Think Mobility Instead of Migration: Leveraging Visitors, Tourists and Students for More International Cooperation

REY KOSLOWSKI*

The Model International Mobility Convention (MIMC) squarely addresses the reality that there is relatively little international cooperation to regulate the movement of people across international borders. While there is a well-established international refugee regime, there is no comparable international labor migration regime. States have increasingly engaged in discussions of international cooperation on migration at the Global Forum on Migration and Development (GFMD) and other international fora. However, existing international agreements do not involve significant commitments on the part of a majority of the world’s States to accept labor migration. They do not add up to a regime facilitating the international movement of labor similar to the international trade regime based on the General Agreement on Tariffs and Trade (GATT).

The world has about 258 million international migrants, defined by the United Nations as those who have lived outside of their country of nationality or birth for more than one year.1 The number of international migrants has grown significantly but it still accounts for only about three percent of the world’s 7.6 billion people. Most people in the world have never left their country of birth and never will.2 Some people have travelled internationally once, some occa-

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* Associate Professor of Political Science and Director of the Master of International Affairs Program, Rockefeller College of Public Affairs and Policy, University at Albany, State University of New York (SUNY). Thanks to the MacArthur Foundation’s research support for the Global Mobility Regimes project upon which this article is based and thanks to Michael Doyle and Kiran Banerjee for their constructive comments on previous drafts.


2. This is borne out by the fact that relatively few citizens of the three most populous countries in the world have passports: sixty million Indians (4.5 percent); 129 million Chinese (9.2 percent) and 132 million U.S. citizens (41 percent). See MINISTRY OF EXTERNAL AFFAIRS, GOVERNMENT OF INDIA, PUBLIC ADVISORY (2014), http://passportindia.gov.in/AppOnlineProject/pdf/Public_Advisory.pdf [https://perma.cc/Z2LJ-2MFJ]; Zhang Yang, Mainland residents: It is more convenient to
sionally and a few regularly travel internationally every year.

In contrast to the U.N. definition of migration, “global mobility” refers to movements of people across international borders for any length of time or purpose. In 2016 there were over 1.2 billion international tourist arrivals, which includes travel for leisure, business and to visit friends and relatives. If all these tourists returned directly home in the same year that would be another 1.2 billion entries, totaling over 2.4 billion entries. Given that many people enter several countries before returning home or return the following year, it is difficult to say how many entries of returning citizens correspond to international tourist arrivals. Additionally, there are millions of students and temporary contract workers who may be abroad for less than one year as well as large numbers of cross-border commuters who might not be counted in tourist arrival statistics. My best guess is that there are over two billion crossings of international borders worldwide per year.

Thinking in terms of global mobility instead of international migration widens the scope of analysis to include international cooperation on international travel and the activities of the international organizations concerned with it. Expanding the scope of the MIMC beyond migration to include chapters on visitors, tourists and students increases the number of people such a treaty may affect—from 258 million migrants and twenty-two million refugees to all of those people who collectively cross international borders two billion times each year. Adoption of the MIMC, therefore, may also have financial consequences for the transportation businesses that enable those two billion international border crossings and the businesses (and educational institutions) that earn revenues from those abroad for less than a year.

The first three chapters of the MIMC articulate principles, rules and norms of what I have called the “international travel re-

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This regime was established long ago but remains somewhat latent. Cooperation within international organizations to facilitate international travel reaches back to the League of Nations and the 1920 Paris Conference on Passports and Customs Formalities. The standardization of passports continued after WWII, with the formation of the International Civil Aviation Organization (ICAO) in 1947 that subsequently promoted the standard of machine-readable passports in the 1980s. Cooperation on international travel may be closely related to cooperation on migration but it is not the same. Often, cooperation on international travel takes place in international organizations such as ICAO, the U.N. World Tourism Organization (UNWTO) and the International Maritime Organization (IMO). None deal with immigration and refugee policies but cooperation within these organizations has enabled increased migration and asylum seeking, along with all other international travel.

For the most part, cooperation on international travel has historically focused on facilitating cross-border movements of ever larger volumes of tourists and business people, however, the hijackings of the early 1970s and the attacks of September 11, 2001 brought security considerations to the forefront of international cooperation in this issue area. As transnational organized crime and terrorism have raised security concerns, States have increasingly turned to international cooperation to secure international travel while maintaining levels of travel flows. While travel facilitation enables asylum seeking, increasing international cooperation to improve travel document security, tighten border controls and combat human smuggling reduces opportunities for successful spontaneous arrival asylum seeking by those with a well-founded fear of persecution.

To address


9. See Koslowski, *supra* note 4, at 69–70. As Alexander Betts notes, “the travel regime exists in parallel to and significantly overlaps with the refugee regime, such that one might refer to a ‘travel-refugee regime complex.’ The principal overlap between the regimes relates to the regulation of spontaneous arrival asylum seekers’ access to territorial asylum.”
this side effect of increasing border security cooperation and maintain international protection, U.N. Member States must increase cooperation to assist countries of first asylum and to resettle refugees, through mechanisms such as those proposed in Articles 211–213 of the MIMC.

Considering the much greater scope of global mobility and the longstanding existence of the international travel regime, I have argued that it is useful to think about international cooperation on migration in terms of a set of three interacting global mobility regimes: the established international refugee regime based on the norm of non-refoulement, an international travel regime based on the norm of secure facilitation of travel, and a non-existent but potential international labor migration regime anchored in the norm of shared prosperity. If we think about international migration as a subset of all movements of people across international borders, issue linkages between international travel and labor migration increase the possibilities for cooperation among States.

By placing three chapters of rules regulating the cross-border movement and rights of visitors, tourists and students together with chapters on migrant workers, investors and migrant residents as well as refugees, forced migrants and asylum seekers, the MIMC links cooperation on international travel to cooperation on migration and refugees. The MIMC provides a framework for policymakers to consider the relationship between international cooperation to facilitate the secure travel of inbound international tourists and international cooperation to promote orderly labor migration.

The fundamental obstacle to establishing an international regime governing labor migration is that migration destination States have no reason to join. Foreign labor, especially low-skilled labor, is in abundant supply. If labor shortages develop during periods of economic growth, States can get as much labor from abroad as they like with bilateral agreements or simply by opening labor markets to migrants while at the same time avoiding any international commitments to keep labor markets open during economic downturns. For individual migration destination States, the additional economic gains of joining such an international regime are not very politically salient

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11. See Koslowski, supra note 4 (dealing with issues with which the following five paragraphs also draw).
because such gains are primarily realized by the migrants themselves and the reduced labor costs due to migration are distributed across the economy as a whole. Moreover, the non-economic costs of large-scale immigration to receiving States’ society and culture, whether real or just perceived, render a policy of multilateral engagement on migration even more difficult for politicians to sell to skeptical publics than international free trade agreements. International bargaining on labor migration has another problem in that it is not conditioned by reciprocity. In bargaining to reduce tariffs, free trade politicians argue that the gains from opening up foreign markets for exports make up for the profits and jobs lost to cheaper imports. Workers in developed countries do not benefit much from gaining access to labor markets in migration origin sending States of the developing world. Politicians in developed countries who need the votes of workers threatened by immigration do not have a corresponding constituency akin to “exporters.” It should, therefore, not be surprising that there has been little interest among U.N. Member States, especially labor migration destination States, to expand the global legal and normative framework for migration policies.

These and other obstacles to international cooperation on labor migration may not necessarily apply to international cooperation on travel. Although migration destination States have no reason to

12. While immigration may significantly increase the economic growth experienced by migration destination States, immigration may also lead to demographic changes that shift the ethnic and religious composition of their societies and, thereby, precipitate divisive political contestation over issues of national identity that incur non-economic costs, up to and including civil war. See William H. McNeill, Polyethnictiy and National Unity in World History (1986); Aristide Zolberg, International Migration in Political Perspective, in Global Trends in Migration: Theory and Research on International Population Movements 3 (Mary M. Kritz, Charles B. Keely & Silvano M. Tomasi eds., 1981); Myron Wiener, The Global Migration Crisis: Challenge to States and to Human Rights (1995). Politicians may also leverage public perceptions of a state’s loss of control over migration for electoral gains that have similar divisive political consequences (and their corresponding non-economic costs), even if the actual immigration flow is not actually changing country’s demographic make-up to a significant extent. See Identity, Migration and the New Security Agenda in Europe (Waever Ole et al. eds., 1993) (looking especially at Martin O. Heisler & Zig Layton-Henry, Migration and the Links Between Social and Societal Security, in Identity, Migration and the New Security Agenda in Europe 148 (Waever Ole et al. eds., 1993)).


14. Id.
join an international regime to facilitate labor migration, these very same States may be very interested in joining a global regime that facilitates the arrival of foreigners who do not come to work, but rather come to spend money on lodging, meals and entertainment. Worldwide, 1.2 billion international tourists generated over $1.5 trillion in revenue in 2016. While there may be no inherent reciprocity between or among States that send and receive labor migration, international tourism has a different array of political constituencies producing different political dynamics with respect to international bargaining among States. Six of the top ten migration destination countries (the United States, Russia, Germany, France, the United Kingdom, and Spain) are also top ten international tourist destinations. Major migration destination countries may not need multilateral cooperation to access the abundant supply of migrant workers but the supply of international tourists cannot be similarly taken for granted. International tourist spending can shift away from States that erect barriers to international travel toward those States that do not.

Moreover, the distribution of international tourism’s economic benefits differs from that of international labor migration. The economic benefits from international labor migration go to the migrants themselves, the businesses in migration destination States that profit from lower labor costs, and their customers who enjoy lower costs for the goods and services produced. International tourist receipts benefit the lodging, restaurant, and entertainment businesses, and can be directly tied to jobs in these industries. Politicians who advocate for increasing labor migration may be opposed by constituents who face wage competition from migrants. In contrast, calling for more international tourism is a common economic development mantra for many cities and regions in most countries of the world. While it may be difficult for migration destination country politicians to support international agreements that commit their countries to ac-


cept certain levels of labor migration regardless of economic conditions, politicians advocating international cooperation to facilitate international tourism can leverage business, union and local government support, especially in periods of economic downturns when international tourist receipts may replace declining domestic spending.

Another reason why politicians may be more inclined to support cooperation on travel than migration is that while the world’s 258 million migrants are primarily people from lower socioeconomic classes who went abroad to take difficult, dirty, dangerous and undesirable jobs; international tourists and business travelers are primarily from middle and upper socioeconomic classes. While liberal immigration policies and international cooperation to facilitate labor migration primarily benefits migrant workers themselves (as well


18. Over seventy percent of the people in the world have incomes below the middle-income threshold of ten dollars per day (or $3,650 year). See Rakesh Kochhar, A Global Middle Class Is More Prominent Than Reality: From 2001 to 2011, Nearly 700 Million Step Out of Poverty, But Most Only Barely (2015). Individuals below this income level would find it difficult to save enough money to pay for the expenses of travelling abroad on visitor visas (which do not allow the traveler to work and earn income in the destination country). A World Bank study found that passport fees of the 127 countries analyzed averaged $50 but exceeded 10 percent of annual per capita income in one of every ten countries. David J. McKenzie, Paper Walls Are Easier to Tear Down: Passport Costs and Legal Barriers to Emigration (World Bank, Working Paper No. 3783, 2005). Comprising roughly half of the world’s international tourist arrivals, the top 10 tourist destination countries charge visitor visa fees that vary from $160 in the US to seventy-one dollars for France, Germany, Italy and Spain to twenty dollars in Turkey and most visitor visa applications to these destinations require the additional cost of traveling to consulates or embassies to submit applications, provide biometrics and/or be interviewed. Finally, in addition to transportation costs, which vary greatly depending on distance and mode of travel, each of the 1.2 billion tourist arrivals on average generated $990 in receipts from lodging, food, etc. U.N. World Tourism Org., Tourism Highlights 2017 Edition 5–6 (2017).

19. See Nat’l Acad. of Sci., Engineering & Medicine, Econ. and Fiscal Consequences of Immigr.: A Report of the Nat’l Academies of Science,
as their extended families back home who receive remittances; liberalizing visa and border security policies and cooperating to facilitate international travel primarily benefits middle and upper class people who wish to take their holidays abroad as well as attend business meetings and conferences. It is much easier for politicians to advocate for liberal visa and border control policies that reduce the inconveniences of international travel for their own well-to-do constituents (while at the same time making international travel for migrants easier), than it is to promote liberal immigration policies that primarily benefit immigrants and foster economic development of home countries.

Chapter I of the MIMC on visitors lays the groundwork for the rest of the project’s approach. The rights of visitors articulated in this chapter set a baseline of rights for anyone and everyone who crosses an international border for any length of time or purpose. Subsequent chapters layer on additional rights for specific categories of visitors—first, tourists and students, then migrants and refugees. Although the MIMC text largely draws on the 1990 Migrant Workers Convention, it also draws on international legal instruments, such as the Chicago Convention on International Civil Aviation, which governs the work of ICAO. In addition to addressing the rights of visitors, Chapter I articulates the rights and duties of States vis-à-vis each other and visitors. Article 6 states that “States Parties have the right to determine who shall be allowed to enter their territories and to decide who shall be allowed to stay,” subject to enumerated constraints, including the obligation of States to allow the entry of their own nationals. Chapter I also includes articles that re-articulate rules guiding States in their use of visas and passports as tools of international cooperation to promote the secure facilitation of travel. Drawing on the New York Declaration, the chapter mandates that States promote international cooperation to manage and control their borders, share best practices in border controls and help build capacities of fellow States.

Chapter II on tourists largely draws on the UNWTO’s “Global Code of Ethics for Tourism.” As such, much of Chapter II is the “soft law” of a code of conduct for tourist operators rather than rules governing international cooperation between States. Given that the

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UNWTO traces its origins to the International Union of Official Tourist Propaganda Organizations of 1934, international cooperation to promote tourism is longstanding. For example, eighty-seven States agreed at the 1963 UN Conference on International Travel and Tourism that “Governments should extend to the maximum number of countries the practice of abolishing, through bilateral agreements or by unilateral decision, the requirement of entry visas for temporary visitors.” The UNWTO’s efforts to persuade governments to eliminate visa requirements and, if visas must remain, to utilize e-visas or allow visitors to get a visa upon arrival have been successful, even in the wake of major global economic downturns that often correspond with tightening immigration policies. At the beginning of 2008, destination countries requested an average of seventy-seven percent of the world’s population to apply for a traditional visa prior to departure; this percentage decreased to sixty-one percent in 2015.

Chapter III on students addresses the world’s population of international students, which grew from 2.8 million to 4.6 million between 2005 and 2016, but has not been thought of as international migration until relatively recently. European, American, Canadian and Australian policymakers have long viewed international students from less developed countries as future engineers, physicians and teachers who return to help develop their countries of origin. Policymakers are increasingly viewing international university students as sources of higher education “export” income and, upon completion of their studies, as human capital to fuel high-tech industries and post-industrial service economies. For example, the Australian government required international students to leave Australia after their studies and banned them from immigrating to Australia for three


In 1999, the government lifted the three-year ban and added five bonus points in the skilled migration program for earning a degree at an Australian university. Three years later, international students comprised half of Australia’s permanent skilled immigrant stream. In 2007, Canada followed the Australian example in revising its points system for permanent immigration to give priority to applications from foreign students who had completed their degrees in Canada. In 2011 the Canadian government began offering permanent residency to foreign students who earned their PhDs in Canada through a “PhD graduate stream” of permanent immigration that is now administered through provincial programs, such as that of Ontario and British Columbia. Although tourists vastly outnumber international students, the annual per capita economic impact of international students is much greater. Consider that, for example, during the 2015–2016 academic year, the 1,043,839 international students studying at U.S. colleges and universities contributed $32.8 billion to the U.S. economy and supported more than 400,000 jobs.

As noted above, an important innovation of the MIMC lies in its explicitly broader focus on all cross-border movements as a domain of international cooperation. By taking up mobility—and with that the wider field of State interests this covers, from travel, tourism, to education, and labor—this approach lays the groundwork for a potentially richer network of interlocking, interdependent, and mutually beneficial forms of multilateral State cooperation than what a more

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28. Id.
29. Id.
narrow focus on migration alone might allow. Diplomats seeking to leverage the economic benefits of international tourism and international education in negotiations toward a global compact for safe, orderly, and regular migration can use the approach of the MIMC as a framework to link international cooperation on travel to cooperation on migration.