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Possible steps towards an
international regime for mobility and security

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Global Commission on International Migration

In his report on the 'Strengthening of the United Nations: an agenda for further change', UN Secretary-General Kofi Annan identified migration as a priority issue for the international community.

Wishing to provide the framework for the formulation of a coherent, comprehensive and global response to migration issues, and acting on the encouragement of the UN Secretary-General, Sweden and Switzerland, together with the governments of Brazil, Morocco, and the Philippines, decided to establish a Global Commission on International Migration (GCIM). Many additional countries subsequently supported this initiative and an open-ended Core Group of Governments established itself to support and follow the work of the Commission.

The Global Commission on International Migration was launched by the United Nations Secretary-General and a number of governments on December 9, 2003 in Geneva. It is comprised of 19 Commissioners.

The mandate of the Commission is to place the issue of international migration on the global policy agenda, to analyze gaps in current approaches to migration, to examine the inter-linkages between migration and other global issues, and to present appropriate recommendations to the Secretary-General and other stakeholders.

The research paper series 'Global Migration Perspectives' is published by the GCIM Secretariat, and is intended to contribute to the current discourse on issues related to international migration. The opinions expressed in these papers are strictly those of the authors and do not represent the views of the Commission or its Secretariat. The series is edited by Dr Jeff Crisp and Dr Khalid Koser, and managed by Rebekah Thomas.

Potential contributors to this series of research papers are invited to contact the GCIM Secretariat. Guidelines for authors can be found on the GCIM website.

Introduction[1]

Advances in transportation and communications technology have increased the potential for international migration around the world. As international migration becomes less inhibited by physical or economic constraints and becomes more a function of legal constraints imposed by states, it becomes an issue of increasing political importance among states. As such, international migration is an area for possible international cooperation within international organizations or through less formal 'international regimes'.[2]

The number of international regimes has increased greatly over the past few decades in an expanding breadth of areas, including global trade and finance (Keohane 1984; Findlayson and Zacher 1988), international security (Jervis 1983; Van Ham 1993), human rights (Sikkink 1993), the environment (Young 1989; Haas 1989); transportation and communications (Cowhey 1990; Zacher 1996), and the internet (Franda 2001). Nevertheless, international cooperation among states to regulate international migration has been limited.

Putting the international refugee regime aside, there is little in the way of international cooperation on migration at the global level and no international migration regime. There are the longstanding but under subscribed conventions of the International Labour Organization (ILO), limited cooperation on high-skilled migration under the General Agreement on Trade in services (GATS) and increasing cooperation on illegal migration, human smuggling and trafficking within the context of the United Nations Convention on Transnational Organized Crime.

The limitations of international cooperation on migration and its potential have been well surveyed in the project on the New International Regime for Orderly Movements of People (NIROMP) directed by Bimal Ghosh (2000) and the report of the Migration Working Group chaired by Michael Doyle submitted to UN Secretary General, Kofi Annan (UN 2003).

As policymakers recognize that economic development in many source countries depends largely on migrant remittances and that destination countries in turn increasingly depend

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[2] International regimes were initially defined as "mutual expectations, rules and regulations, plans, organizational energies and financial commitments, which have been accepted by a group of states (Ruggie 1975: 570). Later, a "consensus definition" by a group of leading international relations scholars emerged: "Regimes can be defined as sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations. Principles are beliefs of fact, causation and rectitude. Norms are standards of behavior defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice" (Krasner 1983a: 2).

upon immigration to support aging populations, there has been more discussion around establishing a regime to facilitate the international movement of labour, similar to the international trade regime on which the General Agreement on Tariffs and Trade (and subsequently the World Trade Organization), is premised. (Ghosh 2000; Straubhaar 2000).

The fundamental obstacle to international cooperation on labour migration, as Ari Zolberg (1991;1992) and James Hollifield (1992) have pointed out, is that migrant destination countries have little incentive to join such a regime because foreign labour, especially low-skilled labour, is in abundant supply. If labour shortages develop during periods of economic growth, states can get as much labour from abroad as they choose, either through bilateral agreements or simply by opening up labour markets to migrants, while at the same time avoiding any commitment to keep these markets open during economic downturns. A global migration regime may make sense however, in terms of increasing economic efficiency world-wide (Staubhaar 2000), as well as ensuring poorer migrant source countries' access to the more wealthy migrant destination markets, for the sake of international development and reducing global inequalities (UNDP 1992).

However, the additional economic gains to individual destination countries of joining such an international regime, as opposed to maintaining the unilateral status quo, are negligible in comparison to the non-economic costs of large-scale immigration on security, society and culture. Such non-economic costs, whether real or perceived, have domestic political consequences. It is therefore even more difficult for destination state policymakers to sell a policy of multilateral engagement on migration to a skeptical public than it is to promote international free trade agreements. Hence, there appears to be little interest among UN member states to expand the international legal and normative framework for migration policies, a conclusion supported by answers given to a questionnaire in which only 47 member states favored convening a global conference on the issue while 26 opposed and 111 did not reply (UN 2003).

Although international cooperation on migration for the sake of economic considerations has languished, security concerns in the wake of September 11th have motivated cooperation on international mobility, encompassing migration and travel. In addition to the 175 million international migrants, (which the UN defines as the number of people who have lived outside of their country of nationality for at least one year), there are the millions of tourists, students and business people who travel internationally for shorter stays. The 19 hijackers who attacked the World Trade Center and the Pentagon entered the U.S. on tourist and student visas under false pretenses and used the same modalities of travel document fraud and visa abuse characteristic of illegal migration to the U.S. Al-Qaeda operated a "passport office" at the Kandahar airport to alter travel documents and train operatives, (including Mohamad Atta, see 9/11 Commission 2004: 169) and at least two, and perhaps as many as eleven, of the September 11th hijackers used fraudulently altered passports.[3]

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[3] One of the hijackers entered on a student visa but never showed up for class, three had stayed in the U.S. after their visas expired and several purchased fraudulent identity documents on the black market that primarily services illegal migrants (9/11 Commission 2004a: 138-39)

Contrary to suggestions made in the media that the hijackers entered legally and that border controls were irrelevant to their entry, the National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission) concluded, "15 of the 19 hijackers were potentially vulnerable to interception by border authorities" (9/11 Commission 2004: 384).

In response to the September 11th attacks, the U.S. changed its visa policies and border control processes in ways that have reverberated around the world. U.S. authorities now demand passenger manifests and passenger name records of US-bound travelers. They are also requiring all non-immigrant visa applicants to be interviewed at U.S. consulates and submit a biometric sample at that time and then again upon entering. Other nations are adopting similar visa and border control policies. In order to facilitate travel, while at the same time increasing security, the member states of the *International Civil Aviation Organization* (ICAO) have agreed to issue machine-readable travel documents with biometrics on *Radio Frequency Identification* (RFID) chips. ICAO member states have also recently put forward proposals for international cooperation on electronic submission of advanced passenger information and the sharing of passenger name record data.

Given that contemporary migration often begins as tourism, study visits or temporary work abroad, international mobility is a more all-inclusive category for understanding the dynamics of international migration and its potential for regulation by states. By shaping the processes of travel and migration, increasing international cooperation on human smuggling, travel document security and passenger data sharing are the first steps toward an international regime for mobility and security. These first steps were recognized by the 9/11 Commission when it argued that;

> [t]he U.S. government cannot meet its own obligations to the American people to prevent the entry of terrorists without a major effort to collaborate with other governments. We should do more to exchange terrorist information with trusted allies, and raise U.S. and global border security standards for travel and border crossing over the medium and long term through extensive international cooperation. (9/11 Commission 2004: 390)

An international regime for orderly migration has greater security value in the post-September 11th world. Previously, the security threat posed by illegal migration and human smuggling was of the "disruptive movements of people." (Ghosh 2000: 221) Such movements could provoke immediate border security problems because of their sheer scale or due to the adverse domestic political reactions at the perceived "loss of governmental control" over borders. Now this threat may come from small groups or even individuals circulating within larger illegal flows. By increasing the share of orderly, properly-documented and pre-screened migration that passes through ports of entry rather than traveling around them, an international migration regime can help border authorities focus their limited resources on travelers and visitors that potentially pose the greatest security risks. Since the legislatures and publics of many major migration destination countries are very interested in maintaining international mobility

while at the same time increasing security, international cooperation on mobility and security as advocated by the 9/11 Commission may also serve as a stepping-stone toward broader cooperation on migration as a whole.

I will elaborate on these arguments in the following six sections. First, I will review the relationship among international migration, mobility and security and describe the initial steps taken after September 11, 2001 to increase security while maintaining international mobility. Second, I examine the development of European cooperation on migration and consider the implications on the development of global regimes. Third, I examine international cooperation to combat human smuggling. Fourth, I describe the consequences of increased international cooperation on travel documents and passenger data exchange on a transatlantic basis as well as on a global basis within the International Civil Aviation Organization. Fifth, I assess the prospects for the formation of a global regime for mobility and security by focusing on leadership. Finally, I will explore the possibility of linking cooperation on security to global cooperation on labour migration under the rubric of a General Agreement on Migration, Mobility and Security.

Migration, mobility and security

From the standpoint of most International Relations scholars, the primary impact of migration has been understood to affect domestic politics, with only marginal consequences for international relations in general.[4] Some point to the fact that the vast majority of people do not cross borders and migrants actually constitute only a small fraction (some 3%) of the world's population. Thus they have a relatively small impact on international politics in general. From a realist standpoint, the migration of unarmed refugees and guest workers across international borders should not enter into security considerations because such movements only affect the balance of power at the margin, if at all. For the most part, therefore, international migration has usually been relegated to an analysis of the "low politics" of international economics rather than the "high politics" of international security concerns.

International migration has always been a security issue for several reasons. First, the phenomenon of migration can be understood not only in economic terms but also as a matter of people moving across borders from parts of the world that, due to international or civil war, political or religious persecution or pervasive street crime are considered 'unsafe', to more secure areas (Schmitter Heisler and Heisler 1989). In particular, these people may move to "security communities," areas of the world where states no longer resort to war among themselves to resolve disputes, (most notably North America and Western Europe) (Deutsch, etc. al. 1957). Second, many international relations theories routinely assume state sovereignty and territorial integrity but not all of the world's states have the capability, nor their policy makers the political will, to stop the citizens of other

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[4] For a more comprehensive review of the literature on migration and international relations, see Koslowski, 2000: 1-29.

countries from entering without authorization (Cornelius, Martin and Hollifield 1994; Sassen 1996).

Thirdly, the policy impact of migration is often out of proportion to the actual size of migratory flows because of public perceptions in the host country that migrants increase employment competition, challenge religious, cultural or ethnic homogeneity or pose a threat to national security (Weiner 1995, 45-74). Whether or not these perceptions are well-founded, they often influence domestic political contests and thereby influence policymaking. When the perception of migration as a threat leads to more general changes in the policies of a host state toward source countries, migration can have a significant impact on foreign policy and national security (Tucker, Keely and Wrigley 1990; Weiner 1993; Teitelbaum and Weiner 1995).

Contrary to realist assumptions that states with sufficient military capabilities are the only actors of significance in world politics, a handful of people crossing unarmed into another country can have tremendous consequences for international security, as the attacks of September 11, 2001 amply demonstrated. The world's most powerful states are now threatened by the possibility of asymmetric warfare by non-state actors armed with weapons of mass destruction (Betts 1998; Allison 2004). Homeland security officials are preparing for simultaneous attacks by suicide terrorists arriving in airports posing as tourists who then infect themselves with smallpox and spread it to unsuspecting crowds at major tourist attractions. Strategies of nuclear deterrence that dominated international security policy and theories in the second half of the 20th century no longer apply when the opponent is not a state that can be threatened with retaliation but rather a suicidal individual.

It is crucial to understand that it is not international migration that is the new security threat but rather international mobility in general. The number of international migrants is a small fraction of the number of people who cross international borders every year. For example, in the year up until September 11, 2001, approximately 500 million people entered the United States through legitimate ports of entry. Approximately 1.3 million people were apprehended by the U.S. Border Patrol while attempting to enter clandestinely (DHS 2004, table 37), and the number that evaded apprehension may rise to several times that. Although a compilation of records of all entries of individuals into all the UN member states is not available, one can surmise that this number could reach into the billions. It is this larger number of people who cross international borders for any length of time, migrants included, that may prose a security threat to any given state.

In response to the September 11th attacks, the Bush Administration announced a set of initiatives to create a "Smart Border" of the future that utilizes new technologies;

> to screen goods and people prior to their arrival in sovereign U.S. territory…Agreements with our neighbors, major trading partners, and private industry will allow extensive pre-screening of low-risk traffic, thereby allowing limited assets to focus attention on high-risk traffic (White House 2002).

Indeed, as expanding e-government and private sector submission of electronic data enables the pre-clearance of passengers and cargo, thereby removing the necessity of inspection at territorial boundaries, borders may increasingly exist, de facto, in cyberspace, becoming "virtual borders."[5]

The Enhanced Border Security and Visa Entry Reform Act[6] was passed in the U.S. Senate by a vote of 97 to 0 and in the House by 411 to 0. The Act includes a requirement that commercial airlines and ships electronically submit passenger and crew manifests before arrival to the US, and sets out fines for non-compliance and loss of landing rights for those airlines that have not paid their fines. The act mandates an automated entry-exit tracking system, known as the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program.

The Act further requires the use of biometrics to verify the identity of foreigners. US-VISIT currently collects digital photographs and fingerprint scan biometrics from those individuals arriving by air or sea and traveling on a non-immigrant visa to the United States. The Act requires that by the end of 2004 all U.S. embassies and consulates be capable of collecting biometrics as part of the mandatory visa interview process, so that the biometrics submitted in the visa application can be matched to those of the individual presenting him or herself for admission into the U.S. at the port of entry.

In February 2004, CBP Commissioner Bonner (2004) proposed the Immigration Security Initiative (ISI). Modeled on existing programs in Australia, Canada, the UK and the Netherlands, this initiative will station teams of CBP officers in the key foreign hub airports from which the majority of US-bound passengers depart. The officers will use advanced manifest data to identify high-risk passengers before they board planes, work with airlines and host nation authorities to examine travel documents and question high-risk passengers as they would upon arrival in the U.S. to make a determination as to whether or not these passengers are admissible to the U.S. (CBP 2004).

These transportation and border initiatives will require extensive international cooperation and the U.S. has taken steps to engage the international community. So far international cooperation on passenger security has been primarily pursued bilaterally through transatlantic US-EU negotiations. The positive G-8 and EU responses to U.S. border security initiatives constitutes a first step toward a transatlantic-centered mobility and security regime that depends on regional cooperation from each side of the Atlantic.

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[5] The term "virtual borders" was used by Customs and Border Protection Commissioner Robert Bonner in remarks at reception preceding the 2003 Customs and Border Protection Trade Symposium, Nov. 19, 2003 and in the Nov. 28, 2003 "Request for Proposals for US-VISIT Program Prime Contractor" (DHS 2003).

[6] Section 402 of the ''Enhanced Border Security and Visa Entry Reform Act of 2002,' Public Law 107–173, May 14, 2002.

European migration regimes and global cooperation

EU migration regimes are implicit or explicit principles, rules, norms, and decision-making procedures around which European actors' expectations converge on the issue of migration.[7] A regime governing intra-EU migration was first articulated in the Treaty of Rome, reaffirmed in the Single European Act (SEA) and formally codified in the European Citizenship provisions of the Treaty on European Union (TEU), signed at Maastricht.

A regime governing migration into the EU from non-member states began to emerge with the 1990 Dublin Convention on jurisdiction for asylum applications, the 1990 Schengen Convention on border controls and Title VI of the 1992 Maastricht Treaty dedicated to Cooperation in Justice and Home Affairs (JHA) and then became more fully articulated with the 1997 Amsterdam Treaty.

During the 1980s, intra-European trade and intra-European travel increased while at the same time shipments were increasingly sent by truck and more Europeans took their cars. This became a recipe for lengthy waiting times at borders as trucks and tourists were stopped for passport inspections. To address this problem, Germany, France, Belgium, the Netherlands and Luxembourg signed the Schengen agreement in 1985 to gradually abolish internal border checks.

The associated Schengen Convention signed in 1990 called for a common visa policy, the harmonization of polices to deter illegal migration and an integrated automated Schengen Information System (SIS) to coordinate actions regarding individuals who have been denied entry. All customs controls at internal borders within the newly established European Union were lifted in 1993 and the Schengen Convention went into effect in 1995 lifting internal border controls while establishing a common external border.

Title VI of the 1992 Maastricht Treaty formalized longstanding cooperation among the member states regarding border controls, migration and asylum. Cooperation in the fields of Justice and Home Affairs (JHA) formed one of three "pillars" of the EU along with the First Pillar of the original European Community and the Second Pillar of Common Foreign and Security Policy (CFSP).

The pillar structure effectively kept this cooperation on an "intergovernmental level" outside of the original Treaty on European Community (TEC). The 1997 Amsterdam Treaty incorporated the Schengen Convention into the EU treaties and set out a plan to incorporate policies on visas, asylum, immigration and external border controls under Community procedures and into the Community legal framework by May 2004. Some aspects of this integration policy, particularly on asylum, family reunification, long term residents, and residence permits for victims of trafficking were achieved by the deadline, but the Council could not agree on a directive for the admission of third country nationals

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[7] This definition is paraphrasing the one referenced above in footnote 1.

for employment purposes (European Commission 2004), proving a broader EU immigration policy to be much more elusive.

In the immediate aftermath of the attacks on the World Trade Center and the Pentagon, the European Council (2001) asked member states to strengthen controls at external borders and strengthen surveillance measures. Shortly thereafter, the Justice and Home Affairs Council began discussions on developing a common border police force and a European Border Guard. But these proposals were blocked at the Laeken European Summit in December 2001. Instead, a new "European Agency for the Management of Operational Co-Operation at the External Borders of the European Union" agency will co-ordinate the implementation of common policies by member state border police, although it lacks policymaking or implementing powers of its own, (European Commission 2003). The Madrid bombing of March 11, 2004 then prompted the European Council to establish the position of an EU counter-terrorism coordinator and to take even more measures to strengthen border security.

Like the U.S., the EU has focused on using information technology to strengthen border controls. The Schengen Information System (SIS) is designed to enforce the common external border and build confidence in this common border so as to enable member states to remove all internal border controls. Integration of the system is necessary for the Schengen Convention to become effective for any signatory. Since the SIS is incapable of working with any more than 18 member states and will not therefore be equipped to handle the increased data processing demands of EU enlargement, the European Commission proposed the Schengen Information System II (SIS II). Scheduled to be operational in 2007, the SIS II will not only increase data capacity, but will also be able to store digital images and biometric data and answer police requests within five seconds (European Report 2003).

With rising concerns about illegal migration into Europe and the possibility of terrorists being smuggled into the EU or using fraudulent visas, the European Commission proposed a common online database that would complement secure identity documents (European Commission 2001) and then put forward a legislative proposal to create and fund a visa information system (European Report 2004).

The member states of the EU have taken international cooperation on migration further than any other states in the world. EU member state cooperation on migration greatly exceeds international cooperation on a global level and it also goes way beyond that of other regional organizations of comparable advanced industrialized states. The decades of economic and political integration that have laid the groundwork for the lifting of border controls among EU member states may prove extremely difficult, if not impossible, to replicate in other regions.[8] The EU may provide the best example of an international migration regime, but it is perhaps inappropriate to use it as a point of comparison for other regions, let alone a global migration regime.

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[8] For a discussion on the limitations of implementing a Schengen-like "North American Perimeter," see Koslowski 2004.

In fact, European cooperation on migration, asylum policy and border control may even be at cross-purposes with global cooperation in these areas. Much like the dilemma posed to global free trade by the formation of regional economic blocs with discriminatory policies that favor members over non-members, if cooperation aimed at free movement within the EU prompts polices that are less open to the rest of the world, EU migration regimes may limit rather than further global cooperation on migration as a whole. For example, after the Maastricht Treaty established the Justice and Home Affairs (JHA) Council as an institutionalized framework for articulating the common principles, rules, norms, and decision-making procedures that made up the emerging EU migration regime, the JHA Council agreed to a common definition of a refugee as its first legally binding joint position in November 1995.

Based on a strict interpretation of the 1951 Geneva convention, which defines a refugee as someone with a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, the new common EU definition effectively excluded those who flee civil wars, generalized armed conflict and persecution by "non-state agents," such as armed militias and insurgent groups. Before the common definition was issued, Germany, France, Italy and Sweden were the only member states that did not define those persecuted by non-state agents as refugees.

The UNHCR criticized the common position as contrary to the spirit of the 1951 Convention and as a step backwards that could imperil refugee protection throughout the world (European Insight 1995). To hear it from Secretary General Kofi Annan, European cooperation on asylum policies may very well be responsible for the demise of what little global cooperation on migration does already exist – the refugee regime. Speaking before the European Parliament, the Secretary General declared;

> when refugees cannot seek asylum because of offshore barriers, or are detained for excessive periods in unsatisfactory conditions, or are refused entry because of restrictive interpretations of the (1951 Refugee) Convention, the asylum system is broken and the promise of the Convention is broken, too. (Annan 2004)

Put simply, increasing European cooperation on migration need not lead to liberal outcomes that benefit asylum seekers and would-be migrants seeking to enter the EU. International cooperation is ordered by and for the benefit of states and if states collectively opt for more restrictive policies, international cooperation may reduce migration rather than lift barriers to it.

By providing an example of states surrendering sovereign prerogatives over border controls as they cooperate, European migration regimes are generally viewed as examples for other regions as well as a step toward a global migration regime. But greater European cooperation may not necessarily translate into progress toward a global migration regime. Rather, European cooperation on border control and migration presents a dilemma to advocates for global cooperation on migration in that it may serve

as a step forward toward a global regime for mobility and security while at the same time eroding the international refugee regime and erecting obstacles to the formation of a more comprehensive global migration regime.

International cooperation to combat human smuggling and trafficking

During the 1990s, policymakers from the major migration destination countries such as United States, Germany, Canada, Australia, the UK, France, Italy and Austria became increasingly concerned with the smuggling of migrants across their borders. Trafficking in persons, particularly, women and children for prostitution, presented a growing human rights issue and human smuggling came increasingly to be viewed as a security problem related to uncontrollable borders.

The prospect of terrorists being smuggled into target states was a potential threat according to some law enforcement circles but it was not until the attacks of September 11th and March 11th that human smuggling was viewed as a security threat in a qualitatively different way. For example, it became clear that terrorists could take clandestine routes that transnational criminal organizations use to smuggle illegal migrants into the U.S. The 9/11 Commission report details linkages between human smugglers and Al-Qaeda and other terrorist groups in need of travel facilitation (9/11 Commission 2004a; 61).

Investigations into the Madrid bombing produced reports demonstrating that Ansar al-Islam, a group affiliated to al-Qaeda and linked to the attack, had been running a human smuggling and document fraud operation to fund terrorist actions as well as to smuggle its own members into countries like Spain and Iraq (Simpson, Crawford and Johnson 2004). As intelligence screening and visa security is tightened so as to stop terrorists from entering legally with valid visas, the threat of clandestine entry of terrorists using smuggling organizations will increase and so to will the security imperatives behind international cooperation to combat human smuggling.[9]

The United Nations and its predecessor the League of Nations have long promulgated international cooperation to combat the trafficking of women and children – dating back to international cooperation to combat "white slavery" at the beginning of the 20th century (see Sculley 2001). During the 1990s, Austria took the lead in encouraging fellow UN member states to pass legislation that specifically criminalizes human smuggling and to draft an international convention on the smuggling of illegal aliens (Schuessel 1997).

In December 1998, the UN General Assembly initiated an Ad Hoc Committee that was charged with drawing up a comprehensive international convention against transnational organized crime and in November 2000, the "UN Convention against Transnational Organized Crime," and its "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children," and the "Protocol against the Smuggling of

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[9] For a review of international cooperation on human smuggling, see Koslowski 2001.

Migrants by Land, Sea and Air" were adopted by the U.N General Assembly. Having received a sufficient number of ratifications, the Convention went into effect September 29, 2003, the anti-trafficking protocol on December 25, 2003 and the anti-smuggling protocol on January 28, 2004.[10]

The objectives of the human smuggling protocol are twofold – to establish the smuggling of migrants as a criminal offence and to facilitate cooperation in the prevention, investigation and prosecution of perpetrators of smuggling. To this effect, the draft protocol provides rules for interdicting and boarding ships suspected of carrying illegal migrants, approves of state use of carrier sanctions, encourages information programs directed at the customers of smugglers as well as information exchanges between states that enable more effective law enforcement. The protocol also calls for strengthening border controls and intensifying cooperation among border control agencies by establishing and maintaining direct lines of communication.

Although the International Organization for Migration (IOM) has a smaller membership[11] than the UN and is much more specialized and limited as a forum for migration policymaking than regional organizations such as the EU, the IOM is a major actor when it comes to international cooperation in the area of human smuggling and trafficking in persons.   At a 1994 IOM-sponsored meeting in Geneva which brought together representatives from source, transit and destination countries, participants asked the IOM to advance the policy discussions of migrant trafficking, organize regional meetings, collect and disseminate information, analyze the problem of trafficking in women for prostitution and contribute to policy harmonization (IOM 1994).

Since then, the IOM has been sponsoring regional processes dealing with irregular migration and migrant trafficking in Europe, the Americas, East and Southeast Asia. While the IOM has emerged as the leading international organization in the area of research and policy dialogues devoted to human smuggling in general,[12] operational programs have primarily focused on trafficking in women and children for forced prostitution, whether in terms of publicity campaigns to discourage women from turning to traffickers or return programs with which the IOM is very experienced.

By providing legal instruments and mechanisms for law enforcement cooperation, the U.N. Transnational Crime Convention's "Protocol against the Smuggling of Migrants by Land, Sea and Air" and the regional IOM organized fora represent important steps toward a global regime for mobility and security. By specifically targeting human smuggling organizations this international cooperation addresses an increasingly important component of terrorist travel.

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[10] For treaty texts, signatures and ratifications, see "UN Signatories to the UN Convention against Transnational Crime and its Protocols" at: http://www.unodc.org/unodc/en/crime_cicp_signatures.html

[11] 102 states as of Nov. 2003.

[12] In addition to the quarterly bulletin, *Trafficking in Migrants*, see the book by IOM consultant, Bimal Ghosh (1998).

From transatlantic to global cooperation on travel documents and passenger data

As U.S. and EU border control officials took steps to tighten border controls through deploying new technologies in an effort to screen out threats from legitimate travel flows, border control officials on both sides of the Atlantic realized that transnational threats posed by terrorist networks required heightened international cooperation. While the split between the U.S. and individual EU member states, such as France and Germany, over the Iraq war led some commentators to declare US-European relations as being in crisis, France and Germany, among other EU member states, were busily signing agreements and exchanging information with U.S. border control authorities.

The European Commission and the U.S. Department of Homeland Security (DHS) have been taking international cooperation into sensitive areas of state sovereignty dealing with border controls, including government surveillance, data collection and exchange that, prior to September 11, 2001, would have been unthinkable. As Mark Miller has pointed out, to the extent that there is an embryonic international migration regime, "it is centered in the transatlantic area" (Miller 2000).

Similarly, an emerging regime for mobility and security is also centered in the transatlantic area and it is developing rather quickly. Nevertheless, there still are many legal and political obstacles to further transatlantic cooperation in this area that have yet to be overcome. The solution to overcoming these obstacles, ironically, points to even deeper and broader global cooperation in order to secure state borders.

Transatlantic cooperation has emerged through U.S. security initiatives and negotiations with the EU that have set up a variety of arrangements and more formal agreements. The 2001 U.S. aviation and transportation security legislation requires that airlines with US-bound international flights "shall make passenger name record information available to the Customs Service upon request."[13] Passenger name record (PNR) data is created each time a passenger books a flight and it is stored in the airlines' reservation systems. The U.S. Customs Service requested PNR data from European-based airlines but several resisted, contending that it would be a violation of EU data protection rules. Essentially, European airlines were presented with a choice: breaking U.S. laws, face fines and potentially lose landing rights or violate EU and EU member state data protection laws and face fines.

After months of negotiations, the European Commission and U.S. Customs and Border Protection (CBP) secured an agreement in the form of a Commission "adequacy decision" (European Commission 2004a) that data were adequately protected and corresponding "undertakings" issued by CBP (2004a), which promise that data would receive agreed-to treatment (Bolkestein 2003). Nevertheless, the European Parliament called upon the Commission to withdraw the draft decision arguing that the Commission's decision;

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[13] Section 115 of the ''Aviation and Transportation Security Act,'' Public Law 107–71, Nov. 19, 2001

[p]resents the risk that millions of European passengers will be subject to comprehensive surveillance and monitoring by a third country (European Parliament 2004: 4-5).

The Parliament cannot stop the transfer of PNR data on its own authority, however, persistent Parliamentary objections, hearings and engagement of advocacy groups may undermine support in individual EU member states and the Parliament has now referred the agreement for consideration on its legal merits to the European Court of Justice.

In response to an attempt by a UK national, Richard Reid, to detonate a bomb hidden in his shoes while on a transatlantic flight, some U.S. legislators raised the possibility of eliminating the program that allows nationals of 27 states to enter the United States without a visa for a stay of up to 90 days (Carr 2002). Instead of abolishing the Visa Waiver Program, the U.S. Congress has ruled that all passports of Visa Waiver Program countries issued after Oct 26, 2004 contain biometrics. Many countries signaled that they could not meet this deadline and Secretaries Tom Ridge and Colin Powell requested a postponement from Congress until December 2006 (Powell and Ridge 2004). Congress responded with a one-year extension until Oct. 26, 2005.[14]

In conjunction with the deadline extension request, DHS announced that nationals of the Visa-Waiver countries would nonetheless be required to enroll in US-VISIT and submit to a digital photograph and finger scanning upon entry to the US, beginning September 30, 2004.

The U.S. Congress deferred to the International Civil Aviation Organization (ICAO) with regards to which biometric standard would be adopted and it was not until May 28, 2003 that the ICAO announced an agreement on this issue. The ICAO recommended facial recognition as the globally interoperable biometrics identifier, plus optional fingerprints and/or retina scans stored on a contact less integrated circuit (IC) chip (ICAO 2003).

Central to his vision of a "revolution in border security," the contact less IC chip is part of a *Radio Frequency Identification* (RFID) system in which data on a chip or tag is transmitted via radio waves to a reader. As opposed to machine-readable travel documents that contain data on magnetic strips, a passport with an RFID chip can be read by the reader at a distance, therefore allowing faster transfer of data from the passport. As envisioned, holders of new biometric passports issued by Visa Waiver countries will give their passports to CBP inspectors who will simply bring the passport close to the reader. The reader will capture the personal data and the digitized biometric. This information can then be checked against terrorist and law enforcement watch lists. Similarly, upon exiting the traveler will "check out" of the country with a wave of the passport over a reader, possibly even using a self-service kiosk.

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[14] See "An Act: To modify certain deadlines pertaining to machine-readable, tamper-resistant entry and exit documents." H.R. 4417.

Although State Department officials expressed confidence that European countries could meet an October 2006 deadline, it is not clear that the one-year deadline extension will be sufficient time to allow incorporation of biometrics into European travel documents. Denmark and Sweden have programs to produce ICAO compliant biometric passports in 2005 if not sooner (eGovernment News 2004) and the UK has indicated that it expects to begin issuing passports with standardized biometrics in late 2005. However, other countries may not begin issuing biometric passports until "well into 2006" (Barry 2004). The U.S. transition to biometric passports is not expected to be complete until the end of 2005 (Barry 2004), meaning even the US is unable to meet the extended deadline that Congress has imposed on other countries.

All EU nationals will have to submit finger scans when enrolling in US-VISIT upon entering the U.S. but EU member states have yet to impose the same restraints upon US nationals entering Europe. Nevertheless, Secretary Ridge has noted that;

> [m]any VWP [Visa Waiver Program] countries themselves are actively engaged in developing programs […] that allow them to collect biometrics through the visa issuance process. (Ridge, 2004: 4)

and he implicitly welcomes other states efforts to adopt biometric entry controls and data submission requirements with which U.S. nationals will have to comply.

More importantly, Secretary Ridge offers a glimpse of how a future global regime for mobility and security may operate in practice. Each state would collect biometrics through the visa application process and then again for comparison at the port of entry. Nationals of those states issuing passports with biometrics meeting ICAO standards may be exempted from visa requirements but their biographical data and biometrics would be captured and stored upon entry into another state. Border control authorities would amass tremendous amounts of biographic and biometric data in digital format, which could then be mined to detect anomalies that could then be flagged for further investigation.

Depending on the level of law enforcement cooperation among origin, transit and destination countries involved, these investigations of individual travelers may involve international law enforcement cooperation. Such collaboration yields its own intelligence on terrorist travel and the sharing of border control best practices that in turn, increase individual state border control capabilities.

Transatlantic cooperation on PNR data collection and exchange as well as the setting of biometric standards requires acceptance of mutual constraints on the range of state action in the area of border control – one of the defining aspects of territorial sovereignty. Further cooperation, however, may be interrupted by differing legal regimes governing privacy and personal data protection. Partly motivated by the fact that Canada and Australia, in addition to the U.S., have also passed legislation requiring advanced submission of PNR data, the European Commission opted to take a global approach to the issue (European Commission 2003a). Ireland, on behalf of the EU, put forward a

proposal for an international framework for the transfer of PNR data to the International Civil Aviation Organization (Ireland 2004). Given the increasing concern over the privacy of PNR data raised in the U.S. Congress (e.g. Collins, 2003) and by the European Parliament, there may be major limitations to further transatlantic PNR data transfer without global multilateral agreements and implementing legislation on the national level. Similarly, visions of a "virtual border," with secure documents with biometrics on RFID chips, require international cooperation on data-sharing and technical standards.

Global regime formation: a question of leadership?

Regional cooperation on border control and migration, global cooperation on human smuggling and transatlantic cooperation on transportation and border security do not, in and of themselves, add up to a global regime for mobility and security. These are only possible steps toward such a regime. Only if this regime comes into being in the future, will historians be able to determine which of the above steps in fact served as precursors to such a global regime. Hence, the remaining discussion in the rest of this paper is highly speculative and is not intended to be prescriptive. I will describe various scenarios and possible strategies based on international regime formation in other issue areas and suggest ways in which they may be relevant in this case. Moreover, there may be other routes toward the realization of a global regime for mobility and security that may prove to be more successful than the suggestions found in the following ruminations.

Today's international trade and monetary regimes were put in motion with U.S. leadership after the devastation of Europe in the two World Wars. These regimes have persisted despite the US's economic decline in the 1970s, relative to Europe's economic rebound and a rising East Asia. Establishment of the postwar international monetary regime required the "hegemonic stability" of a "lender of last resort" and postwar expansions of free trade depended upon U.S. tolerance of "free-riding" by states in Europe and East Asia, which took advantage of U.S. market openings for imports but retained measures to protect their own markets (Kindleberger 1973; Keohane 1984).

Formation of a regime for mobility and security will most likely also require similar hegemonic stability with a leader that will facilitate the standardization of secure travel documents and biometrics, pay the initial development costs of new border control technologies, initiate deployments of new documents and systems, underwrite the institutionalization of international law enforcement cooperation and be willing to extend foreign assistance to states that may wish to participate in the regime but do not have the requisite border control capabilities. At the same time, the hegemonic leader must maintain international mobility by keeping its own ports of entry open to legitimate travelers and migrants and by spending additional resources to ensure that new security requirements and technologies do not significantly slow legitimate travel flows.

Given all of the post-September 11th border security initiatives and transatlantic cooperation described above, it appears that the U.S. government is committed to international leadership on border security, however, it is not clear that the U.S. is

properly equipped to do so, or that the Bush administration and the U.S. Congress is politically willing to change that. The U.S. has taken a leadership role in standardizing requirements for travel documents and biometrics in ICAO but it has been slow to implement systems that impose new biometric requirements on its own citizens, or even that of its neighbour, Canada. Although the U.S. Congress has passed legislation requiring an automated entry-exit system that collects facial and fingerprint biometrics of foreigners who travel to the US, it has not passed legislation requiring U.S. citizens who leave or enter the country to be enrolled in the system.

Given the longstanding diplomatic practices of visa reciprocity and the probable proliferation of US-VISIT-like systems described by Secretary Ridge, U.S. policymakers may soon be in the position of trying to convince U.S. citizens who wish to travel abroad to accept fingerprinting or dropping the fingerprint requirement of foreigners traveling to the US. The 9/11 Commission has now recommended a biometric entry-exit system that enrolls all US, Canadian and Mexican nationals (9/11 Commission 2004: 387-389). This provides an opportunity for the Bush administration and Congress to adopt these recommendations in passing new legislation that would enable the U.S. to take a leadership position in the formation of a global regime for mobility and security.

The Bush administration has been reluctant to fund the implementation of border security measures at U.S. ports of entry, let alone underwrite a major expansion of international law enforcement institutions. The Department of Homeland Security is often depicted in the international media as an overly large organization with a greatly expanding budget.

To put things in perspective, the border control divisions of EU member state interior ministries are collectively much larger than their U.S. equivalent, the Bureau of Customs and Border Protection (CBP), which has approximately 41,000 employees (DHS 2004a: 19). This is only slightly larger than Germany's Bundesgrenzschutz (Federal Border Police) which has 40,000 employees.[15] One then could add border guard staffing figures of a few more EU member states to double that number. The DHS Budget has increased from $31.2 billion in FY 2003, to $35.7 billion in FY 2004 and $37.6 billion in FY 2005 (DHS 2004: 3, 12).[16]

However, as Stephen Flynn points out, additional spending on homeland security in the two years since September 11, 2001 is a minuscule 4% of the annual Defense Department budget (Flynn 2004). In recounting how relatively little the U.S. government has spent on border and port security, Flynn estimated that deploying new shipping container-screening technology at the world's major ports would cost approximately $500 million, "that's three days in Iraq. That's four F-22 fighters" (Flynn 2004a).

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[15] See http://www.bundesgrenzschutz.de/Aufgaben/index.php

[16] These figures do not include funding for Project Bioshield, the government program to pre-purchase vaccines and medicines, which is authorized by separate legislation, nor does it include the funds from the 2004 Iraq supplemental appropriation.

If domestic politics and budgetary priorities constrain the U.S. government from providing the leadership necessary to form a global regime for mobility and security, the EU could potentially fill the role, especially given that the EU has extensive experience in the institutionalization of international law enforcement, cooperation on border controls and building border security capacity in the new EU member states.

While U.S. lawmakers are skittish about proposing the establishment of a national ID card, let alone one with embedded biometrics, many European societies are very accustomed to ID cards, some of which have included fingerprints for some time now. Denmark and Sweden are pioneering ICAO compliant biometric passports and the French Interior Ministry has agreed on new IDs with both facial and fingerprint biometrics on RFID chips (eGovernment News 2004a).

Not only does the EU collectively have more border control staff than the US, but as internal borders with new member states are lifted in the coming years, many border control officers, particularly German officers, will need new tasks. New European integrated border management arrangements may permit some to join in patrolling the EU's new external borders but some could be detailed to broader international cooperation efforts focusing on terrorist travel and document security.

Moreover, the European Commission surpassed U.S. diplomacy on the Passenger Name Record issue when it opted for a global approach and led the international community by proposing a framework for cooperation under ICAO.

A third alternative would be transatlantic hegemonic leadership. That is, if the US, Canada and the EU could each agree to lead on issues where they are best able and the others follow that lead in turn, one could imagine a core group of states that push the agenda of global mobility and security as well as support it though exemplary implementations, financial contributions and political muscle. This scenario may offer the greatest possibility for regime formation but it is also the most diplomatically complex and would require that the domestic constituencies of a relatively large number of states do not resist either of the two steps of such international cooperation.

Moreover, such transatlantic agenda setting offers little to those states outside the core group and could prompt significant diplomatic resistance from the rest of the world should transatlantic hegemonic leadership actually take shape. This brings us to the question of what stake, if any, migrant source countries may have in a global regime for mobility and security.

A General Agreement on Migration, Mobility and Security (GAMMS)?

Given that an international regime theory largely developed to help explain international cooperation outside of formal international organizations, as was the case with the GATT, analogies to the GATT for an international migration regime can be useful, as several authors have demonstrated (Harris 1995; Ghosh 2000; Straubhaar 2000). Most

have envisioned rounds of negotiations toward an overarching agreement that links the well-established refugee regime and cooperation in trade in services, or even international trade in general (Hollifield 2000: 101), to areas of international migration that have not been subject to international regulation.

Given that migration destination countries have not been particularly responsive to economic and human rights arguments for the initiation of such rounds of negotiations, perhaps the security implications of accelerating international mobility may provide increased impetus toward broader cooperation that links cooperation on migration as desired by source countries, to cooperation on mobility and security as desired by destination countries.

Discussions of a global migration regime based on an agreement similar to the GATT have focused on a principle of "regulated openness" that is in contradiction to labour market protectionism through the exclusion of migrants, as well as the liberal doctrine of unfettered free movement of labour across the boundaries of sovereign states (Ghosh 2000: 25). A global regime for the orderly movement of people would involve a bargain in which destination countries would permit legal migration of labour while source countries would agree to do what they could to suppress illegal migration as well as accept orderly repatriation of their nationals who migrated illegally, despite the source countries' best efforts to dissuade that.

From the perspective of destination countries,' there is little incentive for international commitments to keep labour markets open to immigrants. There is no compelling reason to change the status quo when legal labour migration can be permitted (and illegal migration tolerated) on a unilateral basis in periods of economic growth and shut down in time of recession. From the source countries' perspective this bargain is inherently problematic. Not only do their economies increasingly depend upon remittances from legal and illegal migrants alike, but there is little that a state can do to prevent its nationals from leaving without at the same time transgressing international human rights law and possibly also infringing on citizens' constitutional rights. Crudely put, from the source countries perspective, if destination state governments largely condone employment of illegal migrant workers and are having difficulties controlling their borders, it is not the source countries' problem.

In the wake of Sept 11, 2001, the stakes in establishing a global regime for mobility and security are much higher for the US, EU member states and other migration destination countries than past incentives for establishing a global labour migration regime. For source countries, participation in a global regime for mobility and security involves the practical implementation of international norms on document security and biometrics, information exchange and international cooperation among border control authorities and law enforcement agencies that may be prohibitively expensive and administratively very difficult.

As currently pursued by the U.S. and EU, the envisioned global border security cooperation makes heroic assumptions regarding the identity documentation of much of

the world's population. If identity and travel documentation systems of the U.S. and other advanced post-industrial states are so susceptible to fraud and counterfeit, what are we to expect of less developed countries? Kamal Sadiq's work on "documentary citizenship" (Sadiq 2003; forthcoming) demonstrates that document fraud is not only used in illegal migration between countries in the developing world but also enables illegal migrants to vote in the states in which they illegally reside. In many parts of the world, where the registration of births is far from systematic, national ID systems are weak or non-existent and bureaucracies corrupt, a person's possession of a passport may be more indicative of illegal status than citizenship.

Similarly, international information exchanges have been enabled by the internet, however, they rely on a state's capacity to collect, store and retrieve required data. Finally, the international cooperation on border control and law enforcement required for a global mobility regime may involve source and transit countries' acceptance of U.S. and/or EU border control officers in their airports and seaports and that may be considered by many domestic political actors as an intolerable infringement of state sovereignty. Hence, it may be politically difficult for many migrant source countries in the developing world to agree to a global regime for mobility and security. Even if such agreement is reached, implementation may be equally if not more difficult to achieve.

If U.S. and EU's vital security interests are at stake in a global regime for mobility and security, and if cooperation on document security and law enforcement is linked to orderly international labour migration, perhaps a more all-encompassing General Agreement on Migration, Mobility and Security (GAMMS) could be negotiated. Incorporation of orderly labour migration into the global regime for mobility and security would require leadership from the U.S. in expanding the legal migration of migrant labour while at the same time enforcing employer sanctions to dry up the demand for illegal migrant labour. It would require that those EU member states that have resisted opening their labour markets to immigrants do so and agree to an EU framework for labour migration. In return, source countries in the developing world would agree to rapid implementation of ICAO travel document standards, automated information exchanges and increasing international border control and law enforcement cooperation.

Trading labour market access for cooperation in combating terrorist travel, however, may very well prove unworkable. Advocates for border security in destination countries may argue that reducing terrorist mobility increases the security of all states and should not need to be tied to agreements on labour migration. In many developing countries, the threats of malnutrition and disease overshadow concerns over border security, terrorist travel and the prospect of truck bombs detonated in front of hotels that cater to foreigners. Sending states advocate for increasing opportunities for international labour migration and may reject any linkage that "securizes" migration, preferring to focus instead on convincing destination countries of the benefits of legal labour migration.

International cooperation on border security that remains limited to the transatlantic area and does not embrace the whole world will not be as effective as a global regime for mobility and security. Source countries in the developing world may resist the

imposition of biometrics in their documents and foreign law enforcement officers in their airports, however, some states will cut bilateral deals that facilitate travel by their nationals and trade through their ports. With increasingly globalized economies, those states that resist cooperating with the U.S. and EU on border security may suffer significant economic costs from decreasing mobility of their nationals and exports.

International cooperation on migration whether on a global or regional basis need not necessarily lead to liberal outcomes that make it easier for prospective migrants and asylum seekers to cross borders. A global regime for mobility and security would facilitate travel for tourists, businesspeople and migrants deemed legitimate and "wanted" by the states receiving them. At the same time, it would strengthen state capabilities to not only intercept suspected terrorists but also to decrease the "unwanted" migration of illegal workers and asylum seekers.

Given the requirements for leadership necessary to establish such a global regime and the domestic political barriers to governments seeking to assume that leadership, the steps toward a global regime for migration and security described above may not go much further. If they do, however, source countries in the developing world will have choices forced upon them. There may be opportunities for collective actions that translate into additional broader cooperation on international labour migration in the form of a General Agreement on Migration, Mobility and Security. The prospects for such cooperation, however, may only be slightly better than the past efforts at global cooperation on migration that have yet to produce very much.

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