Albania was included in a list of non-EU member states that the EU Council and the Commission regarded as main target countries in the field of migration-related interventions for which concrete policies and measures should be developed in order to reduce the influx of asylum seekers and migrants (European Council, 1999a).

For Albania and the other states mentioned in the list, the so-called 'High Level Working Group on Migration and Asylum' (HLWG), a highly secretive panel of high-ranking officials and experts from EU member states, started to develop a set of specific action plans.³ In 1999 it was predicted that emigration from Albania in the coming years would continue and could eventually even rise. The HLWG therefore recommended that the EU states should implement stricter visa regulations and optimize their return and readmission policies with Albania.

Interestingly, however, the topic of migration and the necessity to curb unwanted flows through and from Albania until the end of the 1990s had actually not been mentioned explicitly in any of the 'Conditionality Reports' of the EU (1997-99). None of these reports mentioned migration as a 'problem', neither as a concern for the region, nor the respective target countries, the EU or single EU member states. This is quite astonishing, as it was exactly the 1990s that brought about heavy emigration flows from Albania and the 'Western Balkans' towards the EU. Up to 2001 just one specific migration-related issue was explicitly mentioned in the reports of the 'Regional Approach' and the SAP: the topic of the return of refugees and displacees to Bosnia-Herzegovina and other countries of the former Yugoslavia. Interestingly Albania, while not being singled out for its significant illegal outward migration towards Italy, Greece and other EU-States, was praised by the EU Commission for being highly constructive in the

handling of refugee flows from Kosovo by accepting several tens of thousands of refugees and displaceds between 1998 and 1999 (Commission of the European Communities, 1999). While the EU after the end of the war in Bosnia–Herzegovina was not willing to accept another considerable number of refugees and displaceds, Albania's role can indeed be called highly constructive and 'exemplary' given the fact that between December 1998 and April 1999 the country accepted around 360,000 refugees (equivalent to 10 per cent of its own population)! With regard to this, one could argue that the EU's silence on Albania's own 'migration problem' was quite strategic: Albania was not stigmatized as the country was seen as instrumental in blocking off some of the expected further refugee flows that may arise, more or less at any time, in the region.

While migration during the 1990s remained excluded from the main political EU documents underpinning the EU's 'Regional Approach' and SAP, the demands to curb illegal flows from 2001 onwards became a main concern and main issue in the EU's SAP documents and bilateral relations with the 'Western Balkans'.⁴ In 2001, the EU Commission in its project for a SAP officially began to request that Albania bring its national asylum and migration policy in line with EU expectations and EU standards (Commission of the European Communities, 2001a). In 2003 Albania found itself again on an EU list showing the main problematic sending and transit countries for the EU (Commission of the European Communities, 2003a, Chapter 3). The region of the 'Western Balkans' as a whole now became declared by the EU as [...] one of the gateways to the European Union for criminal activities, illegal immigration and other threats' (Commission of the European Communities, 2003b, Chapter 1.1).

In 2006, in another report of the European Commission Albania was once more urged to co-operate more effectively in the fight against illegal migration and trafficking. The Commission stated that emigration would still remain a 'problem' and that the illegal flows to Greece would be especially concerning, together with the spread of human trafficking through Albania's borders with its Western Balkan neighbours (Commission of the European Communities, 2006, 4.3.1).

Albania is both a source and a transit centre for trafficking [...] Greater determination is needed to tackle this problem if Albania is to demonstrate that it shares the [...] values of the EU and is able to manage its borders [...].

(Commission of the European Communities, 2001, p. 7)

Judging by this quote from 2001, it seems that there has been hardly any improvement on the part of the Albanian Government to prevent illegal flows over the 1990s and the period between 2001 and 2006. While most of the EU annual reports in the framework of the 'Regional Approach' and 'Stabilization and Association Process' lacked empirical data on the evolution of

migratory movements, one feature common to all reports up to today is a blatant EU-centrism, the exclusionary definition of 'progress' in terms of the permeability of Albania's borders only, as well as a resort to vague statements leading to similarly vague suggestions:

Albania appears to have made progress regarding the control of illegal migration/trafficking towards the EU [...], but [...] border management continues to require substantial improvement.

(Commission of the European Communities 2005, p. 35)

A national migration strategy for Albania

In 2004, the Government of Albania adopted a 'National Strategy on Migration', promoting migration management as 'a pro-active attitude of the Government in order to give answers to the questions related to migration' (Government of Albania/IOM, 2004; 2005b). The strategy was soon afterwards followed by a detailed action plan that, together with the Albanian migration strategy, as 'the path to migration management' aims to accomplish four main goals (Government of Albania/IOM, 2005a): (1) the extension of possibilities for cross-border mobility ('Mobility' as 'enhancing legal channels [...] and possibilities for return') and (2) the promotion of 'Development' in Albania, based on the assumption that a 'proper regulation of migration' could become 'a tool for the development of Albania'. The third goal lies in the protection and support of Albanian emigrants abroad ('Protection' as the goal to prevent Albanians 'from abuse and illegality') while under the fourth goal of 'Integration' both the strategy and action plan aim to 'bring Albania closer to membership of the European Union' (Government of Albania/IOM, 2005b).

The aim of this strategy is to provide Albania with a more comprehensive policy on migration from one that has mainly reacted to combat irregular flows to a more holistic policy [...].

(Government of Albania/IOM, 2004, p. 3)

Evidently the strategy and action plan adopted by the Albanian government testify to Albania's wish to leave behind its past as a stigmatized source-country and hub of illegal (transit) migrants. In the strategy and action plan it is suggested that former policies and problems need to be rethought. In the view of Albanian state officials the time has now come to disengage oneself from an approach that is exclusively focused on control, and to move towards more liberal approaches towards migration and mobility. The principal assumption of both the National Strategy as well as the Action Plan is that the previous measures in the field of migration (prevention) have been largely ineffective, inappropriate and uncoordinated and exclusively inspired by a 100 per cent preventionist approach. Therefore there

is much talk of a so-called new 'holistic' approach towards migration. The great interest in a shift from control and prevention to a new, more effective 'management' of migration that takes into account the interests of Albania and the EU as well as the problems of the past is thus evident. The new approach to migration management describes management as the proper way to achieve mobility, development, protection and (EU-)integration. Secondary goals linked to these main aims lie in the creation of a so-called

'integrated Albanian Diaspora' as well as a new proper management and redesignation of migrant remittances into 'productive', more development-oriented rather than exclusively private consumptive oriented investments in the home country.

(Government of Albania/IOM, 2004; 2005a)

In this regard, the Albanian Migration Strategy incorporates far more goals and orientations for action than the previously adopted 100 per cent control approach aimed for. Instead of exclusively concentrating on the fight against illegal migration, unwanted transit migration and human trafficking as well as the continuous re-enforcement of border installations, Albania's strategy and action plan points at a regulated, selective openness and a greater liberalism towards migration. Temporary and circular migration are now seen as 'wanted' and 'to be tolerated' forms of flows. Establishing a more appropriate migration policy with the help of these two main documents means also taking into account the interest of Albanian emigrants in being able to return to and invest in their home country. In fact this temporary emigration and return of investments is now seen as development-generating and -friendly, helping Albania to get on its own two feet and achieve an equal standing with its neighbours and the EU. The new policy furthermore aims to incorporate the interests of all Albanians inside and outside their home country, establish a closer cohesion among Albanians abroad (a unified and strong Albanian diaspora) enabling the Albanian State to call on its diaspora 'to help' the home country and to defend the interests of Albanians in Albania and elsewhere (Government of Albania/IOM, 2004; 2005a).

In this view, the Albanian migration strategy and action plan resemble to a large extent the ideas of a 'regulated openness' and 'new international regime for orderly movements of people' (NIROMP), envisioned in the 1990s by Bimal Ghosh (Ghosh, 2000, Chapter 1): Firstly, there is the basic vision that the regulation or management of migration ought to be interested in the benefit of states, societies as well as migrants and stayers alike and that migration is a means to positively contribute to the development of receiving and sending countries. Secondly, there is the idea envisioned previously by Ghosh and others that illegal flows could be prevented more easily when allowing for more legal migration by opening additional channels for permanent emigration, return, circular and temporary migration. The strategy and

action plan undoubtedly prefers the latter three forms (return, temporary and circular) over permanent migration.

The IOM and Albania's migration strategy

The Albanian strategy and action plan's resemblance to the ideas of Ghosh and to the concept of migration management is by no means coincidental.

While, at first sight, the National Strategy and Action Plan appears to be an official strategy paper of the Albanian government, interestingly, on closer inspection, the impression is that both documents are not true 'government' or 'national' documents. Indeed, the Albanian strategy and its action plan were elaborated by the same organization that in the 1990s employed Ghosh as a senior consultant: the International Organization for Migration (IOM). Already in the preface of the strategy the reader becomes acquainted with this intergovernmental organization as being the main mastermind behind the so called 'national' and 'governmental' strategy:

The National Strategy for Migration is a project financed by the European Community [...] It has been implemented with the technical and co-funding support of the International Organization for Migration (IOM) through its representation in Tirana. The Albanian Government intends to thank warmly those two international organizations for their generous support [...].

(Government of Albania/IOM, 2004, p. 5)

Already in 2001, employees of the IOM mission in Albania began to design and lobby for a new holistic and 'managerial' approach towards the challenge of migration.⁵ The principal idea was how Albania could handle migration flows towards the EU more effectively and how the national institutions and regulations could be built up, strengthened and harmonized to EU and other international standards in the future. Instead of asking for a 100 per cent control and prevention-oriented approach, as the EU Commission at an early stage suggested, IOM strategically worked towards a more liberal and 'pro-active' approach: a so-called 'management of migration' taking into account the wishes not only of the EU and other receiving states and regions but also, on an equal footing, the expectations and demands on the side of the Albanian government, migrants and society. However, while promoting this approach, IOM, in the words of its Chief of Mission, did not forget about EU anxieties:

Of course, in promoting a different approach we [achieved] that our Albanian counterparts took great interest in the process. It was crucial that we [IOM in Albania] made clear from the start, that there should be a change in perspective, a shift from control to facilitation in order

to allow Albania and Albanians to benefit from migration [...] while, simultaneously, [we have been] supporting the EU in its efforts to prevent illegal migration and human trafficking.

(Expert interview with IOM Albania, Chief of Mission, 2006)

By bringing itself in as a trustworthy and independent 'ally' of Albania, IOM in the following years was able to proceed with its strategy and action plan for a better management of migration into/through and from Albania. In November 2004 the Albanian government finally 'approved' IOM's project and consequently turned the documents elaborated by IOM into national reference documents. However, this step was preceded by another, which should not be overlooked: interested in elaborating a national strategy and action plan for Albania and on behalf of Albania (!), already in 2001 IOM began negotiating with the European Commission and its local delegation in Albania on whether the EU could finance IOM's project and help in securing at a later stage the necessary Albanian 'approval' and 'co-operation'. Interestingly, in these early years no formal memorandum of understanding between IOM and the Albanian government was signed, although this was repeatedly done for other areas, such as for instance in carrying out anti-trafficking awareness campaigns in schools. In 2003 IOM was finally successful in securing the financial support of the EU and was officially assigned to finalize the strategy. On its website the IOM mission in Albania proudly refers to the agreement with the EU Commission in its 'IOM's history in Albania' section: 'September 2003: IOM signs agreement with EC to implement the project on the National Migration Management System.'⁶ In February 2005 IOM then announced the 'ratification' of the strategy by the government; the formulation used, however, clearly points out who actually 'launched' the strategy – it was not the Albanian government but IOM: 'IOM launches the National Migration Strategy, a policy document to manage the Migration'.⁷ There is no reference on IOM's 'history website' to the fact that the strategy was officially brought into force by the Albanian government already in November 2004. For IOM the official starting date was not November 2004 but February 2005: on 21 and 22 February IOM invited for the purpose of 'launching' the strategy around 200 representatives of the Albanian government, civil society, EU institutions, non-state stakeholders and other international organizations to a workshop entitled 'Towards a National Action Plan on Migration for Albania in Partnership with the European Union' (IOM/Government of the Republic of Albania, 2005).

This workshop was designed by IOM to bring about a formal 'legitimation' and 'consensus' for the strategy: The experts and representatives invited were asked for their comments and suggestions in order to prepare and 'launch' a 'national' action plan on the basis of the strategy. In less than three months IOM, following this workshop, then managed to finalize the action plan and in May 2006 it was again IOM that launched the 'National Action Plan on

Migration' (Government of Albania/IOM, 2005a) for Albania by introducing it to the Albanian cabinet of ministers and getting its unanimous 'approval'.

Taking all these into account, the Albanian migration strategy and action plan are nothing less than what the Chief of IOM's mission in Albanian called a 'quite ambitious undertaking' (expert interview with IOM Albania, Chief of Mission, 2006): in the action plan, more than 130 measures have been drawn up by IOM experts in order to manage migration 'better' and more 'coherently' in the coming years. Regarding each single measure the action plan points to the responsibility of foremost national governmental actors. While this looks clear on paper, it is hard to believe that it will actually be these national governmental actors carrying out the action plan. Given the history of the strategy (and its action plan) and the organizational interests involved (IOM: securing future funding; EU: restricting access) it is obvious that IOM and other international stakeholders will carry out the strategy and action plan in the coming years. As the Albanian state institutions are still considered too weak, only actors such as IOM have the expertise to implement the strategy and action plan.

At the end of 2005, IOM calculated that the strategy and action plan could only become implemented with the help of a new annual grant for the following year of around 800,000 EUR. The organization asked for around 1 million EUR additionally: 600,000 EUR for a project to prepare a better 'channelling' of remittances into development and 400,000 EUR for a campaign IOM wanted to implement abroad to call on Albanian emigrants to re-register themselves as Albanian citizens and to support the development of Albania (IOM, 2005a, p. 69).

EU-Integration with the help of IOM's migration strategy

The strategy and action plan that have been invented by IOM for managing migration into, from and through Albania 'better', and in a more 'holistic' way are intrinsically linked to the project of a so called 'common EU migration policy'. While progress towards a common EU migration policy has been detained and remains incomplete, over the last 20 years or so EU policy-makers have successfully developed a second, 'external' pillar of migration control and migration policy-making. Already in the early 1990s the new democracies of Eastern and Central Europe, including Albania, were approached by the EU and incorporated in approaches to prevent and regulate migration. The Schengen Treaty (1985), the project of a Single Market (1987) and the Dublin Agreement (1990) produced the necessity to develop an external pillar, based on practices to externalize (inclusion of non-EU-actors) and exterritorialize (inclusion of third states) migration-oriented interventions in order to protect the Schengen and Dublin Areas against the outside world (see, e.g. Lavenex, 2001; Uçarer, 2002). The member states started to conclude new bilateral agreements with their Eastern

neighbours which allowed for the readmission of illegal migrants and the provision of technical or financial assistance to protect the borders. In a subsequent step, most neighbouring states were declared 'safe countries'. This means that, from then onwards, the EC member states were enabled to deny asylum applications and to send asylum seekers back to the first 'safe country' in line (mostly a non-EC country and often a former Communist country). The inhabitants of these 'safe countries' in turn no longer had the chance to submit an asylum application or to receive a positive decision on their claim. These transfers of migration-related procedures, norms or principles can serve as a vivid example of the diffusion of policies and the supranational or cross-border extension of normative principles, as identified by proponents of neo-institutionalist theory. This diffusion of migration-related policies, procedures and norms was achieved by using different 'paths and portals'. Besides the unilateral and bilateral way, transfer or diffusion was achieved through ad-hoc multilateral, or consolidated forms of multilateral initiatives (consultative processes or intergovernmental organizations). Just recently, the EU member states have started to advance another, fourth method – the 'supranationalization' of policy development, decision-making and implementation. Today a somewhat complex 'pan-European migration regime' has evolved from these various practices to delegate control to actors beyond the EU and beyond the traditional 'controller' of migration – the nation states.

The EU Commission in the framework of the SAP and other policy processes, such as, for instance, the 'European Neighbourhood Policy' (ENP); (Commission of the European Communities, 2004b; including, e.g. Ukraine and Morocco), sees the necessity to integrate preferably all non-EU sending and transit states into a 'European-wide web' and even 'far-beyond-the-EU-web' of EU-consistent norms, rules, and procedures. The SAP, as well as the project of an 'external common EU migration policy', is linked with some other 'geopolitical projects', such as the so-called 'Hague Programme'⁸ (European Council, 2004). Most importantly, the goal of this programme is to turn the territories of the EU member states into a unified (EU-) 'Area of Freedom, Security and Justice'. While this process is to be implemented inside the EU, the SAP and the ENP can be considered side projects to this project as well as the 'European Security Strategy' (ESS) that perceives migration as one of the EU's greatest external threats (European Council, 2003).

Within the context of these various strategies and geopolitical macro-processes, the EU Commission expects the ratification of a new bilateral readmission agreement from all neighbouring states – a treaty allowing the return of stranded migrants, apprehended illegal migrants and failed asylum seeker migrants to the signatory states, regardless of whether these persons possess the nationality of the third state concerned or not (readmission of previous transit migrants).

The EU also demanded such an agreement from Albania. Only after Albania had signed this agreement with the Commission in 2003 was it able

to continue its path towards a closer economic and political association with the EU with the help of a 'Stabilization and Association Agreement' (SAA). The ratification, however, lasted until 2006 and only entered into force at the beginning of 2008. Since then Albania is obliged to readmit its own nationals and all other illegal third country nationals that cross Albanian territory.

The Albanian migration strategy and action plan do not only take into account the EU expectations in the areas of return/readmission of illegal migrants, migration prevention and on other issue areas. Both documents even explicitly represent and define themselves as 'the way ahead' or 'the way towards EU integration' (Government of Albania/IOM, 2005b). 'EU-Integration', together with 'Mobility', 'Development' and 'Protection', forms the pillars on which the strategy and action plan have been founded. Simultaneously, 'Integration' is also defined as one of the four big goals of the strategy and action plan (Government of Albania/IOM, 2004; 2005a).

It is therefore no great surprise that the strategy and action plan 'invented' by IOM and financed by the EU Commission stresses the need for a bilateral readmission agreement and includes detailed proposals of how this agreement can be implemented swiftly and properly. Although there is talk of better and increased opportunities for 'mobility', given the EU expectations in the SAP reports and the framework of the common external EU policies on migration, it is no surprise that the strategy and action plan devote most of their attention to the question of how unlawful, illegal migration could be prevented. Only a small number of largely inconcrete and nebulous measures are actually proposed that concern 'mobility' and the other goals of 'prevention' and 'development'.

With a closer critical look, the Albanian migration strategy and action plan therefore have to be seen in the light of the continuation of EU efforts to curb illegal flows and prevent Albanians from entry; the strategy and action plan are actually foreseen as instruments to bring Albania in line with EU expectations, and one could think that both documents are actually the concretization of what is said in too general and insubstantial terms in the SAP progress reports on Albania and other EU documents.

The IOM: A quasi-governmental and quasi-EU-ropean actor

The Albanian migration strategy and action plan are vivid examples of the increased role of intergovernmental organizations in the sphere of migration policy and 'migration management'. The IOM in the context of Albania took over the role of a quasi-governmental actor that ostensibly negotiated 'on behalf' of the Albanian government both policy documents but simultaneously successfully served its own organizational interests (e.g. prolongation of involvement in Albania and protection of future funding). The EU demand that Albania shows more resolve for cooperation in migration-related matters provided IOM with the opportunity to become integrated

into the process as an intermediary – a policy actor ostensibly acting on behalf of Albania and protecting Albania's interests while negotiating with the EU. The link between the SAP and the migration strategy as well as the significant influence IOM was able to exert on both the EU and Albania within the process is illustrated in the following quote, taken from an expert interview with IOM Albania:

The principal aim of our strategy was, well... We thought that we could and should help Albania to come out of this shallows, out of this position of a problematic case, an underdog, let's say. Albania at the end of the 1990s was left completely alone by the international community, with all its problems. Albania simply does not deserve that and we knew we could do something for them. The aim now is to bring Albania closer to the EU with the help of this strategy and to help Albania and Albanians to benefit from migration. The Stabilization and Association Process of the EU was the context, now we try to help Albania to achieve the goals of the SAP [...] Some of our priorities became acknowledged during the talks with the Commission and so on, then this link between our project and the SAP talks occurred. Then, soon afterwards, while we were already preparing a proposal for the strategy, the Commission now on its own stated that a proper holistic approach to migration is necessary, here in Albania, and started to propose this idea – that was already our idea before – to the Albanian Government. We thought then that the time has come and showed our strategy proposal to the Commission, then afterwards to the Government. [...] The strategy was, after being finalized by us, [then] approved by the government and thus became a national reference document.

(Expert interview with IOM Albania, Chief of Mission, 2006)

If one did not know that IOM is an intergovernmental organization and actor 'beyond' the state, this proud statement of a high-ranking IOM official during the workshop and official 'launch' of the strategy and action plan could be misunderstood to mean that IOM indeed has taken over the role and self-understanding of a national, governmental actor, somewhat like a quasi-'ministry' of the Albanian government:

The IOM is the technical support unit of the Albanian Government that is responsible for the elaboration of the National Strategy on Migration with the financial support of the European Community.

(Schatzer, 2005, p. 19)

The IOM perceives itself not just as a 'governmental' actor but even an actor close to the 'hearts' of would-be migrants, and in some ways a form of 'pressure group' for migrants and their rights. In one leaflet IOM directly

addresses the Albanian public and migrants with the help of three key words: 'Why? What? You!' With the help of the 'You' all Albanian citizens are asked to become familiar with the strategy and action plan and to make these 'national' projects their own 'individual' projects (Government of Albania/IOM, 2005b). The IOM tries to assume a sympathetic and somewhat emphatic posture towards migrants by using the formulation.

Everybody is affected by migration. We all have family members or friends abroad [...] The interests in migration may vary [...] Everybody is invited to raise his or her voice to turn migration into a benefit for all.

(Government of Albania/IOM, 2005b)

To call on all migrants and potential migrants to turn migration into a more 'beneficial' process for themselves and the sending and receiving societies. Simultaneously, IOM tries to promote the idea of a 'unified Albanian diaspora', a diaspora that up to now does not exist, and calls in its strategy and action plan for the construction of a strong and united diaspora of Albanians abroad.

Many highly-educated Albanians have left the country. Others have gained important professional experience while working abroad. Albania should profit from all that knowledge. Communities of Albanian emigrants abroad must be supported and linked to diaspora acting for the development of Albania. These people should also be attracted to (temporarily) return to contribute to Albanian institutes for research, hospitals and universities.

(Government of Albania/IOM, 2005b)

This diaspora envisioned by IOM could and should act as a 'development agent' and enable migrants to turn their migration project into a project beneficial for the home country of Albania. To further this goal IOM not only invited representatives of the Albanian state but also representatives of the Albanian diaspora abroad to the workshop where the Albanian migration strategy was launched and the action plan discussed. Motivated by IOM, the workshop then actually ended with a 'Declaration on the Mobilization of the Albanian Diaspora' – a formal statement, in which the representatives of the diaspora approved the national migration strategy and committed themselves to it.

Given the fact that IOM proposes many goals and ideas that the EU has been demanding for years and the fact that the SAP and the migration strategy and action plan are closely interwoven with each other, IOM could furthermore be described as taking over the role of a 'quasi-EU-ropean' actor, an 'EU-institution' that does not just promote the demands and visions of

the EU but also commits itself to the problem of raising sufficient funds for the implementation of the strategy:

And now [after the strategy and action plan were approved] we said that we will help to find the finances, the programme to support the next five years ahead at least, to keep a political momentum on the document, we go around, to Greece, to the European Commission, the Parliament, other EU member states [...].

(Expert interview with IOM Albania, Chief of Mission, 2006)

As a self-proclaimed 'EU-actor' IOM does not hesitate to give all readers of its strategy, action plans and information leaflets the sublime promise that the IOM migration strategy and action plan are the guarantee that Albania will become a member of the EU in the near future: 'All efforts to manage migration will bring Albania closer to EU membership' (Government of Albania/IOM, 2005b).

A paradigmatic case of internationalized and EU-ropeanized migration management

The IOM's migration strategy and action plan are paradigmatic examples that illustrate the way migration politics in the European context have become to a large extent internationalized and EU-ropeanized by the inclusion of non-EU-actors such as intergovernmental organizations (IOM) and the extension of EU rules and standards with the help of macro-political processes (for instance the SAP) and their carrot-and-stick approaches. The IOM, however, is a far more powerful actor and not just the henchman of the EU, as the project of a national migration strategy and action plan clearly illustrates. While the EU Commission entrusts IOM with the task of assisting Albania's 'weak' government and of promoting and 'teaching' EU norms and standards, the example shows that IOM undoubtedly is able to lobby its own organizational ideas and interests and to 'teach' the Commission what ought and is to be done in Albania.

At the same time, IOM 'pro-actively' prepared and pushed through a new phase in Albanian migration policy and a new phase in EU–Albanian relations alike.

We have to move away from a control-oriented perspective towards a proper, comprehensive and more managed approach to migration. A proactive way to look on migration not as a threat but as a benefit. Migration is a big asset here, the remittances could be used to foster development here in Albania. While many more people could be motivated to stay, others should be allowed to take part in temporary labour programmes.

So adequate and regular channels should be provided for migrants [...] while irregular migration still should be addressed and reduced.

(Expert interview with IOM Albania, Chief of Mission, 2006)

By arguing in the interest of Albania and Albanians and advocating itself as the 'right' ally for Albania, IOM was able to become a 'quasi-local' and 'quasi-governmental' actor, while simultaneously the organization was also successful in recommending itself to the EU as the 'right' ally and practical implementor. While the problem for Albania was that the 'help' provided by IOM could not be refused because IOM had the rear cover of the EU Commission and the EU's carrot-and-stick-approach (association/accession in exchange for adequate and EU-standardized migration policy), the EU is also caught in a serious dilemma. So far only IOM and other IGOs such as the United Nations High Commissioner for Refugees (UNHCR), the Organization for Security and Cooperation in Europe (OSCE) or ICMPD and additional non-state actors such as international non-governmental actors are able to implement EU interests and policy demands 'locally', notably within the territory and sovereignty of 'weak' states such as Albania. Although the EU has now started to build up its own agencies such as, for instance, the EU border agency Frontex, it still lacks efficient implementors. Expert talks with the local delegation of the EU Commission in Tirana, other high ranking EU and national state officials point to the inference that IOM (together with other non-local actors) is regarded as more competent and reliable in achieving EU-driven objectives. IOM and other non-local actors are entrusted with carrying out EU-driven interventions and are expected to ensure that the policy concerns of the EU and its member states are properly taken into account.

The EU Commission in some of its communications and website reports acknowledges its high dependence on intergovernmental actors. IOM and other IGOs such as UNHCR, OSCE or ICMPD are seen as necessary allies in supporting freedom, stability, and welfare along the rims of the EU and in helping to ward off illegal migration. In one report the EU Commission even openly admits that it is currently unable to speak with 'one voice' on the issue of border control and surveillance (Commission of the European Communities, 2002b, Chapter I.5).

The help of IGOs – in the eyes of the Commission – lies in minimizing this dilemma and in facilitating the implementation of EU policies in the target countries. As most of the projects financed by the EU Commission cover a rather short time period (usually less than two years), it is commonly believed that when IGOs are responsible for the implementation of policies, there is a higher likelihood that these policies will bring sustainable solutions. IGOs, in addition, are employed as a kind of 'guarantee' towards the outside world to 'secure' that the political solutions sought and enforced by the EU are consistent with the rights of migrants

and refugees (see, e.g. Commission of the European Communities, 2001b: Chapter 3.3).

While one has to wait for the actual outcomes of the national migration strategy regarding the cross-border flow of migrants, some other outcomes are already visible. With the help of the migration strategy and action plan invented by IOM, Albania has now definitely become a 'testing ground' for new approaches to migration and various practices of 'migration management'. Since the 1990s the country is already densely populated with non-local actors, including non-governmental, inter-governmental and foreign governmental actors (e.g. governmental development agencies of individual states such as the United States Agency for International Development [USAID]) as well as EU actors (for instance, PAMECA, the Police Assistance Mission of the EC to Albania), all trying to influence migration from and through Albania. Outmigration and transit migration are nevertheless still high, making it difficult to call the EU- and foreign-driven interventionism really 'effective'. While some aspects of traditional state sovereignty (first and foremost border control and institution building) have been strengthened, the ability of local actors and Albanian government institutions to influence their own development and to make Albania a stronger and real sovereign state has been put in jeopardy. Although the Albanian migration strategy plays with the idea of 'national ownership', the background history of this strategy and the omnipotent role of IOM clearly point out the reality: Albania has not yet become a sovereign state when it comes to migration policy-making and implementation. One could argue that this is not an accident. For the EU it is more efficient to have 'strong' implementors on the ground, while IOM and other actors derive some organizational benefits from the unstable situation.

Given this constellation, it is even more problematic that the local IOM mission perceives Albania as a 'testing ground' in the real sense of the word and, as the following quote vividly illustrates, just a welcoming sociopolitical setting in which, through a 'strategical exercise', a certain 'best practice' can be developed: Albania, for IOM, is an adequate setting to make a 'case' for new practices in migration management. As a 'best practice' the migration strategy could subsequently be circulated, and 'migrated' to other, bigger and more complex countries and regions:

It is more a strategical work, to have this strategy document now [...] Albania is a perfect case for such an endeavour, it is a little land, you can really do experiments, it is an open society, open to persuasion, relatively confined and it is a safe environment. You have a very good access here, you have sufficient support, there is great interest on side of the Commission.

(Expert interview with IOM Albania, Chief of Mission, 2006)

Even today the Albanian migration strategy and action plan are globally unique as examples for a holistic 'migration policy' invented by non-local, intergovernmental actors. In Bosnia–Herzegovina and Ukraine, two other countries closely bound to the EU by contractual migration-relevant relations, projects comparable to the Albanian strategy at this point seem not yet realistic or feasible.⁹ Nevertheless, preparations in Ukraine have begun to develop a 'labour migration strategy'. In 2006 the IOM office in Kiev wanted to start with its preparations for such a strategy and asked international donors for funding of approximately 630,000 USD. The development of migration strategies for countries has certainly become big business; IOM in Ukraine calculated in the same year expenses of more than 2.6 million USD for capacity building and the improvement of migration management in Ukraine (IOM, 2005a and interviews with IOM in Ukraine).

Migration management has thus become big business and there is need for further critical research on the rationalities, techniques and outcomes of 'migration management' activities, and, not to forget, the implications this 'managerialism' has for sending countries and migrants.

Notes

1. See, for example, ICMPD (2000), IOM (2005b) and US Department of State (2006: 56).
2. Commission of the European Communities (1997), Commission of the European Communities (1998a), Commission of the European Communities (1998b) and Commission of the European Communities (1999).
3. See, for example, European Council (1999b).
4. See, for example, Commission of the European Communities (2002a) and Commission of the European Communities (2004a).
5. Expert interviews with members of the IOM mission in Albania and the local IOM Chief of Mission in 2006.
6. '15 years of IOM Mission in Albania', http://www.iomtirana.org.al/index.php?faq=iom_history (22.06.2009).
7. '15 years of IOM Mission in Albania', http://www.iomtirana.org.al/index.php?faq=iom_history (22.06.2009).
8. Previously 'Tampere Programme', since 2010 'Stockholm Programme'.
9. Expert interviews with the IOM missions in Bosnia–Herzegovina and Ukraine (2006–07).

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8

Expanded Borders: Policies and Practices of Preventive Refoulement in Italy

Chiara Marchetti

Although states attempt to choreograph national borders, often in response to global pressures, these state policies have little meaning until they are 'performed' by state agents or by border crossers... Border agents and state bureaucrats play a critical role in determining where, how, and on whose body a border will be performed.

(Wonders, 2006, p. 66)

Introduction

On 7 May 2009, the Italian coastguard intercepted 227 migrants on board three different ships crossing the Strait of Sicily and sent them back to Libya while they were still in international waters, and more precisely in the Maltese Search and Rescue Area (SAR).

It is the beginning of a 'new model of contrast on the high seas', in the words of the Italian Minister of the Interior Roberto Maroni. An 'historic turn', as he confirms, commenting on the return of these migrants, amongst whom there were allegedly a high percentage of potential refugees escaping sub-Saharan Africa. The operation is one of the most evident outcomes – the first of its kind – of the bilateral agreements between Italy and Libya signed in December 2007 and August 2008, and specifically of the mixed patrol by Italian and Libyan coastguards.

Why can this operation be defined an 'historic turn'? Is it really a 'new model' and, if so, according to which criteria? This chapter aims at investigating the meaning and reach of operations of this kind and more generally the philosophy inspiring this political and operational shift. These events can be interpreted in the frame of what may be called 'preventive *refoulement*'.¹

The principle of non-*refoulement*, as stated in Article 33 of the Geneva Convention² ('No Contracting State shall expel or return a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be

threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'), is the uncontested milestone of the refugee regime and asylum rights. But, in recent years, important changes have occurred in the domain of migration, not least increasing reference to the so-called 'asylum-migration nexus', the criminalization of asylum seekers and refugees in many European countries, and the emergence of harmonized European policies in the field of forced and voluntary migrations. In this context, though no government or international institution can explicitly promote a return policy as regards asylum seekers and refugees, new policies involving state and non-state actors have proliferated; the episode described above represents a key example in this sense. Instead of letting the migrants into the country, where they could apply for asylum and enjoy a set of rights guaranteed by Italian and international law, the coastguard intercepted them in 'no man's water', and prevented them from touching Italian soil. It is possible to talk here about preventive *refoulement* since, according to the international laws, no expulsion occurred, as the operations were not carried out on national territory.³

It can be argued that this is a new trend in migration management, or rather in asylum management, when considering asylum policies and refugee rights. Therefore, the chapter intends to explore the mechanisms and the actors related to this new policy domain, in light of recent events in Italy. Nowadays, several subjects relying on a wide range of European and national laws and treaties are actively involved in the attempt to prevent migrants from reaching Europe, and more specifically Italy. The chapter will describe the role of communitarian agencies, such as Frontex (European Agency for the Management of Operational Cooperation at the External Borders of the member states of the European Union), of international organizations, such as the United Nations High Commissioner for Refugees (UNHCR), of carriers and of policemen of origin and transit countries; even if not discussed in detail, this process also involves liaison officers in third countries and even the sailors of the Mediterranean sea. In this system, more and more often potential refugees are also caught in the net. If irregular economic migrants can still be the object of massive expulsions and restrictive entry policies, when forced migrants are involved, the mechanisms to deter their arrival and consequent quest for protection are necessarily more subtle and hidden.

The chapter describes the path that led to the possibility of preventive *refoulement*. Focusing on the Mediterranean experience and above all on the Italian case, the different apparatuses operating on the levels of deterrence, prevention and externalization, typical of preventive *refoulement*, will be reviewed. These operations are mostly played out at the border, an area which does not simply coincide with the frontier: its width expands to outside the country – encompassing international waters, planes in the sky, the territory of foreign countries where officials of European nations operate – and also inside, into a hazy no man's land where indistinct

groups of migrants can be rejected thanks to readmission treaties and other devices. And the devices of preventive *refoulement* take place in the context of increasing *mixed flows* and a *multiplication of the forms of protection*.

In Italy, the phenomenon of mixed migration by sea first became visible in the 1990s, with significant numbers of Albanians and people of other nationalities arriving by speedboat from Albania. Some 50,000 people are estimated to have arrived irregularly by sea in 1999, of whom more than 90 per cent arrived in Puglia. Since then, the profile of those arriving, their routes and arrival points, and the number of people involved, have fluctuated significantly. A considerable number of large boats arrived in Calabria and Sicily from Turkey and to a lesser extent Egypt (some via the Suez Canal) in the late 1990s and the early 2000s. In 2001, the total number of irregular arrivals by sea had nonetheless dropped to just over 20,000, and by 2004, the figure stood at around 13,500. Even if the figures are not regular, the relation between arrivals by sea and forced migration became more and more visible. By the early 2000s, whilst the overall number of migrants arriving irregularly by sea was dropping, the proportion of these landing in Sicily or Lampedusa was on the rise. Between 2001 and 2002 the yearly proportion of irregular sea arrivals in Italy whose landing-point was either Sicily or Lampedusa rose sharply from 25 per cent to 77 per cent, and since 2003 it has consistently exceeded 95 per cent. Of these, the majority (60–85 per cent of all irregular boat arrivals in Italy in any one year) landed in Lampedusa. After 2004, the overall number of irregular arrivals by sea began to rise again, to around 22,000 per year from 2005 to 2007, and then to 35,655 in 2008 (of which 30,978 arrived in Lampedusa). Whilst this represents a significant increase on previous years, this total nonetheless falls short of the numbers recorded as arriving along the Puglia coast in the late 1990s (UNHCR, 2009b, p. 11). But some interesting data emerge when we look in more detail at the composition of these flows. In 2008, for instance, 75 per cent of sea arrivals to Italy applied for asylum, 50 per cent of whom were granted some form of protection. The Trapani Territorial Commission (which includes the island of Lampedusa) examined 1017 asylum requests between January and August 2008 with an approval rate of 78.35 per cent for some form of international protection.⁴

As regards the multiplication of the forms of protection, Roger Zetter's words sum up the situation concisely: 'more labels, fewer refugees' (Zetter, 2007). In some ways, the need to update the definition of a refugee included in the Geneva Convention legitimized the proliferation of different categories to fill the gap between 'full' refugee and economic migrant. Currently in Italy several definitions and statuses coexist: constitutional asylum, conventional refugee status, subsidiary protection, humanitarian protection, temporary protection (Marchetti, 2007). But this does not necessarily mean that the level of protection guaranteed to forced migrants has increased in parallel with the number of labels. In 2008 only 7.7 per cent of asylum

seekers were given refugee status (7.4 per cent in the first 9 months of 2009), as against the 32.2 per cent of people who received subsidiary protection and 9.6 per cent humanitarian protection (22.3 per cent and 8 per cent in the first 9 months of 2009) (Sprar, 2009). These percentages help the politicians and field workers to present a certain picture: they can say that the vast majority of people arriving irregularly by sea are not 'refugees' and that their claims are manifestly unfounded. The rhetoric and practice of expulsion and preventive *refoulement* can take place more easily in such a confused scenario.

The global and the Mediterranean context

This analysis and the concerns related to such a policy are more urgent than ever. In recent decades the phenomenon of forced migration has reached unprecedented levels. According to the United Nations High Commissioner for Refugees (UNHCR), there were some 42 million forcibly displaced people worldwide at the end of 2008, including 15.2 million refugees, 827,000 asylum seekers and 26 million internally displaced persons (UNHCR, 2009a). Nevertheless, the burden of forced migrants is not equally distributed. The role of the global South is predominant: countries like Pakistan (1.8 million refugees, in 2008), Syria (1.1 million) and Iran (980,000) ranked among the highest as far as the reception of refugees was concerned. The imbalance is even more evident if the economic capacity of single countries is taken into account: Pakistan is once again the first (hosting 733 refugees per 1 USD GDP (PPP) per capita), followed by the Democratic Republic of Congo (496 refugees) and the United Republic of Tanzania (262 refugees). It is only in the 26th place that the first industrialized country, Germany (16 refugees), is found.

In Europe, where the right to asylum was born after the horrors of the Second World War, the situation of forced migrants has rapidly changed in recent years. Between the end of the 1990s and the beginning of the new millennium, numbers of refugees increased sharply, mostly due to flight from war-torn Yugoslavia; but in very recent years asylum applications have decreased when considering the European Union as a whole. UNHCR calculates that in 1997 334,000 people applied for asylum in the European continent (293,000 in the then European Union), while the number grew to 492,000 in 2001 (395,000 in the European Union). In 2007, the number of asylum applications was 254,000 (223,000 in the 27 European Union countries).

Still, the distribution of asylum seekers and refugees is not homogeneous among the different European states. The pressure on the Mediterranean countries, traditionally transit territories for refugees heading to northern states, has increased. In Malta, for example, 70–80 per cent of people arriving by sea apply for asylum and around half of them are granted some form

of protection. In Spain, on the contrary, only 1 per cent of around 32,000 people disembarking in the Canary Islands claimed asylum. In Greece the situation is particularly dramatic: applications are increasing (from 12,267 in 2006 to 26,745 in 2007) (Schuster, 2009); but these figures are still very low if compared to the real flux of potential refugees, and the possibility of being recognized as a refugee is almost zero, standing at 0.05 per cent of total applications (Nerantzis, 2009). Italy itself has become a prominent destination country for asylum seekers compared to previous years: among the 19,600 migrants who arrived by sea in 2007, around 20 per cent received some form of international protection, and the percentage grows to 65 per cent when considering only real asylum seekers. The general figures concerning Italy also show a growing trend, with the peak reached in 2008 with 31,100 asylum claims (compared to 14,000 in 2007 and 13,000 until August 2009).

This picture of the South European situation provides quantitative evidence about the priority of asylum in this particular historical period. But besides the quantitative aspects, asylum has also become a crucial political issue in the European arena. The European Union is in the middle of the harmonization process, which started in 1997 with the Amsterdam Treaty which incorporated the Schengen provisions on visa and border controls agreed under the Schengen Convention and provided for a common asylum system. The four building blocks of this system are the Reception Conditions Directive (Directive 2003/9/EC), the Asylum Procedures Directive (Council Directive 2005/85/EC), the Qualification Directive (Directive 2004/83/EC) and the Dublin Regulation (Regulation (EC) 343/2003) also known as Dublin II. To complete this legal framework, the Temporary Protection Directive (Directive 2001/55/EC) and the Eurodac Regulation (Regulation No 2725/2000) should also be considered. All these provisions are meant to define common and more equal standards in the different EU countries. Yet the core principle of the European asylum system remains the prohibition on expelling those with a full refugee status of international protection, asylum seekers, and all those who could be at risk if returned to their home or a transit country.

How then can the respect for asylum rights and the Geneva Convention be combined with the quest for migration control, security and the reduction of asylum applications? It seems as if the increasing securitization for indigenous populations has been achieved at the price of reducing the security of those whose claims are paramount, that is those seeking asylum (Zetter, 2009). In recent years different devices have been adopted in order to try to implement what is apparently irreconcilable. The proposal on the full externalization of the asylum process⁵ and internal asylum provisions⁶ both move in this direction, for example. They refer to the idea of preventing asylum seekers from entering Europe or, where too late, of redirecting them either to a third or to their own country.

Preventive *refoulement* in an age of expanded borders

In practice, the evolution towards preventive *refoulement* is more evident when looking at the right to physical access to European (in this case, Italian) soil, as the first necessary step towards asylum application and refugee status. The frontier represents a sought-after and at the same time dreaded step for any migrant who wants to reach his final destination.

The nature of borders has inevitably changed in the EU. The weakening of internal borders after the implementation of the Schengen agreement has moved the pressure of control and surveillance to external borders. Even if not all EU countries are directly interested in these practices, the priority of control is defined by the European Union, and all member states participate in some way to the defence of the territory. The European Union defines itself as a 'Common Space of Freedom, Security and Justice':⁷ a space to be defended in order to guarantee these prerogatives.

But as far as the citizens of third countries are concerned, it is clear that the relation between inclusion and exclusion is first played out at the threshold of this common privileged space. The EU's external borders are becoming areas of tension and conflict. Because it becomes more difficult to control or expel migrants once they are inside the EU, for the member states the challenge lies in preventing their entry or at least in limiting it as much as possible, and they resort to repression or deterrence if necessary.

Before analyzing these practices in more detail, it is useful to recall that the territorial border is no longer considered as a simple one-dimensional line, but more and more frequently defined as a border area with its own spatiality and extension. This is not new, since the ancient *limes* have never been linear, but always extended zones (Febvre, 1980, p. 357). Today the idea of the frontier as a *Grenzsraum*, that is a margin, is coming back to the fore, taking the place of the *Grenzlinie*, the border line, in the words of the famous geographer Friedrich Ratzel. Instead of being no man's lands, *terrains vagues*, uncharted margins 'in the middle of nowhere', borderlands bear a closer resemblance to 'black holes', attracting a lot of energy and anxiety (Löfgren, 1999).

Therefore, practices oriented to preventing migrants from entering the EU find a privileged place in these expanded borders. This expansion can be realized de jure but more commonly they are de facto, defined through continuous control practices exercised against migrants. The experience of mixed patrol, which will be described in more detail below, shows how the border can be interpreted as an area extended across two countries. The same considerations can be applied, with some differences, to land, air and sea borders, as the Italian case shows.

In Gorizia, for instance, the Italian town at the border with Slovenia, the last border of a Mediterranean country to fall in 2007 (with the accession of Slovenia to the Schengen area), the return of irregular migrants used to

be a common occurrence, even if they were already in the city centre or the surrounding countryside, some kilometres away from the border itself. During an interview, the Chief Superintendent of the Frontier Police expressed this trend well.⁸ First, the attention of the mixed Italian-Slovenian patrol was devoted to the so-called 'green line', that is the whole border where no international border posts were in place. It is easier to cross at the undefended border. Second, as the Chief Superintendent explained, the area 'around' the green line was controlled, observed and monitored. In his own words, there was a problem of extraterritoriality, since police officials of one country were operating in the territory of the neighbouring country. The ambiguity of this situation is partially solved if the whole area is considered as *Grenzsaum*, and therefore subject to a particular regime where the multiplication of controls is possible.

As regards sea borders, international law provides for a precise subdivision which resembles the expanded land borders mentioned above. According to the Montego Bay Convention,⁹ 'territorial sea' can be extended to a limit not exceeding 12 nautical miles from the baseline; this area is under the full sovereignty of the coastal state. The real border, then, is not drawn at the end of dry land, but corresponds to this limit of 12 nautical miles. In addition to this, a second frontier belt, named the 'contiguous zone', needs to be mentioned, as the coastal country – even if it does not enjoy full sovereignty – can exert some powers here. In the contiguous zone, the coastal state may exercise the control necessary to prevent any infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea, and punish infringements of the above laws and regulations committed within its territory or territorial sea. This sea border thus totals 24 nautical miles in all. And, in addition to what is provided for by maritime law, states often interpret provisions in a contradictory way as far as state responsibility is concerned: stretching or constricting the rules depending on national interests, the costs entailed by the operations and political pressures from international actors such as the EU, UNHCR and the like.¹⁰

This expansion of the border does not, however, occur only in correspondence to the classical frontiers of state sovereignty, but also, for example, inside airport areas. A juridical fiction allows states to consider the areas surrounding international airports as 'zonal borders' under a special regime, another strip of territory under extraterritorial conditions.¹¹ These expanded border areas have contradictory aspects: the same principle allows tourists advantageous prices, prevents asylum seekers from directly submitting their claims, and opens up a space for mass control and return practices.

The procedures mentioned above allow us to suppose that borders are variable to the extent that it is possible to talk about a form of 'introverted flexibility' (Cuttitta, 2007, p. 71), since borders that appear fixed in maps can move in space in order to follow and intercept migrants. In this context, the role of carriers is crucial: if they are promptly identified, they are

obliged to take the migrants and return them to the origin or transit country. Governments also impose financial sanctions on carriers bringing passengers not in possession of the necessary entry documents, as foreseen in several national and international laws and conventions.¹² This procedural measure undermines the substantive right of refugees to claim asylum, and allows the states to restrict or evade their international obligations. In this case preventive *refoulement* is carried out by private actors, who take the states' place in this very delicate matter of control and security.

It is easy to understand how the extension of a border area inside the country can have dramatic consequences for migrants in general, and even more so for asylum seekers. It seems that touching the soil of the destination country is not enough to really have entered this state and to enjoy the rights deriving from the presence on the EU territory. From this analysis it seems that the transformation of internal and external borders that have occurred in EU countries in recent decades has not weakened, but on the contrary increased their flexibility, permitting a functional adaptation to the requirements of controlling migratory flows. The expanded borders become prisms, projecting different shapes onto the sovereign space of the states and the EU. Accordingly, the meaning of exclusion and inclusion changes with different practices and norms disciplining entry and asylum procedures. Bearing this in mind, some aspects of these complex and fragmentary policies can be presented, focusing on different practices of preventive *refoulement* taking place inside these expanded border areas.

Bilateral and multilateral agreements

There are several kinds of agreements aiming at the implementation of old or new collaborations among EU and non-EU countries. As far as migration and asylum management is concerned, different instruments can be mentioned, such as readmission treaties, police cooperation, programmes of technical assistance, the detachment of officers and experts, training and formation of foreign personnel, the exchange of strategic and investigative information, mixed patrols, and assistance for repatriation. Most of these agreements find their operational application in border areas and are meant either to prevent migrants from entering the countries concerned or to facilitate their repatriation. Often labelled as operations against trafficking and smuggling and as of benefit to the safety of migrants, the implementation of these treaties makes access to Italy more and more difficult for both migrants and asylum seekers. The ultimate goal is consistent with the logic of preventive *refoulement*: to move the management of (forced) migrants outside the country in order to keep immigrants closer to their origin countries and prevent them from claiming asylum in Europe. The pressure on and consequent collaboration with third countries are designed to convince them to contain the flux of migrants on behalf of the EU member states.

On the issue of readmissions and repatriations, the Amsterdam Treaty transferred the competence to negotiate and conclude readmission agreements with third countries to the European Union, and specifically to the European Council.¹³ In the presidency conclusions of the Tampere European Council held on 15 and 16 October 1999, it is also stated that the European Council invites the Council to conclude readmission agreements or to include standard clauses in other agreements between the European Community and relevant third countries or groups of countries. This policy, built on the concept of concentric circles of demarcation, seeks to transfer responsibility to non-member countries; readmission agreements are only one of the possible instruments. At least three circles of enforcement can be identified: pre-embarkation checks are geographically the outermost circle; the Schengen border is the innermost; while the network of readmission agreements constitutes the middle (Trauner and Kruse, 2008, p. 8). Generally speaking, readmission agreements are signed on the basis of the principle of reciprocity, which means that all contracting states must be prepared to readmit not only their own citizens but even third country nationals on the same terms.

In this context, in September 2000 the Commission received its first mandates for negotiations with Morocco, Sri Lanka, Russia and Pakistan; in May 2001 for Hong Kong and Macao; in June 2002 for Ukraine and in November 2002 for Albania, Algeria, Turkey and China. The first to come into force were the treaties with Hong Kong, Macao and Sri Lanka (Council of the European Union, 2002; Cossu, 2006, pp. 115–7; Trauner and Kruse, 2008, p. 10). Later, at the beginning of 2008, the European Union and the Republic of Moldova, the Republic of Montenegro, the Republic of Serbia, Macedonia, Bosnia–Herzegovina, Ukraine and Albania signed some new readmission agreements.¹⁴

Even if it is the EU that is responsible for the negotiation and conclusion of these agreements, many individual countries nevertheless continue to act on their own, seeking to sign bilateral agreements with neighbouring countries or states in strategic positions as regards migration management. Considering the Italian case, Italy has signed 29 readmission treaties to date: with 15 EU member states (both ‘old’ and ‘new’ members), such as Austria, France, Greece, Spain, Cyprus, Estonia, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Hungary, Bulgaria and Romania; seven with other European countries (non-EU states), Albania, Bosnia–Herzegovina, Croatia, Macedonia, Moldova, Serbia and Montenegro and Switzerland; and eight with extra-European countries, such as Algeria, the Philippines, Georgia, Morocco, Nigeria, Tunisia, Sri Lanka and Egypt (Ministry of Interior, 2004, p. 119; Cuttitta, 2007, p. 87; 2008).

Italy is also in the process of negotiating other similar treaties with Bangladesh, China, Columbia, Ecuador, Ghana, India, Iran, Lebanon, Pakistan, Peru, Senegal, Syria, Turkey and Ukraine (Ministry of Interior, 2004, p. 55).¹⁵

Besides the readmission treaties, police cooperation agreements may be mentioned, since they are often, in terms of direct implementation, very similar to those mentioned above. Different examples are the Protocol on cooperation with Romania and the Russian Federation, signed in October 2003; the Protocol with Tunisia, of December of the same year, and an analogue agreement signed with Syria at the beginning of 2004. Furthermore, agreements are being negotiated with countries like Argentina, the United Arab Emirates, Estonia, Cape Verde, Kazakhstan, Israel, Latvia, Lebanon, Lithuania, Pakistan, Poland, Portugal, Serbia and Montenegro, Senegal, Uruguay, Venezuela and Yemen (Ministry of Interior, 2004, p. 54; Table 8.1).

All these agreements have facilitated the practice of organizing the readmission of foreign irregular nationals not only via traditional means, but also through ad hoc charters, where entire groups of migrants are loaded up for rapid expulsion from Italian territory. The Ministry of the Interior itself admits that the repatriation operations effected thanks to these charters have gained in importance in recent years. In more detail, we can note that in 2002 the Ministry of the Interior organized 26 repatriation flights for 2297 migrants, in 2003 33 flights for 2334, and in 2004 72 charter flights for 4900 migrants. In the first semester of the year 2005 43 charter flights had already left Italian territory with 2940 migrants on board (Ministry of

Table 8.1 Bilateral agreements with NAMCs and Slovenia

Country	Type of agreement	Place and date of signature
Algeria	Police cooperation	Algiers, 22 November 1999
Algeria	Readmission	Rome, 24 February 2000
Algeria	Executive agreement	Rome, 9 October 2000
Egypt	Police cooperation	Cairo, 18 June 2000
Egypt	Readmission	Rome, 9 January 2007
Libya	Police cooperation	Rome, 13 December 2000
Libya	Police cooperation	Tripoli, 3 July 2003
Libya	Police cooperation	Tripoli, 12 August 2004
Libya	Police cooperation	Tripoli, 29 December 2007
Libya	Friendship, partnership and cooperation	Bengasi, 30 August 2008
Morocco	Readmission	Rabat, 27 July 1998
Morocco	Executive agreement	Rome, 18 June 1999
Slovenia	Readmission	Roma, 3 September 1996
Slovenia	Police cooperation	Ljubljana, 5 July 1998
Tunisia	Readmission and Police cooperation	Rome, 6 August 1998
Tunisia	Police cooperation	Tunis, 13 December 2003

Sources: Ministry of Interior official website, www.interno.it; Cuttitta, 2008, p. 51.

the Interior, 2005, p. 41). Furthermore, some flights left directly from Egypt, and 25 chartered flights took off from Libya, all at Italy's expense (Ministry of Interior, 2004, p. 27).¹⁶

These different types of agreements, ranging from cooperation treaties to readmission agreements, often coexist and define the political and diplomatic relations between two countries. The case of Italian–Slovenian relations is interesting in this respect, since it is now possible to reflect retrospectively on this land border, which is no longer an external European frontier. The two countries signed a readmission agreement (3 September 1996) and a police cooperation treaty (5 July 1998) followed by a memorandum of acknowledgement to define the operations of mixed patrols in the Italian–Slovenian border area (12 December 2000). Thanks to this cooperation, Italy also started to use technological resources which are common nowadays for the first time in an extensive way: in order to identify migrants in the border area, police used camper vans equipped with thermal cameras, night vision binoculars and carbon dioxide detectors.¹⁷ The effects of this system are illustrated by the figures on rejections (*respingimenti*) and readmissions in a period when numbers for irregular access by migrants were very high. Between 2000 and 2006, there were 9486 returns to the border, with the maximum level reached in 2000 (2139) and the minimum in 2005 (744). As regards readmissions, it may be useful to remind ourselves that the agreement implies full reciprocity, which means that, theoretically, flows may go in both directions. Nevertheless the figures present an almost unilateral trend in the field of readmission. In the same period of 2000–06, Italy presented 25,463 readmission cases, even if only 5833 were actually completed. During the same years, Slovenia presented only 217 cases (100 completed).¹⁸ This example shows how the signature of a readmission agreement is not sufficient in itself as a means to manage and counter (irregular) migration. It is only one of the diplomatic steps taken by single states (or by the EU, as mentioned above) in order to convince a neighbouring country to proactively collaborate and accept the transfer of foreign citizens to their territory.

In fact, transit countries do not often have any specific interest in stopping irregular migration, since they can benefit from transit migration movements, from a cheap foreign migration labour force and from maintaining good relations with neighbouring countries of origin. Countries are therefore more likely to accept the readmission of their nationals or of third country citizens if they are rewarded with some kind of incentive. The case of the North African Mediterranean Countries (NAMCs) is illustrative of this. In order to facilitate the implementation of readmission and police cooperation treaties, Italy offered legal immigration opportunities for citizens from cooperation countries (e.g. granted reserved shares for their citizens within the frame of the Italian quota system); development cooperation; technical assistance, financial assistance and training programmes for the

authorities of NAMCs; and international political support and increased trade partnerships (Cuttitta, 2008, p. 53).

From this perspective the importance of a shift towards policies of preventive *refoulement* is easier to understand: readmission and repatriation are far more complicated and more risky (for the country proposing it) than rejection (*respingimento*). Readmission or repatriation can be accomplished only when a foreign national is already present on the territory of the state, and therefore there is a possibility that he will try to claim asylum, that non-governmental organizations (NGOs) and human rights associations will call for his repatriation, that the neighbouring state will refuse to take him back or divert him to another country. Readmission and repatriation are also more expensive if compared to return. While waiting for readmission, migrants are generally kept in detention or immigration centres at the state's expense, and chartered flights are a very expensive means of transportation. On the contrary, as regards return, the state can take advantage of the carriers' imposed collaboration, or may even use the same smugglers' boats migrants and asylum seekers arrived on, merely escorting them back to the departure harbour. As far as asylum is concerned, it is also evident that this kind of operation is a good way of preventing undesired asylum claims and bypassing the international refugee convention. This is one of the reasons why some governments are today experimenting with new forms of return, like those experienced in the Mediterranean sea.

Frontex

When talking about border control and preventive *refoulement*, it is also important to mention Frontex (European Agency for the Management of Operational Cooperation at the External Borders of the member states of the European Union),¹⁹ the EU agency for external border security. Since its creation in 2004, Frontex, based in Warsaw, has focused on six principal areas: carrying out risk analyses, which means assessing threats, looking at vulnerabilities, and weighing consequences; the coordination of operational cooperation between member states in the field of management of external borders, which implies the strengthening of border security by ensuring the coordination of member states' actions in the implementation of Community measures relating to the management of external borders; assistance to member states in the training of national border guards, including the establishment of common training standards; following up the development of research relevant for the control and surveillance of external borders; assistance to member states in circumstances requiring increased technical and operational assistance at external borders; providing member states with the necessary support in organizing joint return operations.

Apart from coordinating cooperation among EU member states, Frontex also pays attention to cooperation with third country border security

authorities, in line with the general EU external policy. On its official website, it can be read that:

Concentrating on third countries that share common goals with the EU in terms of border security, such cooperation is always being targeted at sustainable partnership. In the gradual process, in which such a partnership is developed, working arrangements concluded between Frontex and its third country partners precede practical measures.²⁰

Looking in more detail at Frontex's operations, given reassuring names like *Nautilus* (in the Strait of Sicily), *Hera* (off Canary), *Indalo* (in the Strait of Gibraltar) and *Poseidon* (in the Aegean), some interesting connections with what we have defined as preventive *refoulement* can be found. In 2006, for example, a boat belonging to the Italian Navy in the Strait of Sicily, alongside the boats of its Tunisian colleagues, carried out the first return of migrants to Tunisia on the high seas, where the agency handed over the whole cargo of migrants, even though no international convention provides for such extreme operations. This action was soon imitated in another Frontex operation, in 2007, when an Italian navy boat headed off hundreds of Indian and Pakistani migrants off the coast of Senegal while they were trying to reach the Canary islands. The agency itself admitted that during 2007, over 1500 migrants were intercepted by joint Frontex operations in the Atlantic. The presence of Frontex drives African migrants and refugees to take even more serious risks, navigating their pirogues up to 300 miles off the African coast in order to avoid Frontex patrols, spending about 10 days at sea before reaching the Canary Islands. Twenty-two joint operations were carried out by Frontex in 2007, and the number of third country nationals apprehended was 19,295: 11,476 intercepted at sea borders; 4522 at land borders; and 3297 in airports. In 2006, as a result of Frontex patrols, 32,016 migrants were arrested.

The relation to preventive *refoulement* here seems quite evident. Under the label of 'national border management system' and 'border security', Frontex carries out sea, land and air operations in order to prevent people from leaving their own or a transit country, or to divert them back to the nearest shore or soil. Apart from any consideration regarding the safety of the migrants, who are thus induced to choose more and more risky trajectories in order to avoid national or international patrols, the condition of asylum seekers and potential refugees is particularly alarming, since it seems that Italy, when participating in Frontex activities, operates outside its national territories as if it were not subject to the obligations deriving from international refugee law. In addition, forced migrants are all too often caught in the net together with economic migrants, in the mixed flows so typical of contemporary international migration.

It seems that the Frontex operations are a useful cover for Italian initiatives, since it can always be said that it is the EU that promotes solutions

of this kind, and last but not least, even UNHCR. In June 2008 UNHCR signed an agreement with Frontex establishing a framework for cooperation in order to ensure that persons seeking protection would be given access to EU territory in compliance with the international obligations of the member states. This is one of the reasons why the Italian government often refers to Frontex when seeking legitimation and consent, as the case of Italian–Libyan relations will demonstrate. The last statement of this type was by Italian Prime Minister Silvio Berlusconi at the end of a conversation with the new president of the EU, the Belgian Herman Von Rompuy. Berlusconi stated that

the European Union needs to be more engaged in the determination of who has and who has not the right to claim asylum. I think that the European agency Frontex could take the responsibility for assessing who, among the people trying to come here, is fleeing from a place where his freedom and his life is at risk. This agency should then decide on the destination within the different European countries.

(Ferrari, 2009)

The near future will reveal if this combination of externalization, harmonization and burden-sharing will become a reality.

The ‘new’ Italian model and relations with Libya

In order to get closer to the core of preventive *refoulement*, it is useful to focus on a specific case. As described above, Italy is somewhat in the avant-garde in the field of preventive *refoulement*, and the hottest spot for this is the Strait of Sicily. Political and diplomatic relations between Italy and Libya are at the centre of this. The two countries have a long and rather tortuous history. Libya was an Italian colony between 1911 and 1943; it was later the Italian government that argued for lifting the 18-year-old arms ban placed on Libya so that it could supply it with hi-tech equipment intended to curb illegal migration. EU ambassadors decided on 22 September 2004 that the sanctions – imposed in 1992 – should be lifted. But ministers, meeting in Luxembourg, have now gone further in removing the arms embargo which dates back to 1986. During recent years, relations between Italy (regardless of the political colours of the government in charge) and the country led by Colonel Muammar Gaddafi have become closer and closer.

The first two official agreements, concerning bilateral cooperation against terrorism, organized criminality and irregular migration, were signed in Rome on 13 December 2000 and in Tripoli on 3 July 2003. They anticipated a third agreement, which was signed on 12 August 2004 after the removal of the European embargo on the North-African country. This treaty provided for the mixed sea, aerial and land patrols and for the direct participation of the Italian government in the repatriation of migrants arriving in Libya, mostly from Egypt, Pakistan, Ghana and Nigeria. But already

before the signature of this agreement, Italy had been directly involved in the repatriation from Libya of some 2500 irregular migrants. From 2004 onwards, Italy carried out initiatives in support of Libyan activities against criminal organizations involved in trafficking migrants.²¹ The 2004 agreement can be interpreted as a proof of Italy's interest in an active role working to prevent the arrival of migrants from the North African coasts. Italy therefore tries to prevent the entry of foreigners by intervening directly in the region where they embark. This is why the diplomatic negotiations between the two countries have continued, and why a third agreement was signed (though never published in any Italian official journal) on 29 December 2007 in order to strengthen the mixed patrols in the Strait of Sicily. According to this agreement, Italian and Libyan officials should work together aboard six boats supplied by the Italian Coastguard, with the specific aim of blocking migrants heading to Italy (Pastore and Trinchieri, 2008, p. 47).

The active collaboration between the two shores of the Strait can easily be demonstrated through some examples. A detailed dossier issued by the European Commission on 4 April 2005²² reveals that Italy financed 47 flights to repatriate 5688 migrants from Libya to Egypt, Syria, Pakistan, Niger, Nigeria, Ghana, Bangladesh, Mali, Sudan and Eritrea, in the period between 16 August 2003 and December 2004 alone. Thanks to Italian collaboration many more migrants were also repatriated via tracks across the desert, in harmful conditions. The Libyan government probably knew the risks, since it also asked Italy to supply 1000 body bags, intended for the transport of the corpses of the dead migrants. Italy's involvement was thus not limited to the Straits of Sicily, but was extended to include the territories of third countries (from Libya and southwards) and to affect foreign nationals, amongst whom there were certainly many refugees.

Some other examples of this collaboration can be mentioned. Italy was also involved in the building of detention centres where migrants could be held whilst awaiting repatriation. The Ministry of the Interior itself admitted that the country was engaged in the building of three detention centres (Ministry of the Interior, 2005).²³ In January 2006, Libya decided to buy ten helicopters from the Italian company Finmeccanica for the surveillance of its frontiers: it was the first important contract between a Western manufacturer and the North African country. In September 2007, the EU commissioned Italy to supply Libya with electronic surveillance instruments in order for it to control its Southern frontiers. This is the price paid by Italy to its embarrassing watchman: if Italy wants Libya to control its harbours and prevent migrants from heading to the North of the Mediterranean, then it should help with the Southern borders. The then Minister of the Interior of the centre-left government, Giuliano Amato, revealed that 'Libya imposes a control system in the South as a condition for stronger control and coordination along the Northern frontier.'²⁴

At this point it may be easier to understand the difficulties encountered by an asylum seeker travelling through Libya and aiming to apply for asylum

in Italy. But lately Italy has taken more steps in the direction of preventive *refoulement*. As anticipated at the beginning of this chapter, 2009 will be remembered as the year of the first active operations of *refoulement* in deep water, conducted by the Italian Coastguard.

After the repatriation of the first 227 migrants to Libya when still in the Maltese Search and Rescue Area (SAR), many others suffered the same fate. Between 7 and 11 May, around 500 migrants were brought back to Libya, and non-governmental sources quoted by the European Commission affirm that 1216 people were involved in the *refoulement* between May and August 2009 (Zatterin, 2009). The philosophy of this 'new model of contrast on the high seas' is explained in the words of the Italian Minister of the Interior Roberto Maroni who, just a few days after the first operations, affirmed: 'I will not allow the *clandestino* [illegal migrant] to enter the country. I reject him and he goes back to where he came from, without going deeply into who he is and why he came here' (quoted in Custodero, 2009). In the same spirit, the Prime Minister Silvio Berlusconi said that exceptional asylum cases would be limited to those for whom Italy was bound under international law not to return. The obligation, according to Berlusconi, 'is to take in only those citizens who are able to apply for political asylum and that we have to take in, as stipulated by international treaties and agreements... those who put their feet down on our soil, in the sense also of entering into our territorial waters'. As for other cases, such as those 'intercepted outside our territorial waters who have not yet entered Italy, our rule provided for by international treaties to return him to where he came from applies. I don't see any scandal in it.'²⁵ These are the pragmatic answers to the severe criticisms addressed to operations of this kind. The 'historic turn' consists in the open and full adoption of preventive *refoulement*.

The philosophy of the 'new model of contrast on the high seas' is even clearer when reading the transcript of the official speech given by Minister Maroni at the *Camera dei Deputati* immediately after the rejections, when he was called to justify the government's choices in front of the Parliament.²⁶ First, the rhetorical structure of the speech emphasized 'humanitarian grounds' to justify the rejections: '[This policy] represents a significant deterrent towards criminal organizations involved in human trafficking, it saves many human lives afloat and is bringing a drastic reduction in the debarkation of irregular migrants (*clandestini*) on Italian shores.' Secondly, the Minister recalled the international context providing legitimacy to similar operations: the bilateral agreements between Italy and Libya, the involvement of Frontex in the common patrolling of the frontiers, the international instruments such as the Convention for the Safety of Life at Sea of 1974, adopted by Italy in 1980, and even the presence of UNHCR and IOM in the North African country. Last but not least, the rejections were presented as the natural continuation and concrete implementation of the European Pact on Immigration and Asylum, which commits EU member

states to action in five key areas, all mentioned by the Minister: to organize legal immigration to take account of the priorities, needs and reception capabilities determined by each member state, and to encourage integration; to control illegal immigration by ensuring the return of illegal immigrants to their country of origin or a country of transit; to make border controls more effective; to construct a Europe of asylum; to create a comprehensive partnership with countries of origin and transit to encourage synergy between migration and development. Of course, in this case the emphasis was almost exclusively on the 'control of illegal immigration' and 'border controls', even if this entailed operations in sharp contrast with the other points, namely the goal to 'construct a Europe of asylum'.

Well disguised under opportunistic considerations, the policy of preventive refoulement emerges from the words of Minister Maroni when he lists the government's five priorities in the field of migration and asylum management:

- (1) Improvement of the action of Frontex in the Mediterranean, with the definition of guidelines for combined operations in deep waters, the construction of European reception centres managed by Frontex and the enhanced participation of third countries in these combined operations;
- (2) The re-launching of EU-Libyan cooperation in the field of immigration;
- (3) The identification of mechanisms to guarantee asylum rights outside EU territory, particularly in North African countries, through the direct involvement of UNHCR and of the EU itself;
- (4) Initiatives for political dialogue on immigration in the Mediterranean sea, in the frame of a strong partnership with North African countries and particularly Libya;
- (5) Presentation by the European Commission of an action plan to face the immigration emergency in the Mediterranean.

The discourse reveals the real intentions of the government, stressing the importance of cooperation and partnership with NAMCs and Frontex solely in order to fight irregular migration; asylum and refugees are not explicitly mentioned, except with regard to the possibility of externalizing the examination procedures to North Africa.

Building on this partially new scenario of the management of irregular migration, although asylum seekers are of course also indirectly involved, it is possible to identify three main legal instruments available to the government: return or *refoulement* (*respingimento*), repatriation and expulsion. Repatriation can officially take place when the irregular migrant enters Italian territory and is not conferred refugee status or any other form of international protection. Expulsion is generally meted out to 'over-stayers': foreign nationals who were at one time in possession of permission to

remain, but who lost the requirements to keep their permit and can therefore be forcibly expelled by the police. The third option, return, is the most delicate, since it happens in the expanded border described earlier. This kind of *refoulement* can take place only if the migrants have not entered the country and nobody can really say whether they intended to claim asylum or were 'just' economic migrants. As Maroni says, Italy doesn't care. With the first operations of May 2009 Italy opted for preventive *refoulement*.²⁷

Conclusion

The UNHCR website states that the Agency's ultimate goal is to help find durable solutions that will allow refugees to rebuild their lives in dignity and peace. UNHCR indicates three possible options for this: voluntary repatriation; local integration; or resettlement in a third country in situations where it is impossible for a person to go back home or remain in the host country. Focusing on the durable solution implying the return of refugees, it is easy to understand that the opposite of voluntary repatriation is *refoulement*. *Refoulement*, and even more so forced repatriation, are against the spirit of the Geneva Convention and generally against international law; conversely, voluntary repatriation is often seen as the best solution for all actors: refugees, origin and receiving countries, and international agencies.

The explicit promotion of voluntary repatriation as the best of the three durable solutions presented by the UNHCR is something relatively new. When the refugee agency was born, the three options were equally valued, but as early as 1983 the UNHCR Executive Committee conclusion 29 included a call for governments to facilitate the work of the UNHCR 'in creating conditions favourable to and promoting voluntary repatriation, which whenever appropriate and feasible is the most desirable solution for refugee problems.'

Jeff Crisp comments that the consolidation of this hierarchy is an ambiguous trend: if voluntary repatriation certainly presents some positive features, at the same time it seems that the designation of voluntary repatriation as 'the most preferred solution' has been prompted by other considerations, such as increased concerns about the negative economic and environmental impacts of large-scale refugee populations in countries which are struggling to meet the needs of their own citizens; the reluctance of host states to accommodate large numbers of refugees, resulting from a perception that the more prosperous members of the international community are not sufficiently committed to burden-sharing; a belief that exiled populations represent a threat to local, national and regional security, especially in situations where bona fide refugees are mixed with armed elements; popular antagonism over the presence of refugees, mobilized in some cases by the media and unscrupulous politicians; and an increasingly restrictive asylum

climate, associated with a fear that states are losing their ability to control the movement of people across international borders (Crisp, 2004, p. 5).

Accordingly, the mirage of the repatriation of refugees is an appealing scenario for European countries. And this is consistent with the history of the modern nation state. Immediately after the Second World War, Hannah Arendt had already realized that it was impossible either 'to get rid of refugees' or transform them into nationals of the country of refuge (Arendt, 1979, pp. 268–301). Therefore, the promotion of repatriation as the best solution stems from the 'impossibility' of other alternatives. But what is left when voluntary repatriation is impossible and *refoulement* is prohibited by international conventions? States can still try to prevent people from entering their territory and consequently solve the problem at the source: no entry, no repatriation needed.

In a world of concentric circles of demarcation, Europe presents itself as the core, to be defended at all costs. The threat represented by foreign nationals seeking access to our territory, in some cases to claim asylum, needs to be contained in more and more distant layers: European countries not belonging to the EU, North African countries, and now even other origin or transit countries in the middle of Africa or Eastern Europe. It seems that Europe is trying to deal with asylum as if the number of asylum seekers to be let in could be decided on a priori. For instance, by reading the presidential address by the Austrian Presidency of the European Union in 1998, we learn that a new approach is to be promoted, 'not lying on an individual and subjective right, but of the political supply (*sic*) offered by the receiving countries' (cited in Morice, 2004).

Evidently, the issue of preventive *refoulement* needs to be addressed on a political level even more than on a legal level. In order to invert the trend on migration and asylum management and to respect the international refugee conventions, it is the social and political imaginary that must be radically changed.

Notes

1. This chapter builds on the existing international literature and on empirical research in the field of forced migrations. Specifically, between January 2006 and July 2007, in the context of my PhD dissertation entitled 'Refugees and Asylum Rights in Europe: Political Trends and the Transformation of Rights', I carried out comparative qualitative research concerning asylum systems in Italy, France and the United Kingdom. In Italy I focused on the cities of Rome, Milan and Gorizia. In the framework of a parallel research project (2006–07) entitled 'Possible Citizens' and sponsored by the Caritas Ambrosiana, I was responsible for a research unit on 'Integration and assistance services for asylum-seekers and refugees' in the area of Milan, Lecco and Varese (Ambrosini and Marchetti, 2008). The empirical material collected in these research projects consists of more than 50 in-depth qualitative interviews with forced migrants and other key informants, such as

- members of the commissions responsible for the determination of refugee status, policemen, representatives of the national UNHCR Office, social workers and volunteers. The concept of 'preventive refoulement', and the policies and practices related to it, was first presented and analyzed in Marchetti (2006).
2. UN Convention Relating to the Status of Refugees, signed in Geneva on 28 July 1951; see the UNHCR website at <http://www.unhcr.org/3b66c2aa10.html>.
 3. Other authors define these policies as "neo-refoulement", referring to 'the return of asylum seekers and other migrants to transit countries or regions of origin before they reach the sovereign territory in which they could make a claim' (Hyndman and Mountz, 2008, p. 250).
 4. Ministry of the Interior, http://www.interno.it/mininterno/export/sites/default/it/assets/files/15/0336_domande_asilo_2008.pdf (accessed 27 August 2009). See Human Rights Watch (2009) and UNHCR Italian website at <http://www.unhcr.it>.
 5. The first explicit proposal on externalization was presented in February 2003 by the British Home Office, with the idea of 'delocalizing', that is moving out of Great Britain, the stage of the selection of 'true' and 'false' refugees inside *Transit Processing Centres*. These centres were to be exported to real off-shore platforms: Iraqis could have been processed in Turkey or Iran, Somalis in the North of Somalia itself (or in Kenya or Uganda), other Africans in Morocco and in Zimbabwe. Other centres were to be built on the Eastern European border, in countries like Romania, Croatia, Albania or Ukraine. Accordingly, all these territories would have become 'safe countries': in order to be considered as 'Regional protection zones', these transit centres would have been managed by international organizations or by a third country under the partial supervision of the UNHCR. The most extreme novelty of these proposals was that of the deportation of asylum seekers who had already entered the country. The aim of the whole operation was to discourage bogus refugees, economic migrants and alleged terrorists from illegally coming to the United Kingdom. By direct admission of the British government, the ultimate goal was to progressively reduce the number of asylum seekers entering the United Kingdom (see Delouvin, 2003; Noll, 2003; Huguenet, 2004). The European Commission discussed this proposal at length, eventually defining it as at least partially inadequate.
 6. The concrete possibility of internal asylum is contained in the Qualification Directive (2004/83/EC), which provides in Article 8 for 'Internal protection'. It implies that, as part of the assessment of the application for international protection, member states may determine that an applicant is not in need of international protection if in some part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm, and that the applicant can reasonably be expected to stay in that part of the country. This European directive also refers to a lively debate taking place inside the UNHCR around what has been defined as the *Internal Flight or Relocation Alternative*. In the Guidelines on International Protection that discuss this specific feature, the UNHCR does not refute this possibility, with some limitations (UNHCR, 2004). This form of extra-territorial protection, potentially very risky for asylum seekers, has already been adopted in a number of different countries, such as France, where it is provided for in Law n. 1176 of 10 December 2003. The fact that its application is still quite rare is not enough, since it is one of the possibilities provided for in law. It has been noted that 'recent history teaches us that in a country in prey to instability and violence, no zone can be considered as definitely safe. The fall in July 1995 of the enclave of Srebrenica in

- Bosnia-Herzegovina, declared “security zone” under the control of the United Nations, allows us to doubt, once and for all, of the pertinence/relevance of notions of this kind’ (Castagnos-Sen, 2006, p. 8).
7. Treaty establishing a Constitution for Europe, 2004/C 310/01, Art. I-42.
 8. Interview with Chief Superintendent of the Frontier Police, Gorizia, 24 October 2007.
 9. UN Convention on the Law of the Sea of 10 December 1982 Art. 33, c. 1 (Montego Bay Convention).
 10. The summer 2004 case of the Cap Anamur, which involved three countries: Italy, Malta and Germany, is typical. A boat, chartered by the German NGO Cap Anamur, took 37 people on board who were apparently rescued at sea in the southern Mediterranean (allegedly in Maltese waters) on 20 June; after that, the boat was moored off the coast of Sicily for more than ten days before the Italian institutions authorized disembarkation. UNHCR expressed its concern over serious flaws in the subsequent handling of the asylum claims, which resulted in the deportation of 30 people to Ghana and to Nigeria (<http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=4101252e4&query=cap%20anamur>).
 11. Although they refer to the French case, the words of this officer are particularly appropriate: ‘Curiously the border area is not considered as national territory. That’s what allows us, when leaving for a travel, to buy a small bottle of perfume without paying taxes. It is the same reasoning. In France people do arrive and apply for asylum, but their claim is not considered as a real asylum claim since such an application can be submitted only when you are in the [national] territory. And that’s not [national] territory. Roissy is 30 kilometres from Paris, but we are not in the French territory’. Interview with an OFPRA (Office Français de Protection des Réfugiés et Apatrides) officer, Paris, 18 May 2006.
 12. UN Convention against transnational organized crime, adopted in Palermo in 2000 (the so called Palermo Convention); Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 (OJ L 187, 10.7.2001, pp. 45–6); Italy: Decreto Legislativo 25 July 1998, n. 286 ‘Testo unico delle disposizioni concernenti la disciplina dell’immigrazione e norme sulla condizione dello straniero’ Art. 10, comma 3; UK: Carrier’s Liability Act adopted in 1987; France: L. 92-190 of 26 February 1992. See also similar legislations in Germany, Belgium and Denmark.
 13. Art. 63, par. 3, lett. B.
 14. OJ L 24, 29.1.2008, pp. 53–53.
 15. Unfortunately, more recent and updated data are unavailable, since they are not publicly issued or made available to the general public through the official website of the Italian Home Office <http://www.interno.it>.
 16. Italy is not the only country to use chartered flights to repatriate irregular migrants or rejected asylum seekers: in 2005 the United Kingdom and France organized a joint repatriation flight to Afghanistan and in July 2009 they signed a cooperation agreement in order to better manage these chartered flights. In recent months the French Minister for Immigration and National Identity confirmed that his country and the United Kingdom intended to keep using chartered flights to repatriate failed asylum seekers (see Merlo, 2009).
 17. Camera dei Deputati, Resoconto stenografico dell’Assemblea. Seduta n. 84 del 22/1/2002, <http://documenti.camera.it/Leg14/BancheDati/ResocontiAssemblea/sed084/s040.htm>.

18. I received a copy of these official acts and figures from the Chief Superintendent of the Frontier Police, 24 October 2007.
19. Established by Council Regulation (EC) 2007/2004/ (26.10.2004, OJ L349/25.11.2004) having regard to the Treaty establishing the European Community.
20. See the Agency website at: <http://www.frontex.europa.eu> (accessed 10 December 2009).
21. See 'Li fermeremo in Libia', *Il Manifesto*, 14 August 2004, p. 5.
22. 'Technical mission to Libya on illegal immigration 27 November – 6 December 2004', <http://www.statewatch.org/news/2005/may/eu-report-libya-ill-imm.pdf> (accessed 10 December 2009).
23. Law n. 271/2004 officially authorized the funding of structures built in third countries, useful for fighting against irregular migration.
24. Ministry of Interior, 'Amato: via libera dell'Europa per la fornitura alla Libia di un sistema di sorveglianza elettronica delle frontiere', Press Release, 18 September 2007, http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala stampa/notizie/_ministro/0957_2007_09_18_Amato_Consiglio_AAII_Ue.html_545414877.html (accessed 10 December 2009).
25. 'Berlusconi: 'La nostra idea dell'Italia non è multietnica'', *Il Sole 24 Ore.com*, 9 May 2009, <http://www.ilsole24ore.com/art/SoleOnLine4/Italia/2009/05/berlusconi-no-italia-multietnica.shtml?uuid=f34356f2-3cbd-11de-9448-2a21b45d727f&DocRulesView=Libero> (accessed 10 December 2009).
26. «Informativa del Ministro dell'interno su questioni connesse all'immigrazione»,., Legislatura 16 – Aula – Resoconto stenografico della seduta n. 214 del 25/05/2009, <http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Resaula&leg=16&id=424000>.
27. This shift is also well illustrated by the changes in the relations between Italy and Greece. Even if many international organizations, like the UNHCR, have expressed their doubts about the reliability of the Greek asylum system, Italy sends potential asylum seekers back to Greece more and more often, applying the bilateral readmission agreement signed on 30 March 1999. When arriving at South-Eastern Italian harbours (above all in Ancona and Bari), migrants, who are mainly Afghans and often minors, are returned to Greece, where they are seldom able to claim asylum and even more seldom recognized as refugees. See Schuster (2009) and Scirba (2009).

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9

Informing Migrants to Manage Migration? An Analysis of IOM's Information Campaigns

Antoine Pécoud

Introduction

This chapter investigates the role played by information in migration management. A cross-cutting argument in the global policy discourse on international migration is the lack of appropriate information regarding migration, both among potential migrants and the population of destination states. Information campaigns would be needed to address such disinformation, which generates irrational behaviours and thus jeopardizes some of the positive outcomes expected from 'properly managed' migration. Yet, the analysis of the information campaigns that are actually put in place reveals several gaps between this rhetoric and the practice. This illustrates some of the imbalances of migration management initiatives, and their proximity to objectives of migration control.

The chapter is structured in the following way. It first reviews some of the reports that constitute the global policy discourse on migration, outlining the role of information therein. It then describes some of the information campaigns set up by the International Organization for Migration (IOM), distinguishing between those that deal with trafficking and those that target potential irregular migrants. The next section explores the gaps between discourses and practices in migration management in the light of these campaigns. The fourth section analyses these migration management initiatives in terms of the shifting modalities of migration control and argues that, through such campaigns, control takes place away from the border while relying on methods that have less to do with law and order than with media or advertising; this type of control is presented as a humanitarian rather than a security issue and can be viewed as a steering of human behaviour. Finally, the chapter concludes by arguing that information campaigns point to one of the greatest obstacles to the control of migration, namely the refusal of migrants to accept the legitimacy of the policies aimed at stopping them.

Information in the global policy discourse on migration

A core feature of 'migration management' is the development of a specific corpus of discourses on international migration. The last decade has been characterized by the proliferation of reports of different institutional origins, whose shared aim is to discuss international migration trends and the policy options that are available to 'manage' them. These reports underlie the need for 'stakeholders' to develop a common set of notions, concepts, understandings and assumptions, without which no dialogue can take place.¹ In other words, these publications feature the *Weltanschauung* of 'international migration managers', that is, the worldviews that are shared by most participants in the 'epistemic community' in charge of international policy debates on migration.

The Programme of Action agreed at the 1994 International Conference on Population and Development in Cairo is usually understood as the first attempt to elaborate an international and consensual discourse on migration. Since 2000, an impressive number of reports have been produced, among which one can notably mention the following: the four World Migration reports published by IOM (2000, 2003, 2005 and 2008), the 2005 report of the Global Commission on International Migration (GCIM, 2005), the Hague Process and its 2002 Declaration on the Future of Refuge and Migration Policy (United Nations [UN] 2002), the Bern Initiative and its 2005 International Agenda for Migration Management (IAMM), the International Labour Organization (ILO) (2006) Multilateral Framework on Labour Migration, the 2006 report by the UN Secretary General on International Migration and Development and the 2009 United Nations Development Programme (UNDP) report entitled *Overcoming Barriers: Human Mobility and Development*.²

A major characteristic of this corpus is its positive understanding of migration. In contrast with many of the dominant political discourses in destination states, the mobility of people is generally approached as potentially beneficial for all – according to the so-called 'triple win' objective: for receiving countries (that need migrant workers for labour market and demographic reasons), for sending countries (that export their workers in exchange of remittances) and for migrants themselves (who have access to better income opportunities). Yet, this is not to say that states should adopt a policy of open borders. Most of these reports distinguish between 'good' and 'bad' migration and emphasize that migration is beneficial only if 'managed' in a certain way. For example, the UNDP report identifies three types of migration that do not contribute to 'human development' and that should therefore be avoided: conflict-driven migration, development-induced displacement and trafficking (UNDP, 2009: 62–6). It follows that policies should steer migration in such a way that it yields benefits; as the GCIM states: 'today's challenge is to formulate policies that maximize the positive impact

of migration on countries of origin while limiting its negative consequences' (GCIM, 2005: 23).

Another characteristic of these reports is their mix of empirical descriptions of migration trends (which often rely on academics and researchers) and of policy recommendations. Migration, it is argued, needs to be better understood in order to be better 'managed' and these reports thus provide (often repetitive) discussions of a wide range of migration-related issues, including: the links between migration and development, highly-skilled migration and the brain drain, remittances, human smuggling and trafficking, irregular migration, asylum, integration, human rights, security aspects of migration, migrants' health, the need for better data collection and so on. Migration is thereby framed within what is often called a 'comprehensive' or 'holistic' approach, which is supposed to challenge states' narrowly economic or control-centred strategies. Core cross-cutting policy recommendations include the need for cooperation between states (as migration would be impossible to handle successfully through national and unilaterally-designed policies) and calls to go beyond the mere control of migration by drafting proactive policies that organize mobility rather than restrict it (e.g. through temporary labour migration schemes).

An in-depth discussion of the content of all these reports is beyond the scope of this chapter and I would therefore like to focus specifically on a theme that runs throughout most of them, namely the role of information and information campaigns in migration policy. Information is systematically presented as of crucial and manifold importance. Paragraph 10.19 of the Cairo Programme of Action already mentioned its role in combating irregular migration: 'Governments, with the assistance of appropriate international organizations, should deter undocumented migration by making potential migrants aware of the legal conditions for entry, stay and employment in host countries through information activities in the countries of origin.' The assumption is that irregular migrants are unaware of the rules governing the entry of non-nationals in destination states and that, if properly informed, they would renounce unlawful migration projects. The first World Report of IOM further emphasizes that 'too many people cross borders in an irregular fashion and make unjustified claims for asylum or residency because they are unaware of the prerequisites for the move' (IOM, 2000: 21).

This report also adds another dimension to the role of information by stating that 'the public in receiving countries needs accurate information on the implications of migration to counteract xenophobia' (IOM, 2000: 21). The IAMM makes the same two points: 'The dissemination of accurate, objective and adequate information on migration policies and procedures enables migrants to make informed decisions. It is also needed to inform public opinion and ensure support for migration and migrants in host societies' (Bern Initiative, 2005: 24–5). The argument here is that anti-immigrant feelings are fuelled by the ignorance of the public regarding migrants' usefulness;

if people were to realize the valuable contribution made by migrants, they would accept their presence and racism and xenophobia would decrease. The ILO thus calls for 'promoting public education and awareness-raising campaigns regarding the contributions migrant workers make to the countries in which they are employed, in order to facilitate their integration into society' (ILO, 2006: 28).

Calls for providing information to would-be migrants are particularly frequent when it comes to human trafficking. Traffickers would exploit the ignorance of potential migrants and providing information would therefore reduce people's vulnerability to trafficking abuses: 'Information is an important empowerment tool, diminishing the capacity of traffickers and smugglers to exploit the limited knowledge of potential migrants and counter-balancing the false information provided by criminals involved in the facilitation of irregular migration' (IOM, 2003: 69).

As far as information to receiving populations is concerned, it is not only a matter of increasing the acceptance of immigrants, but also of enabling governments to design more open migration policies. The argument is that policy-makers are increasingly aware of the need to go beyond their inadequately restrictive approach to migration (e.g. by establishing legal migration channels), but that they fear the reaction of their electorate:

The understanding of migration issues in migration management has broadened and deepened, and the examples of good practices have increased significantly. It has become increasingly clear, however, that public perceptions of migration and migrants play a critical role in determining the policy choices available to governments.

(IOM, 2008: 11)

Ignorant public opinions would thus block much-needed policy reforms.

Information is presented as a crucial element in distinguishing between 'good' and 'bad' migration. 'Informed' migrants would know the rules and respect them, thus behaving in a way that makes migration 'optimal' and beneficial for all, while 'informed' public opinions would support policies that aim at maximizing the positive impact of migration. Information is thus given a normative function: in this ideal world, all actors would be perfectly cognisant of migration realities and, consequently, of how they should behave. 'Information campaigns should actively market and promote viable options for legal movement... while actively discouraging counterproductive migration activities' (IOM, 2003: 69). This goes along with a belief in the rationality of actors. Both migrants and inhabitants of receiving states would rationally react to the knowledge at hand and providing 'better' information would then logically lead to changes in their attitudes, behaviours and strategies – and enable them to take 'better' decisions. As the former Director General (DG) of IOM writes in his foreword to the 2005 World Migration

Report, 'rational and well-informed choices by migrants, governments, civil society, communities and the private sector can help maximize the benefits and minimize the costs of migration' (IOM, 2005: 11).

A last argument worth mentioning is that providing information is presented as an activity in which governments should cooperate with other actors. The above-mentioned quote from the Cairo Programme of Action emphasized the role of international organizations (IOs) in assisting states. In its report on migration and development published just before the UN High Level Dialogue on International Migration and Development (HLD), the UN Secretary General writes that 'civil society can assist in ensuring that potential migrants have reliable information on admission requirements before they embark on the migration process' (UN, 2006: 28). This illustrates the role of non-state actors (including not only IOs and nongovernmental organizations [NGOs], but also the private sector, employers, municipalities, regions or civil society), which is a central theme in 'migration management' discourses.

IOM's information campaigns

A common reaction to the development of the global policy discourse on migration is that it would amount to no more than words, and that all the seemingly ambitious statements contained in these reports would lead to no concrete changes in migration policy-making. To some extent, this is a fair critique as there is evidence that, for example, the rhetorical emphasis on 'making migration work for development' translate into very modest and meaningless decisions by governments. Yet, in the case of information-focused arguments, this is not quite the case: some information campaigns have actually been put in place – and this has become a field of activity of some importance, especially for IOM. This section thus analyses the concrete outcomes of the rhetoric described above.

Since the early 1990s, IOM has launched numerous campaigns to inform the population of sending regions of the risks of migrating, mostly in Central and Eastern Europe, South-East Asia and Central America. The first ones took place in Romania from 1992 to 1996, as well as in Albania (1992–95), the Philippines (1997–99), Vietnam (1998–99) and Ukraine (1998). There has been an increase since 2000, with campaigns throughout Central and Eastern Europe, Cambodia, Colombia, the Dominican Republic, Ghana, Morocco or Nigeria.³ IOM's 2009 call for extra-budgetary funding confirms that information campaigns and awareness-raising activities are planned in nearly all countries (IOM, 2009).

IOM's information campaigns can be divided into two categories: those that address human trafficking and those that deal with irregular migration. In both cases, campaigns warn potential migrants of the dangers of migration; yet, this message is stronger and easier to convey in the case of

trafficking, and campaigns that target irregular migration also rely on more security-oriented arguments to dissuade potential migrants. In what follows, I provide examples of the two categories.

Human trafficking

Since the early 1990s, there have been increasing fears surrounding new forms of migration characterized by coercion, exploitation and the involvement of migration professionals often linked to organized crime. In particular, the migratory trajectories of women, recruited in countries of origin by mafia-type criminal organizations and forced into activities such as prostitution, has been described as modern slavery, raising considerable public emotion and political reactions (Berman, 2003). Trafficking is internationally recognized as a human rights violation by the so-called 2000 Palermo Protocols on smuggling of migrants and trafficking in persons. Smuggling concerns the illegal entry of migrants while trafficking regards not only the displacement, but also the exploitation of trafficked persons once in the destination country; smuggling is usually associated with men while trafficking evokes women and children, who are in principle understood as victims rather than criminals (Gallagher, 2001).

Information campaigns are considered an essential tool in fighting trafficking, as they would reduce the vulnerability of potential victims by raising their awareness regarding the risks of being caught in criminal networks. This section presents examples of counter-trafficking information campaigns in Central and Eastern Europe, one of the regions in which these efforts are most developed.

An important support for communication includes posters, which can be found on billboards and on city buses notably (see Andrijasevic, 2004 for an extensive analysis). Some represent beautiful white and often half-naked women in states of despair or in attitudes characteristic of sex workers. They reproduce typical job advertisements, such as 'Trustworthy agency offering women good work abroad', and complement them with headlines directed at the reader, including 'The return home won't be easy', 'Are you sure you know what's waiting for you?', 'Blind faith opens its eyes too late' or 'Do you think it could never happen to you?'. A short text in the first person relates what happened to the woman in the picture, how she wanted to leave her country, was abused by traffickers and forced into prostitution. An example from the Czech Republic in 1999 reads as follows:

When I finished high school, I wanted to study languages at university but I failed the entrance exams. I started looking for work abroad. Then I found an ad in a newspaper for an au-pair job in Italy. I applied for the job and was accepted. When I arrived in Italy, I was met by a couple who presented themselves as the parents of the children I was supposed

to look after. I signed a contract and gave them my passport which they kept. I was taken to a beautiful villa which turned out to be a brothel. I was then forced to prostitute myself When you want to work abroad, call for advice.⁴

Others portray women in vulnerable situations, such as in a cage (with the slogan 'Do you want to trade your dignity, your freedom and your health for a cage?') or in the hands of a man exchanging her against money ('You will be sold like a doll').⁵ In 2005 in Ukraine, a campaign featured large posters representing a passport, with the picture of a young woman and a large stamp that reads 'Sold.'⁶ All these posters feature the phone number of a hotline providing advice to people considering leaving abroad or unsure of the job offer they received.

Other supports include movies. In Moldova, a movie was used to reach a wide audience of teenagers and school pupils. Entitled *Lilya 4-ever*, it tells the story of a 16-year-old girl who becomes a victim of human trafficking. The movie was shown both on national television and through special showing in cities and small towns. In addition, school curriculums incorporated the movie, which was also advertised through stickers and handouts distributed in cafeterias or Internet cafés. NGO members were trained to provide advice and answer questions after the performance.⁷ In Ukraine, another movie (*Prey of Silence*), viewed on national TV, warned women of the risks of being trafficked while calling for Ukrainian women abroad to return home (Andrijasevic, 2004: 162).

Multimedia also includes TV advertisements. In Ukraine, a spot was shown on TV, in which one can see a potential migrant preparing his/her suitcase: the emphasis is put on the various official documents that he/she takes with him/her, and especially on an open passport marked by a very visible LABOUR VISA inscription; one then sees the emigrant at an airport or a train station, refusing to give his/her passport to someone else.⁸ In Moldova, a television advertisement was produced to promote a hotline and featured well-known local artists providing 'friendly advice' to the audience: 'If you want to go abroad, it's OK. I respect your decision. But don't hurry. Get yourself informed. Find a little time to call the hotline.'⁹

Information campaigns rely on partnerships established with a wide range of social actors. As mentioned, IOM campaigns use schools and universities to reach the young audience that is considered most susceptible to going abroad and getting trafficked; teachers are trained to introduce the issues of trafficking and irregular migration in their curriculum while summer camps are organized to raise awareness among young people. Churches also sometimes cooperate; in Romania, for example, an agreement was signed between IOM and the Patriarch of the Romanian Orthodox Church in order to introduce counter-trafficking information in religious schools.¹⁰ Along with media enterprises, other private actors also participate, such as the bus

company Eurolines, used by Eastern Europeans traveling to Western Europe, that distributed anti-trafficking flyers on board.¹¹

IOM is also involved in so-called 'capacity-building' activities, whose purpose is to enable sending regions to better address trafficking challenges by themselves. This includes training of social workers, journalists, civil servants and members of government agencies, as well as workshops and roundtables putting together various state and civil society actors to increase the level of awareness surrounding trafficking. This can lead to the creation of institutions, such as advice centres: with funding from the European Union, IOM has, for example, established 'Centres for Migrant Advice' in Ukraine and the Czech Republic. These are run by NGOs whose staff received training by IOM and Western Embassies, and they organize both face-to-face consultations and info lines, through which migrants are told how to migrate 'safely and legally': advice includes checking with embassies and making sure job offers are realistic before leaving.¹²

In all these initiatives, NGOs play a key role. IOM's campaigns are almost systematically established in partnership with NGOs, which are trained and funded to run advice centres, answer hotlines' phone calls, distribute booklets, organize drama tours, etc. IOM has created and supports international networks of NGOs, with the purpose of exchanging experience and information between NGOs in different countries, and distributes awards to the most active ones. Of particular significance is the EU-sponsored La Strada, a network of associations present in the Netherlands, Poland, Bulgaria, Belarus, Moldova, Macedonia, Bosnia-Herzegovina and Ukraine.¹³ While counter-trafficking initiatives are presented as joint IOM-NGOs projects, Andrijasevic (2004: 151) notes that civil society partners sometimes complain about their little influence on their conceptualization; Schwenken (2005) also stresses how human rights and feminist NGOs active in women's protection find themselves in an uneasy and imbalanced relationship to the governments and intergovernmental organizations they work with on trafficking issues.

Irregular migration

In 2007, Switzerland funded a video spot meant to prevent irregular migration, which was shown on television in Cameroon and Nigeria. It features a young African migrant who calls his dad from a public phone. The father takes the phone; he is relaxing in a comfortable living room. They dialogue:

- Dad, it's Christian.
- Ah! How are you doing?
- Fine, thanks Dad!
- Have you arrived well?
- Yes Dad, there is no problem, my trip was okay.

- And what about your accommodation? Have you finally found a room or a flat?
- Oh yes Dad, I'm lodging with friends. And it is going well.

Other images appear in-between the dialogue scenes. Young homeless Africans are begging in the street. Others are running to escape the police. The dialogue continues:

- I can feel anguish in your voice. Are you hiding something from me?
- No, not at all. It's just that I have been running all over the town all day long. It has been a really busy day.
- Okay! Have you registered with the University?
- Yes Dad, I registered! Courses are going well.

They put down the phone. The warning is then shown on the screen: 'Don't believe everything you hear', 'Leaving is not always living'.

A few months before, another spot was broadcasted in Senegal, following a initiative by the Spanish government. A woman, Fatou, cries. 'Nine months ago, she lost her son. He was the family livelihood', the legend goes. She explains: 'I asked for him and I was told he had left. My son is gone, and we don't have any news from him for eight months now. Here I am sick. After God, my son is my only hope.' One then sees a dead body on a beach. 'And it's so hard.' Then Youssou N'Dour, the famous Senegalese singer, appears on the screen; he sits on a pirogue, with the sea behind his back – in an echo of the boats in which migrants embark to reach the Canary Islands. 'You already know how this story ends,' he says, 'thousands of families destroyed. I'm Youssou N'Dour, please don't risk your life in vain. You are the future of Africa!' The spot ends with an image representing kids who surround a computer, a probable reference to Africa's future.¹⁴

In the United Kingdom, a campaign funded by the British government and implemented by IOM targeted irregular migrants from Eastern Europe. It includes a poster showing a man looking worried and anxious; on the wall behind him, his shadow turns out to be a policeman, recognizable at the traditional 'bobby's' hat. The message is clear – the police will chase irregular migrants – and the text is even more explicit: 'You cannot outrun your shadow! How long can you be on the lookout? The new legislation on illegal migration in the UK is a lot tougher; the controls more rigorous; so you risk being sent back home very swiftly. . . . The only way is the legal way.'¹⁵ Another slogans runs: 'Feels like someone is watching you? That is how everyday feels for an illegal migrant in the UK.' This campaign, which was launched by UK Minister of State for Immigration Tony McNulty in 2005, also featured a TV docudrama presenting the experiences of an irregular migrant who was sent back to Romania; and a leaflet describing the conditions upon which foreigners can enter the United Kingdom and work in the country.

Migration management: from rhetoric to practice

As argued, information campaigns are the direct outcome of the policy recommendations elaborated in the reports discussed above. In many ways, they provide one of the most concrete illustrations of what 'migration management' looks like in practice. They rely upon inter-state cooperation, as they are funded by destination countries while being implemented in sending and transit regions; they are run under the supervision of an inter-governmental organization; they claim to go beyond the mere control of the movement of people by organizing migration and helping migrants to behave in an appropriate manner, that is, in a way that respects the laws and policies of destination states; they incorporate humanitarian concerns, thus taking place within development- and human rights-centred activities; finally, they are set up in partnership with civil society organizations.

Yet, information campaigns also illustrate a number of shortcomings of migration management initiatives – at least if one confronts them to the claimed objectives of the discourses described above. First, while migration management rhetoric mentions the need to inform both would-be migrants and the public opinion, in practice only campaigns targeting migrants are put in place. I have not come across initiatives that would promote the usefulness of migration among the population of destination countries. It could well be that rich receiving states (which are also the main contributors to IOM's budget) would not welcome information campaigns on their territory on an issue as sensitive as migration. Clearly, promoting a positive representation of (especially low-skilled) migration would contradict the still dominant political discourse in most Western European states. It is probably a lot easier to intervene in less powerful states and to incite potential migrants to stay at home. In this sense, information campaigns illustrate a gap between rhetoric and practice, not in the sense that policy recommendations lead to no concrete measure, but in the sense that only some recommendations are put in place – and probably those that are most compatible with the views and interests of rich and powerful states.

This points to another gap, namely the rather dark representation of migration that underlies the campaigns described above. As argued, the global policy discourse on migration tends to view migration as a positive process. But in the campaigns described above, leaving one's country systematically leads to failure, misfortune and exploitation and there is no mention of the possibility of 'making it'. In a campaign in Ukraine, one can read that 'the consequences of not doing one's homework properly can be dire. People can either end up as victims of human trafficking, lured by false promises of jobs or end up in poorly paid jobs with similar working conditions'; in Bulgaria, a booklet targeting young women is entitled 'Guide for the Modern Girls'.¹⁶ In other words, migration is an option only for the losers; clever and hard-working people stay at home. Migrants are further portrayed as

lacking the opportunity to make informed choices, and as naively believing the 'myths' that surround migration. Not only may this be factually incorrect,¹⁷ it also negates migrants' agency and their ability to elaborate coherent strategies.¹⁸

We are quite far away here from the promotion of 'positive' migration. While information campaigns regularly emphasize the need to migrate through legal channels, they do little to actually enable people to do so – for the simple reason that very few legal migration channels are available, especially for low-skilled workers. In other words, the practical implementation of the policy options discussed above is much less balanced than what their rationale suggests: instead of using information to inform people about the risks of irregular migration and steer them toward legal migration, information campaigns merely incite them to stay at home. In this sense, 'management' does not seem very different from 'control' and information campaigns appear as measures that accompany current restrictions on migration, rather than challenge them.

Information campaigns thus hardly fit within a 'comprehensive' approach to migration. They rather accompany the current imbalances in the politics of migration, as the risks and dangers they put forward are to a large extent the direct consequences of Western states' strategies to combat irregular migration. Far from addressing the root causes of migration, they only advise people to stay at home (or to return home, in the case of volunteer return programmes) – as if this was the solution to their well-being, and as if human rights abuses could not take place in countries of origin. While they superficially endorse the concerns of some sending states and of NGOs regarding the human rights abuses that happen during the migration process, they actually do little to modify the security-oriented context that prevails (Andrijasevic and Anderson, 2009; Nieuwenhuys and Pécoud, 2007).

Controlling or managing migration?

One could therefore argue that information campaigns do not challenge the focus on control that characterizes Western migration policies, and that they therefore illustrate how 'migration management' is easily compatible with the surveillance of borders (despite its claims to challenge the restrictions on human mobility). Yet, this would neglect the fact that the kind of control practiced by information campaigns has little to do with the classical patterns of border surveillance.

While there have been debates regarding whether or not governments are genuinely interested in controlling migration, most researchers agree on the fact that it is an increasingly important field of policy (Cornelius et al. 2004). They have also distinguished between states' traditional function as gatekeepers that stop (or filter) people at the border and other kind of

strategies, which include efforts to intercept migrants beforehand (in transit and sending regions) or measures taken within receiving countries, for example, to identify undocumented migrants through the surveillance of their access to welfare or through workplace controls. In addition, this has been shown to imply not only government agencies, but also other actors, such as employers or airline carriers (Guiraudon and Joppke, 2001). To some extent, information campaigns fit into the latter trend. They represent strategies of remote control that are implemented within sending societies; they involve new actors, like international organizations, NGOs, local media, schools, celebrities and so on; they rely on tools and methods that have little to do with 'law and order', but rather with information technologies, communication and the media (newspapers, video clips, etc.).

But information campaigns also introduce new dimensions to the control of migration. For example, they illustrate a shift in the claimed purposes of migration control, as they are not in principle supposed to stop people, but rather to inform and help them – thus displaying a humanitarian flavour. Their stated objective is not to prevent people from entering Western states, but to protect them from the abuses and dangers stemming from irregular migration, smuggling or trafficking. This also enables them to be funded by development and humanitarian affairs budget lines, rather than by home affairs or interior ministries. In this sense, this represents a type of control that is not identified as control (or at least that does not aim at being identified as such), hence having an ambivalent nature, in-between control and humanitarian agendas.

This ambivalence is largely functional. As argued, migration management initiatives rest upon the participation of both sending and receiving states, as well as of other actors such as IGOs, NGOs and the media. These actors have different interests: receiving states want to prevent irregular migration, whereas sending and transit states or NGOs may be interested in combating transnational organized crime or in protecting potential migrants. Migration management initiatives need to federate a wide range of actors to be implemented, and therefore to build upon widely-shared and consensual objectives: indeed, who would argue that information campaigns are undesirable and that people should *not* be provided with information? Yet, the overall objective remains centred on the (im)mobility of people and, in this respect, the 'cooperation' between sending and receiving states advocated by IOM is biased in favour of the latter. In other words, while migration management contributes to control, it does so in a distinct way, by mixing diverse concerns and stakeholders, and by channelling this diversity in the direction of control.

Migration control has traditionally been approached as a classical type of power relations, in which 'law and order' actors (police forces and border patrol agents) implement a top-down surveillance of people, stopping them at the border or removing them from the territory of a state. The

other actors that have gradually been involved in controlling migration (welfare and health institutions, employers, etc.) do not belong to the 'law and order' sphere, but nevertheless exercise the same kind of power over irregular migrants, based upon their identification and denunciation. By contrast, the actors responsible for information campaigns are of a different nature: media, NGOs or IGOs are not formally asked to control migrants, nor do they have the intention or legitimacy to do so. Yet, they form part of a broad configuration that conveys messages reinforcing border control politics, in a way that is not always explicit and conscious.

Such a transformation in the exercise of power can usefully be apprehended through the lens of Michel Foucault's concepts of 'governmentality'. In the lectures given at the Collège de France between 1975 and 1979, Foucault (2004) developed his investigations into political power and the modern state and introduced the notion of 'governmentality', a composite term of 'government' and 'mentality'. 'Government' is understood in a wide sense, that is, not referring only to state entities endowed with authority, but also to the 'conduct of conduct', namely broader ways of directing human behaviour. Power, therefore, is not only about domination, violence and coercion, but also about more or less conscious, visible and direct ways of influencing individuals' behaviours, which may notably include forms of self-regulation. Moreover, power does not emanate from one single centre, but is practiced by very different actors (religious organizations, employers, the market, legal and medical professionals, etc.). 'Mentality' is understood as the set of collective understandings, beliefs, opinions and knowledge that are taken for granted and frame the way government is exercised.

In this sense, information campaigns aim at promoting patterns of self-government among would-be migrants, who are supposed to renounce leaving their home not because they fear the punishment measures elaborated to stop them, but because they believe that irregular migration is a dangerous endeavour that is not worth risking. As Foucault argues when applying the notion of governmentality to advanced liberal democracies, control of the self is particularly relevant when powerful market mechanisms lead to restrictions in the action of the state. Market-based societies give individuals an active role in ensuring the functioning and prosperity of the society, and the freedom to do so; yet, this makes direct surveillance less possible and desirable – hence the need for control and regulation 'from inside'.

Migration, it is often argued, takes place 'between states and markets', as state regulation of migration is challenged by the economic forces that drive the movement of people (Entzinger, Martiniello and Wihtol de Wenden, 2004). Full control of the borders is therefore impossible, given the intensification of cross-border human flows, and would be potentially counter-productive, as it would harm the necessary circulation of workers in a globalizing economy. Information campaigns are a tentative response

to this situation: if people cannot be successfully controlled in their displacements, they need to be convinced to adopt the right behaviour by themselves and to voluntarily comply with migration politics. In an ideal scenario, successful information campaigns would make border control unnecessary: the idea that irregular migration is to be avoided would diffusely pervade norms and behaviours in sending regions in an implicit and consequently more powerful and efficient manner.

The credibility of European immigration policies

Such a scenario, however utopian, would imply people's full adherence to the objectives of migration politics. What information campaigns indirectly reveal is the lack thereof, that is, the fact that potential migrants are not put off by the barriers enacted to stop them. In this respect, information campaigns raise the issue of the credibility of European migration policies, and more particularly of the measures taken to combat irregular migration. If there is a felt need to convince potential migrants not to leave their home without authorization, it is that people are not convinced by the receiving countries' policies to dissuade would-be migrants. However tough they have become, these do not achieve the objective of deterring irregular migrants, who keep trying to reach Europe despite the obstacles and the risks these represent – in a context of socio-economic stagnation in home countries and of demand for cheap and undeclared labour in the West. In this respect, information campaigns hope to achieve the only goal that would ensure the success of migration control: the adherence of those primarily concerned – the migrants – to the objectives of Western governments.

In one of the few studies available on this issue, Kyle and Siracusa (2005) analyze the perception, by Ecuadorian irregular migrants in Spain and the United States, of the migration laws they are infringing. They show how these migrants are conscious of their economic contribution to receiving countries, where they do the dirty jobs refused by non-immigrant workers, and to their home country, whose population is largely dependent upon remittances. Their contribution is further enhanced, in their view, by the corruption and dishonesty that characterize Ecuador's elites, which they view as guilty of stealing the wealth of the country for their own benefit. Because of their former and current influence on their country, Spain and the United States are understood as unfairly refusing to be 'conquered' by migrants after having themselves 'conquered' their country. Moreover, immigration laws are perceived as ungrounded as they refuse entry to people who will nevertheless be tolerated when they get an undeclared job. In other words, far from seeing themselves as 'criminal' or 'illegal', these migrant see their life within their own moral and political framework. The authors conclude that this alternative form of justice is probably the greatest (and most unrecognized) obstacle to the fight against irregular migration.

In other words, the key issue raised by information campaigns is the absence of a common set of understandings and representations regarding the way in which people should behave when it comes to migration. On the one side, Western states expect their tough measures of control to dissuade people from migrating without authorization; yet, this only partly happens and many would-be migrants remain willing to leave despite the obstacles they are likely to encounter. Information campaigns should aim at harmonizing these divergent positions by warning people of the dangers of migration (which are the product of tough policies) and, more generally, by inciting them to behave lawfully.

Conclusion

Information campaigns remind us that, in order to be respected, laws must not only rely on coercive mechanisms but also on a minimal level of adherence from the people supposed to respect them. In principle, democratic institutions and the *état de droit* should ensure that this happens, as laws are established and implemented by elected governments, thus being endowed with some legitimacy in the eyes of the people concerned. When it comes to migration, by contrast, the decisions taken by destination states are meant to apply to non-citizens, including both migrants already living in host countries and would-be migrants living anywhere in the world. When taking tough measures to address irregular migration, Western governments often claim their willingness to send a message to potential migrants, thus explicitly targeting a potentially unlimited number of people.

This discontinuity between the state in which migration policies are decided and the persons who are the first concerned is partly legitimate, as every community may be understood as having the right to decide whom to let in (Walzer, 1983). Yet, the issue of the credibility and legitimacy of migration laws remain, thus fuelling 'unlawful' behaviours that are not perceived as such by their authors. The position of Hardt and Negri in *Empire* (2000), according to which migrants' journey is an act of resistance to the dominant forces that shape the current world order, may be relevant here. This could to some extent be addressed by a consultation at the world level, which could generate a compromise between all parties: sending and receiving states, and migrants themselves. But this would require a kind of world democracy that, while it could be the object of genuine migration management initiatives, is likely to encounter major obstacles. It would indeed suppose governments able to reflect the aspirations of their population, an institutional framework to support discussions, as well as relatively balanced relationships between states to enable fair negotiations – all conditions that seem unrealistic.

For the time being, Western states aim at erecting in people's minds the borders they fail to control between states. They do so by promoting a 'culture of immobility' within sending regions, in order to encourage

'self-control' among potential migrants. This implies going beyond the narrow field of police or security to penetrate other domains of social life (such as cultural production, the media, social work schools, or even religion) and enable indirect ways of steering migrants' behaviour – with the hope that seemingly non-coercive and subtle methods will prove more successful than traditional law and order strategies. This in turn generates an inevitable confusion between security, humanitarian and human rights arguments, as control-oriented objectives become hidden behind a rhetoric that focuses on the well-being of would-be migrants. The current trends toward inter-state 'cooperation' in migration policy-making, as called for by migration management discourses, fuels this tendency, as it fosters apparently consensual topics in which cooperation between states (and between state- and non-state actors) can be grounded.

Notes

1. The importance of a common vocabulary to enable discussions is also manifest in the publication of a *Glossary on Migration* by IOM (2004). In the foreword, one can read: 'Migration is increasingly being acknowledged as an issue that needs a global approach and coordinated responses. States are not only discussing migration issues at the bilateral level, but also regionally and lately in global arenas. A commonly understood language is indispensable for such coordination and international cooperation to be successful. This glossary attempts to serve as a guide to the mire of terms and concepts in the migration field, in an effort to provide a useful tool to the furtherance of such international cooperation.'
2. One could further add the World Bank report on remittances, the yearly SOPEMI reports published by the OECD since 2002, the documents produced by and for the Global Forums on Migration and Development (held yearly since 2007), and other reports or statements by (inter)regional bodies (such as the African Union or the so-called Regional Consultative Processes), NGOs (see, e.g. Amnesty International 2006), or the private sector (see Business for Social Responsibility 2008).
3. See IOM's online publications, especially *Migration*, *IOM News*, *Trafficking in Migrants* and *Global Eye on Human Trafficking*.
4. 'Czech Republic: IOM launches information campaign against trafficking in women', *IOM News* no. 2/1999, p. 9.
5. Examples can be found at <http://www.belgium.iom.int/STOPConference/photos.shtm>.
6. See http://www.iom.org.ua/index.php?id=53&sub_id=54&action=gal&gal_id=15.
7. 'Lilya 4-Ever: Can a Movie Make a Difference?', *IOM News* March 2004, pp. 18–19.
8. See http://www.iom.org.ua/index.php?id=53&sub_id=54&public_id=70&action=public_det&wlng=e.
9. 'Celebrities Spread the Word: 'If you want to go abroad it's OK...Get yourself informed. Find a little time to call the hotline'', *IOM News* June 2004, pp. 21–22.
10. '«Human Beings are Priceless»', *IOM News* June 2002 p. 16; 'Celebrities Spread the Word: '«If you want to go abroad it's OK...Get yourself informed. Find a little time to call the hotline»', *IOM News* June 2004, pp. 21–22.

11. *Prevention of irregular migration from Romania to Belgium*, Final report to the Ministry of Interior, Kingdom of Belgium, 2005.
12. 'Migrating Safely and Legally from Ukraine', *Migration*, December 2005, pp. 24–25.
13. See, for example, in Poland, <http://www.strada.org.pl> and, in Czech Republic, <http://www.strada.cz>.
14. Both videos are on www.youtube.com (titles of videos: *Dangers of illegal immigration* and *Spanish campaign broadcasted in Senegal*).
15. See http://www.samizdata.net/blog/archives/2006/04/those_threateni.html and <http://ukinromania.fco.gov.uk/en/newsroom/?view=News&id=2119183#S>.
16. 'Migrating safely and legally from Ukraine', *Migration*, December 2005, pp. 24–25; '«Open your eyes» is IOM's message to Bulgarian Women', *IOM News* December 2000, p. 5.
17. There is indeed evidence that some trafficked women actually know what to expect, particularly when they have been trafficked more than once (Agustín 2006); similarly, some studies show that irregular migrants often make several attempts to reach destination states, thus being likely well informed about the characteristics of the journey (for a case study, see Cornelius 2001).
18. The darkness of the migration experience also lies at the heart of so-called 'volunteer return programmes', through which IOM assists migrants who want to return (including victims of trafficking and irregular migrants) and help them reintegrate in their country (providing medical, psychological and legal help, family and housing allowances, educational grants, micro-enterprise training and grants, etc.). The assumption is that people have migrated by mistake and that, having realized that their decision was erroneous and misguided, they would like to reconsider their choice and return. Migrants are understood as 'victims' or 'losers' of migration, abused by smugglers, disillusioned by their experience and therefore wishing to return home.

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10

Migration Policy Development in Mauritania: Process, Issues and Actors

Philippe Poutignat and Jocelyne Streiff-Fénart

Over the course of the last decade, several characteristics have earmarked Mauritania as a testing ground for European policies of migration. As a gateway to Europe on account of the relative proximity of its coastline to the Spanish Canary Islands, the economic capital of Mauritania – Nouadhibou – provides a strategic location for testing the efficiency of the containment measures implemented as part of the externalization of European policies of migration and asylum (Streiff-Fénart and Poutignat, 2008). Within the framework of the ‘migration routes’ approach which defines the positions adopted by EU partners in relation to the implementation of these policies, Mauritania’s limited migration flow towards Europe also provides a paradigmatic case of ‘transit countries’.

Other significant characteristics have tended nonetheless to contradict efforts to transform Southern countries into partners of international border control policies and to impose a conception of border control as a shared issue. The lack of interest in migration shown by the government, public opinion and civil society (which have tended to display far greater interest in the internal challenges raised by slavery and the return of refugees to Senegal)¹ has been a recurrent feature of reports published by international organizations.² Compared with the prevailing situation in neighbouring countries also concerned by the European externalization of asylum and migration (particularly Senegal), the management of migration flows in Mauritania has not had the same impact on the country’s political agenda and on societal debates. The consensus on the status of Mauritania as a ‘transit country’ means that the issue is seen as being merely of indirect concern to the country and to the Mauritanian population. Expressions of support for deported immigrants from Spain in Senegal, which compelled the government to temporarily suspend its agreements with Spain, are largely irrelevant in the Mauritanian context. The marked contrast between the 2007 presidential campaigns conducted at roughly the same time in Senegal and in Mauritania is also noteworthy: unlike those in Senegal, the programmes of

presidential candidates in Mauritania did not emphasize migration as a key political issue.

It remains nevertheless true that successive Mauritanian governments since the 2005 *coup d'état*³ have tended to found their quest for international recognition on the willingness of Mauritania to respond to EU injunctions on the control of migration flows. In late 2006, the president of the CMJD could thus claim – with good reason – to be the ‘star pupil’ of the partnership policy: ‘Today, Mauritania is a key actor in the Maghreb, Africa and other geopolitical areas. Whether it be the fight against illegal immigration or the Barcelona process, our country is a sincere and reliable partner’ (‘Horizons’, 29 November 2006).

Mauritania is increasingly asserting itself as a secondary actor on the European political stage, in solidarity with the positions adopted by Spain and, at a still higher level, by the European Commission. But the process of alignment has entailed a degree of political manoeuvring by Mauritania, with the country adjusting only partially and opting resolutely to play its own hand. There has been a significant shift in the last 5 years: while Mauritania’s policy of migration had previously been the object of largely external actions designed to implement control mechanisms of the most operational kind (i.e. military and police control), key aspects of this policy have recently been reformulated and internalized. Mauritanian institutions and civil society have been required to adopt a position on the issue of migration following the implementation of the programmes conducted by international organizations (funded primarily by the EU and Spain) aimed at translating the long-term objectives defined by the various partnerships into concrete actions.⁴

This chapter will examine the various phases of an on-going process that has resulted in a negotiated alignment of Mauritania with the targets assigned to ‘transit countries’. In the course of this process, the external and internal implications of the issue of migration in Mauritania have become varyingly embedded as a result of different strategies, while ideas and words drawn from migration management have been subject to appropriation, reformulation and, more rarely, opposition.

The ‘policy of migration’ in Mauritania: a concept under influence

As in other countries, international organizations (International Organization for Migration [IOM], United Nations High Commissioner for Refugees [UNHCR], International Labour Organization [ILO]) in Mauritania perform a key role in the transfer of cognitive categories and frameworks used by countries in the North to interpret phenomena of migration. The activities of these organizations are not merely focused on international meetings or conferences and their preparatory or resulting texts, since they are

also performed 'on the ground'. Alongside the technological instruments required for the control of migration flows, international experts provide the discourse (the fight against smuggling and trafficking, human rights, good governance, development, decent work) upon which management mechanisms depend for their acceptance and legitimacy. The implementation of the 'external dimension' of the EU's policy of migration and asylum was immediately accompanied by efforts to impose the question of illegality (Ben Saâd, 2008). Changing the representations of legal migrants (within the country) as potential illegal immigrants (in Europe) has emerged as a central objective for the bodies in charge of managing migration flows. These organizations have unanimously deplored the lack of urgency of the Mauritanian authorities in endorsing the objectives assigned to transit countries, but also the porosity of its borders, the freedom of circulation enjoyed by the citizens of bordering countries, and a generally benevolent attitude towards foreigners within Mauritanian society, a feature attributed to the nomadic culture of Mauritania.⁵ The same organizations have also expressed concerns over the limited willingness shown by the authorities to initiate reforms aimed at challenging an administrative system which subjects migrants to harassment and informal levying independently of their legal status.

In 2006, the efforts to impose the issue of illegality resulted in the creation of a branch of IOM in Nouakchott as a result of a technical assistance programme implemented (with varying degrees of success) to support the management of migration. This has been aimed as much at the fight against illegal immigration as at the creation of the conditions of migration policies designed to guarantee the illegalization of migrants:⁶ alongside measures aimed at improving border control (such as training border police to detect fake passports), the 'reinforcement of capabilities' targeted by this programme made provision for the organization of seminars for magistrates, with a view to encouraging the country to develop a legal framework adapted 'to the reality of international migrant trafficking'. Note in this respect that the primary objective was not to ensure that the authorities sanctioned smugglers so much as to guarantee that they applied the 'right' charge that would make the condemnation of illegal immigration and the criminalization of trafficking fully manifest. In a 2007 interview,⁷ the manager of the Nouakchott branch of IOM made (indignant) reference to cases in which smugglers had been charged with forgery and the use of forgeries instead of migrant trafficking.⁸

Several factors account for the lack of urgency displayed by the Mauritanian state in devising a migration policy worthy of the name (a fact deplored by international organizations), including the fact that the country is significantly integrated at a regional level.⁹ Mauritania's policy of migration (or 'lack' thereof) takes account of this fact. Yet the country is heavily involved in the Euro-Mediterranean partnership process, which is partly aimed at managing migration flows. Mauritania has been

participating in the Barcelona process and in Euro-Mediterranean consultation and dialogue since 2007. Since 2004 Mauritania has been a member of the 5+5 group, and in 2008 it became a founding member of the Mediterranean Union. As a result of this partnership, there has been a succession of multilateral meetings and concerted action plans since 2004 that have been aimed at strengthening the control and management of illegal migration.

In 2004, a project entitled Preliminary Actions: Capacity Building of Migration Management in Mauritania was integrated within the remit of IOM funding. The project was designed as a response to a demand made by the Mauritanian government, which

... following the recent increase of illegal migration, is asking for help in order to implement coordinated and efficient measures against this trend. The IOM will help the Mauritanian government (...) to evaluate and improve its capability (...), which includes the development of a national programme of migration management' (IOM (2004) *Preliminary Actions: Capacity Building of Migration Management in Mauritania*, Nouakchott: IOM Mauritania).

On the initiative of the HCR, a forum on migration issues was created in early 2005 under the aegis of the Interior Ministry, which eventually became the *Groupe d'Etude des Flux Migratoires* (Study group on Migration Flows). Following meetings held in September 2005 and again in February 2006, the purpose of the group is to conduct research on national and international law, administrative management and the socio-economic conditions of the period spent by migrant refugees in Mauritania.

Late 2005 (a period marked by the 'Ceuta and Melilla events') saw the implementation of the Seahorse and Atlantis projects of the Guardia Civil and the Spanish Interior Ministry (involving Mauritania, Morocco, Senegal and Cap-Vert), which were aimed at 'fostering greater collaboration between the country of origin, the transit country and the country of destination of illegal immigrants' with a view to fighting more efficiently against the 'Mafia of human trafficking' at the points of origin. Seahorse is designed to develop the coordination and circulation of information between the various services in charge of fighting illegal immigration, to provide training for the agents in charge of migration management and control, and to create a network of liaison officers. One specific objective in Mauritania is the development of a maritime service capable of preventing illegal immigration. Atlantis aims to create multinational maritime patrol units. Some of the underlying motivations include the modification of maritime routes and the alteration of the methods implemented by the 'Mafia' to reach the Canary Islands, made predictable by the implementation of the SIVE detection system.¹⁰ The project identifies Nouakchott and Nouadhibou as

ports harbouring over 3000 fishing vessels 'suspected of being involved in activities relating to illegal immigration'.

2006 was marked by a high degree of media interest in the arrival of pirogues on the Canary Islands from the Mauritanian (and subsequently Senegalese) coasts. The 'influx of illegal immigrants' in the Canary Islands (or the 'wave' or 'avalanche' of illegal immigrants – all words used in the press and by the authorities, particularly in the Canary Islands) precipitated the implementation of 'action priorities' adopted in late 2005 by the European Commission and the European Council. The Spanish government became the target of criticisms from right-wing opposition parties (which criticized it for being excessively 'lax' and for the recent legalization of 500,000 immigrants) and of appeals made by the regional Canary Islands government (opposition). The result was a large-scale lobbying campaign conducted by the Spanish government and directed at European institutions and other member states. The Spanish authorities also sought to involve countries of origin and transit countries in Africa in the fight against illegal immigration (in line with the global approach doctrine)¹¹ by launching an 'Africa plan' in June 2006. The 'migration crisis' in the Canary Islands, the agreements between Mauritania and Spain and the requests for aid submitted to the EU, in addition to the press releases published at the time, constituted a first phase in the alignment of Mauritania with European strategies aimed at developing its priority actions 'in partnership'.

The alignment of Mauritania: a political and discursive positioning

Since March 2006, the phrase 'migration crisis', which had already been used at the time of the Ceuta and Melilla events, has been recurrently used not merely in the press but also in official statements and speeches issued by the authorities (Canary Islands, Spain, Europe, Mauritania and so on) to describe the new situation. Though presented as 'the challenge of illegal immigration and the resulting human tragedies' requiring emergency measures, the 'migration crisis' in the Canary Islands was not a raw, unmediated fact. Rather, it encapsulated a situation elaborated and articulated discursively in a political debate that extends to regional, national, European and international levels (Carrera, 2007). The primarily political construction of the migration issue (to which the media contributed significantly) was apparent, for instance, in the repeated use of a rhetorical format highlighting more or less coherent sets of statistics with a view to establishing the enormous, exceptional and unprecedented influx of migrants. On 4 March, a regional information website claimed that

[s]ince the beginning of the year, nearly 1480 immigrants have reached the coasts of the Canary Islands, i.e. nearly 540 more than

the number of immigrants who arrived on the islands during the first two months of 2005 (944) (...) January was the best month, with 17 pateras and 598 immigrants (as opposed to 492 in 2005) (...) In February the number of immigrants almost doubled – 884 immigrants arrived as opposed to 452 immigrants during the same period in 2005 (see <http://archives.rezo.net/archives/migreurop.mbox/>).¹²

The same format was used ad nauseam throughout the ‘crisis’ and compares the number of arrivals at a given moment X in 2006 with a statistic deemed to be significant (albeit variable) drawn from previous years: ‘as many as in the first 6 months of 2005’, ‘more than the entire number of arrivals in 2005’, ‘will double, triple, quadruple compared with last year’, ‘will smash the previous year’s record in the first half of this year’ and so on. The discourse tends towards the conclusion that these are unprecedented facts, though subsequently the opposing thesis was firmly re-established. De Haas (2007, 2008) in particular spoke of the ‘myth of invasion’ and demonstrated that it is neither a new nor a large-scale phenomenon.

The Mauritanian authorities played a key role in the development of an exceptional situation that largely shaped the country’s discursive and political alignment with Spain and the EU. For instance, the Prime Minister made the following statement in an interview published in *El País*: ‘What happened was unimaginable. In 2005, we arrested 3900 illegal immigrants who were about to enter the Canary Islands, and within the space of just 2 months (since the beginning of 2006) we have arrested a further 1200.’

The discursive construction of the ‘migration crisis’, construed as an exceptional situation justifying urgent new measures, cannot be dissociated from the discursive construction of the ‘human tragedy’, which raises the issue of the moral responsibility of the drowning and suffering of migrants. The consensual interpretation of these tragedies, which tends to emphasize the view of migrants as the victims of smugglers (‘human traffickers’), but also and above all of themselves (on account of their irrational determination and naivety), fosters a vision of migration as a ‘suicidal’ act that involves both paternalistic justifications (protecting reckless victims) and legalistic justifications (arresting and punishing the villains). The means deployed to prevent their arrival were presented as the foundation of a veritable rescue mission. Saving lives is assumed to be a virtuous consequence of measures that are designed primarily to prevent a ‘massive influx’ onto European soil. While they serve to legitimize the political engagement of Mauritania alongside Europe,¹³ the coordinated efforts to prevent these ‘collective suicides’ contribute to Mauritania’s alignment with the discursive repertoire used by the EU to describe the phenomenon (‘illegal immigration’) or to formulate solutions (‘partnership’, ‘reinforcement of capabilities’).

The commitment of Mauritania was made official in 2006 by the adoption of 'a strategy of prevention of African illegal immigration towards Europe from its own territory, through the reinforcement of surveillance and the search for smugglers'. But the plan (which was presented as requiring a significant mobilization of means) was largely declarative since Mauritania's material equipment was relatively limited and for the most part out of service. Yet Spain was prompted within a matter of days to insist during a ministerial 'crisis' meeting on the need for an 'emergency cooperation plan with Mauritania'. The very next day, the Prime Minister of Mauritania declared that 'Mauritania cannot by itself deal with this kind of phenomenon', indicating that he hoped the EU and more specifically the Kingdom of Spain would support the Mauritanian government.

Cooperation between the two countries was made effective by the creation of joint patrol units that became operational in May. These patrols were a first of sorts, since never before had the EU funded an operation designed to 'fight against illegal immigration' affecting a third-party country, a fact underlined by the Spanish and European authorities. The cooperation strategy entailed a military presence, including both material (ships, helicopters) and human resources that replaced local forces while aiming to provide training for the latter – in keeping with the classical model of policies of cooperation.

Spanish-Mauritanian cooperation also resulted in the creation of a transit centre in Nouadhibou. The degree of indecision in naming the centre – with a greater or lesser emphasis on humanitarian priorities ('temporary accommodation camp') or security priorities ('detention camp') – is indicative of the combination of aid and police registers of discourse characteristic of the management of so-called 'illegal' migration. The role of the centre was described by the 2009 Migration Profile of Mauritania as the provision of 'a port of first assistance' for migrants failing to reach the Canary Islands 'with a view to preparing their repatriation to their countries of origin'.

The creation of the centre emphasized by the Mauritania plan and for which Spain provided material and human resources provided an opportunity for extending the repatriation agreement signed in 2003 to include the readmission of migrants from third-party countries. But it also provided the opportunity for the adoption of public positions in Mauritanian society, which had until then been relatively indifferent to the question of migration. By transferring the issue of migration onto the question of human rights, the centre imposed the issue on the agenda of associations such as the Mauritanian Association for Human Rights (*Association Mauritanienne des Droits de l'Homme*, AMDH), which quickly issued a statement opposing the construction of the centre by the Spanish army and criticizing the risk of ill treatment. Even if the process of realization was a gradual one, the organization now sees migration as one of its chief priorities on the basis of the respect for rights in keeping with its vocation, which nonetheless implies

more directly political positions: the association denounces the agreements with the EU and the role of 'gendarme of Europe' which the EU expects Mauritania to perform. Beyond the matter of denouncing the infringement of the rights of migrants, in keeping with the themes of mobilization of transnational movements in which it takes part,¹⁴ the 'realization' by the AMDH of the importance of the issue of migration reflects specific concerns of Mauritanian society: the ill-treatment of Senegalese immigrants, which entails the risk of measures of retaliation, raises the spectre of the events of 1989.¹⁵ The leaders of the AMDH are deeply concerned by the threats which the alignment of Mauritania with policies of migration imposed by foreign powers implies for the still fragile balance of the country.¹⁶

Another reframing was triggered by the discovery of oil on Mauritanian soil in 2005: the status of Mauritania as a transit country, assigned by the partnership policy and vigorously upheld in the negotiation process with the EU, was gradually blurred by an emerging representation of Mauritania as a destination with a strong power of attraction, a kind of little Eldorado on a regional scale, which the discovery of oil would make comparable to the Emirates in the Gulf (Choplin and Lombard, 2009). Alongside the issue of illegal immigration, which continued to pose a problem in terms of the containment of undesirable flows, there emerged another issue: the integration of immigrants as workers to be included within the urban and economic fabric.

These tendencies are in line with the post-control directions recommended by European institutions as part of a global policy of migration. In June 2007, a meeting was set up between an EU delegation and representatives of the Islamic Republic of Mauritania as part of the emerging political dialogue on migration following the Rabat and Tripoli conferences. The meeting reaffirmed the specific status of Mauritania as a transit country, which was commended for its efforts 'in the prevention of and fight against migrants, in spite of limited means, including in the area of readmission and return'. The novelty was that the delegations present at the meeting envisaged an increase of immigration with a view to 'maximizing benefits' as part of the global migration approach. These suggestions were firmly endorsed by the recommendations outlined in the EU's national incentive programme for the 2008–2013 period. The programme criticized Mauritania for its excessive focus on security in its management of migration flows. It emphasized that the 2006 national strategy for the fight against illegal immigration (which had nonetheless been adopted under pressure from Spain, as noted above) 'focused on the goal of containing illegal migration flows transiting through the country, without taking account of the potentially useful knock-on effects of migration' (p. 19). It recommended a more 'positive' management of migration flows, including a reflection on the legalization of migrants seeking to establish themselves on a permanent basis on a given territory and their formal integration within the economic sphere (p. 40).

Finally, the 'development' dimension – which had so far been ignored on account of the status of Mauritania as a transit country – was beginning to emerge as a focus of discussion. The text of the common statement that resulted from the EU-IRM meeting held in June 2007 recommends a better integration of the 'migration' issue in development strategies and makes the creation of 'decent jobs' a priority in areas of high migration. In July 2007, Madrid and Nouakchott signed an agreement designed to promote the legal migration of Mauritanian workers towards Spain. The Mauritanian minister of labour emphasized that the 5000 Mauritanians living in Spain are 'legal, fully integrated and have a 0 per cent rate of criminality'.

We are thus seeing the premises of a markedly more complex conception of the migration issue than the vision which construed Mauritania as a transit country determined to ensure the containment of illegal migration flows transiting through the country. Notwithstanding this reconfiguration, the issue of illegality, which (as Bensaâd noted) was imposed in a country where illegality was largely alien to local representations, does not lose its acuteness. It was instead subject to a reconfiguration in an opposition between legal and illegal migration that carried distinct moral connotations: the former associated immigrant workers in Mauritania and potential Mauritanian immigrants towards Europe within the same model of virtuous migration; the latter exclusively concerned foreigners, deemed to be undesirable for the local economy and also potentially delinquent.

The co-construction of a policy of migration in Mauritania: Issues and actors

The new conception of migration management opens a sphere of public action that largely exceeds the capabilities of traditional forces (police, army, religious and humanitarian associations) dedicated to the management of illegal immigration. The identification of the institutional actors recognized as being involved in the process largely depends on their ability to integrate a transnational network of cooperation that would enable them to establish themselves as 'key actors' among those involved in the consultation process. The turn initiated in 2007 in the policy of migration was thus made manifest by the simultaneous creation of organizations that fostered relations between a range of key local, national and supra-national actors. Two of these actors appear to be particularly significant in the emergence of a field of intervention on the issue of migration for meetings between partners with diverging interests, objectives, and remits of action, but (and this is precisely what makes it a field) which are nonetheless interconnected by the shared discursive forms directly imported from the lexicon of 'migration management' and combined in a variety of ways.

Created in October 2007, the Mauritanian Association for the Fight Against Illegal Immigration (*Association Mauritanienne pour la Lutte contre*

l'Immigration Illégale, AMLII) constitutes one of the most visible manifestations of the involvement of civil society in issues of migration management. Composed of lawyers and journalists from the government daily 'Horizons', the association is a member of the 'Technical group of national work' created by IOM. As its initials suggest, it presents itself as a guardian of a national cause and is founded on the model of comparable associations designed to conduct 'public utility' campaigns created and supported by international organizations and ministries keen to reach and even mobilize local populations to fight against a variety of sanitary and/or social 'plagues' (such as genital mutilations and malaria). It is involved in an inter-African network of similar associations over which it presides. The sub-regional forum which it set up in June 2008 in Nouakchott in the presence of Mauritanian officials and the IOM representative provided an opportunity for making official its leadership of the management of the fight against illegal immigration. The General Secretary of the Ministry in charge of relations with Parliament and civil society congratulated himself for the organization of 'this regional meeting in our country by a national association' and re-emphasized the desire of the President to deploy efforts to 'stem the progression of the flow of young people attracted by Western countries'. The plague-like nature of illegal immigration implies all at once the epidemic nature of immigration among younger populations, the risk to human life and the negative impact on the countries of origin, the transit countries and the countries of destination, which it exposes to 'social, economic and security challenges'.

AMLII claims that transit migrants (from Mali, Senegal, Guinea, Cameroun, Ivory Coast, Gambia and Togo) are its 'target group' and that the chief concern of transit migrants 'is to work in order to save the 400 to 500 thousand ouguiya required to pay the smugglers for the passage to Europe'. The activities of the association contribute to the implementation of 'preventative measures designed to dissuade prospective migrants to leave their countries of origin in order to embark on a perilous adventure' (in the words of the phrase retained by IOM – Migration profile recommendations). The association reformulates it as the consideration of an issue that primarily concerns foreigners, in keeping with the vision of Mauritania as a 'transit country'. AMLII signed a contract of collaboration with the *Mairie* of Sebkhia for the apparent reason that a high proportion of foreigners live in Sebkhia, as well as a 'large number of networks of smugglers'.

The Migration Guide Centre (*Centre Guide de la Migration*) created by the General Confédération of Mauritanian Workers (*Confédération Générale des Travailleurs de Mauritanie*, CGTM) constitutes another manifestation of the involvement of civil society in the general set of organizational devices aimed at migration management. The statement made by its coordinator¹⁷ clearly emphasizes the weight of its presence within this network and the importance of having its specific remit – summarized by the key phrase 'decent work' – fully acknowledged: 'The work carried out by the migrant

centre in Nouakchott has enabled the union to be acknowledged as a key actor in the management of migration flows and the promotion of decent work for migrants'.

Funded by the trade-union institute of cooperation of the Spanish union UGT, and supported by the Spanish cooperation agency, the centre takes part in the programme aimed at fostering greater union solidarity – South-South – created by the International Trade Union Confederation (ITUC) between the Senegalese and Mauritanian confederations of workers, CNTS and CGTM. Its action was immediately integrated within the framework of a joint management of migration and the partnership which it entails, as noted by its first report: 'The partners involved in the management of migration issues, such as the UNDP, the IOM and the EU, as well as a number of organizations in Mauritanian civil society, have also been informed in writing of this new measure'. The union promotes an approach to migration based on the protection of rights against a purely security-focused and administrative form of management. Its practical objectives are chiefly directed at defending the rights of migrant workers in Mauritania (legalizing the situation of illegal workers, resolving labour conflicts suffered by migrant workers, training female domestics, collaborating with the associations of foreign communities living in Mauritania). Yet the issue of illegal immigration to Europe is not altogether overlooked since it is addressed from the perspective of the information on legislation and the European job market. The centre published an information leaflet for migrants 'to explain who would be eligible to work in Europe, and which formalities and necessary procedures would need to be carried out, because immigrants often arrive with false promises made by organized traffickers' (interview with Mamadou Niang). One of the objectives of the centre is to 'inform migrants so that they can make the right decisions and that they are aware of good practices'. The provision of information is encouraged by both the ILO and the IOM, which both publish common information leaflets on the dangers of illegal immigration.

The positions of the two organizations in the context of the specific partnerships in which Mauritania is now involved in the realm of migration reveal the mechanisms of the appropriation of the hegemonic discourse of international organizations and the alignment of the involved parties with the positions assigned by this discourse. They also reveal the implementation of a migration management mechanism that assumes both a distribution of tasks (and of the accompanying rhetoric) between partners and the points of articulation that guarantee its coherence.

Among these points of articulation, it is important to emphasize the common reference to the law, the procedural dimension of which (ratification of convention, rebuilding of codes) provides the basis of a language that can be appropriated by actors developing lines of action that are not merely different but that could also be deemed to be conflicting: a technocratic engineering of migration management (carried by IOM) and the defence of the interests of workers (CGTM) and the protection of the rights of migrants

emphasized by local non-governmental organizations (NGOs) who have integrated the public awareness campaigns promoting the rights of migrants (and the attendant funds) in their traditional programmes for development and the fight against poverty.¹⁸

The actions focusing on female domestic workers are another point of articulation between different registers of discourse. The viewpoint of the unions emphasizes the defence of a particular category of workers (specifically female workers, in keeping with the concern for gender approaches of international organizations) who do not benefit from any protection convention. But they may also be treated from the viewpoint of 'human rights' and forced labour, which tends to emphasize the migration dimension of their situation in the context of human trafficking, even slave trade and slavery. It is quite explicitly from this angle that the issue is evoked by the CGTM:

At a strategic level we wish to reinforce the mechanisms of articulation already in place between activities focusing on public awareness and the defence of migrants as a whole, the protection and organization of the informal sector that covers established migrants, and finally the defence of domestics, conceived as forming a specific sector in connection with the problems of human trafficking and forced labour.

The approach is also given a more general formulation. During a training and information session held at the Guide Centre,¹⁹ the coordinator of the centre, listing the difficulties faced by migrants included, in addition to discrimination and xenophobia, 'forced labour and slave trade, which are contemporary plagues of migration which the union will need to confront in supporting victims'.

The issue of illegality may thus be attributed to organizers of so-called 'illegal movements for employment purposes' (in the words of the 143 Convention on Migrant Workers of the ILO). It may also be treated as a vulnerability against which workers need to be protected by informing them of the dangers entailed by their illegal situation. In this last case, the distinction between the activities of the union (centred round keywords such as 'rights of migrants' and 'decent work') and the activities of the Mauritanian Association for the Fight Against Illegal Immigration (centred around keywords such as 'plague' and 'trafficking') is blurred. In any case it allows for sufficient bridges to identify them as partners working towards an 'improved management of the phenomenon of migration by Mauritania'.

The 2010–11 action plan for the improvement of the living and work conditions of migrants, included on the website of the ILO, provides the list of the 'implementation partners' and details the distribution of duties (and of the corresponding funds).²⁰ It includes state organizations (Ministry of Work), social partners (CGPM and CGTM), international organizations (IOM, ILO), and civil society (besides the two organizations presented

above, the Association for Environmental Protection and Humanitarian Action (*Association pour la Protection de l'Environnement et l'Action Humanitaire* (APEAH) of Nouadhibou and the ONG Caritas), required to carry out specific duties according to a division of tasks articulated around the contrast between the benefits of migration and the damaging effects of illegal immigration: missions of information on the rights and duties of immigrants (production of communication tools, media campaigns) entrusted to the AMLII and the CGTM, and missions of support for self-employment in the informal sector (particularly female workers) entrusted to associations such as Caritas and the APEAH, whose action is based on the developmental model characteristic of the 'project culture' (Olivier de Sardan, 2005).

The view of the Action plan as a tripartite association of 'state institutions, civil society and foreign communities' tends to occlude a number of key partners: international organizations (IOM and ILO), who intervene in the early and late stages of the process – in the elaboration of reference texts and the implementation of a national committee for migration management. This suggests several concluding remarks.

First of all, it is important to note that the increased intervention of actors of Mauritanian society in the implementation of a policy of migration does not replace the external actions which, as noted above, tended to be crucial in the period before the 'migration crisis'. On the contrary, this goes hand in hand with a process of legitimization of the intervention of international organizations: the preamble to the 2009 migration profile produced by IOM insists that beyond the simple statistical reports which they originally constituted, migration profiles are designed to provide 'government instruments for the development of policies'. It emphasizes that 'through mechanisms such as the National Technical Working Group and the national policy planning workshops, the reports also constitute an instrument of public awareness campaigns and inform the development of policy planning on international migrations in the targeted countries'. It also insists that 'the durability of government mechanisms created with a view to preparing migration profiles remains a major challenge'. The compilation of data is not merely an end in itself, since it also provides procedures of rationalization (statistics, planning, consultation, creation of groups of experts) which migration profiles enable and aim to perpetuate.

While the police conception of the containment of migration flows is increasingly associated with the fight against terrorism and trafficking of all kinds (weapons, drugs), there has emerged a more managerial conception which transfers the management of circulation towards the administration of immigrant populations. The identification of these populations as belonging to specific formal categories (legal immigrants, immigrant workers, illegal immigrants), which made little sense in the traditional forms of mobility within the sub-region, becomes an integral part of the process of rationalization dominated by migration utilitarianism (Morice, 2000). The

difficulties entailed by the formalization of the undesirable nature of transit migration have tended to demonstrate that the 'legality' of the migrant was not a legal status so much as a social condition attested to by the relations fostered in local society and the possibility of the migrant's having a sufficiently influential guarantor. Albeit in slightly different terms, this was already the conclusion reached by the first 'migration profile' written by IOM in 2006. It is to this extent that it is important to interpret the recommendation of the European Union for a 'formal integration of migrants in the economic sphere', included in the *Document de Stratégie Pays* (Country Strategy Document) signed by the European Union and Mauritania in 2007.²¹ The adoption by the Ministry of Employment of a strategy for the management of foreign labour is directed at the same end. Its recommendations provide for a double foundation based on the national employment policy and the national policy for the entry, sojourn and settling of foreign nationals.²² In this context, the adoption of regulatory measures defining the conditions for the employment of foreign labour (decree of 16 April 2008) instituting a work permit goes hand in hand with the determination to 'put an end to laxity' and to opt for political sovereignty according to which the presence of a migrant may be considered desirable or undesirable.²³ The role of migration profiles is again decisive in this respect since they constitute one of the chief instruments aimed at favouring the implementation of state mechanisms that are liable to result in operations of categorization, 'screening' and selection (Rygiel, 2004; Frigoli, 2010) between undesirable individuals and immigrants (whether legal or legalizable) who are liable to be integrated in the formal sector.

On the other hand, the role given to immigrant associations remains somewhat hollow: solicited as partners, the position assigned to them within the partnership depends on their willingness to play a game for which they have so far shown little aptitude. In Nouadhibou, the attempts to enrol them in public awareness campaigns about the dangers of illegal immigration have been met with a significant degree of resistance, prompting IOM to abandon the implementation of a programme of 'voluntary return'. While the 'ambiguity' of association leaders, suspected of being involved in illegal immigration,²⁴ was undeniable, it did not testify to their position as intermediaries of Mafia networks (as suggested by the police conception) so much as a high degree of solidarity on the part of well-established communities of migrant workers upon which those keenest to embark on the adventure could rely in the course of their stay.

The process governing the formalization of labour migration tends to make the dichotomy between legal and illegal or migrant workers and candidates for illegal immigration all the more effective. The internalization of this shared ground (between formal and informal, legal and illegal, migrant workers and candidates for illegal immigration) by migrants themselves, the premises of which were observed in Nouadhibou,²⁵ probably constitutes one

of the major challenges (with as yet unknown results) of the new order of migration management in Mauritania.

Finally, one remaining question concerns the ways in which the actors of civil society tend to appropriate the theme of migration and contribute to its emergence as a social issue within the Mauritanian public arena.

Some organizations that are representative of civil society have fully integrated the situation of migrants as part of their militant themes. Such is the case of the AMDH, which relates the defence of free circulation to the defence of human rights. Such is also the case of the CGTM, which included the question of immigration within the union strategies aimed at formalizing labour relations, in keeping with a rationale which, as noted above, is not altogether devoid of ambiguity. Other organizations, created piecemeal or already operating as relays of NGOs or IOs in other areas, have taken advantage of the recent implementation of migration management mechanisms produced by consultation and have widened their activities (training, surveys, public awareness campaigns) by entering this emerging market.

It therefore appears that within the generic notion of civil society, several distinct positions can be distinguished. At one end there has emerged a form of brokerage in which 'developers of local social projects' involved in relations of dependence seek to appropriate the resources provided by the income of migration management (Bierschenk et al., 2000). At the other end, the formulation of warnings against public policies which entail the risk of racism and xenophobia leaves open the possibility of a politicization of migration that could undermine the consensus on migration management.

Notes

1. See Fresia (2009) and footnote 15 in this chapter.
2. See, for instance, this conclusion from the first 'Migration Profile of Mauritania' produced in 2006 by IOM, the HCR and the EU: 'It has emerged from interviews with government representatives that there is no national policy of migration in Mauritania' (document appended to the *Document Stratégie Pays* on Mauritania, which can be accessed at http://ec.europa.eu/development/icenter/repository/scanned_mr_csp10_fr.pdf). The report by the Robert Schuman Centre on Illegal Migration in Mauritania emphasizes from the very outset that 'in Mauritania the issue of immigration has been ignored for many years' (Mohamed Saleh, 2008). The report on 'Migrations in Mauritania. 2009 Migration Profile' produced by IOM again emphasizes the inadequacies of the current legislative framework, which does not 'enable a proper management of the emerging issues of migration'. The document can be downloaded on the website of IOM at http://publications.iom.int/bookstore/index.php?main_page=index&language=fr.
3. On 3 August 2005, the 20-year authoritarian regime of Colonel Maouyyia Ould Sid'Ahmed Taya was overthrown by a putsch, resulting in the creation of a transitional government – the Military Committee for Justice and Democracy (CMJD) – which initiated an electoral process that produced a democratically elected government in 2007, which was itself overthrown by the coup d'état of August

2009. The leader of the coup, General Mohammed Ould Abdel Aziz, was elected president in the elections of July 2009.

4. '5 + 5', Euro-African dialogue, EU-AU, EU-ECOWAS, EU-ACP....
5. For example: 'until recently the Mauritanian people, heavily imbued with nomadic traditions, held no particular views on the populations transiting through their land since the Mauritians themselves were subject to permanent movement'. Translated from Haimoud Ramdan: *La législation de la migration et des travailleurs migrants en Mauritanie*, ILO, June 2005, p. 30. Also: 'The issue of migration flows, which had until now been largely ignored in a culturally nomadic country in which a foreigner could not possibly represent a threat, is now addressed by the Mauritanian authorities'. Translated from key document of the 2007–2011 Franco-Mauritanian Partnership, p. 7 (*Partenariat France-Mauritanie 2007–2011*), p. 7 (see <http://www.diplomatie.gouv.fr/fr/>).
6. The process of illegalization implies considering migrants as objects of 'illegal trafficking'. It is worth noting that in the document on human rights published by IOM, illegal migrants are not viewed as a 'vulnerable' category alongside women and children, and the measures that concern them pertain exclusively to sanctions applying to those helping them to immigrate or find employment ('Migration et protection des Droits de l'Homme', *Droit de la Migration* no. 3, IOM, 2005, p. 103).
7. The interviews quoted in this chapter were conducted in the course of a series of studies carried out in Nouakchott and Nouadhibou in 2007 and 2010 as part of a research programme on transit migrations in Africa (MITRANS) funded by the National Research Agency (Agence Nationale de la Recherche).
8. Worse still (from the point of view of IOM), the authors of this study were provided with examples of cases in which dishonest smugglers were required to repay the 'illegal' migrants whom they had been unable to bring to their destination. More than a flaw in the legislative apparatus, these 'legal anomalies' testify to the gap between the conceptions of 'good governance' upheld by international organizations and a moral economy (Olivier de Sardan, 1996) in which the disapproval of practices that contravene business ethics is combined with a high level of tolerance of practices infused with illegality.
9. Although Mauritania withdrew from the Economic Community of West African States (ECOWAS) in 2009, the bilateral agreements on the circulation of people were not repealed. Citizens from Mali and Senegal – member states, with Mauritania, of the Organization for the Promotion of the Senegal River – enjoy a special status.
10. The integrated system of external vigilance, which has been operational since 2002, was implemented by the Spanish Civil Guard and funded by the European Union. It involves a sophisticated system of radars, cameras and sensors. Designed to monitor maritime borders, it was initially installed in the Strait of Gibraltar, and was gradually extended to the Canary Islands, the Andalusia coastline and the Balearic Islands to cover all of Spain's maritime borders.
11. Following the statement published by the European Commission entitled 'Priorités d'action en vue de relever les défis liés aux migrations' [COM (2005) 621 final; Action priorities aimed at responding to the challenges of migration], the European Council adopted the 'global approach' in December 2005. The global approach views the immediate measures designed 'to reduce illegal immigration flows' as part of a 'broader objective' aimed at developing relations between the EU, Africa and countries of the Mediterranean as part of a 'genuine partnership'.

As a result of this partnership, the global approach will regroup the policies of the European Union in the areas of migration, external relations and development. Conceived as the framework of reference at the Euro-African ministerial conferences held in Rabat (2006) and Paris (2008) and at a large number of expert meetings leading up to these conferences, the 'global approach' is summarized in the three targets of the resulting action plans: the fight against illegal immigration, the reinforcement of the relations between immigration and development, and the organization of legal circulation.

12. Source: Terra Actualidad – Vocento/VMT. (Dispatch quoted on the 'Migreurop' list by the AFVIC/PPM on 4 March 2006).
13. The engagement was described as an involvement in 'joint surveillance operations (...) diverting the vessels using this migration route and contributing to the reduction of human lives lost at sea', to quote the description of operation Hera II by Frontex on its website.
14. The leader of the AMDH took part in the Bamako social forum, where the decision was taken to hold a demonstration for the rights of migrants and the freedom of circulation on 7 October 2006. The AMDH leader acted as representative of Mauritania at the 'counter-summit' held in Rabat in May–June 2006. The association participates in the regional project for the defence of the rights of migrants in transit countries initiated by the Cimade in 2009.
15. Following a conflict at the border between pastors and riverside villagers living on the shores of the Senegal river, measures of retaliation against Moorish traders in Senegal resulted in massacres of Senegalese citizens in Mauritania. These were followed by massive deportations towards neighbouring countries of several thousands of Negro-African citizens from Mauritania who were denied citizenship.
16. Interview conducted with the chairman of the AMDH in Nouakchott, July 2007.
17. This and the following quotations are drawn from an interview conducted with Mamadou Niang, coordinator of the Guide Centre, which can be accessed at www.ituc-csi.org.
18. The unanimous protest now calling for the closure of the Nouadhibou retention centre is highly symptomatic of this type of misunderstanding: criticized by associations working for the defence of migrants as a site of arbitrary detention and a no-go area (see the 2008 report by Amnesty International), it is also considered by the IO as a stopgap solution that should disappear as a result of the tightened legislation and penalization of migration, which will allow for a fully legal closure and turning back (interview conducted with the managers of the Nouakchott branch of IOM, February 2010).
19. Training and information session on the role of unions in defending the rights of migrant workers, CGTM/CSI project for the development of the capabilities of Affiliated Trade Unions, Nouakchott, 22–24 January 2009.
20. The action plan was the result of a report by the ILO (Télou, 2009). Its recommendations were approved during a ratification workshop held in Nouakchott.
21. See http://ec.europa.eu/development/icenter/repository/scanned_mr_csp10_fr.pdf.
22. Intervention by M. Fah Ould Brahim at the seminar on the Management of Labour Migration, co-organized by the ILO and the Ministry of Civil Service and Employment (Nouakchott, 13–15 May 2009). The records of the meeting are available on the website of the ILO: http://www.ilo.org/public/french/protection/migrant/afrique/events/nouakchott_mai2009.htm.

23. 'All the necessary measures will be taken in order to implement a complete census of foreign nationals, by ascertaining the reasons for their arrival and by granting visas to those who fulfil the required legal conditions' (translated from a government statement of general policy delivered before the National Assembly, 6 January 2010, <http://www.primature.gov.mr/fr/index.php?link=1&id=641>).
24. Interview with the manager of the Nouakchott branch of IOM, April 2007.
25. See the paper by J. Streiff-Fénart delivered at the 'Migrations de transit en Afrique' conference held in Nice on 10–12 December 2009 (forthcoming).

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11

International Refugee Law, 'Hyper-Legalism' and Migration Management: The Pacific Solution

Claire Inder

Introduction

Australia's 'Pacific Solution' was a policy developed between 2001 and 2007 to 'manage' the arrival of asylum seekers and undocumented migrants by sea in a manner that purported to be consistent with Australia's obligations under international refugee law.¹ The policy grew from an August–September 2001 stand-off between the captain of a Norwegian container vessel, the *MV Tampa*, carrying some 443 Afghan asylum-seekers that it had rescued while they were en route from Indonesia to Australia, and the Australian Government, which refused to allow the *Tampa* to enter Australian waters so that its passengers could seek asylum or make any application for an Australian visa. With the goal of ensuring that no irregular sea arrivals could access Australia's mainland asylum procedures, the Pacific Solution involved a combination of excision by domestic statutes of various islands to the north of Australia from its 'migration zone', as well as bilateral agreements allowing irregular arrivals by sea to be processed in offshore reception centres on Nauru and Manus Island (Papua New Guinea [PNG]).

Based on a detailed analysis of the Pacific Solution, this chapter argues that the 'hyper-legalistic' approach taken by Australia in constructing its policy – its claim that 'legal' was equivalent to 'right' – allowed Australia to both depoliticize and legitimize its approach to the management of migration by claiming formalistic consistency with international refugee law. However, this chapter argues that 'hyper-legalism' is a limited but evolving trend beyond the Pacific Solution and the asylum-migration context. It calls into question the goal of the legalization of international affairs, especially in the highly political and contested area of migration.

Part 1 of this chapter will provide a brief overview of international refugee law and the tensions created by its interrelationship with (irregular) migration. It will also contrast the international refugee law regime with the

debate on international migration management (the international community's 'missing regime') (Ghosh, 2000, 2005). It will then outline the Pacific Solution, describing the origins of the policy in the 'Tampa crisis' and some of its core elements and features. Although other branches of international law were implicated in the Pacific Solution, notably human rights law and law of the sea, the focus of this chapter is on international refugee law and the way that it was deployed in the context of the Pacific Solution to legitimize and depoliticize Australia's migration management policies.

Part 2 of this chapter will draw on the example of the Pacific Solution to explain the concept of 'hyper-legalism': a formalistic approach towards international law and international legality that allows States and other agents to benefit from the rhetoric of compliance with international law, without any constraint on their actions in practice, in order to both legitimize and depoliticize state policies. This part will seek to understand hyper-legalism as a consequence of the drive by international lawyers to establish international law 'as law'. Finally, it will provide a short description of other policies that both preceded and followed the Pacific Solution within and beyond refugee law and migration, to demonstrate that there is a limited but identifiable trend of hyper-legalism by some states within certain branches of international law, providing appropriate conditions are in place. In particular, hyper-legalism is present where ostensible compliance with international law can be used as a tool to justify radical policies, and to reduce the political debate about such policies to a question of international law compliance.

Part 3 of this chapter will provide some conclusions on the implications of hyper-legalism as it has developed in international refugee law for the field of migration. It will argue that the lessons learned from the Pacific Solution and other examples suggest that caution is required when pushing for legalization in this sensitive, highly political area. Legalization can be a positive development, but not if it leads to a masking of politics and the prevention of real, critical development.

Understanding the Pacific Solution

Background: International refugee law and migration management

The 1951 Convention Relating to the Status of Refugee ('1951 Convention') and its 1967 Protocol form the cornerstones of international refugee law (1951 Convention; Rimmer, 2006). This is an internationally binding legal regime, with 147 States party to either the 1951 Convention or its Protocol. Article 1 of the 1951 Convention defines a refugee as a person who

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing

to such fear, is unwilling to avail himself of the protection of that country (see <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>).

The core protection in international refugee law is the prohibition on *refoulement*: that is, on returning a refugee to a country where he or she would face persecution (1951 Convention, Article 33(1)).² According to the United Nations High Commissioner for Refugees (UNHCR), the principle of non-*refoulement* has the status of customary international law (UNHCR Advisory Opinion, 2007). The 1951 Convention also provides for a range of rights of and obligations towards refugees on the territory of a host state.³ Traditionally, state obligations under the 1951 Convention are triggered when asylum seekers fall within the jurisdiction of a particular state. There is some debate about the scope of 'jurisdiction' under international law, and notably when a state may be held responsible for acts or omissions towards persons located outside its own territory (see, e.g. UNHCR Advisory Opinion, 2007): this is an ambiguity that has come to be critical in recent years, as will be outlined further below.

The 1951 Convention has been supported by significant international institutional architecture: notably, the Office of the UNHCR. The UNHCR has a specific legal protection mandate for refugees and asylum seekers and, amongst other things, manages camps, conducts refugee status determination procedures in states where such procedures are unavailable or inadequate and assists in the search for solutions for persons found to be refugees. The UNHCR has also been mandated with a supervisory role over the application and interpretation of the 1951 Convention under Article 35 by states (Loescher, 2001, p. 5). This is not the equivalent of the monitoring role played by UN treaty monitoring committees for various human rights instruments, which have more power to officially reprimand States for non-compliance (at least in principle). But there is a large emphasis within UNHCR on legal work and its legal protection mandate, including issuing advisory opinions on the application and interpretation of the 1951 Convention, commenting on domestic law reform with an impact on refugees and asylum seekers as well as strengthening UNHCR's *own* processes and procedures for protecting refugees (UNCHR and Legal Protection, 2010). UNHCR's Executive Committee ('ExCom') also periodically issues 'Conclusions' providing guidance to states on the interpretation and implementation of the 1951 Convention (UNCHR ExCom, 2005). These Conclusions, in addition to other advisory opinions issued by UNHCR as well as its practical handbooks and guidelines, constitute the 'soft law' body of international refugee law.

Despite the existence of UNHCR, there are many gaps in the international legal framework for refugees. As one commentator notes, 'the primary obligation under the Convention is expressed in negative terms'; namely, parties must not return a refugee to a state where he or she would face persecution

(*non-refoulement*) (Rimmer, 2006). There is no 'right' to claim asylum (Crock, 2003, p. 56). Another difficulty is that many provisions in the 1951 Convention apply only to persons found to be 'refugees', leaving open questions regarding treatment of persons who have claimed asylum, but have not yet had their status determined (a process which can take several years) (Rimmer, 2006). Accordingly, like many bodies of international law (particularly international human rights law, the close cousin of international refugee law) the 1951 Convention relies on its state parties to develop and implement its provisions through domestic and regional law (UNHCR and Legal Protection, 2010).

Refugee law was for a period arguably one of the more successful international legal regimes (UNHCR Questions and Answers, 2007).⁴ Increasingly, however, aspects of the international asylum regime have been contested. Some provisions in the 1951 Convention are criticized as being outdated: not least, the narrow definition of a 'refugee', as a person seeking protection from individual, politically motivated persecution across state borders. For the purposes of this chapter, an important development at least for many industrialized States is that the asylum system has now become invariably interlinked with the phenomenon of irregular migration and related concerns such as security, terrorism, smuggling and trafficking (UNHCR Questions and Answers, 2007). The limitations on legal migration options in industrialized countries, especially for low-skilled workers, have led to the phenomenon identified by states and international organizations as 'mixed migration', where persons with various needs and motives, including asylum seekers and economic migrants without any protection needs, travel irregularly alongside each other using similar routes and means of transport, often using smugglers. This has led to allegations of abuse of the asylum system, with persons seeking 'migration outcomes' applying for refugee status even if they do not have any international protection needs to prolong stay on the territory of the desired destination State. As a result, there have been attempts by some industrialized states to subsume their protection obligations towards refugees and asylum seekers under the broader umbrella of migration, anti-trafficking and smuggling, and border security policies (UNHCR Advisory Opinion, 2007; Hurrell, 2008, p. 154).

Internationally, migration has become an increasingly topical issue in its own right. The focus on 'migration management' had its origin in the claim that governance of migration at the global level is the so-called 'missing regime' (Ghosh, 2000, 2005). There have been calls for more coherent international cooperation – potentially through binding 'hard law' legal regimes or through a non-binding framework agreement for inter-state cooperation (Ghosh, 2005, p. 15). There has also been an explosion of dialogue and interest on the regional and global levels, with the United Nations engaged for the first time in the migration debate through the 'High Level Dialogue on Migration and Development' (HLD), and development of 'state-owned

processes' such as the 'Global Forum on Migration and Development' (GFMD) and the 'Berne Initiative'.⁵ However, despite calls for an 'international regime for orderly movements of people' (Ghosh, 2000), migration remains a sensitive topic, characterized by unilateralism with very little concrete 'hard law' cooperation on the multilateral level outside certain regions (such as the European Union and North American Free Trade Agreement [NAFTA]).⁶ The cooperation that does exist is dominated by fragmented 'soft law', policy guidelines and 'best practices', and remains cautious and politically divisive. At the same time, the debate on 'migration management' has been in part responsible for the increasing legal and political inseparability of migration and asylum issues for many (industrialized) states, discussed above. Notably the discourse of 'migration management' purports to include *all* forms of human mobility, whether regular or irregular, high- or low-skilled, voluntary or forced, and whether motivated by fear of political persecution, other forms of forced migration (e.g. environmental disaster, civil war) or economic considerations (Ghosh, 2000). It is telling that the jurisdictions of various international organizations that have traditionally been concerned with migration (notably the International Organization for Migration [IOM], but also the International Labour Organization [ILO], the Organization for Economic Cooperation and Development [OECD] and the World Bank) have an increasing role to play on refugee and asylum issues. At the same time, UNHCR is engaging in the phenomenon of 'mixed migration', notably through its '10 Point Plan of Action' (UNHCR 10 Point Plan, 2007).

These developments – the increasing interrelationship between asylum and migration through the discourse of 'migration management' and the growth of international processes on migration in their own right – have put pressure on the international legal regime for refugees. One way in which this pressure has manifested is outlined below.

The 'Tampa Crisis' and the Pacific Solution

On 26 August 2001, in the middle of an Australian election campaign, a fishing boat originating from Indonesia with 443 (mainly) Afghan asylum seekers on board, was identified by Australian authorities in a state of distress in international waters in the Indian Ocean, about 140 kilometres north of Christmas Island (part of Australian Territory). Although the boat was in the Indonesian search-and-rescue zone, Australian authorities issued the rescue signal. The Norwegian container ship, the *MV Tampa*, came to the assistance of the stranded vessel (Senate Committee, 2002). At Australia's request, the captain of the *Tampa* sought to return the rescuees to a port in Indonesia.⁷ However, a group of the rescuees insisted – under ambiguous circumstances – that they be taken to Christmas Island, part of Australia's territory.⁸

The Australian Government under then Prime Minister John Howard refused to allow the vessel to enter Australian waters. The refusal was framed by the Government as part of a crackdown on an 'influx' of 'irregular

migrants' arriving by boat in Australia (which had objectively, if not relatively, increased in 2001),⁹ as well as human smuggling and trafficking rings operating from Indonesia, these were all matters which the Government claimed had been encouraged by 'abuse' of Australia's onshore asylum system as well as creating a dangerous situation for those persons resorting to travel by boat through smugglers. Immigration Minister Philip Ruddock reportedly described the Refugee Convention as an 'enabling tool of organized crime' (Amnesty International, 2002, p. 19). It was argued that the persons coming from Indonesia were 'secondary flow' refugees, 'forum shopping' for a preferred destination state after having reached a 'safe third country of asylum' (Crock, 2003, p. 84).¹⁰ The Australian Governments' position in response to the *Tampa*, encapsulated by the slogan that '[w]e will decide who comes to this country and the circumstances in which they come' (Lateline, 2001), was a symbolic attempt to reassert a perceived loss of control over migration, to which protection obligations were secondary. In public and political discourse, the *Tampa* rescuees were labelled as irregular migrants, 'unauthorized arrivals' or 'boat people', not as asylum seekers or persons who may have legitimate international protection needs. At the same time, and contradictorily, the emphasis of the debate on the threat of people smuggling and trafficking took almost a protective, humanitarian tone: namely, the policy was claimed to be aimed at stopping smuggling and trafficking in part because of the dangers that such activities posed to asylum seekers and irregular migrants themselves (through maritime accidents and other harms). Thus, in a twist of logic, it was claimed that deterring and denying potential asylum seekers access to Australia in order to seek international protection was in fact necessary *for their own protection*.

Australia's refusal to allow the *Tampa* to enter its territory led to a stand-off lasting several days, creating an increasingly grave humanitarian situation for the persons on board (Senate Committee, 2002). On 29 August 2001, after five days of impasse, the *Tampa's* captain sought to enter Australian waters without permission. Australian troops boarded the ship to block its movement (Senate Committee, 2002). On 1 September 2001, the Prime Minister announced that various memorandums of understanding had been reached allowing the *Tampa* rescuees to be taken to Nauru and later Manus Island (Papua New Guinea) for assessment of their asylum claims, in cooperation with IOM and UNHCR. New Zealand also agreed to take approximately 130 persons from the *Tampa* (Crock, 2003, pp. 79–80; Oxfam, 2002).¹¹ When an appeal on the legality of the Australia's actions against the *Tampa* failed in the Australia Federal Court, the rescuees were deposited on Nauru for processing.¹²

The *Tampa* affair triggered the passage of a series of pieces of legislation by the Australian Parliament, seeking to place the ad hoc arrangements that had developed to address the *Tampa* situation on a permanent basis for future boat arrivals. The 'Pacific Solution' was born.¹³ In general terms, the purpose

of the Pacific Solution was to prevent persons without proper travel documentation from landing on Australian territory, in a manner uncontrolled by the Australian Government, for the purpose of claiming asylum (or any 'migration purpose') (Senate Committee, 2002). To do this, the Government 'implemented a multi-faceted strategy' (Senate Committee, 2002).

First, it passed several interlinking statutes through the Australia Parliament 'excising' several thousand small islands to the north of Australia, including Christmas Island – where boats carrying asylum seekers and undocumented migrants tended to arrive – from Australia's 'migration zone' (Crock, 2003, pp. 70–1).¹⁴ The consequence of this was that people intercepted or arriving at such 'excised offshore places' without a visa or other adequate travel documentation were deemed 'offshore entry persons' that had not legally entered Australian territory for migration purposes. They were therefore precluded from accessing Australia's ordinary in-country asylum and visa regime (Senate Committee, 2002). Following the Australian Parliament's original passage of the first block of legislation establishing the Pacific Solution in September 2001, the Government sought at several intervals to increase the number of 'excised' places, usually in response to intelligence on potential new boat arrivals (Parliamentary Library, 2004). A total of eight separate statutes were passed, culminating in the Migration Amendment (Designated Unauthorized Arrivals) Bill 2006 (Cth) that proposed to excise the whole of the Australian mainland from Australia's 'migration zone' (Rimmer, 2006). However, attempts to pass this bill failed in the Senate, and it was ultimately withdrawn by the Government (Parliamentary Library, 2004; Senate Legal, 2006, p. 36).¹⁵

Second, in a reinterpretation of the concept of inter-state 'burden' or 'responsibility' sharing, Australia established agreements with Nauru and PNG (as 'declared countries') to allow 'offshore entry persons' to be transferred to reception centres in those countries to be held while their asylum claims were processed in specially developed procedures.¹⁶ Asylum seekers were not considered by Australia to be in 'detention' on Manus or Nauru;¹⁷ however, they were housed in 'reception centres' managed by IOM under a service agreement with Australia (Senate Committee, 2002). Nauru and PNG received significant amounts of financial aid from Australia in compensation for their assistance (as much as AUD30 million initially for Nauru alone, and in addition Australia assumed full financial responsibility for all reception facilities and processing arrangements as discussed below) (Crock, 2003, pp. 81–2). In 2004, the Government began construction of a reception centre on Christmas Island, one of the 'excised' islands outside Australia's 'migration zone' (Kneebone et al., 2007).

Finally, although somewhat additional to the Pacific Solution per se, Australia also implemented enhanced interception policies to stop boats prior to them reaching Australian waters. From September to December 2001, this was dubbed 'Operation Relax' (although interception in different forms was continued up to 2006) and led to the stopping and seizure of

vessels carrying asylum seekers or undocumented migrants arriving from Indonesia or Malaysia ('Suspected Illegal Entry Vessels') by the Australian navy. The boats were either returned directly to their port of departure in Indonesia (or Malaysia), or towed to the reception facilities in Nauru or PNG (Amnesty International, 2002, p. 6).¹⁸ The Australian Federal Police also carried out 'disruption' activities in Indonesia itself, with the aim of preventing boats from departing Indonesia at all (Crock, 2003, pp. 75 ff).

Although the Pacific Solution was justified on the basis of 'management' of irregular migration and deterrence of people smuggling, the unstated effect of these three pillars of the Pacific Solution was to allow Australia to distance itself from any obligations to provide asylum to 'offshore entry persons' under international refugee law. This was based on the legal fiction that Australia's obligations under the 1951 Convention would be triggered only once persons came within Australia's 'jurisdiction', but that 'offshore entry persons' had not yet entered Australia's 'jurisdiction' due to the establishment of a separate migration zone by the Pacific Solution legislation.¹⁹

Paradoxically, at the same time Australia also insisted strongly that its Pacific Solution was consistent with the 1951 Convention, and that it would 'ensure that asylum seekers will be dealt with under the offshore processing regime in a manner that meets Australia's international obligations' (Rimmer, 2006). The grounding of the Australian Government's defence of the Pacific Solution in its purported consistency with international refugee law was an essential element of the debate at this time. Although refuted by critics, the Government held this up as an answer to legal and political challenges to the policy – a stop-all, in some senses. Of course, Australia's vision of what constituted 'international refugee law' was highly limited – essentially confined to the provisions of the 1951 Convention and the 1967 Protocol as it interpreted them.

We look at our [Refugee] Convention obligations. We wanted to be generous but since we provided more than what's required by the Convention we asked, what is the minimum that's required.

(Amnesty International, 2002, p. 19)

Australia disregarded the 'soft' law that exists around the interpretation of the 1951 Convention – notably UNHCR ExCom resolutions as well as many interrelated bodies of law, such as international human rights law and the law of the sea.²⁰ Nonetheless, while attempts to criticize the legality of the policy on the basis of the 1951 Convention were made,²¹ to the extent that all persons processed under the Pacific Solution did receive refugee status determination hearings and were not simply returned to Indonesia or a third country (the 'minimum' requirement of the 1951 Convention), it was difficult to 'assert categorically' that the Pacific Solution was in breach of the 'hard' provisions of international refugee law (Crock, 2003, p. 70).²² In other

words, while the Australian Government's claim that the Pacific Solution was consistent with Australia's international refugee law obligations (if not human rights and other branches of international law) did not go uncontested, the argument was also sufficiently plausible to allow the Government to maintain its actions were international law compliant.

This was all the more the case given that while the Pacific Solution involved the transfer of the location of reception and processing of asylum claims to Nauru and Papua New Guinea, Australia remained responsible in practice for the *Tampa* rescuees and subsequent persons intercepted and processed as part of the Pacific Solution.²³ It was Australian officials who processed most of the asylum claims, as well as, in the end, looked for countries to provide resettlement options to those determined to be refugees (Crock, 2003; Rimmer, 2006). Australia also assumed the entire (significant) financial burden for the Pacific Solution, including the costs of the reception centres on Nauru and Manus Island (Senate Committee, 2002; Kneebone et al., 2007, p. 182).

However, the confusion caused by Australia's attempts to distance itself from its international legal (de jure) responsibility towards persons processed under the Pacific Solution on the one hand and its de facto assumption of responsibility for their fate on the other meant that the participation of international organizations, and notably IOM and UNHCR, became crucial to legitimizing the Pacific Solution politically and operating it in practice. As mentioned above, IOM was responsible for the setting up and running of the reception centres on Nauru and Manus Island, paid for by Australia under a service contract. However, while IOM had overall management of the facilities, matters including catering and security were sub-contracted to private firms (notably Eures Support Services, Chubb Security Pty Ltd in Nauru and Protect Security at Manus) (Senate Committee, 2002). The role of IOM created serious ambiguities in terms of responsibility for the asylum seekers in the reception centres, ambiguities that were especially visible during a hunger strike by asylum seekers on Nauru in 2003 (see Kneebone et al., 2007, p. 180). With both Australia and Nauru denying responsibility for provision of medical assistance, IOM was left in the middle as both the justification for the policy's international legitimacy and the target of critics of the policy.²⁴ UNHCR was also solicited by Australia for assistance in the initial phase of the policy, and in fact undertook refugee status determination for the *Tampa* rescuees on Nauru, on humanitarian grounds (Crock, 2003, p. 80). UNHCR subsequently withdrew from this, refusing to take part in any further processing on the basis that this responsibility should fall to Australia (Kneebone et al., 2007, p. 181). Following this, Australian immigration officials ran the refugee status determination procedures, albeit according to reduced procedural safeguards compared to those used in the Australia's in-country refugee determination system (Senate Committee, 2002; Rimmer, 2006).²⁵

Approximately 1637 asylum seekers were intercepted on boats leaving Indonesia or Malaysia and sent to Nauru or Manus Island between 2001 and 2007 (UNHCR, 2008a; Attorney General, 2009).²⁶ Most were of Afghan or Iraqi origin. Others were from Bangladesh, Iran, Pakistan, Palestine, Sri Lanka, Turkey or Burma or were stateless. The processing of asylum claims under the Pacific Solution was protracted, taking several years, and even once persons had been recognized as refugees the provision of solutions was slow (Kneebone et al., 2007, pp. 178–9). Among the arrivals who were not granted refugee status or other forms of protection, 483 agreed ‘voluntarily’ to return to their country of origin with the assistance of IOM (including 420 Afghans, 16 Iraqis and 24 Iranians) (UNHCR, 2008a). Of the remainder, 1,153 were found to be refugees or in need of protection. In terms of solutions, 705 were resettled to Australia, 401 went to New Zealand, 21 to Sweden, 16 to Canada, six to Denmark and four to Norway (UNHCR, 2008a).²⁷ In Australia, those resettled were not eligible for permanent residency or citizenship, but instead were issued a ‘temporary protection visa’ (‘TPV’) renewable every 3 or 5 years until such time as return to their country of origin became viable (Amnesty International, 2002, pp. 10–11). There was no right to family reunification.²⁸

The Howard Government argued that the Pacific Solution had been highly effective in terms of ‘managing’ (or more accurately, preventing) irregular migrant and asylum seeker arrivals by boat to Australia. And statistically this was supported by a reduction in the number of boat arrivals: from 5,516 arrivals by boat in 2001, there was only one in 2002. Up to 2007 there were less than 60 arrivals (Time, 2009). Despite this, the policy became increasingly internationally and domestically unpopular, with many critics arguing that even if it did not violate the ‘letter’ of the 1951 Convention (in as much as asylum applicants were being given refugee status determination hearings) it violated the ‘spirit’ of humanitarianism and inter-state responsibility sharing that it embodied (Senate Committee, 2002; UNHCR, 2006, para 7). The last asylum seeker left the Manus Island reception facility in 2004 (UNHCR, 2008b).

The Pacific Solution remained in effect on Nauru until the change of government following the Australian election in November 2007, and was brought to an official end in February 2008, with the departure of the final refugees remaining on Nauru (BBC, 2008b). However, while the new Australian Government led by Prime Minister Rudd abandoned some of the more egregious aspects of the Pacific Solution – such as the transfer of asylum seekers to Nauru and Manus Island, TPVs and limited ‘detention’ (officially) to 90 days for health and security checks – some of the legal mechanisms of the Pacific Solution were retained. This included interception of boats before reaching Australian waters and the legal architecture of ‘excised places’. Persons who arrive at these territories are now processed at the reception facilities on Christmas Island (The Australian, 2009; Time,

2009).²⁹ Moreover, in the fall of 2009, in the face of a 'rise' in the number of asylum seekers seeking to reach Australia by boat without proper travel documents, there was renewed focus on policies dubbed the 'Indonesian Solution' by the Australian press (Time, 2009).³⁰ These policies included cooperative arrangements with Indonesia to encourage the Indonesian navy to 'disrupt' boats from leaving Indonesia, funding by Australia to IOM in Indonesia to support detention of persons there, and refugee status determination being conducted by the UNHCR (The Age, 2009; The Australian, 2009).³¹ All this with the familiar aim of keeping potential asylum seekers and irregular migrants – 'boat people' – away from Australian territory, 'managing' their entry if they did succeed in accessing Australia's migration zone (or otherwise) and limiting Australia's obligations to them in international refugee law.

Hyper-legalism

What is hyper-legalism?

In 1966, Judith Shklar used the term 'legalism' to describe an 'ethical attitude that holds moral conduct to be a matter of rule following, and moral relationships to consist of duties and rights determined by rules' (Shklar, 1986, p. 1).³² Common among lawyers, legal academics and theorists, legalism is premised on the complete isolation of law from the social context within which it exists:

Law is endowed with its own discrete, integral history, its own 'science' and its own values, which are all treated as a single 'block' sealed off from general social history, from general social theory, from politics, and from morality.

(Shklar, 1986, p. 2)

Legalism is particularly evident in the theory of legal positivism (dominant in Anglo-Saxon traditions of law), which consciously inquires into law 'as it is', isolated from all other social factors and particularly the moral or political consideration of law 'as it should be' (Hart in Beck et al., 1996). But it is also embedded in other theories of law, including natural law: it is in fact 'devised almost exclusively by lawyers and philosophers who agree in nothing but taking the prevalence of legalism and of law for granted, as something to be simply defined and analyzed' (Shklar, 1986, pp. 2, 34).

The attitude adopted by the Australian Government in the Pacific Solution regarding international refugee law manifested many of the characteristics of legalism. Notably, Australia's insistence on its strict compliance with the 1951 Convention was portrayed as a complete answer to criticism of the policy – its purported 'legality' precluded much debate on its political (or ethical) 'rightfulness', either from an international asylum perspective or a

migration policy perspective. However, there was an additional characteristic underlying the Australian Government's attitude to international law in the Pacific Solution that moves it beyond 'legalism' to 'legalism plus', or 'hyper-legalism'. Namely, Australia's commitment to rule-following with respect to international refugee law was limited by its highly disingenuous approach to legality itself, placing form above substance.³³ In the context of the Pacific Solution, this disingenuousness was manifested in two ways.

First, the value of Australia's insistence that it was in compliance with international refugee law was circumscribed by its claim to the absolute authority of sovereign states to interpret and implement the 1951 Convention:

It is important to note that the [1951 Convention] does not prescribe the processes which signatory states must follow to identify refugees. The Convention also does not establish an entitlement for asylum seekers to choose the country in which their claims will be assessed or in which protection will be provided. These are issues for sovereign states to settle.

(Senate Legal, 2006, p. 37)

On one view, Australia was not wrong here. The 1951 Convention, like much of the closely related body of international human rights law, is dependent on implementation of its provisions by state parties. As outlined in Part 1, it is also true that the 1951 Convention contains gaps, for example, the Convention does not prescribe the process for determining refugee status (although there is soft law on this from ExCom), or indeed where such claims should be processed (Betts, 2004, p. 60). To this extent, interpretations of international law 'often do not go beyond the stage of *ex parte* contentions' (Kratochwil, 1991, pp. 189, 234–5).³⁴

Nonetheless, the approach taken to refugee law by Australia was more than simply a legitimate assertion of state power to interpret and implement its international obligations. Rather Australia, while seeking to maintain surface compliance with the 1951 Convention, constructed a highly elaborate statutory scheme underneath that international framework in order to severely curtail the very application of much of the 1951 Convention to its policy at all.³⁵ In particular, the 'excision' of parts of its territory from its migration zone (a legal fiction) was expressly designed to avoid triggering Australia's jurisdiction under the 1951 Convention – on the argument that while asylum seekers were not in Australia's 'migration zone' as defined domestically, Australia had no (or at least limited) responsibilities under refugee law. In other words, the Pacific Solution was an attempt to undermine the actual application of the 1951 Convention to Australia's actions: Australia could not be said to be 'violating' international refugee law if it did not in fact apply (UNHCR, 2002, para 5).³⁶ Related to this was the

fact that even if Australia acknowledged some responsibilities under international refugee law, it took an extremely limited vision of what constituted the requirements of 'international refugee law' – essentially confined to the provisions of the 1951 Convention and its 1967 Protocol (as noted above). The exclusion of 'soft law' such as ExCom conclusions, as well as complementary human right law, from the scope of its 'international obligations' certainly facilitated Australia's claims to be acting in compliance with them.

The second element of disingenuousness in Australia's vision of 'legality' in the Pacific Solution, and the domestic cousin of the above, consisted of the fact that the Australian courts were stripped of jurisdiction to hear claims by individual 'offshore entry persons' through so-called 'privative clauses' contained in the legislation constructing the Pacific Solution (e.g. Migration Act, 1958 (Cth), s 49AAA).³⁷ There is something suspicious about executive claims to the legitimacy of a policy based on its 'compliance with the rules', while simultaneously precluding scrutiny by the judicial branch, legality's traditional arbitrators. Thus, the Australian Government not only claimed complete sovereign interpretive authority under international law; it also claimed complete executive authority to interpret the law in the domestic context as well.³⁸

In the case of the Pacific Solution, then, 'hyper-legalism' was grounded in the elevation of 'legality' as the centre piece of the Government's defence as to the political, as well as legal, legitimacy of its policy; but in a context where real meaningfulness in 'following the rules' was minimized by the fact that the Government itself had almost entirely defined away their applicability to the situation at hand, as well as any judicial scrutiny of the manner in which they were interpreted. Thus 'hyper-legalism' implies a commitment to 'lawfulness' and rule-following, with an underlying disingenuousness in the understanding of 'legality'. It suggests that the applicability of the rules themselves is infinitely malleable by the actor purporting to comply. And it allows states to simultaneously seek the rhetorical and political benefits of ostensible 'compliance' with international law, while ensuring that their actions remain largely unimpeded in practice.

More broadly, the Australian Government's reliance on the language of international refugee law, through hyper-legalism, had at least two consequences for the construction of the Pacific Solution as a policy of 'migration management'. First, hyper-legalism allowed the Australian Government to focus the debate about the Pacific Solution on its technical legal compliance with refugee law, at the expense of the political, ethical and pragmatic aspects of this policy from an asylum or migration perspective. It is notable that, at least in the early stages, the Government's claim to the international legality of the Pacific Solution 'pulled the rug' from under critics of the policy. Having been forced to argue 'through law' against the policy, but in the absence of the ability to make determinative 'hard legal arguments', critics were left with emphasizing the 'spirit', the 'underlying intention' and the

'purpose' of the 1951 Convention in order to ground their criticisms; rather than on non-legal arguments about the broader approach to migration or asylum that it exemplified (such as the exorbitant costs involved) (cf. Bern et al., 2007).³⁹ In other words, the language of international law limited – for a time – a highly political debate on the 'justness' or necessity of Australia's migration policies generally to the more narrow question of whether or not they complied with the 1951 Convention. Because 'all was done according to the law', the politics inherent in Australia's approach to migration management exemplified by the Pacific Solution could be masked: the language of law acted to *depoliticize* migration management.

Second, the fact that debate surrounding the Pacific Solution was channelled by hyper-legalism through international refugee law also assisted the Australian Government to justify the approach to 'management' of migration it exemplified as a more 'effective' way of handling irregular boat arrivals and potential spontaneous asylum claims. In other words, hyper-legalism was a tool used to *legitimize* the policy, and the approach to migration management that underlay it. The purported international refugee law compliance of the policy meant it could be reasonably presented as simply an effective migration management tool: deterring and preventing boat arrivals in the first place, therefore 'protecting' potential 'boat people' from the dangers of the voyage and exploitation by ruthless people smugglers (see above); but also giving greater control ('management') to Australia over the processing of such any asylum claims should they be made, and the eventual resettlement of persons found to be in need of international protection. Such decisions could be made at Australia's discretion, rather than being imposed on it by the spontaneous arrival of potential asylum seekers on Australian territory. In this sense, hyper-legalism constituted the essential bridge between ostensible compliance with state obligations under international refugee law on the one hand, and justifying a set of policies to 'manage' migration in a new 'better' or 'more effective' way.

Hyper-legalism as exhibited in the Pacific Solution context was thus more than just an attempt to limit state obligations under international refugee law. It was a crucial component of depoliticizing and legitimizing migration management; and the tool that allowed the Government to persist in a fairly radical policy despite media and public attention.

Explaining hyper-legalistic approaches to international law

What are the origins of the hyper-legalistic approach to international law exhibited by Australia in the Pacific Solution? Arguably, this has been invited by international lawyers themselves.

International law's status 'as law' has long been contested.

For some decades scholars of international law have been preoccupied with the task of establishing that the subject of their professional concern

was in fact law and could not be dismissed as a miscellany of maxims principally useful for the admonishing of decision-makers to act ethically.

(Beck et al., 1996, p. 138)

In a discipline that seemed condemned 'constantly to defend its existence' and 'even more earnestly ... its relevance to world events' (Slaughter, 1993, p. 214), the goal for international lawyers has been twofold: to defend the status of international law 'as law' on the one hand; and to actively encourage the 'legalization' of international affairs on the other as a separate entity from international politics (or ethics, morality, etc.) (Kelsen in Beck et al., 1996, p. 61).⁴⁰ International lawyers also argued for the normative superiority of international law as a mechanism for achieving international peace and cooperation among nations (Kelsen in Beck et al., 1996, p. 60).⁴¹ The need to separate international law from politics, morality and ideology led international lawyers to emphasize the technical and 'non-normative' elements in international lawyering.⁴² Thus, international legal reasoning became characterized by 'references to precedents, treaties, and juristic writings', without recourse to 'moral right or wrong, good or bad' (Hart in Beck et al., 1996, p. 86). Since the 1990s it can be argued that the battle of international lawyers to become fully-fledged members of the legal academy has been more or less won: the status of the discipline 'as law' has, finally, been accepted.

However, in order to make and defend the claim that international law was 'law', international lawyers (and their critics) had only one benchmark, one model of what 'law' was: domestic legal systems.⁴³ International lawyers sought to emulate domestic systems due to the apparent legitimacy derived from their 'enforceability' or 'sanctioning' powers – traditionally viewed as a core element in the definition of 'law' (Austin in Beck et al., 1996).⁴⁴ Seeking to establish the parity of international law with domestic systems may, however, have had an unforeseen consequence: namely, it may have invited states to approach their international legal obligations in a manner that mirrors the way that individuals approach law in a domestic context; an invitation that the structure and design of international law may not be able to withstand (Hart in Beck et al., 1996, p. 89).

This is because many domestic systems, notably western ones, tend to function around the 'right' of participants to actively search for definitional loopholes in order to 'get around' legal rules. Indeed, this legal-technical approach is viewed as the essence of 'lawyering'. It is the duty of a good lawyer to exploit every gap, every 'and' not 'or', and to 'push the definitional envelope' as much as possible (Waldron, 2005, p. 1709). The technical objection, strictly within the letter of the law, is a key feature of the system. One way to describe this is to say that domestic legal systems allow actors to approach the law both 'normatively' (in the sense of appealing to the goals underlying the legal framework), and/or 'strategically', in the legal-technical sense described above.

More specifically, domestic legal regimes can permit actors to adopt a 'strategic' approach to interpreting and applying legal obligations because they are systems that are structured 'tightly'. This operates on two levels. First, in most Western countries there is an institutional framework supporting the legal system through 'separation of powers' – meaning that law is created, interpreted and implemented (in theory) by different actors.⁴⁵ Second, domestic law tends to involve several overlapping but interdependent legal frameworks within the one system. This means that defining the content of a particular legal rule or set of rules as not applicable to an actor or situation will rarely take that actor or conduct outside the legal system altogether – there are sufficient layers of law to ensure that more law will 'step in' to close the gaps. The system in this sense is 'closed'. The combination of these two features means that domestic legal systems can allow actors to adopt the types of 'strategic', highly technical-legal techniques described above, without a risk of undermining the capacity of the legal system to achieve its normative goals. Strategic approaches to domestic law, in other words, do not risk situating an actor outside the legal regime, thus fraying or undermining the opportunity for the system to achieve the normative goals that underlie it.

International law – at least those branches of international law 'on which states do not agree' (Shklar, 1986, p. 39)⁴⁶ – is not characterized by the internal 'tightness' of most western domestic legal systems. There are many reasons for this: the political compromises at the international level that affect rule-making processes; its structural/institutional make-up which has for so long fuelled doubts as to international law's 'legal' status; and the fact that states are 'partners' in the maintenance of the international legal system – as its creators, interpreters and enforcers as well as its subjects – in a way that individuals are not in the domestic context. All of this means that if states adopt a 'strategic' approach to international law akin to the lawyering tactics permitted on the domestic level, the consequence may be a complete sidestepping of the majority of the provisions of an international legal regime. In the absence of other layers of 'law' to hold the state within (and maintain the integrity of) the international regime more broadly, or authoritative institutional capacity to contest a state's 'ex parte' interpretations of its international obligations, the system's ability to achieve the normative goals it was established to uphold in the first place may be undermined.

For example, Australia's 'strategic' reliance on the fact that the 1951 Convention applied only indirectly to 'asylum seekers' (rather than 'refugees') and the ambiguity surrounding state jurisdiction in the case of 'extraterritorial' acts or omissions allowed it to define away the substantive applicability of the 1951 Convention to much of its actions under the Pacific Solution. And by strategically situating its actions beyond (much of) the international refugee law framework, Australia undermined the goals of state responsibility sharing and cooperation for the protection of refugees

that had formed its motivating force at establishment – in other words, the capacity of the system of asylum to achieve its normative goals.

In essence, then, the Pacific Solution suggests that the mistake made by international lawyers was to hold up a model of law that was based on a domestic system that *they could never hope to emulate*. This was a mistake because it has invited states to apply domestic approaches to lawyering that the international legal system (at least in the area under discussion here, refugee law) is not structurally capable of withstanding. International lawyers failed to adequately consider that although domestic legal systems are characterized by ‘enforceability’ and sanctions, they are also and equally marked by the ability of actors to act ‘strategically’ and not just ‘normatively’ with respect to the law. Indeed, that is, according to such theorists as Jurgen Habermas, the basis of their strength (i.e. it is the tension between facticity and validity – between facts and norms) (Habermas, 1996, p. 28). International lawyers have thus pursued legalism as an overriding value to be aspired to; but with an insufficiently theorized conception of law and legality – and how this functions – in the domestic systems they were coveting.

The 1951 Convention was not designed to withstand ‘strategic’ engagement by the state parties charged with its implementation. On the contrary, it was designed to be filled ‘up’ (not ‘down’) by states themselves, in accordance with its ‘spirit’ and not its ‘letter’. Thus, what constitutes ‘strategic engagement’ on the domestic level becomes ‘hyper-legalistic’ on the international one, when a state deliberately exploits the nature of international law to claim consistency with international law as a defence to its actions on the one hand; and undermines any independent content of international legal restrictions on the other, fraying (even gutting outright) the effective functioning of the regime as a whole. At the same time, the State is able to benefit from appeal to ‘neutral’ legal language and argument, narrowing the debate about a policy to the question of whether it is ‘legal’. Thus hyper-legalism provides an opportunity to use the language of law as a means to mask politics; and to dismiss political, ethical or pragmatic arguments on the basis that ‘lawful’ is ‘right’.

Hyper-legalism outside the Pacific Solution: Refugee law and beyond

Some specific aspects of the Australia political and legal context explain the rise of the Pacific Solution and the approach to international refugee law that it exemplified in the name of ‘managing’ irregular migration.⁴⁷ Most important is the highly complex control-oriented system that has characterized Australia’s migration policy since the start of the twentieth century (Lopez, 2003, pp. 59–60) as well as a historical intertwining of migration and asylum issues – notably through a quota allowance for ‘onshore’ and ‘offshore’ refugee claims; with a preference for (and higher number of places allocated to) those persons that are interviewed and selected by Australian

officials in refugee camps in other countries for resettlement to Australia, as opposed to those that arrive spontaneously in Australia (Kneebone et al., 2007, pp. 171–2).⁴⁸ Nor was the Pacific Solution the first time that Australia had pushed the boundaries in terms of its obligations under international refugee law (Lopez, 2003, p. 9).⁴⁹

However, the hyper-legalism of Australia's Pacific Solution, while extreme, was by no means an isolated approach to international refugee law in the name of 'managing' (irregular) migration. Indeed, the Pacific Solution was consciously modelled on the US 'Caribbean' policy, involving the interception of boats of asylum seekers departing from Haiti and Cuba starting in the 1990s, and either returning them to their port of origin with only cursory screening for asylum claims on board maritime vessels (if at all, usually for Haitians) or removing them to camps outside the United States for limited refugee status determination procedures (including Guantanamo Bay, mainly Cubans).⁵⁰ The United States, like Australia, relied on the fact that refugee claims were processed in 'offshore' centres outside US territory in order to distance itself from its international protection obligations. The (now familiar) argument was that asylum seekers had not yet entered US jurisdiction because such areas were outside national territory; therefore US law, including its international obligations, were not applicable. This approach was upheld by the US Supreme Court in *Sale v Haitian Centres Council, Inc* in 1993. The Court found that the prohibition on *refoulement* in US domestic law did not apply to actions taken by the United States outside US territory including on the high seas, and that the US obligations under the 1951 Convention equally applied only to persons within US territory (Crock, 2003, p. 63).⁵¹ The United States also concluded various bilateral agreements with Caribbean States authorizing them to intercept boats in their territorial waters or on the high seas, and to apply different processing standards for refugee status depending on the nationality of the would-be asylum seekers (Barsalou, 2008, p. 6). Finally, like Australia, the United States excluded access to in-country processing regimes and the US legal system for persons processed in 'offshore' centres (Crock, 2003, p. 83). To this day, so-called 'protected migrants' (those processed at Guantanamo Bay by US officials and found to have protection needs) are not given access to resettlement options in the United States. Efforts are instead made to resettle them elsewhere – indeed, during the Pacific Solution it was proposed that Australia and the United States should 'swap' 'offshore entry persons' and 'protected migrants' in an exercise of mutual hyper-legalism (The Guardian, 2007).

Along with the United States and Australia, other states – notably in the EU, including Spain, Italy, Denmark and the United Kingdom – have considered measures to process asylum claims outside of their territory (Phillips & Millbank, 2005). This has been particularly in context of 'interception operations', where would-be asylum seekers and irregular migrants are stopped, either prior to entering state territory or waters (on high seas or in the

territory of a third state) or indeed once they have reached state territory.⁵² The motivation of many of these policies is hyper-legalistic: namely, by processing claims outside their territory, states seek to limit their obligations under international refugee law and therefore simultaneously create more flexibility in and legitimacy for their 'migration management' policies (as well as increase the overall deterrence effect for would-be asylum seekers). In particular, in 2003 the UK Government released a 'New Vision for Refugees' in which it proposed to develop 'regional protection areas' (or 'protection zones', located in regions of origin of refugees and asylum seekers) and 'transit processing centres' (close to the external borders of the EU) (UK Government, 2003). This policy was expressly modelled on the United States and Australian examples cited above, and in its initial form would have resulted in the processing of all asylum claims outside of the United Kingdom, with the exception of some special groups. This 'would have allowed the separation of the state that pays for, and is accountable for, that asylum claim from the state that provides the territory on which the claim is processed and possibly even the social and legal services that correspond to the claim' (Betts, 2003, p. 1).⁵³ It is notable that the United Kingdom, like the United States and Australia, 'attempted to justify (rightly or wrongly) the legality of its proposals through reference to the 1951 Convention – implying that it still regards this as the basis of refugee protection' (Betts, 2004, p. 65).

States have also adopted a range of other policies to deter asylum seekers from reaching their territory or to shift the burden for making refugee status determinations to other states: policies that may fall short of actual *refoulement*, but which can have the effect of preventing bona fide refugees from seeking protection in the name of 'migration management'. These include visa restrictions imposed on nationals of certain states, sanctions against carriers that transport persons without proper documentation, safe country of origin provisions according to which states return asylum seeker without hearing their applications in substance, expedited processing mechanisms that turn away certain applicants (those judged to have no credible claim or a manifestly unfounded claim) without the benefit of a full asylum hearing, and mandatory detention (Aleinikoff & Chetail, 2003). There have also been significant developments at the EU level in terms of externalized border policies (den Heijer, 2010).

It is no accident that hyper-legalism is playing out in the field of international refugee law. The tensions between asylum and migration and security imperatives have created a context where governments wish to radically adapt their migration policies in the face of new perceived pressures by controlling and limiting access to territory. Maintenance of surface compliance with international refugee law and protection obligations is crucial both to supporting the legitimacy of migration management policies and depoliticizing the debate (as outlined above). Further, the asylum regime

has been consciously and deliberately crafted as a legal one, as outlined. This has been aided by the fact that UNHCR itself derives its mandate from the 1951 Convention, and has relied on and developed the view of international refugee law 'as law' in order to support its humanitarian mandate and provide protection to those falling within its jurisdiction.

However, hyper-legalism has also been demonstrated outside the refugee law context, in another field where the existence of 'hard' international law has conflicted with new State political imperatives: international humanitarian law or the laws of war.⁵⁴ In particular, the approach taken by the United States during the 'war on terror' bears many of the hallmarks of hyper-legalism (Waldron, 2005; Webber, 2008). This includes the Military Commissions Act of 2006 ('MCA'), with its assertions as to consistency with international law while excluding both the application of the Geneva Conventions and meaningful judicial review by US domestic courts.⁵⁵ Like Australia in the Pacific Solution, the US Government argued that its treatment of terrorism suspects was consistent with international (humanitarian) law, even though the MCA placed them in a new category of 'unlawful enemy combatants' (MCA Article 948a[1]), taking them outside of the scope of the protected combatant status they should have received under the Geneva Conventions (much like the 'offshore entry person' category in the case of the Pacific Solution).⁵⁶ The 'war on terror' also saw renewed recourse to the use of Guantanamo Bay, this time as an offshore holding centre for 'unlawful enemy combatants', in order to restrict the application of US and international law to persons held there. Equally, the Bush Administration's approach to the prohibition on torture exhibited hyper-legalistic tendencies, albeit without Australia's sophisticated network of domestic legislation (although it has involved, for example, Presidential 'signing statements' to qualify the scope of legislation, as well as the infamous internal legal memos and policy documents, all of which arguably amount to executive versions of much the same phenomenon) (Goldsmith, 2007).⁵⁷ Hyper-legalism as a tool in international humanitarian law played much the same role as hyper-legalism in international refugee law (as demonstrated by the Pacific Solution and other examples outlined above). Namely, through an appeal to the consistency of the policies with international law, states have sought to both legitimize and depoliticize radical new policies that were responding to sensitive domestic and international political challenges – the (irregular) movement of people on the one hand, and state security (terrorism) on the other.

The approach of hyper-legalism briefly outlined in these examples exclusively applies to Western industrialized states, where the ethos of 'legalism' is firmly embedded in the legal and political culture. While this may be a limitation in seeking to establish hyper-legalism as a 'trend' in international law, it is also logical. It is in those countries where legalism is most firmly established as a valuable quality that hyper-legalism can take

root.⁵⁸ Moreover, international refugee law and international humanitarian law both share prominence in the examples provided due to the combination of the gaps in these international legal regimes combined with pressures as a result of new competing state political priorities. Nonetheless, the examples suggest that at a minimum, given the appropriate conditions (legalism in political culture and pressure in implementing certain international obligations), states will seek strategic and not normative engagement with international law, with serious consequences for the capacity of the international legal regime in question to fulfil its intended function.

Conclusion

This chapter has outlined the Pacific Solution as an example of a ‘hyper-legalistic’ approach to international law that has been used to both legitimize and depoliticize state goals for migration management. It has argued that hyper-legalism may have been invited by the drive to establish international law ‘as law’. It has shown that hyper-legalism is a limited, though evolving, trend in certain states both in the area of refugee law and also in other branches of international law facing similar structural collisions between state political expediency and ‘hard rules’ of international law.

The purpose of this chapter is not to argue against ‘legalization’ of international affairs. International legal standards remain something to be aimed for, creating benchmarks for action, minimum standards and rallying points for consensus particularly on matters that are contested between states. At the same time, it is important to recognize the particular nature of international law, and the ways that recourse to it can be misused for political purposes through the tool of hyper-legalism.

The discussion of hyper-legalism in this chapter also has implications for the field of migration as a separate area from international refugee law. As outlined above, despite calls for a cohesive international regime for ‘migration management’, global governance on migration is currently dominated by ‘soft law’ – ‘best practices’, principles, recommendations and other non-binding ‘guidance’ around which States can loosely cooperate and agree. These principles range from the significant to the more superficial, but the reluctance of States at this stage to enter into binding hard international law conventions or treaties in the area of migration is well documented.⁵⁹ For some, the fact that international dialogue on migration remains at the level of soft law is a regression (especially compared to the 1951 Convention in the field of refugee law). It is perhaps – in part – for this reason that IOM has recently pushed to consolidate the concept of ‘international migration law’: arguably the drive towards ‘law’ is an effort to take the politics out of the migration debate, and an echo of the emphasis on the politically neutral concepts of ‘migration management’ and ‘win-win’ migration policies (IOM, *International Migration Law*, 2010). However, such

developments require caution. At a minimum, this chapter suggests that it is important to recognize the politics of migration and deal with them openly, rather than seeking coverage in the attractive language of international law.

Notes

1. Thanks to Frances Foster-Thorpe and Benedict Kingsbury, who assisted with the previous version of this chapter.
2. Complementary prohibitions on *refoulement* are found in international human rights law: For example, Convention Against Torture, Article 3; see also Universal Declaration of Human Rights, Article 14.
3. For instance, the principle of non-discrimination (Article 3), freedom of religion (Article 4), freedom of association (Article 15) and access to the courts (Article 16). Refugees 'lawfully in the territory' of the host state have the right to freedom of movement (Article 26). States agree not to impose penalties on refugees on account of their illegal entry or presence on their territory if they came directly from a territory where their life or freedom was threatened, present themselves without delay and show good cause for their illegal entry or presence (Article 31). The expulsion of a refugee shall only take place pursuant to a decision reached in accordance with due process of law (Article 32) (1951 Convention).
4. See especially the success of the Comprehensive Plan of Action for Indochinese Refugees (discussed in Loescher, 2001), and 'regional' refugee conventions such as OAU Convention (e.g. contains more expansive definition of a 'refugee').
5. See Bibliography for references on these various processes.
6. There are certain exceptions: in particular, see the Protocols on Trafficking and Smuggling and the Migrant Workers' Convention.
7. The Australian Government claimed that under a bilateral agreement between Australia and Indonesia, the *Tampa* passengers had been rescued in Indonesia's zone of responsibility. Indonesia refused to accept responsibility for the rescuees; and it was noted that the Indonesian port was approximately 12 hours from the point of rescue; while the Australian territory Christmas Island was approximately four hours away (Senate Committee, 2002).
8. There are reports that rescuees threatened to commit suicide if the *Tampa* returned them to Indonesia (Crock, 2003).
9. The idea that Australia was responding to any influx of arrivals comparable on an international level has been contested (Parliamentary Library, 2004); 43 boats with 5516 asylum seekers arrived in Australia in 2001 (Time, 2009).
10. Given that Indonesia is not a party to the 1951 Convention, Australia's argument that effective protection was available there in the form of IOM and UNHCR assistance was tenuous (Kneebone et al., 2007, pp. 167, 176).
11. These persons taken to New Zealand from the *Tampa* had their claims determined within weeks (Crock, 2003, p. 80).
12. In the initial action, Justice North held that the rescuees on the *Tampa* had been detained unlawfully by the Australian Government and ordered that they be released onto the Australian mainland (Victorian Council for Civil Liberties Inc v. Minister for Immigration and Multicultural Affairs). This decision was reversed on appeal, with a majority Full Federal Court finding the Government had lawfully acted within its Executive Power under Article 61 of the Australian Constitution; and had not detained the rescuees or restricted their freedom (*Ruddock v. Vardalis*).

13. For the full set of legislation constructing the Pacific Solution see the Bibliography. In the midst of the *Tampa* crisis, the Government had also introduced an emergency Border Protection Bill 2001, which would have given it broad retroactive authority for its actions towards the *Tampa*, and precluded court review. The bill failed to pass in the Australian Senate (Senate Committee, 2002; see also Webber, 2008).
14. Ultimately over 3000 islands were 'excised' under Pacific Solution legislation.
15. The Government was obliged to remove the 2006 Bill from consideration in the Senate due to threats by members of the Prime Minister's own party to cross the floor to vote against it (Howard, 2006).
16. Nauru was not a signatory to the 1951 Convention; Papua New Guinea was but had placed significant reservations on its ratification (UNHCR Basic Obligations, 2009).
17. See Migration Act 1958 (Cth), s 198A(4) (stating that 'offshore entry persons' are not taken to be in immigration detention) (Coombs, 2005, p. 3). Australia was criticized for its insistence that asylum seekers in reception centers on Nauru or Manus were not in detention (Amnesty International, 2002, pp. 14–15, 18).
18. For an argument that Australia's actions in simply returning boats to Indonesia without processing asylum claims constitute *refoulement*, see Crock, 2003, pp. 72 ff.
19. For arguments against this limited conception of 'jurisdiction' see Crock, 2003, citing amongst others Professor James Hathaway, and UNHCR Advisory Opinion, 2007. Cf. 'Once boats enter our waters then our international obligations are involved and have to be accepted' (The Australian, 2009).
20. 'It is a regrettable fact that consideration and debate of Australia's protection obligations has been focused on the 1951 Refugee Convention' (Amnesty International, 2002, p. 19/FN 60).
21. See, for example, UNHCR, 2002, paras 9–11 (especially FN 1) (arguing that Australia's international protection obligations to asylum seekers and refugees are engaged at the frontiers of and throughout its entire sovereign territory including any locations excised by national law). This is consistent with the principle that a state cannot refer to its internal law in order to avoid its international obligations ('The characterization of an act of a state as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by internal law': Crawford, 2001; Vienna Convention, Article 27). Other arguments were made regarding the 'temporary protection visas' (cf. 1951 Convention, Article 34 whereby states shall 'as far as possible facilitate the assimilation and naturalization of refugees'; and 'make every effort to expedite naturalization proceedings'). The most serious criticisms related to the prolonged detention of refugees (and others) under international human rights law but such arguments were also applicable under Australia's mandatory detention policy on the mainland. Critics also challenged the idea of creating differentiated procedures offshore compared to onshore as possibly amounting to discriminatory treatment or penalization for unlawful presence, contrary to Article 31, 1951 Convention (UNHCR, 2006, para 25–26; Crock, 2003, pp. 76–7).
22. There were later suggestions that some Afghans that had been found not to be refugees under Pacific Solution procedures had been killed upon return to Afghanistan. If true, this would amount to a breach of the prohibition on *refoulement*, the cornerstone of the 1951 Convention (BBC, 2008a). Also note

- that those boats returned by Australia to Indonesia under 'Operation Relex' without any processing of persons on board are more easily attacked as breaching provisions of the 1951 Convention (Crock, 2003).
23. While Papua New Guinea is a signatory to the 1951 Convention, Nauru is not and neither country has adequate asylum procedures meeting international standards (UNHCR State Parties, 2008; Amnesty International, 2002, FN 17). 'It is difficult [to] characterize Australia's behavior as other than a de facto assumption of jurisdiction' (Crock, 2003, p. 61).
 24. 'The International Organization for Migration (IOM), as administrators of the Nauru and Manus Island facilities and managers in charge of safety, has effectively become the detaining agent on behalf of the governments involved. The absence of basic safeguards to prevent arbitrary detention raises questions about IOM's responsibility for ensuring that its activities are not in violation of international human rights and refugee law' (Amnesty International, 2002, p. 14).
 25. Australia claimed offshore process would be consistent with UNHCR's standards (for UNHCR's criticism of this see Rimmer, 2006).
 26. This does not include those boats intercepted and returned to Malaysia or Indonesia as part of Operation Relex.
 27. In other words, of the total of 1,637 people detained on Manus Island or Nauru, 70 per cent were ultimately found to be refugees and resettled to Australia or other countries. Of those resettled, approximately 61 per cent were resettled in Australia (Attorney General, 2009).
 28. This contrasts with the usual rights accorded recognized refugees in Australia under the Migration Act 1958 (Cth).
 29. As of October 2009, there were more than 1000 asylum seekers being housed on Christmas Island mainly of Sri Lanka, Iraqi and Afghan origin, with plans to increase the capacity of the centre from 1200 to 1400 beds (UNHCR, 2008a; The Age, 2009).
 30. '[T]here's been a notable shift in policy to incorporate Indonesia as a pre-emptive interception unit to stop boats before they reach Australian waters' (Ozsoapbox, 2009).
 31. 'If they leave the boat the UNHCR and the IOM will support them. Their claims will be processed according to the same rules that would apply in Australia' (The Age, 2009). For the importance of the role played by UNHCR and IOM in Indonesia, see Kneebone et al., 2007, p. 176.
 32. Note this chapter does not necessarily use the term 'legalism' as employed e.g. by Hurrell ('the norms and rules of international life are so far away from the power political "realities" that their study becomes an empty and formalistic exercise, well captured by the derogatory force of the term "legalistic"') (Hurrell in Beck et al., 1996, p. 208).
 33. There is an obligation to act in 'good faith' under international law: see, for example, The Vienna Convention, Article 26 ('Every treaty in force is binding on the parties to it and must be performed by them in good faith'), Article 31(1) ('A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of their object and purpose'). It is beyond the scope of this chapter to consider whether or not the Australian policy violated this obligation; however the absence of 'good faith' was not a core element in criticism of the policy at the time. This may be because Australia in fact assumed a minimum level of responsibility under the 1951 Convention for processing asylum seekers.

34. For basic international norms on the interpretation by states of their treaty obligations, see the Vienna Convention, especially Articles 30–33.
35. 'For one thing, we seem to be dealing in this case with not just fine tuning, but a wholesale attempt to gut our commitment to a certain basic norm' (Waldron, 2005, p. 1709).
36. Part of this approach relied on redefinition of key legal terms and usages from the traditional usage. As noted by UNHCR, 2002: 'In a number of places the language used in this Bill [Migration Legislation Amendment (Further Border Protection) Bill 2002], related legislation and debate diverges from accepted meanings. This may confuse discussion of the issues that the Bill relates to, and in some cases the use of international terminology for different purposes may lead to a failure of international refugee protection mechanisms. Of particular concern is the manner in which the following words and phrases are used: "resettlement", "asylum seeker" and "safe country"'.
37. The use of privative clauses to limit court jurisdiction had been a previous feature in Australian migration law: see Migration (Judicial Review) Amendment Act 2001 (Cth); Lopez, 2003, pp. 47–9.
38. The focus of this chapter is on approaches to international law; thus it does not consider the implications of the Pacific Solution for Australia's domestic legal context. However, debates about the Pacific Solution under domestic law were also contested: e.g. regarding privative clauses and 'executive legality' (see Webber, 2008). For comparison with US context, see Goldsmith, 2007. The *Tampa* litigation in the Australian Federal Court was decided on the basis of domestic immigration and constitutional law issues (Crock, 2003).
39. For example: 'Overall, what this amounts to, in UNHCR's assessment, is a set of proposals which are not in accordance with the object and purpose of the 1951 Convention, to which Australia was among the first to accede' (UNHCR, 2006, para 7).
40. See also: Slaughter, 1993; Koskenniemi, 2002a; Shklar, 1986, pp. 111, 130; Jeffrey, 2006, pp. 225, 227.
41. See also: Shklar, 1986, p. 139; Koskenniemi, 2002b, p. 504.
42. 'International lawyers stress the pragmatic functions of their profession. Blueprints for world order have been taken over by technical sub-disciplines and specializations. Environmental or human rights regimes are created and the legal aspects of the European Union's foreign and security policy debated without the need for an over-arching theory' (Koskenniemi, 2002b, p. 516). See also Nagel, 2005; Kratochwil, 1991, p. 5.
43. 'Forms of doubt arise from an adverse comparison of international law with municipal law, which is taken as the clear, standard example of what law is' (Hart in Beck et al., 1996, p. 77).
44. And indeed, it was challenges to international law's lack of sanction power (as well as broader structural differences from domestic law) that constituted the core of critics' attacks on international law 'as law' (Hart in Beck et al., 1996, pp. 69–70).
45. From a domestic point of view this is one aspect that was so problematic about Australia's use of privative clauses: see above (Endnote 37).
46. This chapter is not concerned with those regimes that constitute the more technical, less controversial bodies of international regulation (whether public or private international law) for example, in aviation or telecommunications, and even branches of law such as those governing trade and investment that are the

subject of accepted international arbitral regimes for the sanctioning of State parties as well as private individuals. International refugee law, and the related fields of international human rights and humanitarian law in particular, are distinctive in terms of their goals, their language, the nature of the obligations they purport to impose on states, their reliance on domestic implementation and their compliance mechanisms. See also Neuman, 2003 (distinguishing treaties that facilitate technical cooperation and bargaining for commercial advantage from other general international law treaties).

47. These include the absence of a national human rights regime, the tradition of judicial formalism, and a 'dualist approach to international law' (e.g. Charlesworth et al., 2006, pp. 30, 92).
48. This division led in part to the rhetoric of 'queue jumpers' adopted by the Government to describe asylum seekers arriving by boat. The idea was that they were taking places away from the quota allocated for those persons selected by Australia in refugee camps (the 'queue') (see also Time, 2009).
49. Notably, Australia's 'mandatory detention' policy for all irregular arrivals, including asylum seekers, has been much criticized (see: Lopez, 2003, pp. 65–66, Charlesworth et al., 2006; UN Human Rights Committee, 2007).
50. See Crock, 2003, p. 62, for a discussion of the briefing papers produced by the Australian Government defending the Pacific Solution on the basis of the US policy. The US policy was in fact based on earlier executive orders issued by President Reagan that had authorized the interception and return of boats from Haiti by the US Coastguard (Barsalou, 2008, p. 4). 'On-board' processing by the US usually consisted of the so-called 'credible fear test', which has been much criticized (Barsalou, 2008).
51. For a comparison between the *Sale* decision and the decision of the Full Federal Court in Australia on the Tampa incident see Crock, 2003; Cf. *Rasul v Bush*, which held in the context of terrorism detainees at Guantanamo Bay that US courts had jurisdiction to hear habeas corpus claims. The implications of this decision for asylum seekers is yet to be determined (Barsalou, 2008, p. 5).
52. No legal definition of interception exists: see the working definition contained in UNHCR Interception, 2003 ('interception is one of the measures employed by States to: prevent embarkation of persons on an international journey; prevent further onward international travel by persons who have commenced their journey; or assert control of vessels where there are reasonable grounds to believe the vessel is transporting persons contrary to international or national maritime law; where, in relation to the above, the person or persons do not have the required documentation or valid permission to enter; and that such measures also serve to protect the lives and security of the travelling public as well as persons being smuggled or transported in an irregular manner').
53. For further details and analysis of the UK proposals see Noll, 2003; Betts, 2004. The UK proposals have to date not been implemented other than some limited pilot programs. For the response of the UNHCR to the UK proposals, see UNHCR, Revised EU Prong, 2003 (approving the use of EU Reception Centres but requiring them to be open in principle and located within the territory of the EU).
54. Notably made up by the four Geneva Conventions of 1949 and their additional protocols (ICRC, Geneva Conventions, 2010; Dunoff et al., 2006).
55. See especially Article 948b(f) of the MCA (asserting that 'a military commission established under this chapter is a regularly constituted court, affording all the necessary "judicial guarantees which are recognized as indispensable by civilized

- peoples" for purposes of common Article 3 of the Geneva Conventions') but that 'no unlawful alien enemy combatant subject to trial by military commission under this chapter may invoke the Geneva Conventions as a source of rights' (Article 948b(g)).
56. This was presuming that the framework of the 'laws of war' was applicable to terrorism at the outset (see generally, Goldsmith, 2007). As an example: 'In a 25 January 2002, memo, White House Counsel Alberto Gonzales advised the President of "the threat of domestic criminal prosecution under the War Crimes Act", a federal statute. He advised Bush to invent a legal technicality – declaring detainees in the "war on terror" to be outside the Geneva Conventions – which, he said, "substantially reduces" the chance of prosecution. Gonzales went further, telling the President that the war on terrorism "renders obsolete Geneva's strict limitations on questioning of enemy prisoners"' (The Nation, 2004).
 57. See especially the Detainee Treatment Act of 2005 and Signing Statement by President Bush.
 58. An explanation that hyper-legalism may stem from an importation of domestic legal methodology to the international level goes some way to explaining the dominance of western countries, and particularly the United States, in examples of hyper-legalism. For these are precisely the countries that emulate technical-legal 'strategic' approaches to lawyering (Legalism 'is... a very common social ethos, though by no means the only one, in Western countries': Shklar, 1986).
 59. See, for instance, the lack of progress made on one of the only 'hard law' treaties in this area, the UN Migrant Workers Convention (Cholewinski et al., 2009).

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12

Refugees or Migrants? The UNHCR's Comprehensive Approach to Afghan Mobility into Iran and Pakistan

Giulia Scalettaris

Introduction

Labelling constitutes an inescapable part of public policy-making (Wood, 1985; Zetter, 1991, p. 44), which entails identifying standardized categories of people in order to define those who can reap the benefits of rights and entitlements. By defining groups of clients and spheres of competence, this operation of classification contributes to organizing public policy. The current international framework addressing international mobility is based on the distinction between 'refugees' and 'migrants'. What theoretically distinguishes refugees from migrants is the cause of departure: forced in the case of refugees (such as persecution and conflict), voluntary in the case of migrants (such as economic reasons). International migration and asylum are currently considered as separate international policy areas. This is reflected in the institutional separation between those institutions responsible for refugees and those for migrants. While there is a consolidated international regime to protect refugees, based on the 1951 Convention and the 1967 Protocol relating to the Status of Refugee (hereafter the 1951 Geneva Convention) and the existence of the United Nations High Commissioner for Refugees (UNHCR), there is no such regime for other categories of migrants, nor is there international consensus about the responsibility of states for responding to migration.¹

In practice, mobility is more complex. There is recognition among scholars today that it is impossible to apply the term 'forced migration' to the real world in a way that enables one to separate out a discrete class of migrants. In fact, a clear-cut distinction between forced and non-forced migration does not account for the way migratory processes actually work and take place in the real world (Richmond, 1988, p. 20; Turton, 2003, p. 7).² Empirical studies have demonstrated that the boundaries between voluntary and involuntary movements are blurred and that refugees are part of complex migratory phenomena (see, for instance, Bakewell, 2000).

Today's resource-poor current Afghanistan has long been a transit region, whose populations have given rise to ancient and varied mobility patterns. Mobility from Afghanistan increased steadily at the end of the 1970s, following the Soviet invasion of the country. Political instability has continued for decades since, propelling renewed flows. The largest destinations were neighbouring Iran and Pakistan. The UNHCR has been traditionally involved with Afghan displacement in the region since the beginning of the 1980s. Afghans in Iran and Pakistan made up 40 per cent of the people of concern of the agency 20 years ago. According to UNHCR statistics, at the end of 2007 there remained some 1.5 million Afghans refugees in Pakistan and some 900,000 in Iran. This size made Afghans the largest group of people of concern to UNHCR, accounting for some one tenth of the entire world's refugee population.

Anthropologists Centlivres and Edwards have questioned the capacity of the 'refugee' category to explain the mobility patterns of Afghan Pashtuns in Pakistan, which were shaped by the conflict as well as by their membership in the Pashtun tribes and in the Islamic community (Centlivres, 1988; Edwards, 1986). More recently, Monsutti's ethnographic study of Hazara migration has pointed out that this population has developed multidirectional and cyclical migration patterns, as well as transnational social and economic networks covering the whole region of Pakistan, Afghanistan and Iran as a livelihood strategy. These migration patterns and networks allow coping with an unstable environment, including by the injection of considerable amount of resources through remittances. While acknowledging that following the outbreak of conflict at the end of the 1970s Afghan migration patterns intensified considerably, Monsutti points out that no clear-cut distinction can be drawn between war and poverty as two separate causes of mobility (Monsutti, 2005).

This brings us to the core question of how the international policy framework based on the distinction between forced and voluntary migration is applied in practice to Afghan population movements. The paper refers to the post-2001 strategy of UNHCR in the region, focusing notably on the attempt of the organization to reconfigure the regional policy framework addressing Afghan mobility based on a new categorization of people on the move. It is argued that the way Afghans on the move are labelled is the outcome of a process of political confrontation between UNHCR and the concerned sovereign states around the status to grant to non-nationals and the criteria that should guide status attribution. Who the 'refugees' are, the criteria according to which they are identified, the degree of protection they are granted, as well as more in general the scope of the 'asylum policy area', are the very outcomes of this contextual process. The additional interest of this case study lies in the comprehensive approach adopted by UNHCR. By acknowledging that its population of concern is part of larger population movements, it looks beyond its strict people of concern

and puts forward a framework addressing Afghan mobility as a whole. By proposing diversified arrangements to address four types of migrants, UNHCR's approach acknowledges the interrelation among the ways mobility is dealt with.

Afghan 'refugees' in Iran and Pakistan

When Centlivres and Monsutti notice the inadequacy of the refugee category to account for Afghan mobility patterns, they refer to the definition enshrined in the 1951 Geneva Convention.³ Instead of focusing on the descriptive scope of the refugee definition, we will focus on the way the latter is applied to Afghans on the move in practice, that is, the way this universal and abstract category takes concrete meaning in reality. How and to whom is it applied concretely? What is at stake in this process? Who are the Afghan 'refugees' in practice?

Iran ratified the 1951 Convention and the 1967 Protocol in 1976.⁴ However, these provisions were not incorporated into domestic law. Within its national legislation, a set of regulations issued in 1963 incorporate a refugee definition based on Article 1A(2) of the Geneva Convention and govern the status of this category. Despite the existence of such regulations, since the end of the 1970s only some 1000 Afghans have been accorded a recognized status according to these provisions. The large majority of Afghans who arrived after 1978 have rather been dealt with collectively by ad hoc measures.

During the 1980s, following the revolution, Iran had a benevolent attitude towards incoming Afghans and, in the name of a religious brotherhood, granted Blue Cards to all, allowing unlimited residence rights and social advantages. This attitude radically changed during the 1990s: exhausted by the war with Iraq and in the light of steady migratory movements, Iran stopped granting Blue Cards, even though conflict was still prevalent in Afghanistan. Mostly, Afghans were not prevented from arriving, but were granted no status at all.⁵

In 2001, in parallel to the setting up of a major repatriation programme organized in collaboration with UNHCR, Iran organized a registration of Afghans. All previous cards were declared expired. Those who registered received a new card, which entitled them either to stay, or to participate in assisted repatriation. Two further registrations were organized in 2003 and 2006 and new cards (Amayesh 1 and 2) were awarded, each of them replacing the previous one. Only the holders of the card issued by the previous registration could register with subsequent exercises.

Internationally, Amayesh card holders are commonly defined as refugees. Formally, however, Amayesh cards do not recognize a status in accordance with the Geneva Convention: the holders are 'foreign nationals' allowed a temporary stay in Iran. These cards entitle them to rather

restricted rights: for instance, holders are not allowed to work in many sectors of the economy and their freedom of movement is restricted. Since 2001, the Iranian government has been gradually curtailing these rights in order to encourage repatriation. The same objective is sought by making registration modalities more difficult to comply with, in terms of fees, places of registration and so on.

Beside registered Afghans, there are hundreds of thousands of unregistered Afghans in Iran. Either they did not take part in the 2001 registration, or arrived after 2001, or did not manage to re-register. No alternative ways of obtaining a permit of stay were available. 2007 estimates ranged from 500,000 to 1.5 million people. This part of the Afghan population has no permit of stay and no rights whatsoever in the Iranian territory, and it is subject to systematic deportation campaigns.

Unlike Iran, Pakistan is not a signatory to either the 1951 Convention or the 1967 Protocol, and has no national legal mechanism for asylum or refugee status determination. The Foreigners Act governs the movement of all non-citizens into and within Pakistan. Under the Act, all individuals who enter Pakistan without either a passport or visa are subject to deportation. The only instruments of law on refugees are constituted by the agreements signed with UNHCR.⁶ In practice, Afghans have been dealt by a *de facto*, non-regulated exemption from the Foreigners Act. Due to the extreme porosity of the border, Afghans were never prevented from entering Pakistan, but have never been granted a formal status.

During the 1980s, in a geopolitical context highly influenced by the Cold War confrontation, when sizeable funds were made available from Western powers, Afghans were allowed to enter and to move freely. Some went to urban centres, other grouped into so-called Afghan Refugee Villages, where assistance was initially available. As was the case in Iran, the treatment gradually deteriorated during the 1990s, in parallel with the decrease of international assistance after the Soviet withdrawal. At the end of the 1990s, alarming reports documented increased harassment and deportations (see, for instance, USCR, 2001; HRW, 2002).⁷

The first comprehensive registration of Afghans in Pakistan by the Pakistani authorities took place only between 2006 and 2007, following a census in 2005. The census was open to all Afghans living in Pakistan, while registration was open only to those who took part in the census. Those who registered received a Proof of Registration (PoR) card valid for 3 years, recognizing the status of 'Afghan citizen temporarily residing in Pakistan'. The PoR card is a temporary permit of stay but doesn't entail any additional right such as work permit or freedom of movement. Similarly to the 2001 registration in Iran, the 2005 census marked a watershed in Pakistani policies vis-à-vis Afghans: on the one hand all those present in the country were offered the possibility of a temporary permit of stay, on the other hand the state of exception to the Foreigners Act officially

ended, as all those arriving in Pakistan after the 2005 census are subject to the Foreigners Act.

Until 2007 all Afghans in Pakistan were internationally referred to as refugees. UNHCR relied on estimates to quantify them, since they were never counted. Following the 2007 registration, PoR card holders (as opposed to undocumented Afghans) are labelled as refugees.

If we look at the status held in practice by those Afghans in Iran and Pakistan who are internationally labelled as refugees, we realize that the status they hold and the set of rights they are entitled to are quite flexible, ranging from cards entitling for indefinite stay with extensive rights, to temporary permits of stay without any additional rights, to no status at all. Moreover, we note that neither Iranian nor Pakistani documentation policy is rooted in a formal evaluation of the causes of departure. In practice, in Iran Afghans obtained a permit of stay according to the period they arrived in Iran (during the 1980s or the 1990s), and to their ability to participate in the 2001 registration and to comply with the modalities of subsequent registrations. In Pakistan, they obtained a formal permit of stay according to their participation in the census. The refugee status determination procedures led by UNHCR itself constitute the only exception. These procedures, however, only concern a negligible number of Afghans who are in general resettled through small-scale programmes, since UNHCR cannot issue permits of stay.

We should then perhaps put the question differently: what makes Amayesh card holders and the PoR card holders refugees? The technical documents refer to registered Afghans falling under the competence of UNHCR as 'registered Afghans' or 'Amayesh card holders' or, after 2007, 'PoR holders', for the sake of precision and clarity.⁸ However, when it comes to reports with a wider dissemination and to global statistics, nuances disappear and this population is referred to as 'refugees'.⁹ So labelled, they integrate global refugee statistics, where, as people of concern to UNHCR, they are made 'homogeneous' with other Afghans and non-Afghan non-nationals around the world, who are also labelled as 'refugees', and who, however, might enjoy very different statuses, which were attributed according to different modalities.

This is after all not surprising if we consider that the 1951 Geneva Convention does not contain any instruction as to how to identify refugees, nor universal obligations concerning the rights to be granted to them. Indeed, it sets out the obligations of the signatory states concerning the treatment to be accorded to refugees, but these standards are expressed in relative terms, with respect to 'nationals' and 'other foreigners'. Not to mention the fact that there are still a good number of countries that have not signed the Geneva Convention, and that in the end, in the absence of a coercive power, the provisions of the 1951 Convention are not binding even upon signatory states.

Disentangled from a precise degree of protection and from the causes of departure, 'refugees' do not constitute a pre-defined group of non-nationals that should be granted a pre-defined degree of protection. In each single situation the matter is about defining which status to grant to which non-national, and according to which criteria. This process is necessarily contextual and historical. We already mentioned some of the factors influencing this process of status attribution. In the next section we are going to look closer into it, focusing on the post-2001 strategy of UNHCR and on the way the agency implements it.

Towards a new policy framework addressing Afghan mobility

In 2001, when the treatment of Afghans in both Iran and Pakistan had critically degenerated, UNHCR decided to promote a screening exercise to identify those Afghans who could not return to Afghanistan for protection reasons, and recognize them with a formal status. In Pakistan, due to the huge size of the Afghan population, it was impossible to organize a refugee status determination exercise. Therefore, UNHCR focused on new arrivals. In Iran, instead, the national authorities organized the first registration in 2001. UNHCR was worried for those non-registered Afghans who risked persecution in Afghanistan: as no alternative way of obtaining a permit of stay existed, they risked being deported. Given the impossibility of introducing refugee status determination procedures, UNHCR claimed screening deportees.

The operations to set up the screening process were interrupted by the geopolitical swing following the 9/11 attacks, which led to the intervention of the United States in Afghanistan, the overthrow of the Taliban and the start of a political process of reconstruction led by the international community. This geopolitical change paved the way for unprecedented waves of return from both Pakistan and Iran. 2002 saw a massive return movement: almost 2 million people availed themselves of the repatriation programme, making it the single largest repatriation ever managed by UNHCR.¹⁰ In Afghanistan, the organization set up a major reintegration programme, including direct assistance to the returnees as well as capacity-building efforts and advocacy initiatives aimed at including high return areas in national development plans.

The UN agency, however, was aware that repatriation, albeit massive, would not by itself lead to the end of, or constitute the final solution to, Afghan displacement in the region. A new impasse loomed on the horizon. In fact, the Iranian and Pakistani governments did not hide their intentions; they were firmly determined in demanding that all Afghans go back to their country, where an internationally led reconstruction process was underway.

According to the analysis of UNHCR,¹¹ however, a complete return of Afghans to Afghanistan was not conceivable, for at least three reasons. First,

the absorption capacity of Afghanistan and the conditions in the country. Exhausted by decades of conflict, still one of the countries with the lowest development indexes in the world, Afghanistan lacked land, shelters, infrastructure, livelihood, health and education services. The return of nearly 2 million Afghans in 2002 had put the country under strain and questioned its capacity to absorb similar numbers in the following years. UNHCR assumed that the improvements would be gradual, also depending on the outcomes of international involvement. Secondly, the social and demographic profile of the Afghan population in Iran and Pakistan made it clear to the UN agency that a large portion was willing to stay in the neighbouring countries. Most of the remaining population had been living there for decades and got used to higher standards of living. An entire generation had been born and had grown up outside Afghanistan. Thirdly, UNHCR acknowledged that cross-border movements had intensified over recent decades and were prevalent. Mobility was rooted in the economic differentials between Afghanistan and neighbouring countries and transnational networks had become a critical component in the livelihood system of many Afghan families. Thus, the presence of Afghans in neighbouring countries was embedded in complex migratory patterns, driven by different motives, including economic and social factors.

Based on this analysis, in 2003 the agency developed a strategy for the subsequent years and notably identified four categories of people requiring diversified solutions: those willing to return at some point to Afghanistan; long-staying Afghans who had de facto integrated in the host country; those in need of international protection; labour migrants. The regional strategy developed by UNHCR consists in the elaboration and the adoption of a new regional policy framework addressing Afghan population movements into Iran and Pakistan. Basically, UNHCR aims at recasting the terms under which status is attributed to Afghans in neighbouring countries.

- (1) The first component of the Afghan population in Iran and Pakistan identified by UNHCR includes those Afghans willing to return to Afghanistan, or waiting for conducive conditions to do so. For this portion of the Afghan population, repatriation and reintegration actually constitute a solution. They would make use of UNHCR's repatriation and reintegration programmes. However, UNHCR acknowledges that their number is gradually decreasing. Hence the need to contemplate additional arrangements.
- (2) Long-staying Afghans refer to those who have developed strong links in Iran, and have de facto integrated. UNHCR considers that, even though they do not strictly fear persecution in Afghanistan, any return would not be voluntary in their case. Therefore, they would need a more predictable status outside their country of origin, providing at least secure long-term residence. For this part of the Afghan population, UNHCR

also contemplates development assistance programmes in locations impacted by the Afghan presence.

- (3) Afghans in need of protection are those who cannot return to Afghanistan because they fear persecution. This component of the Afghan population in neighbouring countries corresponds to the population of concern of UNHCR. UNHCR considers that they should benefit from an adequate protection regime including an improved asylum mechanism and higher protection.
- (4) Finally, UNHCR acknowledges the existence of movements that are economic or social in nature. According to UNHCR's analysis, even though work possibilities in neighbouring countries are high (and, indeed, entire sectors of those economies rely on the Afghan workforce) no legal channels are available. Favoured by the porosity of the borders, cross-border movements take place through informal channels. As a consequence, all those who cross the border find themselves in an illegal situation and are exposed to deportation. Therefore, UNHCR deems it necessary to build a migration framework offering labour migrants legal channels and temporary residence rights in destination countries.

With the financial support of the European Commission, UNHCR adopts a proactive role to steer up and supervise the transition, including through the involvement of the International Organization for Migration (IOM) and the International Labour Organization (ILO), whose technical assistance is considered important for elaborating arrangements and for institutional capacity building. The final goal of UNHCR's strategy is the management of mobility lodged within normalized bilateral relations, as a source of dialogue and regional stability. Once the transition is accomplished, UNHCR's role would be confined to supervising the refugee status determination, in line with its traditional mandate.

Negotiating protection

In the years following 2001, UNHCR remained firmly engaged in both repatriation and reintegration in Afghanistan. In all public documents and declarations, repatriation is always considered as 'the preferred durable solution'. The condition is that it should be voluntary. Voluntary return constitutes the guiding principle of the agency and Iran and Pakistan committed themselves to respect it by signing the Tripartite Agreements. Negotiated and signed in 2002 with Iran and 2003 with Pakistan, the Tripartite Agreements, involving Afghanistan, UNHCR and Iran and Pakistan respectively, govern the programme of repatriation. At the same time, whilst supporting repatriation, UNHCR is aware that the return of all Afghans is not viable. Therefore the agency wants to convince the governments of Iran and Pakistan that a portion of the Afghan population will most likely not go back

to Afghanistan, and that it is necessary to put in place new arrangements providing for more stable and predictable statuses.

As sovereign states, only the Iranian and Pakistani governments have the authority to concretely allow non-nationals to enter their territory and grant them rights (first of all the right of residence). UNHCR, being a multilateral agency, has no capacity to do so. UNHCR is present in Iran and Pakistan in the capitals and with a number of field offices. However, the extent to which UNHCR is consulted both by legislators and in government decision-making, is limited. In practice, the action of the agency consists in negotiating with the governments concerned, trying to influence their policies and promote its vision. Its counterparts are the Ministry for States and Frontier Regions (SAFRON) and the Commissioner for Afghan Refugees (CAR), in Pakistan, and the Bureau of Aliens and Foreign Immigrant Affairs (BAFIA) within the Ministry of Interior in Iran. The Agreements established a mechanism of consultation, based on Tripartite Commissions due to meet some three times per year.

Until 2001, due to scarcity of funding and a political impasse, the negotiating leverage of UNHCR was quite limited. Yet the geopolitical swing changed the situation. The region now has come to be the centre of international interest and more funding is available. Besides relieving the neighbouring countries, the reactivation of repatriation programmes and the huge return movement also gave legitimacy to the intervention of the international community in Afghanistan and to the reconstruction process. Even more than the assistance programmes that UNHCR continues to fund in neighbouring countries, the key asset vis-à-vis Iran and Pakistan is its repatriation and reintegration programmes, since the sustainable return within the legitimate framework of a programme of voluntary repatriation is at the centre of strategic interests of neighbouring countries. This opens up a space for leverage. UNHCR wants to seize this space to foster the political will of the neighbouring countries to follow its vision and embark on a transition to reform the policy framework addressing Afghan mobility.

In 2003, UNHCR launched a process of high-level strategic consultations, involving the governments of Afghanistan, Iran and Pakistan as well as donors and technical cooperation agencies, with a view to bringing the issue of population movements to the highest levels and gaining political support for the policy transition. To inform this political dialogue, UNHCR relies on a substantial amount of fresh, expressly committed research on Afghan population movements, transnational networks, second generation Afghans and market analysis (see, for instance, Stigter and Monsutti, 2005; Abbasi-Shavazi and Glazerbook, 2006; Altai Consulting, 2006; CSSR, 2006; Wickramasekara et al. 2006; Saiko, 2007).

Furthermore, UNHCR is engaged in its relationship with neighbouring countries for the management and implementation of its repatriation programme in the region. UNHCR is aware of the pragmatic need to reduce the

number of Afghans in neighbouring countries in order to make the size of the population acceptable to the governments. In fact, the agency hopes that the return of a portion of the Afghan population will make host countries more flexible towards remaining Afghans and more willing to switch to a new framework. On the other hand, UNHCR safeguards the principle of voluntary return and counterbalances the increasing pressures of Iran and Pakistan who, noticing a decline in repatriation rates, are willing to encourage more substantial returns.

In 2003/2004, for instance, Iran adopted a set of 'regulations on accelerating repatriation of Afghan nationals', which limited the rights of Amayesh card holders in term of access to education and medical services. In 2005 Iran declared a province highly populated by Afghans as a no go area for foreigners and started to confiscate documents from those who refused to leave. Since 2004, noticing that most returnees did so from urban centres, the Pakistani government decided to close a number of camps and in 2005 went as far as to decide to close all camps in the Federally Administered Tribal Areas (FATA) region. By constantly referring to the clause of voluntary repatriation, UNHCR tries to mitigate these pressures. With regard to camp closure, for instance, whilst unable to prevent Pakistan from closing camps on its territory it demands that there is a viable relocation option available within Pakistan and that no violence takes place. In Afghanistan, it joins and supports also the position of the Afghan government, who, for instance, intervened in 2005, officially asking Pakistan to slow down camp closure. When there is no other way, UNHCR can go as far as taking a public position, as it did in 2005 towards Iran, when the agency threatened to withdraw from its programmes. In addition, the agency constantly monitors returns to Afghanistan and is engaged in constant advocacy, pointing out the situation on the ground in Afghanistan, highlighting the deteriorating security situation and the shrinking absorption capacity.

Mitigating the pressures on the Afghan population and laying the basis for the reform of the overall policy framework addressing Afghan mobility can be seen as staggering goals. Whilst resisting year by year increasing pressures, UNHCR needs at the same time to secure the political space to negotiate and lay down the basis of this transition. Reaching a breaking point on short-term priorities might compromise the negotiation of long-term goals. It is indeed a delicate equilibrium to ensure, all the more so as it is not sure to what extent such a balance is achievable, given the huge size of the population concerned. In 2008, 4 years after the launch of the long-term strategy of UNHCR, the openings of neighbouring countries towards the new framework put forward by UNHCR are limited. Neither Iran nor Pakistan have substantially changed their principled position that all Afghans should return to their own country.

As far as Iran is concerned, the main developments concern labour migration. In spite of many declarations stating that migration arrangements

would be discussed only after completion of return, in 2006 Iran agreed to offer hundreds of thousands of visas for seasonal labour migration to Afghan heads of households, provided that the rest of the family went back to and remained in Afghanistan. This stance indirectly acknowledged the importance of Afghans to its national economy. UNHCR hopes that this scheme might evolve into a broad agreement on seasonal migration. On the other hand, there is no concrete change as far as long-stayers are concerned. Iran has made some informal declarations concerning the specific situation of veterans of the Iraq War and particularly vulnerable individuals, but never adopted new arrangements vis-à-vis this population. Lastly, in spite of UNHCR's attempts to capitalize on existing procedures to establish an asylum mechanism in line with international standards, Iran did not show any political will in that direction.

Signed in 2003 after long negotiations, the 2003 Tripartite Agreement between Afghanistan, Pakistan and UNHCR included the agreement on a screening exercise due to take place upon the end of the repatriation programme, aimed at distinguishing between 'migrants' and those 'in need of international protection'. This was already a good starting point in the light of the long-term strategy of UNHCR, since it indirectly already recognized that not all Afghans would have returned, and that a refugee status determination exercise was necessary to identify those deserving international protection. Nevertheless, Pakistan maintains an official position that all Afghans should repatriate. Pakistan frequently argues for a higher engagement of donors in Afghanistan, to make the conditions there more conducive to return.

The census and the registration exercises constituted an important development in the arrangements addressing Afghans in Pakistan. The census allowed the collection of more information about a population whose size and profile was basically unknown. For instance, the data on place of origin, age, year of arrival and vulnerabilities allowed for a better planning for reintegration programmes in Afghanistan. The data confirmed UNHCR's initial analysis and the pertinence of its long-term strategy, for it demonstrated that the remaining Afghan population (some 3 million people) is very young, has presently been living in Pakistan for decades and has no intention to return. Pakistan has accepted that these data will constitute the base for future policies. The registration granted a permit of stay for 3 years, thus temporarily protecting the Afghan population from harassment and deportation.

Another shift in the position of the Pakistan government regards the nature of the assistance to Afghans in Pakistan. While Pakistan supported care and maintenance programmes only to underline the temporary nature of the Afghan presence, UNHCR advocated more development-oriented poverty reduction programmes in refugee-affected areas, with a view to fostering local integration. In the end, the Pakistani government endorsed development-oriented programmes. On the migration front, however,

Pakistan shows no political will to enter into such discussions, neither is the climate conducive to the setting up of new asylum mechanisms.

In both countries, a strong resistance to institutional change by those institutions responsible for administering the Afghan presence, whose existence has consolidated within national administrations, has proved difficult to overcome. The numerous attempts to involve other institutional actors within the Ministry of Foreign Affairs, or the Ministry of Social Affairs have not succeeded. Bureau of Aliens and Foreign Immigrant Affairs (BAFIA) and Ministry of States and Frontier Region (SAFRON) still keep the monopoly on the policies about the Afghans' presence in the country.

Year after year, the situation looks more and more challenging and UNHCR's breathing space seems to grow smaller. While the decrease of repatriation rates induce neighbouring countries to renew pressures, the conditions in Afghanistan do not look encouraging. Notwithstanding a number of overtures as well as informal acknowledgments, no substantial change on the principled position has occurred: officially, both countries still refuse to hear about 'residual population'. Meanwhile, regional relations, especially those between Afghanistan and Pakistan, become more tense, and the policies vis-à-vis the Afghan presence in neighbouring countries, by now a structural element of the regional relations, have increasingly become a political tool.

The politics of labelling

Starting from 2001, UNHCR has strived to introduce the distinction between forced and voluntary migration in a regional context where this principle had no practical application. We can see this stance when we consider the attempts by UNHCR to introduce a screening mechanism of new arrivals in Pakistan and of deportees from Iran. In a context where the general treatment of Afghans in neighbouring countries had markedly degenerated, these measures were aimed at extrapolating from the whole Afghan population in neighbouring countries those who left Afghanistan because of persecution or conflict, in order to ensure that they received a higher degree of protection. In respect to the new policy framework promoted by UNHCR, when we consider the category of 'people in need of protection' and the establishment of asylum mechanisms in line with international standards, we notice that here, too, UNHCR wants to introduce a mechanism to identify forced migrants within the aggregate of people on the move and to grant them a higher status than the ones available.

UNHCR, therefore, supports the distinction between forced and voluntary migrants as the main criteria that should govern status attribution to non-nationals and promotes a framework more in line with the international model briefly illustrated in the introduction, polarized in terms of forced versus voluntary migration. Indeed, this is the same criterion that

defines the mandate of UNHCR. In other words, identifying forced migrants in need of protection is essential for the pursuit of the very mandate of the agency. Questioning the possibility of distinguishing between forced and voluntary migration would mean ascertaining the impossibility of pursuing its mandate.

In dealing with Afghans on their territories over almost three decades, the governments of neighbouring countries have other priorities than identifying those who escaped persecution and conflict and protecting them. Even though they have to some extent endorsed the distinction between forced and voluntary migration as a legitimate criterion by signing international acts of law, this is not necessarily their preferred criteria in dealing with non-nationals. They are rather driven by political considerations of national interest that are not analyzed in detail in this chapter.

The clash of criteria and the implications that this clash has for labelling are apparent when we consider that Iran and Pakistan justified the hardening of their policies during the 1990s by stating that newcomers were voluntary economic migrants, not forced migrants anymore – even though conflict was still prevalent in Afghanistan. What had changed was rather the geopolitical context of conflict as well as the internal issues at stake as to the Afghan presence. Similarly, the existence of conflicting definitions of refugees is exemplified by the following passage of the 2005 tripartite Agreement between Iran, Afghanistan, and UNHCR: ‘The term “Afghan refugees and displaced persons” shall – for the purposes of defining the scope of this Joint Programme only – mean Afghan citizens in Iran who were registered in the Amayesh registration exercise undertaken by the Iranian authorities in 2003’. This formulation reflects the fact that Iran and UNHCR do not share a common definition of who the refugees are. For Iran, the refugees are those who registered in the 2001 registration. UNHCR, however, cannot endorse this distinction because it is aware that registration modalities were not rooted in an assessment of the causes of departure.

In the end, the actual criteria applied in practice is, at best, one in-between, on the one hand, the opposition voluntary versus forced migration put forward by UNHCR, and, on the other hand, the criteria put forward by the host state. In fact, we notice that, for the large part, refugee status determination – that is the moment when the theoretical distinction between refugee and voluntary migrant assumes concrete meaning in reality – almost never takes place. Due to the size of the population, but also and foremost to the resistance of host states, the motives are never examined (at least until 2007). While indeed it will be instructive to analyze screening modalities and how these are applied, for the scope of this chapter it is enough to note that the circumstances in which the screening between forced and voluntary migration effectively takes place are very marginal and only concern negligible numbers of Afghans.

We observe that, in this case study, the upstream process governing the attribution of status to non-nationals in practice is not a legal matter about distinguishing in an accurate way among complex mobility patterns, as much as the confrontation between States and UNHCR around criteria of status attribution to non-nationals in a situation where the protection available is limited, with forced as opposed to voluntary migration being the criteria promoted by UNHCR, and political considerations of national interest driving states. This is a political process that takes place in the interplay between national and international constituencies, where what is at stake is the ability of a multilateral agency to safeguard the application of international law in a field where states are particularly averse to a renunciation of sovereignty. Even though states maintain the monopoly on the granting of status, they do not maintain the monopoly of definitions. These examples, as well as the attempts of UNHCR to introduce a new framework based on four categories, providing for a new way of attributing status and rights, shows that the labelling itself is a field of political confrontation.

Harmonized arrangements addressing mobility as a whole

UNHCR promotes the establishment of a proper asylum policy in line with international standards, including refugee status determination procedures to identify forced migrants out of the aggregate of people on the move, and higher standards of protection. However, at the same time, while defining its post-2001 policy vis-à-vis Afghan displacement, the agency looks beyond its population of concern and develops a more comprehensive strategy. UNHCR recognizes that its population of concern is part of a larger context of population movement. In fact, the agency identifies notably four categories (future returnees, long-stayers, persons in need of protection, labour migrants), puts them on a continuum, and defines diversified arrangements to address each type of mobility. The strategy put forward by UNHCR aims at reconfiguring the whole framework addressing mobility patterns in the region. By so doing, UNHCR's approach tackles Afghan mobility as a whole and acknowledges the interrelation between the ways mobility is dealt with. Herein lies the comprehensive nature of UNHCR's approach as well as its innovative scope.

The four categories drawn by UNHCR indirectly also acknowledge the inadequacy of the opposition voluntary vs forced migration to account for Afghan population movements. In fact – it being understood that identifying forced migrants is necessary, since this is the population UNHCR is mandated to seek solutions for – the clear-cut opposition between 'people in need of protection' and 'labour migrants' is blurred and diluted by two other categories: long-stayers and those who need more time before returning to Afghanistan.

Usually, as there is no agency mandated to protect other categories of migrants, applying the mandate of UNHCR consists in extrapolating from the bulk of people on the move those who deserve a higher degree of protection. In the absence of an alternative available status, identifying a forced migrant means drawing the line of inclusion to a degree of protection. Let's remember, for instance, that the screening was deemed necessary only when the general treatment of Afghans in neighbouring countries had deteriorated in an irreversible way, to provide forced migrants with a higher degree of protection. By contrast, the regional strategy of UNHCR for Afghan displacement does not aim exclusively at separating forced migrants from the whole aggregate of people on the move in order to grant them protection, but to grant to each type of migration a specific degree and type of protection. With alternative forms of protection available, the consequences of the screening exercise would have less critical consequences, as it becomes possible to obtain a temporary permit of stay protecting from harassment and deportation.

UNHCR goes beyond the economy of traditional solutions for refugees to envisage a more comprehensive 'economy of solution' in addressing the Afghan mobility in the region as a whole. Hence, UNHCR's strategy indirectly acknowledges the interrelation among the arrangements addressing mobility, as arrangements influencing one another and requiring harmonization. In fact, it is in order to better protect forced migrants, its population of concern, that UNHCR acknowledges the importance of addressing in a harmonized way the movements as a whole. In this specific case, UNHCR identifies the lack of legal channels for mobility and/or alternative legal statuses available in neighbouring countries as one of the key obstacles. Making available legal channels and differentiated statuses in neighbouring countries (notably introducing a labour migration framework, a specific long-term status for long-stayers) is part of the solution to improve the conditions of forced migrants, as actually a way, *inter alia*, to counterbalance the protection for forced migrants.

Two main questions remain as to the actual implementation of UNHCR's proposed framework. The first regards the political will of Iran and Pakistan to modify the criteria of status attribution or even grant more predictable statuses, when their will to offer status and rights is actually decreasing. The second question regards the contents of the arrangements. UNHCR papers do not address this issue and leave it to be defined through bilateral negotiations. With regard to labour migration, it is simply said that labour migration needs to be regulated. However, why should Iran and Pakistan be willing to regularize labour migration, when they are already benefiting from a cheap workforce of unregistered Afghans? And would new arrangements be able to offer legal channels to all those willing to work in Iran and Pakistan? The same dilemma crops up again, as opening legal channels and a more secure status for some might entail a worse treatment for others.

A crucial element will be the capacity of the Afghan government to enter these negotiations and advocate for its nationals.

As of 2008, the regional strategy outlined in this paper remained a rare example of a broad approach to mobility – which made it an innovative programme within UNHCR itself. Indeed, in other contexts the agency rather focuses its action on ensuring an asylum space against increasingly restrictive migration policies. This is the case, for instance, of its action vis-à-vis the countries of the European Union, aimed at ensuring the access of asylum seekers to the refugee status determination mechanism in place in those countries. The link with the European Union – which is one of the largest donors at the same time of UNHCR and of the process of reconstruction in Afghanistan – points to the global dimension of the action of UNHCR and to the larger context in which the political confrontation around labelling and status attribution to Afghan nationals takes place.

Notes

1. See, for instance, Ghosh, B. (1995) 'Movements of People: the Search for a New International Regime'. *Issues in Global Governance. Papers written for the Commission on Global Governance, Kluwer Law International*, pp. 405–24; Karatani, R. (2005), 'How History Separated Refugee and Migrant Regimes: In Search of Their Institutional Origins'. *International Journal of Refugee Law* 17(3).
2. Theoretically, the crucial problem has been the fact that every kind of migration implies at least some degree of agency. Most migrants take their decision to migrate in response to a complex set of external constraints and predisposing events. These constraints and events vary according to their salience and impact, but there are elements both of compulsion and choice in all migrants' decision-making (Turton, 2003, p. 7). In order to overcome that, Richmond, for instance, has elaborated a theoretical framework in which rather than distinguishing between 'forced' and 'voluntary' migration, he distinguishes between 'proactive' and 'reactive' migration, seen as the opposite ends of a continuum, according to the degree of agency exercised by the actors involved (Richmond, 1988, p. 20).
3. According to Article 1A(2) of the Convention, as amended by the 1967 Protocol, a refugee is a person who, 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it'.
4. Iran set a number of reserves, including on wage earning employment and freedom of movement.
5. On the evolution of the attitude of the Iranian government vis-à-vis Afghans see Adelkhah, F., Olszewska, Z. (2007), 'The Iranian Afghans'. *Iranian Studies* 40(2); Rajee, B. (2000) 'The Politics of Refugee Policy in Post-Revolutionary Iran', *Middle East Journal* 54(1): pp. 44–63; Abbasi-Shavazi, M. J. et al. (2005) Return to

- Afghanistan?: a study of Afghans living in Tehran, Islamic Republic of Iran. Afghanistan Research and Evaluation Unit, Kabul.
6. According to some scholars, these engage Pakistan to observe a substantive body of refugee law (Zieck, 2008).
 7. There exists an abundant literature on the policies of the Pakistan government vis-à-vis Afghans. See for instance Fielden, M. B. (1998) 'The Geopolitics of Aid: The Provision and Termination of Aid to Afghan Refugees in the North West Frontier Province, Pakistan'. *Political Geography* 17(4): 459–87; Ruiz, H. (2002) 'Afghanistan: Conflict and Displacement 1978 to 2001'. *Forced Migration Review* 13; Schoech, R. (2008) *Afghan Refugees in Pakistan During the 1980s: Cold War Politics and Registration Practice*. *New Issues in Refugee Research*, 157, Geneva: UNHCR.
 8. For instance, in the 2005 Tripartite Agreement between Iran, Afghanistan and UNHCR, it is specified that 'the term "Afghan refugees and displaced persons" shall – for the purposes of defining the scope of this Joint Programme only – mean Afghan citizens in Iran who were registered in the Amayesh registration exercise undertaken by the Iranian authorities in 2003'. In the 2007 Tripartite Agreement between Pakistan, Afghanistan and UNHCR refugees are defined as those 'Afghan citizens who have sought refugee in Pakistan and who are holders of a valid Proof of Registration'.
 9. See papers such as UNHCR's Global Appeals and Reports.
 10. See, for example, Turton, D., Marsden, P. (2002) *Taking Refugees for a Ride? The Politics of Refugees Return in Afghanistan*. Kabul: Afghanistan Research and Evaluation Unit.
 11. The next paragraphs summarize the salient points relevant for the present analysis of the following papers: UNHCR (2003) *Towards a comprehensive solution for displacement from Afghanistan*. Discussion Paper. UNHCR, Geneva, and UNHCR (2004) *Afghanistan. Challenges to return*. UNHCR, Geneva. For a broader contextualization see also Macleod, E. (2008) 'Afghan refugees in Iran and Pakistan'. Loesher, G., Milner, J., Newman, E., Troeller, G. (eds) *Protracted Refugee Situations: Political, Human Rights and Security Implications*. United Nations University Press.

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13

From 'The Whole Enchilada' to Financialization: Shifting Discourses of Migration Management in North America

Matt Bakker

What does 'migration management' look like in the context of contemporary migration from Mexico to the United States? At first glance it is tempting to conclude that there has been little in the way of coherent migration management activity over the last 50 years or so. After all, since the termination of the Bracero temporary worker programme (1942–64), neither the Mexican nor the US government has been particularly interested in working together to address the continuing flow of undocumented Mexicans into the United States.

This initial impression is reinforced by the tendency within research literatures to focus exclusively on the unilateral policy domains of Mexican emigration policy (Fitzgerald, 2009) or US immigration policy (Andreas, 2000; Cornelius, 2001). It might be that this reflects the actual domestic orientation of state policy. As the sociologist Alejandro Portes has recently argued:

[I]nternational migration flows receive far more attention for their real or imagined effects in receiving societies than for their effects in places of origin. Governments of host nations generally follow suit, enacting policies designed to stem or channel the flow according to purely domestic interests with nary a thought about the implications of these policies for migrant-sending nations. Governments of the latter have not proven much more enlightened, as their interests in migration seldom extend beyond the size and growth of remittances sent by their expatriate communities.

(Portes, 2009, pp. 17–18)

In terms of sending state policies, the academic literature on transnational migration and the 'global nations policies' that help to reinforce and

reproduce it – a body of work in which the Mexican case occupies a prominent place (Basch et al., 1994; Berg and Tamagno, 2006; Coutin, 2007; Goldring, 2002; Guarnizo, 1998; Itzigsohn, 2000; Levitt and de la Dehesa, 2003; Smith, 1998) – actually presents a substantially more nuanced picture of the objectives pursued by migrant-sending states than Portes lets on. This valuable vein of research has documented the widespread diffusion of policies aimed not only at capturing the economic resources of migrants, but also their political support at home and abroad. This understanding of the common bureaucratic toolkit migrant-sending states are increasingly relying upon to tap into the political and economic resources of their migrant communities for domestic gain can, however, give the misleading impression that such policies constitute both an enduring feature of the present international conjuncture and something of a counter-hegemonic strategy of states on the periphery of the geopolitical system. This obscures the fact that migration policy-making is now commonly the object of collaboration and negotiation on the part of migrant sending and receiving governments (as well as other agents outside ‘the state’), as in the case of US–Mexican migration I examine here. This increasing transnational collaboration around migration-related policy deserves more careful documentation and examination, and this chapter contributes to that task.

This chapter documents the shifting contours of migration policy discourses and negotiations in North America over recent decades, and in so doing it paints a distinct picture of the content and agencies driving migration policymaking. Rather than conceiving of immigration or emigration policies as deriving from the ‘national interest’ of the US or Mexican states, respectively, the chapter aims to bring into focus the growing collaboration between the two states as migration has come to take a place within the larger project of North American integration and has become the object of a growing assemblage of institutions and agencies pursuing remittances and development policies. This growing assemblage involves US government bodies (e.g. the Department of the Treasury, the Federal Reserve Bank and the Federal Deposit Insurance Company), Mexican government agencies (such as the Secretaría de Desarrollo Social, the Banco de México and the Instituto de los Mexicanos en el Exterior), international financial institutions (including the International Monetary Fund, the World Bank and the Inter-American Development Bank), private foundations and think tanks (e.g. the Inter-American Dialogue, the Migration Policy Institute, the Rockefeller Foundation and Hispanics in Philanthropy), a multitude of migrant organizations and hometown associations, and for-profit financial institutions (such as Wells Fargo Bank and the money transfer operation First Data Corporation).

The account of the growing collaboration between the United States and Mexico that I provide here sheds light on the brief moment when an agreement seemed possible that might normalize US-bound Mexican migration

and codify the two governments' regulatory roles in managing the flow of migrants to the North; and on how that possibility evaporated following the terrorist attacks of 11 September 2001, leading migration policy in North America to increasingly turn towards the financialization of remittances, with the implicit hope that extending financial markets and networks might generate the economic opportunities necessary to put a halt to migration in the future. Given the multi-faceted complexity of this policy domain, my sketch of the shifting frames of migration policy discourse and practice in North America is necessarily partial. The chapter begins with a brief analysis of the policies adopted by the Mexican government towards migrants living abroad since around 1990. In parsing out the significance of the discourse and practice of migration management in North America, the remainder of the chapter focuses on the content and meaning of the US and Mexican governments' negotiations and collaboration on migration policy before and after 11 September 2001, and then turns to examine the discursive output of one key agency within the broader assemblage of actors and institutions that in recent years has increasingly engaged in the design and implementation of policies coveting migrant remittances as a 'development tool'. I then conclude by drawing out some of the implications of this study, emphasizing the increasingly transnational and multi-scalar character of processes of migration policy formation and implementation, the particular form of power put into operation by the remittances-to-development assemblage, and the production of expert knowledge and technocratic discourse that gives that assemblage its force.

Emigrant policies and the end of the 'Policy of Having No Policy'

For many years after the US government's unilateral decision to terminate the Bracero temporary labour programme in 1964 Mexican officials attempted to reinitiate negotiations over US-bound migration. By the 1980s, however, Mexican government officials abandoned attempts to negotiate with the United States (Délano, 2006). The government's implicit new policy, often referred to as a 'policy of having no policy'¹ (García y Greigo, 1988), was based on the assumption that engaging in any such discussions would adversely affect the continued flow of migrants and potentially sour the larger bilateral relationship with the United States (Alba, 2007; Castañeda, 2007; Délano, 2006). According to Mexican officials' strategic logic, the status quo offered the Mexican state the best of both worlds – out-migration served as a safety-valve releasing pressures on the labour market and the social safety net, and Mexico had no responsibility for controlling the flow. This position led the Mexican government to stay on the sidelines as policy options were being debated in the United States in the run-up to the approval of the Immigration Reform and Control Act (IRCA) in 1986.

Following the approval of IRCA and its granting of legal status in the United States to over 2 million Mexican nationals, many analysts suggested that it was time for Mexico to move away from its implicit policy and begin developing a national policy on emigration (see, for example, García y Griego, 1988). By all accounts Mexican policy-makers took this advice to heart.

In the years that followed the passage of IRCA, Mexican officials came to accept the fact that Mexico was a 'nation of emigrants', that migration was going to be an on-going feature of its national development and identity, and that its foreign policy needed to be adapted to that reality (Fitzgerald, 2009; González Gutiérrez, 2006, p. 200; Smith, 2003). The leading example of the Mexican government's efforts to create an emigration policy in the years following IRCA was the creation of the Programa para las Comunidades Mexicanas en el Extranjero (PCME) in 1990. The stated objectives of this programme were three-fold: 1) to maintain cultural ties between Mexico and its nationals and their descendants living abroad; 2) to promote migrant investment in sending communities and 3) to protect the rights and 'promote the development of Mexicans in the United States' (Smith, 2003, p. 306). In furtherance of this mission, the PCME carried out a variety of activities including the creation of Mexican Cultural Institutes in major US cities that helped to raise awareness about Mexican history and culture; it provided assistance to Mexican migrants interested in creating community organizations, such as sports leagues or hometown associations; and it sponsored exchange programs designed to keep Mexican American youth connected to the homeland.

Beyond its self-recognition as a nation of emigrants, explanations for why the Mexican government was driven to create the PCME usually centre on two inter-related political factors. First, the PRI regime needed to shore up its political legitimacy among migrants in the aftermath of the 1988 elections. The PRI candidate Carlos Salinas emerged victorious from those elections, but his victory was marred by allegations that his main opponent, Cuauhtémoc Cárdenas, had been robbed of the election through vote rigging, disappearing ballot boxes, and other electioneering tactics long mastered by the PRI regime. Cárdenas had found significant support for his campaign among Mexicans in the United States and the creation of the PCME was part of a strategy aimed at quieting opposition tendencies within the diaspora (Alarcón, 2006, p. 159). As the Mexican consul in Los Angeles at the time put it: 'One of the greatest protest marches against the outcome of the elections took place in Los Angeles. This led to an awakening in Mexican political circles.... This recognition took place in the context of a radical reformulation of Mexico's foreign policy. What we want to do now is build bridges with the Mexican community' (José Ángel Pescador, quoted in Dresser, 1993, p. 94).

The second factor helping to explain the creation of the PCME was the 'radical reformulation of Mexico's foreign policy', alluded to by Pescador in

the quote above. As Mexico turned towards a neoliberal export-oriented economic model in the 1980's, and particularly after the election of Salinas, the government began relying on its 'embassies and consulates to promote the country's image, inform the principal financial, political, and academic centres abroad about the country's internal changes and, in general, take full advantage of the opening and thus attract more foreign capital, technology, and trade' (González Gutiérrez, 1997, p. 50).

Thus, beginning around 1990 the Mexican government abandoned its unstated 'policy of having no policy' and engaged in a coherent set of efforts to cultivate improved ties with *los mexicanos en el exterior*. Although this policy shift was largely driven by conjunctural factors (i.e. the need to buttress the political legitimacy of the PRI regime and generate support for its turn to a neoliberal model of global economic integration), the new emphasis on improving relations with Mexicans living abroad has found continuity across the last four presidential administrations. Over a decade ago, midway through the term of Ernesto Zedillo (1994–2000) one analyst concluded that, 'The administration of Carlos Salinas de Gortari (1988–94) broke with the past by creating new and coherent bureaucratic structures that had an unprecedented reach. Since Ernesto Zedillo took office in 1994, the Mexican state has consolidated Salinas' initiatives' (Guarnizo, 1998, p. 60). These 'coherent bureaucratic structures' have only been further consolidated during the subsequent presidential administrations of Vicente Fox and Felipe Calderón, particularly with the creation and continuity of the Instituto de los Mexicanos en el Exterior within the Foreign Affairs Secretariat.

When viewed against the backdrop of this policy continuity, it is hard not to read as disingenuous Vicente Fox's claim just prior to taking office that his administration would enact a full-scale change in the country's migration policy, or in his words that 'Mexico's migration policy of the past – a policy that consisted of having no policy – ends today' (Fox speech, Los Angeles, California, 9 November 2000). In one important sense, however, his assertion carried real validity. The reconceptualization of foreign policy and Mexico's role in the world carried out by the *Partido Revolucionario Institucional* or Institutional Revolutionary Party (PRI) administrations of Salinas and Zedillo only went so far. Officials in these administrations had certainly used their more open approach to foreign policy to justify establishing closer relations with *mexicanos en el exterior*. But those administrations held steadfastly to the principle of non-intervention when it came to US immigration policy, suggesting that this was an issue of domestic sovereignty and strictly off-limits to the Mexican government. Under the leadership of Fox, by contrast, this marked disinterest in helping to shape US immigration policy came to an end.

As part of a vision of North American economic integration that went further than that of his PRI predecessors, Fox and other top government officials moved decidedly to place the issue of migration at the top of

the US–Mexico bilateral agenda. During the run-up to the election and as president-elect, Fox made waves in the United States by expressing his hopes for an expanded North American Free Trade Agreement – which he took to calling ‘NAFTA Plus’ – more akin to the European Union. When pressed for details on this NAFTA Plus, Fox never wavered in suggesting that a central element would be the elimination of controls on human mobility: ‘Our proposal is to move to a second phase of NAFTA where in 5–10 years that border will be open to a free flow of people, workers, transiting in the border between our two countries, same as we’re doing with products, services and merchandise’ (Interview with Newshour, 21 March 2000).

After taking office and beginning substantive negotiations with the Bush administration the timeline for realizing this part of his vision moved from candidate Fox’s ‘five to ten years’ to a more amorphous ‘medium to long term’, but the goal remained the same:

And, yes, in the medium, or in the long term there should not only be a lifting of barriers for products, merchandise, services, or capital goods, but there should also be free movement of people which we should be striving for as time goes on, because working together in this partnership for prosperity, together with the United States and Canada, we should be able to get there.

(President Vicente Fox, Chicago, IL, 15 July 2001)

Opening the borders to human mobility was not the only feature of Fox’s NAFTA Plus proposal. He also envisioned an explicit and coordinated effort by the three partner countries to bridge the wide gulf in economic well-being separating Mexico from its partners to the North. During a gathering of business and political leaders in Los Angeles just months into his term, he outlined this part of his vision by referring directly to developments in the European Union:

The process of consolidating the European Union offers a number of positive lessons that can be learned from. In the European case, one of the things that I have mentioned is that they had the wisdom and the ability to guarantee that each of the countries advanced together. Twenty-five years ago, the development divide between Germany and Spain was similar to the one that exists today between the United States, Canada, and Mexico. That divide was reduced, and almost eliminated, within 25 years because Spain progressed to such an extent that it almost caught up to the levels of Germany, England, or France. For that reason, when you work together as a team, when there is solidarity, when one works to meet that objective, those divides can be eliminated and, obviously, that

is something that we aspire to do over the long term. That is, to eliminate the income gap between Mexico and the United States.

(President Vicente Fox, Los Angeles, California, 22 March 2001)

There are two parts of this grand vision of 'NAFTA Plus' that are worth highlighting. First, as initially formulated by Fox, moving down the path towards greater prosperity and deeper integration in North America required more than simply unleashing market forces across the nascent region; it would only be possible if the three partner countries worked together and jointly contributed to planned economic development initiatives that might reduce the gap in living standards between Mexico and its partners. Second, far from worrying that migration would taint relations with the United States, the Fox administration placed migration and *los mexicanos en el exterior* at the very centre of their policy agenda and their vision for deeper social and economic integration in North America. Resituating migration in this way opened up the possibility that the issue could return to the top of the bilateral agenda and potentially become the object of coordinated 'migration management' schemes.

Towards coordinated migration management: Constructing the 'Whole Enchilada'

When Vicente Fox Quesada took the reins of the Mexican presidency in December 2000, a change in the bilateral relationship and policies on migration appeared likely. The political conditions that had ensured that migration was a constant source of conflict had begun to change by 2000. Political conditions are, of course, not objectively given but must be continually constructed and re-shaped by political actors. In the present case, the most prominent re-framing of US–Mexican migration as an issue calling for bilateral collaborative policymaking was carried out by a panel of migration experts convened by the Carnegie Endowment for International Peace and the Instituto Tecnológico Autónomo de México in mid-2000. Among the 'experts' brought together were academic migration specialists, interest group representatives like US labour union leaders and business leaders from both countries, and political figures, including most prominently Jorge Castañeda and Gustavo Mohar, both of whom would occupy central positions in the Fox administration's migration policy team.

That panel's report, 'Mexico-US Migration: A Shared Responsibility,' was timed for release just prior to the first official meeting between Presidents Fox and Bush, the Guanajuato Summit in February 2001. The report argued that numerous factors had come together in the first years of the new millennium to make the time ripe for migration reform. First, while the simultaneous inauguration of presidents in the two countries occurs every 12 years, this was the first time that both incoming presidents had come from the political

opposition – if only because Fox's election represented the historic defeat of the PRI's 70-plus year hold on power in Mexico. A second factor was that a sustained period of economic growth in the United States throughout the 1990s had resulted in unprecedented job creation, record low unemployment levels, and an increasing dependence on Mexican migrant labour. Growing recognition of this dependence, and concern with bringing this needed but legally unauthorized force out of the shadows and into a well-regulated system of labour migration, also made the current moment propitious. Finally, the expert panel suggested that complementary demographic trends in the two countries offered the possibility of a true 'win-win' situation. For the United States, the spectre of retirement for the baby-boom generation brought to the fore the need for significant new numbers of young workers to cater to the needs of its aging population. Given the booming economy and tight labour market, the report surmised, the vast majority of these workers would have to be made up of immigrants and their children. Fortuitously, Mexico was well positioned to offer these needed workers. While the demographic pressures driving migration were projected to subside within 15–20 years, 'in the absence of a profound structural transformation of the Mexican labour market, Mexico will continue to need to send many migrants to the United States' in the short term (Mexico-U.S. Migration Panel, 2001, p. 9).

One of the hopes of the report's authors, suggested in its title, was that it might help political leaders to re-position migration issues at the top of the bilateral agenda by recasting the management and regulation of the complex phenomenon as a 'shared responsibility.' This could be done as long as forward-looking policy-makers were willing to get past the conflict and stagnation of earlier negotiations over migration and come to see the issue as an 'opportunity' rather than a 'permanent bilateral problem' (ibid., p. 7). If that were done, current conditions offered the possibility of a 'grand bargain,' where formal recognition of US dependence on Mexican labour could lead to agreement around four central issues: 1) expanded access to temporary work visas and permanent residency status for Mexican nationals; 2) cooperative efforts to crackdown on human smuggling operations and to protect would-be migrants contemplating dangerous crossings; 3) working together to build a viable border region; and 4) cooperation on economic development initiatives in Mexico, particularly those targeted on migrant-sending regions (ibid., pp. 2; 17–32). The novelty of the report's recommendations was to suggest that a realistic assessment of each country's 'interests' on the migration issue could lead to the trading of 'safe, legal, orderly, and predictable' access to the US labour market for the Mexican state's commitment to support efforts to control future undocumented flows towards the United States. And, in the long term, the demographic pressures driving large-scale Mexican migration would diminish and the flow of migrants to the North could be expected to 'naturally decrease and stabilize at moderate levels' (ibid., p. 2). This natural evolution of the phenomenon allowed the

Panel to envision, just as Fox had with his NAFTA Plus proposal, a future 'North America with gradually disappearing border controls' where '*permanent migration within the 'region' could remain at moderate levels*' (ibid., p. 14, emphasis in original). The elements of this proposed 'grand bargain,' and the strategic and demographic rationale to support it, would in large measure become the framework for the subsequent immigration reform negotiations between the two countries.

Those negotiations began shortly after US President George W. Bush took office in January 2001. Bush chose Mexico as the site of his first international visit, less than a month into his term. Meeting at the Fox family ranch in Guanajuato, the two presidents initiated a set of discussions on migration and development that would continue productively for months. At the end of their Guanajuato summit, the governments released a joint statement, entitled 'Towards a Partnership for Prosperity: The Guanajuato Proposal', which described their accomplishments. The following excerpt from that statement shows just how much Fox's broad vision of expanding North American integration and the US–Mexico Migration Panel's recommendations had been imprinted on their dialogue, even if these grand visions had been transformed into a more 'realistic and pragmatic' (Alba, 2007, p. 327) statement of shared values, priorities and commitments on the paired issues of migration and development:

Among our highest priorities is unfettering the economic potential of every citizen, so each may contribute fully to narrowing the economic gaps between and within our societies. We acknowledge the dynamism achieved through NAFTA, which has ushered in dramatic increases in trade that have transformed our economic relationship. After consultation with our Canadian partners, we will strive to consolidate a North American economic community whose benefits reach the lesser-developed areas of the region and extend to the most vulnerable social groups in our countries. To this end, we support policies that result in sound fiscal accounts, low inflation, and strong financial systems. Migration is one of the major ties that bind our societies. It is important that our policies reflect our values and needs, and that we achieve progress in dealing with this phenomenon. We believe that Mexico should make the most of the skills and productivity of their workers at home, and we agree there should be an orderly framework for migration which ensures humane treatment, legal security, and dignified labor conditions. For this purpose, we are instructing our Governments to engage, at the earliest opportunity, in formal high-level negotiations aimed at achieving short and long-term agreements that will allow us to constructively address migration and labor issues between our two countries.

(see <http://fox.presidencia.gob.mx/en/search/?contenido=548&pagina=2&palabras=inagural+address>)

In the months following the Guanajuato summit, under the leadership of Secretary of Foreign Affairs Jorge Castañeda, Mexico ratcheted up the pressure on the United States to reach agreement on managing future migration. Castañeda and the rest of the Mexican delegation continued to hammer home the point that the only way that acceptable progress on migration reform could be achieved would be by dealing with the multiple aspects of the complex issue as a package, rather than in a piecemeal fashion. In making that case to the American public, Castañeda came to refer to that package in the colloquial language of 'the whole enchilada', containing five ingredients similar to those contained in the US–Mexico Migration Panel report: 1) legalization of the undocumented population living in the United States; 2) a lifting of restrictions on visas; 3) expanded access to temporary work visas; 4) cooperation on security, including saving lives of migrants stranded in the desert and in pursuing human traffickers and 5) promotion of economic development in Mexico, particularly in migrant-sending regions.

During a much celebrated state visit to Washington, D.C. in September 2001, Fox continued to press for the 'whole enchilada', issuing a public challenge to his counterpart. After characterizing his democratic election as a watershed moment in US–Mexican relations, ushering in deeper cooperation and enhanced prosperity for both nations, Fox told a crowd assembled at the South Lawn of the White House that:

The time has come to give migrants and their communities their proper place in the history of our bilateral relations. Both our countries owe them a great deal. And working together, both of us can build new conditions of fairness for them, as well as for the development and prosperity of our two nations. For this reason, we must, and we can, reach an agreement on migration before the end of this very year, which will allow us, before the end of our respective terms, to make sure that there are no Mexicans in the United States who have not entered this country legally, and that those Mexicans who have come into the country do so with the proper documents.

(President Vicente Fox, Washington, DC, 5 September 2001)

The hope that this agreement on migration reform could be reached by the end of the year, as is by now well known, came crashing down with the towers of the World Trade Centre on 11 September 2001. Less than 1 week had passed since Fox's historic state visit, but it had become clear immediately that migration reform would take a back seat to the newly unleashed 'war on terror.' During his first weekly radio programme following the terrorist attacks, Fox reported on his conversations with Bush:

This morning I spoke with President Bush. We have been in very close communication with them, with his administration, with the United

State government. And this morning we were talking about how, while first things first and right now that issue [the terrorist attacks] has to be dealt with, President Bush, even with that tragedy, has not forgotten about his commitment to work toward regularizing the status of migrants, of all of our *paisanos* over there in the United States, of working towards giving order to the labor flows going to the United States.

(Fox en Vivo, Fox Contigo, 15 September 2001)

Despite those reassurances, it would not be long before the US negotiators would make clear to their interlocutors that the United States was no longer actively working towards a reform deal (Cason and Brooks, 2002). At the 26 November 2002 Binational Commission meetings, Fox recognized that 11 September had forced both sides to give priority to security issues, but with a year now passed he pleaded with the Bush administration, 'Now is the time to start again with renewed energies the negotiations of a comprehensive migration reform deal' (Fox speech, México, DF, 26 November 2002). Despite these calls, the window of opportunity had already closed for an integral reform package that would include both expanded access to legal immigration routes and legalization for the currently undocumented. Fox's grand vision of 'NAFTA Plus' appeared to have become another victim of the terrorist attacks.

Some commentators have suggested that the events of 9/11 were not the determinant factor that dashed the hopes for Fox's grand vision. Luis Carlos Ugalde, for example, has argued that 'Even if the attacks had not occurred, the audacious move by the Mexican government to introduce a "NAFTA plus" scheme to liberalize the labour market across North America would have had very limited success' (Ugalde, 2003, p. 116). Ugalde suggests that domestic constraints of a political and structural nature in the United States, such as electoral interests and the declining vitality of the economy, would have blocked the path to an eventual migration agreement, even in the absence of the terrorist attacks. While there were surely domestic political and economic obstacles that any agreement would have had to overcome, the arguments forwarded by Ugalde and others fail to apprehend the real importance of Fox's vision of the future, and of the 'expert' analysis of the US–Mexico Migration Panel that supported that vision. These discourses articulated economic conditions and political interests and values around a vision of deeper North American integration consistent with the liberal political and economic values dominant in both Mexico and the United States. This articulation in terms of the region's dominant values justified the proposals for a coordinated migration management plan in the short term and disappearing controls on human mobility over the long term. The work done by the expert panel's 'shared responsibility' proposal and Fox's vision of a borderless North American future was not to simply describe the evolution of some purportedly objective political, economic

and demographic conditions; instead, these programmatic statements were aimed at the more difficult task of restructuring the political terrain and expanding the limits of 'the possible.' The success of this political work was, of course, by no means guaranteed and thus the objective of incorporating migration into an expanded project of North American integration might not have been realized even if the 9/11 attacks had not materialized, as Ugalde suggests. But that is mere speculation. What we know is that those events spelled the end for the bilateral negotiations, and the Fox administration was forced to settle for a more limited extension of the two countries' shared neoliberal project, in the form of the financialization of migration and remittances.

9/11 and its consequences for the bilateral agenda: The financialization of migration

While the 9/11 attacks may appear to have silenced the promise for migration management in the North American context, in this section I analyze the continuing cooperation of Mexican and US government officials in the period following September 2001. If the initial discussions over migration management attended to migration policy in its various dimensions – legalization of undocumented migrants; regulation of future flows; economic development assistance to sending-regions and so on – cooperation in the post-9/11 era is marked by a reduction of the issue to a single dimension: the financialization of migration and remittances. In essence, the hope for cooperative management of migration through both a relaxation of US restrictions on Mexican migration and concerted actions to promote economic development in Mexico had given way to a new agenda that fashioned financial-market-driven economic development initiatives as capable of enacting 'migration control' single-handedly.

Presidents Fox and Bush held a high-profile meeting in the context of the United Nations Financing for Development Conference on 21–22 March 2002. If nothing else, this meeting served notice that the previous year's migration negotiations had, for all intents and purposes, come to an end. While the joint statement released after the meeting claimed that the high-level working group on migration had been instructed to continue its work, the statement's brief comments on migration were more valuable for their absences than for their content. According to the joint statement, it would appear that the greatest accomplishment of the protracted negotiations over the year prior had been that they 'yielded a clearer assessment of the scope and nature of this issue' (Joint US-Mexico Statement, 22 March 2002). Beyond that sterile evaluation of the migration negotiations, the statement was largely occupied with touting the 'smart border' initiative the two presidents had just launched and with promoting their 'Partnership for Prosperity' agenda, which was aimed at putting into practice their 'shared

vision to help unfetter the economic potential of every citizen, so each may contribute fully to narrowing the economic gaps between and within our societies'. What was this Partnership for Prosperity and what does it tell us about how migration management was conceived of and implemented in the post-9/11 era?

The Partnership for Prosperity (P4P) initiative was announced during Fox's September 2001 state visit to Washington.² This public-private partnership, according to the Presidents, promised to 'address some of the root causes of migration' by 'spur[ring] private sector growth throughout Mexico'. They envisioned a market-friendly public policy framework that could 'harness the power of free markets to boost the social and economic well-being of citizens particularly in regions where economic growth has lagged and fueled migration.' With this explicit statement of using the power of free markets to extend economic opportunity and potentially provide alternatives to US-bound migration from Mexico, the Presidents instructed their administrations to work together, consult with 'the best expertise among Mexican and US economists, business people and civil society' and prepare a formal action plan by March 2002.

This action plan was presented to the Presidents during the UN Conference in Monterrey on 22–23 March 2002. The document declares the objectives of the initiative in the following terms: 'The Partnership seeks to create jobs where they are needed the most, to foster an environment in which no Mexican feels compelled to leave his home for lack of jobs or opportunity.' The action plan was drawn up after consulting the 'expertise of more than 100 US and Mexican business leaders, government officials and academics in two conferences', one each in Mexico and the United States in late 2001 – early 2002. From these conferences, the architects of the P4P initiative – representatives from the US Department of the Treasury and Department of State and the Mexican Secretaría de Hacienda y Crédito Público, Secretaría de Relaciones Exteriores, and Oficina de la Presidencia para las Políticas Públicas – identified the 'overarching strategies' that would form the basis of their initiative (Creating Partnership Through Prosperity, 2002, p. 2, see: <http://www.state.gov/documents/organization/16197.pdf>).

If the bilateral discussions over migration and development that unfolded from February through September 2001 seemed to be shaped most prominently by President Fox's vision of expanded North American integration, the P4P action plan made clear that the Bush administration was no silent partner in these negotiations. While Fox's initial expressions of his vision suggested a preference for concerted tri-lateral efforts at developing Mexico's poorest regions, apparently something similar to the 'structural funds' at the centre of the EU's regional policies, the P4P framework would not approach that type of aggressive and coordinated approach to regional development assistance. Rather than funnel significant amounts of public financing into Mexico's poorest regions, those places 'where economic growth has lagged

and fuelled migration' (ibid., p. 2), the P4P initiative would emphasize institutional reforms, training and education for Mexican public officials, and the sharing of 'best practices' from US government agencies and private institutions.

The P4P action plan identified four broad goals to be pursued by the partnership: 1) expanding access to credit; 2) sharing technical knowledge and 'best practices'; 3) facilitating cross-border communication between similar organizations and 4) encouraging private sector investment in infrastructure projects. The overall goal of the partnership, as expressed on multiple occasions throughout the text, are to generate 'productivity gains' and promote 'widespread economic growth'. Two features of the action plan, its various components, and the discourse of partnership in general are worth emphasizing here.

First is the relative importance given to migrant remittances and investments in the collaborative projects implementing the various goals. The very first objectives elaborated in the action plan were 'Remittances – Lowering the Cost of Sending Money Home' and 'Housing – Promoting Private Investment to Meet Demand and Strengthen Roots.' The first of these is directed at 'lower[ing] the cost to Mexicans working in the United States of sending money home'. This is to be done by encouraging financial institutions to market aggressively to migrants and, in turn, educating migrants about the benefits of using formal financial institutions. The latter promised to 'facilitate investment in Mexican housing by Mexicans in the United States through cross-border mortgages and construction loans'. While this component of the initiative is touted as 'focus[ing] on improving Mexican entrepreneurs' and farmers' access to new and existing sources of capital', 'enhanc[ing] understanding of the financial system' and 'equip[ing] citizens with the tools they need to make good economic choices', there is surprisingly little in the way of 'new sources of capital' besides migrant remittances and investments. In fact, this seems like nothing more than a utopian vision of the beneficence of financial markets, whereby migrants' participation in formal banking institutions would free up new sources of capital and miraculously lead to expanded access to credit in poor and rural communities in Mexico. In the end, for all its celebration of the goals of providing 'access to the window of opportunity offered by broader and deeper global connections in the 21st century', creating 'jobs where they are needed the most' and ensuring that 'no Mexican feels compelled to leave his home for lack of jobs or opportunity', the P4P contains little in the way of concrete policies that would channel investment into migrant-sending regions in ways that bring these goals to fruition.

The second noteworthy feature is that the entire project, although couched in the language of 'partnership' and a technocratic idiom of identifying barriers to sustained growth and improved livelihoods, reproduces a developmentalist hierarchy that identifies US corporations, experts and

government institutions as purveyors of the expert knowledge, business and administrative experience, and (last but certainly not least) capital that provide the key to unleashing growth in Mexico's poorest regions. In practice, this meant that much of the collaboration promoted by the P4P was designed to impart to Mexican officials, business leaders, and 'financial and investment managers' the ways of the US brand of finance-driven capitalist growth. In hindsight, and given the global financial meltdown precipitated in 2008 by the excesses of that model, the dangers and limitations inherent in this growth strategy are plain to see in the leading example under the objective of 'sharing best practices and technical expertise':

The US Treasury will coordinate the provision of technical assistance to Mexico's Sociedad Hipotecaria Federal (SHF) to encourage securitization of mortgages and the creation of a secondary mortgage market in Mexico. In these efforts, Treasury will draw upon experts with experience in housing finance from private financial institutions, government-sponsored agencies (like Fannie Mae, Freddie Mac, and Ginnie Mae), and the US Office of Federal Housing Enterprise and Oversight.

(Partnership for Prosperity Action Plan, 2002, p. 6)

In sum, following the demise of the comprehensive binational migration policy reform negotiations in September 2001, the Mexican and US government officials continued to collaborate on migration policy issues, but their focus had been reduced. Officials no longer sought the regularization of migration and the eventual lifting of restrictions on human mobility across the US-Mexican divide. The only remaining ingredient of the 'whole enchilada' was the promotion of economic development in migrant-sending regions and the P4P strategy for doing this focused almost exclusively on the extension of US-style financial products and markets into all of Mexico. In essence, the new policy discourse hailed migrants and remittances recipients as subjects of financial services whose rational economic behaviour within banking institutions would provide the key to unleashing economic growth, opportunity, and the end to US-bound migration.

The transnational remittances-to-development assemblage

At the same time that US and Mexican government officials were focusing their energies on the financialization of migrant remittances, another set of actors within Latin American-focused development institutions and think tanks were working up a similar policy discourse around remittances and development. The remittances-to-development assemblage has grown increasingly large and complex in recent years, coming to incorporate scores of international agencies, national government bureaus, and a variety of non-governmental organizations, from grassroots development groups,

to migration associations, and philanthropic foundations. One need look no further than the fanfare around the Global Forum on Migration and Development³ in recent years to verify the strength and vitality of this assemblage.

For the present discussion, I want to centre my attention on the work of one early institutional proponent of the vision of remittances as a development tool in the North American context whose pioneering work helped to bring the present assemblage into being: the Inter-American Dialogue (IAD), a non-profit think tank in Washington, DC that markets itself as 'the leading US center for policy analysis, exchange, and communication on issues in Western Hemisphere affairs'.⁴ Since the late 1990s, the IAD has actively promoted the understanding of remittances as a 'tool for development' through the work of a dedicated 'remittances and development program' and the distribution of policy reports emanating from that programme. In January 2004, the IAD released an influential report from a 'task force on remittances' it convened with the participation of some 15 'prominent political and business leaders; financial, technical, and legal experts; and representatives of sending and receiving countries' (IAD Report). Among these experts were the former president of the Dominican Republic, Lionel Fernández, the former director of the US Immigration and Naturalization Service, Doris Miesner, the former director of the Multilateral Investment Fund, Donald Terry, and Guadalupe Gómez, the then president of the Federation of Zacatecan Hometown Associations of Southern California. The IAD convened the task force on two occasions to 'review the challenges and opportunities that remittances represent, explore the policy choices available to governments and international institutions, and come up with recommendations for policy and action' (*ibid.*, p. 1). The activities of the task force were coordinated by the IAD remittances and development programme director Manuel Orozco, who has become one of the leading intellectual promoters of the remittances as a development tool model. In what follows, I dissect this report, an exemplar of the policy agenda emanating from the remittances-to-development assemblage, emphasizing three issues: 1) the characterization of remittances as financial flows; 2) the types of governmental interventions advocated and 3) the link made between these interventions and 'development'.

The report, entitled 'All in the Family: Latin America's Most Important International Financial Flow', begins with what has come to be a standard trope in academic and policy documents addressing remittances: the presentation of a series of tables and graphs that tabulate total remittances flows to select Latin American countries and compare those numbers to other types of international financial flows in recent years – such as foreign direct investment and official development assistance. These tables and graphs inevitably show that the 'stream of remittances pouring into Latin

America and the Caribbean is vast and growing year by year' (ibid., p. 4) and that these amounts are both more stable than foreign direct investment and far outstrip amounts of official development assistance. These demonstrations of the scope and stability of remittances flows presumably make the case alluded to in the report's title: that remittances now constitute Latin America's most important financial flow.

With the constitution of remittances as the region's most important financial flow out of the way, the report next turns to an analysis of the types of governmental interventions that could 'further enhance the impact of remittances' (ibid., p. 1). The report outlines two major policy proposals: 1) that remittances transfer costs should be substantially reduced, a task that it recommends should be done by 'expanding competition among the institutions that transfer the money'; and 2) that migrant remittance senders and recipients back home should be strongly encouraged to 'make use of banks and other financial institutions to exploit the full range of economic opportunities they offer' (ibid., pp. 3–4). The agencies charged with these interventions are not solely state policy-makers, but a wider swath of potential stake-holders, including banks and other financial institutions, migrant organizations, and non-governmental organizations. The role for state agencies in the report's recommended actions is limited; in fact, one of the more striking features of the report is how its prescriptions tend not towards the types of proactive state action that could help accomplish their objectives, but instead towards the types of actions that states should *not* take. Thus, in the opening paragraphs of a section entitled 'Remittances are a Family Affair' we find the following litany of admonitions: 'Governments should not, for instance, limit the amounts or restrict the destination of remittances, nor should they seek to prescribe how remittances are sent or used. They should not set prices for remitting institutions, nor should they collect taxes on remittance transfers.' When, a few short lines later, we learn that task force members found consensus around the belief that 'despite the reductions of the past few years, the costs of sending remittances to most Latin American countries is still too high', we find again a proscription on state intervention, as the task force found that 'it would be a mistake to try to reduce prices through government controls or regulations' as these might stifle competition, reduce options in the marketplace, and actually lead to higher costs (ibid., pp. 8–9). In conclusion, the report's 'strongest recommendation to governments and international agencies is to follow the advice of Hippocrates to the medical profession – first, do no harm' (ibid., p. 14).

Where government energies should be channelled, according to the report, is towards 'banking the unbanked' remittance sender and recipient. Accordingly, the 'single most important task, for both governments and nongovernmental agencies, is to encourage senders and recipients to make use of banks and other financial institutions' as 'giving the unbanked in the United States and Latin America access to financial institutions – that

is, “banking the unbanked” – is far and away the best path to reduce costs and increase the security of remittance transfers’ (ibid., p. 9). How exactly is this to take place and why is it so important? The ‘array of initiatives’ suggested include a series of facilitatory actions, such as encouraging competition, facilitating alliances, and reducing barriers to innovation, as well as the more practical ‘giving people information about best banking practices [and] educating senders and recipients about financial matters’ (ibid., p. 9). The importance of these educational activities derives from the fact that ‘By opening and using accounts in banks and other financial institutions, migrants and their family members back home gain economic citizenship. They become part of the economic mainstream’ (ibid., p. 9).

In reading this influential report, one is struck by the limited space given to a justification of these policy proposals and their link to the undefined but positively charged concept of ‘development’. It is as though the report’s authors found their preferred solutions to the problems of poverty in Latin America so self-evident that they did not feel the need to elaborate much upon them, beyond a few words about how these monies are helping to bridge massive inequalities in Latin America and how participation in banking institutions would not only lower transmission costs, but ‘it provides an array of other advantages’, including offering people access to financial services and credit (ibid., p. 14). In the end, access to banking services becomes the valued good itself, as evidenced by the report’s final words: ‘An important measure of a country’s social development is the share of its population that is banked – that is, that enjoys full economic citizenship’ (ibid., p. 15).

Conclusion

This chapter began by asking what the concept of ‘migration management’ might mean in the context of contemporary US–Mexican migration. The strategy employed in offering a response to that question has been to chart a number of shifts in migration policy discourse in North America over the last two decades, examining and contextualizing a few of the key moments of rupture – the 1988 presidential elections in Mexico and the turn to the emigrant policies of the PCME; the 2000 election of Vicente Fox and promise of incorporating migration into a deepening North American integration project; the events of 11 September 2001 and the move to the financialization of remittances. The analysis I have provided here of these shifts in policy discourse suggests that ‘migration management’ as currently thought and practiced in North America is not about regularizing migration and recognizing it as a relatively normal feature of the complex interdependencies linking the United States and Mexico; instead, the discourse and practice of migration management very much still sees Mexican migration, and particularly its unauthorized variant, as a ‘problem’ to be solved through governmental interventions. The brief moment when the creative

political energies of Mexican president Vicente Fox and his allies made an expanded North American partnership with open borders seem a distinct, if distant, possibility came crashing down with the twin towers in New York on 11 September. From that moment forward, the thrust of the initiatives designed and promoted by the agencies making up the remittances-to-development assemblage has been to view managing migration in terms of ameliorating 'push factors' in Mexico, promoting economic development, and generating employment opportunities in migrant-sending regions that might reduce out-migration in the future. In conclusion, I want to draw out some of the implications of this study for our broader understanding of contemporary discourses and practices of 'migration management'.

First, this most recent incarnation of migration management in the North American context illustrates the increasingly complex play of agency in the construction and implementation of migration policy in the contemporary period, marked as it is by neoliberal forms of transnational political and economic integration. The designers and implementers of migration policy are no longer solely bureaucrats of single nation-states, or even sending and receiving states engaged in binational labour import/export schemes. The discursive formations of the IAD's model of 'remittances as a tool of development' and the P4P Action Plan both demonstrate how the power and agency of governmental intervention is being distributed to and deployed by actors and institutions situated 'below', 'beyond' and within 'the state'. That is to say, migration policy formulation and implementation are increasingly becoming multi-scalar and transnational processes, involving a variety of actors from government agencies, non-profit think tanks, banks and credit unions, philanthropic foundations, international institutions and migrant organizations, as I have described above.

The second issue I want to deal with here has to do with how we can understand the power in operation in these transnational processes of policy formation and implementation. The types of governmental intervention emerging from the P4P, the IAD report and the broader remittances-to-development assemblage aim to put into operation a particular mode of power, what we might call transnational 'governmental' power, drawing on a concept from Michel Foucault (1991; see also, Ferguson and Gupta, 2004). This is not a form of power that resides solely in 'the state', nor relies exclusively on coercion; in fact, if anything, in this discursive formation 'the state' is itself an object of coercion, as state officials are repeatedly admonished to refrain from any types of intervention or regulation that might stifle competition and hinder the realization of the policy objective of financial market-driven 'development'. Beyond this particular coercive element, the operation of this assemblage is oriented towards orchestrating the 'conduct of conduct' (Dean, 1999; Hindess, 1996), coordinating the actions of the state agencies, international institutions, private financial companies and other non-governmental entities in ways that will help to foster the formation of

a particular neoliberal migrant subjectivity. The type of power the assemblage is putting into operation can, thus, be understood as productive, as a set of procedures attempting to align the actions of a variety of actors and institutions across multiple geographic scales around a particular political project: to shape the subjectivities of remittances senders and recipients in ways that will provide them with 'the information needed to make better choices' (IAD Report, 2004, p. 11) and attract them towards banking services. We could say that these most recent discursive and governmental formations seek to enshrine a new form of migration management in the North American context, a type of migrant *self-management*, whereby a specific set of economically rational and responsible actions by remittances senders and their families back home is expected to unleash economic benefits and opportunities that could obviate the need for migration in the future.

Finally, a few words are in order regarding the 'expert' knowledge and technocratic logic at the heart of the remittance-to-development assemblage. Both the P4P action plan and the IAD report were the product of explicit consultative mechanisms designed to bring into the policymaking arena individuals and 'stakeholders' with significant expertise in issues of migration and development. This reliance on 'expert' knowledge has led to a set of pragmatic and technocratic solutions driven, as in most other development industry initiatives, by an appraisal of the migration and development problematic that calls forth precisely the types of interventions that development practitioners are equipped to offer. In this case, that leads to a variety of proposed solutions and interventions from the different agencies within the remittances-to-development assemblage: state agencies who can minimize regulatory 'burdens' as a means of encouraging competition in financial markets; international financial institutions generating and distributing statistical information on remittances and global 'best practices'; banks and credit unions entering the competition within the remittances marketplace; and non-governmental organizations (NGOs) working to educate migrants and remittances recipients of the value of the financial services industry.

These interventions are embedded within the reigning intellectual paradigm of neoliberalism and the limits it imposes on what it is possible to imagine and design within development institutions. The remittances-to-development agenda is in this way 'de-politicizing' (Ferguson, 1990), as it forecloses the discussion and analysis of other potential 'solutions' to the migration 'problem', other means of managing the phenomenon, whether those be to engage in a more direct and coordinated effort to redress the conditions of uneven development in North America that contribute to the continuation of Mexican migration *al norte* or the more radical idea of recognizing that the long history of migration from certain regions of Mexico has brought into being a whole set of relatively durable transnational social institutions within which migrants and others orchestrate their lives across borders. A clear recognition and valorization of this form of transnational

living might suggest that the 'problem' of Mexican migration is not so much that hundreds of thousands of Mexicans continue to cross the border every year, but that most of these migrants are forced to undertake this journey surreptitiously and to carry out their lives in the United States under the constant threat of exploitation and removal.

According to the technocratic logic of the experts engaged in the multi-scalar processes of policy design and implementation, the window of opportunity for the type of coordinated migration management envisioned by President Fox that might have reconciled the competing demands of migrants, employers, Mexican and US state agencies, and other interest groups appears to have closed for the foreseeable future. It could be argued that, within the present political climate, the remittances-to-development agenda is making the best out of a bad situation, seeking to design and implement development policies and practices that will allow migrants to hold on to a little bit more of their own hard-earned money. A less generous analysis would have to note, however, that in seeking to shape migrants and their family members into 'economic citizens' with access to a broad range of financial services, these policies studiously ignore the political and institutional context of US-bound Mexican migration, which traps most migrants within an 'undocumented' status that grants them little to no access to the bundle of civil, political, and social rights that we normally associate with citizenship. For all the warts of the neoliberal, market-centric approach of these most recent remittances-to-development initiatives, their real tragedy lies in the way that they depoliticize the institutionalization of this migrant 'illegality' (see de Genova, 2005), forestalling the contemplation of alternatives and thus propelling the current institutional matrix into the future.

Notes

1. This and all other translations in the text are my own.
2. The document produced at the February 2001 Guanajuato Summit had been subtitled 'Towards a Partnership for Prosperity', but the formal P4P initiative was not launched until September 2001. Given these early origins, we can think of this initiative as constituting the fifth ingredient of Castañeda's 'whole enchilada': the promotion of economic development in Mexico's migrant-sending regions.
3. See <http://www.gfmdathens2009.org/index.php?id=1&L=0> for info on the official government meeting in 2009 and <http://www.gfmd2009.org> for information about the accompanying 'civil society days'.
4. <http://www.thedialogue.org/page.cfm?pageID=2>.

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