REGIONAL APPROACHES IN MANAGING MIGRATION
A COMPARATIVE VIEW

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**ABSTRACT**

Considering the complexity of today’s international migration, the attempt to manage the movement of people unilaterally, at the national level, seems highly inadequate. On the other hand, a comprehensive international or global regime to manage migration has not yet evolved. While calls for a global framework continue to exist, much advancement in regional management of movement has already happened. Several regional organizations and agreements have developed legal instruments to manage the flow of people within the territories of their Member States. The present paper gives a comparative view on selected policies (rights of entry, residence and work) as pursued by certain regional arrangements. The approaches towards managing intra-regional flows vary considerably ranging from (regional) free movement of people to modest travel and entry facilitation for certain categories of people.

Key Words: regional integration, international migration, regional migration governance, regional free movement schemes

**INTRODUCTION**

Considering the complexity of today’s international migration, the attempt to manage the movement of people unilaterally at the national level seems highly inadequate. On the other hand, no comprehensive global migration regime has yet evolved, although discussions to do so are brought up frequently. In contrast to international trade in goods and services, states seem much more reluctant to liberalize the cross-border movement of people and to install a coherent international framework for migration. Therefore a myriad of legal instruments, norms and principles continues to exist, targeting different aspects of migration at all possible governance levels (national, regional and international).

Within this “patchwork” of international migration management, the regional level has emerged as an important layer of governance. Informal regional processes of consultation and cooperation have flourished all around the globe, bringing together like-minded states with common migration interests and concerns. Although these so called Regional Consultative Processes (RCPs) are non-binding
and informal in nature, they represent an important step towards regional multilateral strategies in the management of migration (Nielsen, 2007).

What has been less observed, at least from an academic point of view, is the increased significance of (formal) regional organizations and agreements in facilitating the movement of people. Several regional arrangements have developed (or are in the process of developing) legal instruments to manage the flow of people within the territories of their Member States. By aiming at the free (or freer) movement of people, they target first and foremost the citizens or nationals of the Member States of the respective arrangements. However, some organizations like the EU have embarked on the road towards a common asylum and immigration policy which in the long run would harmonize Member States’ migration policies towards third country nationals.

The present paper aims at giving a comparative view on migration policies adopted by certain regional arrangements in order to facilitate the movement of people at the regional level.

This approach is selective from two points of view. First, the overall goal is not to provide a comprehensive survey of all possible regional arrangements, though a considerable number of regional organizations and agreements has been included in this paper. The idea is rather to offer a reasonably descriptive set of examples in order to give a first overview of the variety of regional arrangements dealing with migration and the movement of people.

An additional restriction exists in view of the specific policy fields to be compared. The focus of this paper is on the three classical topics: travel facilitation, labour migration and residence rights. Possible regional approaches towards irregular migration, refugees, remittances etc. are excluded for the time being. Ancillary policies such as the portability of social security or pension rights and the recognition of skills and qualifications cannot be analyzed in greater detail either.

The paper is divided into six parts and organized as follows:

The first part briefly introduces the topic of regional integration and outlines the relationship between the movement of people and regional integration processes. In this context possible advantages and disadvantages of regional migration schemes are discussed while some general remarks on the challenge of comparing regional integration processes round off the picture. The second part introduces those
regional organizations and agreements selected for the purpose of this paper. It is to be noted that the subsequent comparison is based on the legal provisions of the adopted instruments and not on what is actually implemented as this is beyond the scope of this paper and generally difficult to assess. Part three focuses on the right of entry and regional policies on visa facilitation. The main differences exist with regard to both the authorized period of stay without a visa and the categories of people benefitting from these rights. The fourth section will elaborate on regional labour migration policies. The range of different approaches extends from offering full mobility of labour, granting market access only for certain categories of people (mostly high-skilled) or service providers on a temporary basis (following the GATS model), to facilitated entry conditions for certain professions. Closely linked to the right of entry and the right of work is the right of residence, which will be presented in part five. Here it becomes obvious that only a small minority grants residence rights independently from economic activity and on a permanent basis. The last part summarizes the findings.

1. REGIONAL INTEGRATION AND MIGRATION

Against the background of globalization and a (still) fragmented multilateral system, the regional level has emerged as an intermediate layer of governance. Although there has been a significant growth in both the number and scope of regional arrangements in recent years, the idea of regional integration and cooperation is certainly not new (Fawcett, 2005). Different unions, associations, leagues and the like have existed throughout history with a first major wave of initiatives in the nineteenth century (Mattli, 1999). Today, a multitude of regional organizations, associations and agreements exist, differing considerably in their scope, range of activities, institutional set-up, decision-making procedures and membership. In order to distinguish these different forms of regionalism or regional integration, two dimensions are usually distinguished: (1) a chronological and (2) a qualitative view (Van Langenhove and Costea 2005). The chronological approach identifies successive waves of regionalism, starting either after the Second World War (two waves of regionalism) or including initiatives between the two World Wars too (three waves of regionalism). The qualitative approach in contrast distinguishes between

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1 For a comprehensive list of regional arrangements worldwide see the Regional Integration Knowledge System (RIKS) at: http://www.cris.unu.edu/riks/web/.
“old” and “new” regionalism, implying a fundamental (qualitative) difference between the two processes. An alternative way is to speak of “generations” instead of “waves”, thereby avoiding the strict separation of chronological clusters and circumventing the dichotomy of “old” and “new” (Van Langenhove and Costea, 2005, p. 2).

The first generation of regionalism is based upon the idea of a linear process of economic integration whereby former separate (national) economies merge into larger (regional) economies. Following Balassa’s famous approach (1961), different “sequences” of economic integration can be distinguished. The process starts with a Free Trade Area, in which the participating states agree to abolish all internal customs on goods while keeping their own level of external customs duties. During the next stage external tariffs are harmonized leading to a so called Customs Union. This is followed by a Common Market, including the free movement of goods, services, capital and labour. Monetary integration furthermore implies the adoption of a common currency, a common monetary policy and a supranational authority to monitor this policy. The Economic and Monetary Union goes even one step further by introducing also a common fiscal policy.

The “second generation” of regionalism is based on the idea that economic integration cannot be separated from other political, social or cultural developments and that integration may also include non-economic matters such as security, justice etc. This type of regionalism is not (anymore) limited to the European Union but includes various integration processes in other world regions too.

The “third generation” finally implies that regions are playing a role on the world stage of global politics. This is often referred to as global “actorness” as the region is performing different tasks as an actor at a global governance level. This form of regionalism is still a normative idea, although the European Union is displaying certain elements of this third generation of regionalism (Van Langenhove and Costea, 2005, p.12).

**Relationship between regional integration and the movement of people**

The relationship between regional integration and the movement of people has not been studied up to now in a comprehensive and in-depth way. However, general observations indicate that the two processes are interdependent and mutually influence each other as broadly outlined below.
Regional integration processes challenge the traditional concept and role of the state. This may involve the transfer of sovereignty from the national to the supranational (regional) level with repercussion also on migration policies. Similarly, cross-border movements create new dynamics to which states have to adapt. In a region where the movement of people has created transnational spaces, sometimes pre-dating the drawing of international borders, this can delegitimize national governments to adopt policies along these borders which do not reflect actual migratory movements.

In a similar way, both regional integration and international migration influence the formation of national or regional identities. Where people are allowed to move freely across and reside within the territories of certain states, it becomes difficult to delineate migrants from residents or nationals. Traditional forms of identity might be challenged and concepts of identity redefined.

Regional migration policies aimed at facilitating the movement of people might furthermore increase intra-regional flows, while on the other hand flows from outside the region might decrease due to stricter entry conditions for third country nationals. On the contrary it is also possible that migration flows continue to exist (or might even grow) despite a certain policy. It would therefore be interesting to contrast regional migration policies with actual migration flows within a region.

**A case for regional migration management?**

Despite the transnational character of cross-border movements, regional organizations or associations have rarely been involved in the formulation and implementation of migration policies. This has been - at least for the last 200 years - the exclusive domain of sovereign nation states eager to protect the boundaries of their territories.

There are however good reasons to consider regional frameworks for the management of movement of people. First, a significant part of today’s cross border movements is intra-regional. As estimated by the World Bank, migration flows within Sub-Saharan Africa, Europe and Central Asia (if taken as a region) and South Asia show a remarkable percentage of intra-regional flows (see graph 1).²

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² The levels of intra-regional mobility are calculated as a percentage of total emigration destination. Furthermore it should be noticed that within this database, the term “regional” relates to macro-regions or continents.
Second, regional agreements are usually easier to reach as compared to multilateral (global) frameworks. Due to the smaller number of states, comprehensive agreements are more likely, especially if countries show similar levels of socio-economic development. Countries of the same region might share common interests with regard to specific migration challenges and cooperation might be easier due to existing personal links and mutual trust. Finally, the pooling of limited human and financial resources might be beneficial especially (though not exclusively) for developing countries.

On the other hand, regional migration schemes may also display certain weaknesses. One downside is certainly that by abolishing existing borders within a region, new borders are created towards countries not belonging to the regional organization or agreement. Entry for third-country nationals might therefore become more difficult as often illustrated by the metaphor of “Fortress Europe”. One general challenge of regional integration schemes is furthermore the issue of overlapping membership. Captured in the famous image of a “spaghetti bowl”, countries sometimes belong to different regional organizations at the same time. In the worst case scenario this can lead to incoherence and poor implementation of policies, considerable economic costs and an overall lack of commitment. Last but not least, migration is not only a transnational but also a truly global phenomenon. As correctly pointed out by Gosh (2007) major countries of origin and destination...
may not always be located in the same region. Regional and (future) global schemes shall therefore be complementary in order to ensure a certain degree of policy coherence.

The challenge of comparing regional integration processes

The attempt to compare (former or) existing regional integration processes is often accompanied by a conceptual, methodological and theoretical challenge, not seldom leading to more confusion than enlightenment. From a conceptual point of view, the major problem lies in the absence of an (interdisciplinary) agreement on fundamental notions like region, regional integration, regionalism, regionalization etc. For comparative research this is especially important as the definition of a notion or concept decides upon the selection of a case and ultimately influences the conclusions or generalizations to be drawn.

The second major challenge becomes obvious when looking at the multitude of different theoretical approaches aiming to explain regional integration processes and outcomes. Some theories have developed in line with classical theories in political science and IR, while others emerged in a particular regional context (Fawcett, 2005). Especially “region-specific theories” are said to suffer from a Eurocentric bias leading to the situation in which “progress in regional integration is defined in terms of EU-style institutionalism.” When comparing different integration processes, the European experience should be used as an important case without raising it to the one and only path to follow.

Finally, different methods exist on how to study regional integration processes. A classical way is, for instance, to look at single cases in a historical perspective, which is usually dominated by qualitative research. Others study multiple cases in order to deduct general explanations, usually applying quantitative methods. Especially the latter raises a set of problems since the selection of cases is not always based on precise and clear cut criteria.

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5 For more details see Ibid., p.13ff.
With regard to regional approaches towards migration the following elements can be added. First, a clear distinction should be made between the legal provisions and the actual implementation of a certain policy. A protocol on visa-free travel might be signed and ratified but ignored in practice by national border posts or authorities. The present paper focuses explicitly on the legal dimension of migration policies, without denying the importance of implementation issues.

Second, one should bear in mind the scope and purpose of a specific regional organization or agreement. If a regional free trade agreement focuses exclusively on the mobility of high-skilled labour, no comprehensive mobility of people can be expected (and should not be used as a benchmark). Finally, it makes sense to break down different policies into individual rights in order to compare them more accurately, e.g. rights of entry, residence, work, ancillary policies, etc.

2. REGIONAL APPROACHES IN MANAGING THE MOVEMENT OF PEOPLE

With regard to the regional level, there are basically two different types of mechanisms which foster cooperation on international migration. The first type includes (formal) regional organizations or agreements which by pursuing different economic, political or security-related goals have included the movement of people into their integration agendas. These regional organizations or agreements are the focus of the present paper.

Second, Regional Consultative Processes (RCPs) have emerged during the past 15 years, promoting intergovernmental dialogue and cooperation on international migration. These informal, non-binding processes aim at bringing together government officials, representatives of International Organizations and to a lesser extent NGOs to discuss migration issues of common interest. Currently 13 major RCPs exist covering all world regions.⁶ Although most of these processes have been developed in close relation to (formal) regional organizations, they cannot be discussed in greater detail in the framework of this paper.⁷

With regard to (formal) regional organizations and agreements, the facilitation of movement is approached in a great variety of ways. Liberalization of movement might be a primary or secondary objective of an agreement and the overall goal of an integration process might influence the extent to which the movement of people

⁷ For further reading see IOM (2001); Thouez/Channac (2005); Nielsen (2007).
is liberalized. Second, variation might occur with regard to the different aspects of mobility. These can include short or long-term migration, single or multiple entries, temporary or permanent residence and work, flanking policies such as the portability of social security and pension schemes or the recognition of skills and qualifications. The categories of people who benefit from a possible liberalization might differ as well, ranging from labour migrants (including all possible categories of migrant workers) to visitors and tourists, family members, refugees etc.

As mentioned above, the goal of this paper is not to provide a comprehensive survey of all possible agreements or organizations, but to offer a reasonably descriptive set of examples in order to assess the variety of regional arrangements dealing with migration and the movement of people. There are however certain features common to all selected arrangements. They are all regional arrangements and mandated to become active in the field of movement of people.\(^8\)

For the purpose of this paper, the following regional organizations and agreements have been selected:

**Africa**: African Union (AU), Common Market for Eastern and Southern Africa (COMESA), Economic and Monetary Community of Central Africa (CEMAC), Economic Community of West African States (ECOWAS), and the Southern African Development Community (SADC).

**The Americas**: Andean Community (CAN), Caribbean Community (CARICOM), North American Free Trade Agreement (NAFTA) and Southern Common Market (MERCOSUR).

**Asia-Pacific**: Association of Southeast Asian Nations (ASEAN), Pacific Island Forum (PIF), South Asian Association for Regional Cooperation (SAARC).

**Europe**: Black Sea Cooperation (BSEC), Community of Independent States (CIS), Eurasian Economic Community (EURASEC) and the European Union (EU)

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\(^8\) For the purpose of this paper the term regional is understood as follows. Member States belong to the same geographical sub-region or neighboring geographical sub-regions. This excludes inter-regional (or cross-regional) organizations like APEC or the OIM which cover different macro-regions or continents. Furthermore, a minimum participation of three states is required, excluding therefore classical bilateral agreements, e.g. bilateral Free Trade agreements (FTAs).
3. TRAVEL FACILITATION AND RIGHTS OF ENTRY

In most countries of today’s world people are free to leave the boundaries of their states. This is also acknowledged by the Universal Declaration of Human Rights (1948) which states that “everyone has the right to leave any country, including his own, and to return to his country”.\(^9\) This right to *emigrate* is however not complemented by an internationally recognized right to *immigrate*. Consequently, the decision whether a person is allowed to *enter* another country is still in the discretion of sovereign nation states. Discussions have been brought up frequently whether not to introduce a universal right of entry, but progress in terms of concrete output has been limited so far.

In order to control entry to the territory of a state (or region), different tools can be applied. One measure is to set quotas which put a quantitative restriction on the number of migrants admitted during a certain period of time (usually one year). Another common way is the issuance of a visa, usually understood as “an endorsement by a consular officer in a passport or a certificate of identity that indicates that the officer, at the time of issuance, believes the holder to fall within a category of non-nationals who can be admitted under the State’s law”.\(^10\) The types of visa vary according to the purpose of entry and may include tourist visa, business visa, temporary work visa, student visa etc. It is to be noted that a visa usually does not give the holder any additional rights beyond the right to enter a country and to stay there for a limited period of time. Finally, work permits may authorize migrant workers to enter another country for employment.

Among those organizations considered for the purpose of this paper, a considerable number has already adopted instruments to facilitate the movement of their citizens for non-economic purposes (see table 1). The most prominent example is certainly the free movement scheme of the European Union.\(^11\) The right to enter and move around freely within the territory of the EU is exercised in two different ways. First, every EU citizen is automatically entitled to enter another Member State without a visa, only to be restricted on grounds of public policy, public security or public

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\(^9\) Universal Declaration of Human Rights, Art. 13(2).
\(^10\) IOM Glossary (2004), p. 69
\(^11\) For a more detailed view on the free movement scheme of the EU see Hailbronner (2007), Condinanzi et al. (2008), Weiss and Wooldridge (2007).
health. Second, it is within the Schengen regime that people in Europe are allowed to move around freely. As the Schengen regime was however developed outside the EU framework, it does not exclusively apply to EU citizens. At present, it covers 22 EU Member States with Bulgaria, Romania and Cyprus not (yet) applying it. The UK and Ireland decided to opt out from the Schengen acquis. With Iceland, Norway and Switzerland also three non-EU countries are participating in the Schengen area.

The complete abolition of visa requirements for citizens of a regional organization is however not confined to the EU, but has taken shape in other world regions as well. The Eurasian Economic Community (EURASEC) has signed an Agreement on mutual visa-free travel of citizens in February 1999, granting EURASEC citizens the right to enter, move across and reside in the territories of the Member States without a visa and by just presenting a national identification document. Member States of the Commonwealth of Independent States (CIS) signed an agreement on visa-free movement of citizens in 1992, establishing the right of CIS citizens to enter, leave and move within the territories of CIS Member States without a visa, provided that they carry national identification documents. According to the Economic Agreement of the Gulf Cooperation Council (GCC) citizens of the Member States shall enjoy equal treatment with regard to the right of residence and movement among GCC Member States. Movement by just presenting an Identity Card is currently in place in five Member States of the Gulf Cooperation Council (GCC). Finally, the Common Market of the South (MERCOSUR) approved an agreement on Visa Exemptions granting artists, scientists, sportspersons, journalists, specialized professions and technicians visa-free travel up to 90 days. The “Agreement on Residence for State Party nationals”, which grants all MERCOSUR citizens an automatic visa and the freedom to live and work in another member state, is however not in force yet.

Temporary visa exemption is provided by the majority of the selected organizations ranging from 14 days of visa-free travel in the case of ASEAN to 6 months for CARICOM nationals. Within African regional integration processes such as CEMAC, ECOWAS and SADC the maximum period of stay without a visa is usually 90 days.

13 It has to be noted that the status of the agreement is currently unclear. In 2000 Russia notified that it was leaving the agreement, while other signatory states concluded different bilateral agreements.
15 Agreement on Visa Exemptions between the Member States of the MERCOSUR ("Acuerdo sobre Exención de Visas entre los Estados parte del MERCOSUR), Mercosur/CMC/DEC No. 48/00.
but differences exist with regard to additional requirements like health certificates or proof of financial support. In the case of the Andean Community (CAN) visa-free travel is allowed for 90 days as well and applies not only to CAN citizens but also to foreign residents. The South Asian Association for Regional Cooperation (SAARC) grants visa-free travel of 30 days but only to certain categories of people. The BSEC does not (yet) provide for any kind of visa exemption but adopted two agreements to facilitate visa procedures for business people and professional lorry drivers.
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<th>Regional arrangement</th>
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<th>Temporary Visa exemption</th>
<th>Simplification of Visa procedures</th>
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Source: Compiled by the author

¹⁶ The current status of the CIS agreement on visa-free movement is however unclear.
4. LABOUR MIGRATION

International arrangements on labour migration exist at bilateral, regional or plurilateral level. The most common type is certainly the bilateral labour agreement which is generally concluded between labour sending and receiving countries (Trachtmann, 2009). Other agreements are adjuncts to bilateral or regional free trade agreements or customs unions.\(^{17}\) It is also important to bear in mind that the right to enter another country for economic purposes does not automatically entail the right to practice a certain profession. National regulations with regard to recognition of skills and qualification may still apply and represent an additional barrier to labour migration.

With regard to the selected regional arrangements, we can broadly distinguish four different types of approaches\(^ {18}\): (1) Organizations or agreements granting full mobility of labour which usually come along with general free movement schemes including non-workers, (2) Regional arrangements granting access to their labour markets only for certain categories of people, mostly high-skilled workers, (3) Regional arrangements following the GATS model by granting labour market access only to service providers on a temporary basis, (4) Regional arrangements facilitating entry conditions for workers.

(1) Comprehensive arrangements for labour mobility

Within this category the most advanced regional integration scheme is certainly the European Union (EU). As one of the four fundamental freedoms of Community law, Art. 18 EC gives every EU citizens the right to move and reside freely within the territory of the Member States. More specific treaty provisions apply to the movement of workers (Art. 39 EC), the self-employed (Art. 43 EC) and to service suppliers (Art. 49 EC). In addition, there is relevant secondary legislation on social security, health care, taxation, mutual recognition of diplomas etc. According to Article 39 EC and Regulation 1612/68 every national of an EU Member State has the right to work in another EU Member State without the need of a work permit.\(^ {19}\) This includes equality of treatment with regard to employment, remuneration and

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\(^{17}\) It has to be noted at this point that those Regional Trade Agreements (RTAs) notified to the WTO are not “regional” in the sense of the present paper as they include also bilateral agreements.

\(^{18}\) This distinction was inspired by Nielsen (2003), who uses however a more refined model to distinguish different regional trade agreements.

\(^{19}\) This includes the right to seek employment, to stay in the Member State for the purpose of employment and to remain in the territory of a Member State after having been employed.
other working conditions. Family members are entitled to specific rights as well. However, employment in the public sector might be restricted and Member States can deny access to their labour markets on grounds of public policy, public security or public health. It is worth mentioning that in the context of eastward enlargement, several old Member States introduced transitional restrictions on the free movement of workers from the new Member States. During this period, old EU Member States are allowed to apply national measures to restrict their labour markets including the requirement of work permits. This restriction can be maintained for a maximum of seven years until May 2011 in the case of the eight countries that joined the EU in 2004 (Malta and Cyprus were excluded) and until 2014 for Bulgaria and Romania.

The full mobility of labour is however not only a main goal of the EU, but envisaged in other regional integration processes as well. In the founding Treaty of the Economic Community of West African States (ECOWAS), Member States are called upon to abolish all obstacles to the freedom of movement and residence of Community citizens and to allow them to work and undertake commercial activities within the Community. In order to achieve these long-term goals, a Protocol relating to Free Movement of Persons and the Right of Residence and Establishment was signed in 1979. It identified three main phases (right of entry, residence and establishment) through which free movement should be achieved in a maximum period of 15 years. The right to work is addressed in the second phase, which entered into force in 1986. It includes the right of residence for the purpose of seeking and carrying out income earning employment. Employment in the civil service of the Member States is however excluded unless permitted by national laws. Citizens wanting to reside in another Member State are obliged to apply for a residence card or residence permit at the competent ministry of the host Member State.

20 Family members have, irrespective of their nationality, the right to reside with the migrant worker and to receive a residence permit for the same period of time as the worker. Children of migrant workers have in addition the right to education in the host country on the same conditions as children of national workers. They can retain their right of residence even after the migrant worker has left the country.
21 Treaty establishing the Economic Community of West African States, Lagos, 28 May 1975, Art. 27 (1) and (2).
23 Supplementary Protocol A/SP./1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment.
24 Ibid., Art. 2.
25 Ibid., Art. 4.
26 A comprehensive analysis of free movement of people within ECOWAS can be found in Adepoju (2005) and (2007), SWAC/OECD (2006), Martens (2007).
The Common Market for Eastern and Southern Africa (COMESA) envisages the free movement of goods, services, capital and labour. The founding Treaty states as one objective the removal of “obstacles to the free movement of persons, labour and services, right of establishment for investors and right of residence within the Common Market”. In 2001, the Protocol on Free Movement of Persons, Labour, Services, Right of Establishment and Right of Residence was adopted. As implementation is however slow, Member States are still applying the Protocol on Gradual Relaxation and Eventual Elimination of Visa Requirements.

Within the Andean Community (CAN) the Andean Labour Migration Instrument (IAML) contains the most important provisions related to labour migration. It provides for the gradual establishment of unhampered movement and temporary residence for Andean migrant workers, which are classified into four different categories: (1) Individually moving workers, (2) company workers, (3) seasonal workers and (4) border workers. Andean migrant workers are granted the right to equal treatment, to form labour unions and to collectively bargain their wages. Families of migrant workers are also protected under the IAML. Rights of entry and departure are to be granted to spouses of migrant workers, minor children who are not yet emancipated, older disabled children and parents of migrant workers. It should nevertheless be noted that an additional regulation still needs to be adopted in order to implement the provisions laid down in the IAML (Santestevan, 2007, p.380). Within the Gulf Cooperation Council (GCC) full equal treatment shall be accorded to GCC nationals working in the government and private sectors. Effective from 1982 on, GCC nationals were allowed to engage in all economic activities not listed within a specific document (“negative list approach”). In 2007 the list was reduced to four types of activities which are limited to the nationals of the respective Member State.

(2) Regional arrangements providing labour market access only for certain categories of people

The North American Free Trade Agreement (NAFTA) focuses exclusively on facilitating the mobility of businesspeople on a temporary basis (Chapter 16 of

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29 The different categories are defined and explained in Articles 5 to 8 of the Labour Migration Instrument.
30 IAML, Art. 10 and 11.
31 Ibid., Art. 12.
32 Resolution of the Supreme Court, 23rd session Doha 2002.
NAFTA). According to Article 1608 of NAFTA, the term “businesspeople” includes persons involved in trade in goods, the provision of services and the conduct of investment activities. The agreement is limited to temporary entry which is defined as being “without the intent to establish permanent residence” (Art. 1608 NAFTA). Temporary entry is basically granted to four categories of high-skilled labour: (1) business visitors, (2) traders and investors, (3) intra-company transferees and (4) professionals. This last category requires a special visa, also known as the nonimmigrant NAFTA Professional visa or TN visa (Alarcón, 2007, p. 253). It is to be noted that the requirements for obtaining a NAFTA visa in order to work in the US differ for Canadian and Mexican citizens.34

Within the Caribbean Community (CARICOM) certain categories of Community nationals are granted the right to seek employment as wage earners without a work permit. At present these categories include graduates and equivalent qualifications, artists, musicians, media workers, sportspersons, teachers, nurses, holders of associate degrees and equivalent qualifications as well as artisans who have received a Caribbean Vocational Qualification.35 In order to proof that they belong to one of the eligible categories, CARICOM nationals have to apply for a “Certificate of Recognition of CARICOM Skills Qualification”. This certificate ensures a definite entry of six months and can be transformed into indefinite entry once the holder´s qualifications are verified by the receiving country.36 In addition, service providers are allowed to enter another CARICOM Member State on a temporary basis.37 The provision of services is permitted at all skill levels as long as service providers are not employees. This does however include neither a right of residence nor a right to enter the local labour market.

The way labour migration will be addressed within the Pacific Island Forum (PIF) is not yet decided. The Pacific Island Countries Trade Agreement (PICTA) includes at present only trade in goods. However, Pacific Trade Ministers decided in 2001 that the scope of PICTA should be broadened to include also trade in services (TIS) and the temporary movement of natural persons (TMNP). This TMNP scheme shall include two different categories of persons, namely professional workers (tier 1) and semi-skilled workers (tier 2).38 Recognised professional workers shall be allowed to

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34 See also Papademetriu (2004).
35 The original categories are laid down in Art. 46 of the Revised Treaty. For the current categories of skilled labour see CARICOM Status Report of Free Movement of People in the Region (unpublished).
36 For more details on this and other aspects of movement of people within CARICOM see Mac Andrew (2005), Nonnenmacher (2007).
38 Study on the Pacific Island Countries Trade Agreement (PICTA) Temporary Movement of Natural Persons (TMNP) Scheme, TOR (i).
move freely among the Member States while semi-skilled workers shall be subject to a quota system. The final design of the agreement has however yet to be decided.

(3) **Regional arrangements following the GATS model**

The *Common Market of the South (MERCOSUR)* has not (yet) moved towards general free movement of labour, but grants market access primarily to service providers. The “Protocol of Montevideo on Trade in Services” directly replicates the GATS model by linking mobility rights to specific commitments formulated in the annex of the protocol (Trachtman 2009, p. 237). Besides, Member States are obliged to ensure that service providers receive equal treatment as compared to nationals or service providers from third countries. The “Agreement on Residence for State Party Nationals” and a similar agreement including Bolivia and Chile provide that citizens of the Member States have the right to entry, reside and work in other member states.\(^{39}\) The right of residence can be transferred to family members while children are guaranteed access to education. The Residence Agreement has however not entered into force yet.

The *Association of Southeast Asian Nations (ASEAN)* also follows the GATS approach by aiming at the elimination of barriers to trade in services. Liberalization in services under the ASEAN Framework Agreement on Services (AFAS) shall however go beyond Member States’ commitments under GATS, also known as the “GATS-Plus principle”. The categories listed under the AFAS include, among others, business visitors, intra-corporate transferees, contracted service suppliers etc.

(4) **Facilitated entry and non-discriminatory conditions**

The *Black Sean Economic Cooperation (BSEC)* does not (yet) grant entry or mobility rights but aims at facilitating the visa procedures of certain categories of people. Two agreements have been adopted in 2009 aiming at facilitated visa procedures for business people and professional lorry drivers.

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\(^{39}\) Agreement on Residence for State Party Nationals of MERCOSUR, Bolivia and Chile (“Acuerdo sobre Residencia para Nacionales de los Estados partes del MERCOSUR, Bolivia y Chile”), Mercosur/RMI/CT/ACTA No. 04/02.
Table 2: Labour migration instruments

<table>
<thead>
<tr>
<th>Regional arrangement</th>
<th>Comprehensive labour arrangements</th>
<th>Market access for certain categories of people</th>
<th>Market access for service suppliers (GATS model)</th>
<th>Facilitation of entry, visa procedures etc.</th>
<th>Other remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>AU</td>
<td></td>
<td></td>
<td></td>
<td>Framework agreement</td>
<td></td>
</tr>
<tr>
<td>COMESA</td>
<td></td>
<td></td>
<td></td>
<td>Status of Protocol unclear</td>
<td></td>
</tr>
<tr>
<td>CEMAC</td>
<td></td>
<td></td>
<td></td>
<td>No regional instrument</td>
<td></td>
</tr>
<tr>
<td>ECOWAS</td>
<td>Full mobility of labour</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SADC</td>
<td></td>
<td></td>
<td></td>
<td>No regional instrument?</td>
<td></td>
</tr>
<tr>
<td>CAN</td>
<td>Full mobility of labour(^40)</td>
<td>Certain categories of skilled labour</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>CARICOM</td>
<td></td>
<td>Temporary entry for business people</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>NAFTA</td>
<td></td>
<td></td>
<td>GATS Approach</td>
<td>Agreement on full mobility not yet in force</td>
<td></td>
</tr>
<tr>
<td>MERCOSUR</td>
<td></td>
<td></td>
<td>GATS Approach</td>
<td></td>
<td></td>
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<tr>
<td>ASEAN</td>
<td></td>
<td></td>
<td>GATS Approach</td>
<td></td>
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<tr>
<td>PIF</td>
<td></td>
<td></td>
<td></td>
<td>Agreement under negotiation</td>
<td></td>
</tr>
<tr>
<td>SAARC</td>
<td></td>
<td></td>
<td></td>
<td>Liberalization of trade in services under discussion</td>
<td></td>
</tr>
<tr>
<td>BSEC</td>
<td></td>
<td></td>
<td>Facilitation of visa procedures business people/ lorry drivers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CIS</td>
<td></td>
<td></td>
<td></td>
<td>Employment subject to national law/bilateral agreements; protection of migrant workers rights</td>
<td></td>
</tr>
<tr>
<td>EURASEC</td>
<td></td>
<td></td>
<td></td>
<td>Right to reside and work in another MS according to national legislation</td>
<td></td>
</tr>
<tr>
<td>EU</td>
<td>Full mobility of labour</td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>GCC</td>
<td>Full mobility of labour</td>
<td></td>
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</tbody>
</table>

Source: compiled by the author

\(^{40}\) An additional legal instrument is however required to implement the provisions on movement of labour.
5. Rights of residence

The right of residence is closely linked to the right of entry and the right of work. According to the IOM, residence can be understood as “the act or fact of living in a given place for some time (…)”\(^\text{41}\). One can distinguish between temporary residence (e.g. linked to a limited period of employment) or permanent residence (granted for an indefinite period). Furthermore, differences may exist with regard to the requirement of documents, e.g. residence permits. Also important to mention is the fact that some organizations or agreements do not explicitly use the term “residence”. If rights of entry and work are granted even within a limited period of time, the right of “residing” in another country can however be implied.

From all selected regional arrangements only a minority grants residence rights independently from economic activity. Citizens of EURASEC, for instance, have the right to enter, move across and reside in the territories of the Member States provided they are in the possession of an identification document. Those citizens residing permanently in another Member State enjoy the same rights and obligations as compared to nationals of that Member State. Within the European Union all EU citizens have the right to reside on the territory of another Member States for up to three months, after which they are required to report their presence to the respective authorities.

Within MERCOSUR, service providers are granted temporary residence for up to four years. Once the Residence Agreement enters into force, MERCOSUR citizens will be entitled to temporary and permanent residence providing for the right to enter, exit and move around freely.

However, the great majority of the listed arrangements make residence rights subject to the exercise of income-earning employment. CAN, CARICOM and ECOWAS explicitly link the right of residence to income earning employment, whereby differences exist with regard to the categories of workers. In the case of NAFTA, temporary residence is limited to those high-skilled workers under the NAFTA visa scheme. Permanent residence is explicitly excluded in the agreement.

\(^{41}\) IOM Glossary (2004), p. 56.
### Table 3: Rights of residence

<table>
<thead>
<tr>
<th>Regional arrangement</th>
<th>Residence rights granted beyond economic activity</th>
<th>Residence rights linked to economic activity</th>
<th>Other remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>AU</td>
<td></td>
<td>Framework Agreement</td>
<td></td>
</tr>
<tr>
<td>COMESA</td>
<td></td>
<td>*Right of Residence envisaged in founding Treaty and Protocol</td>
<td></td>
</tr>
<tr>
<td>CEMAC</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ECOWAS</td>
<td>Right of residence for the purpose of seeking and carrying out income earning employment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SADC</td>
<td>Temporary residence; residence permit needed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CAN</td>
<td>Temporary residence for migrant workers granted in the framework of the IAML</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CARICOM</td>
<td>Right of residence after being granted indefinite entry; person must be involved in economic activity and not be a charge on public funds</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MERCOSUR</td>
<td>Temporary and permanent residence entailing right to enter, exit and move around freely(^2)</td>
<td>Temporary residence up to four years for service providers</td>
<td></td>
</tr>
<tr>
<td>NAFTA</td>
<td>Temporary residency linked to temporary entry of high skilled workers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ASEAN</td>
<td></td>
<td>No regional instrument</td>
<td></td>
</tr>
<tr>
<td>PIF</td>
<td></td>
<td>Not yet clear, agreement under negotiation</td>
<td></td>
</tr>
<tr>
<td>SAARC</td>
<td></td>
<td>No regional instrument</td>
<td></td>
</tr>
<tr>
<td>BSEC</td>
<td></td>
<td>No regional instrument</td>
<td></td>
</tr>
<tr>
<td>CIS</td>
<td></td>
<td>Right of residence subject to national law, bilateral agreements</td>
<td></td>
</tr>
<tr>
<td>EURASEC</td>
<td>Right of residence?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>EU</td>
<td>Right of residence, residence permit after 3 months</td>
<td></td>
<td></td>
</tr>
<tr>
<td>GCC</td>
<td>Right of residence</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: compiled by the author

\(^2\) Agreement not yet in force.
6. CONCLUSIONS

The purpose of this paper has been to give a comparative view on specific migration policies as pursued by selected regional organizations and agreements in order to facilitate the movement of people at the regional level. The comparison was based on the legal dimension of the selected instruments, not taking into account the actual implementation of the policies.

With regard to travel facilitation it can be summarized that the majority of regional arrangements has introduced temporary visa exemption schemes for the citizens of their Member States. This can range from 14 days of visa-free travel in the case of ASEAN to 6 months for CARICOM nationals. Differences exist furthermore with regard to the categories of people benefitting from these rights (all citizens vs. specific categories of people). A complete abolition of visa requirements for citizens of a regional arrangement is pursued by fewer organizations including the EU, EURASEC and the GCC. MERCOSUR has adopted an agreement granting all MERCOSUR citizens an automatic visa and the freedom to live and work in another member state. It has however not entered in force yet.

The picture is similar when it comes to labour migration policies. Broadly speaking four different types of regional approaches can be distinguished: First, organizations or agreements granting full mobility of labour. These include the EU and ECOWAS (and to a certain extent the GCC and CAN), although significant differences exist when it comes to the implementation of the adopted agreements or protocols. More in-depth research is therefore needed to a) assess the degree of implementation and b) to analyze possible reasons for an either successful or failed application of a legal instrument. Second, regional arrangements were identified which grant access to their labour markets only for certain categories of people, mostly high-skilled workers. These include NAFTA and CARICOM, whereby the eligible categories of people differ from agreement to agreement. Thirdly, certain regional arrangements follow the GATS model by granting labour market access only to service providers on a temporary basis. Currently ASEAN and MERCOSUR are applying this approach. MERCOSUR has however adopted a much broader agreement facilitating labour migration in general. It has however not yet entered into force. Finally, the BSEC is not granting any mobility rights for workers but facilitates visa procedures for certain categories of migrant workers.
It is implied in the selective approach of this paper that these findings can only be a starting point for further research. They do however show that across all world regions, regional organizations have been establishing different instruments to facilitate the movement of the citizens of their Member States. In case of successful facilitation of movement this can even deepen the regional integration processes as such. The scope and range of the different approaches does however vary considerably and a more in-depth, case-to-case analysis is needed to explain the factors behind the various schemes.
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