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Third Thematic Session “International cooperation and governance of migration in all its dimensions, including at borders, on transit, entry, return, readmission, integration and reintegration”

– Joint Statement –

E. Guild, Queen Mary University of London
M. Panizzon, University of Bern
E. Fornalé, World Trade Institute, University of Bern

Multi-layered governance (MLG) as a dominant model in global migration policy encourages flexibility in identifying and applying the most effective and legitimate rule-making layer (national, trans-regional, supranational) to the subject matter. MLG is a model of governance that ascribes the allocation of power and authority to domestic mechanisms and bilateral, regional, and intergovernmental arrangements.¹ Unlike policy cooperation or well-managed migration policy, interaction among layers in MLG is driven by a programmatic and participatory element.² Power is shared to ‘build trust and capacities’,³ with non-state actors, to achieve ‘policy coherence’, and ultimately enhance human rights protection.

Policy outcomes of a multi-layered governance of large migration flows: setting the agenda for rights-based packaging solutions?

We distinguish institutional-procedural and substantive-rights-based outcomes of MLG:

- 1) MLG is an opportunity for diversity and inclusiveness in migration policy-making: through “layering” this governance model, promotes customized flexible solutions as opposed to one-size-fits-all approaches which hamper human rights enforcement;
- 2) Shifting venues enables ‘an escape to markets’ as an alternative to security-driven anti-immigration rhetoric. Evading anti-immigrant sentiment by going for labor mobility in preferential trade agreements, or regional integration frameworks, like European Union, ASEAN, ECOWAS etc.,⁴ instead, may open legal avenues which increase the potential of migrants’ participation in the labour force under conditions of equal social protection. Conversely, competing and overlapping layers of

¹ The Global Compact for Migration (GMG) Input to the Secretary General’s Issue Brief, Theme 3: International cooperation and governance of migration in all its dimensions including at borders, on transit, entry, return, readmission, integration and reintegration.

² Conzelmann, T. (2008). A New Mode of Governing? Multi-level governance between co-operation and conflict. In Conzelmann, T. and Smith, R. (eds.), *Multi-level Governance in the European Union: Taking Stock and Looking Ahead*. Baden-Baden: Nomos, 11-30.

³ Sutherland Report, UN Doc. A/71/728, para. 37: “Bilateral, regional and inter-regional partnerships and cooperation platforms on migration can provide valuable venues for building trust and capacities.”

⁴ Jurje, F. and Lavenex, S. (2014). “Trade Agreements as Venues for ‘Market Power Europe’? The Case of Immigration Policy”. *Journal of Common Market Studies* 52(2) 320-336; see also Geddes, A. (2015) “Temporary and circular migration in the construction of European migration governance.” 28(4) *Cambridge Review of International Affairs* 571-588; Boswell, C. (2008). “Evasion, Reinterpretation and Decoupling: European Commission Responses to the ‘External Dimension’ of Immigration and Asylum”. 31(3) *West European Politics* 491-512.



rules create complex regimes that result in failures to uphold human rights, not least because complexity is frequently the handmaiden of the arbitrary;

We call for MLG to achieve policy coherence in three thematic areas:

- 1) Labour mobility: closely linking trade preferences to human rights and labour standards for refugees and migrants can be mutually beneficial: trade opportunities, such as the General System of Preferences (GSP) of the WTO, may be exploited to incentivize transit countries hosting large refugee and migrant populations. This could provide access to employment for refugees and migrants (some examples, albeit incomplete and with substantial questions still open, are provided by the Jordan/Lebanon and Ethiopia Compacts). Moreover, such an approach would also comply with and enforce ILO labour standards. It is worth considering whether a further link regarding guarantees of *non-refoulement* and right to asylum could be included.
- 2) Climate change: the current legal landscape is well-equipped to address the unpredictability of future environmental migration. The multi-layered approach could be a valuable vehicle for attracting attention to expanding and/or improving existing migratory instruments by supplementing them with legal channels in bilateral and regional agreements.
- 3) Social protection: evidence points to the ability of MLG to strengthen access to protection and reduce inequalities. This can be achieved if states cooperate within regional integration frameworks which in turn provide space for regional and transregional civil society collaboration to achieve equality in social protection.

We recommend that multi-layer governance be carefully framed. The international community must refrain from formally legitimizing package deals that might promise improved livelihoods for some migrants, ‘paid for’ by the violation of the human rights of others. Such rights include: the right to leave, the prohibition on push-backs of migrants at international borders without consideration of their protection claims, and the prohibition on mass expulsion.

How can multi-layered governance bring about change in the perception of risk and security impacts of migration? Which governance gaps can it address?

Linkages within this thematic issue, including between trade, climate change, education, health and human rights, can open legal pathways and transform migrant trajectories into livelihood opportunities.⁵ Encouraging MLG under the strict condition that the human rights of migrants are fully protected can enhance resilience-building among migrants. It could also help to transform the framework of international protection from a ‘burden’ to an opportunity.⁶

MLG can assist the international community to move beyond the “ad hoc-ism” of humanitarian interventionism designed to save lives, by redirecting the focus to multiple frameworks that protect and enhance life, in particular that of migrants.⁷ It demands a long-term perspective engaging all policy areas and levels of decision-making affected by movement of people.

⁵ SDG Agenda 2020 “well managed migration policies” include humanitarian intervention but also access for all, including migrants, to lifelong learning and other opportunities.

⁶ Volker, T. and Garlick, M. (2016). "From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees." *International Journal of Refugee Law* 28(4) 656-678.

⁷ Moreno Lax, V. *Accessing Asylum in Europe: Extraterritorial Border Controls and Refugee Rights under EU Law* (Oxford: Oxford University Press, forthcoming).