Natural Persons Supplying Services in Trade Agreements: Mismatch with Immigration Law?

Dr. Jürgen Bast, Senior Research Fellow
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Concurrent Perspectives of Migration Governance

- Migrants as market participants: economic approach
- Migrants as trouble makers: aliens police
- Migrants as non-nationals: foreign policy
- Migrants as strangers or kins: cultural identities
- Migrants as persons: rights-based approach
Trade & Migration

- Multilateral: WTO/GATS
- Bilateral: RTAs

How do they couple the concurrent perspectives of migration, respectively?
WTO/GATS

- Movement of natural persons under GATS
  - Border-crossing of independent service providers
  - Posting of workers employed in service industries based abroad
  - Transfer of personnel to a commercial presence abroad within multinational service industries

- GATS = framework for negotiations
- GATS = most-favoured-nation treatment
GATS’ immigration law carve-outs

- Carve-out I: no jurisdiction for non-permanent forms of migration
- Carve-out II: policing territorial access justifies discrimination on the basis of origin
- Non-admission on economic grounds?
- Coupling perspectives by deference to national law (no regulatory machinery)
Bilateral (Trade) Agreements

- Addressing non-economic concerns through
  - Selective choice of State parties
  - Various side-agreements
  - Dialogue and cooperation

- Cons:
  - Unjustified discriminations
  - Bargaining power of countries of origin
  - Postcolonial dependency
Policy recommendations

- Expansion of the actual scope of commitments on Mode 4 is not advisable
- Service (and labour) migration should be embedded in a broader bilateral framework
- Taking RTAs seriously ("substantial sectoral coverage")
- Waiving developing countries from MFN treatment concerning service migration