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BORDERING MOBILITY –
NETWORKS IN REGIONAL
MOBILITY REGULATION

CHRISTOF ROOS

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ABSTRACT

The aim of this article is to develop an analytical framework which contributes to the understanding of mobility regulation. While most literature focuses on international efforts to control migration the perspective is widened by looking at mobility, encompassing short-term cross border movements for the purpose of travel and labor. Regulatory modes are specified and described ranging from more binding bi- and multilateral agreements to less binding governmental networks. Little attention has been paid to the latter modes which increasingly define state to state cooperation. Since mobility regulation on the global level is in a nascent stage, regulatory modes are assessed within regional economical integration movements such as the EU and NAFTA. Mobility regulation within the two blocs differs greatly; within the EU framework freedom of movement and establishment has been achieved while travel and labor in the North American context are mostly regulated in the respective national realms. Still, modes of cooperation on mobility have been established in both cases with similar functions: the socialization of officials into trusting each other.

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1. BORDERING MOBILITY – NETWORKS IN REGIONAL MOBILITY REGULATION

The current state of globalization is characterized by the OECD and other international institutions as the “age of mobility”, an era in which “more people will move more frequently” (Dayton-Johnson *et al.*, 2007: 26). Movements across borders have become more dynamic making it difficult to determine how long people will stay in a country and where they will move on to next (Brock and Albert, 1998; Kraler and Parnreiter, 2005). Migratory patterns are in flux, in their temporal and in their spatial dimensions.¹

Considering these changes, border and migration researchers suggest to look at cross-border movements in terms of “mobility” rather than migration. International migration alludes to a long-term stay in another country. Instead, the term *mobility* includes short-term cross-border movements such as travel, temporary work, seasonal labor, or study which are not considered international migrations although they are increasingly defining global interactions (Kosłowski, 2009; Newland, 2005).² The conceptual widening not only helps to better quantify the actual density of global interactions but also provides a tool to grasp the range of efforts to control and regulate these cross-border movements internationally. Therefore this article will look at two forms of international mobility, travel and labor. The question will be asked how states share responsibilities over their borders regulating these mobility types and identifies systematically the regulatory modes within which regulation takes place.

International cooperation on border and mobility policies is a nascent field of international regulation since the power to define who is eligible to enter the state’s territory and who is excluded used to be decided by the state alone as a defining element of its

¹ Empirical data from the most recent OECD “Migration Outlook” in 2008 confirms this observation since movements across borders are diversifying and increasing considerably: Long-term immigration increased by 5% from 2005 to 2006, summing up to a total of four million legal immigrants in OECD countries. The report indicates that 2.5 million temporary labor migrants were admitted to OECD countries and that the number of international students increased by 50% from 2000 to 2005 in the Member countries of the organization (OECD 2008). Figures on the growth of international tourist arrivals increased as well from 25 to 903 million from 1950 to 2007. The forecast by the UN World Tourism Organization predicts one billion cross-border tourist movements by 2010 and 1.6 billion by 2020 (UNWTO, 2008).

² Migration research understands a cross-border movement to become a migratory movement if the stay of the person in a country other than that of his or her usual residence exceeds at least one year. Movements defined as migratory are most often categorized by their motivation such as asylum or refugee movements, immigration for the purpose of family reunification or settlement and labor (UN, 1998: 18).

sovereignty (Krasner, 1999).³ The border, no doubt, still is an instrument which expresses the interests of the state with regard to the extent, content, and structure of cross-border movements (Eigmüller, 2006). It can be observed though, that the interests and power constellations shaping a border cannot be traced back to unitary state actors any longer. Consequently, the venues where these interests are negotiated are not only located within national governmental arenas. New forms of border politics can be identified: States increasingly cooperate in framing and enforcing their border and mobility policies. Through agreements and treaties as well as governmental networks state sovereignties are pooled and responsibilities transferred to international and supranational organisations.

This cooperation takes place in particular within regional economical and political integration movements. (Mau *et al*, 2008). Two contrasting cases, mobility regulation of the US within the North American Free Trade Agreement (NAFTA) and mobility regulation of Austria and Finland within the European Union (EU) are studied. The two regions are contrasting cases since within Europe state borders are regulated cooperatively between countries to an enormous extent whereas in North America cooperation is hardly regulated by the means of agreements and treaties. Still, cooperation takes place. In Europe cooperation is mostly built upon multilateral treaties monitored and further developed by the EU as a supranational organization. Austria and Finland show what purpose established treaties and networks between the EU and Member States serve. The US, obviously the crucial country in NAFTA determines cooperation on mobility policies and cooperates with its neighboring countries in governmental networks mostly located outside of agreements. By comparing the NAFTA with the EU and by taking the view from government officials and their cooperation in networks it is possible to take stock of the functions of the various modes in which cooperation takes place. More than 40 government officials and policy observers were interviewed in the three case countries; Austria, Finland, and the US. Interviews were conducted semi-structured and interviewees were asked to identify modes of cooperation.⁴ Governmental networks have distinct functions and became crucial regulatory bodies that shape the international regulation of mobility more and more. In the European case governmental networks did

³ Krasner finds four uses or characteristics of sovereignty: control over borders, external recognition, ultimate right to decide, and capacity to exclude external authority structures (1999).

⁴ The empirical field work to this study was compiled within a research project at the Collaborative Research Center “Transformations of the State” at the University of Bremen. The project “Border regime change and cross-border mobility of persons” lead by Steffen Mau focuses on changes in mobility regulation in the OECD world. The country cases which exemplify these changes are Austria, Finland and the US. Comments from Heike Brandt and Steffen Mau on earlier versions of this paper were greatly appreciated.

not only lay the ground for the common mobility area in the past but enable border policy makers from the Member States today to exert their influence on EU policies within and outside the decision making process. The research laying the empirical ground for the study shows that the crucial function of governmental networks in mobility regulation is to socialize government officials into trusting each other.

By and large research on international mobility regulation does not provide a general analytical concept which distinguishes certain regulatory modes and their conditions. The literature is scattered and focuses mainly on the reactions of states towards international migration. A number of studies looks at policy responses of the nation state towards immigration and assesses a decreasing ability of states to control international movements accurately (Cornelius *et al*, 1994). Reasons thereof, such as the implementation of liberal norms and human rights in western societies (Joppke, 1999), and implications for state sovereignty are highlighted (Sassen, 1996). The loss of control for states in terms of immigration control builds the hypothesis for an ever growing strand of literature. For instance, it explains the common border and mobility regulation of the Member States of the EU as a strategy to regain control over mobility. Accordingly, the shift of decision making venues from the national to the European level and the establishment of a European migration and mobility regime have far ranging consequences such as restrictive migration and mobility policies which contribute to the “Fortress Europe” hypothesis (Guiraudon, 2000; Lavenex, 2006; Transit_Migration_Forschungsgruppe, 2007).

In the existing literature on the regulation of cross-border movements it becomes apparent that most attention has been paid to immigration and asylum issues. Little research has been done on temporary forms of mobility such as travel and labor (Koslowski, 2009). Furthermore, regulatory modes within which state actors and international actors cooperate are not specified properly and few authors recognize the emergence of governmental networks with their distinct functions in international mobility regulation (Newland, 2005). The focus of this study is to close this gap by drafting a concept which gives a general and systematical perspective on regulatory modes in mobility regulation. Few studies approach cooperation on the regional level comparatively and only analyze single regimes within their specific regional context (Condon and Sinha, 2003; Lahav, 2004). Therefore, international regulation of travel and labor, as two distinct mobility types, will be comparatively analyzed within a European and North American context.

The article develops in two stages. First, an analytical model will be developed. Slaughter’s concept of the international system as a system in which states share power by bi- and multilateral agreements and within intergovernmental organizations but also

through governmental networks, provides the basic assumptions to draft an analytical concept for the regulation of global mobilities (2004).

Second, an empirical assessment of the regulatory modes outlined in the model is attempted. International regulatory efforts will be traced on the regional level. The modes governing cross-border travel and labor exemplify how states establish specific mobility regimes within regional contexts. Both mobility types are different in kind, but similar modes of international regulation were found.

2. AN ANALYTICAL CONCEPT ON INTERNATIONAL MOBILITY REGULATION

In order to lay the basis for identifying the modes of international mobility regulation an analytical concept will be drafted. Modes of cooperation such as bi- and multilateral agreements and conventions as well as horizontal and vertical governmental networks build the infrastructure for international cooperation. The section emphasises that those networks possibly coordinated by intergovernmental or supranational organisations are decisive in international mobility regulation. By pooling the regulatory modes in the field of mobility regulation, mobility regimes are formed.

The basic modes of international cooperation in mobility regulation are bi- or multi-lateral agreements and conventions. Cooperation founded on “hard law”, meaning legally binding obligations that are precise and that delegate authority for interpreting and enforcing the legal norm, provides international actors with the general advantage to reduce transaction costs within cooperation and to strengthen the credibility of their commitments to each other (Abbott and Snidal, 2009: 21). Krasner distinguishes agreements according to the degree to which responsibility between states is shared and thus sovereignty compromised. On the one hand, he holds, there are agreements “...rulers enter into [...], such as human rights accords, from which they expect some gain, but their behavior is not contingent on what others do” (Krasner, 2001: 18). The Universal Declaration of Human Rights is an example for such a non-contingent agreement in international law. On the other hand, some agreements can go further than that in the sense that “...rulers agree to violate the sovereignty of their own state contingent on other signatories honoring their part of the bargain” (Krasner, 2001: 18). These types of agreements, that have the nature of a contract, transcend national sovereignty and expose national institutions to external influence often by authorities which interpret treaty violations and set conditions for the contracting parties. In regime research, bi- and multilateral agreements are supposed to be pareto-improving, meaning that they make at least one party better off without making anyone worse off (Krasner, 2001: 23-30). Examples for these types of agreements are the Chicago Convention on travel documents and the Schengen agreement on border controls. The rules laid down in these agreements and the principles and norms that shape the signatories expectations can be

framed in terms of “international regimes”, as policy field specific international institutions (Krasner, 1983). Thus, cooperation in terms of mobility regulation should not be understood as a zero-sum game, meaning that more international cooperation means less authority for national policy makers. The transfer of the venue of decision making or the commitment of states to certain commonly agreed on principles can be understood as an extended

(post-) national scope of action in terms of the regulation of cross-border mobility (Guiraudon, 2000; Hess and Tsianos, 2007).

Conceptualizing international cooperation in mobility regulation only in terms of bi- and multilateral agreements does not provide a sufficient framework to grasp this (post-) national scope of action. Krasner’s research on regimes helps to understand why states cooperate internationally within certain policy fields according to agreed on principles. However, this study broadens the perspective and differentiates the specific modes that establish regimes and focuses on the functions particular modes offer to actors involved.

Slaughter adds another layer to conceptualizing mobility regimes by identifying “government networks” which are nested in regimes and, according to her, increasingly define international relations. These networks work horizontally between national government officials within a formal institutionalized or informal environment, and vertically between national officials and their supranational counterparts (Slaughter, 2004: 13). A network is defined as “[...] a pattern of regular and purposive relations among like government units working across the borders that divide countries from one another and that demarcate the ‘domestic’ from the ‘international’ sphere” (Slaughter, 2004: 14).

Aside from binding agreements, the internationalisation of border policies is increasingly defined by these networks within which information and regulatory styles (best practices) are shared. The actors of these networks are mainly justice and home affairs officials, as well as external relations experts and labor officials. The networks can be formal and institutionalized or informal.

International organisations are often used as institutionalized platforms for horizontal networks bringing policymakers together at the same table. The role of international organisations (IOs) in mobility regulation goes beyond offering the infrastructure for state officials to convene. In fact, the role of international organisations is crucial and threefold: First, international institutions provide monitoring mechanisms for states compliance with negotiated agreements. Second, they often work as information agencies and influence border policy making by recommendations and standard setting. By providing platforms for horizontal networks, the dissemination of these recommendations to policymakers is assured. Third, they can offer concrete services such as the im-

plementation of certain border policies. In comparison to international organisations, supranational institutions exercise more of an autonomous power and in border policies they may even substitute governing functions (Slaughter, 2004). The most prominent example is the EU that enacts common visa, border control, and consular policies for its Member States. It is an international legal personality that is able to negotiate agreements with third-countries. In this sense, a supranational organisation replicates functions of the state and exists “above the state”. It establishes an effective vertical network between national officials and their supranational counterparts (Slaughter, 2004: 20). The EU serves as an example for the role of a supranational organisation in mobility regulation: It is to enact and enforce binding decisions on all its members, to harmonize national regulations on borders, and to gather information and expertise for the further development of common border policies.

The internationalisation of mobility regulation is, therefore, multifaceted and complex. It encompasses ‘traditional’ bi- and multilateral agreements on the one hand and increasingly horizontal and vertical networks involving international and supranational organisations on the other. The organisations build the infrastructure for negotiations, the harmonization of policies, and information sharing on the regulation of global mobility. Furthermore, they start networking with each other and create horizontal and vertical networks of a second order. Networks connect and shape interaction between the national, the international, and the supranational governmental arenas.

The next two paragraphs (3 and 4) look at the international regulation of cross-border travel and labor. The focus is on delineating the modes of cooperation which form the mobility regimes on the regional levels. Relevant networks and agreements forming the regimes as well as the actors’ perspective as to what their cooperation determines are identified. The figure shows that the establishment of regulatory modes is assessed in two regional economic blocs, NAFTA and EU, according to the two types of mobility travel and labor.

Fig. 1: Regulatory Modes in Regional Mobility Regulation

Travel		Labor	
NAFTA (US)	EU (A/ FIN)	NAFTA (US)	EU (A/ FIN)
Regulatory Modes: - Bi- and Multilateral Treaties - Horizontal and Vertical Government Networks			

3. DEFINING ENTRY PROCEDURES: THE REGULATION OF TRAVEL WITHIN NAFTA AND THE EU

On the regional level the cooperative management of the everyday business of controlling cross-border movements developed considerably. Crossing a border for the purpose

of travel, in general, does not exceed a time span of 90 days and comprises activities such as holidays, doing business, or family visits. State borders are the state's institution through which this type of cross-border mobility is regulated primarily (Brabandt and Mau 2010). The following two paragraphs will outline how travel has been regulated cooperatively between states as part of regional integration processes.

3.1 Cross-border travel: The US in NAFTA

Between Canada, Mexico, and the US, customs on the transnational trade of goods were abolished but not the control of cross-border movements of persons. Contrary to European or South American regional economic integration, NAFTA does not entail the freedom of movement for persons. Still, cross-border travel increased considerably since the free trade agreement went into force in 1994. Between 1996 and 2006 the number of trucks crossing the US borders daily rose by 31% and non-immigrant admissions, meaning tourists and business travellers, from Canada and Mexico almost quadrupled between 1996 and 2005 (Department of Homeland Security, 2005; Department of Transportation, 2007: 83).

Cooperation in terms of border control was triggered through NAFTA but is negotiated bilaterally, with different outcomes concerning the states neighboring the US: The collaboration between the US and Canada has led to a “seamless border”. In contrast to the US–Mexico border which has become more and more militarised with a high control intensity (Cottam, 2006). The situation to the north is ambivalent. Although control at the border between Canada and the US has always been enforced, before 9/11 entry visas and even proper passports were not a mandatory prerequisite for citizens of either country to enter the other country (Interview US #10, 2008). Cooperation on border control in horizontal governmental networks and bilateral agreements between the two countries has been established for decades and reached a high level of density. The first agreement on an exchange program for immigration inspectors was signed in 1894 (Condon and Sinha 2003). This and following agreements have served to found the basis for building mutual trust and the establishment of common control procedures for more than a century now. Today, “International Border Enforcement Teams” (IBET) staffed by US and Canadian border patrol agents enforce control cooperatively (Interview US #1, 2008). In the light of increased cross-border mobility, the seamless or “smart” US-Canadian border is only possible by deploying latest technology, the exchange of information and staff, and shared intelligence (Koslowski, 2004).⁵ Since po-

⁵ The NEXUS program was set up in 2002 providing the possibility for frequent border crossers to register their personal data in a database facilitating the control by the issuance of specific “Trusted Traveler” documentation. At the time 110.000 persons enjoy this privilege at the US- Canadian border (http://www.cbp.gov/xp/cgov/newsroom/news_releases/archives/2006_news_releases/122006/12142006.xml, 3/12/09).

licing of borders has become more and more an intelligence issue in the last one and a half decades (Kaufmann, 2007), cooperation has become much more sensitive and secretive (Interview US #1, 2008).

Border co-operation with Mexico faces more challenges than the US-Canadian cooperation. This is because, “like mindedness” between executives in the two countries has not been developed to the same degree and the situation at the border differs greatly. Officials at the US Department of Homeland Security (DHS) mention increased violence against border patrol agents, poor law enforcement capacities and the exponentially greater threat of illegitimate trade and travel as central differences between the northern and southern US borders. These conditions impede a denser cooperation and render the liberalisation of control a difficult endeavour (Interview US #2, #13, 2008). Still, even in the contentious US-Mexican border relation a “Trusted Traveller Program” that allows faster border control procedures for pre-screened travellers, called SENTRI, similar to the US–Canadian NEXUS program has been set up within the Western Hemisphere Travel Initiative (WHTI).⁶ Moreover migration researcher Guiraudon lists a number of US-Mexican governmental networks such as the “Border Relations Action Group” and the “Working group on Migration and Consular Affairs” which “[...] serve as a forum of cabinet-level officials to resolve border problems of mutual interest” (Guiraudon, 2001: 36). Since recently, the US acknowledges “co-responsibility” for border related crime and horizontal government networks have been established that increase the number of US agents working in Mexico (AP 26 March 2009).⁷ Even though mobility regulation with Mexico has been less densely developed and has been less based on reciprocity, government networks were established which foster cooperation. One interviewee compares the US–Canadian and the US–Mexican cooperation as follows (Interview US #1, 2008):

⁶ The SENTRI (Secure Electronic Network for Travellers Rapid Inspection) has first been introduced in 1995 and fastens CBP (Customs and Border Protection) processing for pre-approved, low-risk travellers. So far 175.000 persons enjoy privileges at the US – Mexican border (http://www.cbp.gov/xp/cgov/travel/trusted_traveler/sentri/sentri.xml, 3/12/09). The WHTI is a US governmental program, Canada, Mexico and Caribbean Nations fall under, that has the aim to strengthen US border control by facilitating entry for US citizens and legitimate travellers at the same time. Basically, the program lays down document standards and allows facilitated border crossing with “trusted traveller cards” (such as SENTRI or NEXUS cards), enhanced drivers licenses, and other documents (http://travel.state.gov/travel/cbpmc/cbpmc_2223.html, 07/07/09).

⁷ Undocumented border crossings by Mexican workers are triggered by the likelihood of finding employers in need for cheap and flexible labor. Security matters mainly drug and gun trafficking follow the same supply and demand structure. Demand for drugs in the US triggers violence and corruption against and within Mexican law enforcement officials being outgunned by powerful drug cartels armed with American guns (AP, March 26, 2009).

The multi-agency US-Canadian border enforcement teams, “[...] they operate on both sides of the border and they work together to basically identify and break up, you know, whether it is a smuggling ring, whether it is a cigarette smuggling ring, a people smuggling ring, a drug trafficking ring or whatever. But you literally have agencies that are sitting at the table together, that are sharing law enforcement and intelligence information and this is the relationship that is going on for a period of years. There is not a similar in a wholly organized way relationship that happens on a day to day government to government basis --- on the US - Mexico side of the equation. Though [...], again, the cooperation between the US and Mexico has increased, you know, tremendously in recent years, but you have occurrences there because of the fact that local law enforcement and to a certain extent ---- you know federal law enforcement were... were penetrated by the drug cartels et cetera in Mexico. It became difficult for the US to partner with some of these enforcements, you know, operations because you don’t necessarily know sort of, you know, where your information is going [...] and who you are dealing with.”

The quote exemplifies that cooperation is basically conditioned by the trustworthiness which the US government agencies attribute to their neighbors. Cooperation takes place on the implementation level and does not involve the drafting of common border policies (Interview US #1, 2008). Next to some bilateral agreements with Canada it is first of all horizontal governmental networks that shape the cooperation on border control in North America. The established networks have the function to create like mindedness and trust between officials and mark the first step for further more binding cooperation. In the light of the drafted analytical concept it can be argued that NAFTA cannot actively promote common policy making between the contracting parties since it is not an international organisation, but only a multilateral free trade agreement. The agreement has no direct impact on the regulation of travel but entails a chapter on mobile labor which will be discussed in the next section.

The following paragraph looks at modes of international mobility regulation in Europe and focuses on the vertical networks established between the EU institutions and the EU Member States. The comparison of travel regulation in the North American context with the European context allows distinguishing vertical from horizontal networks and gives an idea about their differential impact.

3.2 Freedom of movement: Austria and Finland in the EU

The regulation of borders in Europe stands in sharp contrast to North American borders. In Europe, the establishment of a macro-territorial mobility area with the supranational regulation of its external borders has been realized. EU integration has resulted in a sig-

nificant transformation of the EU Member States' national borders. The political agenda of creating an "area of freedom, security, and justice" demarcates a territory in which the liberties of the Single European Market, the free circulation of goods, services, capital, and people are ensured. Borders between EU Member States have become highly permeable, while external borders have become fortified and highly selective (Mau *et al.*, 2008). Mobility regulation in Europe has started off with the creation of horizontal government networks, a multilateral agreement, and finally, its integration into a supra-national institutional framework that exerts power over the border policies of its Member States. The shared responsibilities over border controls were negotiated outside EU-institutions within the multilateral Schengen Treaty of 1985, between the governments of the Benelux countries, Germany, and France. The multilateral treaty finally went into force in 1995. Since 1985 the Schengen area has grown from its initial five signatory states to most of the old and by now all of the new Member States of the EU. In 1997 the Schengen Treaty got incorporated into the EU treaties (Bendel, 2007).⁸

A precondition for waiving control at the inter-state borders of Member States has been the mutual trust between government officials as well as the ability of Member States bordering third countries to secure and control mobility across the external borders respectively. EU documents stress this condition by highlighting that "[t]he principle of solidarity – a corollary of mutual trust between Member States on which the area of freedom, security and justice is founded should be reinforced and consolidated" (Commission, 2003). Mutual trust and co-operation reinforce each other and should be understood in an interdependent relationship: "[...] the core of the Schengen agreement [...] is the deepening of cooperation between states which do not enforce border control on their internal borders any more. The public debate is very aware of this side of the coin, that external borders are controlled more vigorously and standardized. [...] The other, [...] more important side is, that cooperation between states has become more intense and more trustful. Without Schengen that would not have happened so quickly, so intensively, and so trustful." (Interview Austria #13, 2009, own translation).

The Schengen agreement is the most compelling example for internationalized travel regulation. Border policies are not decided upon unilaterally, but multilaterally within a group of states negotiating together the security standards for entry into their common

⁸ The EU Member States Great Britain and Ireland still retain their sovereignty claims on implementing border control to their territories. Still, both opt-in to certain agreements within the Schengen Treaty. Since December 21 2007, the land borders between "old" EU Member States and the central and eastern European accession countries can be crossed without being controlled. Airports lifted passport controls on March 31 2008. Non-EU Member States like Iceland, Norway, and Switzerland are part of the Schengen area as well. They are associated members of the agreement.

territory. Harmonized border control in the Schengen area is to a large extent concerned with the harmonization of border control procedures and the application and interoperability of common technology. In this vein, most important measures are the Schengen Implementation Agreement (SIA), the Schengen Information System (SIS) and the data base EURODAC which stores fingerprints of illegal border crossers and asylum seekers (Bauböck and Perchinig, 2006).

Compared to the NAFTA which was established to further economical integration as well, the EU created horizontal *and* vertical government networks, which actually substitute state authority over mobility regulation. Freedom of movement in the EU was possible because states shared the belief that pooled sovereignty and the relocation of control to the external borders of the common mobility area would not lead to a loss of control for them. Before control at the internal Schengen-borders was lifted, officials had already cooperated in various governmental networks such as the TREVI group founded in 1976. Thus, a mutual understanding of control procedures, cross border crime and its prevention had already been established. Next to the creation of like mindedness on control procedures, the shift of decision making venues from the national to the European level granted a wider field of manoeuvre for national policy makers. In fact, shared responsibility in horizontal and vertical networks made control of cross-border mobility more efficient (Favell and Geddes, 1999; Guiraudon, 2000; Lahav, 2003).⁹

Government networks in the European context did not only lay the ground for the establishment of the Schengen Treaty but also decisively shape cooperation within today's EU border politics. They enable border policy makers from the Member States to exert their influence on EU policies within and outside the decision making process. By looking at the country cases Austria and Finland which both acceded to the EU in 1995, we can see that their integration within supranational modes of mobility regulation is exemplified.

Finland signed the Schengen agreements in 1996 and finally implemented all measures in 2001 (Niemenkari, 2002). Austria signed the agreements in 1995 and implemented the measures until 1997. Taking a look at the two small EU Member States Austria and Finland one would expect little influence in EU border politics, but, the

⁹ The exclusion of national parliaments from the decision making process in the beginning of the 1990s and by then weak EU institutions made it possible for national executives to negotiate in the intergovernmental realm decisions on the „lowest common denominator“, meaning very restrictive regulations. This so called “two level game”, declaring intergovernmental bargains as European decisions got limited by the further development of the competences of European institutions, such as the EU-Commission, the EU-Parliament and the European Court of Justice by the Treaties of Amsterdam 1997 and Nice 2000 (Bendel, 2007).

opposite comes to the fore. At first sight, Member States seem to give up any sovereignty of defining border control since they share responsibility in the decision making process over entry criteria and control procedures to the common territory with 29 states. In addition, supranational EU-institutions exert enormous influence by coordinating, drafting, and monitoring the implementation of policies. The Amsterdam Treaty of 1997 signifies the sovereignty transfer on border control issues from the national to the supranational EU level. The standards and regulations controlling the now common EU borders were gradually transferred into the institutional and judicial realm of the EU. The EU Commissions' Directorate General "Justice, Liberty and Security" drafts, together with the EU-Council, representing the interests of the Member States, the common border policy. Since 2004, the Commission has been setting the agenda by proposing policies to the Council in terms of control procedures, visa, and asylum. Here, control procedures, visa, and asylum matters are decided upon by a qualified majority vote, safeguarding national interests but at the same time containing the influence of single national governments within the EU decision making process (Bendel, 2007).

Government officials in Austria as well as Finland claim expertise for border control in the Schengen area and at its external borders. Both countries bordered communist bloc countries until 1989 and faced increased cross-border movements from Central and Eastern Europe ever since (Interview Finland #6, 2008). Austria delivered an influential strategy paper during its presidency of the Council in 1998. The paper lays out the plan to extend and delegate border controls to countries of origin and transit of mobile people. This paper allegedly influenced the Councils' policy development lastingly (Interview Austria #2, 2008).¹⁰ Finland, going along the same lines, promoted the "Integrated Border Management Concept" in 2006 which reasserts the practice of de-locating control from the actual site of the border (Interview Finland #6, 2008). An essential element of EU harmonized border control is the extension of control measures to third-countries and to the entire EU territory. Aside from actively influencing policies during Council presidencies, both countries assigned government officials to prominent posts in the EU border security agency "FRONTEX", the latest creation of the multitude of EU information agencies and institutions dealing with the documentation and analysis of cross-border mobility.¹¹ FRONTEX, like most of the other agencies, functions as a platform

¹⁰ Interviews with government officials in Austria mentioned the influence of this paper more than once. Still, the paper now has reached confidential status and could not be obtained.

¹¹ The institutions disseminate information to decision makers of the Member States and their EU counterparts. At the same time they provide the platform for horizontal and vertical government networks to meet. Worth mentioning are: ICONET founded in 2005, an internet based coordination network for the exchange of information on irregular migration, illegal entrance and resettlement of evicted migrants; Immigration and Asylum Group

for national experts to ensure that European border police officers operate according to Europe-wide common standards. FRONTEX provides training courses, offers analyses of irregular border crossings and coordinates joint missions of national border agencies. Comparable to the US-Canadian border cooperation the practice of exchanging border control officers is a tool to harmonize measures and to build horizontal networks of trust and mutual understanding.

The example shows that even small Member States like Austria and Finland are sure to assert their influence within the Council, the official regulatory body deciding about common border policies, and within specialized networks such as FRONTEX. Vertical government networks in the supranational institutions of the EU such as the Commission and the Council draft binding agreements for all its members. This regulatory mode is much more effective in terms of establishing a common mobility space with shared responsibility on external borders than just horizontal networks established through economic integration in North America. However, the construction of a common mobility space waiving border control between the cooperating states was not intended and closer cooperation on border control policies necessitates more confidence in the border patrol agents, first of all at the US southern borders. The networks which were found resemble the very beginning of cooperation on cross-border mobility within the TREVI group. Institutionalized platforms would probably be necessary to monitor and standardize common practices further.

In Europe, the EU institutions and specialized agencies facilitate this harmonization process and provide avenues for Member States to assert influence or claim expertise. These platforms are formally built within the EU framework and serve as agencies whose most valuable incentive for cooperation is information (Eberlein and Grande, 2003). In order to be effective, contemporary mobility regulation necessitates a wealth of intelligence and technology. Constitutive for establishing agencies in the EU which channel sensitive information to the members is a basic understanding of confidentiality. The EU institutional set up allows for more cooperation and harmonization through the monitoring function of the supranational institutions and has the very practical impact of reinforcing trust between the Member States' officials. In other terms, EU institutions socialize the Member States into trusting each other.

In the next section, the international regulation of mobile labor will be studied. Following the structure of this article, cooperation on the regional levels will be subject of

founded in 2001, an expert group providing a platform for the exchange of information on migration issues; and Eurasil, founded in 2002, a network for asylum practitioners. For a complete list of networks initiated by the EU see <http://ec.europa.eu/transparency/regexpert/search.cfm?!=all>.

the analysis. Crossing borders for the purpose of travel or labor is different in kind; still, similar modes of internationalized regulation can be found.

4. DEFINING WAYS OF ACCESS: LABOR MOBILITY IN NAFTA AND EU

In principle, states admit persons for the purpose of employment on the basis of national laws and policies (Baruah and Cholewinski, 2006: 190). Labor mobility, in general, exceeds a short-term stay of 90 days and may last from three months up to three years and longer for various forms of labor contracts. Regulating mobile workers is a complex matter since some stay for an extremely short time, such as seasonal workers, posted workers, or service providers while others stay for a longer period of time which can easily become permanent. Since the expected stay of mobile workers exceeds that of travelers, the need to provide some kind of social security, housing, and education are central aspects in its regulation. These issues touch upon sensitive internal matters such as the distribution of welfare and the accessibility of benefits to foreign workers; consequently one would expect little international cooperation.

4.1 Labor mobility within NAFTA

US policies provide many ways of entry through different non-immigrant visa types. Canadian, Mexican, and US authorities have agreed on establishing common regulations for their white collar workers who need to move in the common trading bloc (Condon and Sinha, 2003). Comparable to the GATS Mode IV agreement, NAFTA requires Member States to grant temporary entry to business persons under its chapter 16. The treaty defines temporary as the absence of the intent to stay permanently. Within the NAFTA framework, the US used to define temporary as not exceeding one year. However, since 2008 the period of admission granted at one time has been extended to three years (US Federal Register, 2008). The focus on the facilitation of business mobility is decisive and reflected in four distinct categories: business visitors, traders and investors, intra company transferees, and professionals (NAFTA Annex 1603). Applicants must present a letter of their prospective employer in the US and give proof of their qualification in one of the mentioned categories. The Appendix to the agreement lays down education requirements and alternative credentials for people with specific occupations that are eligible for the so-called NAFTA “TN non-immigrant visa”.¹² Documents that give proof of these qualifications have to be presented to an immigration officer in US consulates or at a point of entry.

¹² The appendix defines education requirements for more than 60 professions. For instance, a graphic designer needs to present a bachelor or licenciatura degree; or a post-secondary diploma or a post-secondary certificate, and three years experience (NAFTA Annex 1603).

The agreement, although multilateral in nature and supposed to be enforced reciprocally between the signatories, is discriminatively applied by the US towards its two neighbors. Canadian citizens who apply as NAFTA professionals get their TN visas issued very easily at a port of entry. Mexican citizens need to apply at US consulates first which is an onerous barrier because it involves high fees and long waiting times (Interview US #9, 2008). Once the visa has been issued by the consulate they have to pass a second check with an immigration officer at a point of entry. Until 2004 there was a numerical cap at the quota of 5.500 Mexican applicants. For Canadian citizens there has never been a numerical cap. That way the TN visa actually integrated the white collar sector of the US and Canadian labor markets (Condon and Sinha, 2003: 91-93). For Mexican citizens, although the cap was removed, the measure does not really facilitate labor mobility to the US because Mexico would need an agreement on blue collar workers and seasonal laborers which is excluded from NAFTA's Chapter 16 on the temporary entry of business persons. However, the establishment of a bilateral labor agreement that would regulate low skilled workers mobility is discussed in the ongoing debate on the immigration reform act which proves to be a difficult issue (Erllich, 2006). NAFTA does neither further more binding obligations nor does it promote the establishment of governmental networks dealing with cross-border labor regulation. It could be hypothesized that further regulation of the enormous legal and illegal movements of mobile workers across US borders is not actually sought by politicians and therefore cooperation is only taking place in one little area, the mobility of the highly skilled (Interview US #6, 2008, Cornelius 2005).

This brief overview showed that the US uses the NAFTA framework to facilitate skilled labor mobility. Since procedures apply discriminatorily to Mexican citizens, this measure lacks the principle of most-favored treatment for all participants. In contrast, Canada and Mexico apply the same requirements to any NAFTA national irrespective of their country of origin. In conclusion it has become clear that US-cooperation with Canada regarding labor mobility has been decisively more developed than with Mexico. This is because Mexican citizens are suspected not to leave the US after the termination of their contracts. The mistrust in the neighbors' compliance with the agreement impedes on the facilitation of the application procedure envisaged in NAFTA (Interview US #2, 2008).

The cases Finland and Austria in the EU show a very different reality. Labor mobility within the EU is not restricted to certain skills or qualifications, but is open to any EU citizen of any profession.

4.2 Labor mobility in the EU

EU Member States established the most extensive regional mobility system for their workers. Since its formation with the Treaties of Rome in 1957, the free movement of

workers within the European Economic Community was the acclaimed goal of a common market granting free movement for capital, goods, services and persons. The section on travel showed how free movement was enabled, as the right to cross internal EU borders without being controlled. According to mobile labor, this freedom has been interpreted as the right to enter, stay and remain temporarily or permanently in a country other than its own.

Free movement of workers was first realized in 1968 and has been further developed ever since. By now, all forms of employment, meaning wage earning employees as well as the self-employed, have the right to move and establish themselves within the territory of the EU unrestrictedly. EU citizens' mobility is regulated according to a set of rights based on the principle of non-discrimination on the grounds of nationality (Art. 12 of the Treaty on the European Union, Part III, Title III). The European Court of Justice monitors the consistent and uniform application of EU law in Member States. Member States can only expel citizens of other members if they pose a serious threat to their public order (Baruah and Cholewinski, 2006: 185). Aside from enabling participation in the common labor market, EU regulations assure social security entitlements and their portability within the common mobility area. The Council Regulation 1612 from 1968 regulates access of EU workers to housing, education, vocational training, and welfare benefits in the entire EU territory. Today, free movement is basically unrestricted and can be interpreted as the right of any EU citizen to settle anywhere in the Union even if the purpose of stay is not work related, but means of subsistence are given (European Parliament and Council of the European Union, 2004).

The extent to which Member States are involved into the EU's vertical governmental network became apparent when ten states joined the regional grouping in 2004. Member States with high unemployment figures or strong unions managed to arrange transitional arrangements that restrict the free movement of nationals of the new central and eastern European Member States. Restrictions apply to a maximum of seven years (2+3+2 years), until 2011 at the latest. After five years though, in 2009, the countries which still uphold restrictions have to convince the European Commission that there are serious disturbances on their national labor markets legitimizing the restriction.¹³ Ireland and the UK lifted restrictions immediately in 2004, whereas, among others, Austria and Finland

¹³ Transitional arrangements were drafted for ten central and eastern European countries: the Czech Republic, Estonia, Hungary, Latvia and Lithuania, Poland, Slovakia, Slovenia (accession to the EU in 2004), and Romania and Bulgaria (accession in 2007). The restrictions for the 2004 cohort were lifted by: Finland, France, Greece, Ireland, Portugal, Spain, Sweden and the UK. The restrictions for the 2007 accessions were lifted by: Finland, Sweden, Cyprus, the Czech Republic, Estonia, Latvia, Lithuania, Poland, Slovakia, and Slovenia. (www.euractiv.com/en/enlargement/free-movement-labour-eu-27/article-129648)

maintained barriers to central and eastern European workers. Finland lifted those barriers in 2006, after all not contempt with the restrictions imposed mainly on Polish and Baltic citizens looking for work in Finland (Interview Finland #2, 2008). Austria still applies restrictions at the most until 2011 highlighting its geographical location in central Europe and the stark income differentials to its neighboring countries. One official claimed that opening the borders to the new Member States would have meant “suicide” in terms of the danger of undermined labor rights and wages (Interview Austria #12, 2009). Contradictions between Member States lifting or maintaining restrictions come to the fore. This highlights the differentiated impact of national public debates and party politics within the Member States (Interview Austria 2009 #12, Finland #2, 2008).

The EU regulates cross-border movements from travellers from outside and labor mobility from EU-citizens within its territory. The EU treaties and directives manifest a legal differentiation between EU-citizens and third-country nationals, who are bound to the territory of the Member State that is responsible for their lawful residence. Member States retain most of their authority over determining criteria of entry and stay of third-country nationals entering the EU as temporary workers except for highly qualified workers.¹⁴ EU’s institutions do not have extended influence over the issue of labor mobility from outside the EU yet. Still, horizontal governmental networks have been established already. They promote cooperation through recommendations and best practices that harmonize Member States policies towards third-country nationals. Cooperation networks were installed, such as the European Migration Network (EMN) and the General Director’s of Immigration Services Conference (GDISC). This initiative brings the department heads of immigration services of the 27 EU countries and applicant states together. The members of the network saw that “[...] with the enlargement of the EU it became evident that also at the operational level, there had to be some connecting networks and a sharing of information and views” (Interview Finland #2, 2008). Such government networks resemble the intergovernmental networks which once prepared free movement within the Schengen area (see TREVI). It can be assumed that like mindedness between the government officials in charge has to be established *before* the regulation of temporary workers from outside the EU can be shifted to the EU level.

In the concluding remarks, the modes which regulate labor and travel will be assessed in comparison. It will be analyzed what the chosen mode of cooperation tells us about the extent of cooperation between the parties.

¹⁴ Common regulations concerning criteria of entry and residence for this small group were found recently (European Parliament and Council of the European Union, 2009).

5. CONCLUSION

The empirical findings show that international cooperation on mobility regulation is diverse and defined by regulatory modes which have distinct conditions and consequences. This study meant to close a gap in the literature which has not yet adequately dealt with the analytical distinction of regulatory modes.

Fig. 2: *Travel and Labor in Regional Mobility Regulation*

Regional Mobility Regulation	Travel		Labor	
	NAFTA (US)	EU (A/ FIN)	NAFTA (US)	EU (A/ FIN)
	<ul style="list-style-type: none"> - No multilateral agreement on travel - Bilateral agreements and horizontal government networks - Like mindedness, but lack of trust - Cooperation on border policy enforcement 	<ul style="list-style-type: none"> - Schengen Treaty incorporated into supranational EU framework - Vertical governmental networks - Institutionalization of trust between parties - Common policy making and enforcement 	<ul style="list-style-type: none"> - Multilateral agreement - TN-non-immigrant visa - Different procedures for Mexican and Canadian citizens 	<ul style="list-style-type: none"> - EC Directives determine freedom of establishment for any EU-citizen - Labor mobility within the EU is supranationally determined - Cooperation on labor mobility from outside the EU in horizontal governmental networks

The analytical framework identified traditional modes of mobility regulation such as bi- and multilateral agreements which build the basic infrastructure of mobility regulation within NAFTA and the EU. International mobility regulation cannot be fully grasped though, if one only looks at this framework without taking into account governmental networks between states that have increasingly been located outside of formal agreements, or at vertical networks between states and supranational organizations. The basic function of horizontal networks is to establish like mindedness between government officials. Governments take part in such networks or are willing to be influenced by them because they get access to information about ways of bordering which they could not generate alone. Governmental networks are predominant where more cooperation is sought but formal treaties have not been accomplished yet. At the same time networks can be established alongside agreements to safeguard channels of influence for participating states. The mode of cooperation reflects the extent of cooperation shared between the contracting parties. Vertical networks between states and supranational organizations are most effective in terms of cooperative mobility regulation because they serve to monitor, harmonize, and further develop common border policies.

The comparison of travel and mobile labor, as two categories of global mobility, showed that even though the two mobilities are very different in kind, similar patterns define their regulation. Bi- and multilateral agreements and networks define and structure how people move and work in Europe and North America. The EU defines a socio-economic space that grants the partaking in a European wide mobility regime. This European space transcends the scope of the state with its delimited territory, its nationally defined labor markets, and societies (Mau, 2006). The extent of harmonization and shared policy making is unique and can be traced back to the lasting impact of supranational institutions. The analysis of Finland's and Austria's vertical and horizontal networks showed how pooled sovereignties determine the common borders for travelers from outside and mobile workers within the EU. Vertical networks and European institutions are defining border policies and EU agencies set the pace for their further development. Here an internationalized mobility regime enables free movement and establishment within the Schengen area for both travelers and workers.

To the opposite, NAFTA is a regional economic bloc which first of all focuses on free trade between economies and secondly on the respective societies. Therefore, the establishment of a common mobility space granting freedom of movement to 'NAFTA citizens' has not "[...] ever been on the table really for any US policy maker to open borders like that" (Interview US #10, 2008). Cooperation seems to be a necessity in terms of managing the security of everyday cross-border flows such as travel and for distinct segments of the labor markets in integrating economies; e.g. labor mobility of skilled workers. NAFTA triggers the establishment of more and more networks concerning the security issues in travel but does not go beyond the TN non-immigrant visa agreement in terms of the regulation of mobile labor. It seems to be the political choice of the US to not regulate unskilled and seasonal labor crossing its borders. Neither national policy makers nor a supranational institution are possibly promoting the idea of a common mobility space. The international regulation of travel and labor in the North American context aims at the governance of borders, not their removal. Although very different from mobility regulation in the EU, cooperation in North America is more the rule than the exception.

Cooperative mobility regulation starts with the establishment of like mindedness and trust between officials in horizontal networks. If inter- or supranational institutions are developed as well government officials are even further socialized into trusting each other.

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