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Regional migration governance – building block of global initiatives?

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ABSTRACT

Regional institutions addressing mobility, asylum, migrant rights or migration control have proliferated all over the world and occupy an important space in recent UN initiatives to boost global cooperation on migration and refugees. Unlike Europe, where these different aspects of migration policy have come under the ambit of one institution, the European Union, regional initiatives in other parts of the world tend to emerge in different fora, with overlapping but incongruent memberships. Introducing a taxonomy of regional migration institutions, this article assesses regionalism's contribution to multilevel migration governance in two dimensions: the vertical interplay between regional and multilateral institutions on the one hand and the horizontal relationship between regional institutions on the other hand. The article concludes that regional (economic) integration frameworks like ASEAN, ECOWAS or MERCOSUR may prove fruitful anchors for more substantial regional migration governance.

KEYWORDS

Migration governance; regime complexity; regionalism; ASEAN; ECOWAS; EU; MERCOSUR; NAFTA

Introduction

Contemporary efforts to boost international migration governance pay considerable attention to regional initiatives. The UN New York Declaration of 19 September 2016 includes recurrent references to regional cooperation settings, be them 'regional integration frameworks', 'regional consultation processes', 'regional economic organizations', 'regional refugee instruments', 'regional organizations', 'regional dialogues' or just 'regional initiatives' (UNGA 2016). Indeed, while nationally 'Migration policy … is often regarded as the last major redoubt of unfettered national sovereignty' (Martin 1989, 547), and states have been traditionally reluctant towards multilateral commitments (Betts 2011), more instances of international cooperation can be found at the regional level.

Regional approaches have a long tradition and are at the origins of today's international institutions. The United Nations High Commissioner for Refugees' (UNHCR) predecessor, the United Nations Relief and Rehabilitation Administration, was established in 1944 to address the millions of people displaced across Europe as a result of the Second World War. The 1951 Geneva Convention forming the core of the international refugee regime was initially limited to events in Europe. Today's International Organization for Migration (IOM) was set up in the same year as the Intergovernmental Committee for European Migration to help resettle people displaced by the Second World War. As we will elaborate

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further below, also other regions have developed cooperative instruments as a reaction to large movements of migrants and refugees. Yet only a few of these have fed back onto the global level.

Next to the rather loose coupling with international institutions, a second feature of regional migration governance is its strong fragmentation and diversity. As indicated in the quote of the 2016 New York Declaration, a plethora of settings has emerged addressing different aspects of migration governance and taking different institutional forms. On the more formal and firmly institutionalised end, we find regional human rights and refugee treaties and regional integration frameworks/regional economic communities. These institutions are usually based on a treaty, and they have decision-making and/or enforcement mechanisms encouraging the cooperation between the participating countries. On the other end of the continuum, we find less formalised, sometimes ad hoc and fully voluntary initiatives setting guideposts for action, such as 'Declarations', or promoting dialogue and exchange, such as the 'Regional Consultation Processes'.

This article sets out to shed light on this plethora of regional migration governance by providing a taxonomy of existing institutions and specifying their position within a vertically and horizontally differentiated multilevel system of migration governance. In the vertical dimension, the taxonomy defines a four-point scale of regionalism in the sectors of human rights, refugee protection, economic mobility, labour rights and migration control which specifies the extent to which these provisions exceed, mirror or fall behind corresponding institutions at the international level or in other regions (Sections One and Two). Combining the multilevel governance (MLG) approach (Hooghe and Marks 2003; Panizzon and Van Riemsdijk 2018) with the literature on international regime complexity and institutional interplay (i.e. Alter and Meunier 2009) the horizontal dimension indicates how far the different sectoral initiatives within a region are nested within an encompassing regional institution or exist in parallel with little or no overlap (Section Three). The analysis shows that while 'vertical' interplay with international institutions varies considerably, beyond Europe regionalism tends to be particularly fragmented with little horizontal integration between different sectoral regimes. Based on institutional considerations and examples from Europe and the Economic Community of West African States ECOWAS, the article concludes that regional (economic) integration frameworks may provide fertile ground for bringing greater coherence in existing regional institutions and strengthening their legal and political contribution to global initiatives.[1]

Towards a taxonomy of regional migration governance

We propose a taxonomy of regional migration governance focusing on substantive (what is governed?) and organisational terms (how is it governed?). In substantive terms, the fragmentation of the international legal order (Aleinikoff 2007) is captured by three general approaches (Lahav and Lavenex 2012): an economic approach focusing on facilitating mobility; a rights-based approach focusing on the rights of migrants; and a security-based approach emphasising the imperatives of migration control. Migration policy can refer to one of these approaches, in the case of which it is functionally specialised. Alternatively, it can address all three substantive dimensions, in the case of which it is encompassing and comprehensive. Within the rights-based approach, one can further

distinguish between rights pertaining to migrants as individuals as such, i.e. general human rights, refugee and migrant workers rights. The organisational dimension defines the extent to which these substantive provisions are institutionalised. This has two aspects: the degree of legalisation in terms of obligation, precision and enforceability of provisions (Abbott et al. 2000); and the extent to which decision-making procedures are permanent and formalised versus ad hoc and informal.

Although regional institutions have often emerged as a response to local circumstances and therefore bear considerable divergence, any comparative assessment across regions and between regional and international commitments necessitates the definition of general criteria which can be applied regardless of individual specificities. On the substantive dimension, we distinguish between weak, partial, strong and very strong regionalism, depending on the range and depth of aspects covered by regional provisions.[2] We suggest taking existing international norms as a benchmark for strong regional commitments and, against this standard, identify exceeding or undermining provisions. Where there is no international standard, such as for the control dimension, we propose a classification based on the most far-reaching existing regional template, in this sample the EU. The organisational dimension affects the stringency of the substantive components and thus acts as a qualifier. For facilitating the overview the substantive values can be quantified on a scale from 0 (none) to 4 (very strong) and then multiplied with the formal/organisational score (see Table 1).

A multilevel approach to regional migration governance

The taxonomy proposed above takes an implicit multilevel perspective by scaling the substantive scope of regional initiatives in relation to overarching international institutions where such exist. We refer to this vertical axis as 'nesting' of regional institutions. To this vertical axis, we add a horizontal one which looks at the interplay between different institutions within one and the same region. Here, we distinguish encompassing from parallel and overlapping institutions (see Figure 1). As we show below, with the exception of the EU, which has subsequently addressed (to different extents) all substantive dimensions of migration governance, initiatives in other regions tend to be functionally fragmented along mobility, human/refugee/labour rights and migration control frameworks.

The question of inter-institutional relations within a wider architecture of international governance links up with the notion of MLG, which was first developed in the context of federal systems and the European Union (Hooghe and Marks 2003; Panizzon and Van Riemsdijk 2018) and, in the field of International Relations, the literature on regime complexity and institutional interplay (Alter and Meunier 2009; Raustiala and Victor 2004).

The central concept of the MLG approach is the distinction between encompassing 'Type I' and functionally specific 'Type II' governance. 'Type I' governance is multipurpose, it is exercised through joint and durable decision-making institutions with a broad mandate, its scope is territorially based, and relationships are hierarchically structured. 'Type II' governance in contrast is limited to specific functional areas or sectors, the membership in such institutions follows functional rather than territorial lines and flexible, more horizontal, less strongly institutionalised modes of decision-making prevail (Hooghe and Marks 2003). Originally developed for studying federal states, the distinction between Type I and Type II governance has recently also been applied to international

Table 1. Taxonomy of regional migration governance.

		Rights						
	Mobility	Human rights	Refugee rights	Labour rights	Control		Institutionalisation	Legalisation
Very strong 4	All citizens, labour market access, unlimited stay	Regional codification of human rights exceeding international human rights treaties	Regional codification of refugee rights exceeding the Geneva Convention	Regional codification of labour rights exceeding the UN Migrant Workers Convention	Harmonised entry and border control regime, common visa policy	*1.5	Encompassing permanent institutionalised decision-making	Supranational law with high obligation, precision and judicial enforcement
Strong 3	All citizens, labour market access, limited stay	Regional codification based on international human rights	Regional codification based on Geneva Convention	Regional codification based on the UN Migrant Workers Convention	Common rules on entry requirements and border management	*1	Issue-specific institutionalised decision-making	International law with medium obligation, precision, political and/or judicial enforcement
Partial 2	(Selected) workers, partial labour market access, limited stay	Selected human rights	Selected refugee rules	Selected migrant worker rights	Selected rules on entry or border management	*0.75	Ad hoc institutionalised decision-making	International law with low obligation, precision, no enforcement
Weak 1	Exchange of best practices	Exchange of best practices	Exchange of best practices	Exchange of best practices	Exchange of best practices	*0.5	Ad hoc informal decision-making	Soft law with no obligation, low precision and no enforcement
None 0								

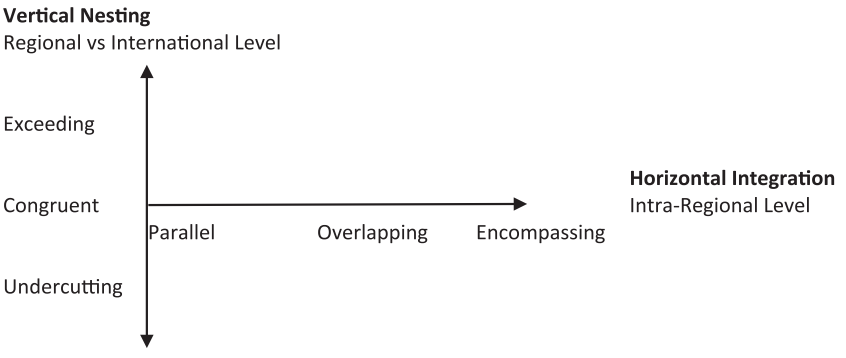

Figure 1. Dimensions of institutional interplay.

organisations to differentiate such organisations that have a wider, more encompassing functional scope such as regional integration frameworks like the EU, ECOWAS or MERCOSUR, from function-specific organisations. Such function-specific Type II organisations are for instance regional human rights systems such as the African Charter on Human and Peoples' Rights or Regional Consultation Processes (RCPs) focusing on migration management (Harns 2013). Henceforth, we will speak of Type I governance when different dimensions of migration governance as well as other areas of international cooperation are addressed within one and the same regional organisation with a stable territorial membership basis, and of Type II governance for function-specific institutions which address only a particular aspect of migration governance.

When studying international regimes, the MLG approach can be usefully combined with the IR literature on institutional interplay. This distinguishes three basic constellations of inter-institutional relations (Alter and Meunier 2009): parallel regimes, where there is no formal or direct substantive overlap; overlapping regimes, where multiple institutions have authority over an issue, but agreements are not mutually exclusive or subsidiary to another; and nested regimes, where institutions are embedded within each other in concentric circles, like Russian dolls.

A 'nested' constellation is typically akin to the vertical relationship between an organisation with a smaller (regional) membership and a larger (global) institution within the same functional policy area. This corresponds to our vertical axis in the taxonomy (see above). At the intra-regional, horizontal level, pertinent rules can be either integrated into one encompassing 'Type I' institution or constitute distinct 'Type II' regional institutions covering (partly or fully) the same states but addressing different substantive areas (for instance, human rights in one institution, mobility in another one). If these regional migration institutions have neither substantive nor formal links they amount to *parallel* regimes, which corresponds to the lowest level of regional horizontal integration. When different regional institutions partly cover the same functions and/or have some formal, organisational links we speak of *overlapping* regimes. The more we move from parallel and overlapping to encompassing horizontal interplay, the more integrated and meaningful is the regional level of migration governance.

In the following, we classify the substantive and organisational features of regional migration institutions in four world regions (Europe, the Americas, Africa and Asia) using the taxonomy introduced in section one and qualify their level of intra-regional integration.

Assessing and comparing regional migration governance

A plethora of regional initiatives has evolved in the post-Second World War period addressing migration-related issues (see Table 2). In the following, we assess the most important regional institutions and offer a classification on the basis of which they can be systematically compared.

Europe: encompassing extensive regionalism

The European region is particular because it disposes of a regional integration framework, the EU, that has gradually come to encompass all dimensions of regional migration regimes at a very high scale – with the exception of a common (economic) immigration policy regarding third-country nationals. This is not to say that there is no institutional fragmentation in Europe; the Council of Europe, the European Convention on Human Rights and its Court constitute separate bodies with a longer tradition in the protection of human rights and cooperation on asylum (Lavenex 2001, 56ff). Compared with other regions, however, the European migration regime is much more centralised in the EU as encompassing 'Type I' MLG system.

In terms of mobility, the free movement of workers (later 'people') was included from the start as a fundamental freedom of the European single market (Art. 18 EC). The 1987 Single European Act extended freedom of movement to all EU citizens, also the economically inactive. Alongside this process, EU Member States have coordinated social security systems and established a framework for mutually recognising qualifications. Although

Table 2. Regional migration institution by sector and decade of creation.

Mobility	EU		ECOWAS	CSME	CIS, NAFTA MERCOSUR, SADC, COMESA ASEAN	AU Migration Policy Framework EAC
Rights	Human rights	ECHR	Inter-Am. Charter	African charter	ASEAN declaration SADC charter	Arab charter EU charter
	Refugee rights			OAU Convention	Cartagena declaration EU Third Pillar	Kampala convention Brasilia declaration Brazil declaration Jakarta declaration EU
	Labour rights			EU	NAALC ECOWAS Conv. on Social Security MERCOSUR declaration	ASEAN declaration SADC
Control				IGC TREVI Schengen	Budapest Process RCM/Puebla Process SACM EU Third Pillar	MIDSA MIDWA Bali process Colombo process EU
Years	50s	60s	70s	80s	90s	2000s

Note: AU: African Union; CIS: Community of Independent States; COMESA: Common Market for Eastern and Southern Africa; CSME: Caribbean Single Market and Economy; EAC: East African Community; IGC: Intergovernmental Consultations on Migration, Asylum and Refugees; MIDSA: Migration Dialogue for Southern Africa; MIDWA: Migration Dialogue for Western Africa; NAALC: North American Agreement on Labour Cooperation; OAU: Organization of African Unity; RCM: Regional Consultations on Migration (Also: Puebla Process); SACM South American Consultations on Migration; SADC: South African Development Community; TREVI: Terrorism Radicalism Extremism Violence International (Europe).

the EU lacks a full-fledged competence on economic immigration from third countries, directives have been adopted concerning specific groups such as the highly skilled, students, researchers or seasonal workers, as well as on the rights of third country nationals lawfully resident in the EU.

The European migration regime is also very strong on the control dimension. The definition of common high standards for the control of the common external borders as well as a common visa policy for short-stay visas were developed from the mid-1980s onwards. The EU has also devised a common asylum policy. While highly deficient, this policy is marked by the existence, de jure, of common admission, procedural and substantive criteria for granting asylum (Lavenex 2018). Finally, the EU scores very high with regard to the organisational dimension. It has well-established decision-making structures and a sophisticated legislative system producing a wealth of supranational law that is not only – by international standards – very strong on obligation and precision, but which also benefits from monitoring by the European Commission and enforcement through the European Court of Justice. Providing for individual complaints, this enforcement system is particularly supranational.

Translating these patterns into numerical values, the European migration regime complex can be summarised as being both encompassing and exceeding international commitments. We can assign the highest values on all dimensions (4, *1.5), even though common policies on economic immigration are lacking and asylum policy cooperation is deficient.

South America: overlapping regionalisms with a strong human rights orientation

In Latin America, strong regional initiatives exist for mobility and human rights. Two regional integration frameworks stand out: the Andean Community and MERCOSUR. While the Andean Community benefits of a more stringent degree of legalisation – with its laws exerting direct effect and a supranational court allowing for individual complaints (Alter and Hooghe 2016), its substantive coverage has remained below that of MERCOSUR. What is more, its Member States have become associated with the wide free movement framework under MERCOSUR's Residency Agreement.

Labour mobility within MERCOSUR was initially addressed in relation to economic integration in the founding Treaty of Asunción (1991) establishing MERCOSUR and was subsequently widened towards fully fledged free movement under the 2002 Residency Agreement. As Acosta (2016) notes, this liberal stance resonated with a constitutional tradition established with Latin American countries' acquisition of independence beginning of the nineteenth century.[3] The decision to open up the borders in 2002 symbolised departure from the restrictive migration systems established under the dictatorial regimes of the twentieth century. The 2002 Residency Agreement grants the nationals of MERCOSUR Member States (Argentina, Brazil, Paraguay, Uruguay and Bolivia) and associated Member States (Chile, Colombia, Ecuador and Peru) the right to reside and work for a period of two years (transformable into permanent residency) in another Member/Associated State – conditional on citizenship and a clean criminal record.[4] The Agreement also provides a number of rights, including the right to equal working conditions, family reunification, access to education for the children of migrants (Acosta and Geddes 2014), and more generally migrant workers' equal civil, social, cultural and economic rights as

compared to nationals (Art. 9). Such rights have also been promoted within MERCOSUR through the 1998 Social-Labour Declaration which basically takes over the provisions of the 1990 UN Migrant Workers Convention. In parallel, internal mobility has been liberalised as part of MERCOSUR's 1998 Protocol of Montevideo on Trade in Services. While building on the framework of the WTO General Agreement on Trade in Services (GATS) (Lavenex and Jurje 2015), these provisions go beyond by including more categories of service providers and facilitated access.

Free movement provisions and migrant worker rights, while taking a stronger human rights framing, are thus comparable to the EU. Other aspects of migration governance have been taken up either outside regional integration frameworks, or have not been formally addressed. Refugee issues are addressed at two levels:[5] juridical enforcement through the human rights instruments adopted within the Organization of American States and legally non-binding programmatic cooperation under the Cartagena Process. As elaborated by Cantor and Barichello (2013), the Inter-American Commission on Human Rights and the Court have engaged into an active jurisprudence developing the concept of asylum from a human rights perspective and advancing the notion of burden-sharing for the region (Cantor, Freier, and Gauci 2015). This juridical process has been paralleled by the Cartagena Process launched in the early 1980s to deal with the situation of Central American refugees. This ad hoc initiative led to the legally non-binding 1984 Cartagena Declaration on Refugees which expanded the refugee definition of the 1951 Geneva Convention to persons fleeing generalised violence and Internally Displaced Persons. The Cartagena Process has kept momentum with the high-level conference taking place every ten years where plans of action and new initiatives have been agreed. The latest one, the 2014 Declaration of Brazil has widened the scope of participants to the Caribbean countries and proposed innovative solutions for refugee cooperation, such as a labour mobility programme (Castillo 2015). While these initiatives have found much praise in the literature (e.g. Harley 2014), critical voices also point at their lack of precision, weak legal/political institutionalisation and limited effects in practice (De Menezez 2016). This is why we classify the refugee dimension as nested but 'partial' regime comprising common rules on specific refugee issues (see Table 1).

In sum, the South American region reflects a form of overlapping regionalisms where the mobility and social rights aspects on the one hand and refugee aspects on the other hand have been addressed by different institutional frameworks. Based on the numerical categories proposed in Table 1, regionalism is strongest with regard to mobility norms (4) as well as labour and human rights (3), and less far-reaching for refugee protection (2), while migration control has hardly been addressed regionally (0). All initiatives, including the South American Regional Consultative Process (SACM), so-far approach migration from a human rights perspective, leaving control aspects to national regulations. In terms of formalisation, the most legalised area is that at the nexus between refugee law and human rights, yet the Inter-American Court of Human Rights lacks the political norm-setting dimension of institutionalisation (*1). The Residency Agreement and MERCOSUR provisions have international law character but MERCOSUR's intergovernmental enforcement mechanism is not operational (*1). Other initiatives such as the Cartagena Process have been based on soft law and looser intergovernmental coordination (*0.5). Given relatively low levels of formalisation, implementation remains patchy.

North America: parallel hegemonic regionalisms focused on trade and control

In comparison to South America regional cooperation among the U.S., Canada and Mexico is much weaker and mirrors U.S. interests. It comprises limited temporary mobility provisions linked to trade and investment within NAFTA and informal cooperation against irregular migration in the framework of the Regional Consultations on Migration (RCM) (also referred to as Puebla Process). In addition, human and labour rights have seen relatively strong regional codification, without however extending to refugees.

Chapter 16 of NAFTA establishes criteria and procedures for the temporary entry of business people, covering business visitors; traders and investors; intra-company transferees; and professionals in specific sectors. The U.S. has also introduced a special non-immigrant visa category – Treaty NAFTA (TN) for temporary stays of professionals from Mexico and Canada who possess a certification of employment. For certain professions (i.e. accountancy, architecture and engineering), the parties have concluded Mutual Recognition Agreements.

Social rights and labour issues within NAFTA are covered in a side agreement, the North American Agreement on Labour Cooperation (NAALC), which also applies to migrant workers (Annex 1 principle 11). The agreement establishes sanctioning mechanisms if a labour right complaint is accepted by the appropriate domestic labour office (Russo 2010). While the North American region has not developed further cooperation regarding migrants or refugees, de facto we have a constellation of regime overlap with the American System of Human Rights. In 2003, for instance, the Inter-American Court of Human Rights has reviewed NAFTA and NAALC in the light of the UN Migrant Workers Convention (to which the U.S. is not party) and has criticised the U.S.' refusal to extend basic labour rights to undocumented Mexican workers (Advisory Opinion (Oc-18/03) of 2003). In organisational terms, commitments under NAFTA are binding for Member States and subject to dispute settlement mechanisms. The Treaty has also established a Working Group on Temporary Entry meeting once a year to monitor implementation.

A parallel regime exists with the RCM/Puebla Process linking the NAFTA members with eight Central American neighbours.[6] This was launched in 1996 and focuses on control and border security (Kunz 2011). Compared to other RCPs, the RCM is strongly institutionalised involving regular meetings at different levels, but its decisions are not legally binding.

Summing up, migration governance in North America comprises in NAFTA/NAALC limited regional provisions on temporary trade-related mobility (2) encompassing relatively strong protection for migrant worker rights through the NAALC (3) which are both institutionalised and legalised (*1). These structures overlap with the system of human rights protection (3, *1). A separate parallel, institutionalised but non-legally binding RCP deals with migration control (1*0.75). No specific initiative deals with refugees.

Asia: informal and fragmented regionalism with weak international nesting

Asia is the region in which cooperation on migration is least developed. This is linked to the vast heterogeneity of the continent, the general weakness of regionalism and Asian

countries' limited participation in pertinent international regimes. The subregion within which migration cooperation has developed most is South-East Asia.

The 1967 founding document of the Association of South East Asian Nations (ASEAN) did not touch on migration. Limited provisions on labour mobility were included in its 1995 Framework Agreement on Services, later recapitulated in the 2012 Agreement on Movement of Natural Persons. These provisions are linked to investment and business flows to facilitate the temporary movement of highly skilled professionals, and are backed by a number of Mutual Recognition Arrangements. Travelling within the region for up to one month is visa-free for ASEAN nationals, but work visas remain subject to domestic regulations (Jurje and Lavenex 2015, 2018).

Migrant workers' rights are covered in the regional Declaration on 'Protection and Promotion of the Rights of Migrant Workers' signed in 2007 by ASEAN leaders (Marti 2018; Rother 2018; Rother and Piper 2015). Legally non-binding, the document is also substantively weak because it proposes safeguarding the rights of migrants and their families in accordance with national laws and regulations and contains only general calls for appropriate employment protection, wages, and living conditions; as well as for coordination on anti-trafficking policies. Legalisation is thus low; and no independent body monitoring/enforcement provisions exist (Nikomborirak and Jitdumrong 2013). Weak regional legalisation is amplified by many Asian countries' abstention from international commitments. Out of the ASEAN members, only Indonesia and the Philippines are parties to the 1990 UN Migrant Workers Convention. In contrast to formal legal instruments, informal consultation mechanisms have been set-up to foster cooperation, such as the ASEAN Forum on Migrant Labour under the leadership of the International Labour Organization (ILO), and through bottom-up civil society organisations (Rother and Piper 2015).

While mobility norms and labour rights are still in their infancy, Asian countries have remained particularly disengaged from international refugee policy instruments.[7] The only relevant regional initiative is the Principles of Bangkok on the Status and Treatment of Refugees adopted in 1966 by the Asian-African Legal Consultative Committee, revised in 2001 by what had become the Asia-Africa Legal Consultative Organization. As Moretti (2016) points out, the Principles of Bangkok are declaratory and non-binding and, unlike the Cartagena Declaration in Latin America, which is also a soft law instrument (see above), they have not been incorporated in national legislation and practices. Observers have partially attributed this lack of involvement to the strong engagement of the international community in solving refugee crises in the past, and in particular the Comprehensive Plan of Action for Indochinese Refugees (CPA) that ran between 1988 and the mid-1990s. According to Davies (2006, 18), Western involvement signified that countries in the region 'never felt obliged' to join international instruments or to engage in protection. There are indications however that this disengagement might be changing, partly due to the externalities of Australia's offshore processing, partly due to the imminence of refugee displacements. In 2012, ASEAN adopted a Human Rights Declaration, which includes several provisions pertinent to the rights of refugees, including the right to seek and receive asylum. The impact of this provision is however limited given that these human rights commitments apply 'in accordance with the laws' of the respective states (Article 16); in ASEAN only The Philippines and Cambodia are party to the Geneva Convention, and only The Philippines have national legislation on asylum.

Also, this Declaration foresees no monitoring or enforcement mechanisms. The situation is further exacerbated by the fact that some Asian countries such as Malaysia and Myanmar have not joined central international human rights instruments such as the International Covenants on Economic, Social and Cultural Rights and Civil and Political Rights or the Convention against Torture. Rather than by legal instruments, more momentum might be built up by operational cooperation within the local RCP, the Bali process. Originally focused on anti-trafficking, and heavily dominated by Australia, the Bali Process has from 2012 started to address refugee issues. This has partly been a consequence of ASEAN countries' (in particular Indonesia and Thailand) dissatisfaction with Australian externalisation practices, and partly a response to an urgent need for action in the context of refugee crises in the Bay of Bengal and Andaman Sea (Mathew and Harley 2016, 52; Moretti 2016).

Summing up, Asia scores low an all dimensions of regional migration governance. However, a nucleus of slightly more formal and encompassing cooperation has started to emerge around ASEAN and the Bali process. In conclusion, we find partial provisions on mobility (2); a rather loose non-binding declaration on labour rights (1); a non-enforceable Charter of human rights (1); no specific provisions on refugee rights (0); and parallel informal coordination on migration control within the Bali Process (1). Throughout, the legal/institutional dimension is weak (*0.5).

Africa: nested and partly 'encompassing' regionalism

The African continent represents particularly strong instances of regionalism clustered along RECs, an internationally nested human rights regime, and mainly externally induced RCPs. While these regimes exhibit overlapping structures, they have tended towards more encompassing integration in Western Africa and, in particular, the ECOWAS.

Already the ECOWAS founding Treaty of Lagos (1975) provided for freedom of movement (Deacon et al. 2011) which was in large parts realised following the Protocol Relating to Free Movement of Persons and the Right of Residence and Establishment' of 1979 (Adepoju 2011). Cross-border transit was facilitated through a common identity travel card introduced in 1987 and the ECOWAS passport (IOM 2007).

Regarding labour rights, in 1993 the Social and Cultural Affairs Commission of ECOWAS adopted the General Convention on Social Security to ensure equal treatment of cross-border workers and the preservation of their rights while living abroad. Africa is the only region with South America where a majority of states are party to the UN Migrant Workers Convention.[8] Though implementation remains limited, regional Ministers have committed to promoting the rights of migrant workers, cooperation in labour migration, and geographic and occupational mobility (Klavert 2011).

In institutional terms, all 15 ECOWAS members have ratified the 1979 Free Movement Protocol, which becomes directly applicable in national law. The ECOWAS Court of Justice (ECJ) has juridical power to enforce compliance with the Revised Treaty and all other subsidiary legal instruments adopted by Community and it has issued several rulings concerning the implementation of the freedom of movement (Open Society 2013). Nevertheless, numerous official and inofficial obstacles are reported that limit implementation in practice (Awumbila et al. 2014).

Extra-regional migration and the security aspects of cooperation have been addressed from 2000 onwards in an RCP, the Migration Dialogue for Western Africa MIDWA. Originally detached from ECOWAS, and initiated under leadership from the IOM, MIDWA fully overlaps in terms of membership with the former. Even though it initially flagged out a broader agenda, cooperation in MIDWA has clearly focused on border management and the fight against irregular migration. An interesting development is the gradual rapprochement between ECOWAS and MIDWA with the 2008 Common Approach on Migration, a non-binding ECOWAS statement providing an action plan to promote effective migration management in West Africa (Awumbila et al. 2014). This integration took a further step with the decision in 2012 to strengthen MIDWA's institutional capacity by anchoring it more strongly in the framework of ECOWAS (2012).

A similar rapprochement emerges in the field of refugee protection. Human rights and refugee issues have been approached at the pan-African level in several instruments. The Organization of African Unity (OAU) adopted in 1969 a refugee convention that formulates a broader definition of protection grounds than the 1951 Geneva Convention and also contains in Article II(4) a cooperation clause according to which 'Where a Member States finds difficulty in continuing to grant asylum to refugees' … 'other Member States … shall in the spirit of African solidarity … take appropriate measures to lighten the burden of the Member State granting asylum' – yet if in practice this possibility has hardly been invoked (Mathew and Harley 2016, 44). Commitment to asylum was reiterated in the African (Banjul) Charter on Human and Peoples' Rights of 1981 containing the right to 'seek and obtain asylum' (Article 12(3)) and its adjacent Commission and Court have developed an active jurisprudence in the matter (Sharpe 2013). Other mechanisms relevant for refugee protection are the competences for humanitarian intervention at the level of the AU and within ECOWAS. These were laid for ECOWAS with the 1999 Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (the Mechanism). The ECOWAS Cease-fire Monitoring Group may lawfully be dispatched in time of armed conflict to protect displaced persons as well as to prevent the escalation of refugee flows (Levitt 2001; Ngung 1999). Moreover, Section IX of the Mechanism relating to the task of peace building, specifically provides that once the hostilities have ended, ECOWAS shall assist the Member States that have been adversely affected by violent conflicts in the resettlement and reintegration of refugees and IDPs. This provision does not create rights *per se* for refugees and asylum-seekers but constitutes a basis for the potential development of a regime that would facilitate burden-sharing (Ebobrah 2016). This cooperation in the humanitarian and security realm has spilled over into stronger coordination within ECOWAS. In August 2007, the Community adopted a Memorandum on the equality of treatment for refugees with other citizens of ECOWAS Member States in the exercise of Free Movement, Right of Residence and Establishment. It is aimed at ensuring that refugees from other Member States continue to enjoy their freedoms under ECOWAS Protocols. Moreover, it encourages the Member States to facilitate issuance of travel documents and residence permits to refugees to foster local integration. In March 2012, ECOWAS Heads of State and Government also approved a common Humanitarian Policy, which recognises the vulnerability of refugees and the necessity to facilitate refugees' integration into their host states. Since 2005, the ECJ has the competence to rule on human rights violations through an individual complaints procedure. Further, on 17 June 2015, the ECJ signed

a document with UNHCR for cooperation in improving the protection of the rights of refugees and asylum-seekers.

Summing up, within Africa an impressive number of migration governance elements have been introduced that also show a growing level of coordination and vertical nesting with international regimes. ECOWAS is the subregion with the strongest coherence of instruments involving a strong free movement regime (4), some labour rights cooperation (2), initial coordination on irregular migration and control (2) and refugees (2). While ECOWAS structures cannot be compared with the level of supranationalism in the EU, the level of legalisation and formalised cooperation is relatively high (*1) – even if this does not necessarily reflect in political practice. An additional overlapping AU-wide human rights regime exists (2) which involves judicial enforcement (*1).

Table 3 summarises the numerical values of the regional migration regimes covered in this article. Figure 2 offers a comparative visualisation, using the weighted scores (substantive score multiplied by the organisational score).

Comparative conclusion: fragmentation and coherence in regional migration governance

As the classification of migration governance in five world regions shows, regional initiatives have emerged in a sectorally differentiated manner, perpetuating the 'type II' features characteristic of the fragmented architecture of international migration law (Aleinikoff 2007; Lahav and Lavenex 2012). Regional migration governance has clustered around three primary types of institutions: (economic) mobility regimes; human rights instruments (including refugee-specific agreements); and informal RCPs.

Based on the taxonomy elaborated above, the aspect of migration governance with the most developed regional component is the liberalisation of mobility flows. On all continents, regional integration frameworks have come to include either full or facilitated mobility rights for the citizens of participating countries. This process has been sustained by the economic agenda pursued by these integration frameworks as well as their wider political aspirations. Clearly, the substantive scope of regional mobility provisions exceeds international level commitments as there are no international norms on migrant admission apart from limited provisions in the GATS (Lavenex and Jurje 2015). The formalisation of these mobility norms has benefited from the institutional and legal pillars of corresponding regional integration frameworks. As discussed above, however, these pillars differ considerably across regions and reach from strong legalised supranationalism in the EU to chiefly informal voluntarism in the ASEAN.

In all regions surveyed, mobility regimes have spilled over into cooperation on labour rights for intra-regional migrants. This process has been sustained by the functional interdependence between the mobility of labour and its protection. It has also benefited from the broader diffusion of social and economic rights as manifested in the 1990 UN Migrant Workers Convention. However, the labour rights component has remained weak in those regions lacking enforcement structures. As highlighted in the case of ASEAN, international organisations (the ILO) and civil society organisations have attempted to fill the gap mobilising official declarations as anchors for sustained migrant rights' promotion from below.

Table 3. Summary of regional migration governance scores.

	Europe (EU)			South America (MERCOSUR)			North America			Asia (ASEAN)			Africa (ECOWAS)		
	Sub.	Org.	WS	Sub.	Org.	WS	Sub.	Org.	WS	Sub.	Org.	WS	Sub.	Org.	WS
Mobility	4	*1.5	6	4	*1	4	2	*1	2	2	*0.5	1	4	*1	4
Human rights	4	*1.5	6	3	*1	3	3	*1	3	1	*0.5	0.5	2	*1	2
Labour rights	4	*1.5	6	3	*1	3	3	*1	3	1	*0.5	0.5	2	*1	2
Refugees	4	*1.5	6	2	*0.5	1	0	0	0	0	0	0	2	*1	2
Control	4	*1.5	6	0	0	0	2	*0.75	1.5	1	*0.5	0.5	2	*1	2

Note: 'Sub.': substantive dimension, 'Org.' : organisational/legal dimension of regional provisions, 'WS': weighted score.

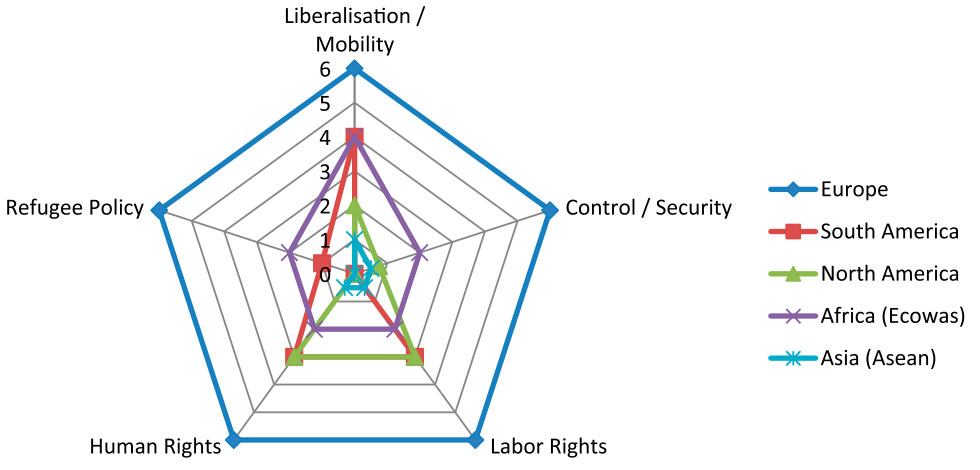

Figure 2. Visual representation of regional migration governance.

Next to regional integration frameworks, the second type of regional institutions involved in migration governance is regional human rights/refugee treaties/declarations and associated courts/processes. These institutions have usually predated the regional integration initiatives and benefit from the existence of overarching international norms in which they are nested. While regional human rights instruments usually emulate the norms of the International Covenants and other international human rights treaties more innovation is observable at the level of refugee protection instruments. Beyond the EU's supranational provisions which promote harmonisation based on the Geneva Convention, provisions exceeding international ones are found in the legally binding 1969 OAU Convention and the non-binding Cartagena Process in Latin America. Responding to regional priorities and mobilising greater solidarity among participating countries, these instruments have introduced wider refugee definitions and burden-sharing elements – at least on paper. As noted above, the exception to this vertically nested pattern of human rights/refugee provisions is Asia where corresponding norms have neither been codified in regional nor in national structures. While these human rights/refugee treaties/processes tend to be formally separate from regional integration frameworks, they can be mobilised to adjudicate on these frameworks as shown in the case of the Inter-American Court of Human Rights and NAFTA.

The third, most recent and least legalised cluster of regional migration regimes centres around the RCPs which, as explicitly informal platforms, have promoted coordination rather than codification among participating countries. Frequently initiated by regional hegemons such as the U.S. for the RCM or Australia for the Bali Process or by external actors such as the EU and the IOM for the African RCPs, these platforms have in common that they mainly focus on migration control. The exception to this development is the South American region where regional cooperation has so-far hardly addressed the security aspects of migration.

This distinction between three functionally differentiated regime clusters hints at the primarily parallel and overlapping set-up of intra-regional migration governance along 'type II' rather than encompassing 'type I' structures. Herewith, regional migration

governance mirrors the fragmentation characteristic of international migration governance. The lack of coordination between (economic) mobility, refugee/human rights protection and migration control initiatives is problematic in the light of increasingly mixed migration movements, and fails to exploit potential synergies between these different regimes, such as for instance using mobility norms for attenuating refugee crises, or ensuring the protection of migrant workers' rights. The lack of coordination is amplified by the divergence of institutional and legal formats characterising these initiatives, with some aspects benefiting from legal codification and enforcement mechanisms and others having purely declaratory character.

That being said, the richness of regional initiatives is clearly an asset in current aspirations for more humane and equitable international migration governance (Newland 2010; Thouez 2018). Greater intra-regional coordination would reduce the risk of gaps, normative conflict and missing implementation resulting from the current state of fragmentation. This would do more justice to the complex nature of the migration issue and the many interdependences between the different dimensions of migration governance. While far from perfect, the EU does represent such a more encompassing, 'type I' form of regionalism. In Western Africa, ECOWAS is another example of a regional economic community that has come to embrace various aspects of migration governance including mobility, labour rights, refugee protection as well as, with the rapprochement with the local RCP, MIDWA, migration control. Also, MERCOSUR in South America and ASEAN in South-East Asia may, given their rather encompassing approach, develop into regional migration policy hubs.

In sum, the potentially greater similarity of problem structures among countries within a particular region; the potentially higher level of trust and communication between them; the spill-overs from previous regional cooperation in other fields; and the existence of institutions should be beneficial for developing common ground in migration policy. Among the institutions reviewed here, regional integration frameworks with their more encompassing mandate, their shared regional ownership (in contrast to the strong external or internal hegemonic domination akin to the RCPs); their permanent institutional base, agreed decision-making mechanisms and formal as well as informal enforcement structures constitute particularly promising anchors for a comprehensive approach. Such stronger institutional consolidation would also facilitate regions' input in global institutions and processes. With greater integration of intra-regional structures, however, more attention needs to be given to inter-regional coordination – and to these regions' vertical coordination in an increasingly multilevel system of migration governance.

Notes

1. The part on regional economic mobility regimes draws on previous work with Flavia Jurje (see Lavenex et al. 2016), her collaboration is gratefully acknowledged.
2. Given the limits imposed by the format of a journal article, the categories proposed are necessarily broad and can be refined in much more detail.
3. In 1811, the first Venezuelan Constitution introduced a clause later replicated by all countries in the region: 'All foreigners of any nation will be admitted into the State'. Equal treatment, mainly with regard to civil rights, and a rapid path toward naturalisation were also incorporated. According to Acosta (2016), this posture was chiefly to lure European migrants.

4. Guyana, Surinam and Venezuela (a MERCOSUR member state, currently suspended) have not ratified the MERCOSUR Residence Agreement and thus South Americans cannot use it when moving to these countries and, vice versa, nationals of Venezuela, Surinam and Guyana do not have a right of residence in **the other South American States except when countries have unilaterally decided to extend the agreement to them such as for example in Argentina, Brazil or Ecuador. I thank the anonymous reviewer for clarifying this point.
5. At an international level, only Cuba, Barbados, Grenada, Guyana and Saint Lucia have not signed on to the 1951 Geneva Convention and/or its 1967 Protocol. Nationally, most countries in Latin America have mechanisms in place for the recognition of refugees, and 14 countries have included the wider refugee definition outlined in the 1984 Cartagena Declaration on Refugees in their respective national laws (Harley 2014).
6. RCM members: Belize, Canada, Costa Rica, El Salvador, United States, Guatemala, Honduras, Mexico, Nicaragua, Panama and Dominican Republic. Argentina, Colombia, Ecuador, Jamaica and Peru have observer status.
7. Only very few states in the Asia-Pacific region are parties to the 1951 Convention or its 1967 Protocol: Japan, the Philippines Cambodia. Papua Guinea, Nauru, Fiji, South Korea, Timor Leste, the Solomon Island, Tuvalu, Australia and New Zealand; Bangladesh, India, Indonesia, Malaysia, Pakistan or Thailand are not. China is party to the Convention but has not implemented its obligations in domestic law (Mathew and Harley 2016, 47).
8. Eight of the ECOWAS Member States (Burkina Faso, Cabo Verde, Ghana, Guinea, Mali, Niger, Nigeria and Senegal) have ratified the UN Migrant Workers Convention. Benin, Liberia, Guinea Bissau, Sierra Leone and Togo have signed but not ratified the Convention. Gambia and Côte d'Ivoire have not signed it.

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