
Taking Mobility Seriously in the Model International *Mobility* Convention

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The Model International Mobility Convention (MIMC)¹ develops a comprehensive and rights-based framework for individuals on the move, whether as tourists, workers, students, or simply as visitors to other States. As such, the concept of *mobility* is implicit throughout the Convention and core to many of its principles and provisions. For refugees and other forced migrants, however, the MIMC's proposals for promoting and regulating voluntary movement may be viewed as orthogonal to their predicament in two respects. First, most forced migrants would prefer a world in which they could stay home; safety at home, not movement, may be their primary goal. Second, contemporary approaches toward forced migrants focus on securing protection and providing assistance, not on facilitating movement. What I want to suggest in this brief comment is that mobility can and should play a larger role in the international refugee regime than is usually recognized. That is, the MIMC's normative commitment to mobility can be made central in the context of forced migration as well as in the context of voluntary migration.

The experience of most forced migrants today can broadly be described as coerced displacement followed by constrained movement. The initial movement of refugees is forced, not voluntary; and once they have achieved safety in (usually) a country bordering their home State they become largely immobile.² If the hosting State has a

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1. Model International Mobility Convention, *International Convention on the Rights and Duties of All Persons Moving from One State to Another and of the States They Leave, Transit or Enter* 32 (2017), http://globalpolicy.columbia.edu/sites/default/files/mimc_document.pdf [<https://perma.cc/F3Q3-6G88>].

2. Viewed from this perspective, one could characterize the three durable solutions—voluntary repatriation, local integration and resettlement—as prioritizing the interests of States in creating immobility rather more directly promoting the individual agency of refugees.

policy of encampment—as does Kenya—then refugees may be denied the right of freedom of movement within the asylum State, a violation of the rights guaranteed by the Refugee Convention.³ And opportunities for moving beyond the country of first asylum are generally quite limited: only a small number of refugees each year are granted resettlement in third countries; a few are able to take advantage of other routes of lawful migration (for work, education or to join family).⁴ So most onward movement from countries of first asylum is deemed by destination States as illegal.

In the earliest days of the refugee regime, movement was understood as crucial to the project of helping refugees rebuild their lives. A central innovation of the post-WWI efforts to extend protection to refugees was the “Nansen Passport,” a document issued in the name of the first High Commissioner for Refugees Fridtjof Nansen.⁵ For many refugees who had no documentation from either their home State or hosting State, the Nansen Passport served as an identity card. The Nansen Passport did not guarantee entry to another State; admission would depend on the domestic laws and policies of that State pertaining to non-citizens. But it facilitated travel outside the borders of the State of asylum: receiving States would accept the document as adequate for purposes of identification, and asylum States would recognize the Nansen Passport as sufficient to permit re-entry of a refugee who had ventured abroad.⁶ The movement of refugees was generally understood as important to attaining self-reliance—refugees would travel to other States in search of gainful employment.⁷

This sensible idea of providing opportunities for refugees to move no longer figures in the refugee regime. Refugees are, in effect, given one shot at safety and security. Consider how this played out during the movement of hundreds of thousands of Syrian refugees from Turkey to Europe in 2015-16.⁸ Those who were accepted

3. United Nations Convention Related to the Status of Refugees, art. 26, July 28, 1951, 189 U.N.T.S. 150.

4. For example, 189,300 persons were resettled in 2016, a number that amounts to a small fraction of the 22.5 million refugees across the world. UNHCR, GLOBAL TRENDS: FORCED DISPLACEMENT IN 2016 (2017).

5. Katy Long, *When Refugees Stopped Being Migrants: Movement, Labour, and Humanitarian Protection*, 1 MIGRATION STUD. 4 (2013).

6. Principles of re-admission were explicitly adopted in the 1933 Refugee Convention. See Convention Relating to the International Status of Refugees, Oct. 28, 1933, 159 L.N.T.S. 199.

7. See Long, *supra* note 5.

8. *Migrant Crisis: One Million Enter Europe in 2015*, BBC NEWS (Dec. 22, 2015),

into European States were placed into the asylum process, where they will be subject to individualized determinations as to their status as refugees. Others met with border police, fences and other barriers and were denied entry; for those States, the refugees were simply illegal migrants who had no right to enter either based on their refugee status or in order to file a claim for asylum. A decision by the governing body of the EU to distribute Syrian asylum-seekers among EU members according to a formula was rejected by several Member States and never put into effect. Eventually, an agreement was negotiated between the EU and Turkey, which permitted the return of Syrian asylum-seekers to Turkey (in exchange for a promise of 6 billion euros, progress toward visa-free travel for Turks in the EU, and a restart of the process that could eventuate in Turkey's admission to the EU).⁹ Thus while EU politicians, journalists, NGOs, and other humanitarian actors have no difficulty in traveling to Turkey to negotiate about, report on, and work with more than 2.5 million refugees being housed by Turkey, the refugees themselves now face formidable legal and practical barriers in moving beyond the country of first asylum. Freedom of movement, it seems, is a privilege of the most fortunate, not the most in need.

Scholars and policy experts have over the past several years made a number of proposals for reforming the international refugee regime. Unfortunately, enhancing refugee mobility does not figure prominently in their thinking. It is possible to identify what I would label a New Liberal Consensus on reform. While there is no formal New Liberal Consensus "manifesto," we can see a set of ideas and policy recommendations that are generally adhered to and advocated for by a wide range of progressive, reform-minded government officials, experts, and institutions. These include: (1) the refugee definition should not be "opened up," but persons fleeing conflict and violence are and should be generally assisted as refugees;¹⁰ (2) refugees

<http://www.bbc.com/news/world-europe-35158769> [https://perma.cc/X5FK-KE54] (estimating that over 800,000 refugees traveled from Turkey to Greece, half of which were migrants from Syria).

9. Agreement between the European Union and the Republic of Turkey on the Readmission of Persons Residing without Authorization, E.U.-Turk., May 7, 2014, L 134/3, [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0507\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0507(01)&from=EN) [https://perma.cc/X5Y4-4KLT]. For a critical analysis of the mechanics of the EU-Turkey Deal and the logistical implications for host countries, see Elizabeth Collett, *The Paradox of the EU-Turkey Deal*, MIGRATION POL'Y INST. (Mar. 2016), <https://www.migrationpolicy.org/news/paradox-eu-turkey-refugee-deal> [https://perma.cc/A6QB-G6GU].

10. UNHCR, GUIDELINES ON INTERNATIONAL PROTECTION No. 12 (2016), http://www.rulac.org/assets/downloads/UNHCR_Guidance_Armed_Conflict_2016.pdf

are best assisted in States close to home (it is cheaper and makes return easier);¹¹ (3) self-reliance should replace “care and maintenance” as the primary focus of international programming (with the assistance of development actors and the private sector);¹² (4) refugees can be a benefit to hosting States;¹³ (5) resettlement programs should be expanded and additional legal pathways created to help share the burden imposed on countries of first asylum;¹⁴ and (6) non-entrée policies should be criticized¹⁵ and xenophobia condemned.¹⁶

Were the world to adopt policies along the lines of the New Liberal Consensus, the lives of millions of refugees would be improved. And yet it is important to see that the Consensus is actually quite at home with the premises of the approach that has produced the present dismal state of affairs. We can see this by noticing what is missing. While the Consensus gestures at increased responsibility sharing (through “new pathways” to third countries), no serious effort is made to construct a global framework for addressing protracted situations. States are not being asked to commit themselves to a sys-

[<https://perma.cc/RCV7-TLYD>].

11. ALEXANDER BETTS & PAUL COLLIER, *REFUGEE: TRANSFORMING A BROKEN REFUGEE SYSTEM* 132–135 (2017).

12. U.N. Secretary-General, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants*, paras. 80–82, U.N. Doc. A/70/59 (Apr. 21, 2016), <https://reliefweb.int/sites/reliefweb.int/files/resources/N1611262.pdf>

[<https://perma.cc/M8XA-FX4X>]. ALEXANDER BETTS ET AL., *REFUGEE ECONOMIES: RETHINKING POPULAR ASSUMPTIONS* 36 (2014), <https://www.rsc.ox.ac.uk/files/files-1/refugee-economies-2014.pdf> [<https://perma.cc/KE9W-F6V2>]. WORLD BANK GROUP, *FORCIBLY DISPLACED: TOWARD A DEVELOPMENT APPROACH SUPPORTING REFUGEES, THE INTERNALLY DISPLACED, AND THEIR HOSTS* 90, <https://openknowledge.worldbank.org/bitstream/handle/10986/25016/9781464809385.pdf?sequence=11&isAllowed=y>. T [<https://perma.cc/BK88-3K9L>].

13. *REFUGEE ECONOMIES*, *supra* note 12, at 16–19 (citing empirical evidence that refugees buy products and services in host economies, create employment, and contribute human capital as a source of labor); ALEXANDER ALEINIKOFF, *MIGRATION POL’Y INST., FROM DEPENDENCE TO SELF-RELIANCE: CHANGING THE PARADIGM IN PROTRACTED REFUGEE SITUATIONS* (2015) (suggesting that humanitarian actors should focus on shifting the paradigmatic view of refugees from one of “burden” to “benefit”).

14. G.A. Res. 71/1, ¶¶ 77, 78 (Oct. 3, 2016).

15. “Non-entrée” refers to the commitment of ensuring that refugees should not be allowed to arrive. James Hathaway, *The Emerging Politics of Non-Entrée*, 91 *REFUGEES* 40, 40–41 (1992). For criticisms of non-entrée policies, see e.g., James Hathaway and Thomas Gammeltoft-Hansen, *Non-Refoulement in a World of Cooperative Deterrence* (Working Paper No. 106, 2014), https://repository.law.umich.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1216&context=law_econ_current [<https://perma.cc/5RH3-2SL9>].

16. G.A. Res. 71/1, *supra* note 14, ¶¶ 14, 39.

tem of distributing burdens, nor is any international structure or platform suggesting allocating “shares.”

Furthermore, the New Liberal Consensus says very little about enforcement of the rights of refugees. And while xenophobia and non-entrée policies are criticized, they are not really confronted; indeed, they become a basis for supporting policies that offer developed States protection from spontaneously arriving asylum-seekers. Most troubling is that Consensus continues to relegate refugees to the countries in which they were first provided protection; movement beyond is seen not as a part of a system of protection but rather as *migration*—and therefore subject to normal rules States put in place for regulating the entry and stay of migrants.

At the end of the day, the New Liberal Consensus is surprisingly close to the current North-South bargain: the global North adopts policies to incentivize the global South to keep refugees from moving onward. The new incentive on the table today is increased development funding to supplement (inadequate) humanitarian resources. The potential benefits to hosting States are two-fold: increased overall levels of funding, and participation of refugees in local economies. Nothing more is demanded of the global North. Indeed, once refugees have re-attained productive lives, their justification for moving North can be asserted to be far weaker. A goal of self-reliance, it turns out, is simply the old humanitarianism tune with new development words—a way for the global North to believe it is doing something to relieve human misery while keeping refugees in States to which they first fled.

In accepting a State-based refugee regime, the New Liberal Consensus approaches the international refugee regime not as a system but as a series of bilateral and multilateral bargains. This is a mistaken view. The States that have signed up to this project—by ratifying the Refugee Convention, serving as members of UNHCR’s Executive Committee, approving the annual UN General Assembly resolution on refugee protection—have obligations toward displaced persons and other State members to support the system and promote its goals.

Crucial to the success of the international refugee regime is a far more robust commitment to global responsibility sharing than currently exists. And it is here that the concept of mobility can play an important role. The idea would be that refugees should be recognized as having the right of free movement between and among the members of the regime. In essence, this is a suggestion for the revival of the Nansen Passport, and endowing it with the additional element of presumptively authorizing entry of recognized refugees to other State members of the international system of refugee protec-

tion. Persons arriving from a country of first asylum would not be subject to lengthy asylum determinations that take years and impose substantial costs on receiving States; prior adjudication of refugee status, perhaps certified by UNHCR or another international body, would suffice for all members of the regime. To be acceptable to member States—and to be consistent with fair distribution of responsibilities—they could limit admissions to a certain annual amount or could condition admission upon demonstration that the refugee has a means of supporting him or herself and their families (and other conditions relating to security and the like). But the central principle would be one of supporting refugee agency as they attempt to rebuild their lives.

Free movement among members of a political body is hardly a new idea. From the creation of the United States, to the EU and ECOWAS¹⁷ (and perhaps soon MERCOSUR), the right to move is protected by law.¹⁸ To be sure, a new Nansen Passport would extend that privilege to non-citizens of the political entities that constitute the whole, but they will have achieved a certain degree of membership by meeting standards that warrant the exercise of international protection—which all members of the regime are committed to guaranteeing. Refugees could choose their State of residence as States accept their responsibilities as regime members. This is similar to current refugee resettlement programs, but puts the right of initiative in the refugees' hands: rather than States selecting refugees, refugees select States.

It should be apparent that this kind of mobility within the system benefits all parties. Refugees are able to regain agency and advance the goal of self-reliance; hosting States are benefitted if refugees who are unable to find work there can find it in another State; and States of destination gain from having refugees link to employers who seek their labor. And this kind of mobility would undercut smuggling and trafficking activities, which would surely decrease exploitation and abuse of refugees and prevent deaths at sea. Indeed, under such an approach, mobility can itself be a “solution” to the refugee situation—one that does not demand of States that they extend

17. *ECOWAS – Free Movements of Persons*, UNITED NATIONS ECONOMIC COMMISSION FOR AFRICA, <https://www.uneca.org/pages/ecowas-free-movement-persons> [<https://perma.cc/576G-UDUM>].

18. For a summary of legal frameworks protecting the right to move freely, see INT'L ORG. FOR MIGRATION, FREE MOVEMENT OF PERSONS IN REGIONAL INTEGRATION PROCESSES: SUPPLEMENTAL MATERIALS (2007), https://view.officeapps.live.com/op/view.aspx?src=http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/microsites/IDM/workshops/free_movement_of_persons_18190607/idm2007_handouts.doc [<https://perma.cc/XJJ7-UESV>].

membership.

We should not be so naïve as to think that systemic mobility can be adopted immediately. There would be strong opposition from third countries that would (correctly) believe that they would receive large numbers of refugees. This would not constitute fair burden-sharing any more than the current situation of “responsibility by proximity.”¹⁹ So States may want to ease into mobility, perhaps establishing annual quotas, or requiring refugees to establish that there is an employer who has offered them a job. Or mobility could be established at a regional or sub-regional level—as in the EU and among ECOWAS States.

The MIMC advances a number of proposals that address and also help lay the groundwork for incorporating mobility as a potential solution to forced migration. Most importantly, the MIMC makes realizing collective and fair responsibility sharing a core element of international protection. It does so by proposing a framework for allocating shares among States Parties to provide adequate funding and resettlement as well as establishing a mechanism to ensure accountability.²⁰ The MIMC also advocates the implementation of a broadly comprehensive system that would foreclose the need for subsequent status determinations: the establishment of a single harmonized asylum procedure would allow international protection status to “travel” and thus function globally.²¹ Finally, recognizing the important link between refugee agency and mobility, it also includes provisions requiring States Parties to allocate at least ten percent of labor visas to persons who have refugee and forced migrant status.²²

The move away from refugee camps in most parts of the world—and UNHCR’s policy on alternatives to camps—has supported refugee mobility within States of first asylum.²³ It is now time to adopt similar practices allowing movement between and among all States that are part of the international refugee regime. The MIMC suggests important first steps in the right direction.

19. This phrase is adopted from Peter Sutherland, former U.N. Special Representative of the Secretary-General for International Migration, Interview by U.N. News Service with Peter Sutherland, U.N. Special Representative of the Secretary-General for International Migration (Oct. 2, 2015), <https://reliefweb.int/report/world/interview-refugees-are-responsibility-world-proximity-doesn-t-define-responsibility> [<https://perma.cc/NU59-J8JT>].

20. MIMC, *supra* note 1, art. 209.

21. *Id.* art. 129.

22. *Id.* art. 211.

23. UNHCR, POLICY ON ALTERNATIVES TO CAMPS (2014), <http://www.unhcr.org/5422b8f09.pdf> [<https://perma.cc/5RL9-23CH>].