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Globalization, international mobility and the liberal international order

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Globalization in the contemporary era has been structured by a liberal international order, a rules-based system reflecting the principles of economic interdependence, democracy, human rights and multilateralism. However, the relationship between international mobility and the liberal international order (LIO) is contested. Although the core principles of the LIO were never fully adopted by all states, I argue that they are particularly poorly represented in the arena of international mobility. The movement of individuals across international borders is governed by distinct norms and operating procedures that reflect the ability of countries of destination to structure flows of travellers, migrants and refugees, rather than flows being managed on the basis of adherence to the underlying principles of the liberal order. States continue to take advantage of cross-border mobility by modulating flows to achieve their own economic and political goals. The travel regime privileges entry from wealthy countries and by wealthy individuals. The migration and asylum regimes have limited permanent movement to around 3.6 per cent of the global population, a proportion that has grown only slightly over the past seven decades.¹ The COVID-19 pandemic is likely to reinforce these norms and operating procedures that restrict freedom of circulation and limit the protection of human rights.

In this article, I disaggregate ‘international mobility’ into three regimes—the travel regime; the voluntary (labour) migration regime; and the refugee regime.² These three regimes are usually discussed separately rather than combined within a single empirical or theoretical frame. Bringing them together helps to underscore the common threads that might otherwise be overlooked. The article proceeds by first defining the characteristics of the LIO that are applicable to international mobility. I then describe each of the three mobility regimes and provide evidence

* This article is part of the September 2021 special issue of *International Affairs* on ‘Deglobalization? The future of the liberal international order’, guest-edited by T. V. Paul and Markus Kornprobst.

¹ United Nations Department of Economic and Social Affairs, Population Division, *International Migration 2020 Highlights* (ST/ESA/SER.A/452) (New York: United Nations, 2020), https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undesa_pd_2020_international_migration_highlights.pdf. (Unless otherwise noted at point of citation, all URLs cited in this article were accessible on 27 June 2021.)

² Rey Koslowski, ed., *Global mobility regimes* (New York: Palgrave Macmillan, 2011). The term ‘regime’ follows from Stephen Krasner’s definition of a regime as a set of ‘principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given issue area of international relations’: Stephen D. Krasner, ‘Structural causes and regime consequences: regimes as an intervening variable’, *International Organization* 36: 2, 1982, pp. 185–205.

that globalization and the LIO are less visible here than in other dimensions of globalization, with limits on both the movement of people and on which people can move. The focus here is on the limitations on human mobility; space constraints prevent a broader discussion of the impact on migrant rights. I point out that the COVID-19 pandemic is unlikely to have a liberalizing impact in opening the gates of human mobility wider. Finally, I survey the research that connects international mobility to the LIO and argue that states which benefit from the status quo ante are loath to modify the system in ways that incorporate liberal principles.

International mobility and the LIO

Although many scholars agree on some dimensions of the LIO, the concept is a contested one. To clarify the criteria by which I evaluate the three global mobility regimes, I draw on both Ikenberry's and Lake, Martin and Risse's descriptions of the LIO.³ The elements that are most pertinent to an enquiry into international mobility and the LIO are the sovereign equality of states, multilateralism, human equality and the capitalist market economy.⁴ Although Ikenberry emphasizes state sovereignty, which implies unilateral state control over policy choice, Lake and colleagues employ a narrower term, the 'sovereign equality of states'. Sovereignty in the Westphalian sense is limited in the LIO by the pooling and delegating of authority inherent in multilateralism. That is, while sovereign nation-states are recognized as the primary actors in the LIO, and even though the LIO does not necessarily extend to all states in the international system on all dimensions, the pooling and delegating of authority indicate that state sovereignty is not absolute but 'subject to international laws and jurisdiction'.⁵ Multilateralism is also a contested term. In the narrow sense, it refers to multilateral institutions that coordinate 'relations among three or more states'.⁶ John Ruggie's definition is broader, incorporating 'generalized principles of conduct' and the 'indivisibility among the members of a collectivity with respect to the range of behavior in question', and reflecting 'diffuse reciprocity'.⁷ In examining the three global mobility regimes, we will see that there are instances of narrow multilateralism but little of the broader, normatively based definition of multilateralism.

Human equality is central to the liberal component of the LIO. Although LIO scholars include democracy, rule of law and human rights among the order's main features, I emphasize the equal treatment of individuals regardless of country of origin.⁸ The LIO is also based on the principles of the capitalist market economy,

³ One of the most prominent discussions of the LIO is found in a series of articles and a book by G. John Ikenberry, *A world safe for democracy: liberal internationalism and the crises of the global order* (New Haven, CT: Yale University Press, 2020). See also David A. Lake, Lisa L. Martin and Tomas Risse, 'Challenges to the liberal order: reflections on international organization', *International Organization* 75: 2, 2021, pp. 225–59.

⁴ Lake et al., 'Challenges to the liberal order', include in their description of the LIO the free movement of goods and capital, but specifically exclude 'the movement of people across international borders'.

⁵ Lake et al., 'Challenges to the liberal order', p. 232.

⁶ John Gerard Ruggie, 'Multilateralism: the anatomy of an institution', *International Organization* 46: 3, 1992, pp. 561–98, p. 571.

⁷ Ruggie, 'Multilateralism', p. 571.

⁸ As noted above, the principles of the LIO also have implications for the treatment of non-citizens upon

which implies economic interdependence not only domestically but internationally. The LIO theoretically could and should include the cross-border movement of people if the principles described above were uniformly applied. However, the core states of the LIO have developed mechanisms to circumvent those principles—mechanisms that are visible in all three arenas of global mobility—so that the global mobility regime is, in the words of Virginie Guiraudon and Gallya Lahav, ‘oriented to protectionism and exclusion’.⁹

The international travel regime

The international travel regime encompasses all individuals who cross international borders through legal ports of entry. It provides rules for those crossing international borders for ‘any purpose and length of time’¹⁰—labour migrants, refugees, tourists, business travellers, international students,¹¹ family members, and others. The annual flow of individuals across international borders amounts to more than five times the total stock of international migrants, so the international travel regime affects a much wider array of individuals than the other mobility regimes.

International travel is the mobility regime most consistent with globalization in the LIO. The costs of international travel have plummeted as a result of technological advances in transport and communications, while global middle classes with enhanced purchasing power have grown. International travel is a component of economic interdependence, facilitating the creation of new markets and the construction of international business partnerships, and representing the sale of international services through tourism. And it is large. Prior to the global pandemic, the UN World Tourism Organization estimated that 1.5 billion individuals travelled outside their country of origin in 2019—about 19 per cent of the global population.¹² Experts estimate that travel and tourism together made a direct contribution to global GDP of 3.3 per cent in 2019; the indirect impact amounted to 10.4 per cent of global GDP, a level that has held relatively steady over the last two decades.¹³

arrival. However, space constraints limit the discussion here to cross-border flows (immigration policy), leaving migrant rights (immigrant integration) for consideration at a later date.

⁹ This is consistent with Guiraudon and Lahav’s characterization of the LIO in the realm of international migration. They argue that *multilateralism* constrains national sovereignty by imposing *human rights norms* and promoting *freedom of circulation*, but that states have circumvented multilateralism and hence do not adopt these principles. See Virginie Guiraudon and Gallya Lahav, ‘A reappraisal of the state sovereignty debate: the case of migration control’, *Comparative Political Studies* 33: 2, 2002, pp. 163–95 at p. 163; Gallya Lahav, ‘Immigration and the state: the devolution and privatization of immigration control in the EU’, *Journal of Ethnic and Migration Studies* 24: 4, 1998, pp. 675–94.

¹⁰ Rey Koslowski, ed., *Global mobility regimes*, p. 51.

¹¹ UNESCO reports 4.8 million international students in 2017 and 5.3 million international students in 2019. International students normally enter on temporary visas rather than residency visas, so do not fall under the category of migrants. That said, many states facilitate the permanent residence of international students once they have graduated. There are no global statistics on the number of international students who choose or are allowed to remain. See ‘International students’, *Migration Data Portal*, 9 June 2020, <https://migrationdataportal.org/themes/international-students>.

¹² ‘UNWTO records 1.5 billion tourism arrivals in 2019’, *Breaking Travel News*, 20 Jan. 2020, <https://www.breakingtravelnews.com/news/article/unwto-records-1.5bn-tourism-arrivals-in-2019/>.

¹³ Statista Research Department, ‘Share of GDP generated by the travel and tourism industry worldwide from 2000 to 2019’, *Statista*, 2021, <https://www.statista.com/statistics/1099933/travel-and-tourism-share-of-gdp/>.

The international travel regime is regulated through standards created by multilateral institutions. These standards allow states to control the movement of individuals across international borders—through passports, visas and border inspections—to provide for the ‘secure facilitation’ of travel.¹⁴ Passports identify the individual; visas provide a mechanism for inspection prior to travel, and allow states to specify which individuals are allowed entry; border inspection ensures that the individual is correctly identified and has the appropriate documentation to enter the territory of the state. ‘Secure’ is an indication that states see international border crossers as potential threats and want mechanisms to deflect terrorists, criminals and the spread of disease, as well as to control migration. ‘Facilitation’ is an acknowledgement that travel is an important component of globalization, both in fostering economic integration and in creating lucrative international service industries.

The multilateral organizations which define the standards that govern international travel do so as a by-product of their central mandates. These include the International Civil Aviation Organization (ICAO), the International Criminal Police Organization (INTERPOL), the World Customs Organization (WCO), the World Health Organization (WHO) and the United Nations World Tourist Organization (UNWTO). These intergovernmental organizations have developed their roles over the past several decades, and now provide a relatively robust system of rules and regulations to which states adhere to control international travel. States continue to play a central role in implementing and supplementing these rules and regulations, and also cooperate bilaterally and regionally through policies such as visa waiver programmes. Each of these components of the regime is described briefly below.

The ICAO was established in 1944, as a specialized agency of the UN, by the Chicago Convention on International Civil Aviation. One element of its functions is to set standards for travel documents for the transport sector, covering air, maritime and land transport.¹⁵ The most recent embodiment of the ICAO’s standardization activity is the Traveller Identification Programme. Adopted in 2013, it sets standards for ‘evidence of identity, machine readable travel documents (MRTDs), document issuance and control, inspection systems and tools, and interoperable applications’.¹⁶ The breadth of cooperation achieved through the ICAO is significant: by the deadline for implementation of the MRTD standards, over 180 states had issued MRTDs that are ICAO compliant.¹⁷

ICAO member states collaborate with INTERPOL to report lost and stolen passports through a common database.¹⁸ The WCO serves to strengthen border

¹⁴ Rey Koslowski, ed., *Global mobility regimes*, p. 4.

¹⁵ The ICAO acknowledges its central role in providing document standards for all international travel. ‘Travel documents serve the broad transport sector by contributing to border integrity not only in air transport but also in maritime and land transport settings. These important benefits extend the contribution of ICAO travel document related activities beyond ensuring border integrity at international airports’: ICAO, *Traveller Identification Programme*, 2020, <https://www.icao.int/Security/FAL/TRIP/Pages/default.aspx>.

¹⁶ ICAO, *Traveller identification programme*, 2020.

¹⁷ ICAO, *Annex 17: security*, 2020, <https://www.icao.int/Security/SFP/Pages/Annex17.aspx>.

¹⁸ INTERPOL, *Border management*, 2020, <https://www.interpol.int/How-we-work/Border-management>.

security, and works actively to develop institutional connections between customs officers and the police, as well as between border police and customs agents, to reduce international criminal activity.¹⁹

The WHO, a UN specialized agency, has become the central actor in controlling the transmission of contagious diseases across international borders. In response to the growing number of internationally transmitted diseases, the WHO World Health Assembly adopted the International Health Regulations in 1969, since when they have been revised several times. These binding regulations require countries to detect, assess and report 'specific diseases, plus any potential international public health emergencies'.²⁰ The WHO coordinates incoming information from member states and disseminates that information globally through the Strategic Health Operations Centre, which operates 24 hours a day, 365 days a year.²¹ The Global Outbreak Alert and Response Network is the second mechanism on which the WHO relies to provide global health leadership. This is a global partnership 'to engage the resources of technical agencies beyond the United Nations for rapid identification, confirmation and response to public health emergencies of international importance'.²²

Finally, the tourism industry's international organization, the World Tourism Organization, became a UN specialized agency in 2003.²³ Tourism has evolved into a global industry that promises avenues of economic development recognized in the Sustainable Development Goals. The industry is an important proponent of travel facilitation and an important partner in providing political support for the maintenance of open borders and interstate cooperation to ensure secure facilitation of travel.

Regional organizations also cooperate on international travel. The EU has the densest level of cooperation, as the member states have created a common travel zone, the Schengen Area, and common border control procedures.²⁴ A few other regional organizations have also adopted visa-free travel, such as ECOWAS and the Andean Pact.²⁵ At the bilateral level, states also cooperate on a more limited basis outside the framework of intergovernmental organizations. One common

¹⁹ WCO, *Strengthened cooperation between customs and border and coast guards*, 8 Nov. 2017, <http://www.wcoomd.org/en/media/newsroom/2017/november/strengthened-cooperation-between-customs-and-border-and-coast-guards.aspx>.

²⁰ A public health emergency of international concern is defined by meeting two of four criteria: '1. Is the public health impact of the event serious? 2. Is the event unusual or unexpected? 3. Is there a significant risk of international spread? 4. Is there a significant risk of international travel or trade restrictions?': Centers for Disease Control and Protection, *International Health Regulations*, 19 Aug. 2019, <https://www.cdc.gov/global-health/healthprotection/ghs/ihr/index.html>.

²¹ WHO, *Strategic Health Operations Centre (SHOC)*, May 2015, https://www.who.int/ihr/about/IHR_Strategic_Health_Operations_Centre_SHOC_respond.pdf?ua=1.

²² WHO, *What is GOARN?*, 24 April 2020, https://extranet.who.int/goarn/sites/default/files/GOARN_one_pager_20200424.pdf.

²³ UNWTO, *About us*, 2020, <https://www.unwto.org/about-us>.

²⁴ Andrew Geddes and Jeannette Money, 'Mobility within the European Union', in Randall Hansen, Jobst Koehler and Jeannette Money, eds, *Migration, nation states and international cooperation* (London: Routledge, 2011), pp. 44–74. The Schengen Zone includes 22 of 27 member states (Croatia, Bulgaria, Romania and Cyprus have not yet met Schengen Zone criteria and Ireland negotiated a waiver to Schengen membership) and four non-member states (Iceland, Lichtenstein, Norway and Switzerland).

²⁵ Jeannette Money and Sarah P. Lockhart, *Migration crises and the structure of international cooperation* (Athens, GA: University of Georgia Press, 2019).

bilateral feature of international travel is the visa waiver programme. Visas are documents that states employ to prescreen potential visitors. Given the time-consuming and costly process of prescreening, states began to design visa waiver programmes for countries whose citizens are likely to meet the conditions for entry and exit. The United States adopted a pilot programme for visitors from the United Kingdom in 1988 and has since expanded the programme to include 38 countries.²⁶ Other countries, as well as the EU, have followed suit. States also sign bilateral agreements on border security.²⁷

The international travel regime and the LIO

Although international travel (as opposed to migration) is one mark of globalization, it does not necessarily reflect the liberal underpinnings of the international system based on the sovereign equality of nations, human equality and the economic interdependence promoted by capitalist markets. The tools developed within a system of multilateral agencies allow many of the world's population to travel easily. However, destination countries supplement the multilateral rules with unilateral rules that serve to restrict travel from various countries, according to their own goals and preferences.²⁸ The main tool is a state's unilateral designation of countries whose citizens are granted visa waivers. This designation is in direct conflict with the principle of sovereign equality of states, as it privileges some states and excludes others. The second tool is the visa granting process itself, which allows states to vet individuals from countries that are not included on the visa waiver list, making travel costly and time-consuming for them, possibly prohibitively. This contravenes the principle of human equality and affects primarily poorer countries in the global South and poorer people within those countries. While obtaining a visa to travel to countries of the global North is not impossible, it represents a significant hurdle that can be overcome only by a few.²⁹

One marker of the uneven access to international mobility is the Passport Index.³⁰ The 2021 country rankings (exclusive of temporary coronavirus controls) put Germany at the top with a score of 137 out of 198, meaning that Germans can

²⁶ US Department of Homeland Security, *U.S. Visa waiver program*, 2020, <https://www.dhs.gov/visa-waiver-program>.

²⁷ See e.g. Jason Ackleson, 'International cooperation on border security in the developed world: the US–Canada and US–EU cases', pp. 95–114, and George Gavriliş, 'Border management assistance and global mobility regimes: evidence from Afghanistan, Bosnia and the central Asian republics', pp. 131–50, both in Koslowski, ed., *Global mobility regimes*.

²⁸ Steffen Mau, 'Mobility citizenship, inequality, and the liberal state: the case of visa policies', *International Political Sociology* 4: 4, pp. 339–61.

²⁹ See e.g. the US State Department website on visa applications from any country not included on the visa waiver list. Individuals must undergo an in-person interview and bring documents to prove that they are intending only a short visit, including access to resources for the duration of the visit and a round-trip ticket: US State Department, *Visitor Visa*, 2021, <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html>.

³⁰ Passport Index, *Global passport power rank 2021*, 2021, <https://www.passportindex.org/byRank.php>. I report the *country mobility score*, that is, 'the total number of countries that can be easily accessed with a given passport. It is a calculated total based on Visa-free, Visa-on-arrival, eTA [electronic travel authorization], and eVisa [electronic visa] issued within three days'. The site reports that 'All data is [sic] based on official information provided by governments.'

travel to 137 countries without prior authorization, through visa waivers, e-visas and visas upon arrival. At the bottom stands Afghanistan, with a score of 30 out of 198: Afghans can travel to only 30 countries without prior authorization. This contrast is but one indicator of the markedly uneven access to international travel today, and demonstrates the challenge the travel regime represents for economic interdependence. So, although the international travel regime is a component part of globalization in a liberal international system, the liberal component is stunted.

Of course, the COVID-19 pandemic has caused a collapse of the travel regime, because most states have unilaterally closed their borders to most travellers as part of the quest to contain the spread of the novel coronavirus. The UN reports that 150 nations instituted border controls and that at least 99 of these made no exceptions for individuals claiming a need for protection.³¹ The UNWTO reports that international travel declined by 87 per cent between January 2020 and January 2021.³² However, states have demonstrated throughout history the ability to control their borders to protect their populations from disease; the novel coronavirus is certainly not the first, nor will it be the last, infectious agent to cross international borders. The international travel regime is already undergoing revision to supplement individual states' efforts in acknowledgement of the perceived heightened threat of global health crises, a process that includes revisions to the International Health Regulations.³³

Given that the goals of the international travel regime already encompass the concept of secure facilitation, it has many of the tools it needs to underpin international travel in the contemporary era. However, the global pandemic has served to skew the international travel system even further in ways that undermine its liberal component. As vaccinations become available, citizens in countries of the global North benefit while countries in the global South await the arrival of vaccines and treatments. In October 2020, India and South Africa requested negotiations in the World Trade Organization on the waiver of specific patent protections to minimize the effects of the pandemic, but these have languished until recently.³⁴ While these negotiations are proceeding at a 'glacial pace', the *New York Times* reports that 'only 0.3 percent of the vaccine doses administered globally have been given to the 29 poorest countries, home to about 9 percent of the world's population'.³⁵ As vaccine passports are likely to be required for international travel as countries begin to reopen their doors, citizens of countries in the global South confront yet one more hurdle to international mobility.

³¹ António Guterres, 'The COVID-19 crisis is an opportunity to reimagine human mobility', UN, 3 June 2020, <https://www.un.org/en/coronavirus/covid-19-crisis-opportunity-reimagine-human-mobility>.

³² UNWTO, *Tourist arrivals down 87% in January 2021 as UNWTO calls for stronger coordination to restart tourism* (Madrid, 31 March 2021), <https://www.unwto.org/news/tourist-arrivals-down-87-in-january-2021-as-unwto-calls-for-stronger-coordination-to-restart-tourism>.

³³ WHO, *Review committee on the functioning of the International Health Regulations (2005) during the COVID-19 response* (Geneva, 2020), <https://www.who.int/teams/ihr/ihr-review-committees/covid-19>.

³⁴ AFP, 'Countries urge patent waiver for more than just COVID-19 vaccines', *Straits Times*, 3 June 2021, <https://www.straitstimes.com/world/countries-urge-broader-patent-waivers-than-just-covid-19-vaccines>.

³⁵ Peter S. Goodman, Apoorva Mandavilli, Rebecca Robbins and Matina Stevis-Gridneff, 'What would it take to vaccinate the world against COVID?', *New York Times*, 15 May 2021, <https://www.nytimes.com/2021/05/15/world/americas/covid-vaccine-patent-biden.html>.

In sum, the international travel regime more closely resembles other dimensions of the LIO, as the sizeable proportion of the global population that crosses international borders every year suggests a significant level of economic interdependence. However, the liberal components of the travel regime are stunted by the constraints on the ability of citizens of the global South to travel as freely as citizens of the global North, inhibiting their ability to thrive in the global economy. The pandemic has put additional pressure on the travel system; although travel is likely to revive, in part based on the economic importance of the tourism industry, observance of the sovereign equality of states, human equality and economic interdependence is diminished.

The voluntary migration regime

The voluntary migration regime is the second leg of the global mobility regime. A migrant is defined by the UN as an individual living outside their country of origin for more than one year, and thus excludes the vast majority of individuals who cross international borders every year for shorter periods. Although UN migration statistics include refugees, this section encompasses only those individuals who do not qualify for refugee status (even though their lives may be at risk). I employ the term 'voluntary' migration regime as it includes individuals who move for employment purposes but also those who move with, or to be united with, family members, who may or may not be employed.³⁶

The voluntary migration regime is institutionalized in multilateral international organizations and a growing body of treaty law, supplemented by regional and bilateral agreements. At the apex is one of the 'core' human rights conventions, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) (signed in 1990, but effective only from 2003). This is supplemented by two International Labour Organization (ILO) conventions on migration, No. 97 (1949) and No. 143 (1975). International migration has risen on the UN's agenda, which has convened multiple dialogues and appointed a special representative for international migration starting in 2006. One dialogue has become a permanent fixture through an annual Global Forum on Migration and Development. In 2016 an intergovernmental organization, the International Organization for Migration (IOM), became a related organization of the UN. Most recently, at the multilateral level, the UN 'New York Declaration' of September 2016 called for negotiations for a Global Compact on Safe, Orderly and Regular Migration, which was adopted by the UN General Assembly in December 2018 as a non-binding agreement among states.

The origins of these multilateral institutions lie in the Treaty of Versailles, signed more than 100 years ago following the First World War.³⁷ Part XIII of the treaty created the ILO along with a Charter of Workers' Rights. Although

³⁶ Koslowski labels this the 'labor migration regime'. See Koslowski, ed., *Global mobility regimes*.

³⁷ Glenda Sluga, 'Remembering 1919: international organizations and the future of international order', *International Affairs* 95: 1, 2019, pp. 25–44.

the treaty does not employ the word ‘migrant’, it does acknowledge the place of workers ‘in countries other than their own’, and provides that these workers are to be treated on terms of equality with the citizen workforce. However, during the following century the ILO has adopted only the two migration conventions mentioned above: Convention No. 97 (1949) standardizes international labour recruitment practices, while Convention No. 143 (1975) provides protections for migrants and helps states deal with undocumented migration. Neither treaty is well ratified: the former has only 50 ratifications and the latter 25.

Disappointed by this record, migrant countries of origin shifted their focus of activity in this area to the UN General Assembly, where they command a majority. Thus the ICRMW was born, although it took ten years, from 1980 to 1990, to negotiate, and an additional 13 years before a sufficient number of countries ratified the treaty to bring it into effect. As of 2020, there were only 58 ratifications, all by countries of origin; destination countries, whose cooperation is necessary to implement the treaty’s protections, have avoided ratification and thus are not legally bound by its prescriptions. It is important to point out that vastly higher numbers of states have ratified the remaining ‘core’ human rights conventions; the ICRMW is the exception, rather than the rule, in the human rights regime.

At the multilateral level, the IOM is an intergovernmental agency whose budget is based predominantly on voluntary contributions. Therefore, it responds to the needs of the individual member states that provide its funding. Its recent affiliation with the UN is not as a specialized agency over which the UN exerts supervisory responsibility; rather, it is a ‘related organization’ that retains its original managerial and budgetary structure. Despite its name and its UN affiliation, it has no power to force states to open doors to voluntary migrants.

At the regional level, a number of regional organizations have a goal of freedom of movement, which allows citizens of member states to live and work in other member states. But few of these goals have been enshrined in treaty language and implemented. To date, only the EU, the Gulf Cooperation Council and the Trans-Tasman Travel Arrangement provide for free movement, while the Caribbean Common Market provides for free movement of skilled labour (those with university degrees).

At the bilateral level, states negotiate bilateral labour agreements to facilitate recruitment of foreign workers. These agreements were common in Europe in the period following the Second World War, as states sought to reconstruct their economies. Those countries in the global South that have seen rapid economic growth—especially the Gulf oil states—have also made use of bilateral labour agreements. But overall these represent a tiny proportion of the possible bilateral labour agreements that could be negotiated.³⁸ Bilateral readmission agreements are a European innovation; the EU and other European countries have negotiated a significant number of these agreements, which are crucial for immigration

³⁸ Margaret E. Peters, ‘Immigration and international law’, *International Studies Quarterly* 63: 2, 2019, pp. 281–95; Money and Lockhart, *Migration crises*.

control as they provide the mechanism through which countries of destination can return undocumented migrants—either directly to the country of origin or indirectly to the country of transit.³⁹

The voluntary migration regime and the LIO

To understand the contemporary institutional architecture governing voluntary migration flows, it is important to note three facts.⁴⁰ The first is the status quo after the Second World War, on which this architecture is built. Customary international law grants states sovereign control over their borders, to admit or turn away non-citizens. However, customary international law also requires states to allow their citizens freely to leave and return to their countries of origin. This imbalance in state sovereignty provides countries of destination with the power both to limit and sort immigrants.

The second component is the pattern of migratory flows in the era since the Second World War. These patterns are predominantly ‘one-way’ and country-specific. Most migrants choose to move from less wealthy and stable countries to countries that are wealthier and more stable—but, in so doing, do not spread themselves out uniformly across the globe.⁴¹ Rather, the pattern of flows is determined by historical and geographic ties between countries. Post-colonial powers tend to receive migrants from their former colonies. Even the United States receives major migratory flows from its short-lived imperial period, as well as from its forays in the international system. Geography is the second factor in explaining migratory patterns, as many migrants move to neighbouring countries that provide more economic opportunities and political stability. This is true in the global South, where almost half of all international migrants live, as well as in the global North. Because countries’ migratory flows differ, the externalities of migration tend to be bilateral rather than multilateral, increasing the costs of constructing a multilateral regime.⁴²

Finally, the international system has become densely institutionalized since the end of the Second World War. Through the various decision-making structures of these institutions, states that are dissatisfied with the status quo may draft and adopt treaties that profess to modify the status quo but, in the voluntary migration

³⁹ Elizabeth Collett and Aliyyah Ahad, *EU migration partnerships: a work in progress* (Brussels: MPIEurope, 2017).

⁴⁰ This discussion draws largely on Money and Lockhart, *Migration crises*.

⁴¹ The UN Development Programme reports that ‘three quarters of international movers move to a country with a higher HDI than their country of origin; among those from developing countries, this share exceeds 80 percent’. See UNDP, *Human Development Report 2009. Overcoming barriers: human mobility and development* (New York, 2009), pp. 22–3.

⁴² Externalities are effects of a transaction between two parties on a third party or parties. These effects can be either positive or negative. Because each receiving country’s migration flows are unique, the costs and benefits of migration for non-migrants tend to be limited to the two countries—sending and receiving—involved in the migratory flows. Sandra Lavenex and Emek Uçarer, eds, *Migration and the externalities of European integration* (Boulder, CO: Lexington, 2003) provide another analysis of the externalities of European migration regime. In this case, the externalities are multilateral, as the EU has freedom of movement for citizens of member states, and third-country migrants (after five years’ residence) can move anywhere within the member states. Chapters in this volume provide examples of externalities experienced by member states as well as externalities generated in non-member states.

regime, are rarely adhered to by those states whose actions are required to give effect to such changes.

These three facts—the status quo ante, distinctive migratory patterns and the institutionalized international system—help explain why there are multilateral treaties and international institutions that appear to provide a set of norms and standards in this area to which states should adhere but which are, in fact, hollow. Although multilateral institutions exist, they do not reflect the normative underpinnings of multilateralism as defined by Ruggie. In fact, Tanja Basok argues that the norms on migration are ‘counter-hegemonic’: that is, these agreements reflect ‘the absence of a consensus on the legitimacy of these principles and their rejection by most major migrant receiving states’.⁴³

The voluntary migration regime has a complex institutional landscape that ultimately privileges countries of destination, allowing them to set the level of immigration and type of immigrants they desire.⁴⁴ The regime works imperfectly, but states have neither given up nor lost complete control of their borders.⁴⁵ This is not to say that states uniformly limit all types of migration all the time. Many European countries actively recruited migrant workers after the Second World War to supplement their domestic labour forces; and, in the contemporary era, migrants form high proportions of the populations of the Gulf oil states. But the system does allow for countries of destination to set the level of migration and the type of migrant they want, and to activate immigration control systems to deter, detect, detain and deport those who do not meet those criteria. With or without bilateral readmission agreements, customary international law requires that states allow the re-entry of their citizens deported from other countries because they either entered without permission or no longer meet the conditions of their entry documents. And states deport large numbers of migrants every year. For example, the United States apprehended 1,013,539 individuals during the 2019 fiscal year, detained 510,854, and deported 359,885, fewer than half of whom had criminal records.⁴⁶

Overall, the system works to limit migration, in contrast to other elements of globalization that involve the free flow of goods, services and capital; this outcome contravenes principles of economic interdependence and the free workings of the capitalist market economy across international borders. As noted above, only 3.6 per cent of the global population live outside their countries of origin. States’ ability to control immigration, albeit imperfectly, is reflected in the 2017 Gallup World Poll, which reported that about 750 million people—almost three times the current level of immigrants and 15 per cent of the world’s adult population—would like to migrate permanently to another country if they had the oppor-

⁴³ Tanja Basok, ‘Counter-hegemonic human rights discourses and migrant rights activism in the US and Canada’, *International Journal of Comparative Sociology* 50: 2, 2009, pp. 183–205 at p. 185.

⁴⁴ The description of the voluntary migration regime is drawn from Money and Lockhart, *Migration crises*.

⁴⁵ See Gary Freeman, ‘Can liberal states control unwanted migration?’, *Annals of the American Academy of Political and Social Science*, vol. 534, 1994, pp. 17–30; Lahav, ‘Immigration and the state’; Guiraudon and Lahav, ‘A reappraisal’.

⁴⁶ Mike Guo, ‘Immigration enforcement actions: 2019’, *Annual Flow Report* (Washington DC: US Department of Homeland Security, Sept. 2020), https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/enforcement_actions_2019.pdf.

tunity to do so.⁴⁷ This is not to say that immigration control in the states with even the largest control capacity is perfect. Yet, were controls absent, immigration levels would probably be much higher than they currently are. The description presented here of the institutional architecture governing international migration suggests that the central pillars of the LIO are not well represented.⁴⁸

The global pandemic's effect on the voluntary migration regime appears temporary, and little change is anticipated as states, especially states of the global North, already have control systems in place, albeit imperfect ones. When vaccines and treatments become widely available, there is likely to be a minimal impact on global migration patterns.

The refugee regime

The refugee regime is often considered the height of multilateral liberalism. It was established by the Convention on the Status of Refugees (hereafter 'the Geneva Convention'), drafted in 1951, which provides a definition of 'refugee', elaborates the principle of non-refoulement and enumerates the rights of refugees in the country of asylum. The Convention is widely ratified—149 of the 193 UN member states are party to it.⁴⁹ Yet well before the COVID-19 pandemic, states were actively working to minimize their responsibilities for protecting persecuted individuals whom the Convention defines as refugees, much less the broader set of individuals, labelled 'forced migrants', who flee across international borders because their lives are at risk. The pandemic and the backlash against the LIO have only aggravated the plight of these individuals.

The act of succouring foreigners in need is not a new idea. But the modern concept of the refugee entered the lexicon of multilateralism through the work of Fridtjof Nansen, one of the Norwegian delegates to the League of Nations, in facilitating the settlement of Russian refugees from 1920 onwards. This work expanded over the interwar period and was consolidated after the Second World War. The contours of the contemporary refugee regime are generally well known. Article 1 of the Geneva Convention defines a refugee as an individual who,

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

The Convention also defines the principle of non-refoulement—that is, not returning the individual seeking asylum to the country where the persecution takes place—and establishes the rights of refugees. In addition to the narrow

⁴⁷ Neli Esipova, Anita Pugliese and Julie Ray, *More than 750 million worldwide would migrate if they could* (Gallup, 10 Dec. 2018), <https://news.gallup.com/poll/245255/750-million-worldwide-migrate.aspx>.

⁴⁸ Space limitations prevent a broader discussion of migrant rights, which are determined predominantly by countries of destination.

⁴⁹ United Nations Treaty Collection, *Convention relating to the Status of Refugees*, https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=_en. There are 146 parties to the Convention and 147 parties to the 1967 Protocol, and 149 parties to one or both.

classification of refugee status, the Convention was limited both geographically—to refugees from Europe—and temporally—to events prior to 1951. The 1967 Protocol, drafted by experts rather than politicians, removed those limitations. The most recent multilateral agreement on refugees emerged from the 2016 New York Declaration, which, as noted above, called for a Global Compact on Refugees; this was duly negotiated and adopted in 2018, but is a compact rather than a treaty, so it not legally binding on states. The United Nations High Commissioner for Refugees (UNHCR) is tasked with ensuring that the provisions of the Convention are carried out.

In implementing the Convention, the norm is for states to adopt their own asylum adjudication procedures in accordance with the definition, although the UNHCR performs refugee status determination in 50–60 countries every year, jointly with around 20 countries, and as the sole adjudicator in the others.⁵⁰ A main criticism of the current regime is that the definition of refugee focuses narrowly on individual persecution whereas, in the contemporary era, individuals face a wider array of threats to their lives.

In acknowledgement of the narrowness of the criteria for refuge, two innovations have been made. The first is the establishment of regional conventions in Africa and Latin America that extend protections to individuals threatened by violence. The second is the recognition by individual states that persons who fall outside the Convention's definition of refugee may need 'complementary protection'. For example, EU countries adopted the concept of 'subsidiary protection', while the United States developed the concept of 'temporary protected status'. But the countries that grant this type of protection do so at their own discretion and define the rights offered to these individuals as well as the duration of their protected status.⁵¹

The programmes just described are efforts to expand protections for individuals at risk. However, a further set of innovations has arguably had a more important impact on those seeking protection. This comprises efforts by states, especially states in the global North, to prevent individuals from reaching their territory to request asylum. The strategies employed include 'externalization' of controls over human mobility and adoption of principles that permit states to return asylum applicants to a country other than their country of origin.

Externalization involves the recruitment of additional actors to facilitate control over international mobility. This devolution has been ongoing in European countries at least since the 'migration stop' that is usually dated to 1973, since when states, in Lahav's words, have 'reinvented forms of state control and exclusion'.⁵²

⁵⁰ UNHCR, *Refugee status determination* (New York, n.d.), www.unhcr.org/refugee-status-determination.html.

⁵¹ The UNHCR has also attempted to generate 'soft law' through 'Convention Plus' and the 'Agenda for Protection' (2002); see UNHCR, *Convention Plus at a glance*, <https://www.unhcr.org/en-us/protection/convention/403b30684/convention-plus-glance-june-2005.html> (New York, June 2005); Executive Committee of the High Commissioner's Programme, *Agenda for protection: review and way forward*, 2010, <https://www.unhcr.org/en-us/excom/standcom/4c0527999/agenda-protection-review-way-forward.html>.

⁵² Lahav, 'Immigration and the state', p. 675; see also Guiraudon and Lahav, 'A reappraisal'; Ruben Zaiotti, ed., *Externalizing migration management: Europe, North America and the spread of 'remote control' practices* (New York: Routledge, 2016).

Guiraudon and Lahav identify ‘the devolution of [centralized state] decision making upward to intergovernmental fora, downward to local authorities, and outward to nonstate actors’.⁵³ Examples of intergovernmental forums include the ICAO, INTERPOL, the WHO and the WCO (described above). Non-state actors include international carriers, which are now required by states to ensure that travellers’ documents are in order and are fined if passengers arrive without the appropriate documentation.⁵⁴

Externalization also encompasses the negotiation by states of agreements with other states to control the exit of both citizens and non-citizens, to prevent individuals who might ask for asylum from reaching their territory. One prime example is the agreements reached in late 2015 and early 2016 between the EU and Turkey to prevent Syrian refugees in Turkey, as well as all other transit migrants, from leaving Turkey. Given the need for identity documents and visas prior to travel, potential refugees may well be prevented by the creation of these offshore mechanisms from actually seeking refuge. Externalization contravenes the norms of the LIO associated with both freedom of circulation and human rights.

The second prong of the prevention strategy is the development of legal principles that allow states to deflect asylum-seekers to other states. This is not a new phenomenon. Kjaerum dates the practices of European states in this respect to the 1970s, when most European countries curtailed the immigration of workers that had fuelled postwar reconstruction.⁵⁵ The legal principles developed by EU member states include those of ‘first country of asylum’, ‘safe country of origin’ and ‘safe third country’. These concepts are absent from the Geneva Convention but are not specifically prohibited by it.⁵⁶

The earliest of these principles, *first country of asylum*, was introduced at the EU level in 1992, when member states adopted a ‘Council Resolution on Manifestly Unfounded Applications for Asylum’.⁵⁷ This principle allows countries to return an individual asylum-seeker to the country where asylum has already been granted, thereby preventing onward movement of refugees.

The principle of *safe country of origin* is first found in the EU’s Asylum Procedures Directive (APD) of 2005 and reiterated in the updated APD of 2013, although individual member states had developed safe country lists from at least as early as the 1990s.⁵⁸ The directive defines a safe country of origin as a country with rule

⁵³ Guiraudon and Lahav, ‘A reappraisal’, p. 163.

⁵⁴ Lahav, ‘Immigration and the state’.

⁵⁵ Morten Kjaerum, ‘The concept of country of first asylum’, *International Journal of Refugee Law* 4: 4, 1992, pp. 514–30; Violeta Moreno-Lax, ‘The legality of the “safe third country” notion contested: insights from the law of treaties’, in Guy S. Goodwin-Gill and Phillipe Weckel, eds, *Migration and refugee protection in the 21st century: legal aspects* (The Hague: Nijhoff, 2015), pp. 665–721.

⁵⁶ Joann van Selm, ‘Access to procedures “safe third countries,” “countries of origin” and “time limits”’, background paper commissioned by UNHCR and Carnegie Endowment for International Peace for the third track discussions held in Geneva, June 2001, as part of the Global Consultations on International Protection, <https://www.refworld.org/pdfid/3b39a152d.pdf>, p. 47.

⁵⁷ European Council, *Council resolution of 30 November 1992 on a harmonized approach to questions concerning host third countries* (‘London Resolution’), 30 Nov. 1992, <https://www.refworld.org/docid/3f86c3094.html>.

⁵⁸ European Association for the Defense of Human Rights, EuroMed Rights and International Federation for Human Rights, ‘*Safe*’ countries: a denial of the right of asylum (2016), <https://www.ohchr.org/Documents/Issues/MHR/ReportLargeMovements/FIDH2%20.pdf>.

of law, the absence of indiscriminate violence, and the absence of persecution and torture. If an asylum-seeker arrives in a country with an established list of safe countries and originates in one of those countries, that individual receives an 'expedited review' or 'accelerated procedures' for examination of their application, which may not allow for appeal.

The third concept is that of the *safe third country*. This concept differs from first country of asylum in that the asylum-seeker has some connection to the third country, usually associated with transit, but has not been granted asylum by that country.⁵⁹ If the asylum-seeker transits a first country to a second, or third, state and lodges an asylum claim in the latter, that country may deflect the asylum claim. This principle has been applied to EU member states and extended to non-EU countries through which the asylum-seeker has passed and to which she or he may be returned, as the member state considers the asylum application should have been lodged there.

Other states have noted the development of these principles by the EU, and the ability member states have thereby gained to deflect asylum-seekers, and recently have adopted the same principles. For example, the United States has applied these principles when dealing with Mexico and the countries of the northern triangle of Central America.⁶⁰ The same principles have also been adopted in South Africa to deflect asylum-seekers from all countries other than those with which it shares borders.⁶¹

The refugee regime and the LIO

The refugee regime appears on the face of it to be a central component of the LIO. The broad definition of multilateralism would appear to be in place via the Geneva Convention, in the widely recognized concept of non-refoulement. However, the protections it provides have been limited by the ingenuity of states in generating principles that are not prohibited by the Geneva Convention, so that, although they follow the 'letter of the law', they do not observe its spirit. More than 80 per cent of refugees live in countries of the global South, in significant part because of their inability to lodge asylum claims in countries of the global North, as a result of policies of externalization and the adoption of the principles of first country of asylum, safe countries of origin and safe third countries. The conditions in which they live limit their ability to flourish as humans.⁶² It is not current pressures for deglobalization that have given rise to the unravelling of the refugee regime;

⁵⁹ Van Selm, 'Access to procedures'; María-Teresa Gil-Bazo, 'The safe third country concept in international agreements on refugee protection: assessing state practice', *Netherlands Quarterly of Human Rights* 33: 1, 2015, pp. 42–77; Mysen Consulting, *The concept of safe third countries—legislation and national practices* (Norway, 2017), https://www.udi.no/globalassets/global/forskning-fou_i/asyl/the-concept-of-safe-third-countries.pdf.

⁶⁰ US Department of Homeland Security, *Fact sheet: DHS agreements with Guatemala, Honduras, and El Salvador* (Washington DC, 2019), https://www.dhs.gov/sites/default/files/publications/19_1003_opa_fact-sheet-agreements-northern-central-america-countries.pdf.

⁶¹ Gil-Bazo, 'The safe third country concept'.

⁶² Jeannette Money and Shaina D. Western, 'The fates of survival migrants: the quality of refuge', in Heather M. Smith-Cannoy, ed., *Emerging threats to human rights: resources, violence and deprivation of citizenship* (Philadelphia, PA: Temple University Press, 2019), pp. 213–44.

rather, like other elements of the international mobility regime, the refugee regime has always catered to the interests of core states and has been manipulated by those states to preserve their sovereignty over migratory flows. The outcome has been to put at risk the human rights of refugees and asylum-seekers.

The SARS-CoV-2 pandemic has only worsened the fate of forced migrants (as well as other migrants and travellers) around the world. The UN reports that the conditions of all migrants (both voluntary and refugees) have deteriorated during the pandemic, its policy brief on migrants pointing to three crises that affect migrants more severely than the citizen population.⁶³ First, the health crisis is more severe because of the crowded and unsanitary conditions in which migrants often live and their lack of access to health care. Second, the socio-economic crisis arising from the lockdowns imposed to control the virus has hit migrants hard: many, especially those in the informal economy, have lost their employment; many others are front-line workers at greater risk of exposure to the virus. Moreover, when migrants are out of work, they are unable to send remittances home to their families, whose well-being is often dependent on such funds. These two crises affect all migrants. The third, however, is specific to refugees: this is the protection crisis. Persecution and violence do not stop because of the pandemic; the need for protection continues. But border controls put in place to prevent the spread of the virus also prevent access to protection, certainly in at least the 99 countries that the UN reports make no exceptions for asylum-seekers. Thus human rights, a central attribute of the LIO, are at risk.

In sum, the protection regime established in the wake of the Second World War as a central element in the LIO has been under attack for at least three to four decades, since the point at which countries of the global North first experienced an influx of asylum-seekers. This observation is an indication that the refugee regime, like the travel and voluntary migration regimes, has never been a central component of the LIO.

Why has international mobility been excluded from the LIO?

This article adds to the research agenda by demonstrating the wide array of norms and operating procedures governing the cross-border movement of people in the international system that permit countries of destination to shape migratory flows, and global mobility more broadly. Juxtaposing the three global mobility regimes allows us to see a common thread: the role of destination states in circumventing central principles of the LIO—the sovereign equality of states, multilateralism, human equality and migrant rights, and economic interdependence.

As noted above, there is nothing particularly unique about the cross-border movement of people in an international order characterized by these principles and the capitalist market economy. To explain why travellers, workers and refugees have been excluded from the operation of these principles, I have argued that the

⁶³ Guterres, 'The COVID-19 crisis'; UN, *COVID-19 and people on the move*, June 2020, https://www.un.org/sites/un2.un.org/files/sg_policy_brief_on_people_on_the_move.pdf.

states that constructed the LIO found no need to create a new set of multilateral principles, norms and decision-making procedures, but have been able within the existing rules to select immigrants and determine migratory flows in accordance with their own preferences.⁶⁴

It is widely acknowledged that two principles of customary international law are central to privileging countries of destination in the cross-border movement of people.⁶⁵ The first of these is the right of citizens to leave and return to their country of origin. Without this principle, there could be no international migration. Jurists connect the right to leave and return to the broader development of the law of nations as early as the fifteenth century, and argue that it is central to the notions of human rights and personal liberty. The second, opposing, principle is national sovereignty over entry into the state. The legal rationale for this is based on the principle of territorial sovereignty and is echoed in domestic jurisprudence, as reflected in the often-cited US Supreme Court case *Nishimura Ekiu v. United States*:

It is an accepted maxim of international law, that every sovereign nation has the power as inherent in sovereignty and essential to its self-preservation to forbid the entrance of foreigners within its dominions, or to admit them only in such cases as it may see fit to prescribe.⁶⁶

This imbalance between the right to exit and the right to entry provides countries of destination with the power both to sort immigrants on the basis of desired characteristics and to determine the level of the cross-border movement of people. A second reason for countries of destination to avoid multilateralism lies in the country-specific and ‘one-way’ patterns of migration in the post-Second World War period, which generate bilateral rather than multilateral externalities.⁶⁷ Thus there is little need for countries of destination to develop multilateral institutions, especially since externalities can be addressed more cheaply on a bilateral basis.

These observations are not uncontroversial: a number of scholars have argued that migration is central to the LIO. James Hollifield, for example, maintains that ‘international migration, like trade, is a fundamental feature of the postwar liberal order’.⁶⁸ Sara Goodman and Thomas Pepinsky also argue that ‘migration lies at the

⁶⁴ Money and Lockhart, *Migration crises*.

⁶⁵ This discussion draws on Vincent Chetail, ‘The transnational movement of persons under general international law: mapping the customary law foundations of international migration law’, in Vincent Chetail and Céline Bauloz, eds, *Research handbook on international law and migration* (Cheltenham: Edward Elgar, 2014), pp. 1–72. The criteria for recognizing customary international law are threefold: whether the practice is particularly widespread and representative; whether those states that fail to adhere to the principle acknowledge it in the breach; and whether the principle appears in a large number of international documents and in domestic case law.

⁶⁶ *Nishimura Ekiu v. United States*, 142 U.S. 651 (1892), citing an 1892 US Supreme Court decision.

⁶⁷ Money and Lockhart, *Migration crises*.

⁶⁸ James F. Hollifield, ‘The emerging migration state’, *International Migration Review* 38: 3, 2004, pp. 885–912; quote from p. 905. Hollifield recognizes the fundamental tension between migration and the liberal state, and refers to the ‘liberal paradox’ whereby states need immigration ‘to maximize material wealth and economic security’ but confront domestic political forces that ‘seek a higher degree of closure’. However, Adamson and Tsourapas point out that the ‘liberal migration state’s’ management strategy is only one possible type of migration management and migration state: see Fiona B. Adamson and Gerasimos Tsourapas, ‘The migration state in the global South: nationalizing, developmental, and neoliberal models of migration management’, *International Migration Review* 54: 3, 2020, pp. 853–82.

heart of the international liberal order'.⁶⁹ On the other hand, some scholars would agree with my conclusion that the cross-border movement of people is excluded from the LIO. Lake and colleagues put it starkly: 'These classically liberal policies do not extend to the movement of people across national borders.'⁷⁰ Margaret Peters is equally blunt: 'After World War II, the victors ... created a liberal international order based on integrating markets for goods and capital but not labor.'⁷¹ But neither of these works addresses *why* labour, or the movement of people more broadly, was excluded from the LIO.

One way to square this circle is to adopt Goodman and Pepinsky's argument that migration policy is employed as a tool of the embedded liberal order.⁷² 'Embedded liberalism' is the term coined by John Ruggie to describe how states in the international system, in constructing the LIO after the Second World War, developed strategies to protect their citizens from the dislocations that come with economic integration into the global economy.⁷³ The original protections were generated primarily through social welfare nets and controls over capital flows. However, Goodman and Pepinsky suggest that immigration policy also served as a compensatory mechanism. To sustain this argument, they develop a two-dimensional typology of state migration strategies based on openness/closure to immigration and inclusion/exclusion to national membership. One strategy, adopted by both Germany and the United Kingdom, is 'exclusionary openness': a policy that allows significant flows of migrants but compensates the citizen population by excluding migrants from state-provided protections—an illiberal strategy at the centre of the LIO. Moreover, this two-dimensional typology defines alternative strategies that states could and have adopted. From this perspective, immigration is 'in but not of' the LIO. That is, states do not adopt the liberal principles of the international order when constructing their migration policies but do modulate their migration policies to protect their domestic populations from the vagaries of international markets, including international labour markets.

If this position is adopted, it would require that all three global mobility regimes—travel, voluntary migration and refugees—be viewed as mechanisms of immigration control, rather than as separate regimes with specific functions associated with global mobility. It also suggests that the migratory dimension of embedded liberalism in countries of the global North is not dead but has shifted towards constricting flows as liberal states have adopted more inclusive membership policies—a policy that Goodman and Pepinsky label as 'inclusionary closure'.

An alternative domestic politics approach might also provide insight into the exclusion of global mobility from the LIO. Rather than focusing on embedded

⁶⁹ Sara Wallace Goodman and Thomas Pepinsky, 'The exclusionary foundations of embedded liberalism', *International Organization* 75: 2, 2021, pp. 411–39 at p. 415.

⁷⁰ Lake et al., 'Challenges to the liberal order', p. 231.

⁷¹ Margaret Peters, 'Integration and disintegration: trade and labor market integration', *Journal of International Economic Law* 23: 2, 2020, pp. 391–412; Margaret Peters, *Trading barriers: immigration and the remaking of globalization* (Princeton: Princeton University Press, 2017).

⁷² Goodman and Pepinsky, 'The exclusionary foundations'.

⁷³ John Gerard Ruggie, 'International regimes, transactions, and change: embedded liberalism in the postwar economic order', *International Organization* 36: 2, 1982, pp. 379–415.

liberalism, Margaret Peters, for example, argues that capital mobility and international trade decreased the need for low-skilled labour in countries of the global North, thereby reducing corporate lobbying for greater levels of immigration. This, she continues, allows anti-immigrant voices to come to the fore—an ironic outcome, given the exclusion of labour from the LIO. ‘The recent backlash to the LIO, then, has implicated the very flow—the movement of labor—that was never part of it.’⁷⁴ The rich literature on the domestic sources of immigration policy suggests that the connections between the global mobility regimes and the LIO could be explored more fully to good effect.

Conclusions

The international mobility regime is one of the least globalized dimensions of the international system today. The three components of the regime—travel, voluntary migration and refugee flows—reflect low levels of economic interdependence and minimal levels of multilateralism; the sovereign equality of states is abridged and human equality is ignored. The novel coronavirus pandemic has only reinforced these traits.

States, especially destination states of the global North, have found it useful to be unconstrained by liberal principles when dealing with travel, migration and asylum-seekers. Although some states have opened their doors more or less widely to immigration at specific times, overall these strategies have been employed to limit the cross-border flow of people in ways that are not visible in other dimensions of the global economy. To explain the absence of global mobility from the LIO, I emphasize the status quo ante, which allows destination states to employ unilateral policies to modulate the cross-border movement of people in ways that are both economically and politically useful to those states. The domestic origins of the desire to control global mobility—as opposed to the promotion of cross-border flows of goods, services and capital—point to two distinct explanatory factors. The first draws on the concept of embedded liberalism and suggests that migration is central to the LIO—it is ‘in but not of’ the LIO. State policies governing global mobility are chosen to compensate citizens dislocated by international market forces, including those of international labour markets. The second proposes that domestic politics are central to state policy choices, and that the policy preferences and political power of domestic actors are critical to the global governance of migration. Both of these perspectives are consistent with the evidence presented here, and also suggest that a closer examination of the domestic origins of the illiberal treatment of global mobility is in order.

⁷⁴ Peters, ‘Integration and disintegration’, p. 391.