Global Governance of Migration and the Migrants' Rights Movement

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WORK IN PROGRESS – NOT FOR CITATION

Introduction

The past few years have seen the ascendancy of international migration on the global policy agenda. Much in contrast to other issue areas which are subject to global regulation such as trade (WTO), finance (IMF, WB), health (WHO) and intellectual property (WIPO), the movement of people is not governed by a formal international regime (except for refugees). States (especially major destination countries) remain extremely reluctant to be seen to compromise 'sovereign' control over inflows of non-citizens[1]. Recently, however, there has been an increased level of activity surrounding the governance of economic migration at the global level (hereafter: simply "migration governance"): many intergovernmental organizations are now actively involved in migration from their respective areas of expertise or interests, several international commissions and state-led initiatives have placed migration governance on the global policy agenda, and a number of institutions for inter-state dialogue and cooperation have been established at the regional and global levels. This had the result of an emerging system of migration governance which is to date, however, highly fragmented and incoherent.

The general aim of this paper is to examine the obstacles and opportunities provided by the emerging, yet fragmented, migration governance system for the rallying around of non-state actors in one form or another to assess their level of influence over shaping the direction and content of policy making at the global level. In this sense, we take a "bottom-up" perspective on global governance. Our specific interest is with the strategies employed by those non-state actors which are advocating for migrants' human rights and we refer to those as "civic organizations" (cf. Diani 2003). It has been suggested that migration is "the single greatest behavioral risk factor for human rights abuse in the contemporary world" (Brysk 2005: 10). The specific sub-group of migrants we are interested in, economic migrants – especially the low-skilled, and/or irregular who constitute the majority of all economic migrants – are subject to discrimination of various kinds due to their position in the labour market, their legal status, their gender and ethnicity. Among the exploiters are employers, landlords, recruitment agencies, smugglers – and the state[2]. At the same time, the pressure to out-migrate has augmented due to various factors such as lack of employment opportunities in the origin countries (exacerbated by the various current crises) and the spreading of a culture

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[1] This is also reflected in international law: individuals have the right to leave and the right to return to their country of birth but there is no commensurate right to enter and remain in a country of choice.

[2] Filipino activists, for instance, have for long criticized the aggressive "labour export" policies that have been promoted by the Philippine government since the 1970s for "milking" the many migrants (depending on the source, the Philippines are among the three top emigration countries in the world with their nationals dispersed the widest to over 150 destinations).

of migration (where overseas employment is seen as an important element to boost development 'at home') (Hujo and Piper 2010). This indicates that rights issues for migrants start already before the crossing of borders, pertaining to the causes and consequences of migration.

In this context, our paper probes into the kind of strategies civil society actors are using to promote migrant rights and to influence policy making at the global level. We see these strategies as being mainly of two kinds: 1. normative (i.e. the discursive level, to achieve a certain, and possibly new, understanding of what migrant rights are all about) and 2. agential (that is, collective agency of organizations which aim to gain access to global institutions and processes of policy making). The distinction between the two is analytical, in reality they often overlap as advocacy groups struggle for inclusion (agential strategy) in order to affect policy formulation (normative strategy). To probe deeper into the nature of these strategies, we develop an analytical framework on the basis of two overlapping strands of theory: constructivist international relations and social movement theory.

A note on the concept of 'rights'

With regard to the concept of migrants' rights, Bryan Turner (2006) and other social scientists (as opposed to legal scholars) have commented that the study and analysis of rights has predominantly been the province of legal scholars, philosophers, political theorists, leaving other social sciences (or specific strands within them) comparatively speaking rather silent on this subject. But social scientific perspectives can make crucial contributions to our understanding of rights as an expression of a socially constructed reality and thus rights are subject to redefinition and re-evaluation over time and space. Conceptualizing grievances as 'rights' and the actual claiming of rights are actions which derive from the changing aspirations of people, and such change is typically induced by claims making mechanisms based upon freedom of speech (discursive element) and freedom of association (organizational element) (Nett 1971). In other words, a social science perspective on rights draws our attention (amongst other) to the importance of collective mobilization in ensuring the promotion and shaping of human rights discourse and protection, i.e. through 'bottom up' processes involving political activism by civic organizations (Grugel and Piper 2009, Piper 2009). This in turn points to the vital role played by organizations and their networks as vectors of collective agency and action.

Rather than providing a legalistic approach, we therefore take a meso level perspective in addressing the subject of migrant rights – a perspective which views rights as a product of political struggle and, thus, as a 'work-in-progress' phenomenon rather than a final product (cf. VeneKlasen et al. 2004)[3]. In this sense, our discussion builds on Nett's understanding of rights as "the primary conditions of acting – to speech, motion, expression, being heard, represented[4]…." (1971: 218). Such approach to rights, therefore, involves a process of politicization, the set-up of rights-claiming organizations and ultimately rights-getting mechanisms. This perspective allows us to investigate the opportunities and obstacles to the promotion of a rights-based approach to migration governance (Grugel and Piper

[3] To become effective, rights need to be guaranteed by someone, i.e. someone (usually states) must be responsible. This has been extensively covered by others (eg. Kuper 2005). As we focus on the activism side of rights in this paper, we will not deal with the aspect of responsibiliy to deliver rights here.

[4] Arguing that rights need to be conceived apart from the law, Nett distinguishes 'rights' from 'law' because the latter often works as an instrument of privilege, whereas rights discourse is used by social movements, such as the civil rights and the women's movements, in order to challenge law.

forthcoming). Given the spatial nature of migration and the spatial mobility of migrants, such organizations have to, and in fact do, respond in their political activism equally across space and place, that means they operate within the transnational sphere.

The structure of the paper is as follows: we begin by outlining the institutional developments towards global governance of migration. Then, we turn to the conceptualization of transnational advocacy and present the main players within the migrant's rights movement. Thereafter, we in turn explore what we have chosen to call the "normative strategies" and the "agential strategies" of actors within the migrant's rights movement. The first focuses mainly on norm entrepreneurship and the second on the efforts to change the terms of inclusion into governance institutions. Throughout, we use empirical examples for illustrative purposes but we do not provide an in-depth case-study. Brief concluding remarks end the paper.

Emerging global architecture of migration governance

In contrast to other subject areas in international relations, migration is characterized by a comparatively low level of institutionalized international cooperation. States are central actors in migration governance, and have so far been reluctant to create binding forms of cooperation at the global level. For instance, there is no single UN organization devoted exclusively to economic migration as opposed to refugee or forced migration (Tamas and Palme, 2006).

In the field of migration, states retain ultimate power in deciding whom to allow access and whom to keep out (even if in reality many migrants defy this by leaving and entering "illegally"), and it is has often been commented upon that migration is one of the last bastions subject to primarily national regulation (although regional regulation, as in the case of the EU and its harmonization drive, qualifies this somewhat).

Yet, from around the year 2000 onwards, migration suddenly figured "everywhere one looked, in the UN system and beyond" (Newland, 2005, p. 1). Kofi Annan mentioned in his reform proposal for the United Nations the need to "take a more comprehensive look at the various dimensions of the migration issue" (United Nations, 2002b, p. 10). On his initiative, the independent Global Commission on International Migration (GCIM) was established in 2003, mandated to place migration on the global agenda, to identify gaps in existing policy-making to investigate the linkages between migration and other issues, and finally to offer recommendations on how to improve the governance of migration(GCIM, 2005). Part of the UN's and GCIM's information gathering and 'mood testing' activities were so-called Regional Consultative Processes (RCPs) which were established in the late 1990s around the globe. The RCPs are informal and non-binding fora for consultation and exchange of best practices for governmental officials from geographically defined member states (Klein Solomon et al, 2008). Apart from the GCIM, two other global commissions have contributed to drawing attention to migration: the Commission on Human Security (CHS, 2003), and the World Commission on the Social Dimensions of Globalization (ILO, 2004a).

A few ad hoc independent initiatives have also aimed at improving migration policy and fostering cooperation between states in different regions. One is the state-owned Berne Initiative, which was launched by the Swiss government and worked by means of regional consultations. Its main outcome, the *International Agenda for Migration Management*, consists of 'common understandings' as well as 'effective practices' (IAMM, 2004).

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

In 2007 the Global Forum for Migration and Development (GFMD) was arranged for the first time in Brussels. Its objective is to "make new policy ideas more widely known, add value to existing regional consultations, and encourage an integrated approach to migration and development at both the national and international levels" (United Nations, 2006c). Following intense disagreements on its organizational make-up, the GFMD has been established outside of the UN system as a compromise. It is characterized as a voluntary, informal and state-led arena for policy-makers to discuss, exchange information and express ideas concerning migration and development, and it is hence not intended to take binding decisions (Matsas, 2008). Nevertheless, the belief is that the Forum will result in shared understandings on migration globally (GFMD, 2007, p. 158). After its first meeting in Brussels, the second took place in Manila in 2008 and the third in Athens in 2009. The fourth will be in Puerto Vallarta, Mexico, in 2010; the venue of the fifth is to date undecided with Spain having pulled out due to its economic crisis, and the last before the next UN High Level Dialogue on migration and development will be held in Morocco in 2013 at which the future of the Forum will be discussed.

These developments since 2000 have resulted in migration being approach from two main, and interconnected, discursive frames and concomitant policy prescriptions: 1. management of migration (aimed primarily at controlling the flow of people under regular policy schemes to prevent irregular migration) and 2. the renewed interest in the link between migration and development (with specific focus on the issue of remittances and brain drain/brain gain).

As noted above, there is no UN migration organization at the centre of global migration governance, the way that the UNHCR is for refugees and the World Trade Organization is for trade. Although the International Organization for Migration (IOM) is exclusively dedicated to migration, being an intergovernmental organization it stands formally outside the UN system and mainly works as a service organization for states. Over the past ten years, an increasing number of international organizations have re-engaged or become newly involved with migration from their respective perspectives and priorities. The ILO has among these the longest history in its role as standard setter at the workplace, including migrants in their role as workers. Its Migrant Section has, however, had its ups and downs over the years and is compared to other sections rather small with regard to staff and budget (Standing 2008). Then, there is, the World Health Organization (WHO) which is concerned with the migration of health workers (in addition to migrants as carriers of health problems); the UNHCR which is mainly concerned with refugees but increasingly acknowledges economic migrants as part of "mixed migration" flows; UNDP specialized in development issues involved in migration; and finally UNIFEM which has carried out important work on empowering migrant women, albeit in a geographically uneven manner, with strong priority given to Asia). Since 2006, there has been certain coordination between 14 major agencies in the form of the so-called

‘Global Migration Group’ but the institutional structure still lacks a clear centre, as lamented by some commentators (e.g. Matsas, 2008). In addition, a number of UN agencies have written reports on aspects of migration, such as UNFPA on gender and migration (2006) and UNRISD has worked on social policy issues relevant to the context of migration as well as gender (2005; Hujo and Piper 2010).

The above examples of the work by various commissions and intergovernmental initiatives and organizations show that migration is now officially and explicitly acknowledged as a global phenomenon (rather than ignored or tacitly tolerated), as “here to stay” with all the implications for origin and destination countries as well as for the migrants themselves. What these initiatives first and foremost aim at is to bring together governments from both ends of the migration chain to address the (what is typically perceived as problematic) aspects of migration. As mentioned above, this is done under the emerging discursive framework of ‘managing migration’ as well as ‘managing poverty’ (in the form of the ‘migration-development’ link that is to address especially the push factors of migration) whereby the subject of migrant rights is clearly sidelined (Kalm 2008; Piper forthcoming), an issue we return to below. We should point out here, however, that parallel to the state-led emergence of migration governance, there are also efforts to revive the protection deficit in current migration policy making. One such example was the ILO’s attempt at its annual congress in 2004 to promote a rights-based approach to migration which, it however only achieved in the form of a non-binding agreement. Another is the so-called ‘The Hague Process’, which included both government representatives, international and non-governmental organizations in its consultations and produced a final document known as the *Hague Declaration* (United Nations, 2002a) which consists of 21 principles for migration governance (Martin, 2005, p. 34-37). Again, this Declaration constitutes an example of ‘soft governance’.

Actors and networks: the migrants’ rights movement

This section turns to the civic organizations promoting migrant’s rights in global governance. First, the theoretical approach to these actors is outlined. Second, the main civic organizations and networks are presented.

A *transnational advocacy network*, according to Keck and Sikkink (1998: 2), “includes those relevant actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services”. The “network” component of the term indicates that this particular form of organizations is distinguished by voluntary and horizontal exchanges of communication between its constituent parts. “Advocacy” signals that the network in question is concerned with the common good, motivated by common ideas and values. In this, they are distinguished from other transnational actors, such as multinational corporations and interest groups, whose motivation is instrumental and rooted in self-interest, and from epistemic communities and scientific groups that are motivated by shared ideas of causality (ibid: 8, 30; cf. Risse 2002: 255). Transnational advocacy networks may include a broad range of actors: Keck and Sikkink list international and domestic NGOs, local social movements, foundations, the media, churches, trade unions, consumer organizations, intellectuals, but also parts of governments and international governmental organizations (1998: 9). By including

governmental actors as possible actors within advocacy network, Keck and Sikkink depart from the traditional position which defines civil society actors by its opposition to governments[5].

We will approach the overall civil society organization for migrants' rights as a transnational advocacy network in this broad sense, but make two modifications: first, we will argue that the differences between actors partaking in a networks need to be further specified theoretically, and second, we will argue that Keck and Sikkink may overstate the normative consensus binding together a given network.

As concerns types of actors, Tarrow (2001) distinguishes between social movements, nongovernmental organizations and networks. Tarrow argues that the main difference between the two first ones lies not in the goals they pursue but in the activities in which they engage: INGOs have access to, and interact with authorities while social movements lack access and engage in more radical protests against them. Networks are in his understanding not a third alternative to social movements and INGOs, instead they often contain them "…in the loose way that networks contain anything" (Tarrow 2001: 13). They are defined as "the informal and shifting structures through which NGO members, social movement activists, government officials, and agents of international institutions can interact and help resource-poor domestic actors to gain leverage in their own societies" (ibid).

As concerns the consensus, in their definition of transnational advocacy networks, Keck and Sikkink emphasize that these are made up of actors that are linked together by "shared values" and a "common discourse" (1998: 2). They thus tend to assume that there is a broad normative consensus underlying much of the work of networks operating transnationally, thereby playing down how international norms are often very contested (Tarrow 2001: 8). A network may contain different types of actors, displaying various degrees of radicalization and hence, assumedly, different interpretations of the norms being promoted.

It might even be that the network as a whole may gain from normative cleavages between the different composite actors. If a network contains a more radical wing, authorities often try to undercut its influence by provide funding and support for the moderate organizations. The moderates, in turn, tend to adopt a more radical position as a result from the pressure of the radicals. The outcome of this dynamic, which McAdam et al refers to as the "radical flank effect" (1996: 15), is sometimes that states end up adopting policy changes that were once too radical for both themselves and the moderates.

In our view, it is important to leave the question of normative consensus open to empirical investigation. Networks emerge in different settings, with different targets, goals and campaigns, and it is likely that the normative composite of actors differs between different networks. For instance, it is clear that the level of normative convergence is higher in the more specified campaign dedicated to promote the ratification of the migrant workers convention, than it is within the network of actors that gather at the annual meeting of the governmental Global Forum on Migration and Development.

Advocacy for migrant's rights in global governance

[5]A related concept is "civic network". Diani (2003) defines it as a social structure of organizations or individuals apparently working toward a common good or interests (campaign aims etc.). This is based on a normative concept of civil society as describing a space of progressive action and an assumption that many not-for-profit organizations working on public issues such as poverty, human rights and the environment are constituent nodes within this space.

A plethora of organizations is involved in different aspects of migrant's rights, for instance refugee organizations and church/faith based organizations. In this paper our concern is with the organizations and networks of organizations that operate on the global level. In this section, we introduce these different actors.

The first global meeting on migration at the UN level, the UN High Level Dialogue on Migration and Development in 2006, has resulted in the establishment of the Peoples' Global Action on Migration, Development and Human Rights (hereafter simply PGA), the first truly global network of migrant associations from all regions of this world, which has since organized parallel events at various global fora on migration. This migration specific PGA forms part of a much larger movement that was launched in 1998 in Geneva as a new alliance against "free" trade and the World Trade Organization (see http://nadir.org/nadir/initiativ/agp/en/index.html) (for a more detailed discussion, see Routledge and Cumbers 2009). When referring to PGA hereafter, we confine ourselves to the migration-related PGA. The Migrant Forum in Asia (MFA), the largest regional network comprised of migrant rights (advocacy and grassroots) organizations or national networks located in 14 countries (major origin and well as destination) all across Asia, is headquartered in Manila and functions as the driving force behind, and provides leadership of, the PGA. Increasingly trade unions are also part of this network. Moreover, MFA is linked up with Migrant Rights International (MRI), until recently based in Geneva but now led by the chairperson of MFA. MRI comprises 500 organizations in Asia, Africa, Europe, Latin America and North America.

As stated on MFA's web page, the PGA brings together groups from around the globe "to share information, dialogue, strengthen their analysis and develop joint positions on current and emerging issues on migration" and to provide "essential space for lobbying and pressuring governments and international bodies to look at migration from a human rights perspective and to make governments accountable to their international human rights and development commitments." (see http://www.mfasia.org/peoplesglobalaction/PGAMDHR.html).

In addition to the multi-state fora that have taken place since early 2000, the ILO congress in June 2010 during which the drafting of a new standard-setting convention on domestic work was decided (a task to be carried out between July 2010 and June 2011 when the next ILO congress will take place), has further led to a flurry of grassroots and network activities, across borders and types of advocacy organizations. The fact that the ILO has agreed to table such a convention is the testimony to the effectiveness of advocacy campaigns through which the cross-organizational networks have circulated and mobilized new understandings of domestic work (personal interviews, Piper). These fairly recent networking activities among migrant and non-migrant domestic worker associations have sprung up or intensified in preparation of the ILO's congress in 2010 (see www.domesticworkerrights.org). They constitute examples of alliances and networks working toward greater gender, informal worker and migrant justice in those sectors or types of jobs that have historically been outside of the purview of conventional trade unionism and subject to non-union organizing or union organizing at the margin of "male-stream" labour politics (Ally 2005).

The absence of such global movement during the ten years of negotiating and drafting the 1990 UN Convention on the Rights of All Migrant Workers and Their Families (CRMW) partly explains this Convention's lack of success in terms of ratifications. The two

other international legal standards directly relevant to migrants in their role as workers (two ILO conventions are fairly old (from 1949 and 1973),so that there has in fact been a gap of several decades on the global level with regard to giving consideration to migrants in their role as vulnerable workers. The little promotional activity on behalf of the 1990 UN Convention indicates politically sensitive idea of applying certain human rights to non-citizens. Despite the claim of universality, non-citizens are still the least well protected group of people. Hence, the emergence of a global migrant rights movement is paramount in contributing to the promotion and advancement of migrant rights.

How to institutionalize "difficult" norms

This section covers the aspect of strategies that we referred to as "normative" – i.e. the attempts on part of civic organizations to affect the norms of global migration governance in the direction of increased respect for migrant's rights.

Despite the growing scholarship on human rights, the processes through which the norms and principles prescribed by these conventions are adopted and institutionalized in national settings have not been sufficiently addressed in the scholarly literature (Gordon and Berkovitch, 2007). Some scholars emphasize the *cultural* embeddedness of nation-states in the so-called 'world society' and argue that global norms have been disseminated through cultural and associational processes. These worldwide models, it is further argued, inspire local action, local institutions and national policies in virtually all of the domains, such as family life, religious practices, business interactions, political decisions, education, and health (Frank et al., 2007; Hafner-Burton and Tsutsui, 2005; Meyer, 2000; Meyer et al., 1997; Tsutsui and Wotipka, 2004). Yet, world society scholars do not always specify how nation-states are socialized into these global norms. While some proponents of this approach suggest that the human rights principles are disseminated at world public fora and thus the states that are linked to international governmental organizations and/or participate in international meetings or conferences are the ones that are most likely to adopt them (Boli and Thomas, 1997, 1999); other scholars working within this paradigm (e.g. Cole, 2000) contend that these norms are communicated through diffuse (less structured) normative mechanisms, although the exact nature of these mechanisms is not discussed.

Even when national laws and international conventions, declarations and institutions set standards for migrants' rights, neither the interpretation of the eligibility nor the exercise of rights are automatic. Some scholars view rights as a negotiated relationship associated with historic and current struggles for the expansion and extension of rights (Lister 1997; Jelin 2005). As will be expanded below, the process is more complicated when international norms are not accepted by all nation-states. Migrants' rights (particularly undocumented migrants) are a case in point: while advocated by some nation-states, they are denied by others. The role played by migrant rights advocates in interpreting, negotiating, and applying human rights norms are of paramount importance (Basok 2009; Grugel and Piper 2007).

Actors within the advocacy realm concerned with human rights can be seen as normative entrepreneurs – as actors who strategically try to expand the human rights agenda by strategically building and promoting their specific human rights claim. Such claims either take the form of identifying new bearers to already existing rights (such as the idea of

migrants as non-citizens), or of promoting human rights standard for some new social practice (Brysk 2005: 3). Migrant's human rights claims are of the former kind, as norm entrepreneurs in this area are not so much concerned with promoting new rights, as with expanding existing human rights also to non-citizen workers.

We will now turn to the process of introducing and transforming a norm. According to Finnemore and Sikkink (1998) this is a process which evolves in different stages: *norm emergence*, when norm entrepreneurs call attention to a new or unnoticed human rights violation, and persuade states to promote it. When a critical mass of states have been persuaded to adopt the norm, a "tipping point" is reached, after which follows a *norm cascade* as other states are convinced or pressured into accepting it as well. In order for a norm to get to this stage, it usually needs to become institutionalized in rules and within organizations (conventions, IGOs). Socialization and peer pressure are the dominant mechanism at this point. The last stage is *internalization*, which signifies that the norm is no longer controversial but has reached a taken-for-granted character, and norm conformity follows quite automatically. According to theory, rights advocacy is most influential in the first stage of norm emergence, when they call attention to a specific problem and engage in strategic construction of cognitive frames (Finnemore – Sikkink 1998: 898).

In the case of the UN Migrant Workers Convention, however, it seems as though advocacy organizations have entered later into the process (as mentioned above). The CRMW was initiated by two states, Mexico and Morocco, in the mid-1970s. These countries did not want to leave migration issues to the ILO, partly because it was feared that ILO's tripartism would give unions too much of a say, partly because UN Conventions, unlike ILO Conventions, are subject to reservations by states. According to Pécoud and de Guchteneire, about half of UN member states participated at some stage in the drafting of the CRMW (2004: 5). The Convention was adopted by the UN General Assembly in 1990, in the early 1990s civil society advocacy took off. This mobilization – which again followed rather than preceded the Convention – has been focused on the promotion of the Convention, perceived of as a "key symbolic and practical instrument to implement [migrants'] rights within the framework of the rule of law" (Taran XXXX: 1). So, against the common assumption that "nonstate actors are leaders and states followers in the mobilization against human rights crimes" (Schmitz-Sikkink 2002: 531; cf. Risse 2002: 265) in this case it was in fact states who were the initial leaders – but it has to be pointed out that they were specific states: those who are (or were at that time) mostly senders of migrants and concerned with the rights of their nationals abroad.

Yet, it was largely due to civil society actors that this Convention finally entered into force in 2003 – 13 years after its adoption. No UN agency made any effort to promote it, and it was even difficult to obtain a copy of the text itself until the mid-1990s. NGO efforts spread information about the convention and translated it into various languages, thereby contributing to its eventual coming-into-force (Grugel – Piper 2007: 50). In a study on the obstacles and opportunities to the ratification of the 1990 UN Convention in the Asia Pacific (the first commissioned by UNESCO in a series of regional studies, now published 2010), Piper identified civil society, or rather migrant associations, as the most crucial factor in the promotion of this Convention (its ratification and degree of implementation). At the present stage, the norms within the Convention has not yet reached its tipping point, as only 43 states have ratified it. For a norm to reach the tipping point which can lead to a norm cascade, a

critical mass of actor must have adopted it. In this case, “critical states” would translate to the major destination countries, none of which has ratified the Convention.

We now turn to some of the factors that may be conducive to the success of norm promotion. One such condition concerns how the movement’s goals are “framed” and presented. The migrant rights movement may gain additional followers and thus strength if its messages are optimistically expressed with “rhetoric of change”. Albert O Hirschman famously wrote that the rhetoric of reaction tends to follow a similar pattern: it resists change and discourages action by alluding to jeopardy (we may lose what we have won), futility (it is a waste of time and resources to struggle, since no change is possible), and perverse effects (the actions that are meant to bring about change will actually make matters worse). To counter pessimism, activists need to employ a more positive “rhetoric of change”. More precisely, they may want to take up the following themes, countering the themes of the rhetoric of reaction: *urgency* (if we do not act now, the situation will become increasingly difficult to change), *agency* (there is a window of opportunity now, and it will open even more if we take action now), *possibility* (it is feasible to reach better policies, greater justice etc.) (Gamson-Meyer 1996: 285-6). ‘Urgency’ is definitely expressed in the form of a “rights” discourse. The slogan “migrant rights are human rights”, promoted by MFA, pertains to that. Vis-à-vis global institutions of migration governance, the demand is for a rights-based approach to migration (see ILC 2004, statements to GFMD etc.). But so far, this has largely fallen on deaf ears.

Another factor concerns the character of the norm promoted. Keck and Sikkink have found that norms that are more likely to have an impact are those that either are concerned with preventing especially vulnerable groups from bodily harm, or those that promote legal equality of opportunity (1998: 204-6). Others claim that norms that resonate with modernity’s core feature, such as individualism, universalism and rational progress, are likely to be accepted (Finnemore-Sikkink 1998: 907; Brysk 2005: 22). Not surprisingly, new norms are also found to be more persuasive if they “fit” rather than “clash” with already existing ones (Björkdahl 2002: 52; Finnemore-Sikkink 1998: 908). Tanya Basok (2009) distinguishes between *hegemonic* and *counter-hegemonic* human rights. The former are consistent with liberalism’s focus on individual freedom and formal equality as well as with sovereignty, and enjoy wide recognition. The latter, in contrast, challenge the foundations of liberal democratic values and/or the principle of sovereignty, and are hence subject to much more controversy and dispute. In her opinion, migrants rights is an example of counter-hegemonic human rights as they involve granting and expanding rights to (sometimes undocumented) non-citizens, thereby challenging the norm of sovereignty (Basok 2009: 188). This may present difficulties for advocacy groups, who for instrumental reasons may have to draw on other, more established, human rights in order to become convincing for states (ibid: 185)[6].

Collective Agency and Networking

[6] This resonates with the way that Amnesty International introduces new issues on the human rights agenda, by initially associating it with approved human rights themes, then developing it into an issue on its own – always careful to keep its framing non-confrontational (Rodio-Schmitz 2010: 6).

This section turns to the agential aspect of civic organizations' strategies for promoting migrants rights. It has been argued that a normative agenda aimed at social justice for marginalized groups – especially in cases where no international standards exist or a lot of resistance towards them - can only be pushed forward by civil society actors in the form of an integrated approach aimed at various levels of governance, national and global (Grugel and Piper 2007). A key mechanism for advocacy, as widely argued, are networks of non-governmental organizations. Activist networks, or networks in activism, are defined as relationships between individuals and organizations who cooperate on conflictual issues, tied by common interests and exchange, such as knowledge (Carrington et al. 2005; Diani 2003). Social movement scholarship has shown how networks add strength to collective action by pooling resources (financial, knowledge, expertise) facilitating knowledge exchange that can generate new solutions to existing problems and thus bring new issues to the agenda of policy processes (Keck and Sikkink 1998)[7]. This is particularly important in the case of temporary migrant workers whose rights are ignored, if not violated, at the origin as well as destination end (through state policies, recruiter and employer practices).

The first part of this section introduces the concept "political opportunity structures". The second one discusses the political opportunity structures of global governance of migration, by focusing on the level of access to the different international institutions. In the third and final part we present some of the actions of civic organizations to affect the political opportunity structures that have often been designed to their disadvantage.

Political Opportunity Structures

Social movement theorists have called attention to the importance of "political opportunities structures," a concept used to refer in part to the degree to which the political establishment is open or closed to demands advanced by social activists (see Tarrow, 1994, for instance). It can be stated that counter-discourse (i.e. normative strategy) is likely to be accepted if a political opportunity is created for this understanding of norms to be heard. Political opportunity structures provide the structural setting in which the agency of activists is played out. Political opportunity structures may not only arise in national but also in the context of supra-national institutions. Lenz (2008) illustrates how transnational feminist networks quickly and proactively responded to the rapidly increasing demand for gender knowledge in international institutions, states, and NGOs during the UN Decades for Women. These feminist networks were able to work transnationally by pooling and integrating pluri-local knowledge, producing innovative approaches to gender issues that gained recognition among UN agencies. These networks created, classified and integrated gender knowledge into activism aimed at social change. Lenz demonstrates how these networks were very influential in problem definition and agenda setting and as a result they had some impact on policy formulations. In fact, some UN-based organizations, such as ILO, have created political opportunity structures for migrant rights activists to mobilize their knowledge on foreign domestic workers.

The concept political opportunity structure relates to the structure of opportunities and constraints that a certain movement or network faces (McAdam et al 1996: 2). It often has to do with the level of openness and access to the political system, the presence of absence of

[7] For a detailed review of the existing literature, see Bendell and Ellersiek (2009).

elite allies, and the propensity for repression on part of the targeted authority (McAdam 1996: 27). One particular characteristic of political opportunity structures is that even actors that are weak in resources can take opportunity of them. However, when they close down “even the strong grow weak” which means that activists must change tactics (Tarrow 1996: 54). Some aspects of political opportunity structures are deeply embedded and institutionalized and only change very slowly and gradually, whereas others are more volatile and shifting with events and actors (Gamson-Meyer 1996: 277).

Political opportunity structures may be analyzed as both independent and dependent variables, as they create or constrain possibilities for influence, but networks may also create political opportunities (cf. McAdam 1996: 35).

In global governance, rules of access to international institutions are perhaps the most important political opportunity structure (Betsill-Corell 2008: 40). In general, transnational networks are expected to increase their influence if they act in an environment which is heavily structured by international institutions. IGOs provide arenas for regular interactions with state actors. Also, the UN system is thought to enhance network influence, as its conferences allows for some level of participation (Risse 2002: 264-5)[8].

Access to institutions of global migration governance

A core argument in the literature on global governance is that non-state actors are increasingly important in world politics (Lipschutz, 1996; Pattberg, 2006; Risse 2002). Representatives from business, NGOs, civic organizations and their networks and others now increasingly partake in the institutions of global governance (Jönsson and Tallberg, 2010)[9]. For some, the increasing importance of civil society organizations holds great promise for the development of more peaceful international relations (Kaldor 2003), or for the emergence of more democratic international relations (Scholte 2002), while others highlight the potentially problematic consequences for democratic accountability (Held and Koenig-Archibugi 2005).

To some critics the increased level of access to international institutions does not make these institutions more democratic or the organizations more influential. For instance, Kamat (2004) argues that the pattern of NGO inclusion (based on an all-inclusive definition of civil society, not necessarily “civic” society meaning related to civic organizations only) reflects neoliberal corporate and state interests as more critical voices (especially those challenging transnational enterprises and the structure of the global economic system) are effectively excluded from policy fora. She criticizes the way in which international institutions on the one hand hail civil society representation and on the other neglect to distinguish between “people-oriented” and corporate NGOs: “As a result, business and industry associations are now equally a part of ‘NGO representation’ in international policy forums, making it impossible for progressive NGOs to build a common alliance against corporate interests” (Kamat, 2004, pp. 165-66). This is in fact observable in the case of migration governance as far as the Global Forum for Migration and Development (GFMD) is concerned where “Civil Society Days”

[8] Heijden (2006) has developed the concept for the international setting and claims that it is made up of four different dimensions: 1) formal institutional structure (open–closed); 2) informal elite strategies (integrative–exclusive); 3) configuration of power (divided elite–united elite); 4) political output structure (weak–strong).
[9] In what follows we concentrate on civic organizations.

which run parallel to the official government meeting comprise representatives from all walks of civil society life: private business, foundations, trade unions, diaspora associations, research institutes or think tanks, academia - and migrant rights activists (we return to this point below).

In contrast to some other issue-areas in international relations, the global governance of migration is marked by an overall low level of access to migrant rights activists (Grugel and Piper, in press).[10] In fact, it has been argued that since the term global governance is so strongly associated with the influence of civil society, one ought to talk of an "international" rather than "global" governance of migration (Channac, 2007; cf. Thouez, 2004: 11). We will now turn to the level of access to different international institutions in migration governance[11].

At the Global Forum on Migration and Development, participation input is restricted to the 'civil society days' held separately from the governmental meeting (plus, there are the 'formal' civil society days and the side events organized by the global migrant rights movement). Civic organizations have reacted strongly against being excluded from governmental discussions (cf. Amnesty, 2007; MFA 2010). Within the UN system, NGO participation is in fact encouraged by an article in the UN Charter. Since the Global Forum is formally outside the UN system, however, this article does not apply. This is one of the main reasons why civil society actors tend to favor the incorporation of the Forum into the UN system (MRI, December 18 and ITUC 2007). While migrant rights organizations want to have more influence on the Forum (in terms of the process – the agenda setting as well as the actual negotiations), governmental delegates have a different concern: in a session on the future of the Forum in Manila, delegates were distressed by the low level of business representation in the civil society days. They feared that private actors did not feel comfortable among trade unions and human rights organizations, and expressed a desire to enhance private sector input in the future civil society days (GFMD 2008a; 2008b). This seems to confirm the general trend outlined by Kamat (2004) (who links the pluralization of the public sphere at the global governance level to the neoliberal shift in policy making more generally).

As concerns international agencies, the level of access granted varies between organizations. An obvious exception to the general rule of low access is the International Labour Organization (hereafter ILO) whose tripartite structure guarantees access to governments, employer organizations as well as labor. The latter is represented via trade unions and the trade union movement has historically only included a minority of organized workers, to the exclusion of informal, female and migrant workers (Standing 2008). Although

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[10] This paper concerns the global level only. In migration policy at the national level, organized interest groups (employer organizations and trade unions) and courts are known to have a strong influence on policy in some (mostly Northern) countries (Freeman 1995; Joppke 1998). Several states have also delegated certain control functions to private actors, such as airline companies pointing to migration being also linked to national security interest with the aim of keeping certain migrants, such as asylum seekers and irregular migrants, out (Guiraudon and Lahav 2000).

[11] An example from the regional level is the so-called Regional Consultative Processes. These are informal in character, similarly to the GFMD, meaning that they are as a rule restricted to government representatives only. As explained by Klein Solomon et al (2008: 6): "…States and civil society organizations tend to emphasize different aspects of migration. For example, whereas the concerns of States generally tend to focus on policy dimensions regarding who may enter, for what purposes and under what conditions, civil society organizations tend to be preoccupied with the rights and entitlements of migrants". According to these authors, the prioritization of migrants' rights by civic organizations constitutes a major "obstacle" for their inclusion into RCPs (ibid: 7).

this has gradually begun to change, NGOs and migrant associations can only seek indirect representation through trade unions (Piper 2008). The Migrant Committee at the Office for the High Commission for Human Rights (hereafter OHCHR) which oversees the implementation of the 1990 UN Convention on the Rights of All Migrant Workers and their Families by requesting reports from State Parties also invites the submission of shadow reports by NGOs and migrant associations. But with no major destination country having ratified this Convention, this has limited effects.

Strategies to affect global migration governance

Given the vertical obstacles which obstruct access to institutions of global governance, migrant rights organizations are increasingly forming horizontal networks to operate at various levels across space and place, reflecting the complex nature of migration and migration policy, in the attempt to find entry points somewhere – nationally, regionally or globally. As migration is necessarily a transnational issue, involving at least two states (country of origin and destination) and migrant rights issues pertain to causes and consequences of migration, it is to be expected that political activists also respond in a transnational manner – which they do – hence the importance of considering not only studies on social movements but also on transnational activist networks.

As was discussed above, the access to the global governing architecture is quite weak for migrant's rights organizations. The global policy debate on migration occurs increasingly outside the UN structure directly between states. Thus far, it has left the knowledge and expertise of civil society organizations at the margin of official debates and the discourse of migrant rights activists has not resonated with the views of many. This can be illustrated by the GFMD process. Whilst the first GFMD had almost completely sidelined, if not neglected, the issue of migrant rights, by the 3rd GMFD in Athens in November 2009 an improvement from the previous two GMFD fora can be noted in this regard. Not only were the civil society representatives able to hold a joint meeting with official state delegates (something that did not happen at the first two fora) but the civil society organizations, in consultation with the People's Global Action on Migration and Development (PGA), produced a "Joint Civil Society Declaration and Recommendations on Migration, Development and Human Rights And the Future of the Global Forum on Migration and Development" and presented it to the official delegates. In this statement, the risks and costs of migration are flagged up to counter the positive spin taken on the relationship between migration and development by governments and the need to include rights as the third ingredient in this debate. In other words, through this statement migrant rights activists demanded a rights-based approach to both, migration and development (see http://www.mfasia.org/peoplesglobalaction/index.html).

At the conclusion of the PGA meeting in Athens, migrant rights activists agreed to ensure that at 4th Forum in Puerto Vallarta, Mexico, civil society organizations are given more opportunities to have their concerns heard by official state representatives. They were particularly encouraged by the statement made by Ambassador Gomez-Camacho (Mexican Ambassador to the UN) at a PGA plenary session who described the Mexican government's interest in dialoguing with grassroots organizations and its emphasis on human rights as an

essential element for the 2010 agenda. Thus, there might be a political opportunity for PGA leaders to have their voices heard in Mexico in 2010.

Despite (or maybe because of) the persisting obstacles to the advancement of a rights-based approach to migration, regional and global networks of migrant rights activists, allied with trade unions, are expanding. They act across places and thus pool isolated grassroots activists into a critical mass. In addition to acquiring more experience in dealing with multi-state fora, the global migrant rights movement has gained greater visibility and a louder voice, similar to other advocacy networks working on different issues (Diani 2003). While it is still early to tell how much influence their knowledge will exert on policy makers, the exchange of knowledge that goes on within transnational networks and the global spread of these networks, makes the mobilization of knowledge potentially more effective by comparison to spatially divided and in many placed rather small advocacy committees.

Another venue which provides political opportunity to promote new norms is offered by the ILO. Migrant workers' interest can be represented via worker organizations who form part of the ILO's unique tripartite structure (with employer organizations and governments), albeit through the channel of trade unions which have historically been rather exclusive for migrants for a number of reasons (discussed in more detail in Piper 2009). The specific lack of legal recognition suffered by domestic workers (foreign and local) has been among the various advocacy issues raised by domestic worker organizations and their networks. This is an issue the new ILO convention on domestic work will address. It will constitute an important step forward in-so-far as it will draw attention to the plight of domestic workers, call for respect of their rights, and demonstrate their capacity to mobilize to claim these rights.

Yet, as the experience of the CRMW clearly indicates, the existence of international conventions *per se* does not guarantee that nation-states that are most responsible for the violation of the principles affirmed by the conventions, will ratify them and/or will set mechanisms to enforce them. But it would open up further political opportunity structures offered by the ILO mechanisms – and the mobilization of knowledge involved in submitting official complaints to the Committee of Experts - and thus most likely ensure continuing engagement of trade unions in the struggle for domestic workers' rights transnationally[12].

Alternative avenues and the future

- TRADE UNIONS' POLICY SHIFT ("unions without borders") – *there is increasing evidence in international unions' strategy papers or statements (at national as well as global level)*[13] *about the need to establish links between affiliates across borders at least between migrant sending and origin countries, if not further; as well as to form coalitions with migrant associations and migrant advocacy networks; academics have captured this by developing the concept of "transnational social movement unionism" and " transnational labour citizenship" (Gordon 2009): the question this raises is: will this lead to greater collective agency through unions?*

[12] In this context, the concept of 'portable justice' and 'portable membership' is of relevance. For a more detailed discussion, see Piper (2009) and Grugel and Piper (forthcoming).
[13] For example: the Dutch FVN and the British TUC at national level; the IUF and BWI at global level.

- Inter-American Court of Human Rights' groundbreaking ruling from 2001 – *this ruling was the first to stipulate that all migrant workers, regardless of migration status (i.e. including the undocumented) are to be granted the same and equal labour rights as documented and "indigenous" workers; the question this points to is whether the regional level of migration governance might offer more chances at norm setting than the global level?*(another example at the regional level is the ASEAN Declaration on Migrant Workers Rights from 2008 and the founding of an ASEAN Task Force on Migrant Workers; Asian trade unions have also produced a declaration on the need to organize and support migrant workers – the so-called Phuket Declaration from 2008; it is yet to be seen, however, whether and how these laudable aims will progress from mere rhetoric to practical policies and programmes)

- a new ILO Convention for Domestic Workers was discussed at ILO congress in June 2010, resulting in most governments supporting trade unions in favour of a new standard setting document (rather than just toothless recommendations). This surprising support, however, is partly to be explained by the fact that the relevance for migrant domestic workers was downplayed. – *the question this raises is whether this mean a sector-specific approach is more effective than a direct 'migrant rights' approach? What will this mean for implementation for migrant rights?*

Concluding Remarks

This paper has intended to shed light on the movement for migrant's rights that target the newly emerging global migration governance structures. While the policy discourse within the state-dominated fora in this field tend to approach migration as a potential danger to be contained and controlled, and/or as an economic resource to be exploited, advocacy organizations press for the strengthening of the human rights dimension of migration governance.

More specifically, this paper has begun to outline a theoretical framework with which to approach the activities of the civic organizations promoting migrants rights. It has proposed that these strategies can be analyzed in their normative as well as agential dimension. The first of these concerns the actions oriented to changing the norm dynamics of global governance, whereas the second concerns the actions taken to press for inclusion into various governance fora.

The findings so far suggest that the normative strategies may be affected by the fact that migrant's rights are often perceived as clashing rather than fitting with existing norms. Especially the ambitions to protect the rights of irregular migrant workers may pose – or be perceived to pose – a challenge to the norm of state sovereignty. The counter-hegemonic character of migrant's rights is hence likely to present certain difficulties for advocacy. As concerns the agential strategies, it is clear that existing political opportunity structures work to the detriment of rights activists, since the access granted to international institutions in the field is very limited. However, political opportunity structures can be perceived as a dependent as well as an independent variable, being potentially open to change or

modification by activists. As some of the examples we use indicate, it also seems that migrant's rights activism sometimes has the potential to affect governance structures.

Two interesting tasks for future research would then be 1) to specify the ways in which the counter-hegemonic character of migrant's human rights affect norm dynamics and the strategies of activists; and 2) to explore under what conditions that activism may affect global governance institutions in this field. Thorough and detailed empirical investigations would be required to this effect.

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