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International Organizations and Migration: a global issue
without a global forum.

Why it does not have the place it deserves.

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Introduction

In awarding the Nobel Peace Prize to the United Nations (UN) and its Secretary-General (SG), Kofi Annan for their work, the Norwegian Nobel Committee underlined that responsibility for peace and security, but also obligations with regard to human rights are the main features of the organisation and constitute its strength.

The Committee stressed that “Through this first Peace Prize to the UN as such, the Norwegian Nobel Committee wishes in its centenary year to proclaim that the only negotiable route to global peace and cooperation goes by way of the United Nations”.¹

While it seems difficult to argue against the Committee’s declaration as quoted above, I will try to analyse at the beginning of this research the concept of Global Governance, to provide a framework, as broad as possible, for the purposes of this study.

In his Nobel Prize acceptance speech in 2001, Kofi Annan stated:

A forum was created – “the United Nations” - where all nations could join forces to affirm the dignity and worth of every person, and to secure peace and development for all peoples. Here, States could unite to strengthen the rule of law, recognize and address the needs of the poor, restrain man's brutality and greed, conserve the resources and beauty of nature, sustain the equal rights of men and women, and provide for the safety of future generations.

We thus inherit from the 20th century the political, as well as the scientific and technological power, which - if only we have the will to use them - give us the chance to vanquish poverty, ignorance and disease.

In the 21st century, I believe, the mission of the United Nations will be defined by a new, more profound awareness of the sanctity and dignity of every human life, regardless of race or religion. This will require us to look beyond the framework of States, and beneath the surface of nations or communities. We must focus, as never before, on improving the conditions of the individual men and women who give the state or nation its richness and character.²

Taking the words of the (former) UN Secretary-General as a point of departure and as inspiration, the primary research focus of this dissertation explores, analyses and discusses the reasons why, in spite of the firmly declared will to deal globally with issues relating to the “dig-

¹ Press release of Nobelprize.org <<http://nobelprize.org>>

² Annan, Kofi (2001): We the Peoples. The Role of the United Nations in the 21st Century. United Nations, New York Nobel Lecture, Oslo, December 10th, 2001.

nity of human life“, no anchor UN organisation exists to deal with migration.

Without entering into an ontological dispute about idealism and realism, we can argue that the statement of the UN SG (Kofi Annan) at the Nobel Prize award was a general, idealistic one, particularly when it comes to the definition of the UN mission in the 21st century. In later years a number of statements by the UN SG (Ban Ki-moon), put migration in the UN agenda, either in relations to other, broader UN areas of activity or as a matter to be dealt with, realistically, in a cautious way. As a matter of fact, the issue of migration seems to come into the agenda, with some predominance, in the year 2006.

In the next paragraphs we can observe how a certain path sometimes develops in a vague and contradictory direction in the UN system. The following paragraph, taken from the Report of the Secretary General dated 18 May, 2006, at the Sixtieth Session of the General Assembly³, can be considered enlightening.

Agenda item 54(c) Para 293 Globalization and interdependence: international migration:

Within the United Nations system there is no single entity with the mandate of working systematically on the full spectrum of international migration issues. Each of the United Nations organizations constituting the Global Migration Group cover different and sometimes overlapping aspects of international migration and development and each has its governing body. With 116 member States, IOM focuses on a wide spectrum of migration issues but is outside the United Nations system.

In a first attempt to show the place migration occupies among the UN areas of activity, we may say that the issue of migration particularly fits into three of them, namely:

- Peace and security
- Development
- Human rights

Integrated in the major areas dealt with by the UN, migration started to gain more attention from member states and became then the object of UN treaties⁴.

“Although these instruments differ from each other by title, they all have common features and international law has applied basically the same rules to all of these

³ The Report of the Secretary-General dated 18th May, 2006, at the Sixtieth Session of the General Assembly, Agenda item 54(c) Globalization and interdependence: international migration and development.

⁴ The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990. Convention against Trans-national Organized Crime and its Protocol against Trafficking in Persons, 2003. Protocol on Smuggling of Migrants by Land, Air and Sea, 2004.

instruments. These rules are the result of long practice among the States, which have accepted them as binding norms in their mutual relations. Therefore, they are regarded as international customary law.”⁵

In a later part of this introduction, we will see, however, that due to the resistance of Member States, the UN SG himself pleads for a non-binding forum on migration, not charged with the responsibility to formulate and promote binding instruments such as treaties, protocols and conventions.

A closer look at the three areas mentioned above shows that migration is dealt with, not per se but in conjunction with other issues. These sometimes focus on a specific migrant type (e.g. migrant workers) or on a specific illegal action (e.g. smuggling of migrants), and sometimes locate it within a broader framework such as organized crime.

a) The United Nations is well-placed to address migration in connection with peace and security, as irregular migration is often considered an emerging threat. However, migration should not be treated solely as a security concern, but rather be dealt with on the basis of respect for the human rights of all migrants, regardless of their status, and taking into account all economic, social and cultural implications of migration. Due to the multidimensional character of international migration, the United Nations can be considered the suitable forum for dealing with it following the principle of shared responsibility and the strengthening of cooperation among states directly concerned with the phenomenon.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families offers a “valuable frame of reference” for this effort.⁶ Its Article 1 defines its applicability to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

It also states that the Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

b) Within the UN System, the year 2009 has seen migration placed primarily in connection

⁵ www.un.org Definition of key terms used in the UN treaty collection.

⁶ A/RES/45/158 General Assembly 69th plenary meeting 18th December, 1990.

with the issue of development. Migration, both within and beyond borders, has become an increasingly prominent theme in domestic and international debates, and is the topic of the 2009 Human Development Report (HDR09). The report formulates the following goal for the UN with respect to migration and development:

Together, our goal is to harness the power of migration to reduce poverty and inequality -- to help more people share in the world's prosperity -- and to achieve the Millennium Development Goals. We are here to ensure that migration and development policies are founded on evidence, not fuelled by prejudice.⁷

The report investigates migration in the context of demographic changes and trends with respect to both growth and inequality. It also presents in considerable detail and nuances individual, family and village experiences, and explores less visible movements typically pursued by disadvantaged groups such as short term and seasonal migration.

c) In connection with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and to mention an example relating to human rights, we can recall the work the UN Human Rights Committee which addresses, among other things, the rising flow of workers moving in and out of countries like

According to the Secretary-General's report on the protection of migrants (document A/64/188), 16 countries reported on their implementation of the resolution on the protection of migrants (resolution 62/156) and 9 countries on the importance of family reunification (resolution 63/184). The Special Rapporteur on the human rights of migrants submitted a report to the Human Rights Council's eleventh session containing a section highlighting the protection of children in the context of migration. The Office of the United Nations High Commissioner for Human Rights (OHCHR) continues its efforts to support the rights of migrants through its field offices, engaging in migration-related human rights work.

We will return to this UN activity at a later stage, when discussing OHCHR more in details. Among the report's recommendations, the Secretary-General encourages the adoption of national plans informed by international human rights standards to strengthen the protection of migrants. He encourages member states to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as protocols to the Convention on Trans-national Organized Crime, which deal with the smuggling of migrants and human trafficking.

⁷ Secretary-General SG/SM/12587 DEV/2772.

Besides the above Treaty, the Protocol on Smuggling of Migrants by Land, Air and Sea entered into force in 2004. It is a landmark in the fight against the smuggling of migrants and another milestone in the global effort to combat trans-national organized crime. This Protocol provides the international community with new tools to confront the smuggling of migrants. It defines the smuggling of migrants as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State party of which the person is not a national or a permanent resident” (Article 3, paragraph (a) of the Protocol).

This tool was designed to strengthen the international community’s position in countering trans-national organized crime groups and their highly sophisticated networks to smuggle migrants, exploiting human misery and making sizeable criminal profits in the process.

On 22nd December, 2003, the General Assembly in its resolution A/RES/58/135 on international cooperation in the fight against trans-national organized crime welcomed the entry into force of the Convention against Trans-national Organized Crime. The General Assembly also adopted resolutions to combat trafficking in drugs and in persons, and to strengthen international crime prevention efforts.

The United Nations Office on Drugs and Crime (UNODC) provides technical assistance to Member States in order to support the implementation and ratification process. As of 20 January 2004, the Protocol has been signed by 112 Member States and ratified by 40 States.⁸

In and through the above discussion of individual efforts, we have seen when and how the issue of migration became regulated by binding instruments of international law within the UN system. The reason why this study provides examples of different types of UN treaties rests upon the argument in favour of having migration dealt with from inside the UN system. Being kept outside the system, migration remains a peripheral issue and will only be an item on the agenda in connection with other issues, accordingly/consequently losing its position with respect to human rights.

In this regard, I would like to appraise the role of the only organisation, outside the UN system, which put migration in the centre of its mandate, focusing on the International Organization for Migration (IOM), invited by the General Assembly (GA) to participate in its sessions,

⁸ Press Release SOC/CP/280 Landmark United Nations Protocol Against Smuggling of Migrants enters into force (reissued as received), Vienna, 27th January (UN Information Service).

and its work in the capacity of an observer.⁹

Cooperation between the UN and IOM is mainly dealt with by the Second and Third Committees of the GA and regulated by two GA resolutions of 1992 and 1997. It is worth recalling that IOM was established in 1951 as the Provisional Intergovernmental Committee for the Movement of Migrants of Europe and mandated to help European governments to resettle and transport millions of people uprooted by the Second World War. Only in 1989 did it become IOM, changing from a logistic, regional agency into an international migration agency.

Some features in its Constitution are worth being underlined as they will be referred to in a later chapter comparing this organisation to a number of UN and non-UN agencies. First of all, in the Preamble of the Constitution the contracting parties recognize that migration services are required to “ensure the orderly flow of migration movements”, call for cooperation among States and international organisations, and include refugees in the definition/their understanding of international migration. The transfer of migrants and refugees is referred to in Chapter 1, Article 1 .1 (a) and (b) of the Constitution as the priority service and main purpose of the organisation. In consideration of the fact that transfer of migrants involves more than the simple logistical transportation of migrants from one place to another, extending to border management, targeted assistance for return migration, passport and visa systems, and determination of migrant status, it should ideally be managed at a global level. However, Chapter 1, Article 1.3 states that “the Organization shall recognize the fact that control of standards of admission and number of immigrants to be admitted are matters within the domestic jurisdiction of States.”

The subject of migration can be presented from the point of view of municipal or international law. There is, in fact, no unanimously accepted view on the question of whether migration falls within the domestic jurisdiction of each State and should accordingly be regulated by municipal law or is a concept of international law.

The relevance which treaties have in the management of migration needs to be stressed, in particular considering Article 27 of the Vienna Convention on the Law of Treaties which provides that, where a treaty conflicts with a State’s municipal law (including the State’s constitution), the State is still obliged to meet its obligations under the treaty. This raises the question whether migration is a matter of international concern, likely to have international repercussions, and should therefore not/no longer be considered a matter of domestic jurisdiction?

⁹ A/RES/47/4 41st plenary meeting 18th October, 1992.

The co-existence of States and the existence of international relations are among the factors to be taken into consideration when dealing with migration. The very reason why States are anxious to identify migrants is their desire to distinguish and delimit them, who as a rule are nationals of other States.

Here the limitations to the organisation's mandate are clearly set out, not leaving much room for the international regulation and management of a global issue like migration.

In this regard, it is worth noting that in dealing with the issue of domestic jurisdiction of States, a different principle - i.e. that of the Responsibility to Protect - is adopted by the UN as agreed by the heads of state and government of UN member states in the Outcome Document of the World Summit in September 2005. The definition of the Responsibility to Protect can be summarized as follows:

“Each individual state has the responsibility to protect its citizens from genocide, war crimes, ethnic cleansing, and crimes against humanity and at the same time, the international community has to support the states in fulfilling that task, but if a state manifestly fails to do so, the international community, through the United Nations, has, in accordance with the UN Charter, especially Chapter VI and VII, the responsibility to take collective action through peaceful, diplomatic, humanitarian or even coercive means in order to protect civilians in armed conflict.”¹⁰

The issue of Protection is also a controversial one. It should be emphasized that IOM has no legal protection mandate, in spite of the fact that its activities contribute to protecting human rights, having the effect or consequence of protecting persons involved in migration.

We will return to the concept of protection and mixed migration at a later point, particularly in connection with UNHCR activities. This involves discussing the fact that refugees and asylum seekers more and more often move from one country to another alongside other people whose reasons for moving are different and not protection-related.

The Cooperation Agreement between the UN and IOM, dated 25th June, 1996, settles in particular the reciprocal status of observer whereby IOM was invited by the UN to attend meetings and conferences as observer “whenever matters of interest to the IOM are discussed”. By the same token, the UN was invited by IOM to attend meetings and conferences as observer “whenever matters of interest to the UN are discussed”.

In the present study, the status of observer will be reviewed and clarified, specifically in con-

¹⁰ Articles 138 and 139 of the Outcome Document of the High-level Plenary Meeting of the General Assembly in September, 2005.

sideration of the fact that there are different grades in the observer status, as follows:

- a) Intergovernmental organisations having received a standing invitation to participate as observers in the sessions and the work of the General Assembly and maintaining permanent offices at Headquarters (among them IOM)
- b) Intergovernmental organisations having received a standing invitation to participate as observers in the sessions and the work of the General Assembly and not maintaining permanent offices at Headquarters
- c) Other entities having received a standing invitation to participate as observers in the sessions and the work of the General Assembly and maintaining permanent offices at Headquarters

With respect to UNHCR, divergences and common areas will be outlined in the chapter dedicated to IOM and UNHCR. The issue of Protection, in particular, will be analyzed in the context of the two organisations, considering that, while IOM has no legal mandate for it, the General Assembly specifically refer to UNHCR 's competence and functions relating to international conventions providing for the protection of refugees.¹¹ It also states that UNHCR shall assume the functions of providing international protection to refugees.¹²

An area of activity common to both UNHCR and IOM, where States find it increasingly difficult to distinguish between refugees and migrants, is that of mixed migration. Mixed movements are so complex and fluid that any system designed to cope with them has to be extremely flexible.

Another organisation that can be compared to IOM for being the anchor organisation for the global environment and for coordinating the multilateral environmental agreements is the United Nation Environment Programme UNEP.¹³ Its mission is defined as follows: to provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and people to improve their quality of life without compromising that of

¹¹ Article 1 of the Convention as amended by the 1967 Protocol provides the definition of a refugee: "A person who owing to a 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

¹² General Assembly Resolution 428(V) of 14th December, 1950.

¹³ Biermann, Frank/ Siebenhüner, Bern/ Schreyögg, Anna (2009): *International Organizations in Global Environmental Governance*. London/ New York: Routledge.

future generations.

Fundamental functions of UNEP, missing from the functions of IOM are, for example, the development of international agreements and other national environmental instruments. In this respect, it is worth mentioning Article 4 of the Vienna Convention on the Law of Treaties, which distinguishes between treaties constituting international organisations and treaties adopted within an international organisation

The Convention applies to:

- any treaty which is the constituent instrument of an international organisation without prejudice to the rules concerning acquisition of membership and without prejudice to any other relevant rules of the organisation;
- any treaty adopted within an international organisation without prejudice to any relevant rules of the organisation.

IOM being outside the UN system, it neither has the function of developing international agreements, nor can a treaty be adopted within this organisation.

As we have previously seen, international law's treaties are among the main instruments accepted by UN member states. Therefore, an organisation which operates outside the UN system, like IOM, lacks the authority to develop and apply such instruments, limiting its area of intervention accordingly.

UNEP, for its part, has also initiated a ministerial-level intergovernmental process to strengthen environmental governance and reinvigorating global commitment to sustainable development. Beyond this, many international environmental agreements have been established with UNEP's assistance, such as the Montreal Protocol on Substances that Deplete the Ozone Layer, the growing number of treaties that govern the production, transportation, use, release and disposal of chemicals, and the family of treaties that protect global biodiversity.

At a later stage, the study will analyse, within the framework of the existing UN entities dealing with migration, a statement by the SG on the establishment of the Global Migration Group, in which he pointed out the following:

“There is no consensus on making international migration the subject of formal, norm-setting negotiations. There is little appetite for any norm-setting intergovernmental commission on migration. But, the Forum would be the opposite of that. It would be informal, voluntary, and consultative. Above all, it would not

make binding decisions.”¹⁴

In this regard, it is worth pointing out that, as in the case of organisation such as the International Atomic Energy Agency (IAEA), dealing with atomic energy as a matter of high security for all the world, or the Office of the High Commissioner for Human Rights (OHCHR), a number of member states might have had reservations about trusting an international agency with the monitoring of this sensitive issue.

In this regard, as President Eisenhower stated in the Atoms for Peace Speech¹⁵, in spite of a difficult reality encompassing divergent and differing national positions, it is imperative to take the required steps.

In this quest, I know that we must not lack patience. I know that in a world divided, such as ours today, salvation cannot be attained by one dramatic act. I know that many steps will have to be taken over many months before the world can look at itself one day and truly realize that a new climate of mutually peaceful confidence is abroad in the world. But I know, above all else, that we must start to take these steps - now.

In the case of the United Nations human rights programme, which started as a small division at United Nations Headquarters in the 1940s, it may be enlightening to analyze its development. Only at the World Conference on Human Rights in 1993, the international community decided to establish a more robust human rights mandate with stronger institutional support. Accordingly, Member States of the United Nations created OHCHR by a General Assembly Resolution in 1993.

The growth in United Nations human rights activities has paralleled the increasing strength of the international human rights movement since the United Nations General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948.

“Drafted as ‘a common standard of achievement for all peoples and nations’, the Declaration for the first time in human history set out basic civil, political, economic, social and cultural rights that all human beings should enjoy. It has over time been widely accepted as the fundamental norms of human rights that all Governments should respect. December 10, the day of its adoption, is observed worldwide as International Human Rights Day. The Universal Declaration, together with the International Covenant on Civil and Political Rights and its two

¹⁴ The Secretary-General’s address to the High-level Dialogue of the General Assembly on International Migration and Development, New York, 14th September, 2006.

¹⁵ Address by Mr. Dwight D. Eisenhower, President of the United States of America, to the 470th Plenary Meeting of the United Nations General Assembly, 1953.

Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights, form the “International Bill of Human Rights.”¹⁶

Alongside the development of international human rights law, a number of United Nations human rights bodies have been established to respond to changing human rights challenges. They rely on OHCHR for both substantive and secretariat support in fulfilling their duties. These bodies can be either Charter-based¹⁷ and political bodies consisting of State representatives with mandates established by the United Nations Charter, or they can be treaty-based¹⁸ committees with independent experts set up, with the exception of one, by international human rights treaties and mandated to monitor State parties’ compliance with their treaty obligations.

The United Nations Commission on Human Rights, established in 1946 and reporting to the Economic and Social Council was the key United Nations intergovernmental body responsible for human rights until it was replaced by the Human Rights Council in 2006. In addition to assuming mandates and responsibilities previously entrusted to the Commission, the newly created Council, reporting directly to the General Assembly, has expanded mandates. These include making recommendations to the General Assembly for further developing international law in the field of human rights, and undertaking a Universal Periodic Review of the fulfilment of each State of its human rights obligations and commitments.

With this brief overview of some of the relevant organisations in mind, let us return to the central research question: What are the reasons for which UN Member States have not, to date, felt the necessity to create an organisation (or transform an existing one into one) which, on a permanent basis, follows and promotes all matters related to migration in an effective manner? On the side of the UN, a first reply to this question could be supported by the following paragraphs which illustrate which instruments have been set up, to deal with migration, within the UN system.

In 2006 the Report of the Secretary General, presented at the Sixtieth Session of the General

¹⁶ www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw

¹⁷ The current Charter-based bodies are the Human Rights Council and its subsidiaries, including the Universal Periodic Review Working Group, and the Advisory Committee. Previously, the Charter-based bodies were the Commission on Human Rights and its subsidiaries, including the Sub-commission on the Promotion and Protection of Human Rights

¹⁸ Several UN human rights conventions establish monitoring bodies to oversee the implementation of the treaty provisions. The treaty bodies are composed of independent experts and meet to consider States parties’ reports as well as individual complaints or communications. They may also publish general comments on the treaties they oversee.

Assembly as Agenda item 54(c) “Globalization and interdependence: international migration and development”, presented two bodies: the Global Migration Group and the High Level Dialogue on International Migration and Development, both established in 2006. The first of these, the Global Migration Group, meets at regular intervals to coordinate activities and improve coherence within the UN and between the UN and IOM in addressing a wide array of international migration issues. Its membership, consisting of nine UN organisations and IOM, and its terms of reference are all-encompassing. However, a number of issues particularly relevant to migration, such as gender, children, education and legal frameworks, to name only a few, do not appear to be represented in the above bodies through the relevant UN organisations like UNICEF, UNIFEM or UNITAR.

At the UN HLD conference in September 2006, the UN SG made the following statement which pointed out the issue of lack of consensus and “appetite” among member states to establish a permanent entity:¹⁹

Just a few years ago, many people did not think it possible to discuss migration at the United Nations. Governments, they said, would not dare to bring into the international arena a topic on which their citizens are so sensitive.

More and more people are excited about the ways in which migrants can help transform their adopted and their native countries.

Governments are now beginning to see international migration through the prism of opportunity, rather than of fear.

International migration today cries out for a global discussion and the answers to many of problems can be found through constructive engagement and debate. Many participants have embraced the proposal for a Global Forum on Migration and Development and its first meeting to be held in 2007.

There is no consensus on making international migration the subject of formal, norm-setting negotiations. There is little appetite for any norm-setting intergovernmental commission on migration. But, the Forum would be the opposite of that. It would be informal, voluntary, and consultative. Above all, it would not make binding decisions.

The Forum would allow us to build relationships of trust, and to bring together the best ideas that different countries have developed: facilitating remittances; engaging Diasporas; exploring new ways to reduce poverty; building educational partnerships; and so on.

¹⁹ The Secretary-General’s address to the High-level Dialogue of the General Assembly on International Migration and Development, New York, 14th September, 2006.

Finally, it would show that Governments are now willing to address this complicated, volatile issue in a thoughtful, constructive fashion.

The Forum must be led and overseen by States. But the United Nations System stands ready to support it.

The substance of the UN SG's words in 2006 diverges from the substance of Kofi Annan's speech in 2001. On the one hand, in 2001 Kofi Annan emphasised UN awareness of the sanctity and dignity of every human life, regardless of race or religion. On the other, in 2006 Ban Ki-moon accepts that there is no consensus on making international migration the subject of formal, norm-setting negotiations.

From the above statement, we may start deriving some assumptions which will be the basis for the hypothesis that this thesis presents, namely, that apparently UN Member States do prefer, as stated by the UN SG, a consultative process rather than a permanent body within the United Nations. As we understand, the consultative process, now established as the Global Migration Group, is not aiming at achieving negotiated outcomes or work under strict rules of procedure, but rather be an open-ended, non-binding body (quote: informal, voluntary and consultative). The GMG being an inter-agency group, it is not the forum where instruments such as treaties, conventions and protocols can be designed for member states to ratify and comply with.

These considerations seem to me to be limiting a full engagement by both individual states and IOs in dealing with migration. I have consequently chosen the issue of International Organisations and migration because I feel that an important forum is missing in the UN system, specifically among organisations dealing with human life.

My personal motivation in writing this thesis stems from the fact that I have worked more than 25 years in a specialized agency of the United Nations and, with the insight that experience has provided, know the factors that favour and inhibit the impact a UN agency can have on the issue covered by its mandate. Besides, being familiar with the organisational structure of UN organisations, I may gain privileged access to information through structured interviews with persons working in the same context. More importantly, I would like to explore the reasons why and how, in the case of some global issues such as labour, health, environment, climate change, refugees, education and gender, to name just a few, member states have managed to find a common language and come to an agreement to act jointly and entrust an organisation with the implementation of its mission.

There are two principal areas to which my thesis will contribute by providing answers to

pressing questions. The first of these concerns the actors of the global management of migration and can be subdivided into two complementary research questions:

- 1 a) Who are the stakeholders, and what are their roles, their current performance and policy impact, that are involved in managing the global migration process?
- 1 b) Does a central entity or an umbrella organisation exist at the global level, meaning primarily within the UN system, which has the sole mandate of managing migration and which is considered and acknowledged as the main authority or all relevant issues related to migration?

The second area concerns the suitability of various potential means of dealing with international migration at the global level. The crucial research question in this respect is the following:

- 2) Could sufficiently flexible legislative instruments, i.e. international regimes, contribute to solving the most pressing of the emerging problems related to migration?

In order to be able to reach answers to these questions, a combination of several methods will be used in research. This mix of methods will include a) desk research, b) expert interviews, c) document analysis and d) a case study. The results of desk research allow me to benefit from existing studies, documentation and information material published on the issue of migration, covering a time span beginning approximately in the post-war period until 2010. The expert interviews provide a picture of the general and specific attitudes held by organisations dealing, directly or indirectly, with migration, on possible changes which could be called for or even occur in the international landscape. The analysis of documents links spoken personal opinions and feelings to written official documents, often requiring interpretation of implicit meanings. Finally, as theory alone would provide an incomplete picture of the migration issue as it is dealt with by international organisations, the case study provides a detailed look at the reasons for and justifications of governments' behaviour towards migrants. In this, the perspective of Critical Discourse Analysis (CDA) will be adopted in order to highlight issues of the representation of migrants in the media and other documents.

1. CHAPTER 1: FRAMEWORK OF THE STUDY

1.1. Theory of Sovereignty

According to Remi Maier-Rigaud's work on international organisations as corporate actors, international organisations have increasingly gained in importance for inter-state cooperation and international politics since the end of World War II.²⁰ While some international organisations seem to function solely as fora for the coordination of state actor interests, others seem to have emerged as actors of their own. In order to pursue this observation, Rigaud raises two questions.

His first question is: Are international organisations unitary actors? Similar to treaties between states (e.g., free trade agreements) and regional integration arrangements, international organisations are a subcategory of international institutions.²¹ Following Simmons/ Martin (2002: 194), international institutions are a "set of rules meant to govern international behaviour". This definition is based on the broader definition of institutions as rules of the game in social life, established by Douglass North: "Institutions are [...] the humanly devised constraints that shape human interaction" (North 1990: 3).

International organisations are thus defined as physical entities with a bureaucratic structure that embodies a set of rules. The other sub-categories of institutions are often contained in international organisations, implying a more qualified type of institution. Therefore, international organisations are the most differentiated type of international institution. This is reflected in the fact that most international organisations²² are accorded legal personality in international law. However, not all international organisations are corporate actors and the state of legal personality does not automatically make an international organisation a corporate

²⁰ Maier-Rigaud, Remi (2008): "International Organizations as Corporate Actors: Agency and Emergence in Theories of International Relations." Max Planck Institute for Research on Collective Goods. <http://www.coll.mpg.de/pdf_dat/2008_07online.pdf>

²¹ These sub-categories are not necessarily mutually exclusive since one can imagine an arrangement that encompasses all three sub-categories.

²² According to the common definition in international law, an international organization has to exhibit four features: It should be a permanent association of two or more states based on a founding treaty and the organization should be independently in charge of its own tasks, which implies the presence of at least one body entitled to act. See for example Peters, Anne (2006): *Völkerrecht: Allgemeiner Teil*. Zürich et al., Schulthess, 169. One should be aware that this definition of international law is not identical to the emerging autonomy which defines corporate actors.

actor.²³ Rather, a corporate actor is composed of parts or members, but its behaviour is not decomposable or reducible to its parts. This necessary and sufficient feature of corporate actors is called ‘emergence’ and accounts for the autonomy of corporate actors. The process of emergence has been described by Flam (1990: 5) as driven by the capacity of “member-created organizations [...] to transform themselves from a ‘mere’ set of formal organizational rules into corporate actors, endowed with a capacity to act, and acting independently from the intentions and interests of their creators”.

Applied to international organizations, this means that they are corporate actors if their behaviour and actions cannot be reduced to the micro level. In order to be corporate actors, international organisations have to show some kind of autonomy vis-à-vis their member-states. They have to exhibit a genuine quality that makes them more than the sum of their parts. This autonomy becomes visible in the ability of international organisations to alter the identities and interests of its members through a feedback mechanism.²⁴

The second question raised by Maier-Rigaud is: To what extent are international organisations corporate actors, based on the autonomy criterion? In order to address the quality of international organisations as corporate actors, political science literature is instructive. In this respect, the fields of neorealism and rational choice institutionalism are compared. Analytically, both theories can be attributed to an economic approach to international organisations, which emphasizes the agency of states and, therefore, tends to view international organisations as mere instruments of state interests. This contrasts sharply with social constructivism, a sociological approach which enables a conceptualization of international organisations as emergent phenomena. Because of its roots in symbolic interactionism, social constructivism thus allows a view of international organisations as autonomous actors.

The theory of social constructivism, which encompasses several aspects touched upon by this study, provides an informative conceptual view on the framework in which international organisations act, particularly in relation to their constituencies. With respect to the above-

²³ Corporate actors may take various forms, as for example sports clubs, political parties, firms or states.

²⁴ The state of legal personality is either explicit or implicit. Explicit means that the founding treaty or constitution of an organization refers to its legal personality. For example, the International Labour Organisation possesses full legal personality, in particular the capacity to contract, acquire property and to institute legal proceedings (cf. Constitution of the International Labour Organisation: Chapter IV, Article 39). If the state of an organization is not made explicit in its founding documents, then it can also be deduced from these documents. Therefore, it is necessary that the functions and tasks of an organization laid down in these documents require it to possess legal personality. In the Bernadotte case, the International Court of Justice accorded to the UN legal personality due to the competencies and powers implied in the UN Charter; see also Peters, Anne: *Völkerrecht: Allgemeiner Teil*.

mentioned framework, the relationship between international organisations and the issue of sovereignty in their member states, i.e. their main constituencies, needs to be discussed.

In international law, the term “sovereignty” means that a government possesses full control over its own affairs within a territorial or geographical area or limit. However, determining whether a specific entity is sovereign is not an exact science, but often a matter of diplomatic dispute. There is usually an expectation that *de jure* and *de facto* sovereignty exist at the place and time of concern, and rest in the same organisation. Foreign governments can either recognize the sovereignty of a state over a territory or refuse to do so.²⁵

What this study discusses is not migration *per se*, i.e. those social forces and reasons that motivate migrants to move across borders, but rather the attitude of governments to apply *raison d'état* as defined and pursued by Cardinal Richelieu who rejected the view that policy should be based on dynastic or sentimental concerns or a ruler's wishes.²⁶ Classical theories regarding sovereignty range from J. Bodin's and T. Hobbes' theories on absolute monarchy, to J. J. Rousseau's definition of popular sovereignty (*Du Contrat Social*). For this study, however, it is the currently changing character of sovereignty in international law and international relations, as emphasized in the work of Winston P. Nagan and Craig Hammer, that is of relevance. Nagan and Hammer expound that

“An analysis of the world social process will yield a vast number of participants and institutions that comprise the global community. Among these are State sovereigns, international and regional organizations, political parties, business groups, pressure groups, NGOs, and individuals in various roles relevant to social relations within and across State and national lines.”²⁷

Later in the same article, they add:

“It is perhaps a paradox that sovereign independence is now often accompanied by sovereign membership in various regional associations and international organizations, which juridical limits sovereignty. For example, membership in the United Nations conditions sovereignty; in other words, sovereignty cannot trump the obligations and international responsibilities of the UN.”²⁸

²⁵ Nagan, Winston P./ Hammer, Craig: “The changing character of sovereignty in international law and international relations.” *Columbia Journal of Transnational Law*. 2004, Vol. 43, 141-188.

²⁶ “Diplomacy.” *Encyclopædia Britannica*. 2010. Encyclopædia Britannica Online. 08 Dec. 2010 <<http://www.britannica.com/EBchecked/topic/164602/diplomacy>>.

²⁷ Nagan/ Hammer, 2004: 155.

²⁸ *ibidem*: 159.

By joining the United Nations, member states thus willingly surrender aspects of their national sovereignty. For example, they consent to submit decisions relating to international peace and security to the UN Security Council, thereby limiting their ability to use force.²⁹ Additionally, UN Security Council decisions are binding for member states.³⁰ The International Court of Justice similarly champions the importance of international rules over domestic rules. An insightful example of this is in an Advisory Opinion issued on April 26, 1988, in which the Court asserted that “the fundamental principle of international law is that it prevails over domestic law.”³¹ Justice Schwebel added that “a State cannot avoid its international responsibility by the enactment of domestic legislation which conflicts with its international obligations” under a treaty.³² Ultimately, the court tacitly accepted that a State’s membership in the international community is a clear limitation on its sovereignty.

Even legal philosopher H.L.A. Hart admitted that a State’s sovereignty cannot excuse it from its obligations under international treaties. He asserted the “view that a state may impose obligations on itself by promise, agreement, or treaty is not [...] consistent with the theory that states are subject only to rules which they have thus imposed on themselves.”³³ Instead, he argued, if appropriate rules within the state exist, then “a state is bound to do whatever it undertakes by appropriate words to do.”³⁴

In a broader context, exceptional cases of violations of the UN Charter may lead to the expulsion of the violating state from the UN. In the case of migrants’ rights, the focus of this study in general and of the case study in particular, we can conclude with Nagan and Hammer that “The rights of peoples within the constitutional system, with its undefined boundaries of authority, will consistently challenge the institutional foundations of the UN system itself.”³⁵ Indeed, the growth of human rights and humanitarian law standards as well as the strength of the popular support they receive in global and civil society is putting increasing pressure on

²⁹ See UN Charter, *supra* note 17, at art. 24 (granting the U.N. Security Council primary responsibility for the maintenance of international peace and security). *Ibidem* art. 33 (requiring member states to exhaust peaceful means of conflict resolution before resorting to the use of military force).

³⁰ *ibidem* art. 25

³¹ See *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*, 1988 ICJ REP. 12, 34, para. 57 (Advisory Opinion of Apr. 26).

³² *ibidem*: 42 (Schwebel, J. sep. op.).

³³ See Hart, H.L.A. *The Concept of Law*. Oxford: Clarendon Press, 1961. 219.

³⁴ *ibidem*

³⁵ Nagan/ Hammer, 168.

both the institutions of international governance as well as the foundations of sovereign governance within the international community.

1.2. The Concept of Global Governance

1.2.1. The Term “Governance”

When we use the term “governance”, we usually mean a much broader and inclusive term than “government”. In a wider sense this term is sometimes used to cover control and monitoring activities at different social levels, such as for example at the level of enterprises and non-governmental organisations (NGOs). Additionally, we use this term when referring to the exercise of authority by a government and / or by supranational organisations.

Governance is, as a matter of fact, not limited to national states, but rather goes beyond them. It is therefore not restricted to the geographical borders of a nation, but also includes international organisations, non-governmental organisations as well as civil society.

Besides, the difference between governance and government lies in the fact that governance aims not at the establishment of formal institutions but rather at the utilization of informal control measures.

The limits of both concepts have been defined as follows:

“Governance is not synonymous with government. Both refer to purposive behavior, to goal-orientated activities, to systems of rule; but government suggests activities that are backed by formal authority, by police powers to insure the implementation of duly constituted policies, whereas governance refers to activities backed by shared goals that may or may not derive from legal and formally prescribed responsibilities and that do not necessarily rely on police powers to overcome defiance and attain compliance. Governance, in their words, is a more encompassing phenomenon than government”³⁶

The above definition supports the view that governance does not imply a clear-cut control of social processes through a given political institution, but rather and more precisely/specifically a complex system of rules which stems from cooperation among different spheres of authority.

Only two decades have elapsed since Rosenau’s definition; the cooperation that should be at the basis of governance has shown fluctuations, underlining the utopian aspect of Rosenau’s

³⁶ Rosenau, J. (1992): *Governance, order and change in world politics*. Cambridge: Cambridge University Press.

definition. As a matter of fact, new major threats such as terrorism and natural disasters have strongly placed themselves on the global agenda. While the events of 9/11 should by no means lead the world to abandon the “shared goals” which Rosenau defined as the main features of governance, the unilateral actions taken by the United States in starting the Afghanistan and Iraq war (to which no end is in sight) seems to indicate a collapse of multilateralism. Far from mitigating the problem of terrorism, this collapse could only aggravate it.

On the other hand, the positive case of Haiti where the international donor community is working hand in hand with the Haitian government and people, where donor support for reconstruction takes the form of grants linked to Haitian goals, shows global work depending on actions taken by regional and international partners. Both the World Bank and the International Monetary Fund announced that no debt repayments from Haiti would be due for the next five years and joined hands in rebuilding Haiti, thereby supporting the transition from humanitarian aid to reconstruction.

Rather than dreaming of an illusory global democracy or a hypothetical global government, it seems much more reasonable for us to advance progressively and to define the (immediate) problems and objectives. In this manner, we might be able to envision the type of structures and institutions suitable for bringing about the type of action needed to resolve given problems.

International organisations play an important role in today’s world. It is difficult to imagine an international system without these institutions. They form an indispensable part of global governance and are necessary in providing global and international public services.

“These institutions are like governments in that they issue rules and publicly attach significant consequences to compliance or failure to comply with them- and claim the authority to do so. Nonetheless, they are not governments because they do not attempt to perform anything approaching a full range of governmental functions, they do not seek to monopolize the legitimate use of violence within a permanently specified territory, and their major actions require the consent of states.”³⁷

Before analyzing the role of (individual/specific) international organisations and their functions in global governance, however, we will (briefly) trace the development of global governance in terms of history, regional institutions as well as its new focus.

³⁷ Buchanan, Allen/ Keohane, Robert O. (2006): *Ethics & International Affairs* 20, no.4 (2006).

1.2.2. The Path towards Global Governance

1.2.2.1. From International Equilibrium to Global Governance in the 21st Century

The conviction that the future of global architecture will come into existence only through a system of global governance, held by former UN SG Kofi Annan, is shared by many political scientists.

The international architecture is outdated and woefully inadequate to meet the challenges of today – and much less those of tomorrow.

There is a need for urgent reform. We need structures with more legitimacy and greater capacity to deal with our global problems.³⁸

Whereas before governance was essentially intended as a means of regulating, or limiting, the individual power of states in order to avoid disequilibrium and maintain the status quo, it has become considerably more complicated today. It is, therefore, imperative to collectively shape the world's future by establishing a regulatory system for the numerous issues that bypass national action.

From the 18th to the 19th century, the main issue was one of power and equilibrium. Old forms of governance, common in those centuries, were becoming increasingly ineffective and obsolete. The new forms of governance, in fact, involved a much broader range of actors and could no longer limit themselves to national governments.

The 19th century sees the emergence of freedom as the philosophical superstructure at the basis of both the revolutionary ideology and the development of democracy, both of which (continue to) express themselves in the 20th century. A common commitment to democratic values has certainly helped in putting new forms of governance into place and at the service of society. Institutions emerge and consolidate themselves, linked to different aspects of our life.

The 21st century does not appear to begin as a religious one (even though religion has progressed into a political force) – as per the prophecy attributed to André Malraux³⁹ – but rather as one of equality, at least as one of human rights.

³⁸ “Multilateralism - Today's Imperative”. Speech given 21 January, 2009, Oslo, Norway.

³⁹ “The 21st century will be religious or it will not be at all”. These words of warning have traditionally been attributed to André Malraux, French writer and Minister of Culture during the later years of General De Gaulle's government. But Malraux denies having ever made this statement, at least not in those exact words. In a 1975 interview he insisted that what he had wanted to say is that the cyclical relationship between man and God will produce a “new notion of religion in human thinking” at the beginning of the next century.

1.2.2.2. The Regional Dimension of Global Governance

Realistically, we can affirm that traditional conflicts are (well) on the way to extinction. Today, there are practically no wars between States.⁴⁰ The collapse of all empires also meant the end of wars of national emancipation. The new conflicts are of a different sort. First, they concern mostly “peripheral” or “marginal” countries that are removed from the geopolitical epicentres. These countries are often both poor or impoverished, and poorly governed. New causes of conflict are also born. They are less and less of a political and increasingly of an economic and environmental nature.

In dealing with these conflicts, new approaches are necessary, including detailed/well-founded knowledge of the issues at hand, a shared/common will to prevent escalation, and the right or duty to intervene (*devoir d'ingérence*) in the affairs of states that are often, at best, incapable of preventing conflict.

Within this framework, it is worth mentioning that articles 52, 53 and 54 of the UN Charter establish the subordination of regional arrangements to the United Nations, particularly as far as regional security is concerned.

Regional organisations such as EU and OSCE work with the UN to maintain peace in the region and also address issues related to human rights, including migration, together with the UN. While regional and global organisations could overlap in their programmes and compete with each other, the real challenge is to complement each other.

While the idea of global governance first materialized after World War I with the creation of the League of Nations and then again after World War II with the creation of the United Nations, the term of regional global governance came into use only later. The term entered common usage in conjunction with the EU, when the principle of a common foreign and security policy (CFSP) was formalised in the Maastricht Treaty of 1992. EU countries have always recognised the need to act together in foreign policy and defence matters.

Besides, the European Council considers it essential that the Union also develop a capacity to

⁴⁰ Attempts to find a clear definition of a country or state may fail if we think about, for example, self-proclaimed states such as Abkhazia and South-Ossetia which broke away from Georgia with Russian backing. Or Kosovo (recognized by 65 states) and Western Sahara (recognized by more than 80). Diplomatic recognition is also not a parameter, considering that, for example, countries with formal diplomatic ties to Taiwan are just 23, mostly small islands. However Taiwan, under the name of Chinese Taipei, is a member of the Asian Development Bank and the World Trade Organization. The Sovereign Military Order of Malta, issues not only passports but postage stamps and has diplomatic relations with over 100 countries. Vatican City sees itself as a sovereign state, the Holy See is an observer at the United Nations (The Economist April 10th 2010 “Defining what makes a country. In quite a state”).

act and be regarded as a significant partner on the international scene in a number of areas, including immigration. This requires close cooperation with partner countries and international organisations such as the Organisation for Security and Cooperation in Europe (OSCE), the Organisation for Economic Cooperation and Development (OECD) and the United Nations.

1.2.2.3. The Establishment of Regional Organisations in Europe During the 20th Century (EU, OECD and OSCE)

EU

At the end of the Second World War, Europe was torn and devastated. The United States encouraged European countries to re-build their ruined economy, to regain influence and, most of all, to decisively prevent a new tragedy. The first to express this project was W. Churchill on 19th September, 1946, in his address at the University of Zurich in which he identifies Franco-German reconciliation and the establishment of a European organisation as conditions for peace and liberty throughout the continent:

“Yet all the while there is a remedy which, if it were generally and spontaneously adopted by the great majority of people in many lands, would as by a miracle transform the whole scene and would in a few years make all Europe, or the greater part of it, as free and happy as Switzerland is today. What is this sovereign remedy? It is to recreate the European fabric, or as much of it as we can, and to provide it with a structure under which it can dwell in peace, safety and freedom. We must build a kind of United States of Europe.”⁴¹

Contrary to the vision voiced by Churchill, Europe is split into East and West as the 40-year-long Cold War begins. West European nations create the Council of Europe in 1949. It is a first step towards cooperation between them, but six countries want to go further.

On the 9th of May, 1950, Robert Schuman presents his proposal for the creation of an organised Europe, indispensable to the maintenance of peaceful relations. This proposal, known as the “Schuman declaration”, is considered the beginning of the creation of what is now the European Union.

As of 1950, the European Coal and Steel Community begins to unite European countries economically and politically in order to secure lasting peace. The six founders are Belgium,

⁴¹ Winston Churchill on 19th September, 1946, in his address at the University of Zurich
<http://www.ena.lu/address_given_winston_churchill_zurich_19_september_1946-2-794>

France, Germany, Italy, Luxembourg and the Netherlands. In 1957, the Treaty of Rome creates the European Economic Community (EEC) or ‘Common Market’.

OECD

After the second World War, on 16 April 1948, the European Aid Program commonly known as the Marshall Plan led to the creation of the Organisation for European Economic Cooperation (OEEC) in order to meet Marshall’s request for “some agreement among the countries of Europe as to the requirements of the situation and the part those countries themselves will take”. The mandate of the OEEC was to continue work on a joint recovery programme and in particular to supervise the distribution of aid. In 1961, the OEEC evolved to become the OECD.

As far as migration is concerned, the OECD analyses recent developments in migration movements and policies, focusing on the economic and social aspects of migration, on the management of labour migration to support economic growth and on the labour market integration of immigrants in OECD countries. Other areas of work consist of analysing specific topical issues (health workforce and migration project) and exploring the links between migration, trade and the economic development of origin countries.⁴²

Work on international migration is based on continued monitoring of migration movements and policies in member countries and outside the OECD area, and in-depth analysis of the economic and social aspects of migration. This includes the role of migration in alleviating labour shortages, links between migration, demography and economic growth, and the fiscal impact of migration.⁴³

OSCE

The establishment and transformation of the Conference on Security and Cooperation in Europe (CSCE) and, later, the Organization for Security and Cooperation in Europe, mark two historical periods in Europe, specifically connected to the relationship between East and West Europe. The establishment of CSCE, in fact, was initially linked to the détente phase of the early 70s and had the purpose of setting up a multilateral forum for dialogue and negotiations between East and West. The Helsinki Final Act, signed in 1975, contained a number of commitments on political, military, economic, environmental and human rights issues which were the basis of the so-called “Helsinki process”.

⁴² OECD, History <www.oecd.org/history>

⁴³ OECD, Statistics <www.oecd.org/topic>

With the end of the Cold War, the role of CSCE was adjusted to the new challenges of the time. The Conference's name was changed accordingly. CSCE acquired broader institutional and operational capabilities, becoming the Organization for Security and Cooperation (OSCE) in Europe in 1994.⁴⁴

Migration is part of the comprehensive security approach of the OSCE as recognized already in the Helsinki Final Act. With international migration continuing to increase and more and more countries being affected by migratory movements, effective migration management and international cooperation have become ever more important.⁴⁵

1.2.2.4. Other Regional Agreements

The drive towards economic and, in some cases, political integration has led to a number of regional agreements which deal, on occasion, with aspects related to the movement of people. In this respect, the European Union is the most advanced regional group. However, agreements to facilitate the movements of persons or workers have been part of the regulatory framework establishing common markets or free trade groups in other regions, but none has advanced as much as the European Union.

Besides, a new type of regional cooperation consists of the informal consultative processes that have multiplied since the 80s. One of the first of these was the Intergovernmental Consultations on Asylum, Refugees and Migration Policies in Europe, North America and Australia, established in 1985.

Today, according to the United Nations and IOM, there are two such regional processes in the Americas, three in Asia and two in Africa. A short analysis of the main regional actors in migration outside Europe will provide an insight into the similarities and differences among them.

Asia /ASEAN

As a well-established regional body, ASEAN is also moving towards closer economic integration where greater intra-ASEAN economic cooperation and a free flow of people, goods and services are anticipated. With the expansion of ASEAN, there is also a greater need to ensure that development is well balanced between old and new Member Countries. In order to

⁴⁴ OECD, About <www.oecd.org/pages/0,3417,en_36734052_36734103_1_1_1_1_1,00.html>

⁴⁵ OECD, Secretariat - Office of the Co-ordinator of OSCE Economic and Environmental Activities <www.osce.org/eea>

achieve these goals, all ASEAN bodies need to work together in supporting and facilitating regional initiatives in the various sectors. In this regard, the 5th ASEAN Summit in 1995 in Bangkok identified immigration as an area where cooperation could be further strengthened to support ASEAN economic cooperation. The ASEAN Heads of Government and State initiated the convening of a consultative meeting of the ASEAN Heads of Immigration for the first time with the aim to focus on the simplification of immigration procedures to further strengthen economic cooperation.

Africa/ ECOWAS

In 1975 ECOWAS Member States adopted a Protocol on Free Movements of Persons and the Right of Residence and Establishment. The Protocol, along with the supplementary texts later added, testifies to the member countries' determination to place the free intra-regional movement of persons at the heart of the regional integration process.

ECOWAS was provided with the mandate to define a joint regional approach on migration at the 30th Ordinary ECOWAS Heads of State and Government Summit in Abuja in June 2006. At the meeting in Ouagadougou on 20 December 2006, the ECOWAS Mediation and Security Council reaffirmed this priority, requesting the Commission President to: "*pursue the consultative process for the definition of a common approach to the management of intra-regional migration and migration to Europe in all its aspects*". Undertaking this mandate, the ECOWAS Commission initiated a strategic thinking process with a view to defining a joint regional approach on migration.⁴⁶

Latin America/ECLAC

At the meeting of the ECLAC sessional Ad Hoc Committee on Population and Development, held during the 30th session of ECLAC in San Juan, Puerto Rico on 29 and 30 June 2004, the country delegations recommended that at its next regular meeting, to be held in 2006, the Ad Hoc Committee should analyse the subject of international migration, human rights and development. They furthermore requested that the secretariat of the Ad Hoc Committee, in collaboration with the United Nations Population Fund, prepare the relevant substantive documents, pursuant to the mandate contained in Resolution 604.⁴⁷

⁴⁶ OECD, Meeting of Ministers on ECOWAS common approach on migration
<www.oecd.org/dataoecd/17/2/41400366.pdf>

⁴⁷Report of the ECLAC sessional Ad Hoc Committee on Population and Development and resolution 604 (XXX) (DDR/1)

In response to this request, the Latin American and Caribbean Demographic Centre (CELADE) - Population Division of ECLAC formulated/drafted this summary, based on the document entitled “Cuatro aspectos centrales en torno a la migración internacional, derechos humanos y desarrollo” (LC/L.2490)⁴⁸. This text is intended to provide guidance to governments in the region so that they may face the most important challenges and opportunities for development presented by migration, taking an approach that also takes into account the human rights of migrants and their families. The study has been enriched by the participation of CELADE in numerous meetings, workshops and seminars involving governments, academics, civil society and experts, and by the conclusions reached at these gatherings. It has also benefited from many of the studies reported in CELADE publications, from the intense effort made by the International Organization for Migration (IOM), the United Nations Population Division and other entities in the system, and from the contributions of experts and academics in the region.⁴⁹

1.2.3. Summary

The above discussion of the concept of Global Governance has provided a considerably more complex picture, going well beyond the mere difference between government and governance mentioned at the outset. As a matter of fact, governance has been continuously developing and changing throughout the last few centuries, adjusting to different historical events. The relationship between and among states, the establishment of international organisations, the consequences of wars and conflicts - all these social and political developments have necessitated and continue to necessitate new thoughts and realities in the search for an optimal solution to the problems accompanying global issues at a particular point in time and in a specific country and/ or region.

The above considerations are based on the analysis of the historical period in which new entities have been established as well as of the geographical distribution of those entities, enabling them to deal in-depth with issues often related to the culture of the region or to the social environment conducive to phenomena similar to but not identical with other regions' developments.

⁴⁸ This document, which has not been edited, was prepared by the Centro Latinoamericano y Caribeño de Demografía (CELADE) - División de Población de la CEPAL para la reunión del Comité Especial sobre Población y Desarrollo del XXXI período de sesiones de la CEPAL del 2006.

⁴⁹ CEPAL, La Comisión Económica para América Latina <www.cepal.org>

The concept of Global Governance in its several dimensions equally implies a different approach when related to so-called global issues. Biodiversity, climate change and global warming, environmental issues, free trade, health issues, human population, human rights issues, migration, natural disasters, nuclear weapons, sustainable development, world hunger and poverty – all of these are all long term problems that concern us and which, today, are typical/characteristic problems of “international relations”, mainly but not only dealt with at the global level. The next chapter will attempt to clarify what type of governance applies to them through broad categorization and institutional research.

1.3. Methodology

The combination of the methods used for this thesis includes a) desk research, b) expert interviews, c) document analysis and d) a case study using the perspective of Critical Discourse Analysis.

Desk Research (Literature Review, Theoretical Concepts, Structure etc.)

The desk research constitutes the basis for the research project. Literature focusing a) on theoretical concepts (discourse analysis, migration and integration theories, and comparative analysis) and b) on documentation coming from the archives and information centres of the organisations dealing with migration has been reviewed. Additionally, newspaper articles and other information materials were gathered as initial evidence and basis for discussions with experts and stakeholders in the field of migration.

Expert Interviews / Interviews with Stakeholders

Experts and stakeholders have been interviewed in order to determine which issues they think important to explore and what perception they have of the manner in which migration is dealt with at the global level. These interviews have also helped to obtain “insider” information that allows the identification of possible additional sources. Experts and stakeholders’ perception of the issue could be identified during the interviews and relevant information on the internal discourse in their organisations and its impact could be obtained.

The selection of foci in the migration context, such as human rights, mixed migration, labour migration and irregular migration, was motivated by different determining factors such as the policies in the organisations included for the interviews.

Collection of Data / Document Analysis / Comparison

The main aspects of research and gathering of relevant data was conducted in archives made available online by international organisations. These archives contain up-to-date material reflecting the discourse on migration, including records and minutes of meetings and assemblies, yearbooks, periodicals, etc.

Another important source of information is legislative proposals, draft legislation and bills as well as institutional statements concerning them. These resources have been invaluable in identifying policy developments, especially in the areas of migration, and allow for an analytical view on the potential influence of international organisations on political decision making processes in the area of migration. Besides, reviewing related literature, both published and unpublished sources, such as books, journals, international human and labor rights instruments (i.e. conventions, protocols and agreements), national laws related to the issue of migration and particularly, laws, immigration and emigration policies, newspapers, periodical reports of human rights watch, ILO reports and documents of relevant actors such as the International Organization for Migration (IOM).

Case study

The bilateral-regional approach to resolving the problem of migrant workers adopted by Italy as a destination country and North African countries as countries of origin is focused on in a case study. The study is based a) on the descriptive analysis of available literature, published by the organisations and institutions involved in this particular series of events, and b) on the perspective of Critical Discourse Analysis.

The critical analysis of discourse will focus on only a small part of the full picture in order to allow a more in-depth view of the matter. However, consideration, if only as background, has been given to the comprehensive situation. Having outlined the legislative, geographical and institutional set-up of the case study, it is worthwhile to draw the readers' attention to the criteria the case study will follow, namely, using some parameters which can be found in the classical theory of critical discourse analysis as defined by two of its principle proponents:⁵⁰

That is, discourse is socially constitutive as well as socially conditioned – it constitutes situations, objects of knowledge, and the social identities of and relationships between people and groups of people. It is constitutive both in the sense that it helps to sustain and reproduce the social status quo, and in the sense that it contributes to transforming it. Since discourse is so socially consequential, it gives

⁵⁰ Fairclough, N./Wodak, R. (1997): 'Critical Discourse Analysis'. In: Introduction to Discourse Analysis., van Dijk, T.A. (ed.), London, 258-284. 258

rise to important issues of power. Discursive practices may have major ideological effects – that is, they can help produce and reproduce unequal power relations between (for instance) social classes, women and men, and ethnic/ cultural majorities and minorities through the ways in which they represent things and position people.

Focusing on briefing notes and press reviews meant for journalists and the public at large, the text, wording and paraphrases used by the actors highlighted in the case study more than ever directly “constitute” the social context in which migrants find themselves.

2. Chapter 2: Global Issues in the 21st Century

In order to provide a framework which can plausibly hold the majority of global issues, it is useful, for the purpose of this study, to group the issues we will refer to. One possible categorization would divide them into two major groups, the one related to the environment and the other to human rights.

However, it goes without saying that a number of global issues do not fall neatly into the above categories. Among these are issues like atomic energy, which is dealt with, at the international level, by the International Atomic Energy Agency (IAEA). Atomic energy resists categorization in the above terms because its proximity to the environment or to human beings largely depends on the priority assigned to IAEA's activities by its member states' agendas. The mandate of IAEA to protect people and the environment from harmful radiation exposure as well as to mobilize peaceful applications of nuclear science and technology situates the issue at an in-between position. Atomic energy, therefore, will be included in this discussion if and when a link to the research purpose of the study appears.

In keeping with this purpose, this chapter will begin with discussing the issues of environment and human rights, not in general terms, but bearing in mind the international organisations' full range of instruments in dealing with them.

To mark the starting point for the discussion of these two issues, it is worth recalling that, *as a common standard of achievement for all peoples and all nations*⁵¹, the Universal Declaration of Human Rights was proclaimed in 1948. Through this Convention, human rights emerged on the international agenda and were followed some two decades after by the issue of the protection of the environment as a new matter of global concern.

A first link between the two issues in relation with international organisations appeared when the United Nations Conference on the Human Environment, which met at Stockholm from 5th to 16th June, 1972, proclaimed the need to give priority to two aspects related to human beings. Those two aspects are indicated as their natural environment on the one side and as their man-made environment on the other.

Man is both creature and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and

⁵¹ United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 A (III)

spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself.⁵²

The need to deal with these two issues in a cooperative and coordinated fashion was strongly felt by the constituency of member states participating in the governance of global institutions in the 20th century. Indeed, it became the driving force behind a number of agreements and treaties dealing with the environment and human rights.

2.1. Environment

While policy makers and negotiators sometimes regard international organisations' authority either as a limit or as an intrusive attempt on their sovereignty, scientists⁵³ have stressed the urgent need for changes in the following warning:

World Scientists' Warning to Humanity

Human beings and the natural world are on a collision course. Human activities inflict harsh and often irreversible damage on the environment and on critical resources. If not checked, many of our current practices put at serious risk the future that we wish for human society and the plant and animal kingdoms, and may so alter the living world that it will be unable to sustain life in the manner that we know. Fundamental changes are urgent if we are to avoid the collision our present course will bring about.⁵⁴

In indicating the five linked areas which must be addressed simultaneously, the scientists call for the help of the world community. The message they communicate seems to assume that politicians, scientists, business and religious leaders are ready and willing to act in a cooperative, coordinated way and to share responsibility in dealing with the environment. The feeling of having the means to achieve a positive impact on the life of future generations is certainly

⁵² Stockholm Conference of the United Nations on the Human Environment, 16 June, 1972, UN Doc.A/CONF.48/14/Rev.1.at 3 (1973)

⁵³ Over 1,500 members of national, regional, and inter-national science academies have signed the Warning. Sixty-nine nations from all parts of Earth are represented, including each of the twelve most populous nations and the nineteen largest economic powers. The full list includes a majority of the Nobel laureates in the sciences. Awards and institutional affiliations are listed for the purpose of identification only. The Nobel Prize in medicine is for physiology or medicine.

⁵⁴ Kendall, Henry W. (1992): *World Scientists' Warning to Humanity*. Union of Concerned Scientists, 1992. <<http://www.ucsusa.org/about/1992-world-scientists.html>>

the main motive for governments to agree, as they did, to establishing a number of international instruments to deal with this issue. In principle, but not without exceptions, governments also seem willing to let environmental matters be managed by an international entity, in which they participate as member states.

The designated authority of the United Nations system in environmental issues at the global and regional level, the United Nations Environmental Program (UNEP)⁵⁵, covers several areas directly related to environment such as ozone, waste management, air pollution, chemicals, natural resources and climate change.

On the majority of those areas, member states have reached an agreement, in the form of a protocol or a convention. Besides, the organisation has assisted in the negotiations of a number of international treaties on chemicals and waste, and hosts the secretariats of the following:

- a) Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal
- b) Montreal Protocol on Substances that Deplete the Ozone Layer.
- c) Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade
- d) Stockholm Convention on Persistent Organic Pollutants
- e) Global Programme of Action for the Protection of the Marine Environment from Land-based Activities
- f) Strategic Approach to International Chemicals Management

While, generally speaking, the above conventions can be seen as having, in the course of their implementation, achieved the majority of their objectives, there is one important exception: the Kyoto Protocol. This protocol has been the object of critical assessment by, first of all, participating member states and media.

With respect to the central/main/a crucial argument of this study, which is based on the assumption that governments' consensus is needed, at the international level, to manage and monitor a specific issue in an effective way, the following example should be enlightening and conducive to conclusions.

⁵⁵ UNEP, Resources <<http://www.unep.org/resources/gov/default.asp>>

The two Protocols and their implementation demonstrate, in fact, how the approach to an issue can differ profoundly with respect to the way that governments and institutions deal with them.

On the one hand, the Montreal Protocol on Substances that Deplete the Ozone Layer (ODS) defined as “Perhaps the single most successful international agreement to date” by Kofi Annan, Former Secretary General of the United Nations⁵⁶.

Under the Montreal Protocol, for the first time, nations agreed in principle to tackle a global environmental problem before its effects are clear, or its existence scientifically proven. This can be also defined as the first example of the acceptance of the precautionary principle in a major international negotiation.

On the other hand, although numerous countries joined an international treaty -- the United Nations Framework Convention on Climate Change (UNFCCC) - to begin to consider what can be done to reduce global warming and then approved an addition to the treaty (the Kyoto Protocol) with more powerful (and legally binding) measures, they did not demonstrate any common determination to achieve results in Copenhagen in 2009 (15th Conference of the Parties or COP15). The diplomatic gathering had one goal: to create an “ambitious global agreement incorporating all the countries of the world” to succeed the 1997 Kyoto Protocol, which expires in 2012. But deep divides on how best to tackle the problem exist between developed countries, and even deeper divides separate developed from developing worlds.

Climate change is, in theory, the perfect topic for an international environmental agreement. All countries are affected by, and contribute to, the build-up of greenhouse gases, and should be willing to join in the effort to stop it. However, it is far from easy to agree what to do, and how to do it.⁵⁷

In spite of the years that have since elapsed, the above statement still applies to the current state-of-the-art in climate change negotiations. Expectations are simply postponed to the next Conference of the Parties (COP), where the long awaited post-Kyoto international agreement to take effect in 2013 should be finalized and concrete and effective results to tackle the global challenge of climate change should be delivered.

2.1.1. Environment and Human Rights

⁵⁶ Secretary-General SG/SM/10620 OBV/573

⁵⁷ A close look at the Climate Change Convention, PANOS, November 2000
<<http://www.panos.org.uk/global/reportdetails.asp?type=report&id=1000&reportid=1005>>

The United Nations Environment Programme (UNEP) and the Office of the High Commissioner for Human Rights (OHCHR) recently organized a High-level Expert Meeting on the topic “The New Future of Human Rights and Environment: Moving the Global Agenda Forward”. The meeting took place at UNEP’s headquarters in Nairobi from 30 November to 1 December 2009.

In a series of resolutions, the former United Nations Commission on Human Rights (UNCHR) and the United Nations Human Rights Council which replaced UNHCR in 2006 have drawn attention to the relationship between a safe and healthy environment and the enjoyment of human rights. Most recently, the Human Rights Council in its resolution 7/23 of March 2008 and resolution 10/4 of March 2009 focused specifically on human rights and climate change, noting that climate change-related effects have a range of direct and indirect implications for the effective enjoyment of human rights.

These resolutions have raised awareness of how fundamental the environment is as a prerequisite to the enjoyment of human rights. We can build on the work of the Commission on Human Rights and the Human Rights Council, on UNEP’s and the international community’s achievements in the environmental field to deepen our understanding of two significant aspects: first, the direct and indirect links between the protection of the environment and the enjoyment of human rights; second, obligations and responsibilities of States and other actors under human rights treaties and multilateral environmental agreements.

The two day High-level Expert Meeting was attended by thinkers drawn broadly from different fields including academics, judges, other legal experts, representatives of international governmental organisations, public interest groups and policy makers. The Expert Meeting provided a forum to review recent developments concerning the relationship between human rights and the environment, including the recent resolutions of the Human Rights Council on human rights and climate change, and to discuss ways and means to promote integrated strategies and policies for the protection of human rights and the environment.

2.1.2. Environment and Migration

As the present sub-chapter will discuss the link between human rights and migration, two studies which have recently analyzed migration in connection with environment should be mentioned here:

- 1) *Environmentally induced migration and conflict* by William A. V. Clark, Berlin 2007
- 2) *The way forward. Researching the environment and migration nexus* by Marc Stal and

The first of these studies utilizes the demographic approach to migration, focusing particularly on rural-urban migration, age-driven migration, push and pull factors (triggers and drivers), and internal migration caused by environmental stress. The second begins by linking migration to climate change, and goes on to elaborate on the thesis that internal migration is the most likely part of environmentally-induced migration. The nexus with climate change is emphasized when the study refers to adaptation measures⁵⁸. A controversial issue, in this respect, is the definition of the “environmental refugee”, coined by IOM and discussed in connection with climate change and migration by a Policy Brief of the *Netzwerk Migration in Europe*⁵⁹.

Yet the concept of “environmental refugee” has been criticized as vague and simplistic. In a United Nations High Commission on Refugees working paper, Richard Black argues that “although environmental degradation and catastrophe may be important factors in the decision to migrate, and issues of concern in their own right, their conceptualization as a primary cause of forced displacement is unhelpful and unsound intellectually, and unnecessary in practical terms.”⁶⁰

This disagreement between IOM and UNHCR on a matter of definition and classification shows one side of the fragmentation in the approach to migration by international organisations. Ideally, the terminology and designations employed in this field should conform and reflect a common practice.

2.2. Human Rights

As understood today, human rights refer to a wide variety of values and capabilities reflecting the diversity of human circumstances and history. They are conceived of as universal, applying to all human beings everywhere, and as fundamental, referring to essential or basic human needs.

Human rights have been classified historically in terms of the notion of three “generations” of human rights. The first generation of civil and political rights, associated with the Enlighten-

⁵⁸ Fussel, Hans-Martin/ Klein, Richard J.T. (2004): “Climate change vulnerability assessment: an evolution of conceptual thinking.” In *Climatic Change*, vol.75, no.2, pp.301-329.

⁵⁹ Focus Migration, Policy Brief No.15 December, 2009.

⁶⁰ Black, Richard (2001): “Environmental refugees: Myth or reality?” New Issues in Refugee Research Working Paper 34. Geneva: UNHCR.

ment and the English, American, and French revolutions, includes the rights to life and liberty and the rights to freedom of speech and religion. The second generation of economic, social, and cultural rights, associated with struggles against unregulated capitalism from the mid-19th century, includes the right to work and the right to an education. Finally, the third generation of solidarity rights, associated with the political and economic aspirations of developing and newly decolonized countries after World War II, includes the collective rights to political self-determination and economic development.

The idea that human rights should be protected at an international level is relatively recent and corresponds to the establishment of the United Nations itself, the 1945 UN Charter and the 1948 Universal Declaration of Human Rights. Since then, an elaborate and dynamic process of articulating what human rights actually are has taken place.

With the adoption of the Universal Declaration of Human Rights in 1948, many treaties and agreements for the protection of human rights have been reached through the auspices of the United Nations and several regional systems of human rights law have been established.

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on December 10th, 1948, General Assembly resolution 217 A (III) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected.

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.⁶¹

The principle of universality implies that all States – whether of origin, of destination or of transit - are responsible for the protection of migrants' human rights.

2.2.1. Human Rights and Migration

⁶¹ United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 A (III)

It is (virtually) impossible to find an internationally agreed definition of migration. The available literature in the field simply provides a general account of migration, which denotes a broader notion of movements of people internally between and across districts, provinces, or municipalities within the same geographical spaces or countries, and at the same time, it also denotes the cross-border or international movements of individuals or groups for a variety of reasons. It includes both regular migration – in which the migrant or persons migrating comply with the respective country's immigration policies set forth to regulate inflow of people into its territories – and irregular migration – in which the migrant does not.

Some governments identify migration flows as one of the global challenges that are key to achieving the overarching goal of just and sustainable development. In order to meet this challenge, the government should aim to increase the transfer of capital, knowledge and experiences from immigrants to developing countries. As a way of meeting this goal, the government should pursue two goals: 1) increase knowledge on migrants in their countries and their contribution to development in countries of origin and 2) more actively engage and support the contribution to development made by migrants in cooperation with relevant authorities, the private sector and non-governmental organisations.

As a matter of fact, these two goals are closely intertwined. Policy makers and practitioners therefore need to develop a comprehensive understanding of the multi-dimensional phenomenon of migration in order to manage it effectively. A cooperative approach to international migration management is required to deal with the migration pressures of this century. Such an approach will include policies and programmes for migration and development, facilitating migration, regulating migration, and forced migration.

In order to find a potential answer to the research question posed, migration will be discussed not only per se, but also in comparison to other issues of different nature falling mainly, but not only, within the range of environment and human rights groups.

The broad concept of human rights includes all questions concerning the treatment of immigrants. In fact, human rights are closely related to all parts of the migration process: sometimes they are the reasons why people migrate; they are called upon in the treatment that migrants receive in transit countries; they come into the picture about their integration in host countries; and they play a role at the moment of migrants' return.

Needless to say, human rights are universal and inalienable — in other words, human rights apply everywhere and to all human beings by virtue of their humanity. This does, of course, include and applies regardless of their legal status in the host society.

Human rights, therefore, have the potential to serve as an important element for any migration policy maker.

Human rights, after all, are a legal framework developed by states themselves in order to ensure that all human beings, and in particular their own nationals, are treated with a certain standard wherever they may find themselves.

Beyond that, human rights provide a unique framework, agreed on by states, through which to mediate the competing interests of sending and receiving states, communities, and any individuals caught up in the process of migration.

For instance, the consideration of human rights can enhance policy making by deepening an analysis of the causes of migration, including: its links with inequitable patterns of global trade; the role of economic policies that increase poverty and undermine economic and social rights; the effects of corrupt and abusive government; war; and environmental and economic decline.

Another important area to which international human rights law can contribute is the issue of migration and security. The human rights framework is a pragmatic one because it recognizes that, in certain instances, states may restrict some rights, such as the right to freedom of movement, in the interests of national security.

However, human rights law lays down a principled basis from which states should proceed in such cases. First, there must be a legitimate and objectively verifiable public interest that the state is seeking to protect. Second, any restrictions must be based in law and be strictly limited and proportionate to the harm that is feared. These restrictions must not infringe on the enjoyment of other human rights. The right to equal treatment and non-discrimination is of particular importance to migrants in this respect.

Finally, there are certain rights that are so fundamental that they can never be restricted or derogated/deviated from. These include the right to life and the right to be free from cruel, inhumane, and degrading treatment.

2.3. Global Issues and Non-Governmental Organisations

Having discussed the linkages between the environment, human rights and migration as well as among the three issues, one more question appears to be worth considering, namely the

presence of Non-Governmental Organisations (NGOs)⁶², also defined as grassroots networks or non-state actors, within the framework of global governance of migration.

Powerful NGOs such as Greenpeace, Worldwide Fund for Nature, and Friends of the Earth operate in the environmental arena. The same applies to Amnesty International and Human Rights Watch operating in the area of human rights.

These NGOs have demonstrated on several occasions that their intervention may strongly influence national and international public opinion, achieve objectives which are not easily achieved by international organisations, and shape policy at a global level. They are able to implement a wide range of strategies and tactics. Influencing policy through media and online outreach, grassroots mobilization and alliance development, they raise awareness and change attitudes, promote social and policy initiatives.

As Jane Nelson wrote in “The Operation of Non-Governmental Organizations (NGOs) in a World of Corporate and Other Codes of Conduct”⁶³:

In many public opinion surveys NGOs are ranked as the most trusted institutions in society and they usually dominate issues such as human rights and the environment in terms of trust.

The above statement places NGOs predominantly around those global issues such as the environment and human rights. Here, NGOs seem to find not only trust, but also more room for expanding their activities and establishing their presence in a political and social context. A second characteristic shared by the areas of environment and human rights is the presence of well established intergovernmental organisations which, as major actors, contribute to keeping the discourse on the relevant issue alive and creating the global framework for their management.

It is of the highest significance that the same is not happening in the area of migration even though the situation would appear to be similar. Indeed, a number of NGOs – international as

⁶² A non-governmental organization (NGO) is any non-profit, voluntary citizens' group which is organized on a local, national or international level. Task-oriented and driven by people with a common interest, NGOs perform a variety of service and humanitarian functions, bring citizen concerns to Governments, advocate and monitor policies and encourage political participation through provision of information. Some are organized around specific issues, such as human rights, environment or health. They provide analysis and expertise, serve as early warning mechanisms and help monitor and implement international agreements. Their relationship with offices and agencies of the United Nations system differs depending on their goals, their venue and the mandate of a particular institution. See also NGO Global Network www.ngo.org/ngoinfo/define.html.

⁶³ Nelson, Jane (2007): *The Operation of Non-Governmental Organizations (NGOs) in a World of Corporate and Other Codes of Conduct*. Cambridge.

well as national, such as the International Catholic Migration Commission (ICMC) and Migrants Rights International – are also active in this area. Nonetheless, the impact they have on the governance of migration seems to be acknowledged by the international community, by policy makers, by the media and by the public at large, even if to a lesser extent. This begs the question:

Can this be attributed to the fact that, at global level, no central full-fledged organisation within the UN system is in charge of the comprehensive management of migration?

2.4. Conclusions

Having begun the discussion on the global context of the environment, human rights and migration as well as the presence of NGOs in those contexts, the need to focus on migration in terms of its different expressions is a priority for the next chapter. Such a focus should provide a framework for the discussion of the international organisations operating in the area of migration.

It will compare the different mandates, missions, objectives and activities of the organisations to be discussed in detail at a later stage with the purpose of assessing whether or not they reflect the apparent fragmentation of the approach to migration.

3. Chapter 3: National, Regional and International Management of Migration

3.1. Domestic Jurisdiction versus International Legal Instruments

3.1.1. Statistics and Democracy

On page 6 (check) of this study, Chapter 1, Article 1.3 of IOM's constitution was quoted as stating that "the Organization shall recognize the fact that control of standards of admission and number of immigrants to be admitted are matters within the domestic jurisdiction of States". Taking the above statement as a point of departure, this chapter will discuss data collection on international migration as well as statistics indicating the percentage of migration in different regions of the world as a basis for a further investigation of the issue of a domestic jurisdiction.

These data are of particular relevance for policy making as data should, in fact, serve as guidance for taking informed decisions in managing the migration issue. Country-limited statistics, however, provide only a very limited picture of migration and need to be analysed in conjunction with regional and global statistics so as to enable policy-makers to fine-tune legislation and strategies aiming at, among other goals, the "control of standards of admission and number of immigrants".

At global level, the UN, as well as at regional level, the European Union and the OECD, collect data from certified sources and analyse these data with respect to a number of indicators, e.g. age, sex and country of origin, as it will be described in the next sub-chapters.

Beyond this first point, in order to be able to compare how States manage migration within their domestic jurisdiction, democracy will be discussed as the guarantee of basic human rights to every individual person vis-à-vis the state and its authorities as well as vis-à-vis any social groups and other persons.

The notion that international endorsement of a set of principles for official statistics was necessary was formed at the Conference of European Statisticians. At the end of the eighties of the last century, the countries of Central Europe began to change from centrally planned economies to market-oriented democracies. A few years later the Soviet Union was dissolved. Among the many changes that these developments generated was the need for complete transformation of the national statistical systems. Part of this transformation process was about

redefining the role of official statistics, as well as making it clear to governments and other users of statistics that a good system of official statistics must meet certain general criteria. In order to communicate this message successfully, and to assist heads of national statistical offices to defend the position of their institutes, the Fundamental Principles of Official Statistics were developed.⁶⁴

Principle 1. Official statistics provide an indispensable element in the information system of a democratic society, serving the Government, the economy and the public with data about the economic, demographic, social and environmental situation. To this end, official statistics that meet the test of practical utility are to be compiled and made available on an impartial basis by official statistical agencies to honour citizens' entitlement to public information.

Furthermore, at the Committee for Coordination of Statistical Activities, held in September 2005, a set of principles governing international statistical activities were endorsed by the United Nations Statistics Division (UNSD) as well as by a number of international organisations, including OECD and Eurostat. These principles are intended to guarantee a homogeneous approach and a joint commitment to several points which focused on the need for

- a) high quality international statistics, accessible for all, as a fundamental element of global information systems,
- b) coordination of international statistical programmes as essential to strengthen the quality, coherence and governance of international statistics, and avoiding duplication of work, and
- c) bilateral and multilateral cooperation in statistics which contribute to the professional growth of the statisticians involved and to the improvement of statistics in the organisations and in countries

These principles are the basis for the databases to be discussed in the following section.

3.1.2. Databases on Global, International and Regional Levels

United Nations Global Migration Database

The 2006 High-level Dialogue on International Migration and Development and the subsequent establishment of the Global Forum on Migration and Development (as of 2006 the Global Migration Group) have created a strong and new demand for migration data that is

⁶⁴ UN Data, A world of information <<http://unstats.un.org>>

accurate, up-to-date and policy-relevant. In response, the United Nations Population Division of the Department of Economic and Social Affairs (DESA) has developed the United Nations Global Migration Database (UNGMD), a comprehensive collection of empirical data on the number (“stock”) of international migrants by country of birth and citizenship, sex and age as enumerated by population censuses, population registers, nationally representative surveys and other official statistical sources from more than 200 countries and territories in the world.

The database addresses key policy questions which have remained unanswered so far, including the following: What are the main countries of origin of international migrants? What is the sex and age distribution of international migrants? What are the changes in the international migrant stock over time for particular countries of origin or age groups? In addition, the database allows for the quantification and monitoring of vulnerable groups in need of special protection, such migrant women, children and stateless persons.

The data contained in the database were derived from numerous sources, including the Demographic Yearbook, produced by the United Nations Statistics Division, tabulations collected by the Population Division as well as official publications available from resource centres, libraries and the internet.

OECD International Migration Data 2009

The OECD Statistical Series contain, first of all, cross national tables (into, from and in selected countries), providing information on inflows and outflows of foreign population as well as inflows of asylum seekers, stocks of foreign and foreign-born population and, finally, acquisition of nationality. The database also provides information on stocks and flows of foreign or foreign-born labour force.

The country tables furthermore provide information on stocks and flows of foreign population, asylum seekers by nationality, stocks of foreign-born population by country of birth, stocks of foreign population by nationality and acquisition of nationality by country of former nationality. Also contained in the country tables is the foreign or foreign-born labour force, differentiated by place of birth and by nationality.

EU Statistics on Immigration

In 2006, within the borders of the EU, about 3.5 million people settled in a new country of residence, according to Eurostat estimates. After a rather rapid growth of this number in 2003, compared to 2002, the rise in immigration has slowed in the last few years. Compared with the small increase in total immigration, more citizens of EU Member States were migrating: the number migrating to another Member State increased by 10 % per year.

Returning nationals accounted for a minority of immigrants in most countries. However, there were more national immigrants returning home than either non-national EU immigrants or those from other countries outside the EU, in the following countries: Denmark, Lithuania, Poland (permanent stays only) and Finland. Poles and Romanians were the most numerous immigrants among citizens of EU countries, while Moroccans ranked first among non-EU citizens.

In most of the Member States for which data is available for 2006, a majority of migrants were at the lower end of the working age range, aged between 15 and 34 years. Immigrants who were not EU citizens were younger than those who were (including nationals returning home). There were also more men than women among the immigrants, and the women were younger than the men. However, when compared with other countries, women are more common among immigrants in the southern countries of the EU.⁶⁵

Eurostat produces statistics on a range of issues related to international migration. Data are collected on an annual basis and are supplied to Eurostat by the National Statistical Institutes of the Member States.

Member States differ as to the data sources used to produce the statistics on international migration flows and the population stocks relevant to migration. Most Member States base these statistics on administrative data sources such as:

- population registers;
- alien registers;
- databases on the issuing of residence permits.

Some countries use sample surveys to estimate migration statistics. The data on citizenship acquisition are normally produced by administrative systems.

In several Member States, migration data have never been available or have provided incomplete coverage of the relevant population groups. Even where data was available, the use of different national definitions of who was a resident or who was a migrant meant that international comparisons could be difficult or misleading. However, with the help of the metadata attached to the data collected from Member States, it can be used for general overviews on migration in the EU. Starting from 2008, migration data collection is to be based on Regula-

⁶⁵ Data from September, 2008. For further information and the most recent data, see Eurostat <<http://epp.eurostat.ec.europa.eu>>.

tion 862/2007, which is expected to result in a greater amount of more internationally comparable data becoming available.

All of the above examples of statistical collection, created by global and regional institutions and based on national inputs, prove to be valuable instruments when providing decision-makers with data to reach informed decisions. Furthermore, statistics provide an objective view of the changes taking place at a national level and allow comparisons between different times and locations.

However, while statistical data collection is widely used in Western democracies, this does not apply equally to non-democratic systems. In the book *Iraq since 1958: From Revolution to Dictatorship*, Farouk-Slugett states that, unfortunately, “the absence of statistics, and the general difficulty of access to Iraq [pre-2003]... means that it is not possible to carry out the kind of broad analysis of [democracy in Iraq]...for the more recent past”.⁶⁶

3.1.3. Democracy

In terms of continents, 25 percent of all international migrants are in Asia, 23.3 percent are in North America, 18.7 percent in Europe, 16.8 percent in the former USSR, 9.3 percent in Africa, 3.3 percent in Latin America and 3.4 percent in Oceania.

On the one hand, we have democratic countries which, through their domestic jurisdiction, manage the immigration issue in a detailed, comprehensive manner and guarantee the majority of their rights to their citizens as well as to migrants. On the other, we are faced with non-democratic systems that do not allow political participation for the majority of citizens or subjects, limiting either the number of people who effectively participate or the scope of participation that is permitted. In authoritarian systems power is held by small elites who generally do not seek to share this power with others or to surrender it through democratic processes.

Regimes in modernizing authoritarian systems, while crucial decisions are made by non-democratic elites, often tinker with creating democratic institutions and processes which may eventually assume important powers. Taiwan, for instance, was transformed from a one-party police state dictatorship to a multi-party democracy through such incremental changes. Often, however, such quasi-democratic reforms are meant to provide a “steam valve” to “let off steam” rather than to transfer any real power from a non-democratic elite to a representative system.

⁶⁶ Farouk-Slugett, M. (2001): *Iraq since 1958: From Revolution to Dictatorship*. Bodmin: I.B. Tauris & Co Ltd.

3.2. Some International, Regional and National Comparisons

3.2.1. The European Pact on Immigration and Asylum

The European Pact on Immigration and Asylum highlights two crucial aspects of the phenomenon of migration, the stimulus and support for growth on the one end as well as the changes it triggers in host countries on the other hand. The Pact is based on the assumption that “the European Union [...] does not have the resources to decently receive all the migrants who hope to find a better life here”. It calls for better management of immigration and enhanced coordination at EU level as required by the creation of an area of free movement without internal borders. The EU has already made notable progress towards integrated immigration policies, including the adoption of a common visa policy, the harmonisation of asylum standards and the establishment of the Frontex agency in charge of external border security.

The Pact’s preamble, however, argues that these developments are insufficient, identifying five basic commitments for the development of a comprehensive EU policy on migration and asylum:

- **Legal migration:** A comprehensive approach to legal immigration should be devised, in harmony with the needs and the capacity of each member state to receive immigrants “in a spirit of solidarity”. The Pact builds here upon the Blue Card initiative and the Commission’s Policy Plan on Legal Migration, both of which are already in the pipeline;
- **Illegal migration:** The centrepiece of this section is the organisation of “selective repatriation of illegal immigrants”. This policy area is mainly covered by the recently adopted Return Directive. However, the Pact calls on member states to further enhance co-operation by organising joint flights for repatriation, improving readmission agreements and intensifying the fight against human trafficking.
- **Border controls:** The document focuses on the role of Frontex, the EU agency for external border security and proposes the establishment of two separate permanent bodies of command, one for southern and one for eastern member states.
- **Asylum policies:** Member states are expected to develop common guarantees on asylum, as well as an asylum support office by 2009 and a single, unified asylum procedure by 2010.
- **Foreign countries:** The EU’s approach to migration policy should deal with the origin of third-country immigrants. The Pact suggests offering opportunities for legal migration tied

to employment and education, but stresses the significance and benefits of circular migration.⁶⁷

3.2.2. The Swiss Constitution

As a country outside the European Union, therefore having its own, national migration policy, and a long history of immigration, Switzerland provides terms of comparison worth looking into. The preamble and the first title of the Constitution determine the general outlines of Switzerland as a democratic federal republic of 26 cantons governed by the rule of law.

The preamble opens with a solemn invocation of God in continuance of Swiss constitutional tradition. It is a mandate to the State authorities by the Swiss people and cantons, as the Confederation's constituent powers, to adhere to the values listed in the preamble, which include "liberty and democracy, independence and peace in solidarity and openness towards the world".

The general provisions contained in Title 1 (articles 1–6) define the characteristic traits of the Swiss state on all of its three levels of authority: federal, Cantonal and municipal. They contain an enumeration of the constituent Cantons, affirm Cantonal sovereignty within the bounds of the Constitution and list the national languages – German, French, Italian and Romansh. They also commit the State to the principles of obedience to law, proportionality, good faith and respect for international law, before closing with a reference to individual responsibility.

Title 2 contains the Constitution's bill of rights. The 1874 constitution contained only a limited number of fundamental rights, and some of them grew less significant as the 20th century wore on, such as the right to a decent burial guaranteed in article 53 of the old constitution. In consequence, the Swiss Federal Supreme Court's extensive case law developed an array of implicit or "unwritten" fundamental rights, drawing upon the case law of the European Court of Human Rights and applying the fundamental rights guaranteed in the European Convention on Human Rights (ECHR), which Switzerland ratified in 1974.

In the course of the 1999 constitutional revision, the Federal Assembly decided to codify that case law in the form of a comprehensive bill of rights, which is substantially congruent with the rights guaranteed in the ECHR, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

⁶⁷ EurActiv <<http://www.euractiv.com/en/socialeurope/european-pact-immigration-asylum/article-175489>>

Title 2 also covers the essential rules on the acquisition of Swiss citizenship and of the exercise of political rights. Furthermore, it contains a number of “social goals” that are not directly enforceable and which the state shall strive to ensure, including the availability of social security, health care and housing.⁶⁸ Apart from these generally applicable goals, there are several which particularly apply to migrants:

1. Readmission agreements
2. Migration agreements
3. Agreements according to art. 100 (5) Federal Alien Law
4. Visa facilitation agreements
5. Agreements on visa exemption for holders of diplomatic, service or special passports
6. Agreements on visa exemption
7. Trainee agreements

As far as Migration agreements are concerned, the statistics bureau at the Federal Office for Migration (FOM) has published the figures on foreign nationals. They reveal that the number of foreign nationals living in Switzerland now exceeds 1.6 million.

As of 31st December, 2008, a total of 1,638,949 foreign nationals were living in Switzerland. This equals about 21% of the entire resident population. Sixty-two % of all foreign nationals living in Switzerland are EU/EFTA nationals and more than 50 % have been living in Switzerland for over 15 years.

Switzerland’s bilateral agreement with the European Union on the free movement of persons has had an effect on the composition of the foreign resident population in Switzerland. The number of persons from the EU-27/EFTA member states increased by 6.8 percent, whereas the number of persons from non-EU/EFTA member states increased by only 0.4 percent. Between 1st January and 31st December, 2008, the number of German nationals showed the highest increase (+31,463), followed by nationals from Portugal (+13,844), France (+ 8,163), Great Britain (+3,213) and Poland (+1,608).

3.2.3. Outside Europe: The Reality of Other Regions

This section begins by looking at civil society entities as they play a vital role, though also

⁶⁸ Ehrenzeller, Bernhard/ Mastronardi, Philipp/ Schweizer, Rainer J./ Vallender, Klaus A. (Hrsg.) (2002): *Die schweizerische Bundesverfassung, Kommentar*.

fragmented, in dealing with the migration issue. The approach is usually country-based or regional. No equivalent to a global migration NGO, as in the case of the environment (e.g. Greenpeace, Friends of the Earth) or human rights (e.g. Amnesty International, Human Rights Watch) exists in the area of migration.

3.2.3.1. The USA's Service Framework for Migrants

The USA is the most attractive of the official immigration countries, has the most vulnerable of borders, and provides a good example of the near impossibility of liberal democracies completely controlling illegal migration.

The US Immigration and Naturalisation Service (INS) estimated the illegal population in the USA in 1996 at 5 million. It also estimated it to be growing at the rate of about 275000 per year, despite a budget in the order of US\$ 4.8 billion, the bulk of which is dedicated to border control. About 2.1 million or 41 percent of the total undocumented population in 1996 were non-immigrant overstayers. The rest had entered illegally, mostly across the Mexican border. Anti-illegal migration rhetoric has run high in the USA in recent years, apparently to placate public concern, while politicians praise legal migrants in pursuit of the critical migrant vote. Once in the US, however, "illegal" immigrants run little risk of removal. They are in fact welcomed as low wage labour by (especially agricultural) employers, and are generally tolerated in a time of economic growth and low unemployment.

A definition of terms relevant to describing the status of individuals not born in the US, but live there or seek to live there is, for sake of clarity, essential at this point:

Immigrant: Umbrella term referring to those who have come from another country to seek residence here. Each level of immigration confers certain rights and responsibilities. The most restrictive level of immigration is when one has a temporary visa (either for studying or employment) whereas the individual is unable to leave and re-enter the country, has a pre-defined stay, and is unable to receive federal funding to pursue an education. Other immigrant statuses, for instance Lawfull Permanent Residents (LPRs), can own property, attend public schools and universities, and join the armed forces. Only naturalized citizens are able to vote. However non-citizen immigrants pay taxes and engage in other forms of civic life.⁶⁹

3.2.3.2. Asia and Migrant Workers: Indonesia and Malaysia

⁶⁹ Federation of American Scientists (FAS) <<http://www.fas.org/irp/agency/dhs/endgame.pdf>>

This section presents a practical example of dealing with the migration issue on a bilateral basis between two countries within a regional (Asian) and sub-regional (ASEAN) context. The example is included here to allow us to understand the reluctance of governments when it comes to engaging in international legally binding instruments and their preference for dealing with the issue in a more flexible and tailored manner.

Another important advantage of the “fragmented” approach taken by international organisations, to be developed and elaborated on at a later stage, is the involvement of UN specialized agencies (such as ILO) or UN Programmes (such as UNHCR). These organisations, although they deal with the issue of migration not as a main mandate but rather as one of the many areas covered by their broader mandates, underline the benefits to be derived from the synergies within the relevant organisation, with their main themes, comprehensively addressed by legal instruments such as conventions and declarations.

After a long period of negotiations, the year 2010 finally saw the signing of a long-awaited agreement on migrant workers with Malaysia. The discussion of the Memorandum of Understanding (MoU)⁷⁰ led to agreements on several crucial provisions (such as the formation of a joint task force as well as migrant workers’ rights to hold their own passports and have one day off a week).

Conditions regarding placement fees and minimum wages were the toughest discussion points in this agreement, but Malaysia appeared to be determined to resolve the differences in order to end an Indonesian moratorium on the sending of migrant workers. Although negotiators from both sides managed to agree on the cost structure, Malaysia continued to refuse to negotiate a minimum wage standard. The joint working group had also discussed the handling of illegal Indonesian migrants in Malaysia, as there has been an increase of smuggled workers in recent months despite the continuing moratorium.

In fact, the moratorium was lifted only after improvements were made to programs to prepare

⁷⁰ This definition of a “Memorandum of Understanding” is based on the Wikipedia entry of the same name. A memorandum of understanding (MOU or MoU) is a document describing a bilateral or multilateral agreement between parties. It expresses a convergence of will between the parties, indicating an intended common line of action. It is often used in cases where parties either do not imply a legal commitment or in situations where the parties cannot create a legally enforceable agreement. It is a more formal alternative to a gentlemen's agreement. In some cases, depending on the exact wording, MoUs can have the binding power of a contract; as a matter of law, contracts do not need to be labelled as such to be legally binding. Whether or not a document constitutes a binding contract depends only on the presence or absence of well-defined legal elements in the text proper of the document (the so-called "four corners"). For example, a binding contract typically must contain mutual consideration - a legally enforceable obligation of the parties, and its formation must take place free of the so-called real defences to contract formation (fraud, duress, lack of age or mental capacity, etc.).

migrant workers being sent overseas, including a requirement that they undergo a minimum of 200 hours of standard training.

Excerpt from *The Star Online*⁷¹

Indonesia, Malaysia to sign MoU on maids in about 5 weeks

By DHARMENDER SINGH

PUTRAJAYA: The signing of the Memorandum of Understanding (MoU) on the Recruitment and Placement of Maids from Indonesia is expected to be signed in about five weeks.

Human Resource Minister Datuk Dr S. Subramaniam said many of the issues that would be included in the MoU, which will see the freeze on maids from Indonesia lifted, had already been discussed with his Indonesian counterpart and ironed out so the signing was not expected to be too far away.

Among the issues discussed, he said, were the provisions for a day-off each week for domestic help from Indonesia, maids being allowed to hold their passports, reasonable agency fees and allowing wages to be decided between the employers and workers.

From the above, two significant points emerge: The first point underlines the interest of governments in dealing with the issue of migration on their own terms, entering into direct negotiations with national counterparts of sending/receiving countries. This allows them to work outside an international binding framework⁷², rather using more flexible instruments such as a bilateral Memorandum of Understanding to deal with specific issues that are seen as priorities in need of regulation. The second point is the collaborative effort taken by the major national

⁷¹ The Star Online <<http://thestar.com.my>>. This daily publication belongs to a network of national daily newspapers published in Asian cities, organized to optimize coverage of major news events in the region. The networking of newspapers in Asia was first discussed informally by the Asian editors who participated in the first Asian-German Editors' Forum organized by the Konrad Adenauer Foundation in Manila. Encouraged by the success of the forum, the editors decided that a more permanent professional and business relationship be pursued not only among themselves but among their respective publications with the goal of improving the coverage of Asian affairs by Asian media. The objectives of the network to which *The Star Online* belongs are: 1. to enhance and improve news coverage of Asian affairs; 2. to provide member newspapers with reliable access to news sources in Asia; and 3. to help promote the professional development of journalism in the region, make it a reliable source of information both at national and regional level. Published: Thursday May 27, 2010 MYT 6:03:00 PM

⁷² In public international law and international relations, MoUs fall under the broad category of treaties and should be registered in the United Nations treaty database. In practice and in spite of the United Nations' Legal Section insistence that registration be done to avoid "secret diplomacy," MOUs are sometimes kept confidential. As a matter of law, the title of MoU does not necessarily mean the document is binding or not binding under international law. To determine whether or not a particular MoU is meant to be a legally binding document (i.e. a treaty), one needs to examine the intent of the parties and well as the position of the signatories. A careful analysis of the wording should clarify the exact nature of the document.

stakeholders to promote basic human rights and labour protection of migrant workers. The public dialogue with organisations such as ILO, in providing training programmes for migrants, aims to foster greater understanding of three aspects: 1) the human cost of exploitation of migrant workers, 2) problems faced by Indonesian migrant workers in Malaysia as the main destination country, and 3) ways in which Indonesia can ensure the effective protection of Indonesian migrant workers through better legal enforcement throughout the migration process, starting with recruitment and training in Indonesia, continuing through job placement abroad, and concluding with the eventual return to Indonesia.⁷³

3.2.3.3. The Gulf States: Kuwait over Migrants

Human rights in Kuwait are object of criticism by human rights-related organisations. While Kuwaiti nationals enjoy a moderate range of rights, there are severe allegations of human rights abuses among foreign nationals.

Migrant workers, in particular, continue to suffer a wide range of abuses in Kuwait. Most vulnerable are the many thousands of women employed as domestic servants, mostly nationals of south and south-east Asian countries. They suffer double discrimination, first as women and second as domestic workers, who continue to be excluded from the protections afforded to other expatriate workers under the 1964 labour law. Women domestic workers commonly work excessive hours for little pay and often allege that they are subject to physical and other abuse, including sexual abuse, at the hands of their employers, against which they often have no remedy. The minimum wage for foreign domestic workers was reported to be less than half that set for other foreign workers and only a third of the minimum wage paid to Kuwaiti nationals. A standardized contract for foreign domestic workers introduced in October 2006 led to some improvements, although it appeared to have worsened the situation for domestic workers facing physical or other abuse by their employer by banning them from transferring to a different employer.

The UN Human Rights Council examined Kuwait's human rights record as part of the council's Universal Periodic Review (UPR) of each nation. The Universal Periodic Review was established under the General Assembly Resolution that created the UN Human Rights Council in 2006. The UPR evaluates the human rights record of all 192 member states, with each state submitting to review every four years. This review was Kuwait's first.

⁷³ International Labour Organisation ILO <<http://www.ilo.org/jakarta/whatwedo/eventsandmeetings/lang-en/index.htm>>

May 12, 2010 (Geneva) – Kuwait should accept recommendations on protecting the rights of migrant domestic workers and stateless persons made today by United Nations member countries, Human Rights Watch said. The UN Human Rights Council examined Kuwait’s human rights record as part of the council’s Universal Periodic Review (UPR) of each nation.

Several delegations at the three-hour session raised concerns about the lack of legal protections for migrant domestic workers and about problems faced by stateless persons in Kuwait. More than 660,000 domestic workers are employed in Kuwait, making up over one-third of the country’s migrant workforce. Local rights groups estimate that Kuwait’s population of about 1.3 million citizens also includes more than 120,000 Bidun, long-time residents who lack Kuwaiti nationality.

“The international community has called attention to Kuwait’s failure to protect the country’s most marginalized groups,” said Joe Stork, deputy Middle East director at Human Rights Watch. “Kuwait should demonstrate its commitment to human rights by protecting domestic worker rights, and ensuring equal rights for stateless persons.”⁷⁴

In fact, under the contract, domestic workers who leave their employer or are dismissed will be deported.⁷⁵

Although the law in Kuwait does not explicitly prohibit trafficking in persons, traffickers may be prosecuted for transnational slavery, with a penalty of up to five years’ imprisonment, or for forced prostitution, with a penalty of up to five years’ imprisonment or seven in the case of forcing minors. However, the government reported no such prosecutions or convictions. Penalties for trafficking-related crimes range from fines and incarceration for failure to abide by the standardized domestic labour contract to life sentences and death for rape. However, in most cases, law enforcement efforts were not effective and focused on administrative measures, such as shutting down companies in violation of labour laws or issuing the return of withheld passports or payment of back-wages, rather than criminal punishments for abusive employers.⁷⁶

⁷⁴ Human Rights Watch <<http://www.hrw.org/en/news/2010/05/12/kuwait-deliver-promised-rights-reform>>

⁷⁵ Wikipedia <http://en.wikipedia.org/wiki/Migrants_workers_in_Kuwait>

⁷⁶ Human trafficking is the acquisition of people by improper means such as force, fraud or deception, with the aim of exploiting them. Smuggling migrants involves the procurement for financial or other material benefit of illegal entry of a person into a State of which that person is not a national or resident. Virtually every country in the world is affected by these crimes. The challenge for all countries, rich and poor, is to target the criminals who exploit desperate people and to protect and assist victims of trafficking and smuggled migrants, many of whom endure unimaginable hardships in their bid for a better life. As the only United Nations entity focusing on the criminal justice element of these crimes, the work that UNODC does to combat human trafficking and the smug-

The government assisted some trafficking victims; however, victims were sometimes also detained, prosecuted, or deported for acts, such as prostitution or absconding, committed as a result of being trafficked. The government sheltered some trafficking victims in the domestic worker shelter built in 2007, and it occasionally paid for airline tickets to repatriate runaway or abused domestic workers. The Domestic Workers Administration sometimes brokered solutions between employers and former employees.

3.2.3.4. Australia

The illegal migration and asylum seeker pressure on Western countries is expected to increase over the next 25 years. The only ‘solution’ envisaged by international migration forums so far is to improve the living standards, political stability and democratic institutions in countries of origin, so that people will no longer want or need to move. This solution obviously entails a long-term effort, and one that in the short to medium term will increase rather than decrease migration pressures. In the meantime, so-called receiving countries, including the traditional immigrant receiving countries, will continue to tighten border controls and attempt to restrict asylum seeker entry. The officially non-immigrant countries of Europe and the UK will also intensify their efforts to integrate their sizeable illegal and asylum seeker populations that have become established.

Australia has been largely protected from the levels of illegal and asylum seeker movements experienced by other countries – protected, that is, by its physical remoteness, its lack of land borders and its strict visa regime. With cheaper and more direct air travel, increasing temporary movements, tighter border controls and more restricted asylum seeker access in Europe and the USA, together with the advent of a highly sophisticated global people smuggling industry, Australia could become a more attractive destination for migrants in the near future. Besides relative economic and political stability, and remoteness from world conflicts, Australia offers well-developed and comparatively generous migrant and refugee settlement assistance and quick access to citizenship entitlements.

Australia does not rank amongst the highest countries in the world in terms of illegal populations and asylum seekers, but it has certainly been affected by the issue. In 1998-99 Australia received, on a per capita basis, fewer asylum claims than the UK, and much fewer than Germany or Switzerland, but more than France or Italy. In terms of immigration countries, Aus-

gling of migrants is underpinned by the United Nations Convention on Transnational Organized Crime and its protocols on trafficking in persons and migrant smuggling.

tralia received twice as many asylum claims per capita than the USA, but half as many as Canada. In per capita terms, Australia in 1998-99 had an estimated illegal population, per million population, of 2819, compared with the USA's 20 328 per million population.

Australia, the USA and Canada are often compared on immigration issues. However, Australia and the USA not only have different labour market and welfare traditions and cultures, but they also have different migration cultures. In the USA legal migration is dominated by family migration, and the focus of recent policy and debate has been illegal migration. Canada's and Australia's migrant and humanitarian programs have been similar, but have diverged in recent years, with Canada maintaining higher immigration intakes, even in times of relatively high unemployment, and a refugee program increasingly dominated by asylum seekers.⁷⁷

It is questionable whether many countries – disregarding Canada perhaps – would be willing to sign the 1951 international refugee convention today. It is equally questionable whether it would be seen as a workable way of addressing the refugee situation at the beginning of the 21st Century. However, Australia, along with other Convention countries, appears reluctant to revisit it, despite the twisting of the international refugee effort resulting from the focus of individual countries on their refugee determination systems, and their efforts to weed out 'economic' (and possibly no less desperate) refugees from political ones⁷⁸. Neatly separating the issues related to migrants and refugees presents a challenge. The two areas will, therefore, often be dealt with within the same framework, still keeping in mind the internationally agreed upon definitions and the relevant measures' implementation. Overseas experience suggests it is likely that more resources in Australia may be directed towards dealing with illegal arrivals and on shore asylum seekers in the future. Practical and cost considerations as well as humanitarian concerns may force a revision of the detention policy, if the numbers of illegal arrivals increase by much. Additional policy and administrative resources may also be needed to focus on regional refugee solutions, and on negotiating readmission agreements with sending countries further into the field. And, finally, a decreasing proportion of Australia's annual refugee intake may come via UNHCR advice from refugee camps overseas, as increasing numbers of people seek protection visas in Australia.

3.2.3.5. Interregional Migration from Indonesia to Malaysia and the Gulf

The reason for selecting migration between Indonesia, Malaysia and the Gulf as an example is

⁷⁷ See footnote #11 for definition of refugees

⁷⁸ See footnote #4 on migrant-related Conventions

three-fold:

- a) While migration from South to North (Mexico-USA or Africa-Europe) is dealt with by several legal frameworks, which do show room for improvement, to the advantage of both receiving country/ies and migrants, open to further elaboration, it can be affirmed that the democratic systems of the recipient countries aim at ensuring a fair treatment of this vulnerable category of internationally moving persons. South-South migration, in contrast, cannot be seen and discussed within the same framework as the recipient countries are often non-democratic systems, without a legislation specifically dealing with migration, thus opening the door to possibilities of abuse and illegal treatment.
- b) While South-North migration often implies a deep cultural and social diversity, in the case under consideration, the migration flux happens between countries of the same religion (Islamic), with a similar colonial history (former British / Dutch protection) and with strong economies that are likewise or mainly based on petroleum resources.
- c) Last but not least, the high percentage of women migrants is the distinctive feature of these migratory movements and makes the case particularly noteworthy. Academic papers, literature as well as reports by International Organizations on this issue are produced on a regular basis. The legal framework for their rights and entitlements is, however, not yet fully in place. The agenda of the 99th session of ILO (2010) contained as its 4th item “Decent work for domestic workers”, dealing primarily with the aforementioned millions of women and their occupation.⁷⁹

In summary, these points make migration between Indonesia, Malaysia and the Gulf a case which, while characteristic in terms of the dangers and difficulties faced by migrants, deserves special attention because of its specific properties.

Reaching an agreement with Kuwait is of the highest importance for Indonesia, because many Indonesian workers were unable to leave the Middle Eastern nation when they had problems with their employers. Indonesia intends to ask Kuwait for the same type of worker protections it was asking from Malaysia, including the right to retain their passports and regulations to governing minimum wage and leave.

It is estimated that there are six million Indonesian migrant workers overseas, with two million in Malaysia alone. Only approximately 1.2 million of these hold legal documents, accord-

⁷⁹ International Domestic Workers' Network (IDWN)
<http://www.domesticworkerrights.org/sites/default/files/ILO%20Domestic%20Work%20Report_0.pdf>

ing to the Manpower Ministry. While the number of Indonesian migrant workers in Kuwait is less than in Malaysia, they still number in the tens of thousands. In a report that urged the government to better protect foreign labourers, Amnesty International stated that migrant workers from countries such as Indonesia, Bangladesh and Burma are lured to Malaysia by promises of high salaries, but often end up being exploited and abused.⁸⁰

One of the starkest examples of the abuse of migrant workers came to light in Malaysia, where foreign workers made up a fifth of the total workforce. Official records divulged this year showed that Malaysian authorities caned almost 35,000 migrants between 2002 and 2008, many for immigration offences – cruel and degrading punishment on a monumental scale. In addition to undocumented workers, documented workers whose passports have been withheld by their employers, asylum-seekers and refugees were also at risk of being caned. Thousands of migrant workers languished in detention centers falling short of international standards, often with little due process or legal protection.

Even where migrant workers received greater legal protection, their marginalized status still made them vulnerable to abuse.

As the above-quoted report states, foreign labourers make up more than a fifth of Malaysia's work force, filling jobs at construction sites, factories, restaurants, households and palm oil plantations. Even so, Amnesty International found that lower-than-promised wages, unsafe working conditions, and arbitrary arrests and extortion are common. The 100-page report, titled "Trapped — The Exploitation of Migrant Workers in Malaysia" is based on the interviews that an Amnesty team visiting Malaysia conducted with more than 200 workers, both legal and illegal. Indonesian workers, the report revealed, frequently worked without pay for an initial period to cover the fees of their recruitment agents.

Work permits also continue to be a major problem for migrants in Kuwait. The report quoted an Indonesian woman who worked at an electronics factory as saying she had not been given a work permit for almost a year, yet 100 ringgit (\$30) was deducted from her wages every month to cover the expense. Such an arrangement, the report said, was a violation of the Protection of Wages Convention, an International Labour Organization (ILO) treaty ratified by Malaysia. As part of its recommendations in the report, Amnesty urged Malaysia to increase workplace inspections and step up prosecution of those who mistreated workers.⁸¹

⁸⁰ Amnesty International, Asia-Pacific <<http://thereport.amnesty.org/regions/asia-pacific>>

⁸¹ Convention concerning the Protection of Wages (Note: Date of coming into force: 24:09:1952. This Convention was partially revised in 1992 by Convention No. 173). Convention: C095. Place: Geneva. Session of the Conference: 32. Date of adoption: 01:07:1949. Subject classification: Protection of Wages. Subject: Wages.

A UN specialized agency such as ILO, a regional Asian NGO called CARAM (Coordination of Action Research on Asia and Mobility)⁸² and a human-rights related NGO such as Amnesty International seem to be among the few reference points for the regulation of the problems related to migration from Southeast Asia to the Gulf. But how can they deal with the reality of the lack of protection that affects migrants both as human beings and as workers, specifically exploitation and marginalization?

In the next chapter, this and other questions, in relation to International, Intergovernmental Organisations and Non-governmental entities will be discussed. In addition, comparisons between the two above categories of institutions will be used to discover OR establish which one has the better instruments for the most effective approach to the management of migration.

3.3. Conclusions

In response to the first leading research question concerning the stakeholders and actors in the global management of migration, the following hypotheses can now be suggested:

If a UN Organisation for Migration, similar to the UN Programme for Environment (UNEP) were to be established, it is unclear whether management of migration would become more efficient and better coordinated. Also, it cannot be taken for granted that member states, after having actively contributed to its establishment, would put into force specific instruments within or through such an organisation that would serve to improve the management of migration, particularly in those areas which are still dominated by *ad hoc* solutions rather than coordinated approaches.

To elaborate on the above hypotheses, first of all reference should be made to pages 31 to 34 of this study which provide a broad presentation of UNEP *per se* as well as in relation to human rights and migration.

As Konrad von Moltke argued in his article “Why UNEP matters” of 1996,⁸³ given its mandate, its resources, and its authority, UNEP has been a remarkable success. This assessment runs counter to the view of UNEP as a failed agency held by some UN critics. The area where

⁸² CARAM Asia. (2002, August 28). Colombo Declaration. *Regional Summit on Foreign Migrant Domestic Workers*. Proceedings of the regional summit are available at: <http://www.caramasia.org/index.php?option=com_content&task=view&id=148&Itemid=347>

⁸³ Fridtjof Nansen Institute <http://www.fni.no/YBICED/96_05_moltke.pdf>

the agency's successes are most obvious is the development of international regimes to manage global environmental problems. This impressive list needs to be put in context, however. Indeed, no other UN agency can match this record. These environmental conventions represent the only major field of international relations which continued to evolve dynamically throughout the 1970s and 1980s. Without UNEP, much of this would not have been possible.

It can be argued that these agreements would have come about regardless of UNEP, and that some of them took the form they currently have because many of the principal actors were unwilling to have them move forward within the UNEP framework, which has always been too weak to support the necessary structure to develop the global dimension of international environmental policy. Since this is a hypothetical argument, it can be neither proved nor disproved in principle. However, experience in most countries strongly suggests that in the absence of an articulate environmental advocate, other interests will prevail over the environmental imperative. UNEP was - and continues to be - a weak agency. Nevertheless, it was the only environmental advocate within the UN system and could provide an international focus for the increasingly vocal national advocates for environmental concerns.

To some extent, the widespread criticism of UNEP is a self-fulfilling prophecy. Those who criticize UNEP most strongly are often those who would need to change their own practices if UNEP were to succeed. To some extent, the criticism is thus a self-serving argument that justifies a lack of attention to the environmental agenda. Would the arguments put forward by von Moltke also apply to an UN Organisation for Migration? On the one hand, we can surmise that they would, probably, concerning the promotion of international regimes related to migration. On the other hand, the question whether this hypothetical UN Organisation for Migration would be strong enough to develop a global policy with respect to migration cannot be answered at this point as many organisational features which make an organisation "strong" or "weak" only develop over the years and are not necessarily built into the organisation's constitution, mandate or programs.

Two main points following from this discussion, which could be called tentative or preliminary in the sense that they are worth being tested, will lead this study towards more substantial conclusions.

The first is the hypothesis that global governance of migration need not be managed by a single UN organisation in order to reach sustainable results. It is thus antithetic to the thesis that, following the example of governance of other global areas (such as the environment and human rights), migration should be managed by one "umbrella" organisation rather than being

spread across a number of UN and non-UN organisations in order to reach desirable results. As the privileged instrument for inter-agency coordination in the area of migration, the Global Migration Group (GMG) aims at coordinating fourteen organisations in their work of implementing programmes related to an equal number of migration issues. It cannot be defined an organisation for not having a secretariat, a fixed staff and all other features belonging to a UN programme or UN specialized agency. Still, it ensures continuity at least at the level of those intergovernmental agencies which have mainstreamed migration into their mandates.

Elaborating the second point, in contrast but not in contradiction to the first point related to international organisations, the next chapter of this study aims to develop a deeper understanding of the reasons underlying the “fragmented” status that Civil Society finds itself in vis-à-vis migration.

4. Chapter 4: Current Instruments: Power Interactions Within and Between Them

4.1. Inter-State versus Inter-Agency: Two Lines on a Plane that Do Not Intersect or Meet

Before starting a discourse analysis with the aim of understanding social interactions in the area of International Organisations and Migration, it is essential to acknowledge the position of this study and the ground it has covered so far. To bring about change, it seems crucial to understand power relationships in the migration-related institutions. The focus of attention, accordingly, will be on the external (IOs and member states) and internal (IOs among themselves) UN attitude towards the creation of a new migration organisation, the official explanation for its non-existence and the solutions offered so far, i.e. the establishment of the Global Forum for Migration and Development as well as of the Global Migration Group.

Both instruments, the first state-led, the second UN-led, seem to act independently from one another, in spite of having been established within the same framework of the High Level Dialogue on Migration in 2006. The only visible link, shared by both instruments, is the participation of the UNSG Special Representative for Migration and Development, Mr. Peter Sutherland. While no job description of Mr. Sutherland position can be found, the press release in the foot note indicates his role as an advisor in matters related to migration.⁸⁴

4.2. Opposition to Assign Migration a More Prominent Role on the Agendas and to the Establishment of a UN Organisation for Migration

Reiterating the position which seems to be predominant in the UN system with respect to migration, Mr. Peter Sutherland at the GFMD first meeting of the Steering Committee in February 2010 pointed out that “the best way to proceed was through an informal dialogue with the

⁸⁴ The General Assembly has requested the Secretary-General “to prepare a comprehensive overview of studies and analyses on the multidimensional aspects of migration and development, including the effects of migration on economic and social development in developed and developing countries, and on the effects of the movements of highly skilled migrant workers and those with advanced education”, while also addressing short-term and seasonal workers within the context of labour movements. The Secretary-General hopes to provide this overview, drawing on various inputs, including in particular the report and recommendations of the Global Commission on International Migration, at latest by the end of May. He looks forward to benefiting from the advice of Mr. Sutherland, as well as other experts, in the preparation of the overview, and he relies on him to help bring it to the attention of Member States at the highest level during the run-up to the high-level dialogue. See also <<http://www.un.org/News/Press/docs/2006/sga976.doc.htm>>.

minimum rules”. The same view or notion, in other words, appears to be at work when member states which emphasize the rationale behind the GFMD to help governments reach their Millennium Development Goals (MDGs), might be the same which, when signing off on the MDGs in 2000, did not include migration in the final document.

Forcing the issue, in spite of its sensitivity and growing visibility, to keep a low profile and prevent it from becoming part of the UN global institutional architecture, seems to be a strong interest of UN organisations and member states, across the board.

4.3. Examples of “Institutionalisation”

A number of different paths taken by the UN and its member states on other issues, such as security in Europe, i.e. CSCE/OSCE, the protection of the ozone layer, i.e. the Multilateral Fund of the Montreal Protocol, and the gender issue will be briefly discussed as examples of processes developing around an issue of global or international interest with the purpose of “institutionalizing” that specific issue. Are there any lessons to be learned from those examples for the case of migration?

In the following sub-chapters, we will see how:

- a) a multilateral issue such as security in Europe has been dealt with in an extended institutionalizing process, being transformed from a Conference into a full-fledged organisation
- b) a more specific, but still global issue has been dealt with, within the framework of a “successful” Protocol, by setting up a Multilateral Fund with policy making organs and a secretariat
- c) a global issue, gender, was first dealt with in a fragmented way and is now, through a General Assembly Resolution, assuming a new role and place in the UN system.

4.4. Academic Positions on International Organisations and Migration: The Global Migration Governance Project

The study will take as a point of reference the Global Migration Governance project, one of the few research projects grounded in Political Sciences that attempts to understand what global migration governance is and move forward from there to discuss similarities and, more importantly, divergences.

While the point of departure is the same, “[t]here is no UN migration organization and migra-

tion is governed by a fragmented tapestry of international organizations”⁸⁵. Discourse analysis⁸⁶ will allow different conclusions such as advocating the concept of “shared responsibility”, forged by the GFMD for its member states as the central theme for its 2010 Meeting (Puerto Vallarta, Mexico, November 2010), as a suitable framework for cooperation among UN agencies, too and between GFMD and GMG. The “fragmentation” in the UN system on the issue of migration would be then viewed not as a scattered patchwork of different contributions, without a unified, coherent common goal, but rather as a platform where each agency delivers its specialized contribution, benefiting from the wholeness of its mandate.

The Global Migration Governance project addresses the lack of a coherent international institutional framework in the area of migration, compares the fragmented nature of migration governance to other global issues such as environment and trade and, as an example, refers to the refugee regime as a “relatively clearly defined” regime. This study will be referred to at a later point in Chapter 5.

4.5. International Organisations and Policy Makers

4.5.1. The UN-led Process on Migration: The Global Migration Group (GMG)

The GMG was established by the United Nations Secretary-General in early 2006 in response to a recommendation of the Global Commission on International Migration for the establishment of a high-level inter-institutional group of agencies involved in migration-related activities. The GMG was created by building on an existing inter-agency group with a more limited membership, the Geneva Migration Group, which was established in April 2003. At present, the Group is comprised of 14 entities.

While elaborating on the functions and membership of GMG would be a mere duplication of the GMG website⁸⁷, some considerations on the activities of the Group as they have been planned and implemented are worthy of discussion.

In view of the GMG chairmanship of one semester, the most practicable way to proceed appears to be the one by which the chairing organisation (one out of 13 UN agencies plus IOM) selects as thematic focus for its semester chairmanship the area of migration which comes

⁸⁵ Global Migration Governance <<http://www.globaleconomicgovernance.org/project-migration>>

⁸⁴ Fairclough, Norman/ Wodak, Ruth (1997): ‘Critical Discourse Analysis’. In: van Dijk, T.A. (ed.): *Introduction to Discourse Analysis*. London: Routledge. 258-284.

⁸⁷ Global Migration Group <<http://www.globalmigrationgroup.org>>

close to its core mandate. In the case of the first 2010 semester, which was chaired by UNDP, the thematic focus was on the follow-up to the 2009 Human Development Report. As for the second 2010 semester, chaired by the Office of the High Commissioner for Human Rights, all outputs revolve around migration and human rights.

While, on the one hand, this division of labour is plausible, it does not, on the other hand, foster inter-agency co-operation, but rather separates the areas of influence in a clear-cut manner, i.e. it perpetuates an already pre-existing division.

The following excerpts, which is taken from the minutes of the GFMD second meeting of the Steering Group and refers to a statement by the SGSR, Mr. Peter Sutherland, in response to a proposal made by the Chair, are enlightening:

THE CHAIR

Thereafter, the Chair shared with the Steering Group its plan to consider assigning an organizational role to the Global Migration Group (GMG), i.e. as co-chairs of a Roundtable session in Puerto Vallarta, in partnership with a government. Mexico was cognizant of the fact that most of the GMG agencies participate in the GFMD by assisting in preparing background papers, providing data, and answering questions both during the preparatory phase and the actual sessions. Furthermore, the Chair noted that the GMG had managed to reach a greater level of internal coordination and coherence to date. But to foster this internal coordination, Mexico would like to give the GMG the opportunity to speak with a single voice, not through the independent agencies, and in a more coherent way to convey the views of the United Nations on the migration phenomenon.

MR PETER SUTHERLAND

Mr. Sutherland supported the Chair's call for greater participation from the GMG. He recalled that the UN had always intended to engage the GMG and its various agencies, many of which are involved, one way or another, in the migration saga. The Secretary General and the heads of the individual GMG agencies had been very active in trying to promote greater coherence among them. Initially, the GMG was envisaged to coordinate in a way that could provide a secretariat for the whole process. **But this did not happen because of coordinating agencies which perceived some conflicts of interest in putting a structure amongst them.** It was also difficult to reach this objective in the context of the rotating chairmanship of the GMG. In addition, the GFMD had taken a different route with the creation of its own Support Unit which has provided such an important element in the continuity and the organization of the Forum.

Mr. Sutherland nonetheless believed that this should not take away from the need to advance the process of the GMG faster and more effectively, and to take advan-

tage of their resources and expertise in support of the GFMD. The intellectual contribution of the GMG must be enhanced and developed. **A lot more had to be done to improve the GMG's internal coordination and cooperation.** Each agency must be prepared to make a contribution to the whole process through their personnel and through active engagement in the GFMD. Notably, there are a number of GMG agencies like IOM, ILO, UNOHCHR, and others that are already playing a very substantial role in the GFMD. But the collective GMG involvement in the process needs to be strengthened. This is difficult to do and might take a long time to realize⁸⁸.

Considering the work of the Global Forum on Migration and Development, as described later under 4.5.2, the positions taken by the member states, the chair and the advisors provides the blue print for future action and establishes a precedent which seldom will be ,later on, superseded. It is therefore essential to understand the link between the two instruments (GFMD and GMG) as assessed by their members and as fostered or held back at their official meetings.

The above decision process is self-explanatory and stresses the lack of understanding of the linkages between the two for a, particularly from the side of the policy makers/member states

4.5.2. The Informal Inter-State Dialogue on Migration: The Global Forum on Migration and Development (GFMD)

In September 2006, the High Level Dialogue on International Migration and Development took place in the framework of the General Assembly of the United Nations. Over 140 Member States discussed the global implications of international migration and the mutually beneficial interaction between migration and development. The High Level Dialogue made explicit the close relationship of development policies with migration policies, and reaffirmed how well migration governance can contribute to development and how development policies can impact migration. Understanding this complex relationship is of growing importance as migration increases every year.

As a result of these discussions, a large number of UN Member States expressed their interest in continuing the dialogue on migration and development by means of an informal, voluntary and state-led global forum.

Again the words of the SGSR, Mr. Peter Sutherland, indicate two possible scenarios for that

⁸⁸ GMG, Minutes of the GFMD second meeting of the Steering Group. "Partnerships for migration and human development – shared prosperity, shared responsibility" Palais des Nations, Geneva 28 April 2010. <http://www.gfmd.org/en/gfmd-documents-library/doc_download/506--report-of-the-proceedings-second-steering-group-meeting-english.html>. Added emphases in bold are my own.

event, namely:

Mr. Sutherland highlighted the importance of preparing well ahead of 2013. He said there was a wide range of possibilities as to where the GFMD would end up in 2013. One conclusion could be that the Global Forum had not contributed to anything. Or, conversely, a very dramatic conclusion could be reached to create a new organization to move the process forward. To try to achieve a consensus would be difficult, and it should not be turned into a North-South debate.⁸⁹

The possibility, here defined as a “dramatic conclusion”, that a new organisation might be created, indicates, to the author’s understanding, an alternative to the existing GFMD, rather than the creation of an organisation for migration as a new entity. The assumption on part of the SGSR that “to achieve a consensus would be difficult” is certainly based on his in-depth knowledge of the migration “saga” (his choice of words) and of the numerous actors involved, both UN and non-UN agencies as well as member states.

At this point of time, the stress in relation to the possibility of setting up a new instrument is put mostly on member states and on the danger of a North-South debate. This is, on the one hand, a logical assumption as we are discussing a state-led Forum. On the other hand, the present/undeniable lack of close cooperation with international organisations which should facilitate the dialogue on migration is noteworthy. Finally, the perspective of a North-South debate in the future, as it is often viewed by high level representatives in their official capacity as actors of development, is seen as a danger rather than as a possibility for reciprocal dialectic enrichment.

4.5.3. The Point of Departure Revisited: The Lack of a UN Organisation Dealing with Migration

The following paragraph, taken from the Report of the Secretary General dated 18th May, 2006, at the Sixtieth Session of the General Assembly, Agenda item 54(c) Para 293 Globalization and interdependence: international migration, states:

“Within the United Nations system there is no single entity with the mandate of working systematically on the full spectrum of international migration issues. Each of the United Nations organizations constituting the Global Migration Group cover different and sometimes overlapping aspects of international migration and development and each has its governing body. With 116 member States, IOM focuses on a wide spectrum of migration issues but is outside the United Nations

⁸⁹ *ibidem*

system.”⁹⁰

The “official” reason for this can be recognised in a statement by the SG on the establishment of the Global Migration Group, in which he pointed out the following:

“There is no consensus on making international migration the subject of formal, norm-setting negotiations. There is little appetite for any norm-setting intergovernmental commission on migration.”⁹¹

It is worth asking if the formulation “there is” applies to member states, to International Organisations, or both? This question remains unanswered as no more detailed elaboration has been done in the statement.

4.5.4. The Solution at Hand

“But, the Forum would be the opposite of that. It would be informal, voluntary, and consultative. Above all, it would not make binding decisions.”⁹²

Reading the above paragraphs, the structure of the GMG seems to be considered far from perfect by everyone concerned. In order to understand which aspects and features of the GMG could be positively or negatively assessed by the migration constituency, it is worth underlining, first, that:

- a) surprisingly, a number of UN agencies with mandates covering GMG’s themes are not represented in the Group (UNIFEM, UNFCCC, UNEP) in spite of the contribution they could make according to their mandate and, secondly, that
- b) areas which are sometimes well defined (labour ,trafficking, children – related issues) are dealt with and coordinated by the respective lead agency, are sometimes undefined when several agencies work on the same issues without having the required competence or are neglected altogether (gender without UNIFEM/UN Women, climate change without UNFCCC or UNEP, health without WHO)

Based on the above considerations, the competence and strategy of the GMG can be reasonably questioned so as the authority of decision-making by the relevant missing organisations and the intention of the setting up entity.

⁹⁰ Report of the Secretary General dated 18th May, 2006, at the Sixtieth Session of the General Assembly, Agenda item 54(c) Para 293 Globalization and interdependence: international migration.

⁹¹ *ibidem*

⁹² The Secretary-General’s address to the High-level Dialogue of the General Assembly on International Migration and Development, New York, 14th September, 2006.

4.5.5. Institutionalisation Processes Imply Political Backing of Member States and Supportive Cooperation by IOs.

A twenty-year process: From CSCE to OSCE.

The OSCE traces its origins to the détente phase of the early 1970s, when the *Conference on Security and Co-operation in Europe* (CSCE) was created to serve as a multilateral forum for dialogue and negotiation between East and West. Meeting over two years in Helsinki and Geneva, the CSCE reached agreement on the Helsinki Final Act, which was signed on 1st August, 1975. This document contained a number of key commitments on politic-military, economic and environmental and human rights issues that became central to the so-called “Helsinki process”. It also established ten fundamental principles (the “Decalogue”) governing the behaviour of States towards their citizens, as well as towards each other.

Until 1990, the CSCE functioned mainly as a series of meetings and conferences that built on and extended the participating States’ commitments, while periodically reviewing their implementation. However, with the end of the Cold War, the Paris Summit of November 1990 set the CSCE on a new course. In the *Charter of Paris for a New Europe*, the CSCE was called upon to play its part in managing the historic change taking place in Europe and responding to the new challenges of the post-Cold War period, which led to its acquiring permanent institutions and operational capabilities.⁹³ As part of this institutionalization process, its name was changed from CSCE to OSCE by a decision of the Budapest Summit of Heads of State or Government in December 1994.

In the coming decades, the CSCE would evolve from a diplomatic Conference that helped to break down the barriers of mistrust between East and West into an international Organisation – the OSCE – whose numerous institutions and field operations proved vital to stability in the post-Cold War world, focused on but not limited to Europe.

This timeline traces the growth of the OSCE from its origins in Helsinki into an organisation with truly global reach that is actively engaged in conflict prevention, resolution and post-conflict rehabilitation – as well as a whole host of other activities related to security, cooperation, human rights and more.

The Helsinki Final Act was a landmark accord in many ways. One of its most significant aspects was that it made human rights issues – which had long been a no-go area in relations

⁹³ OSCE/CSCE, Charter of Paris for a New Europe <<http://www.osce.org/about/19298.html>>

between East and West – a subject of legitimate concern to all.

“No longer could nations seek to shield human rights violations from international scrutiny by claiming they were internal affairs.”⁹⁴

A fifteen-year process. On the 15th anniversary of the Beijing Fourth World Conference on Women, UN creates UN Women.

The establishment of the UN Entity for Gender Equality and the Empowerment of Women is the result of years of negotiations between UN member states and advocacy by the global women’s movement. It merges four previously distinct parts of the UN system⁹⁵ and it is expected to enhance, not replace, efforts by other parts of the UN system (UNICEF, UNDP and UNFPA). It will support inter-governmental bodies, help member states and also help the UN system.

Since this is the most recent UN initiative related to a global issue, it is worth considering whether a similar initiative would be possible or, rather, feasible with respect to the issue of migration. This question cannot, however, be fully answered in the affirmative, because of the differing points of departure and the dissimilar features which characterize the two issues.

Accordingly, the following key words from the SG’s statement in July 2010⁹⁶ could not be applied to the issue of migration for a number of reasons. The first reason being that the competences on migration, spread among several organisations of the UN system, (with the exception of a non UN agency, i.e. IOM), are embedded in the mandates of the agencies where they constitute one among several areas of activities, but not the priority (migration and labor, migration and refugees, migration and human rights, to name only a few). Picking up two key notions, the following options should be considered:

- 1) “Delivering as one”. The only flexible initiative, which has its own limitations, could be identified in the Global Migration Group, which was established as an inter-agency forum. The word “Delivering”, however, cannot be applied to the GMG which is not expected to “deliver” any operational programme or activity.
- 2) Establishing a composite entity by consolidating and transferring the existing mandates

⁹⁴ OSCE/CSCE, The Helsinki Final Act <<http://www.osce.org/about/19298.html>>

⁹⁵ Division for the Advancement of Women; International Research and Training Institute for the Advancement of Women; Office of the Special Adviser on Gender Issues and Advancement of Women; and United Nations Development Fund for Women.

⁹⁶ UN WOMEN <<http://www.unwomen.org/2010/07/statement-by-the-un-secretary-general-on-the-creation-of-un-women>>

and functions. This solution cannot be applied to the migration issue, for it is dealt with as a part of a broader mandate and not on its own by all agencies, with the one exception of the IOM.

Some further key concepts expressed in the SG's statement could, however, be applied to the issue of migration. For example, a new entity which should "lead to more effective coordination, coherence and (gender/migration) mainstreaming across the UN system" and "with the additional role of leading, coordinating and promoting the accountability of the UN system in its work (related to migration)" would fulfil the purpose of a possible new migration entity. Defining UN Women as "the newest member of the UN family", after the General Assembly passed a resolution on the establishment of this entity on 2 July 2010, the Secretary General stated:

I welcome today's vote by the 64th General Assembly to merge the four gender entities of the United Nations into UN Women. Today's action does more than consolidate United Nations offices, it consolidates United Nations strengths. UN Women will significantly boost UN efforts to promote gender equality, expand opportunity, and tackle discrimination around the globe. It is also an important step in our wider effort to strengthen UN system-wide coherence to meet the challenges of the 21st century.⁹⁷

Here the questions arise whether migration is seen as one of the challenges of the 21st century and whether an effort is required to strengthen UN system-wide coherence in dealing with the issue of migration.

UN Women is a recognition of a simple truth: Equality for women and girls is not only a basic human right, it is a social and economic imperative. Where women are educated and empowered, economies are more productive and strong. Where women are fully represented, societies are more peaceful and stable.⁹⁸

Would member states agree to recognize a similar "simple truth" with respect to migration, accepting that equality for migrants is not only a basic human right, but a social and economic imperative?

That is why I have made gender equality and the empowerment of women one of my top priorities — from working to end the scourge of violence against women, to appointing more women to senior positions, to efforts to reduce maternal mortality rates.

⁹⁷ ###

⁹⁸ *ibidem*

Once again, I salute the General Assembly for its action. Women of the world look to the United Nations for leadership – and Member States have delivered.⁹⁹

Two final questions arise at this point: Has the SG made migration one of his top priorities as well? And, if so, does the General Assembly also take action towards delivering UN leadership, on behalf of its member states, for migration?

While on a number of occasions, now dating back to 2006, when GFMD and GMG were first established, migration has certainly been defined as a priority by the UN SG, no action can be seen on the side of the GA with respect to bringing migration into the focus of its agenda.

A ten years process: The Multilateral Fund of the Montreal Protocol.

On an altogether different scale, more focused and of a lighter structure, the Multilateral Fund of the Montreal Protocol emerged from the World Conference in Rio, 1992, where political impetus played a pivotal role.

In 1977, the United Nations Environment Programme initiated the World Plan of Action on the Ozone Layer. Several years later in 1985, the Vienna Convention for the Protection of the Ozone Layer established the principles of international cooperation on ozone destruction, stressing the need to cooperate in research and monitoring, to share information on Ozone Depleting Substances (ODS) production and emissions, and to pass control protocols if and when warranted. For the first time, nations agreed in principle to tackle a global environmental problem, before its effects had become clear or its existence had been scientifically proven. The Fund thus constitutes the first example of the acceptance of the precautionary principle in a major international negotiation.

After two years, in 1987, the Montreal Protocol on Substances that Deplete the Ozone Layer was ratified.¹⁰⁰ It requires countries to reduce levels of production and consumptions of ODS according to an agreed schedule.

The Helsinki Declaration on the protection of the ozone layer included a commitment to facilitate the access of developing countries to relevant information, research results and training, and to seek to develop appropriate funding mechanisms. Some years later, the second meeting of the parties, the so-called London Meeting agreed to establish an Interim Multilateral Fund to assist developing countries (Article 5 Parties). The Interim Multilateral Fund was

⁹⁹ *ibidem*

¹⁰⁰ UNEP Montreal Protocol on Substances that Deplete the Ozone Layer
<<http://www.unep.org/OZONE/pdfs/Montreal-Protocol2000.pdf>>

established with its Secretariat in Montreal, Canada. Four UN Agencies – i.e. UNDP, UNEP, the World Bank and later UNIDO – became implementing agencies of the Fund. In 1994, the Fund was established on a permanent basis and replenishments of the Funds followed every two years. Control schedules as well as license systems and compliance periods are the main instruments for ensuring a successful implementation of the Fund’s programme.¹⁰¹

4.6. Conclusions

The conclusions of this chapter relate to the three main actors in the migration debate, namely member states, international organisations and last but not least, civil society organisations.

1) “Elever ce pays en élevant son langage.” – Albert Camus¹⁰²

According to the theory of Critical Discourse Analysis (CDA), describing discourse as social practice implies a dialectical relationship between a particular discursive event and the situation(s), institution(s) and social structure(s) which frame it: the discursive event is shaped by them, but it also shapes them.¹⁰³

This has been also recognized, albeit from a literary point of view, by Albert Camus. In fact, the capacity of written words to influence the audience and the possibility to use the press or any other media as an instrument to upgrade the level of public opinion through upgrading the language used is particularly emphasized by Albert Camus in his essay “Combat”, written in August 1944, with respect to democracy, solidarity and humanity.

With respect to the political significance of statements sent out as messages to a vast audience, a number of official texts, relating to the issue of migration, will be discussed as, if expressing a one-side perception, they might advocate assumptions which could then become a justification for abusive action. A case study will be presented in Chapter 5 to support the author’s argumentation. In particular, a message contained in the constitution of an intergovernmental organisation such as IOM might reinforce certain member states’ claims aimed at

¹⁰¹ Interim Multilateral Fund <<http://www.multilateralfund.org/history.htm>>

¹⁰² ## Combat d’Albert Camus, ce quotidien issu de la Résistance et né à la Libération quand brillait l’espoir de refonder la République par un surcroît de démocratie, de solidarité et d’humanité. « Notre désir, écrivait Camus dans Combat, le 31 août 1944, d’autant plus profond qu’il était souvent muet, était de libérer les journaux de l’argent et de leur donner un ton et une vérité qui mettent le public à la hauteur de ce qu’il y a de meilleur en lui. Nous pensions alors qu’un pays vaut souvent ce que vaut sa presse. Et s’il est vrai que les journaux sont la voix d’une nation, nous étions décidés, à notre place et pour notre faible part, à élever ce pays en élevant son langage ».

¹⁰³ Fairclough, Norman/ Wodak, Ruth (1997): “Critical Discourse Analysis”. In: van Dijk, T.A. (ed.): *Introduction to Discourse Analysis*. London: Routledge. 258-284.

preventing any interference by IOs in their national migration-related policies.

The case study will compare an article of IOMs Constitution with a statement made by the Minister of Foreign Affairs, Germany, Mr. H.D. Genscher¹⁰⁴, at the Helsinki CSCE Conference.

2) The second point which will be discussed relates to the resistance, if not open opposition that the establishment of a new UN organisation dealing with migration has received from within the UN system itself. Arguments in favour or against such a new organisation will be drawn from a number of semi-structured interviews with UN and non-UN organisations.

3) As referred to in the sub-chapter on the institutionalization process (4.3), in particular in relation to the creation of UN Women, global civil society groups played an important role in promoting the establishment, within the UN system, of a less fragmented approach to gender. Can any lessons be learned from this case and be applied to the issue of migration?

¹⁰⁴ Hans-Dietrich Genscher (born March 21, 1927) is a German politician of the liberal Free Democratic Party (FDP). He served as Foreign Minister and Vice Chancellor of Germany from 1974 to 1982 and, after a two-week pause, from 1982 to 1992, making him Germany's longest serving Foreign Minister and Vice Chancellor. In 1991, he was Chairman of the OSCE.

5. Chapter 5: Refugees, Mixed Migration and Irregular Migration

Conventions might be ratified, but nevertheless not respected. In order to provide the full context of the case study described in the next chapter, a number of background issues need to be outlined: first, with regard to the general situation in which the case described here took place and, second, with respect to the actors involved in it.

5.1. The Legislative Framework

Two international treaties dealing with refugees and migrant workers provide the context for this chapter and clarify the different status of refugees, migrant workers and illegal migrants. As far as ratification is concerned, the first Convention under consideration, i.e. the 1951 Convention on Refugees, elaborated within the framework of UNCHR, has gained broad acceptance and has been ratified by 144 states. In contrast, the second, dealing with migrant workers and elaborated within the framework of ILO, has only been ratified by 43 states in the course of its 20 years of existence.

The case study will show how, in spite of its broader acceptance and ratification, state parties continue to disregard the first Convention, ignore it, and apply bilaterally negotiated agreements to circumvent it.

Finally, between the 1951 Convention on Refugees and the second on migrant workers, which struggles to protect this latter category due to its very limited ratification, there is a vacuum of issues concerning illegal migrants, who can expect protection only in the context of general respect for human rights.

5.1.1. The 1951 Refugees Convention and UNHCR

UNHCR currently helps more than 20 million people, approximately half of whom are refugees or asylum seekers. The Convention, which has proven remarkably flexible in rapidly changing times, continues to be the cornerstone of refugee protection.

The 1951 Convention relating to the Status of Refugees is the key legal document in defining who is a refugee as well as refugees' rights and the legal obligations of states. The 1967 Pro-

to be removed geographical and temporal restrictions from the Convention.¹⁰⁵

The process of developing a body of international law, conventions and guidelines to protect refugees began in the early part of the 20th century under the League of Nations, the predecessor of the United Nations. These efforts culminated on 28th July, 1951, when a special UN conference approved the Convention relating to the Status of Refugees.

The Convention clearly spells out who is a refugee and defines the kind of legal protection, other assistance and social rights that he or she should receive from state parties to the document. Equally, it defines a refugee's obligations to host governments and certain categories of persons, such as war criminals, who do not qualify for refugee status.

Several months before the Convention's passage, the fledgling United Nations High Commissioner for Refugees had begun its work on 1st January, 1951. In the subsequent decades, the document has been the foundation of the agency's efforts to help and protect more than 50 million refugees.

This first instrument was limited to protecting mainly European refugees in the aftermath of World War II, but a 1967 Protocol expanded the scope of the Convention as the problem of displacement spread around the world. The original document also inspired regional instruments such as the 1969 OAU Refugee Convention in Africa and the 1984 Latin American Cartagena Declaration.

Until today, a total of 146 states have acceded to one or both of the UN instruments. But as the pattern of global migration changed and the number of people on the move increased dramatically in recent years, the relevance of the 1951 Convention has been called into question.

The definition of migrants, as explained in the UNHCR web page referring to the Convention¹⁰⁶, reads as follows: Millions of 'economic' and other migrants have taken advantage of improved communications in the last few decades to seek new lives in other, mainly western, countries. However, they should not be confused, as they sometimes are, with bona fide refugees who are fleeing persecution and not merely economic hardship. Modern migratory patterns can be extremely complex and contain a mix of economic migrants, genuine refugees and others. Governments face a daunting task in separating the various groupings and treating genuine refugees in the appropriate manner – through established and fair asylum procedures.

¹⁰⁵ History of UNHCR <<http://www.unhcr.org/pages/49da0e466.html>>. See also The 1951 Refugee Convention <<http://www.unhcr.org/3b66c2aa10.html>>

¹⁰⁶ UNHCR on the Convention <<http://www.unhcr.org/3c0f495f4.html>>

An economic migrant normally leaves a country voluntarily to seek a better life. Should he or she elect to return home, he/she would continue to receive the protection of his/her government. Refugees flee because of the threat of persecution and cannot return safely to their homes in the circumstances then prevailing.

5.1.2. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹⁰⁷

On the occasion of the 20th anniversary of the adoption of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, a global campaign has been launched calling on governments to act immediately to end widespread human rights violations, suffered daily by migrants around the world, by ratifying this Convention.

Since its adoption by the United Nations General Assembly on 18th December, 1990, the Convention has been ratified by 43 states and signed by a further 15 states. The Convention recognises the specific vulnerabilities of migrant workers and promotes humane and lawful working and living conditions. It provides guidance on the elaboration of national migration policies based on respect for human rights and the rule of law. It sets out provisions to combat abuse and exploitation of migrant workers and members of their families throughout the migration process.

One of the paragraphs of the Preamble of this Convention refers specifically to illegal migration in the following terms:

Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights.¹⁰⁸

5.2. Irregular Migration in the Mediterranean Region¹⁰⁹

In Europe, most of the news today OR in recent years is dominated by economic issues, the

¹⁰⁷ Adopted by the General Assembly in Resolution 45/158 of 18th December, 1990.

¹⁰⁸ OHCHR, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families <<http://www2.ohchr.org/english/law/cmw.htm>>.

¹⁰⁹ The following discussion draws on the Conference of the Council of Europe held on “Irregular Migration and dignity of migrants: Co-operation in the Mediterranean region” in Athens, 3-4 October, 2001.

“war” against terrorism, combating insecurity (especially in the run-up to elections), and so on. Intermittently, but quite frequently, the fight against trafficking in labour, “intrusive” prostitution, uncontrolled influxes of clandestine migrants on the Italian, Spanish, Greek coasts, often brought to light by fatal accidents, makes newspaper and television headlines.

Among these are the numerous illegal sea crossings attempted by people who are sometimes referred to as “boat people” (named after the Vietnamese refugees in the China Sea). Sicily, situated on one of the main migration routes in the Mediterranean (between Tunisia, Libya and Italy) has a number of staging posts and hubs for such illegal crossings that use the islands of Pantelleria, Lampedusa, Linosa. At the time of writing, the closure of the UNHCR Office in Libya has made the discussions of this issue highly topical.

5.2.1. Causes of Irregular Migration

Irregular migrants do not see – and often do not have – any possibility for legal entry and residence in European countries. On the other hand, they do hope for an improvement of their lives when they leave. As for migration in general, the underlying causes are similar: unemployment and poverty, conflicts and war as well as political persecution.

Irregular migrants sometimes enter legally, but then continue to stay without appropriate permits. Sometimes this is due to a lack of knowledge of legal requirements, but more often it is due to the recognition that, if they applied for an extension of the permit, they would be deported.

5.2.2. Smuggling and Trafficking

Due to stricter border controls and because many requirements are almost impossible to meet when applying for a regular visa, an increasing number of people turn to organisations that smuggle and traffic in human beings. Thus the price for such an illegal journey increases tremendously. Not only do people pay large amounts of money to cross borders, they also risk their lives. Hidden on lorries or boats not equipped for transporting human beings, large groups of persons are carried across borders, and left by smugglers and traffickers if controls approach.

In the case of the Mediterranean Sea, boats and ferries are probably the main carriers of irregular migrants. When coast guards arrive, they are simply thrown into the sea. Many have lost their lives in this manner over the past years.

5.2.3. Mediterranean Countries

Countries north and south of the Mediterranean Sea are transit countries as well as destinations. Portugal, Spain, France, Italy and Greece are required to take responsibility for irregular migrants as they enter their territory. In order not to provide additional deterrents, however, they have introduced not only border control measures, but also reduced health and social benefits. As a consequence, irregular migrants often feel better off if they remain undocumented.

5.2.4. Illegal Employment

Even if wages in illegal employment are low, for many persons fleeing from acute poverty they seem high, partly also because no taxes and social security are paid. Employers frequently exploit this opportunity to employ cheap labour and save social security costs. This is detrimental to both, the social security system and the states' income through taxes. In addition, particularly in regions with high unemployment rates, this situation creates substantial problems for local communities.

5.2.5. New Forms of Slavery

Persons who have resorted to trafficking organisations as a means to flee, children who were sold to trafficking organisations, or women attracted by false promises of a bright future, often find themselves in desperate situations. Traffickers keep them in total dependence, often also threatening the family in the country of origin. Many women and children are sold into prostitution, but also as domestic servants, offered as potential wives in catalogues, or forced to work on building sites, restaurants and sometimes rather dangerous industries. They are kept in locked rooms and houses, are beaten, raped and maltreated. They live in constant fear and despair. Prevention efforts against human trafficking should be focused on each vulnerable group and environment. A multi-stakeholders approach, including governments, local communities and journalists, is considered best suited to achieving results. This has been stressed at the Conference of the Alliance against Trafficking in Persons, organized by OSCE in 2009.¹¹⁰

5.2.6. Criminality

¹¹⁰ OSCE “Conference of the Alliance against Trafficking in Persons”, see <http://www.osce.org/documents/cthb/2010/09/43863_en.pdf>

While the majority of irregular migrants have only committed the sole offence of entering the country illegally, there are some who are also used by traffickers for criminal activities. This ranges from drug and arms trafficking to stealing and shoplifting using children.

Trafficking organisations are well-organised criminal organisations. As trafficking has become a profitable business, profits are now exceeding those of drug trafficking, and assisting victims of trafficking has become dangerous as well. Traffickers tend to regard the persons as their property, and any interference is met with retribution, often violent.

The main focus of present strategies for dealing with irregular migration is stricter border control as well as stricter visa requirements. There is a strong need for alternatives, such as easier access to short-term visa for the purpose of seasonal employment. A coordinated European immigration policy, offering profound information on legal job opportunities in various European countries and at all levels of skills, could contribute much to reducing irregular migration and the risks and dangers that beset such migrants.

UNHCR has pointed out the fact that quite a large number of refugees have had to resort to traffickers and smugglers in order to leave situations of high risk and danger. It is therefore of great importance to ensure that the asylum system is able to identify refugees and provide necessary protection.¹¹¹

Trafficking is only possible with a certain amount of corruption in the transit/destination countries. It is therefore important to address this problem appropriately and at the various levels. Transparent immigration procedures would help to identify arbitrary decisions. If guaranteed protection, victims of traffickers might be ready and willing to assist in uncovering the criminal networks. Particularly for women and children who have become victims of trafficking, specific programmes of assistance are required. Education and training are most suitable for such help, but counselling and psychological therapy will also be necessary to overcome the traumas of violence and incarceration.

5.3. The Institutional Setup: UNHCR and Mixed Migration

While recognizing that border controls are essential for combating international crime, including smuggling and trafficking, UNHCR stresses the need for practical protection safeguards to ensure that such measures are not applied in an indiscriminate or disproportionate manner and

¹¹¹ UNHCR “Refugee Protection and Mixed-Migration: A 10-Point Plan of Action”
<<http://www.unhcr.org/refworld/docid/45b0c09b2.html>>

do not lead to refugees being returned to countries where their life or liberty would be at risk.

UNHCR works with governments around the world to help them respond to some of these challenges in a coherent and practical way. An example of this is a 10-point plan which UNHCR is implementing. It sets out key areas in which action is required to address mixed migration in countries of origin, transit and destination.¹¹² An awareness of mixed migration is especially important because refugees and migrants around the world risk their lives every day in desperate attempts to find safety or a better life. And although refugees and migrants often use the same routes and modes of transport, they have different protection needs.¹¹³

Factors that have contributed to the increase in the scale of international migration include globalization and growing disparities in living conditions, both within and between countries. Among the people on the move today, many are seeking employment or educational opportunities, while others want to reunite with family members and still more are fleeing persecution, conflict or blind violence in their countries.

While refugees and asylum seekers account for only a small proportion of the global movement of people, they frequently travel alongside migrants. Many of these movements are irregular, in the sense that they often take place without the requisite documentation, use unauthorized border crossing points or involve smugglers.

The people who move in this manner usually place their lives at risk. They are often obliged to travel in inhumane conditions and may be exposed to exploitation and abuse. States, on the other hand, regard such movements as a threat to their sovereignty and security. Yet in some cases, this may be the only escape route open to those fleeing war or persecution.

5.4. Conclusions

This analysis will focus on only a small part of the full picture in order to allow a more in-depth view of the matter. However, consideration, if only as background, has been given to the comprehensive situation. Having outlined the legislative, geographical and institutional set-up of the case study to be discussed in the next chapter, it is worthwhile to draw the read-

¹¹² UNHCR “Tem Point Plan of Action for Refugee Protection and Mixed Migration for Countries Along the Eastern and South Eastern Borders of European Union Member States” <<http://www.unhcr.org/4688b4af2.pdf>>

¹¹³ To examine the challenges of protecting refugees in mixed migratory flows, the UN High Commissioner for Refugees organized a two-day regional conference on Refugee Protection and International Migration in Dakar, Senegal, in November 2008. This builds on the Dialogue on Protection Challenges launched by UNHCR in Geneva in December 2007. <<http://www.unhcr.org/pages/4a12a6286.html>>

ers' attention to the criteria the case study will follow, namely, using some parameters which can be found in the classical theory of critical discourse analysis as defined by two of its principle proponents:¹¹⁴

“That is, discourse is socially constitutive as well as socially conditioned – it constitutes situations, objects of knowledge, and the social identities of and relationships between people and groups of people. It is constitutive both in the sense that it helps to sustain and reproduce the social status quo, and in the sense that it contributes to transforming it. Since discourse is so socially consequential, it gives rise to important issues of power. Discursive practices may have major ideological effects – that is, they can help produce and reproduce unequal power relations between (for instance) social classes, women and men, and ethnic/ cultural majorities and minorities through the ways in which they represent things and position people.”

Taking into consideration mainly briefing notes and press reviews meant for journalists and the public at large, the text, wording and paraphrases used by the actors highlighted in the case study more than ever directly “constitute” the social context in which migrants find themselves.

In the situation of the case study, after risking a perilous journey from Libya to Italy across the Mediterranean Sea, migrants literally find themselves pushed from Europe back to Africa, caught up in a *querelle* that involves as actors, the “invisible” migrants, the governments representatives of the two countries mentioned above and the UN organisation related to refugees and mixed migration, i.e. UNHCR. In the framework of the case study, migrants are the object of the dispute, moved and processed physically as well as verbally. They do not appear as individual persons but as an invisible, impersonal and indistinguishable plural entity which appears to be only a cause of problems, tensions and conflicts. No positive connotation can, in any of the texts discussed, be found. Rather, they represent the key to a power game, a social and ethnic minority which, even in the diction of the humanitarian organisations concerned, is a mere category without identity.

The hypothesis to be tested in the following case study involves the crucial issue whether member states respect established international regimes if they conflict with their sovereignty.

If new international regimes are established by the international community, either within a central institution or separately, they face the challenge of guaranteeing that member states which have ratified them will adhere to the rules and standards

¹¹⁴ Fairclough, N./ Wodak, R. (1997): ‘Critical Discourse Analysis’. In: Introduction to Discourse Analysis., van Dijk, T.A. (ed.), London, 258.

laid out in them. The key issue here is whether said states are ready to surrender a certain degree of their national sovereignty despite the fact that these laws may not be entirely in harmony with their national constitution or their cultural values.

One of the underlying assumptions of this study is that international legal instruments, such as protocols and conventions, do not necessarily guarantee that state parties respect them. To investigate this assumption and gain a better understanding of how governments do, in fact, disregard conventions they have adopted, the approach of Critical Discourse Analysis will be applied. Language, so one of its principle tenets, is powerful in shaping public opinion and, indeed, in constructing social reality. Public statements can declare people as included or excluded, mainstream or marginal, central or peripheral. Therefore public discourses influence social action and social structures.

The case study presented in the following consists of the analysis of representations, stereotypes, metaphors and symbols within the public discourse on migration that foster notions of national power. The outcome of this case study should prove not only that the adoption of conventions does not guarantee the international community's equilibrium, but also that national governments' refusal to conform to their content can put pressure on international actors. What is more, states even take actions that might be seen as retaliation against organisations such as UNHCR when they seem to intrude into domestic legislation.

Unlike content analysis, Critical Discourse Analysis also accounts for implied messages that underlie communication. According to analyses conducted by Riggins discriminative language used in public has become increasingly mitigated.¹¹⁵ Speakers with a tendency to discriminate migrants or other social groups preferably use terms that disguise their intentions. If their statements are unexpectedly criticized by the wider public, those vague formulations will help to save face. Explicit terms may therefore be exchanged for more subtle expressions, making them more difficult to identify and interpret. The analysis of representations is mainly concerned with the content that is included in a news article, editorial, novel etc. For a critical analysis it is also important to note conspicuous absences and silences or, in other words, to acknowledge things that are not included in a text, although they are relevant to the issue.

¹¹⁵ Riggins, Stephen Harold (1997): „The rhetoric of othering.“ In: Riggins, S.H. (ed.): *The language and politics of exclusion: others in discourse*. London: Sage. 1-30.

6. Chapter 6: A Case Study - UNHCR, the 1951 Convention on Refugees and Italy's Push-Backs

The three key stages of the case study that will be discussed on the following pages consist of selecting the texts, analyzing them and reaching conclusions that are relevant to the arguments presented so far. The texts have been selected among news items (taken from newspapers and other sources), press releases, blogs and briefing notes. The names of the speakers/ representatives of the various entities involved are given in bold. Significantly, however, migrants are never identified by name in these texts.

The actors involved in the case that will be presented and discussed in the following chapter are:

1. The migrants
2. A State Party to the 1951 Convention on Refugees-Italy
3. A non State Party to the 1951 Convention on Refugees-Libya
4. The UN Organisation dealing with refugees and mixed migration- UNHCR

The chronology of events, as covered in the news, press releases and blogs is the following:

6.1. The Background: January 2009

At the beginning of 2009, a warning message issued by the UNHCR called attention to a situation in which not only institutions but also values, identities, social relationships and connections acquired significance with respect to international organisations and migration. The events in question took place in the Mediterranean region and happened between Libya and the Italian island of Lampedusa.

The migrants at the centre of the above situation are, as shown by available data, persons originating from Somalia and Eritrea. According to preliminary figures for 2008, about 75 percent of those who arrived in Italy by sea in 2008 applied for asylum, and around 50 percent of those who applied were granted refugee status or protection on other humanitarian grounds. The number of sea arrivals throughout Italy rose from 19,900 in 2007 to 36,000 in 2009.

UNHCR worried about conditions for 2,000 boat people on Italian island.¹¹⁶

News Stories, 23rd January, 2009. The office of the UN High Commissioner for Refugees expressed mounting concern on Friday about the conditions faced by nearly 2,000 boat people, including asylum seekers, crammed into one reception centre on the southern Italian island of Lampedusa.

The centre has a capacity for only 850 people and the result is that hundreds of people are now sleeping outdoors under plastic sheeting and adequate reception standards cannot be maintained.

The reception centre in Lampedusa was established to accommodate people rescued at sea while preparations were made for their transfer to special centers in southern Italy, which were set up to examine their situation and needs. Until now, this arrangement has been seen as a model for the responsible management of mixed migratory flows.

The practice has been to accommodate asylum seekers in open centers and have their asylum applications examined by the territorial refugee status determination commission. At the beginning of this year, the government made changes to this arrangement whereby all migrants and asylum seekers must remain in Lampedusa until a decision is made on their cases.

The overcrowding of the temporary reception centre on the small island is creating a humanitarian situation of concern which also complicates the work of UNHCR and other organizations active there under a project funded by the Ministry of the Interior and the European Commission. Local residents have protested against the increased number of people being held in the centre.

“During the past [few] years, UNHCR has been working closely with the Italian authorities to develop a better system of managing mixed flows of asylum seekers and migrants reaching Lampedusa by sea,” said Pirkko Kourula, director of UNHCR’s Europe Bureau. “We urge the Italian authorities to take all necessary steps to address the difficult humanitarian situation now unfolding in Lampedusa.”

First of all, UNHCR presents a plausible account of raw facts that are intended, however, to establish a claim, as it appears in the last sentence. The use of UN jargon, such as “to express concern”, and definitions such as “asylum seekers” and “mixed migratory flows”, puts the situation in a bureaucratic framework, following internal UN conventions and rules. In the social context under discussion, the UNCHR wording appears neutral. The organisation speaks on behalf of other organisations active in the region (in Lampedusa) as well as of local

¹¹⁶ UNCHR News Stories, 23 January, 2009. <<http://www.unhcr.org/news/NEWS/4979f78b4.html>>

residents. This implies close, coordinated and direct links between the organisations and other entities, mostly NGOs, i.e. Amnesty International, Save the Children, Consiglio Italiano per I Rifugiati (Cir), Associazione per gli Studi Giuridici sull'Immigrazione (Asgi), Medicines Sans Frontieres. However, UNHCR does not name them individually or specifically, but rather speaks of them in general terms, thus indicating a distance, supposedly existing between the UN organisation and the various NGOs. Their importance and role is thus de-emphasized, even minimized vis-à-vis the single UN organisation.

The definition “boat people”, commonly used in the 70s to indicate the refugees from the Vietnam War and the communist regime, is here applied to illegal immigrants and asylum seekers travelling by boat from the North African Coast to Italy. Regardless of whether it is used consciously or unconsciously, the use and definition of “boat people” by UNHCR leads to a positive association recalling that the Organisation itself had in the late 70s set up refugee camps in Vietnam’s neighbouring countries in order to process the “boat people” from Vietnam and received the 1981 Nobel Peace Prize for this initiative.

At a later point in the same news story issued by UNHCR, the news writer emphasizes the inclusion of asylum seekers among the boat people, underlining their specificity as potentially recognized refugees and thus differentiates them from migrants in general.¹¹⁷ UNHCR feels authorized to remind Italy of Article 13 of Council Directive 2003/9/EC of 27 January 2003, which provides the general rules on material reception conditions and health care¹¹⁸. In the text under analysis, UNHCR reports that standards cannot be maintained in the centre (Centre of first reception-Centro di prima accoglienza) at Lampedusa and refers to the changes made by the Italian Government to the EC-defined arrangements which intended reception centres only as preparation to the transfer of migrants/refugees to other centres.

From the wording of the UNHCR news, we are to understand that the change made in the reception of migrants by the Italian Government not only contravenes the above-mentioned

¹¹⁷ Following the definition published by the European Commission, Justice and Home Affairs, asylum is a form of protection given by a State on its territory based on the principle of “non-refoulement” and internationally or nationally recognized refugee rights. It is granted to a person who is unable to seek protection in its country of citizenship and/or residence in particular for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. See also <http://ec.europa.eu/justice_home/glossary/glossary_a_en.htm#asylum>.

¹¹⁸ European Council, Council Directive 2003/9/EC of 27 January, 2003, laid down minimum standards for the reception of asylum seekers. *Official Journal of the European Union* <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:031:0018:0025:EN:PDF>>.

EC Council Directive, but also “complicates the work of UNHCR and other organizations active there”.

As in a number of other press releases and news reports, UNHCR speaks through an official representative, in this case the Director of the Europe Bureau. This seems to imply that the matter is of concern not only for the receiving country, Italy, but for Europe as a receiving region.

6.2. May 2009: A State Party to the 1951 Convention on Refugees, Italy¹¹⁹

Briefing Notes¹²⁰, 12 May, 2009, the UN Organisation dealing with refugees and mixed migration – UNHCR.

This is a summary of what was said by UNHCR spokesperson Ron Redmond – to whom quoted text may be attributed – at the press briefing, on 12 May 2009, at the Palais des Nations in Geneva.

Several of you have asked about any follow-up from UNHCR on Italy's recent push-backs to Libya of persons intercepted or rescued at sea since May 6.

UNHCR Rome is sending a letter to the Italian government noting that while UNHCR appreciates the challenges which irregular migration poses to Italy and other EU countries, we remain seriously concerned that the policy now implemented by Italy undermines access to asylum in the European Union and carries with it the risk of violating the fundamental principle of non refoulement which is enshrined in the 1951 Convention relating to the status of refugees and in EU law as well as in other instruments of international human rights law. The non refoulement principle does not carry with it any geographical limitation. States are

¹¹⁹ Law 94 of July 2009 made undocumented entry and stay in Italy a criminal offense punishable by a fine of up to 10,000 Euros (the so-called “Security Package.”) The law created a national framework for “citizen's groups,” and regulations adopted in August 2009 provide general guidelines with respect to membership. Although requests for authorization to create such groups have been few so far, the government's move, given the climate of hostility, creates a real of risk of what would be state-sanctioned violence against migrants.

¹²⁰ Briefing Notes are issued to provide concise, detailed policy reports and recommendations for the respective organization's topics and related issues. In the present case, the Briefing Note is intended to help policy makers and development stakeholders reach a better, more comprehensive awareness of the organization dealing with migration-related issues. It might be a policy a matter, a situation, a report, action by another government—in fact, anything that government deals with.

Briefings, whether in the form of briefing notes, longer briefing papers or oral briefings, are used to keep decision makers informed about the issues they are responsible for. In government, briefings are the principal means of communication between government managers and their ministers (or other senior officials). The demands of government these days are such that senior officials must constantly learn and retain information about an enormous range of topics and issues, all of which change rapidly. The only way they can do this is by relying on concise, clear and reliable briefings.

obliged to respect this principle wherever they exercise jurisdiction, including on the high seas.¹²¹

UNHCR's concern is heightened by the fact that Libya is not a State party to the 1951 Convention relating to the status of refugees, and does not have a national asylum law or refugee protection system. There is, therefore, no assurance that persons in need of international protection may find effective protection in Libya.

Nevertheless, UNHCR is endeavouring to provide humanitarian assistance and basic protection to the persons sent back to Libya by Italy. From our initial interviews in detention facilities with some of these persons in recent days, it appears that there are indeed a number who wish to seek international protection and may indeed qualify for such protection. This includes persons from Somalia and Eritrea, for example.

In view of the fact that states maintain responsibility for the consequences of their actions affecting persons under their jurisdiction, we are asking the Italian government to readmit those persons who were sent back by Italy and are identified by UNHCR as seeking international protection. Their refugee claims could then be determined in accordance with Italian law.

UNHCR believes it is imperative to find ways of ensuring that migration control measures do not impede access to international protection for persons in need of it.

The significance of words and the values attached to them, spoken by UNHCR not only in the written text but also alluded to in the situation (UNHCR working closely with the Italian authorities), seem, however, not to be shared by the Italian Government which engaged, as of May 2009, in a push-back policy towards migrants and refugees.

African immigrants who attempted the dangerous boat journey across the Mediterranean to Italy face a two-fold hardship. Since May, 2009, if their vessels are intercepted by the Italian authorities, they have been summarily returned to Libya, where migrants typically suffer widespread mistreatment.

The two countries, long at odds, signed a friendship pact in August 2008 that commits Italy to long-term investments worth US\$ 5 billion in Libyan infrastructure. The pact also calls for "intensifying" cooperation in "fighting terrorism, organized crime, drug trafficking and illegal

¹²¹ UNHCR Briefing Notes 12 May, 2009 <<http://www.unhcr.org/4a0966936.html>>. The principle of non-refoulement is seen by most in the international law arena, whether governments, non-governmental organisations or commentators, as fundamental to refugee law. Since its expression in the Refugee Convention in 1951, it has played a key role in how states deal with refugees and asylum seekers. But what does the principle really involve? An expert in refugee law defines it as the idea that "no refugee should be returned to any country where he or she is likely to face persecution or torture".

immigration.” The interdiction and return of migrants appears to be the direct result of such agreements (which, in this particular case, place migration alongside terrorism and organized crime).

In the very first line of the above statement, the representative of UNHCR opens by stating that his organisation had been asked (supposedly, by the representatives of the media) for a follow up on Italy’s push-backs to Libya and thus underlines UNHCR’s duty vis-à-vis civil society. Reporting on the action taken (a letter been sent to the Italian government), UNHCR – while carefully avoiding direct criticism – again stresses its concern and feels compelled to remind Italy of its obligations towards the 1951 Convention and other international laws. The strategy of UNHCR’s arguments is based on recalling legal instruments which are rooted not only in this particular organisation, but also other (international) legislative bodies. Official language and diction is thus used to shape public opinion – this can also be seen in the second part of the speech, when the negative reality of Libya’s lack of refugees’ protection law is reflected alongside the UNHCR’s positive function of providing assistance and protection to those same refugees.

A shift in language in the last part of the statements clearly marks UNHCR’s own authority. When Italy is asked to take action, the word “imperative” reinforces the request and, in a manner of speaking, reassures public opinion that UNHCR is indeed – as requested, indirectly by media representatives – following up on Italy’s push-backs.

6.3. July 2009: UNHCR and the Migrants

UNHCR interviews asylum seekers pushed back to Libya

Briefing Notes, 14 July, 2009.¹²²

This is a summary of what was said by UNHCR spokesperson Ron Redmond – to whom quoted text may be attributed – at the press briefing, on 14 July 2009, at the Palais des Nations in Geneva.

UNHCR staff in Libya has been carrying out interviews with 82 people who were intercepted by the Italian Navy on the high seas on July 1 about 30 nautical miles from the Italian island of Lampedusa. They were transferred to a Libyan ship and later transported to Libya. Based on subsequent interviews, it does not appear that the Italian Navy made any attempt to establish nationalities or reasons for fleeing their countries.

¹²² UNHCR Briefing Notes, 14 July, 2009, <<http://web.uvic.ca/~sdoyle/E302/Notes/WritingBriefingNotes.html>>

Once in Libya, the group was placed in detention centers where UNHCR has had the opportunity to carry out interviews. Of those attempting to reach Italy, 76 originate from Eritrea, including nine women and at least six children. Based on UNHCR's assessment of the situation in Eritrea and our interviews with the people themselves, it is clear that a significant number from this group are in need of international protection.

During interviews UNHCR heard disturbing accounts alleging that force was used by Italian personnel during the transfer to the Libyan vessel. According to these allegations, six people from Eritrea needed medical attention as a result. The individuals also alleged that their personal effects, including vital documents, were seized by the Italian Navy during the operation and have not yet been returned to them. Those interviewed spoke of their distress after four days at sea and said that the Italian Navy did not offer them any food during the 12-hour operation to return them to Libya.

In view of the seriousness of these allegations, UNHCR has sent a letter to the Italian Government requesting information on the treatment of people returned to Libya and asking that international norms be respected.

Over the past years, Italy had rescued thousands of people in distress in the Mediterranean Sea, providing assistance and protection to that in need. Since the beginning of May, a new push-back policy was introduced and at least 900 people trying to reach Italy by sea have now been sent to other countries, mainly to Libya. UNHCR has expressed serious concerns about the impact of this new policy which, in the absence of adequate safeguards, can prevent access to asylum and undermines the international principle of non-refoulement.

For the first time – although not through direct words or phrases, but rather by reporting on oral interviews – the migrants enter the picture that is presented by UNHCR, bringing with them their personal, social, cultural being as well as feelings and affects. Their identity is visualized through their speaking with a representative of an institution which provides them with a status, though uncertain, in an otherwise undefined and vague landscape. However, as their words are reported by someone else – an authorized speaker –, their words are not linked to a voice, gesture or an image. In fact, their national and social language is translated and neutralized and they are simply classified by gender, race origin, class and status as relevant to their situation from the point of view of an institution (that is “processing” them).

In these briefing notes, UNHCR reports on interviews held with migrants aimed at ascertaining the events which brought them to Libya's detention centres as well as their nationality and the need for international protection. The social relationship established between UNHCR and the migrants is defined by the acute situation of the migrants not arriving orderly in a given

receiving country, but rather being “intercepted, transferred, transported and placed” from one place to another very much like commercial goods, rather than as human beings.

The UNHCR statement uses two parameters as basis for its judgments, the first being the interviews with the migrants themselves, the second its knowledge of their country of origin. Having identified the majority of the 82 persons interviewed as nationals of Eritrea, therefore entitled to international protection, and having also gathered information on the treatment by the Italian Navy of the migrants during the 12-hour operation to transfer them to Libya, UNHCR requests information on (although not an explanation of) the above events. UNHCR also reminds the Italian government of the need for respect of international norms, in particular the 1951 Convention on Refugees, entailing the non-refoulement principle. While this is a plausibly recurrent theme in the news items and press releases under review, the question remains whether UNHCR as an organisation speaks on behalf of the migrants using their own words or “translates” sentences and questions into the official language of a UN agency.

Indeed, being aware of its sensitive and critical audience, the organisation carefully uses its resources to deal with human-related issues to fulfil the mandate received by the world community at large which, according to UN Resolutions and Conventions, wants UNHCR to act on behalf of and protect refugees.

Accordingly, UNHCR stresses that “Behind all the statements and statistics about refugees, asylum seekers, the internally displaced and the stateless are real people with harrowing tales of suffering and loss, as well as hope and ambition. UNHCR believes we must provide a platform for their voices and – when it does not risk their safety – to give a face to the millions of people of concern. Our staff around the world gather these human stories every day so that people living in peace and comfort can understand why the forcibly displaced and stateless need compassion and care. The best way to understand the suffering of others is to hear their stories of hardship, courage, struggle and perseverance.”¹²³

The above statement highlights two main points related to the way the news on refugees are circulated and published by UNHCR: the first is the need to avoid putting at risk the people they speak for, who might be in danger if speaking under their own identity; the second is the necessity to make the stories they tell understandable to the world audience through their professionalism.

¹²³ UNHCR News Story “The Human Story” <<http://www.unhcr.org/pages/49c3646c24e.html>>

The change in policy towards migrants in Italian law is reflected, as pointed out by UNHCR, not only in the different way of dealing with migrants in general, but also in the treatment of individuals in particular. However, the way UNHCR defines the manner in which migrants were treated by the Italian Navy seems to somehow neutralize the abusive behaviour of the Navy. Again, the UNHCR representative begins the last part of his speech by giving a positive picture of previous migrants' rescue, assistance and protection by Italy, turning to the accusation of non-refoulement only later. The manner and sequence in which the text organizes information, as well as its effort to counter-balance any accusations with a positive account of Italy's efforts serve to de-emphasize the gravity of the alleged abuse and violation of international laws and conventions.

6.4. A State Party of the 1951 Convention on refugees, Italy

Italy denounces UN complaint over refugees¹²⁴

(AFP) – July 14, 2009

ROME (AFP) — Italy has demanded an apology from the UN refugee agency in an angry response Tuesday to a complaint that a group of African would-be immigrants were mistreated. European Affairs Minister Andrea Ronchi said the UNHCR should be ashamed of the “repugnant and false” accusations against Italy's armed forces, which he said had been made without even checking the facts with Rome. The UNHCR statement alleged that some of the refugees were injured during transfer to another vessel, that some of their belongings were never returned to them and that their possible refugee status was never checked. The Italian navy intercepted a boat carrying 82 migrants on July 1 near the southern Italian island of Lampedusa, said the office of the UN High Commissioner for Refugees. Italy transferred them to a Libyan ship and returned them to Libya, where UNHCR subsequently interviewed them. During interviews UNHCR heard disturbing accounts alleging that force was used by Italian personnel during the transfer to the Libyan vessel,” said a statement from the refugee agency. Six people from Eritrea needed medical attention as a result, it added. Some of those they interviewed had also said that their possessions, including vital documents, were never returned to them by Italian naval personnel, said the UNHCR. “Those interviewed spoke of their distress after four days at sea and said that the Italian Navy did not offer them any food during the 12-hour operation to return them to Libya,” the statement continued.

¹²⁴ AFP, Google-hosted News, “Italy denounces UN complaint over refugees”. 14 July, 2009. <<http://www.google.com/hostednews/afp/article/ALeqM5jeNUjj0WVNF1JGW0JdRGxJ2xS6Rw>>

“In view of the seriousness of these allegations the UNHCR has sent a letter to the Italian government requesting information on the treatment of people returned to Libya and asking that international norms be respected,” it said. UNHCR spokesman Ron Redmond also said: “Based on subsequent interviews, it does not appear that the Italian Navy made any attempt to establish nationalities or reasons for fleeing their countries. “Their inquiries suggested that 76 of the would-be refugees were from Eritrea including nine women and at least six children, he added.” Based on UNHCR’s assessment of the situation in Eritrea and our interviews with the people themselves, it is clear that a significant number from this group are in need of international protection,” said Redmond. Reacting to the allegations, Ronchi said he had “read with amazement the UNHCR’s letter, which makes heavy accusations against the government.” He demanded an apology from the UNHCR, calling the allegations “hasty, false, demagogical, offensive and repugnant, hurting our armed forces who show the world their morality, humanity, competence and sacrifice every day.” He said the refugee agency “should be ashamed (for) these repugnant and false accusations,” the ANSA news agency reported. Ronchi added: “What perplexes us the most is that the UN High Commissioner for Refugees would issue a communiqué without checking the testimony that was gathered with the Italian authorities.” The migrants spent four days at sea before being picked up after sending out an SOS message for help. The UNHCR has been sharply critical of an agreement between Italy and Libya that allows the Italian navy to intercept illegal migrants at sea and return them to Libya, from where they had often set off for Europe. The European Commission has also said it will examine the new measures to determine whether they comply with EU norms, warning that “automatic expulsion rules for entire categories are not acceptable.”

The words and phrases used by the Italian press, representing its discourse in this event, are strikingly distant from the official UN language that could be seen in the texts discussed earlier on. The artificially-created and indeed unprofessional definition of “would-be immigrants” is quite telling, betraying the manipulative effort of the writer consciously or unconsciously meant to verbally “push back” the migrants even from their social status. They are not immigrants, but rather (foolishly) hope to become ones. They therefore do not even fall into a defined category; they merely aspire to enter into it.

The second speaker in the article’s sequence, Italy’s European Affairs Minister, relies heavily on the rejection of UNHCR’s accusations in his argumentation, using an angry statement which, contrary to UNHCR’s language, is direct almost to the point of being blunt. Accordingly, emphatic words such as “ashamed”, “repugnant” and “false” are effectively used here to actively strengthen his position of power, even going beyond the necessary substance of the text, seeking to discredit UNHCR through rhetorical effect.

After expressing his “amazement”, the Minister demands an apology as the UNHCR allegations were directed against the Italian armed forces. Here the sentence is built up to create a “crescendo” effect, celebrating the Italian Navy with civic pride. Abstract but conventional references to “the armed forces” in a political discourse are hard to rebut because they embody values which no one would want to dispute publicly, but at the same time fail to specify precisely who or what one is talking about.

6.5. June 2010: Libya Closes Down the UNHCR Office

UNHCR says ordered to close office in Lybia¹²⁵

GENEVA, June 8 (UNHCR) – The UN refugee agency said on Tuesday it had been told by the government of Libya to close its office in that country and halt activities.

Speaking at a press briefing in Geneva, UNHCR’s chief spokesperson, Melissa Fleming, told journalists that UNHCR was hoping the closure would be temporary and that negotiations to find a solution were continuing. However, she indicated that until the matter was resolved there would be difficulties in meeting vital refugee needs.

“We regret this decision as we believe UNHCR has a great deal of work to do in Libya to protect, assist and find durable solutions for the refugees there,” Fleming said. “This will leave a huge vacuum for the thousands of refugees and asylum-seekers who are there already and, of course, those who continue to arrive steadily on boats every week.”

UNHCR has been working in Libya since 1991 at the invitation of the government. Most of the refugees it deals with are Palestinians and Iraqis, with others typically coming from Sudan, Somalia, Eritrea, Liberia and Ethiopia.

The issue of the closure took on added meaning on Tuesday amid news that a sinking boat carrying more than 20 people, mostly Eritreans, had been intercepted by Libyan vessels inside Malta’s search-and-rescue zone. Fleming referred to the incident at the press conference, expressing concern at delays in the rescue on the part of Italian and Maltese maritime authorities, who were alerted to distress calls from the boat some 24 hours earlier.

UNHCR has had 26 staff in Libya, all but three of them Libyan nationals. Libya has not signed the 1951 Refugee Convention and has no national asylum system in place. In the absence of a national asylum system, UNHCR has carried out reg-

¹²⁵ UNHCR News Stories, 8 June, 2009. <<http://www.unhcr.org/4c0e79059.html>>

istration and refugee status determination, visiting detention facilities and providing medical and humanitarian assistance to detainees.

One year after the conflict between UNHCR and Italy, a conflict between UNHCR and Libya arises. Interestingly, the structure of the above-quoted press statement is somehow unbalanced and asymmetric. In fact, it opens by reporting on a negative event, the closure of an UNHCR office in Tripoli, accompanied by the hope of continuing negotiations as well as by an indication of the difficulties to come.

Future and present are mixed in the same sentence to emphasize the services which UNHCR has been providing and the vacuum which might result from the looming absence of the organisation, caused by the announced closure.

The text shows some internal hesitation and some inconsistency regarding the attempt to justify the need for policy intervention. The statement is supported by an enumeration of UNHCR's aid programmes and activities that have already been carried out or would be carried out if the organisation were allowed to stay in Libya. Almost as an afterthought, the critical mention of the Italian lack of action in an incident that recently happened on the open sea underlines the strained relationship that still exists between the organisation and the government of Italy, one year after the 2009 controversy on the push-back of migrants.

Already in the past, the opinion was expressed that the last agreement signed by Italy and Libya clearly shows that migrants are intended to be an exchangeable commodity.¹²⁶ To the extent that the government of Libya will be able to impede migrations, Italy will to the same extent increase productive investments on the other side of the Mediterranean Sea.

6.6. A Non-Party State to the 1951 Convention on Refugees, Libya

Libya: UNHCR and All Refugees are Illegal.¹²⁷

Libya's Foreign Ministry on late Tuesday deemed the United Nations High Commissioner for Refugees' presence (UNHCR) illegal in the capital of Tripoli. The Libyan Foreign Ministry also brought up charges of illegal activities against the agency and charged that the refugees flocking and staying in Libya were also illegal as the country has no actual amnesty system for refugees.

¹²⁶ Noborder Network: "Crossing borders: Movements and struggles of migration. Where is the world migrating?" *Transnational newsletter*, 6th Issue, September 2008. <http://www.noborder.org/crossing_borders>

¹²⁷ IndignEous, News Story June 10, 2010, on INWEP <<http://inewp.com/?p=3158>>

Before its somewhat unpredictable announcement, the Libyan government gave slight warning signs of disallowing refugees to further linger in its country as the government had never followed the 1951 Refugee Convention.

Back home in Geneva, Switzerland, UNHCR officials and European diplomats expressed disappointment on Libya's decision through UNHCR's spokesman Melissa Fleming.

The Libyan government's decision seems to be only one of the many unpredictable actions made this year, as its leader Qaddafi had called for "jihad" on Switzerland after public scuffles with the Swiss government.

Amnesty International UK also expressed "regret" at Libya's decision; the human rights organisation emphasized the need of the UNHCR's presence in Libya.

Refugees' number in the thousands, these individuals were forced to flee from various parts of Africa and the Middle East. Many are from "problem countries" such as Somalia, Liberia, Ethiopia, Sudan, and Palestine.

Major parts of Somalia are corrupt with pirates, warlords, and 'soldier-fishermen'. Liberia faces major social and political problems, Sudan's inhabitants face genocide, Ethiopia also faces major movements of migrants and other problems while Palestinians are stuck in the Arab-Israeli conflict.

Approximately 3,700 of the 9,000 refugees seek asylum in Libya, all these individuals are given healthcare, food, shelter, education, and job training. Furthermore, many refugees are involved in UNHCR's refugee relocation programs. Refugees when caught, according to Amnesty International UK, are placed in "unsanitary" and "overcrowded" detention centres. Consequently, many people here live 'illegally' fear capture at the hands of authorities for fear being of either abused, separated from their families, or deported.

As a hopeful sign, Libya's government did not show any movements to enforce the Foreign Ministry's decision. Should Libya force the UNHCR to close down, it will also be closing the much needed relocation programs and the relief aid given to these registered refugees. The expelling of the U.N refugee agency may fluctuate the migrant/refugee situation not only for Libya, but also for Europe since the UNHCR also takes care of screening migrant travelling from Libya to Europe; Italy especially, is distasteful of refugees washing up on its shores seeking asylum. In 2008, 33,000 refugees alone travelled from Tripoli to Italy. Already, at least 8 million illegal refugees, majority being of African origin, are currently living in Europe.¹²⁸

¹²⁸ This post was written by the blogger Indigneous, who has written dozens posts on iNewp.com.

Even without in-depth analysis we can argue that this text repeatedly uses the word “illegal” in reporting Libya’s official attitude towards UNHCR, both for the presence of UNHCR and its activities as well as for the migrants. The repetition of key words reveals most clearly what the author is trying to put across in his discourse, namely that Libya does not need to justify itself for its actions and that the mere definition of illegal, according to its judgment, is enough to warrant its legitimacy.

A number of persuasive arguments aimed at reinforcing the formulation of the text follow the initial account on Libya’s decision to close UNHCR’s offices, showing a pattern of variations within the text: alternating accounts of UNHCR and European diplomats’ disappointment, of Amnesty International’s regret, then providing facts and figures about the migrants’ countries of origin as well as information about conditions in Libya’s detention centres.

While, on the one hand, simply reading the text for information gives an insight into the events, on the other hand, it is also helpful to look for gaps in text at the same time. This strategy allows one/us to identify information, perspectives and accounts which are excluded by omission as, in this example, the role of the Italian authorities in this situation.

6.7. Conclusions

News on the very same events, provided by different sources and reported from disparate or, indeed, opposite positions, can provide a multi-faceted picture. To give an objective account, it seemed more appropriate and informative to be deliberately selective in relation to the texts, focusing on those sections which provided the richest source of analytic material. Some contradictions within the texts, especially those contradicting the author’s own apparent assumptions, can provide a truly productive point of an analysis.

In summary, several questions about the case study presented in this chapter should be addressed: Why has this particular case study been selected? What lessons can be learned from it? Which are the messages transmitted openly through the news items in press, the briefing notes and press releases, and which messages are conveyed, as it were, “between the lines”?

The first question can be answered by pointing out that the events which took place in the time period under consideration, from 2009 to 2010, are characterized by all the elements and features that have been discussed so far in this study. This includes, first of all, the international legislative instruments aimed at the protection of migrants (though the 1951 Convention specifically addresses refugees). It also involves one of the most frequented routes for migration flows from South to North. This particular “topos” is now associated with life loss

and family tragedies, seeing women and children among the victims of smugglers and other actors in their different field of responsibility. We thus read about the treatment of refugees, migrants and asylum seekers almost every day, overwhelmed by a never-ending chain of events and relevant news. The sending, receiving and transit countries shift human lives back and forth between each other, rarely showing a welcoming attitude. Caught up in the middle of this economic and social turmoil, the role of UNHCR is difficult indeed, as the case study illustrates. The analysis of the political debate surrounding the case of Italy's push-backs illustrates the way migrants are represented within public discourses as well as the manner in which certain conceptions of migration are preferred in opposition of alternative ways of thinking.

One of the most striking and salient features of the discourse is the use of rhetorical devices used to present the accounts of the same case, in which each party is seeking to counter and discredit the other.

Migrants

As in the case of medical doctors' authority, obviously expressed by their access to an expert language from which most of their patients are excluded, migrant-related institutions express and partly maintain their authority by utilizing a language which probably remains inaccessible for most of the migrants. Indeed, this is one of the main arguments to define the power relations implied by different speaking positions as well as the social context in which discourses are set.

Governments

It is indeed obvious that some governments do prefer to apply their own domestic legislation when it comes to migration-related issues (as well as refugees-related). This fact is reinforced by the observation that, for the same governments disregarding international laws rather than applying them when dealing with migration, is at least one viable way to solve problems related to the issue. The case study brings to attention a series of events dominated by the policy and related procedures of the Italian government towards a migration flow from the African continent which transits through another Mediterranean country, namely Libya.

What is particularly worthy of being considered is the strategic alliance set up between Italy and Libya in this regard. This alliance is in many ways unusual, as it consists between a democratic country and a non-democratic country, between an industrialized country and a developing country, between an EU country and a non-EU country, between a receiving country and a transit country, between a state party of the 1951 Convention on Refugees and a non-

state party of the same Convention. Two countries, in other words, which have each found in the other a partner when the issue of “non refoulement” has come into the picture.

International Organisations

The main sources used in the analysis of this case study are the press reports and briefing notes issued by UNHCR, primarily because the discourse is centred on how international organisations deal with the migration issue and the data should provide an insight into the problem discussed. As the third pole between the two strategic partner countries discussed above, UNHCR is the weak link of the chain as it can be ignored or even disposed of by the host country at its will as well as reprimanded by a state party of its Convention for requesting it to respect the legislative instrument signed. It is therefore legitimate to ask whether an additional organisation for migration, the establishment of which is not deemed necessary by governments as evidenced by the developments (or rather the lack thereof) discussed in chapters #, would be in a position to achieve more and contribute better than the existing ones to the cause of refugees. The case study brings this question, which is central to the purpose of this thesis, to the forefront.

The position of a sample of international and regional organisations dealing with migration will be illustrated in the next chapter in order to make the necessary comparisons and take the required steps leading towards the conclusions of this study.

7. Chapter 7: Expert Interviews

The methodology followed for the interviews was that of small sample expert interviews: the questions employed, the topics focused on and the methods developed to achieve the best flow of responses were informed by the analytical interpretation of the evidence accumulated.

First of all, the sample interviews were opened with an explanatory/preparatory phase and then continued with a data-gathering phase. Indeed, certain risks of bias had to be taken into consideration as the study reflects the author's professional life in an international organisation. In order to prevent such a bias to influence the interview data, particular care was taken to begin each interview as though knowing nothing and keeping open to interpretations which might deviate from prior assumptions. A set of questions was developed and adhered to in order to safeguard an impartial approach to each of the interviews conducted.

Six organisations were selected with the aim to have a sample for each level of operational approach to migration (service, policy development, protection). Network Migration in Europe in representation of Civil Society, ICMPD an intergovernmental organisation or IGO, IOM as non-UN organisation, OHCHR, UNHCR and ILO as UN-bodies (the first two UN General Assembly subsidiary organs and the third a specialized agency).

Within their mandates, migration is dealt with from different angles: information and human resources development, policy development, services to migration, particularly at field level, protection of human rights protection of migrants in conjunction with refugees and protection of migrant workers' rights.

The list of questions asked in the interviews as well as a list of the organisations, the representatives interviewed, including their name and position, as well as the date and place of the interviews can be found in Appendices A and B.

Appendix A QUESTIONNAIRE

Appendix B LIST OF ORGANISATIONS (Name, Position, Date and Place of Interview)

7.1. The Questions Posed

Consensus was found among the organisations interviewed regarding the nature of issues related to migration. While the environment is mainly considered as one of the global public

goods¹²⁹, and poverty and urbanization are classified as global phenomena¹³⁰, migration can be included among the “across-the-borders” issues, not only in its physical but mostly in its social meaning.

Across the borders, in the sense that is used here to describe migration, means running across cultures, societies, religions, nations, regions, ethnic groups, intellectual attitudes, education systems, classes, working situations and realities. These are the borders that migrants encounter on their way to a different, hopefully better country.

This particular multi-faceted dimension of migration makes it a sensitive issue pertaining to national legislation on the one end, which, on the other end, is manageable only by transcending and working across national borders, therefore acquiring the character of a supranational issue. According to Bauböck¹³¹ immigration can be perceived as a remedy for global injustice by changing the distribution of opportunities, realizing the freedom of movement as an integral aspect of individual autonomy. This perception is shared in the study and characterizes the path followed to reach conclusions.

To locate the interviews within the IOs framework, the questions were posed around two main issues: The first issue, domestic legislation versus international legislation, concerned the place of migration management either within domestic legislation or regulated by international legislative agreements. It was raised on the basis of the IOM’s Constitution Chapter 1, Article 1. and the assumption expressed by many stakeholders that governments tend to prefer using the national instruments at hand rather than create a new international/UN organisation for migration. The aspect which had to be read “between the lines”, but which has a strong rationale and will be elaborated upon in the final chapter and conclusion of this study, is that UN organisations themselves and their representatives, though neither officially nor openly, support the same concept, although from a different point of departure.

The second issue, global instruments to manage migration, concerns the existing instruments for migration management at a global, collective level. It was raised in an effort to work out a possible option for more efficient instruments, drawing on a range of possible forms, which will constitute the core of the study’s concluding chapter.

¹²⁹ European Commission “EU focus on global public goods”
<<http://ec.europa.eu/environment/wssd/pdf/publicgoods.pdf>>

¹³⁰ Chen, Shaohua/ Ravallion, Martin (2004): “How Have the World’s Poorest Fared Since the Early 1980s?” In *World Bank Research Observer*, 19(2): 141-170.

¹³¹ Bauböck, Rainer (2009): “Global Justice, freedom of movement and democratic citizenship.” In *European Journal of Sociology* 50 (1) 2009, 1-31.

In order to present an accessible account of the interviews and the respective organisations, each treated in a dedicated subchapter, these will be structured according to the following layout: a) a general introduction and presentation of the organisation under review, followed by b) and c) two paragraphs related to the two questions detailed above.

7.2. Organisations Visited

A) Outside the UN system

- 1) One NGO Network-Migration
- 2) One IGO ICPM (check)
- 3) One non-UN IOM

B) Inside the UN system

- 4) ILO
- 5) OHCHR
- 6) UNHCR¹³²

In this context it has to be stressed again that the definition of UNHCR's mandate lies in the following statement of High Commissioner Lindt.¹³³

All refugee problems have that in common that they have a social and economic aspect, but only some of them also have a legal aspect. The mandate of the High Commissioner is limited to the latter group, and gives to his Office as basic task international protection, to which, in certain cases, the General Assembly has added the granting of material assistance, thereby recognizing that, in certain cases, legal protection appears meaningless to refugees who, for material reasons, are unable to make a new start in life without help.

The two groups of refugee – those inside and those outside the High Commissioner's mandate – are legally very clearly separated, but they are closely inter-related as far as their need is concerned. Here a close division appears sometimes invidious and very often unjust.

¹³² A detailed case study concerning UNHCR has been presented in the previous chapter, illustrating relevant aspects of this organization's work accordingly, mainly as they are translated into the day-to-day reality of migrants' and refugees' lives.

¹³³ UNHCR, Statement by Dr. Auguste R. Lindt, United Nations High Commissioner for Refugees, to the United Nations Economic and Social Council, ECOSOC, 25 July, 1960. <<http://www.unhcr.org/3ae68fb80.html>>

The interview with UNHCR was focused on those programmes in which this organisation deals with migration, particularly mixed migration, rather than follow the standard path used in the interviews with other organisations. Reference is therefore made here to Chapter...., Para.....#

7.2.1. NGO: Network Migration in Europe

a) General Introduction

The NGO “Network Migration in Europe”¹³⁴ pursues a broad approach to migration-related issues based on information and utilizes all available instruments to reach the largest possible audience in Germany. The channels employed by this organisation range from a newsletter to seminars and workshops, held either for a selected audience or for civil society in general. Within a number of programmes funded by the European Commission, the NGO maintains an expert databank and implements migration-related projects; within programmes funded by private German institutions, they develop political education modules.

This information, dialogue and networking, opportunities for online education and learning, advisory services for institutions and individual persons, training seminars and workshops, the newsletter “Migration und Bevölkerung” and the website “Informationsportal www.migration-info.de” are circulated among 9.000 members. The database “Expertendatenbank Migration – Einwanderungsgesellschaft – Interkulturelles Zusammenleben” is part of the European website for integration „Europäische Website für Integration”. The Service portal Migration Citizenship Education is intended for experts in the area of political education in Europe as well as for civil society at large. The online learning site “Lernportal the Unwanted” targets students through self – learning modules.

The following are a few examples of the NGO’s information/education tools:

- Migration Citizenship Education (www.migrationeducation.org)

This is a powerful, user-friendly information platform developed by Network Migration in Europe which provides free online access to learning resources on migration, minorities and human rights in European Citizenship Education on a European and national level, current discourses on European migration policies, human rights protection, migration and gender, migration and religion, postcolonial migration, migration and development in immigration societies in the past and present, immigration policies

¹³⁴ Netzwerk Migration in Europa <<http://www.network-migration.org/>>

and practices shown through the country profiles of Bosnia-Herzegovina, Bulgaria, Czech Republic, France, Germany, Great Britain, Greece, Hungary, Italy, the Netherlands, Poland, Romania, Serbia, Spain and Turkey.

- Advanced Training on (Forced) Migration and Human Rights: Challenges and Approaches for European Citizenship Education

This is a transnational European Forum organized by Network Migration in Europe that provides advanced training on (forced)¹³⁵ migration and human rights. The European Forum is devoted to active learning and the dialogue on (forced) migrations and human rights in Europe past and present, and on European multicultural and interethnic experiences and relations. It is mainly intended for trainee teachers, young teachers, activists and advanced students engaged in education and training work.

b) Domestic legislation versus international legislation

For its regional nature and having an in-depth insight not only into EU structures, but also into its policies and strategies, the views of this NGO indicated how the EU increasingly deals with matters related to migration not only at regional level, but across its member countries, through border management and asylum procedures. Apart from the basic but necessary distinction between forced migration and migrant workers, the integration of qualified workers as well as anti-discrimination measures are issues covered by EU Directives. These factors, according to the interview, are all evident signs of EU overtaking domestic jurisdiction by issuing regional legislative rules and regulations.

Indeed, this NGO recommended one particular means to become familiar with all EU migration policies, the Guide to Locating Migration Policies in the machinery of the European Commission. The Guide not only maps the European Commission's policies related to migration, including the relevant cooperation and consultation mechanisms and funding programmes, it also discusses the issue of the evaluation of policies in terms of impact and effectiveness, as well as the use of indicators. It is jointly published by the Migration Policy Group (MPG) and the European Programme for Integration and Migration of the European Network

¹³⁵ A brief note on the term “forced migration” versus voluntary migration: The term “forced migrant” obviously implies that there is such a thing as “unforced migration”, but one hardly ever comes across this usage. What we usually find instead is “voluntary migration”, with forced migration being treated as synonymous with “involuntary migration”.

of European Foundations (EPIM).¹³⁶ In the words of *Roshan Di Puppò*, director of the Social Platform:

“Non-governmental organizations look to Brussels for policies that enhance social inclusion and equality across the entire Union. In this up-to-date Guide the Migration Policy Group has compiled a unique resource making the European Commission's activities on migration and integration more transparent and accessible. Civil society organizations can dip into the Guide to find out where to secure funding, find allies, share their savoir-faire and have their voices heard.”

Within its programmes, this NGO also tackles the issue of migration when it includes high skilled workers. To deal with this aspect, the EU has adopted a directive announced in the following press release.¹³⁷

European Council press release. Brussels, 25 May 2009.

Council adopts the “EU Blue Card”: more advantages for high-skilled foreign workers.

The Council today adopted a directive aimed at facilitating conditions of entry and residence in the EU of third-country citizens for the purpose of highly qualified employment. The directive establishes more attractive conditions for third-country workers to take up highly qualified employment in the member states of the Union, by creating a fast-track procedure for issuing a special residence and work permit called the “EU Blue Card”.

As has already been indicated, national legislation in the one hand may be guided by political domestic interests and therefore does not necessarily address the issue of migration from a cooperative point of view. On the other hand, international organizations may show a lack of cooperation among parties due to an existing conflict of interest in sending/receiving migrants. In between, therefore, a different approach, based on common interests and on a coordinated policy regarding migration might represent a viable solution, if sustained and supported by member countries.

A third option, the regional European option, has therefore been brought into the picture by the NGO Network Migration. The EU Members still differ widely in terms of production

¹³⁶ European Programme for Integration and Migration: *Guide to Locating Migration Policies in the European Commission - 2nd Edition*. Issued on 31/10/2008.
<http://www.epim.info/docs/documents/137.GuidetoLocatingImmigrationPoliciesintheECII_31.10.08.pdf>

¹³⁷ European Council, Council Directive 2009/50/EC of 25 May, 2009, on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. *Official Journal of the European Union* <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:155:0017:0029:en:PDF>>

structure, structure of employment, and the level of government regulation. At the same time, the Member State governments place high priority on maintaining their flexibility in determining labour-market policy. Among the instruments of labour market policy used to this end are immigration regulations, in particular the right to decide which immigrants are granted entry to the country and its labour market. The Member States' willingness to hand over authority to the EU in this key area of national sovereignty is extremely low. Just how important it is to Member States to maintain national control over immigration is reflected in the fact that some governments began revising their national policies on the recruitment of high-skilled workers even while Blue Card negotiations were still underway. Whether the revised national policies will contribute to increased high-skilled immigration over the coming years remains to be seen.

c) Global instruments

Under the heading of “multilateral organizations”, and because of their relationship in the area of information, Network Migration lists, among others, UNDESA, in particular its Population Division, which is responsible for monitoring and appraising the broad range of areas in the field of population. One of its main responsibilities is to facilitate access, in particular for governments, to information on population trends and their interrelationships with social and economic developments, and thereby provide input to government policy and programme formulation. The official United Nations demographic estimates and projections are prepared for all countries and areas of the world, as well as urban and rural areas and major cities, and serve as the standard and consistent set of population figures for use throughout the United Nations system.¹³⁸ International migration, infant, child and maternal mortality and increased adult mortality in some regions, as well as the demographic impact of AIDS, are critical emerging issues that are also addressed. The Population Division also contributes to the capacity building of Member States to formulate national population and related policies and programmes for the effective implementation of the recommendations of the Programme of Action; and it improves the institutional capabilities of Governments for the collection, analysis and distribution of national population information.

The focus on UNDESA's population-related activities is due to the attention given to international migration, by providing in its website full information on Secretary General's reports and resolutions, statements and remarks, meetings, data, publications, presentations so as

¹³⁸ United Nations, International Migration <<http://www.un.org/esa/population/migration/index.html>>

GFMD and GMG meetings. Overall, however, the global aspect is relatively limited in Network Migration's areas of activities. Rather, they are focused almost entirely on regional/national aspects of migration.

7.2.2. The International Centre for Migration Policy Development (ICMPD)

a) General Introduction

ICMPD¹³⁹ was founded in 1993, based on the initiative of Austria and Switzerland. The organisation was created to serve as a support mechanism for informal consultations and to provide expertise and efficient services in the newly emerging landscape of multilateral cooperation on migration and asylum issues.

ICMPD today is an international organisation with eleven Member States (Austria, Bulgaria, Croatia, Czech Republic, Hungary, Poland, Portugal, Slovakia, Slovenia, Sweden and Switzerland), sixty staff members at its Vienna Headquarters, a mission in Brussels and regional offices and representatives throughout Europe, CIS, Northern Africa and the Middle East. ICMPD moreover holds UN observer status. The continuing purpose of ICMPD is to promote innovative, comprehensive and sustainable migration policies and to function as a service exchange mechanism for governments and organisations. It does so based on the conviction that the complexities of migration challenges can only be met by working in partnership with governments, research institutes, international organisations and civil society and its organisations.

This approach is reflected in ICMPD's working method and structural set-up, based on two interlinked pillars. 2) **Intergovernmental dialogues:** With the aim to foster governmental discussion and enhance inter-state dialogue in the current debate on international migration, ICMPD acts as Secretariat to the consultative Budapest Process (50 European and Eurasian states), and to the Dialogue on Mediterranean Transit Migration, which brings together European as well as Mediterranean Arab states. 2) **Capacity building:** With the aim to contribute to good migration governance and to strengthen national and regional capacities in order to deal with the current challenges in various fields of migration, ICMPD develops and organises training and capacity building programmes, facilitates international and interagency cooperation, and supports governmental and administrative bodies in their institution building

¹³⁹ International Centre for Migration Policy Development <<http://www.icmpd.org>>

efforts and legal reform in areas such as asylum, visa, human trafficking and integrated border management.

b) Domestic Legislation versus International Legislation

ICMPD mentioned the EU policy towards migration, particularly on the European Pact on Immigration and Asylum which is based on the assumption that “the European Union [...] does not have the resources to decently receive all the migrants who hope to find a better life here”.¹⁴⁰ It calls for better management of immigration and enhanced coordination at EU level as required by the creation of an area of free movement without internal borders. The Pact’s preamble argues that developments within the EU are insufficient, identifying five basic commitments for the development of a comprehensive EU policy on migration and asylum.

1. **Legal migration:** A comprehensive approach to legal immigration should be devised, in harmony with the needs and the capacity of each member state to receive immigrants “in a spirit of solidarity”. The Pact builds upon the Blue Card initiative and the Commission’s Policy Plan on Legal Migration, both of which are already in the pipeline.
2. **Illegal migration:** The centerpiece of this section is the organisation of “selective repatriation of illegal immigrants”. This policy area is mainly covered by the recently adopted Return Directive¹⁴¹. However, the Pact calls on member states to further enhance cooperation by organising joint flights for repatriation, improving readmission agreements and increasing the fight against human trafficking.
3. **Border controls:** The document focuses on the role of Frontex, the EU agency for external border security and proposes the establishment of two separate permanent bodies of command, one for southern and one for eastern member states.
4. **Asylum policies:** Member states are expected to develop common guarantees on asylum, as well as an asylum support office by 2009 and a single asylum procedure by 2010.
5. **Foreign countries:** The EU’s approach to migration policy should deal with with the origin of third-country immigrants. The Pact suggests offering opportunities for legal migration tied to employment and education, but stresses the significance and benefits of circular migration. In future, national states will remain responsible for immigration pol-

¹⁴⁰ EU for Journalists, Immigration Dossier <<http://www.eu4journalists.eu/index.php/dossiers/english/C89/379/>>

¹⁴¹ European Parliament, The Legislative Observatory, COD/2005/0167 “Migration policy: return policy as a part of the fight against illegal immigration, common standards and procedures in Member States for returning illegally staying third-country nationals”. <<http://www.europarl.europa.eu/oeil/file.jsp?id=5269672>>

icy as it affects individuals. It is not yet clear how much effect the pact will have in years to come, but there will be an annual meeting to review its effectiveness from 2010 onwards.

c) Global and/or Regional Instruments

As an intergovernmental organisation, ICMPD positions itself on an intermediary level between the regional and international level as its membership goes beyond regional borders. The multiple faces of Europe, the European Union, EFTA and the Balkans further enrich the profile of this IGO.

On the regional European level, contacts, links and partnerships are maintained with the Council of Europe, the European Commission, Europol, Frontex and the OSCE. On the international side Interpol, IOM, UNDP, UNHCR and UNODC are the privileged partners of this IGO. Moreover, cooperation with the Migration, Asylum, refugees Regional Initiative (MARRI) is well underway.¹⁴²

The idea to create ICMPD was launched among a small circle of European government representatives, gathered at the initiative of Switzerland, in the autumn of 1992. Western Europe was at that time in the midst of an asylum crisis, requiring innovative collective measures to reform asylum and refugee reception systems. Migration from and through the new democracies of Central and Eastern Europe was on the rise and the war in Bosnia and Herzegovina had led to mass displacement, requiring that the burden be shared on an international level. At the global level, it was recognised that the growing pressure of north-south migration would be a major issue on the political agenda for the next millennium.

From the 1950s until the mid-1980s, the multilateral fora dealing with migration in a European context had been mainly the Council of Europe, OECD, ICEM/IOM and UNHCR. Informal consultations (now IGC) were set up by Sweden and some like-minded countries in 1985. It worked together with the UNHCR to tackle the emerging asylum crisis. An EC/EU co-operation on immigration and asylum was initiated in 1986 in response to the new internal market system and establishment of external EU borders. The EFTA (European Free Trade

¹⁴² The Migration, Asylum, Refugees Regional Initiative (MARRI) deals with the issues of migration management in the Western Balkans by promoting closer regional cooperation and a comprehensive, integrated, and coherent approach to the issues of migration, asylum, border management, visa policies and consular cooperation, refugee return and settlement in order to meet international and European standards. MARRI's top priority is the enhancement of regional cooperation in its fields of activities among countries in the region, as a vital part of EU integration process and in line with the Thessaloniki Agenda for the Western Balkans. The overall idea was that the countries of the region take ownership of the regional cooperation. <<http://www.marri-rc.org/>>

Association) countries also initiated a move to make immigration co-operation level with that of the EC. Radical changes in Central and Eastern Europe led to the Vienna Process in 1991 (incorporated by the Council of Europe in 1994) and the Berlin Process, which later became the Budapest Process¹⁴³. Existing institutions, such as those mentioned above, worked to upgrade migration-related activities.

In the context of these developments, the founding countries of ICMPD felt that a support mechanism was needed to provide a platform for informal consultations and efficient services in the newly emerging landscape of multilateral immigration and asylum co-operation. They also wanted to ensure that co-operation with Central and Eastern Europe be given a prominent role, taking into account the need to incorporate the new democracies into the European migration scheme and act against the risk of growing illegal migration.

7.2.3. International Organization for Migration (IOM)¹⁴⁴

a) General Introduction

A general introduction to the mandate and activities of this organisation is given in chapter...,para...#

IOM's Role

Over the years, the International Organization for Migration has accumulated an important amount of material and knowledge on the international legal norms and principles that protect the human rights of migrants and regulate migration. Both sets of norms are jointly referred to as international migration law (IML). In view of the lack of appropriate information on IML, and also because there was no central source where all information was easily accessible, IOM expanded its existing legal capacity to consolidate and streamline its involvement in the field of IML. The overall objective of IOM is to strengthen its capacity to assist States in the orderly and humane management of migration, a role attributed to IOM by its Council in 1995 (Council Resolution No. 923 (LXXI) of 29. November, 1995).

¹⁴³ The Budapest Process is a consultative forum of more than 50 Governments and 10 international organisations, aiming at developing comprehensive and sustainable systems for orderly migration. It involves States from the wider European region (EU Member States, SAp, CIS and others) with the purpose of exchanging information and experiences in dealing with related topics such as: regular and irregular migration, asylum, visa, border management, trafficking in human beings and smuggling of migrants, readmission, return, etc. See ICMPD <[http://www.icmpd.org/906.html?&no_cache=1&tx_icmpd_pi1\[article\]=881&tx_icmpd_pi1\[page\]=885](http://www.icmpd.org/906.html?&no_cache=1&tx_icmpd_pi1[article]=881&tx_icmpd_pi1[page]=885)>.

¹⁴⁴ International Organization for Migration <www.iom.int>

In 2004, the International Migration Law and Legal Affairs Department was established to compile migration-related legal instruments at international, regional and national levels and make them easily accessible, to disseminate this information and thus enhance the understanding of IML, to organize training seminars and capacity building activities in the field of migration law, and to promote IML as an essential component of comprehensive migration management frameworks. Since then, the International Migration Law and Legal Affairs Department has created an online database on migration law, organized a number of trainings for government officials and other stakeholders in migration, carried out research and participated in various capacity-building activities all over the world.

b) Domestic Legislation versus International Legislation

A strong supporter of regional consultative processes, IOM participates in most of the major RCPs as a member, partner or observer, provides secretariat-type services for many of the major RCPs, and contributes to RCPs in other ways at the request of participating governments (for example, through research and information dissemination, policy advice, capacity-building and technical cooperation, and project implementation). Although governments have generally taken the primary lead in establishing RCPs, in some cases IOM and/or UNHCR have also had a leading role, together with the governments concerned¹⁴⁵. Among the above RCPs, IOM holds the Secretariat of the Abu Dhabi Dialogue which was launched by The Abu Dhabi Declaration as a collaborative approach to temporary labour mobility in Asia and to maximizing its benefits for development. Otherwise the issue of migration has remained at the heart of countries' sovereignty as stated clearly in the IOM Constitution

One particular aspect of migration, legislated at national and international level, relates to diasporas. Diasporas accumulate human, financial, and social capital for the development of their home communities. Governments of countries of origin can have a crucial role in channelling the initiative, energy, and resources of diasporas into economies and societies, and institutionalizing the link between the diaspora and the socio-economic activities of their home countries. Transnational communities establish and reinforce multi-sectoral links between countries of origin and destination. The challenge this presents for policy makers in developed and developing countries is to create an environment that encourages and supports contributions by migrant diaspora to development.

¹⁴⁵ IOM, Regional Consultative Processes <<http://www.iom.int/jahia/Jahia/policy-research/regional-consultative-processes/lang/en>>

Importantly, IOM country offices are also located in non-member countries see Moscow (large) and Beijing (small). For instance, fifty million overseas Chinese constitute one of the largest diasporas in the world. This diaspora has built up powerful business networks controlling significant sectors of the economy in Southeast and East Asia. Over the years, they have made a tremendous contribution to the economic development of China. The Government of China has accorded preferential treatment to the Chinese diaspora creating an enabling environment for the overseas Chinese to get involved in the economic development of China.

c) Global Instruments

The interview focused on the cooperation between IOM and the UN system. The International Organization for Migration has a long-standing and intense working relationship with the United Nations (UN) at several levels. Today, there are three formal elements on which IOM's overall relationship with the United Nations is based. 1) The first of these is its status as an observer in the UN General Assembly, which IOM obtained in 1992 (GA resolution A/RES/47/4). 2) The second is IOM's inclusion by the General Assembly as a "standing invitee" in the Inter-Agency Standing Committee (IASC)¹⁴⁶ mechanism, which also began in 1992. 3) The third element is the Cooperation Agreement between IOM and the UN, which was signed in 1996 and continues to provide the formal basis for a closer collaboration between the two secretariats.

In practical terms, the increasing operational collaboration that has evolved over the past decade and a half between IOM and a broadening range of UN entities has also resulted in more frequent ad hoc inclusion of IOM in relevant UN working groups. This has especially been the case in emergency and/or post-conflict rehabilitation situations, but also extends to a number of ongoing consultative processes, e.g., women and gender equality.

In discussing the links between IOM and the UN system, and when touching upon the work of the GMG as described in chapter...., para.....#, IOM's membership in the GMG was mentioned as well as the limitations in the structure of the Group. While the group aims to promote the wider application of all relevant international and regional instruments and norms relating to migration, the half-year basis of its chairmanship creates lacks of continuity and hinders substantial outputs. One of the most important functions of IOM, besides its role as

¹⁴⁶ The Inter-Agency Standing Committee (IASC) is the primary mechanism for inter-agency coordination of humanitarian assistance. It is a unique forum involving the key UN and non-UN humanitarian partners. The IASC was established in June 1992 in response to United Nations General Assembly Resolution 46/182 on the strengthening of humanitarian assistance. United Nations Office for the Coordination of Humanitarian Affairs – OCHA Online, General Assembly Resolutions <http://www.reliefweb.int/ocha_ol/about/resol/resol_e.html>.

the central entity for all migration-related issues, is the International Migration Law Database which includes norms and instruments regulating migration at international, regional and national level. In this respect IOM stressed that international norms guarantee certain basic rights to migrants. This is also relevant to integration because it requires policy makers to develop approaches to integration that respect these basic rights. In essence, these norms thus provide migrants with the right to interact with the host society economically, socially, and culturally, under the terms of applicable national legislation, while also allowing them to maintain a sense of their own cultural identity.

Apart from the specific standards applicable to the treatment of refugees in the host country, there are few international legal norms relating specifically to integration of migrants. The most explicit of these norms, based on international human rights principles, are found in the 1990 International Convention on the Rights of All Migrant Workers and Members of Their Families, which entered into force on 1 July 2003.¹⁴⁷

Cooperation between IOM and NGOs deserves particular attention as civil society, including NGOs, plays a limited role in the area of migration compared to the position reached and held by NGOs in other areas related to global issues, such as environment and human rights. In the area of migration NGOs are active mainly in migrants' rights and abuse against migrants. Examples among them are the Platform for International Cooperation on Undocumented Migrants (PICUM)¹⁴⁸ and the *African Diaspora Policy Centre (ADPC)*¹⁴⁹.

The terms of IOM's collaboration with NGOs are defined in Article 1(2) of its constitution, according to which the Organization "shall cooperate closely with international organizations, governmental and non-governmental, concerned with migration, refugees and human resources". Over 40 NGOs currently hold observer status with the organization. Indeed, IOM is actively encouraging NGO participation at its Council and the "International Dialogue on

¹⁴⁷ IOM, The Provisions of International Law <<http://www.iom.int/jahia/Jahia/about-migration/managing-migration/integration-of-migrants/provisions-of-international-law>>

¹⁴⁸ PICUM is a non-governmental organisation (NGO) that aims to promote respect for the human rights of undocumented migrants within Europe. PICUM also seeks dialogue with organisations and networks with similar concerns in other parts of the world. <<http://www.picum.org>>

¹⁴⁹ The *African Diaspora Policy Centre (ADPC)* is an independent organisation which was established in The Netherlands in 2006. ADPC provides a platform that enables African Diaspora in Europe to connect more closely with the continent as a collective force, pool their resources and proactively undertake initiatives for the promotion of peace, better governance and brain gain in Africa. ADPC pursues its goals by facilitating the effective harnessing of the considerable, and largely untapped, social capital of the huge African Diaspora population in Europe for the promotion of peace, better governance and brain gain in Africa. <<http://www.diaspora-centre.org>>

Migration” and hopes that the trend towards increased NGO participation in the ongoing migration policy dialogue will continue. Also at headquarters level, IOM convenes regular annual consultations and briefings for a wider NGO audience. Most of the programmatic cooperation between NGOs and IOM, however, takes place at field level, during the implementation of projects

Such cooperation between IOM and NGOs occurs in various contexts and reflects the diverse relationships between the two actors. NGOs might be collaborators with IOM, service providers or project executors, donors, beneficiaries of IOM technical cooperation, grant recipients, or service recipients. In any given circumstance, IOM and NGOs might act as equal partners, or complement each other’s activities.

7.2.4. Office of the High Commissioner for Human Rights (OHCHR)

a) General Introduction

The Office provides guidance and technical assistance to states and other stakeholders in relation to migrants’ rights and efforts to combat trafficking. The migration issue became part of OHCHR’s activities when a task force was established in 2005 within the Commission on Human Rights under pressure of civil society organisations.¹⁵⁰

The high-level task force on the implementation of the right to development was established by the Commission on Human Rights, in its resolution 2004/7, and the Economic and Social Council, by its decision 2004/249, at the recommendation and within the framework of the Working Group on the Right to Develop, in order to assist it in fulfilling its mandate. The objective of the task force is to provide the necessary expertise to the Working Group to enable it to make appropriate recommendations to the various actors on the issues identified for the implementation of the right to development.

The task force recognizes that the issue of migration and its impact on development is relevant to goal 8 of the Millennium Development Goals and merits further exploration, given that remittances from overseas workers now constitute the highest level of financial flows from developed to developing countries and, therefore, have a significant and complex effect upon the national capacity to progress in implementing the right to development. Further, the task force stresses the impact of migration flows on human rights, including the right to de-

¹⁵⁰ Commission on Human Rights, Sixty-second session, Working Group on the Right to Development, Seventh session. High-level task force on the right to development. Legislative authority: Commission resolution 2005/4. <www2.ohchr.org>

velopment, in terms of loss of human and social capital in developing and less developed countries.

b) Domestic Legislation versus International Legislation

As outlined in the High Commissioner's Strategic Management Plan 2010-2011,¹⁵¹ migration is among the 6 priorities of HR. In other words, protecting human rights in the context of migration is one of the main issues. It is a global issues also in the sense that every country is affected by migration, whether as country of origin, transit, destination or as a combination of these. An estimated 200 million people worldwide live outside their country of birth. While migration is for many a positive and empowering experience, for others the reality is one of discrimination, exploitation and abuse. The failure of states to protect migrants against abusive practices raises serious human rights concerns that are regularly denounced by UN human rights mechanisms and NGOs. The escalation of human trafficking on the global level is another area of serious concern. And while several UN agencies have a mandate to work on migration-related issues, few have a protection mandate, and many of them lack an explicit human rights focus to their activities.

The entry into force of the International Convention on the Rights of All Migrant Workers and Members of their Families (ICRMW) in 2003 and the establishment of the related treaty body gave further impetus to OHCHR's work in this area. Increasingly, other international human rights mechanisms and bodies, including those in the context of the UPR review¹⁵², are also focusing on the situation of migrants. OHCHR has continued its efforts to strengthen migrants' rights and bring a human rights perspective to debates on migration policy, including through its work as a member of the Global Migration Group. Indeed, OHCHR assumed the chairmanship of the Global Migration Group during the second half of 2010. This marks an important point in the organisation's history.

c) Global Instruments

The central tenet of OHCHR is that human rights are at the heart of migration and should be at the forefront of any discussion on migration management and policies. Human rights

¹⁵¹ OHCHR, High Commissioner's Strategic Management Plan 2010-2011
<<http://www.ohchr.org/Documents/Press/SMP2010-2011.pdf>>

¹⁵² The Universal Periodic Review (UPR) is a new and unique human rights mechanism of the United Nations (UN) Human Rights Council aiming at improving the human rights situation on the ground of each of the 192 UN Member States. See UNHCR, Universal Periodic Review
<<http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>>.

mechanisms have been clear in stating that although countries have a sovereign right to determine conditions of entry and stay in their territories, they also have an obligation to respect, protect and fulfil a wide range of human rights of all individuals under their jurisdiction, regardless of their nationality or origin and regardless of their immigration status. In promoting a human rights approach to migration, OHCHR works closely with members of the United Nations system and other partners, including through the Global Migration Group.

Under this mechanism, the human rights situation of all UN Member States is reviewed **every 4 years** (48 States are reviewed each year during 3 UPR sessions dedicated to 16 States each). The result of each review is reflected in an “outcome report” listing the **recommendations** made to the State under review (SuR) including those that it accepted.

The UPR is a full-circle process comprising **3 key stages**:

- 1) Review of the human rights situation of the SuR
- 2) Implementation between two reviews (4 years) of the recommendations accepted and voluntary pledges and commitments by the SuR
- 3) Reporting at the next review on the implementation of those recommendations and pledges and on the human rights situation in the country since the previous review.

7.2.5. International Labour Organization (ILO)¹⁵³

a) General Introduction

One of the major frameworks within ILO, which develops its activities and programmes, is The World Commission on the Social Dimension of Globalization and its report, *A Fair Globalization: Creating Opportunities for All*, released in February 2004. It is the first attempt at a structured dialogue among representatives of constituencies with different interests and opinions on the social dimension of globalization, aimed at finding common ground on one of the most controversial and divisive subjects of our time.

The explicit mandate of the 26 people that made up the commission was to examine the process of globalization through the eyes of ordinary people, drawing on extensive consultations with a broad range of actors in different parts of the world, and some of the best available expertise on the many complex issues involved. The comprehensive analysis and set of recommendations contained in the commission’s report constitute the foundations for a common platform

¹⁵³ International Labour Organization (ILO) <www.ilo.org>

for action, and the basis for future multi-stakeholder dialogue as an essential vehicle for cohesive and sustainable change.

Within this specific framework, the conference paper “Towards a fair deal for migrant workers in the global economy”¹⁵⁴ explores patterns of migration in the context of a globalizing world and examines the impact of migration on countries of origin and destination countries. It furthermore investigates the conditions of work and treatment of migrant workers and assesses international regulations and ILO activities, as well as discussing the available opportunities for improving the management of migration.

b) Domestic Legislation versus International Legislation

According to the above conference paper, most labour migration policies today are unilateral, in the sense that destination countries normally announce programmes to admit migrants without seeking bilateral agreements with countries of origin. There is growing recognition that cooperative migration management can better achieve goals for both sending and receiving countries, and there has been an upsurge in bilateral memoranda of understanding (MOUs) and agreements; however, most programmes to admit foreign workers are unilateral. For the source countries, unilateral action means trying to manage the process of emigration.

Nevertheless, multilateral action has been most successful in establishing international norms. The ILO itself has pioneered two Conventions: the Migration for Employment Convention (Revised), 1949 (No. 97)¹⁵⁵, and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)¹⁵⁶. In 1990, the United Nations General Assembly adopted a new Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which entered into force in 2003.

As a crucial document on ILO’s position, the above-mentioned paper also illustrates multilateral processes by which States voluntarily limit their sovereignty by making binding commitments in international law to regulate trade and migration, as with:

Multilateral treaties and agreements. These include the ILO and United Nations Conventions already discussed in Chapter 4, which are international treaties with specific monitoring

¹⁵⁴ International Labour Conference, 92nd Session, 2004. Report VI “Towards a fair deal for migrant workers in the global economy. Sixth item on the agenda at the International Labour Office Geneva.” First edition, 2004.

¹⁵⁵ ILO <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C097>>

¹⁵⁶ ILO <http://www.ilocarib.org.tt/projects/cariblex/conventions_7.shtml>

mechanisms including scrutiny by independent experts and (in the case of the ILO) tripartite constituents.

General Agreement on Trade in Services (GATS). Mode 4 of GATS for natural persons supplying services relates to conducting negotiations on the rights of natural persons to remain temporarily in a country in order to provide a service, be it qualified or not qualified. The principle of the most favoured nation treatment is applied, but it is not applicable to persons who try to obtain a permanent job, or to the conditions of obtaining nationality, residency or permanent employment. Unlike regional integration agreements, this agreement is aimed at the member States of the WTO.

Regional integration agreements. The frameworks of the European Union, MERCOSUR, the Andean Community and NAFTA allow for free circulation, establishment and access to the labour market of nationals from member countries. In this type of multilateral agreement, migration is treated as just another variable of an integration process. For example, the European Council in its Seville meeting in 2002 concluded that every cooperation and association agreement concluded by the EU must contain a clause for the readmission of migrant workers in an irregular status.

Bilateral migration agreements. These agreements between origin and destination countries usually aim to regulate flows and conditions of stay and employment of migrants. The International Labour Migration Survey revealed that a large number of countries have entered into such agreements, which include provisions on social security.

c) Global Instruments

The number of migrants crossing borders in search of employment and human security is expected to increase rapidly in the coming decades due to the failure of globalization to provide jobs and economic opportunities. The ILO sees today's global challenge in the task of forging the policies and the resources to better manage labour migration so that it will contribute positively to the growth and development of both home and host societies, as well as to the well-being of the migrants themselves. In 2004, the International Labour Conference of the ILO adopted a Multilateral Framework on Labour Migration which is part of a plan of action for migrant workers agreed by ILO constituents.

A practical, effective instrument favoured by ILO and to be applied at the global level is the promotion of migrants' investment in small-to-medium size enterprises (SMEs) in the respective countries of origin. Indeed, SMEs represent a promising potential both for migrants and their countries of origin. Most countries are willing to dedicate resources to either create insti-

tutions to support migrants' enterprises or to promote public events to encourage the diasporas to become part of a transnational network of entrepreneurs. However, the general investment climate in the countries of origin continues to be the principal concern of migrants interested in SME development. In general, most of the entrepreneurial activities supported by migrants in their countries of origin are still the result of autonomous activities of individual migrants rather than specific investment programmes.

Among the most common instruments ILO is trying to foster the implementation of collective development projects initiated by migrant organisations. Migrants' potential for development has always been present and migrants have participated in development activities independently or as part of migrant associations for decades. By and large, however, collective development projects continue to be designed and implemented by migrants and their associations without the intervention of international development agencies or governmental bodies.

A study conducted and published by the GTZ (Deutsche Gesellschaft für Technische Zusammenarbeit) in 2010¹⁵⁷ has identified certain aspects that seem to affect the way in which governments in countries of origin respond to their diasporas. Indeed, the value of this study is not confined to the information it provides, but extends to the fact that the study describes a number of projects that are carried out in the field by migrants' organisations and are supported by the German Development Cooperation (GTZ). Guidelines for practice are published by GTZ, provide practical orientation and illustrate possibilities for cooperation

7.3. Conclusions

The interviews carried out, while clearly limited in number, were designed so as to include at least one representative of the main organisations active in the field of migration. Indeed, as could be demonstrated above, they highlighted a common view on NGOs which, due to the focus on intergovernmental organisations, had remained somewhat on the margins of the discussion of the previous chapters of this thesis.

However, as all organisations interviewed expressed what amounts to more or less the same opinion on NGOs, it is now necessary to elaborate this group of actors defining, first of all, the nature of their political program. In our daily understanding, the term "NGO" within so-

¹⁵⁷ Deutsche Gesellschaft für Technische Zusammenarbeit „Building bonds for migration and development. Diaspora engagement policies of Ghana, India and Serbia.“
<<http://www.migration4development.org/content/building-bonds-migration-and-development-diaspora-engagement-policies-ghana-india-and-serbia>>

called civil society is closely linked with the broad spectrum of organisations that, belonging to neither the market nor the state, can be said to constitute the infrastructure and organisational basis of democratic societies.¹⁵⁸

According to the European Commission's White Paper "European Governance" (2001), organized civil society is of utmost importance for the further development of democracy and the well-being of citizens, because it gives voice to people while on the same time providing goods and services, particularly to those members of society who do not belong to the well-established segments of the population.

However, until now academic knowledge and research on these organisations, their specific problems and potentialities, as well as their internal management procedures and functioning has remained very limited. This lack of expertise may be due to the fact that they are difficult to investigate as each NGO is deeply embedded in the specific historical, legal and societal traditions of the various societies.

Sachße's typology of NGOs¹⁵⁹ differentiates non-profit organisations in membership, interest, service and support organisations. Among them, service organisations constitute the most significant force of the non-profit sector. In fact, most of the actual, practical attention given to migrants, especially to irregular migrants, is provided by local, national and regional NGOs.

All interviews conducted for this thesis underlined that, on a global level, there are only two organisations specifically dedicated to the promotion of migrants' human rights: Migrants Rights International¹⁶⁰ and December 18, established in 1999¹⁶¹. A number of other NGOs give significant attention to migrants' human rights and devote themselves to promoting respect for the rights of all migrants. As the protection of migrants is beginning to emerge as a priority issue on the agenda of international organisations, numerous international human rights organisations have come to address migrants, alongside refugees and asylum seekers, as a further group.

¹⁵⁸ Kocka, Jürgen (2000): "Zivilgesellschaft als historisches Problem und Versprechen. Europäische Zivilgesellschaft." In Hildemeier, Manfred/ Kocka, Jürgen/ Conrad, Christoph: *Ost und West. Begriff. Geschichte, Chancen*. Frankfurt am Main: Campus. 13-39.

¹⁵⁹ The typology was originally developed in an expertise for the Bertelsmann Foundation. See Sachße, Christoph (2001): *Stufen der Gemeinwohlförderlichkeit: bürgerschaftliche Organisationen und Steuerprivileg*. Gütersloh: Verlag Bertelsmann Stiftung.

¹⁶⁰ Migrants Rights International MRI <<http://www.migrantwatch.org>>

¹⁶¹ December18, "Joint Statement on 20th Anniversary Migrant Workers Convention" <<http://www.december18.net>>

Parallel to this, intergovernmental organisations active in migration management have developed rapidly during the last decade, and so have regional intergovernmental consultative processes (such as the IOM Puebla¹⁶², Manila, Colombo, Budapest processes). However, with the exception of Puebla, which has a history of regional NGO coordination, advocacy and dialogue with governments, NGOs have no consistent access to, or right to participate in, the above-mentioned consultative processes. Therefore, NGOs, being mainly nationally based and focused, rarely emerge at a global level; in fact, they privilege localism and express distrust towards intergovernmental organisations and initiatives.

In the landscape sketched above, the NGOs defending migrants' rights remain scattered, fragmented and limited in reaching their objectives. Cooperation with International Organisations remains marginal and makes the efforts of NGOs less visible on the global scene. While international organisations, by virtue of their governmental membership, can do more in the development and support of migration policy, and can also ensure inter-agency cooperation and regular consultations, NGOs thanks to their informal nature are better suited to promoting the advocacy for migrants' rights, to provide direct services for migrants, and to develop professional capacities to effectively carry out these responsibilities.

Considered side by side, NGOs and international organisations together have moral and political leadership roles to play and could very well generate common approaches, strategies and coordination to ensure better management of migration. However, progress in this direction is slow and incremental, while the challenges to be face are enormous.

The conclusion that can be drawn at this point, after complementing the research reported in the previous chapters with the information gained through the interviews, is that my preliminary assessment of the current approach by international organisations in the issue of migration management as fragmented is corroborated by the existing fragmentation among NGOs in dealing with the same set of issues. Possible options, alternative approaches, new instruments and other suggestions pertaining to this state of affairs will be outlined in the following, last chapter.

¹⁶² Regional Conference on Migration <<http://www.rcmvs.org>>

8. Chapter 8: Conclusions

8.1. Part 1: State of the Art

8.1.1. Research Projects

As outlined in Chapter....paragraph.....#, the most recent and, indeed, ongoing research project aiming at exploring the relationship between migration and international organisations within the framework of global governance is the Global Migration Governance project. The Global Migration Governance project was established in 2008 in order to foster the debate on the international politics of and global governance of migration.

The project, as stated by ..., has three core objectives:

1. to address the gap in International Relations scholarship on international migration by examining the international politics and governance of migration.
2. to explain the incoherent and fragmented nature of global migration governance in comparison to other trans-boundary issues such as trade and the environment.
3. to assess the prospects for developing a coherent multilateral architecture regulating states' responses to international migration, and to develop a vision for a politically-feasible and human rights-based global migration governance.

The project is based with the Department of Politics and International Relations and the **Global Economic Governance Programme**.¹⁶³ It also has collaborative links to the Centre for International Studies (CIS) and the Centre on Migration, Politics and Society (COMPAS) at the University of Oxford. It acts as a central focus for wider work within Oxford's various migration research centres for work on the international politics of migration. The project's official documentation defines its leading research questions and method as follows: Through primary fieldwork in Southern Africa, West Africa, the Maghreb, Central America, South-East Asia, Europe, and Australasia, the project will attempt to address four research questions, each of which attempts to explain a particular type of variation in global migration governance and all of which relate to emerging debates in International Relations.

- 1) Explaining variation in regional cooperation on migration

¹⁶³ Global Economic Governance Programme <<http://www.globaleconomicgovernance.org/project-migration>>

Most institutionalized cooperation in migration is regional or inter-regional. In some parts of the world it is more developed than in others. By examining different types of regional cooperation in the developing world, the project will examine what explains differences in the nature and scope of institutionalized cooperation in different regions. Answering this question has important policy implications, because it will highlight the conditions under which regional and inter-regional cooperation on migration can be developed.

2) Explaining variation in how different states choose to create or work through different international institutions in order to address migration

Global migration governance comprises a diverse landscape of formal and informal institutions at the regional, inter-regional and global level. This raises the question of how states choose to create or work through different institutions when faced with multiple and competing options. This question is particularly important in a North-South context in which some states may have more options for institutionalized cooperation than others. It will explore hypotheses about the role of domestic politics, inter-state power, and issue salience in determining which institutions states work through and when. Answering this question has important policy implications because it will highlight the conditions under which states will choose to work through formally institutionalized cooperation and when they are likely to prefer to work unilaterally, bilaterally or informally through ‘dialogues’.

3) Explaining the emergence of substantive issue-linkage between migration and other issue-areas (development, the environment and trade) and the impact of these linkages on migration politics.

Migration is not an isolated issue-area. It cuts across and inter-connects with numerous other policy fields. However, the relationships with other issue-areas – such as development, trade and the environment – are not constant. They acquire policy significance at different times, but nevertheless shape the politics of migration. . By drawing upon the wider literature on issue-linkage, the project will examine how ideas about inter-connections emerge. More specifically, it will explore hypotheses about the ‘migration-development nexus’ and its impact on global migration governance.

4) Explaining variation in different states’ ability to influence global migration governance

The questions “What does ‘power’ mean in the context of the international politics of migration?” and “What determines a state’s ability to influence global migration governance?” have so far been neglected. By exploring the perspective of developing countries in global migration governance, this question will examine a number of hypotheses concerning determining

factors in state influence on global migration governance (e.g. GDP/capita, whether a state is primarily a receiving/sending country, and leverage in other issue-areas). Answering this question has important policy implications for developing countries, as it may indicate ways in which relatively less powerful migrant sending countries can still influence global migration governance.

A second research project which also discusses the area of migration in relation to international organisations is located at the **Graduate Institute of International and Development Studies** an institution of research and higher education dedicated to the interdisciplinary fields of international relations and development studies.

The Institute, drawing on the synergies offered by its two fields of specialisation, offers independent and rigorous analyses of current and emerging global issues with a view to promoting international cooperation and making a contribution to the development of less fortunate societies. Its Programme for the Study of Global Migration¹⁶⁴ is devoted to the interdisciplinary study of migration insofar as it is linked to armed conflicts, generalized violence, persecution, ecological disasters and the phenomenon of 'economic migration' with its contemporary implications.

Beyond this general programme, the research project Migration and International Organisations directed by Prof. Vincent Chetail aims to analyze the mandates of the international organisations in the field of migrations and their possible interactions and collaborations in this framework. The project takes as its point of departure the realization that the many international and regional organisations that have migration on their respective agendas do not always have clear or well-known mandates and that their collaboration moreover remains erratic.

The research project's aim is to identify and clarify the exact role of all the relevant international organisations and the possible avenues for developing a better collaboration in the field of migration.

Shared Considerations

While both research projects discussed above focus on different aspects, it is worthwhile to consider their common ground as well as any considerations they share with this study. Similar to this study, the GMG project and the Programme for the Study of International Migration

¹⁶⁴ Graduate Institute of International and Development Studies, Geneva
<http://www.graduateinstitute.ch/globalmigration/Home_en.html>

base their approach on the underlying realization that there is no integrated migration global policy and that no United Nations Organization for Migration exists within the UN system. Instead, numerous institutions – international, regional and national, both governmental and non-governmental – cover a number of migration-related issues, but without any global coordination mechanism.

A good case in point is the Office of the UN High Commissioner for Refugees which, as shown on page #, has a mandate for refugee protection, while the Office of the High Commissioner for Human Rights has a mandate for the human rights of migrants, and ILO as yet another organisation includes labour migration in its programmes. What is more, the growing area of irregular migration is not taken into consideration by any institutional mechanism at the global level, but is rather dealt with at national level or through bilateral agreements (see chapter # for a case study of this dilemma). Mixed migration falls into the area of refugee protection only when migrants, asylum seekers and refugees travel together. However, no global instrument has yet been put in place to extend protection to migrants. Indeed, some organisations which deal with migrants on a day-to-day basis, such as IOM and UNHCR, were established at a different historical moment or in a different cultural framework, like the aftermath of the Second World War, focusing predominantly on Europe. Thus, the management of migration is nowadays spread among institutions in which migration is not the primary and sole mandate. However, with the aim of filling the vacuum left by the UN system and by global governance in general, a number of formal and informal institutions have been established, not always cooperating among themselves.

As has been stressed above, the GMG project emphasizes the fact that the institutional fragmentation at the global level corresponds to the fragmentation amongst NGOs. Although NGOs represent civil society and powerful constituencies pressing for the rights of migrants – be they irregular, refugees or asylum seekers, – their role and influence are unfocused and of limited relevance in the area of migration management.

Another specificity which characterizes migration is that, contrary to other global issues such as the environment or human rights, international migration has not been analysed in-depth by political scientists and international relations specialists. Two books by Dr. Alexander Betts (faculty member at the University of Oxford and Director of the GMG project) are an excep-

tion to this rule and are among the most recent publications on this issue.¹⁶⁵ Analysis of the international politics and global governance of migration therefore remains very limited. Both this project and the Programme therefore attempt to understand the nature of migration as a global political issue as well as the reasons of the fragmented approach by international organisations. Both projects being ongoing at the time of writing of this study, a direct comparison of their conclusions and output is not feasible.

8.2. Research Publications

Several examples of published research work carried out by research centres dealing with the issue of migration are discussed below as they touch upon policy issues on a practical application-oriented level.

8.2.1. The Development Research Centre on Migration, Globalization and Poverty (Europe)

The Migration DRC was established as a partnership between institutions in South Asia, the Middle East, Africa and Central and Eastern Europe. The Centre undertakes research, capacity building and dialogue necessary for evidence-based and pro-poor migration policies. Following a focus on the UK Department for International Development (DFID) priority countries in 2008-2009, Migration DRC research has more recently concentrated on Bangladesh and Ghana.¹⁶⁶

The partnership between Southern and Northern institutions is central to the purpose of the DRC, allowing it to explore the relationship between different forms of migration and poverty from Southern perspectives. This partnership should:

- Provide an opportunity for a coalition of Southern partners to develop sustained and in-depth research on migration, globalisation and poverty.
- Strengthen the capacity of all partners in the Centre, through a process of mutual learning, and by providing support to individual partners to strengthen their research and dissemination capacities.

¹⁶⁵ See Betts, Alexander (2009): *Forced Migration and Global Politics*. Wiley-Blackwell. See also Betts, Alexander (2009): *Protection by Persuasion: International Cooperation in the Refugee Regime*. Ithaca: Cornell University Press.

¹⁶⁶ Development Research Centre on Migration Globalisation and Poverty <<http://www.migrationdrc.org>>

- Promote dialogue between Centre partners and a wide range of other Southern and Northern actors.
- Enable a strong Southern voice to be heard in policy and academic debates over the next 5-10 years.

Major Publications

The Development Research Centre on Migration, Globalisation and Poverty aims “to promote new policy approaches that will help to maximize the potential benefits of migration for poor people, whilst minimizing its risks and costs”¹⁶⁷. Beyond that, the Centre publishes a number of different publications including a briefing paper series and a working paper series. From the titles of these series alone, we can already gain an insight into the main issues dealt with, particularly concerning Europe and European countries. The subject areas of articles, books and policy briefs range from migration control in Europe after 9/11¹⁶⁸ to labour migration¹⁶⁹.

8.2.2. The Institute for the Study of International Migration (US)

In the USA, the Institute for the Study of International Migration (ISIM) pursues as its main objective the goal of “applying the best in social science, legal and policy expertise to the complex and controversial issues raised by international migration.”¹⁷⁰ ISIM publishes research papers and policy briefs aimed at policy makers and program implementers as well as articles for academic publication. Two important vehicles for the dissemination of the institute’s research findings and policy briefs are *International Migration*, one of the major peer reviewed journals in migration studies, and the *Georgetown Immigration Law Journal*.

Major Publications

Major publications include work on controlling irregular migration, foreign students and workers, transatlantic perspectives on migration, and climate change and migration. The afore-mentioned journal *International Migration* is a peer reviewed, scholarly journal

¹⁶⁷ Development Research Centre on Migration Globalisation and Poverty, About DRC <<http://www.migrationdrc.org/about/index.html>>

¹⁶⁸ See also Boswell, Christina (2008): “Migration Policy Debates in Europe after 9/11: Securitization, Embedded Liberalism, or the Quest for Legitimation?” In: Givens, Terri E./ Freeman, Gary P./ Leal, David L. (eds.): *Immigration Policy and Security: U.S., European, and Commonwealth Perspectives*. New York: Routledge.

¹⁶⁹ Elrick, Tim/ Brinkmeier, Emilia (2009): “Changing patterns of Polish labour migration after UK’s opening of the labour market? Insights from rural case studies in the voidvodship Opolskie and Swietokrzyskie.” In: Burrell, Kathy (ed.): *Polish Migration to the UK in the 'New' European Union: After 2004*. Aldershot: Ashgate.

¹⁷⁰ Institute for the Study of International Migration (ISIM) <<http://www12.georgetown.edu/sfs/isim>>

devoted to research and policy analysis of contemporary issues affecting international migration. Sponsored by the International Organization for Migration (IOM), it discusses:

- Integration of Immigrants
- Migration and Security
- Migration and Development
- Migration and International Trade
- Psycho-social Well-being of Migrants
- Immigrant Education
- Labour Migration

8.2.3. The Forum for Migration Studies, efms (Europe)

As a further research centre in Europe, the European forum for migration studies (efms) is a scientific institute at the University of Bamberg, Germany. Founded in 1993, its main topics are migration and integration of migrants in Europe. The efms is active in the areas of scientific research, policy counselling, and preparation of expert surveys, evaluation, training, information and documentation.

In the book series “Forum Migration”, which was launched in 1993, the efms publishes core research results and conference volumes. The issues range from migration policies, to integration and trafficking. Publications include Heckmann/ Bosswick (1995) on a comparative perspective in migration policies, Tomei (1997) on European migration policies as caught between the need to cooperate and claims to sovereignty, Tomei (2001) on the European harmonisation of national migration policies, and Neske (2007) on human trafficking and irregular migration.¹⁷¹

8.3. An Outlook on a Number of Controversial Points

8.3.1. The UN System: Inside or Outside

The only organisation which deals with migration at the global level is the International Organization for Migration or IOM. As it is located outside the UN system, its mandate and core

¹⁷¹ Heckmann, F./ Bosswick, W. (eds.) (1995): *Migration Policies: a Comparative Perspective*. Stuttgart: Enke Verlag. Tomei, V. (1997): *Europäische Migrationspolitik zwischen Kooperationszwang und Souveränitätsansprüchen*. Bonn: Europa Union Verlag. Tomei, V. (2001): *Europäisierung nationaler Migrationspolitik. Eine Studie zur Veränderung von Regieren in Europa*. Stuttgart: Lucius & Lucius. Neske, Matthias (2007): *Menschenschmuggel. Deutschland als Transit- und Zielland irregulärer Migration*. Stuttgart: Lucius & Lucius.

activities are limited and lack, among other things, the dimension of protection that is common to UN organisations.¹⁷²

This assessment is borne out by the Report of the Secretary General dated 18th May, 2006, at the Sixtieth Session of the General Assembly, Agenda item 54(c) Para 293 Globalization and Interdependence: international migration:

Within the United Nations system there is no single entity with the mandate of working systematically on the full spectrum of international migration issues. Each of the United Nations organizations constituting the Global Migration Group cover different and sometimes overlapping aspects of international migration and development and each has its governing body. With 116 member States, IOM focuses on a wide spectrum of migration issues but is outside the United Nations system.

With respect to the above statement, a number of arguments cluster around the fact that an international organisation for migration, namely IOM, already exists and that the activities and programmes carried out by IOM do, indeed, extensively cover migration-related issues at global level.

However, as stated above, IOM exists and acts outside the UN system and it is therefore worth recalling the origins of this organisation as they constitute its framework up to the present day. IOM was established in 1951 as the Provisional Intergovernmental Committee for the Movement of Migrants of Europe and mandated to help European governments to resettle and transport the millions of people that had been uprooted by the Second World War. Only in 1989 did it become IOM, changing from a logistic, regional agency into an international migration agency.

As an important foundation, in the Preamble of the IOM's Constitution the contracting parties recognize that migration services are required to "ensure the orderly flow of migration movements", call for cooperation among States and international organisations, and include refugees in their definition and understanding of international migration. The transfer of migrants and refugees¹⁷³ is furthermore referred to in Chapter 1, Article 1.1 (a) and (b) of the Constitu-

¹⁷² The increasingly close relationship between the United Nations and IOM led to the General Assembly to grant Observer Status to IOM on 16th October, 1992 (Resolution A/RES/47/4). On 25th June, 1996, a Cooperation Agreement was signed between the United Nations and IOM. On 13th December, 1996, the General Assembly adopted Resolution A/RES/51/148 which welcomed the conclusion of aforementioned Cooperation Agreement.

¹⁷³ While the task of dealing with migrants and refugees is embedded in IOM's Constitution, in the case of UNHCR dealing with migrants is only considered when refugees travel in mixed migration flows.

tion as the priority service and main purpose of the organisation.¹⁷⁴ In consideration of the fact that the transfer of migrants involves more than the simple logistical transportation of migrants from one place to another; extending to border management, targeted assistance for return migration, passport and visa systems, and the determination of migrant status, it should ideally be managed at a global level.

A further point worth being highlighted is made in Chapter 1, Article 1.3, and states that “the Organization shall recognize the fact that control of standards of admission and number of immigrants to be admitted are matters within the domestic jurisdiction of States”. According to the above statement, IOM delegates to member states the control of admission of immigrants. This is a basic differentiation between UN and non-UN organisations. In fact, it is worth recalling that, in the case of UNHCR, the UN General Assembly, in the terms of its resolution 319 A (IV) of 3rd December, 1949, calls upon governments to co-operate with the United Nations High Commissioner for Refugees in the performance of his functions concerning refugees falling under the competence of his Office, especially admitting refugees to their territories, not excluding those in the most destitute categories.¹⁷⁵

The aforementioned lack of a protection dimension in its mandate, resulting from its location outside the system, underlines the gap between UN and non-UN organisations. As a practical example, consider UNHCR’s Statute which states in its Chapter 2, point 8, that “The High Commissioner shall provide for the protection of refugees falling under the competence of his Office”. The same is announced under the heading of UNHCR – Our Core Values and Goals: “UNHCR is mandated by the United Nations to lead and coordinate international action for the worldwide protection of refugees and the resolution of refugee problems”.¹⁷⁶

Despite the above and as seen in Chapter # relating to the case study, it is evident that even the Convention does not foresee sanctions in the case of a state party disregarding this legal instrument aimed at the protection of refugees.

For IOM to become part of the UN system, it would not only have to undergo a radical transformation, therefore changing its statutes, policy organs, constitution and mandate. It would also require a full agreement to this fundamental change and full support on the part of mem-

¹⁷⁴ IOM Constitution, Chapter 1, Article 1 <<http://www.iom.int/jahia/Jahia/pid/225>>

¹⁷⁵ UNHCR - Our Core Values and Goals <<http://www.unhcr.org/3b66c39e1.html>>

ber states as well as a readiness on the part of the UN system in order to realize the establishment of such a new agency.

Another fundamental consideration should also be brought forward as it will serve to explain the position taken by UN organisations, in particular by those found in the interview chapter of the study (chapter #). The first point in this relates to the ongoing reform at the UN, in particular to the far-reaching proposals of a blue-ribbon advisory group called the High-Level Panel on System-wide Coherence.

The panel report (*Delivering as One*) advances a vision of a harmonized and accountable UN system and is currently under review by Member States. The panel recommended that the activities of multiple UN agencies be consolidated at the country level, with a single budgetary framework where possible, and that leadership on humanitarian and environmental activities be strengthened. It further suggested the creation of both a new funding system and a new institutional architecture to deal with gender issues. The concepts of “consolidation” and of “avoiding duplication” are repeatedly emphasized as the primary objectives of the UN reform. Member states, however, press for complementarity and decline allocating additional funds to inefficient organisations. One of the most enlightening statements of the panel makes a strong point in underlining the following:

There are many reasons why the UN has become fragmented and weak: from a lack of buy-in and mixed messages from members states between capitals and representatives in various bodies, to a proliferation of agencies, mandates and offices, creating duplication and dulling the focus on outcomes, with moribund entities never discontinued. Even when mandates intersect UN entities tend to operate alone with little synergy and coordination between them. The UN system now encompasses 17 specialized agencies and related organisations, 14 funds and programmes, 17 departments and offices of the UN Secretariat, 5 regional commissions, 5 research and training institutes and a plethora of regional and country level structures.¹⁷⁷

A second consideration is closely related to the one above and relates to the lack of acceptance from within the established UN organisations which, even though only in some of their programmes, are dealing with migration in a sectoral manner – including labour migration, mixed migration, migration and human rights, to name but a few. These organisations are, as

¹⁷⁷ United Nations, Secretary-General’s High-level Panel on UN System-wide Coherence in the Areas of Development, Humanitarian Assistance, and the Environment <<http://www.un.org/events/panel/resources/pdfs/HLP-SWC-FinalReport.pdf>>

a matter of fact, geared towards the in-depth vertical implementation of their specific mandates rather than towards general horizontal programmes.

The same way of dealing with a global issue such as the environment can be observed when discussing the UN organisation responsible for environment, UNEP, in comparison to other organisations which, for their mandate of specialized agencies (for example UNIDO and FAO), aim at mainstreaming environment-related issues in all their programmes and projects, either in the industrial or the agricultural sector.

8.3.2. Migration versus Environment

As no UN organisation for migration exists within the UN system, following the example of the environment – which is the responsibility of UNEP within the UN system – a UN entity for migration could hypothetically be established. Because of several reasons which will be analysed in the next paragraphs, no parallel structure can feasibly follow the UNEP blue print.

The second cluster of arguments thus revolves around the fact that UN member states have called for the founding of an umbrella organisation in the global area of environment, namely UNEP. The same, however, also applies to the areas of Human Rights and Refugees, for instance. One of the numerous arguments which were raised during the study in favour of an umbrella organisation for migration was based on the fact that, in relation to other global issues, such as the environment, the umbrella organisation UNEP exists and represents the central entity for all UN programmes related to environment.

It should, however, be recalled that the establishment of such an organisation is the result of an extended process, specifically including a number of conferences where the UN member states had the opportunity to call for an umbrella organisation and reach a consensus on its creation, its policy-making bodies, its secretariat and its financing.

UNEP was established after the 1972 UN Conference on the Human Environment in Stockholm, Sweden, proposed the creation of a global body to act as the environmental conscience of the UN system. In response, the UN General Assembly adopted Resolution 2997 on 15th December, 1972, thereby creating:

1. the UNEP Governing Council, composed of 58 nations elected for four-year terms by the UN General Assembly, responsible for assessing the state of the global environment, establishing UNEP's programme priorities, and approving the budget;

2. the UNEP Secretariat, with its headquarters in Nairobi, Kenya, to provide a focal point for environmental action and coordination within the UN system, headed by an Executive Director, with the rank of UN Under-Secretary-General; and
3. a voluntary Environment Fund to finance UNEP's environmental initiatives, to be supplemented by trust funds and funds allocated by the UN regular budget.

In 1992, the UN Conference on Environment and Development – also referred to as the Earth Summit – was convened in Rio de Janeiro, Brazil, bringing together an unprecedented number of representatives from governments, civil society and the private sector. The purpose of the Earth Summit was to examine progress made since Stockholm and to “elaborate strategies and measures to halt and reverse the effects of environmental degradation in the context of strengthened national and international efforts to promote sustainable and environmentally sound development in all countries”.¹⁷⁸ The Earth Summit generated a tangible sense of optimism that momentum was finally being created for global change. It led to two major conventions – the UN Framework Convention on Climate Change and the Convention on Biological Diversity – and saw the creation of the UN Commission on Sustainable Development. The Rio Declaration reaffirmed the principles first elaborated in Stockholm twenty years earlier, while Agenda 21 presented an action programme for building sustainable development into the 21st century. With its groundbreaking synthesis of social, economic and environmental elements into a single policy framework, Agenda 21 gave new impetus and importance to the work of UNEP.

Significantly, the issue of migration has not gone through a similar process. In fact, virtually no UN conference on migration can be recalled with one exception. Building on the global momentum on migration and development, in September 2006 the United Nations dedicated a General Assembly plenary session to migration issues in the form of a High Level Dialogue on International Migration and Development. This ground-breaking international event for the first time provided a unique opportunity to countries of origin, transit and destination to move towards a concerted approach to migration and development.

8.3.3. Other Possible Legal Instruments

Alternatively, Protocols and Conventions on specific aspects related to migration could hypothetically be initiated by member states to achieve a more effective management of the migra-

¹⁷⁸ United Nations, General Assembly, 68th plenary meeting, 14 December, 1990. The Need to Ensure a Healthy Environment for the Well-Being of Individuals, G.A. Res. 45/94, U.N. GAOR, 45th Sess., Supp. No. 49A, at 178, U.N. Doc. A/45/40 (1990). <<http://www1.umn.edu/humanrts/instree/healthyenvironment.html>>

tion issue. The objectives and aims to be achieved in the area of migration are, however, of a completely different nature.

The third argument once more relates the global issues of environment and migration to each other. In fact, considering that a number of issues related to environment have become the object of Protocols and Conventions, a parallel theory has been developed, namely that - following the example of Multilateral Environmental Agreements (MEA) - Multilateral Migration Agreements could be established.¹⁷⁹

The idea of setting up Multilateral Agreements (Conventions or Protocols) stems from the fact that migration, as most environmental problems, is of a transboundary nature and often a global scope, and can therefore be addressed effectively only through international co-operation.

It should, however, be differentiated between Conventions. On the one hand, Conventions constitute the framework of a given organisation. One among them is the 1951 Convention relating to the Status of Refugees, the key legal document in defining who is a refugee, their rights and the legal obligations of states. Its 1967 Protocol removed geographical and temporal restrictions from the Convention which has guided UNHCR from its very beginning and continues to provide an essential framework of principles for UNHCR's humanitarian activities. On the other hand, there are Conventions, such as the Basel Convention¹⁸⁰ whose Secretariat is managed by the United Nations Environment Programme (UNEP) and which has its own governing bodies.

Another form of MEA is represented by Protocols such as the Montreal Protocol on Substances that Deplete the Ozone Layer and the Kyoto Protocols. The first of the two above examples, i.e. the Multilateral Fund, was established by a decision of the Second Meeting of the Parties to the Montreal Protocol (London, June 1990) and began its operation in 1991. It operates under the authority of the parties to the Protocol, which, every three years, decide its budget, with contributions based on the UN assessment scale. Its operations are overseen by

¹⁷⁹ Global Commission on International Migration (GCIM), Jessica F. Green, Colleen Thouez: Global Migration Perspectives No. 46, September 2005. <<http://www.gcim.org/mm/File/GMP%2046.pdf>>

¹⁸⁰ The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal is the most comprehensive global environmental agreement on hazardous and other wastes. The Convention has 175 Parties and aims to protect human health and the environment against the adverse effects resulting from the generation, management, transboundary movements and disposal of hazardous and other wastes. The Basel Convention came into force in 1992. For more details see <<http://www.basel.int>>.

an Executive Committee comprising seven Article 5 and seven non-Article 5 parties¹⁸¹, with a voting structure designed to ensure that neither donors nor recipients could dominate. In delivering financial and technical assistance, it works together with four multilateral implementing agencies, i.e. the World Bank, UNEP, UNDP and UNIDO, and a number of bilateral agencies. Its day-to-day operations are carried out by a small secretariat, based in Montreal.

While the issues dealt with by an environmental organisation have measurable, quantity-related outputs and results, the same cannot be said for organisations dealing with humanitarian or person-related issues such as migration. In this context, compliance expects state parties to reach exactly calculated quantities by a given deadline - this principle can be observed in the case of the Kyoto Protocol, linked to the UN Framework Convention on Climate Change, which sets binding targets to reduce GHG emissions. The major distinction between the aforementioned Protocol and the Convention is that while the Convention **encouraged** industrialised countries to stabilize GHG emissions, the Protocol **commits** them to do so.

The only example of a Convention related to migration is The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which entered into force in July 2003¹⁸². Its primary objective is to protect migrant workers and their families, a particularly vulnerable population, from exploitation and the violation of their human rights.

UNESCO advocates ratification of this convention by all states and disseminates information about this convention and other legal instruments concerning migrants. Similar to the conventions discussed before, this Convention is also located within an UN organisation and has neither a Secretariat per se nor a funding mechanism or separated governing bodies.

Indeed, UNEP, for its part, has also initiated a ministerial-level intergovernmental process to strengthen environmental governance and reinvigorate global commitment to sustainable development. Beyond this, many international environmental agreements have been established with UNEP's assistance, such as the Montreal Protocol on Substances that Deplete the Ozone

¹⁸¹ In 1990, the Second Meeting of the Parties to the Montreal Protocol, the London Meeting, agrees on the total phase-out of CFCs and halons. The London Meeting also agrees to facilitate the transfer of new ozone-friendly technologies for Article 5 countries and to establish an Interim Multilateral Fund to assist these Parties (developing country Parties whose consumption of ODS is less than the 0.3 kg per person per year specified by Article 5 of the Protocol); Developing country parties to the Montreal Protocol are since then referred to as Article 5 countries, industrialized countries as non-Article 5 countries. See also UNEP The Montreal Protocol on Substances that Deplete the Ozone Layer <http://ozone.unep.org/Publications/MP_Handbook/Section_1.1_The_Montreal_Protocol>

¹⁸² UNESCO International Migration Convention <<http://www.unesco.org/new/en/social-and-human-sciences/themes/social-transformations/international-migration/international-migration-convention>>

Layer, the growing number of treaties that govern the production, transportation, use, release and disposal of chemicals, and the family of treaties that protect global biodiversity. Indeed, member states have reached an agreement on the majority of those areas in the form of a protocol or a convention.

8.3.4. State of the Art

Two UN instruments exist which are, at different level and for different constituencies, responsible for migration. The first, the Global Migration Group (GMG), gathers and connects UN and non-UN organisations, while the second, the UN High Level Dialog on Migration and Development (HLDMD) acts as the official UN Forum where member states meet to discuss migration-related issues. The outputs achieved are, however, rather limited when seen within the broad framework and expectations of the issue of migration.

Having discussed the two positions commonly taken towards the management of migration at a global level, the third one will take into consideration the two instruments which have been created in 2006 by the UN Secretary General: the Global Migration Group for UN agencies and the High Level Dialog on Migration and Development for member states.

Reference is made again to the crucial Report of the Secretary General (already quoted at the beginning of this chapter), dated 18th May, 2006, at the Sixtieth Session of the General Assembly, Agenda item 54(c) Para 293 Globalization and interdependence: international migration:

Within the United Nations system there is no single entity with the mandate of working systematically on the full spectrum of international migration issues. Each of the United Nations organizations constituting the Global Migration Group cover different and sometimes overlapping aspects of international migration and development and each has its governing body. With 116 member States, IOM focuses on a wide spectrum of migration issues but is outside the United Nations system.

Three points should be underlined in this respect and elaborated upon:

- 1) There is no single entity with the mandate of working systematically on the full spectrum of international migration issues.
- 2) Each of the UN organisations constituting the Global Migration Group covers different and sometimes overlapping aspects of international migration.
- 3) IOM focuses on a wide spectrum of migration issues but is outside the United Nations system.

While the first and third points simply describe the migration landscape at the global level, within and outside the UN system, the second point is worth being taken up as it is a foundation for the main conclusions. Despite the fact that the Global Migration Group was established by the Secretary General himself, a critical appraisal emerges in his statement inasmuch as he describes the way UN organisations in the GMG cover the issue of migration as “overlapping”. Chapter # of this study has already elaborated on the membership in the GMG with respect to UN agencies’ mandate and/or their participation in the Group. The relationship between the High Level Dialogue on Migration and Development, led by member states, and the GMG has also been discussed previously (Chapter..., para....). A third argument about the work of the GMG relates to its Chairmanship which covers a period of six-months and is based on agencies’ rotation.

Looking at the GMG’s expected outputs for the first semester of the year 2010, a semester which was led by UNDP, the objectives appear – understandably – limited due to the short time span available. They include:

a) Handbook on Mainstreaming Migration into Development Planning¹⁸³

The handbook is currently a joint initiative by IOM, ILO, UNDP and UNICEF and could be enhanced though buy-in from the GMG as a whole. The Chair during the first semester (UNDP) proposes to open up ownership of the handbook to the GMG as a whole by consulting all member agencies on the final draft of the handbook early in 2010 with the aim of making it *the* tool of reference for governments, the international community and civil society stakeholders.

b) GMG Practitioners Symposium

The proposed GMG practitioners symposium is an initiative stemming from UNITAR’s chairmanship. The symposium will be implemented in close collaboration with the other members of the GMG Troika (UNITAR, OHCHR) and with the support of government funders. The two-day event aims to advance partnerships and the sharing of good practices among national migration stakeholders (at the expert level) on the topic of “Overcoming barriers: Building partnerships for migration and human development”.

c) Joint recommendations/guidance for “Extended Migration Profiles”

¹⁸³ IOM (2010): *Mainstreaming Migration into Development Planning: A Handbook for Policy-makers and Practitioners*.

The European Commission's "Migration Profiles" (MPs) initiative is likely to feature prominently on the GFMD's agenda in 2010, both through its Ad hoc Working Group on policy coherence, data and research, and at the Forum meeting in Mexico. The EC has signalled its interest in working with the GMG on the template for so called 'extended' MPs that would give greater regard to the development linkages of migration at the country level.

d) Working group on mainstreaming migration as "One UN"

Between 2010 and 2013, more than ninety countries will establish new UN Development Assistance Frameworks. It is thus a timely moment for the GMG to start collective thinking about guidance that could be provided to UN Country Teams on how to include migration and development in the UNDAF framework with a view to supporting the mainstreaming of migration in national development policies.

The four outputs, ranging from a handbook to a seminar, guidance and a working group do not seem likely to contribute effectively to the overall management of migration.

Each agency is requested to produce quantity (an average of four), rather than quality outputs which, for being strictly related to the GMG work and not to the respective agency's mandate, are necessarily diluted to fit the Group's given framework. Indeed, they are far away from the announced ambition, namely, to promote the wider application of all relevant international and regional instruments and norms relating to migration, and to encourage the adoption of more coherent, comprehensive and better coordinated approaches to the issue of international migration.¹⁸⁴

Regarding the framework of the existing UN entities dealing with migration, a statement by the SG on the establishment of the Global Migration Group should be recalled, in which he pointed out the following:

"There is no consensus on making international migration the subject of formal, norm-setting negotiations. There is little appetite for any norm-setting intergovernmental commission on migration. But, the Forum would be the opposite of that. It would be informal, voluntary, and consultative. Above all, it would not make binding decisions. The Forum would allow us to build relationships of trust, and to bring together the best ideas that different countries have developed: facilitating remittances; engaging Diasporas; exploring new ways to reduce poverty; building educational partnerships; and so on. Finally, it would show that Govern-

¹⁸⁴ Global Migration Group (GMG) <http://www.globalmigrationgroup.org/what_is_gmg.htm>

ments are now willing to address this complicated, volatile issue in a thoughtful, constructive fashion. The Forum must be led and overseen by States. But the United Nations System stands ready to support it.”¹⁸⁵

A central hypothesis is that the global governance of migration need not be managed by a single UN organisation in order to reach sustainable results. It is thus antithetic to the thesis that, following the example of governance of other global areas (such as the environment and human rights), migration must be managed by one “umbrella” organisation rather than being spread across a number of UN and non-UN organisations in order to reach desirable results. As the privileged instrument for inter-agency coordination in the area of migration, the Global Migration Group (GMG) aims at coordinating fourteen organisations in their work of implementing programmes related to an equal number of migration issues. It cannot be defined an organisation because it lacks a secretariat, a fixed staff and all other essential features belonging to an UN programme or UN specialized agency. Still, it ensures continuity at least at the level of those intergovernmental agencies which have mainstreamed migration into their mandates.

As far as the High-level Dialogue on International Migration and Development is concerned, the session of the United Nations General Assembly should be recalled.¹⁸⁶ This first-ever plenary session of the UN General Assembly on migration issues opened 14th September, 2006, at the United Nations in New York, with a focus on ways to maximize the development benefits of migration and to reduce difficulties. “We are only beginning to learn how to make migration work more consistently for development,” Secretary-General Kofi Annan stated in a report prepared in anticipation of the meeting, and continued “Each of us holds a piece of the migration puzzle, but none has the whole picture. It is time to start putting it together.” Four years after their establishment, both the GMG and the HLD still to hold only a piece of the migration puzzle, as stressed in chapter #, referring to the Fourth Meeting of the Global Forum on Migration and Development (GFMD).¹⁸⁷

Preliminary consultations provided the Chair of the Forum with thematic elements that could be the essential components of the Mexico GFMD 2010 agenda. The operative key words for this process are: *shared prosperity/shared responsibility; partnerships; human development;*

¹⁸² The Secretary-General’s address to the High-level Dialogue of the General Assembly on International Migration and Development, New York, 14th September, 2006. <<http://www.un.org/migration/sg-speech.html>>

¹⁸⁶ UN High-level Dialogue on International Migration and Development <www.un.org/migration/index.html>

¹⁸⁷ The Fourth Meeting of Global Forum on Migration and Development was held in Puerto Vallarta, 9-11 November, 2010.

and policy and institutional coherence. Keeping these considerations in mind, Mexico proposes as the central theme of the Fourth GFMD Meeting: “Partnerships for migration and human development: shared prosperity – shared responsibility.” The Chair thus intends to foster a debate on partnerships and synergies among governments, international organisations, civil society and the private sector to address the causes and challenges of migration as well as their interrelationship with development. Considering the scale of migration today, its close links with development, and the complex effects of these links over recent years, the meeting in Mexico seeks promote synergies among all stakeholders. These can help the participants move forward with appropriate actions to address the challenges and opportunities of international migration in a context of international cooperation, shared responsibility and respect for human rights.

8.3.5. A Lack of Partners

In the absence of a single “umbrella” UN organisation responsible for migration, NGOs have no direct counterpart which would provide a forum for discussion and gather them on a regular basis to set up joint cooperation programmes for a common approach to migration. Biodiversity, climate change and global warming, environmental issues, free trade, health issues, human population, human rights issues, migration, natural disasters, nuclear weapons, sustainable development, world hunger and poverty – all of these are long term problems of global concern which, today, are characteristic problems of “international relations”, mainly but not exclusively dealt with at the global level.

Powerful NGOs such as Greenpeace, Worldwide Fund for Nature, and Friends of the Earth operate in the environmental arena. The same applies to Amnesty International and Human Rights Watch operating in the area of human rights. Those NGOs have achieved a high degree of public visibility in the course of the last decades, following their establishment. A notable feature they share is the time of their creation, namely the 60s and 70s. The first decade of this period was marked by revolt against the conservative norms of the time, the mainstream liberalism, and in particular the high level of materialism which was so common during the era; the second decade was influenced by the rapid pace of societal change and the aspiration for a more egalitarian society. Significantly, the founding of these NGOs in the area of environment followed the creation of humanitarian organisations in the post-war period, but anticipated the establishment of UNEP in 1972.

These NGOs have demonstrated on several occasions that their intervention may strongly influence national and international public opinion, achieve objectives which are not easily

achieved by international organisations, and shape policy at a global level. They have moreover proven able to implement a wide range of strategies and tactics. Influencing policy through media and online outreach, grassroots mobilization and alliance development, they raise awareness and change attitudes, promote social and policy initiatives. The noted absence of a leading NGO in the area of migration thus represents a significant dilemma. The following closer look at some of the most prominent NGOs may help to explain why no comparable NGO has emerged in the area of migration and – even more importantly – whether this is related to or even a result of the absence of a counterpart “umbrella” organisation within the UN system.

1) Amnesty International

Ever since it started campaigning in 1961, AI has worked around the globe to stop the abuse of human rights. It has more than 2.2 million members, supporters and subscribers in over 150 countries and territories, in every region of the world. The following short history highlights many of the campaigns and actions AI has undertaken and key human rights developments.

British lawyer Peter Benenson launched a worldwide campaign, ‘Appeal for Amnesty 1961’ with the publication of a prominent article, ‘The Forgotten Prisoners’, in *The Observer* newspaper. The imprisonment of two Portuguese students, who had raised their wine glasses in a toast to freedom, moved Benenson to write this article. His appeal was reprinted in other papers across the world and turned out to be the genesis of Amnesty International.

The first international meeting was held in July 1961, with delegates from Belgium, the UK, France, Germany, Ireland, Switzerland and the US. They decided to establish “a permanent international movement in defence of freedom of opinion and religion”.¹⁸⁸

A small office and library, staffed by volunteers, opened in Peter Benenson’s chambers, in Mitre Court, London. The “Threes Network” was established through which each Amnesty International group adopted three prisoners from contrasting geographical and political areas, emphasizing the impartiality of the group’s work.

2) Human Rights Watch

The history of HRW began in 1978 with the creation of Helsinki Watch, designed to support the citizens groups formed throughout the Soviet bloc to monitor government compliance with the 1975 Helsinki Accords. Helsinki Watch adopted a methodology of publicly “naming

¹⁸⁸ Amnesty International, The History of Amnesty International <<http://www.amnesty.org/en/who-we-are/history>>

and shaming” abusive governments through media coverage and through direct exchanges with policymakers. By shining the international spotlight on human rights violations in the Soviet Union and Eastern Europe, Helsinki Watch contributed to the dramatic democratic transformations of the late 1980s.¹⁸⁹

Americas Watch was founded in 1981 and in rapid succession in the 1980s, Asia Watch (1985), Africa Watch (1988), and Middle East Watch (1989) were added to what was then known as “The Watch Committees.” In 1988, the organisation formally adopted the all-inclusive name Human Rights Watch.

New human rights challenges in the 1990s led to important innovations in the work of Human Rights Watch. Its reporting on the 1991 Persian Gulf War for the first time addressed violations of the laws of war in bombing campaigns. Advocacy targets were expanded to give greater attention to the United Nations and regional bodies such as the European Union.

3) Greenpeace

In 1971, motivated by their vision of a green and peaceful world, a small team of activists set sail from Vancouver, Canada, in an old fishing boat. These activists, the founders of Greenpeace, believed a few individuals could make a difference.

Their mission was to “bear witness” to US underground nuclear testing at Amchitka, a tiny island off the West Coast of Alaska, which is one of the world’s most earthquake-prone regions. Amchitka was the last refuge for 3000 endangered sea otters, and home to bald eagles, peregrine falcons and other wildlife. Even though their old boat, the Phyllis Cormack, was intercepted before it got to Amchitka, the journey sparked a flurry of public interest. The US still detonated the bomb, but the voice of reason had been heard. Nuclear testing on Amchitka ended that same year, and the island was later declared a bird sanctuary. Today, Greenpeace is an international organisation that prioritises global environmental campaigns. Based in Amsterdam, the Netherlands, Greenpeace has 2.8 million supporters worldwide and national as well as regional offices in 41 countries.¹⁹⁰

4) Friends of the Earth International

This NGO was founded in 1971 by four organisations from France, Sweden, England and the USA. Today’s federation of 77 groups grew from annual meetings of environmentalists from

¹⁸⁹ Human Rights Watch <<http://www.hrw.org>>

¹⁹⁰ Greenpeace International <<http://www.greenpeace.org/international>>

different countries who agreed to campaign together on certain crucial issues, such as nuclear energy and whaling.¹⁹¹

In 1981, a small International Secretariat was set up, and in 1983 an Executive Committee was elected. In 1986, the annual meeting was hosted for the first time by an organisation from the South, Sahabat Alam Malaysia/Friends of the Earth Malaysia. In 1985, a European coordinating body was established with an office in Brussels, Friends of the Earth Europe; in 2001, Latin American and Caribbean groups formed their own regional coordinating body; and in 2006 Friends of the Earth groups in Africa formally established a coordinating body.

The hypothetical position based on the question whether the existence of an UN umbrella organisation is the pre-condition for the development of strong and visible NGOs cannot be easily answered. The same is true of the reverse hypothesis: whether globally-active, well established NGOs could be the pre-condition for the founding of a UN central entity on migration. Both questions will be used to formulate the conclusions of this study on the following pages.

8.4. Final Thoughts and Outlook

Characterizing the relation between international organisations and migration as a “fragmented approach” constitutes the emphasis in the title of this study. It originates, as the study showed, from the diverging positions taken in international circles when discussing the issue of migration. In brief, the above-mentioned opposite positions can be subsumed into five clusters:

- a) UN versus non-UN organisation
- b) Umbrella organisation, like UNEP, or shared responsibility i.e. GMG
- c) One single, central entity or more legal framework instruments (protocols and conventions), each covering specific sub-issues
- d) Joint bodies encompassing international organisations and member states or separate entities for each actor, i.e. GMG and UN HLD
- e) The third actor, the NGOs, as pre-condition for or consequence of the existence of a migration-related UN organisation

¹⁹¹ Friends of the Earth International <<http://www.foei.org>>

The path followed in this study has its point of departure in a discussion of the concepts of governance and global issues, comparing domestic with international jurisdiction and, also in this context, positioned the two existing instruments that have been created within the UN system for the management of migration. By way of introducing the case study, the thesis then focused on the legislative framework dealing with migrants and refugees as well as one specific aspect of migration, that of irregular migration, which is at the centre of the events analysed in the case study. To complement the theoretical aspects of the relationship between migration and international organisations, a number of interviews were carried out to provide “inside” views on relevant issues. Finally, in drawing conclusions, attention was dedicated to a visibly lacking partner, missing from the global community of NGOs, whose fragmentation, as underlined, reflects the overall situation of migration management at the global level.

As final considerations, a number of recommendations can be derived from the in-depth review of the global framework in which migration-related bodies and organisations operate today. First of all, closer and more coordinated synergy and cooperation between the major actors involved, including both UN organisations and member states, can only be of benefit for the issue of migration. The political dimension embedded in the decision making of member states as well as the practice-oriented activities of UN organisations could be better managed by an experienced, centrally-located institution, relying on its secretariat, staff, policy making organs, and budget. If such an institution is and will not be initiated or supported by UN constituencies, strengthening existing instruments seems to be the only feasible path to follow.

Second, the question of NGOs must remain somewhat open. With respect to the GMG and the UN HLD, the GMG does not include any specific linkage with NGOs among its activities. UN HLD has invited a number of NGOs to attend its conferences. However, they only have the status of Observers and are grouped with other representatives of Civil Society.

Third, it is worth underlining that being task-oriented and driven by people with a common interest, NGOs perform a variety of service and humanitarian functions, bring citizen concerns to Governments, advocate and monitor policies and encourage political participation through provision of information. They provide analysis and expertise, serve as early warning mechanisms and help monitor and implement international agreements. The lack of such a global entity in the area of migration deprives the actors involved in migration-related activities of a strong, motivated partner which would complement their programmes with a broader outreach into civil society, thus obtaining better final results towards the objectives at stake.

The final point by which to conclude the study should be to inspire all concerned with the management of migration and to underline the need for a three-pronged, cooperative approach by all international organisations dealing with migration. This includes since 2006 members of the GMG, all UN member states, since 2006 the participants of the UN High Level Dialogue on Migration and Development and, last but not least, also those NGOs active in migration-related issues at an international level.

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Appendix A: Questions for the Expert Interviews

1. From your professional perspective, would you consider migration a matter to be dealt with at a national level?
2. If so, do you believe accordingly that it should fall within domestic jurisdiction as some states, within international fora, have claimed?
3. Or would you rather define migration as a global issue requiring a global solution (like, for example, the environment, human rights and poverty)?
4. From within your organisation, do you consider that migration is already dealt with in a comprehensive, efficient way, which allows a coherent management of this issue? Or is this issue dealt with, at the global level, in a discontinuous way?
5. Would you have suggestions for improvement either within your own organization or in relation to other organizations?

Concluding question:

How do you assess the work of the UN and IOM in particular in conjunction with migration?
Do you see it as limited to specific aspects or as broad and comprehensive?

Appendix B: List of Organisations Interviews

All interviews were conducted in the course of 2010. Listed by name, position and place of the interview are the following interview partners:

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ABSTRACT

Migration: a global issue without a global forum. Why it does not have the place it deserves.

At the beginning of the 21st century, migration represents a global phenomenon that holds considerable potential for social, economic and political development, while holding equally substantial risks for those who migrate. The management of migration is or rather should therefore be a key interest for global organisations such as the UN. Yet, the international approach to the global management of migration remains inexplicably fragmented to date.

The approach taken in the study is informed by the following research questions:

- 1 a) Who are the stakeholders, and what are their roles, their current performance and policy impact, that are involved in managing the global migration process?
- 1 b) Does a central entity or an umbrella organisation exist at the global level, meaning primarily within the UN system, which has the sole mandate of managing migration and which is both considered and acknowledged as the main authority on all relevant issues related to migration?
- 2) Could sufficiently flexible legislative instruments, i.e. international regimes, contribute to solving the most pressing of the emerging problems related to migration?

First of all, chapter 1 establishes the framework of the first issue dealt with in the study, namely that of international organizations, by way of discussing the theory of state sovereignty on the one hand and of global governance on the other.

Chapters 2 and 3 then compares migration, as the central phenomenon discussed in the study, to other global issues of the 21st Century, such as the environment and human rights. Its management at different levels (national, regional and international) is sketched in order to complete the general picture.

The core question with respect to international instruments created to cover the migration issue within the UN system is answered in Chapter 4, followed by a detailed discussion of migration-related definitions and legislation in chapter 5. This discussion leads to and informs the case study presented in chapter 6 in order to provide an answer to the second leading research question.

Insights gained through expert interviews conducted with representatives of leading organizations dealing with migration complement the study in chapter 7, providing a basis for final conclusions in chapter 8 that shed some light on the unjustifiable lack of attention by international organisations towards an important social, economic, human and political issue.

ABSTRACT

Internationale Organisationen und Migration: ein globales Thema ohne globales Forum. Ursachen und Auswirkungen seiner Vernachlässigung. [International Organizations and Migration: a global issue without a global forum. Why it does not have the place it deserves.]

Zu Beginn des 21. Jahrhunderts stellt Migration ein globales Phänomen dar, das einerseits bemerkenswertes Potential für gesellschaftliche, wirtschaftliche und politische Veränderung aufweist, andererseits aber auch ebenso beachtliche Risiken für Migranten und Migrantinnen selbst birgt. Das Management von Migration ist oder besser sollte daher eine Schlüsselstellung für globale Organisationen wie die UN einnehmen. Nichtsdestotrotz ist der internationale Zugang zum Migrationsmanagement bis dato unerklärlich fragmentiert und gespalten.

Der Zugang, den diese Dissertation zu der oben benannten Thematik nimmt, basiert auf der folgenden Fragestellung:

- 1 a) Wer sind die Akteure bzw. Teilhaber im Management des globalen Migrationsprozesses und was sind ihre Rollen, ihre gegenwärtige Performance und die Auswirkungen ihrer Entscheidungen?
- 1 b) Existiert eine zentrale, übergeordnete Organisation oder Organisationseinheit auf globaler Ebene, die über das alleinige Mandat des Migrationsmanagements verfügt und als wichtigste Autorität in allen relevanten Migrationsfragen gesehen und anerkannt wird?
- 2) Können ausreichend flexible Legislativinstrumente, d.h. internationale Abkommen, zur Lösung der dringlichsten Probleme im sich laufend verändernden Bereich der Migration beitragen?

Zunächst wird in Kapitel 1 der theoretische und konzeptuelle Rahmen etabliert, in dem der ersten Fragestellung der Dissertation – d.h. jener, die internationale Organisationen betrifft – nachgegangen wird. Hierzu werden einerseits Theorien zur staatlichen Souveränität und andererseits Diskussionen über Global Governance herangezogen.

Kapitel 2 und 3 widmen sich anschließend dem Vergleich zwischen Migration bzw. dem Management von Migrationsphänomenen und anderen globalen Themen des 21. Jahrhunderts wie etwa Umweltschutz und Menschenrechte. Aspekte des Managements dieser globalen Phänomene auf unterschiedlichen Ebenen (national, regional und international) werden umrissen um ein vollständigeres Bild dieses facettenreichen Feldes zu erhalten.

Der zweiten leitenden Fragestellung wird in Kapitel 4 in Hinblick auf internationale Legislativinstrumente nachgegangen, die geschaffen wurden um das Thema Migration innerhalb des UN Systems abzudecken. Kapitel 5 ergänzt diese Perspektive um eine detaillierte Diskussion von migrationsrelevanten Schlüsselbegriffen, Definition und Gesetzen. Diese Diskussion stellt gleichzeitig die Basis für die in Kapitel 6 präsentierte Fallstudie dar, die einen weiteren Beitrag zur Beantwortung der Fragestellung liefert.

Einsichten, die bei Experteninterviews mit Mitarbeitern von maßgeblichen mit Migration beschäftigten Organisationen gewonnen wurden, ergänzen den Gesamtrahmen der Studie in Kapitel 7. Auf Basis aller vorangegangener Kapitel zieht Kapitel 8 Schlussfolgerungen und ergründet den ungerechtfertigten Mangel an Aufmerksamkeit für Migration als bedeutendes gesellschaftliches, ökonomisches, humanitäres und politisches Problemfeld seitens internationaler Organisationen.

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2001, Diploma European Environmental Law, University Koblenz, Germany

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1980-2007, VIENNA Over 25 years of work experience as UN diplomat (UNIDO Deputy Director, Multilateral Environmental Agreements Branch) in a multilateral, multicultural context

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University at Sea, Lifelong Learning, USA: Economic Development in South East Asia, Vietnam, 2010