
Beyond Mapped Horizons: Reflections on the Model International Mobility Convention

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To be alive is to move
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The question of human mobility, intrinsically a motor for all development and a basic, indeed vital, aspect of human existence, has long been relegated to blind spots, most especially where cross-border migration is concerned. Until very recently, it was also largely demarcated to the realms of national and, at best, regional, matters, rather than as an issue of shared international responsibility—an ill-thought but abiding bid perhaps, to contain, constrain, and control a global human phenomenon that might otherwise prove chaotic to the fundamental notions of sovereignty, borders, and citizenship that structure and to a great extent determine, the priorities of international relations.

It is notable that the Model International Mobility Convention (MIMC) comes just a year after the adoption of the New York Declaration for Refugees and Migrants on September 19, 2016.² What has ensued since then is an unparalleled effort within the international community to engage with the question of human mobility. At the United Nations, this work is currently being undertaken down two routes: one towards a global compact on safe, orderly and regular migration³ and another towards a framework of shared responsibility for refugees,⁴ both to be achieved by 2018.⁵ These efforts, triggered

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1. FATIMA MERNISSI, *DREAMS OF TRESPASS: TALES OF A HAREM GIRLHOOD* 209 (Perseus Books, 1995).

2. G.A. Res. 71/1 (Oct. 3, 2016).

3. See G.A. Res. 71/280 (April 17, 2017) (affirming U.N. commitment to launching the process of intergovernmental negotiations and establishing a process designed to lead to the adoption of the global compact for safe, orderly and regular migration).

4. The framework for shared responsibility for refugees, or the Global Compact on

by the largest mass influx of displaced persons in 2014–15 on the shores of Europe since the end of the Second World War,⁶ finally acknowledge the glaring gaps in good governance and international cooperation that have long consigned human mobility to fragmented, uneven, and ill-thought regulatory frameworks. Perhaps the worst aspect of this incoherent political and legal scenario is the fact that it points to a long-standing refusal to acknowledge the vitally important contributions to development and socio-economic progress made possible through human mobility. The cost of this willed blindness is high: countless lives are lost along uncharted and difficult migratory routes,⁷ and millions suffer from deep inequalities, the lack of access to rights and lack of representation. Migration as a choice remains the prerogative of a global elite⁸ while many more, who are either displaced or are seeking better lives, are forced, under existing regulations, to pursue routes that deprive them of dignity and security. A curious paradox emerges: on the one hand, legal and political establishments seek to better the constituencies that they serve in the names of development and progress; and, on the other, they fail to apprehend the mobility inherent to the very ideas of development and progress, which must, if they are to carry any meaning at all, be shaped and implemented by and through the movements of peoples.

GLOBAL MOBILITY

“I have never been outside of India. But with my new smartphone, the whole world can come to me.” (Padma, domestic worker in the

Refugees, is to be developed by the U.N. High Commissioner for Refugees. For details of the proposed contents and timeline, see *Towards a Global Compact on Refugees: a Roadmap*, UNHCR (May 17, 2017), <http://www.unhcr.org/58e625aa7> [<https://perma.cc/C9DP-GYFL>].

5. Details of the U.N. commitments undertaken to shape these global compacts can be found at: *Global Response*, UNITED NATIONS (2017), <http://refugeesmigrants.un.org/global-response> [<https://perma.cc/QHH9-QTXM>].

6. *Refugees at Highest Ever Level, Reaching 65m, Says UN*, BBC (June 20, 2016), <http://www.bbc.com/news/world-36573082> [<https://perma.cc/635E-EKVC>].

7. In 2015, an estimated 3,771 lost their lives crossing the Mediterranean, with upwards of 3,740 losing their lives in 2016. See *Mediterranean Death Toll Soars, 2016 is Deadliest Year Left*, UNHCR, (Oct. 25, 2016), <http://www.unhcr.org/en-us/news/latest/2016/10/580f3e684/mediterranean-death-toll-soars-2016-deadliest-year.html> [<https://perma.cc/E6E7-JQ93>].

8. This phenomenon is particularly true in the poorest countries. See STEPHEN CASTLES ET AL., *THE AGE OF MIGRATION: INTERNATIONAL POPULATION MOMENTS IN THE MODERN WORLD* 78 (2013).

informal sector, New Delhi)

In his book, *A Seventh Man*, the writer John Berger says that “the migrant’s intentionality is permeated by historical necessities of which neither he nor anybody he meets is aware. That is why it is as if his life were being dreamt by another.”⁹ In the modern age, and indeed well before it, mobility was a historical necessity, a fundamental aspect of globalization as we know it, the offshoot and the motor of history as we make it. With ever more people on the move, with persistent global inequalities and technological connectivities, with journeys that are complex and contingent upon socio-economic and many other factors, mobility in the twenty-first century is hard to map, and yet everywhere within and around us.¹⁰ To quote Professor Nikos Papastergiadis, “[M]igration, in its endless motion, surrounds and pervades almost all aspects of contemporary society.”¹¹ Such migration takes many forms: that of the forcibly displaced due to conflict or climate change, that of those displaced within themselves because of a collective imaginary that privileges certain parts of the world over others, that of those who seek more freedoms, wealth, power, stability, security, knowledge, resources and/or rights.¹² In this heaving globalscape of humans on the move, it is fair to ask oneself what routes might lead to the good governance of mobility.

THE GLOBAL COMPACTS ON MIGRANTS AND REFUGEES

June 17th 2017. At the Plaça de l'Àngel in Barcelona, we celebrate the Trobada L'Iftar, or breaking of the fast in the month of Ramadan. I meet Ahmed, aged eighteen and two months, through a common acquaintance. He passes me a plate of food and introduces me to some friends.

Later, I ask Ahmed how long he has been here. “I arrived alone,” he

9. JOHN BERGER & JEAN MOHR, *A SEVENTH MAN* 43 (1975).

10. Other factors that trigger migration include the collective imaginary as shaped through colonial histories whereby former seats of empire (Europe and, more generally, the West) may appear to be desirable locations or the influence of mass media, digital technology and other means of communication that reveal global inequalities. etc.

11. NIKOS PAPASTERGIADIS, *THE TURBULENCE OF MIGRATION* 1 (2000).

12. Perhaps the foremost theorist on this phenomenon of dislocation lived as personal experience by those from the global South is to be found in the seminal work of Frantz Fanon, in FRANTZ FANON, *BLACK SKIN, WHITE MASKS* (Charles Markman & Richard Philcox trans., Grove Press 1967). Another key theorist on the collective imaginary of the global south is Homi Bhabha; see HOMI BHABHA, *LOCATION OF CULTURE* (1994).

says, “when I was eleven years old.”

Ahmed was born in Morocco. He came as a minor and spent his adolescence as a ward of the state. He speaks Spanish, Catalan, Arabic and Amazigh, as well as a smattering of English.

He tells me he would like to qualify as an electrician or a nurse, because he enjoyed studying science at school. But he cannot. Not now anyway, because he has to work as a waiter while his application to remain is being considered.

“If I don’t work, I’ll be on the street. I might even be sent back any day. And then what will I do? Try and come back here without papers?”

I ask him how long it has been since he saw his family.

He hesitates and looks away. “A long time,” he says softly. “Maybe they wouldn’t even recognise me anymore.”

I tell him that the governments of the world are working together to help improve the situation of people like him by bringing in new rules and agreements.

He looks up. “Will that help me?” he asks.

(Ahmed, interviewed by me on June 17th 2017 at Plaça de l’Àngel, Barcelona)¹³

In the context where mobility is one of the most important phenomena of the twenty-first century, the work which commenced in 2017 at the U.N., on shaping the two global compacts on migrants and refugees, must be seen as a historic turn. The 1951 Refugee Convention and its associated Protocol of 1967, which not all Member States are signatories to, are lonely landmarks in global governance on mobility. The U.N. has sought to raise the salience of the issue, with Secretary-General Kofi Annan’s 2002 Report on the Strengthening of the U.N.,¹⁴ the establishment of the Global Migration Group and the Global Forum on Migration and Development,¹⁵

13. I have altered the interviewee’s name to protect his identity. I have his consent to cite from the interview.

14. U.N. Secretary-General, *Strengthening of the United Nations: An Agenda for Further Change* U.N. Doc. A/57/387 (Sept. 9, 2002), <http://unpan1.un.org/intrdoc/groups/public/documents/un/unpan005675.pdf> [<https://perma.cc/V9TU-6WNN>].

15. The Global Forum on Migration and Development was established as a result of the first U.N. General Assembly High-Level Dialogue on International Migration and Development. See President of the General Assembly, *Summary of the High-level Dialogue on International Migration and Development*, ¶ 20, U.N. Doc. A/61/515 (Oct. 13, 2006), <http://www.refworld.org/docid/49997afc27.html> [<https://perma.cc/LQ9B-Z95Z>] (noting “widespread support for the proposal of the Secretary-General to create a global forum as a

and Peter Sutherland's mandate as U.N. Special Representative for Migration and Development.¹⁶ But the U.N. has steered clear of policy commitments as human mobility has hitherto largely been treated as a matter for national and regional responsibility. That the U.N. has in an unprecedented fashion set aside 2017 as a year of global consultations in preparation for negotiations on the two Compacts in 2018, provides clear evidence that there is much for Member States to learn about migrants and refugees. The six thematic sessions held in preparation of the Global Compact on migration are, for example, key ways in which Member States practise, exchange and expand their vocabulary on migration.¹⁷ These sessions also help States conceive of the larger global landscape within which international migration takes place, as well as envisage some of the impacts, challenges and benefits that migration brings at the local level. The inclusion of non-governmental actors in the consultation processes, especially civil society, academia and the private sector, marks important milestones in the advancement of efforts towards a more comprehensive approach to the good global governance of migration.

High time, many would say. The absence of legal pathways for many has led to numerous deaths in seas¹⁸ and deserts. It has led to incarcerations, detentions, deportations, and human rights abuses at borders. It has fostered the spread of clandestine and undocumented mobility and, with this, the criminality and irresponsibility to human care that accompanies smuggling and trafficking. It has led to informal economies and labor abuses, as well as to vulnerability and suffering. This lag in attention paid by the international community to all aspects of human mobility does seem somewhat ironic in light of the fact that not only is mobility as old as human history itself, but that the United Nations was formed following the large-scale refugee crisis provoked by World War II. In a sense therefore, the United Nations owes its existence as a grouping of multilateral entities to a historical context characterized by pressing issues of ungoverned

venue for discussing issues related to international migration and development in a systematic and comprehensive way").

16. Press Release, Secretary-General, Secretary-General Appoints Peter Sutherland as Special Representative for Migration, U.N. Press Release SG/A/976 (Jan. 23, 2006), <https://www.un.org/press/en/2006/sga976.doc.htm> [<https://perma.cc/ZA5N-BVFQ>].

17. These six informal sessions were focused on facilitating safe, orderly and regular migration: the six sessions respectively focused on human rights of migrants, drivers of migration, international cooperation, the contributions of migrants, the smuggling and trafficking of migrants, and labor mobility. See *Refugees and Migrants: Thematic Sessions*, UNHCR (2017), <http://refugeesmigrants.un.org/thematic-sessions> [<https://perma.cc/V2BW-WX34>].

18. See *supra* note 7.

mobility and therefore should long have had as a core concern, the achievement of good governance in this area.

There is little doubt that the Sustainable Development Agenda, with its aim to leave no one behind,¹⁹ forms the frame within which work on the Global Compacts now takes place. The seventeen Sustainable Development Goals that together epitomise this agenda, if all achieved by 2030, would greatly alter the global mobility scenario, rendering migration a choice and a contribution, be this to host, transit or sender countries. While the United Nations High Commission for Refugees (UNHCR) has long played a key global role in the management of refugees and the forcibly displaced, the recent inclusion of the International Organization of Migration (IOM) as a related agency of the U.N., the U.N.'s response confirms the entry of the migrant issue into the global agenda.²⁰ Thus far, the thinking has been that human mobility, when in need of governance, rights and standards, consists of refugees and migrants. This in and of itself is problematic as it constitutes a fundamentally reductive approach to mobility. At the same time, an important conceptual distinction needs to be made when it comes to the question of refugees as opposed to migrants. The idea of refuge enhances that of the nation state as place of shelter. The idea of a migrant, especially a cross-border migrant, can be taken as that of the "other" who crosses over to "our" country. All people everywhere have the right to leave their country, as affirmed in the Universal Declaration of Human Rights.²¹ That, however, raises the question posed by the fact that no one can enter a country without due permission. Refugees, once granted that legal status and offered refuge, are law-abiders. Migrants, particularly those without documentation, may have the right to leave their countries, but remain trespassers once borders have been crossed without documentation. A fundamental disjuncture appears at this point. The United Nations' response, thus far, is to divide and demarcate these inter-related categories.

In considering human mobility in practice, however, there is little doubt that the boundaries between these terms can become blurred, especially from the perspective of the international human rights regime, and with regard to vulnerable persons.²² So too, the

19. G.A. Res. 70/1, Preamble (Sept. 25, 2015).

20. The U.N. and the IOM were officially brought into relationship (in part) in order to "strengthen [the UN and IOM's] efforts in coordinating their respective activities related to migration and human mobility." G.A. Res. 70/296, Annex (Aug. 5, 2016).

21. G.A. Res. 217A (III), Universal Declaration of Human Rights, art. 13, U.N. Doc. A/810 (Dec. 10, 1948).

22. For a discussion of some effects of these "blurred lines" in international law, see

fact that these two terms do little to encompass the vast breadth of types and categories of human mobility in the contemporary age.²³ There are numerous examples in the everyday of blurred categories of people on the move: international migrants in situations as vulnerable as those of refugees; tourists or students who, knowingly or unknowingly, overstay visas; refugees who seek to relocate to countries of their choice for reasons of economic empowerment as much as sanctuary, etc. Yet, the current approach within the U.N. system, as evidenced by the ongoing work on the two Global Compacts, is to uphold the distinction between these two categories on the premise that to not do so would be to seriously undermine the legal protection and rights of refugees.²⁴

In supporting the Rector of the United Nations University, Dr. David M. Malone, in his role as 2017 Chair of the Global Migration Group, I was, last year, a close witness to the consultation processes leading to the Global Compact on safe, orderly, and regular migration. As an academic working for many years on migration, I have been aware that this issue has remained relatively marginal to global processes until now. But the migrant road is long and the very division of mobility governance to the two pathways of migrant and refugee presents concerns. This is so despite the impressively broad span of the elements identified in the New York Declaration as key to the Compacts.²⁵ The demarcations of the “refugee turf” in international relations from the “migrant” one, together with the limitation of mobility to these two categories, remains problematic. In actual fact, mobility has many aspects: students who become migrants, migrants who experience worse vulnerabilities than some refugees, migrants who may also be displaced in one sense or another, and refugees who are also tourists, students and/or visitors and who share the same aspirations as migrants, to mention just a few. The contexts are many and prone to change. In short, the conceptual routes of refugee versus migrant are too narrow, too rigid and too entrenched to encompass the very mobility of categories of mobility.

Parvati Nair, *Refugee or Migrant? Sometimes the Line is Blurred*, THE CONVERSATION (July 25, 2017), <https://theconversation.com/refugee-or-migrant-sometimes-the-line-is-blurred-79700> [<https://perma.cc/U469-WVVX>].

23. For more on categories of people on the move, see ON FOREIGN GROUND: MOVING BETWEEN COUNTRIES AND CATEGORIES (Minaa Ruckenstein and Marie-Louise Kartunnen eds., 2007).

24. As an example of such a position, see Nick Cohen, *To Help Real Refugees, be Firm with Economic Migrants*, THE GUARDIAN (Feb. 6, 2016), <https://www.theguardian.com/commentisfree/2016/feb/06/liberals-harsh-truths-help-refugees-syria> [<https://perma.cc/6NEA-QPJ2>].

25. The list of elements may be found in G.A. Res. 71/1 (Oct. 3, 2016).

In tandem with the above, my engagement with the Commission led by Professor Michael Doyle to shape this Model Convention has provided me with a glimpse into a far more ambitious, nuanced, and far-reaching frame that puts the Global Compact processes in critical perspective. The MIMC projects to a future where mobility is not perceived as a threat. It offers an overarching frame for the protection, regulation and flexible coordination of human mobility, in all its modalities, worldwide. It invites all countries to affirm human rights and to support, value, and protect mobility as a fundamentally enriching and empowering human process. It does so by also highlighting the responsibility of States to open international channels through which such mobility may flourish and flow. Most usefully, the MIMC considers the different sub-sets of mobility as interconnected categories, creating a set of standards that build on one another and offer protection, while also allowing for flexibility.

What lies beyond the Global Compacts? Should the international community address, acknowledge, and support human mobility through the simple, if not at times arbitrary, categorization of refugees and migrants? Or should the international community see the Global Compacts as stepping stones, leading to wider horizons of political and legal imagination, whereby human mobility may be embraced in terms of its multiple, fluid and shifting facets? Regardless of the final form of the Global Compacts, the good governance sought through them must be able to address the living dynamic of human mobility, a core aspect of human existence on the planet.

WHAT DOES THE MODEL INTERNATIONAL MOBILITY CONVENTION ACHIEVE?

*"I don't like the word refugee . . . I'm an ordinary girl. I just want to live an ordinary life." (Meera Zaroor, a high school student from Homs, Syria, resident in Barcelona.)*²⁶

The MIMC offers a platform from which to think critically about the ongoing processes leading to the two Global Compacts. The U.N. system is playing a key role in shepherding Member States through 2017 and 2018 towards the Global Compacts. The very agencies of the U.N. most involved in the work towards the Compacts are those that could engage best with the MIMC and the blue-

26. *Tot un món: Camins.* (trans. "A whole world: Paths.") (A la carta television broadcast July 17, 2017), <http://www.ccma.cat/tv3/alacarta/tot-un-mon/camins/video/5673602/> [<https://perma.cc/T39B-RAUE>].

sky thinking that it offers. The Compacts are not intended to be an end in and of themselves. They form milestones in what is, in fact, just the start of a long and winding road towards the normalization of human mobility in all its facets. Likewise, the point is not whether, years or decades from now, this Model Convention will cease to be just a model and become formalized. What matters is that the U.N. system and its Member States become familiar with the MIMC even as they shape the Compacts, for it acts as a reminder of what else needs to be done. It forces them to envisage mobility beyond the horizons of governance that they are currently mapping. In this sense, the MIMC urges the international community to be proactive with regard to mobility. In the context of mobility and the risks of poor governance, this proactivity is a matter of life.