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## COMMENTARIES

### The Model International Mobility Convention

MICHAEL W. DOYLE\*

People are as mobile as they ever were in our globalized world. Yet the movement of people across borders lacks global regulation, leaving many people unprotected in irregular and dire situations and some States concerned that their borders have become irrelevant. And international mobility—the movement of individuals across borders for any length of time as visitors, students, tourists, labor migrants, entrepreneurs, long-term residents, family members, asylum seekers, or refugees—has no common definition or legal framework.

There does exist a well-established refugee regime based on the 1951 Refugee Convention and its 1967 Additional Protocol,<sup>1</sup> both implemented by the United Nations High Commissioner for Refugees (UNHCR). As the nature of conflict has changed in recent decades, however, this regime has shown strain and weakness. Today there are more than sixty-five million displaced persons in the world,<sup>2</sup> a level not seen since World War II.<sup>3</sup> Mixed flows of labor migrants and refugees fleeing for safety and economic prospects have created a crisis in the asylum-seeking process.<sup>4</sup> Those forced to

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\* Michael Doyle is the Director of the Global Policy Initiative and University Professor of Columbia University. He thanks Emma Borgnäs, Kiran Banerjee, Diego Acosta, Maggie Powers and Joel Trachtman for their suggestions.

1. United Nations Convention and Protocol Relating to the Status of Refugees, art. IA(2), July 28, 1951,

U.S.T. 6259, 189 U.N.T.S. 137, <http://www.unhcr.org/en-us/3b66c2aa10> [<https://perma.cc/R36L-MZ2F>].

2. *Figures at a Glance*, UNHCR (2017), <http://www.unhcr.org/en-us/figures-at-a-glance.html> [<https://perma.cc/UMA8-43XU>].

3. *Global Trends: Forced Displacement in 2015*, UNHCR (2016), <http://www.unhcr.org/576408cd7.pdf> [<https://perma.cc/BQ66-FY45>].

4. KATY LONG, MIGRATION POL'Y INST., FROM REFUGEE TO MIGRANT? LABOR MOBILITY'S PROTECTION POTENTIAL; STEFFEN ANGENENDT, DAVID KIPP & AMREI MEIER, GERMAN INST. FOR INT'L AND SECURITY AFF., MIXED MIGRATION – CHALLENGES AND

move as a result of severe economic deprivation, gang violence, natural disasters, or climate change do not meet the “persecution” threshold of refugees and therefore are not guaranteed protection even though the threats to their lives are manifest.

Migration is similarly incoherent. Students, tourists, and short-term workers who do not fit the U.N. definition of a long-term migrant (those outside national or habitual jurisdiction for one year or more) all face distinct and separate national governance regimes. International migration itself has only recently gained a potential lead organization within the U.N. system with the International Organization for Migration (IOM) joining as a related organization in September 2016.<sup>5</sup> Despite the fact that nearly half the world’s migrants are migrant workers, labor migration remains under a very weak international legal regime that has not been adopted by destination countries.<sup>6</sup> Critics have charged that “national” standard of treatment simultaneously under-protects and over-privileges migrants, which leads countries of destination to under-provide legal pathways for immigration.<sup>7</sup> Failing to provide legal pathways for migrants indirectly encourages irregular migration and that in turn makes migrants vulnerable to exploitation and domestic publics concerned about a loss of control over their borders.<sup>8</sup> The overlaps and gaps of these existing regimes need to be addressed.

A holistic approach to human mobility is needed at the international level to address these gaps in protection, regulation and co-

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OPTIONS FOR THE ONGOING PROJECT OF GERMAN AND EUROPEAN ASYLUM AND MIGRATION POLICY (2017).

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

6. International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Dec. 18, 1990, 2220 U.N.T.S. 3. For statistical estimates on the proportion of labor migrant workers, see INT’L LAB. ORG., ILO GLOBAL ESTIMATES ON MIGRANT WORKERS xi (2015).

7. See MARTIN RUHS, THE PRICE OF RIGHTS (2013).

8. *The Global Compact for Safe, Orderly and Regular Migration*, Int’l Labour Org., <http://www.ilo.org/global/topics/labour-migration/migration/lang--en/index.htm> [https://perma.cc/GCS4-TDNW] (“Evidence suggests that poorly governed labour migration can increase the incidence of irregular migration and raise the risk of exploitation for migrant workers and governance challenges for countries of origin, transit and destination.”). For borders, see Ian Traynor, *Is the Schengen Dream of Europe Without Borders Becoming a Thing of the Past?*, THE GUARDIAN (Jan. 5, 2016) <https://www.theguardian.com/world/2016/jan/05/is-the-schengen-dream-of-europe-without-borders-becoming-a-thing-of-the-past> [https://perma.cc/9T3N-L7TZ]; Noah Buyon, *Hungary to Build (Another) Border Fence*, FOREIGN POLICY (Feb. 24, 2017), <http://foreignpolicy.com/2017/02/24/hungary-to-build-another-border-fence/> [https://perma.cc/BR3P-6VPH].

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operation. We must recognize the huge impact mobility has on economic growth, development and security for all countries. An international mobility regime is needed to establish a system that recognizes the human dignity of all while promoting the interests of countries of origin, transit and destination.

To address this key gap in international law, a Commission sponsored by the Columbia Global Policy Initiative has drafted a Model International Mobility Convention (MIMC).<sup>9</sup> The International Mobility Commission—composed of academic and policy experts in the fields of migration, human rights, national security, labor economics, and refugee law—debated and developed a model framework on mobility that establishes a framework of minimum rights afforded to all people who cross state borders as visitors and the special rights afforded to tourists, students, labor and economic migrants, family members, forced migrants, refugees, migrants caught in countries in crisis and migrant victims of trafficking as a consequence of their status. It articulates the responsibilities of States to protect the rights of foreigners in their territory and the rights of their citizens in other States. This model convention is designed to be an ideal yet realizable framework for what States someday should adopt when comprehensively regulating international mobility.

The goal of the MIMC is thus both to reaffirm the existing rights afforded to mobile people (and the corresponding rights and responsibilities of States)<sup>10</sup> as well as to expand those basic rights (where warranted) in order to address growing gaps in protection and responsibility that are leaving people vulnerable. It builds on existing international and regional conventions, most notably the Refugee Convention of 1951 (with its 1967 Protocol) and the Migrant Workers Convention of 1990.

The distinguished academics and policy experts comprising the International Mobility Commission were invited to attend workshops and provide feedback on draft chapters in person or through video conferencing. Acting in their personal and independent capacities, they have been asked to sign and endorse (and express reserva-

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9. Model International Mobility Convention (MIMC), *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* (2017), [http://globalpolicy.columbia.edu/sites/default/files/mimc\\_document.pdf](http://globalpolicy.columbia.edu/sites/default/files/mimc_document.pdf) [<https://perma.cc/F3Q3-6G88>].

10. Including the Charter of the United Nations, the Universal Declaration of Human Rights and other core international human rights treaties and, where applicable, international refugee law and international humanitarian law.

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tions, understandings and declarations where desired) the MIMC published in this special issue. (The list of Commission and Selected Public signatories to date can be found at page 342 below; all others are invited to sign at [globalpolicy.columbia.edu/mobility-convention](http://globalpolicy.columbia.edu/mobility-convention).)

In the remainder of this introduction, I comment on some of the distinctive features of the MIMC: its scope, methodology, motivation, compliance, and outcomes.

#### SCOPE

The single most distinctive feature of the MIMC is its unprecedented scope. It ranges from short-term visitors to tourists, students, labor and investor migrants (both temporary and permanent), residents, those benefiting from family reunification, forced migrants, refugees, those who have been trafficked as well as migrants caught in countries in crisis. It distinguishes in separate chapters of the MIMC the particular rights and responsibilities appropriate to each group when they move across borders, forming a ladder of increasing rights appropriate to each status.

#### METHODOLOGY

The forty-plus Commission members (the list of Commission signatories follows) were invited to join a single-text process of negotiation. These distinguished experts were consulted by a small Secretariat team at the Columbia Global Policy Initiative (CGPI) who drafted working documents for the chapters.<sup>11</sup> Then, over a period of two years, the Commission met in person and by video in various configurations to review, edit and rewrite the chapters of the MIMC, producing by April 2017, the text published here.

Our substantive method was normative. Unlike a restatement of the law—as for the existing restatements for contracts, torts, foreign relations etc., which recapitulate existing case law in a systemat-

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11. At various times the Secretariat included Yuichi Kawamoto (now at IOM Legal office in Geneva); Steven Nam at UC Davis Law and Stanford; Kelsey Clark; Hila Wesa; Doron Shiffer-Sebba; Dr. Kiran Banerjee (a postdoc at CGPI who took a special role in drafting the forced migrant and trafficking chapters); Emma Borgnäs (who undertook a similar role with the labor chapter and copyediting the whole), Alicia Evangelides, Maggie Powers and Cory Winter of CGPI who organized all our efforts; and the editorial team at the *Columbia Journal of Transnational Law* who edited and blue-booked this Special Issue.

ic manner—our method was closest to a “Realistic Utopia,” a term coined by John Rawls to refer to a system which requires using what we know about institutions, attitudes, and preferences while joining “reasonableness and justice with conditions enabling citizens to realize their fundamental interests . . . .”<sup>12</sup> As did Rawls, it builds on Rousseau’s injunction to legislate for “[m]en as they are, laws as they might be.”<sup>13</sup> Practically, this means reflecting the world as it is and building a movement toward justice that existing, but better motivated, governments could endorse.

Thus it is no objection to say our articles do not correspond to existing treaty commitments or policy. It is an objection if you feel that governments *should* not be willing to endorse these articles. As one Commission member observed: think of this as a treaty designed for a future world in which Justin Trudeau, the current Canadian premier famous for his welcoming attitude toward refugees and migrants,<sup>14</sup> is the typical head of government.

## MOTIVATION

Our aim is to address the unrealized opportunities and the severe challenges in the regimes for migrants and refugees. Today, with 258 million persons,<sup>15</sup> international migrants are the fifth most populous “nation,” just below Indonesia and above Brazil.<sup>16</sup> Although the total number of migrants moving across borders has grown substantially over the past fifteen years, international migrants remain just three percent of the global population.<sup>17</sup> Throughout histo-

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12. JOHN RAWLS, *THE LAW OF PEOPLES* 7 (1993) (viewing migration as a common concern for international governance, this approach extends Rawls’ own vision of international relations).

13. JEAN-JACQUES ROUSSEAU, *IN THE SOCIAL CONTRACT; OR, THE PRINCIPLES OF POLITICAL RIGHTS*, Introduction (1893). For Rawls’ invocation of Rousseau, see JOHN RAWLS, *THE LAW OF PEOPLES: WITH, THE IDEA OF PUBLIC REASON REVISITED* 13 (2001).

14. See Trudeau’s tweet retweeted more than 400,000 times: Justice Trudeau (@JustinTrudeau), TWITTER (Jan. 28, 2017, 12:20 PM), <https://twitter.com/justintrudeau/status/825438460265762816?lang=en> [<https://perma.cc/9XQ7-A9VC>].

15. Dep’t of Econ. and Social Aff., *Trends in International Migration: The 2017 Revision*, UNPOP/DB/MIG/Stock/Rev.2017 (2017). The U.N. definition of a migrant measured in this data is someone resident in a country not of his or her birth for more than one year.

16. *Migration in the world*, INT’L ORG. FOR MIGRATION, <http://www.iom.sk/en/about-migration/migration-in-the-world> [<https://perma.cc/43LJ-LD59>].

17. *Id.*

ry, human beings have been defined by their mobility. One hundred and twenty thousand years ago, our human ancestors moved north from southern Africa and then either went west or east; and some thus poured out of Africa to inhabit the globe. At present, more than two thirds of international migrants live in Europe, Asia or North America, in that order. Most migrants come from India, then Mexico, then Russia, China, Bangladesh and others.<sup>18</sup> They make crucial contributions to productivity and innovation around the world.<sup>19</sup>

Unfortunately, many migrants are also undocumented and too often exploited by employers as a result. Today, human mobility also includes 22.5 million refugees and almost three million asylum seekers.<sup>20</sup> Driven from their homes by civil wars, 2014 saw the largest increase in the numbers of displaced in a single year—nearly double the numbers seen in the previous decade, and a level not seen since World War II.<sup>21</sup> These numbers continued to climb in 2015, fell back somewhat in 2016 but increased again in 2017.<sup>22</sup> Compounding the problem of protracted displacement, the number of refugees returning home is at a thirty-year low.

Over half of all refugees are under the age of eighteen,<sup>23</sup> raising the danger of a lost generation without secondary education or job skills and at serious risk of being exposed to threats of

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18. Dep't of Econ. and Soc. Aff., International Migration Report 2015 Highlights, ST/ESA/SER.A/375 at 1 (2016).

19. *See, e.g.*, a report of September 2016 prepared by a panel of social scientists, including economists, sociologists, and demographers. NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, THE ECONOMIC AND FISCAL CONSEQUENCES OF IMMIGRATION 5 (2016), [http://d279m997dpfwgl.cloudfront.net/wp/2016/09/0922\\_immigrant-economics-full-report.pdf](http://d279m997dpfwgl.cloudfront.net/wp/2016/09/0922_immigrant-economics-full-report.pdf) [<https://perma.cc/4HK7-YLMP>] (“Importantly, immigration is integral to the nation’s economic growth. Immigration supplies workers who have helped the United States to avoid the problems facing stagnant economies created by unfavorable demographics—in particular, an aging (and, in the case of Japan, a shrinking) workforce. Moreover, the infusion by high-skilled immigration of human capital has boosted the nation’s capacity for innovation, entrepreneurship, and technological change. The literature on immigrants and innovation suggests that immigrants raise patenting per capita, which ultimately contributes to productivity growth.”).

20. UNHCR, GLOBAL TRENDS – FORCED DISPLACEMENT IN 2016 (2017), <http://www.unhcr.org/5943e8a34> [<https://perma.cc/R5Y4-XXUG>].

21. UNHCR, GLOBAL TRENDS – FORCED DISPLACEMENT IN 2015 5 (2016), <http://www.unhcr.org/576408cd7.pdf> [<https://perma.cc/RX27-XAXK>].

22. *United Nations: Refugee Displacement at Seven-decade High*, NEWSLINE (June 19, 2017) <https://newslines.com/united-nations-refugee-displacement-at-seven-decade-high/> [<https://perma.cc/Z8UZ-H3WQ>].

23. *Children*, UNHCR, <http://www.unhcr.org/en-us/children-49c3646c1e8.html>, [<https://perma.cc/B7UB-5MNX>].

trafficking, child labor or child marriage. Add to this that eighty-five percent of the forcibly displaced are being hosted by developing countries that can least afford the cost such as Lebanon, Jordan, Turkey, Pakistan, Iran, Ethiopia and Kenya.<sup>24</sup> Without much more substantial global responsibility sharing through adequate funding or resettlement to third countries, this is not sustainable.

On 19 and 20 September 2016, the international community gathered in two summits to address the migration and refugee crises. On the 19<sup>th</sup>, the U.N. hosted a summit that reaffirmed long standing principles of protection for refugees and the value of “safe, orderly and regular migration”<sup>25</sup> and welcomed the IOM into the U.N. system. On the 20<sup>th</sup>, U.S. President Barack Obama led a Leaders’ Summit on Refugees at which governments pledged more resources and more resettlement opportunities for refugees.<sup>26</sup>

States postponed most of the hard diplomatic work until 2018, with these discussions promising three specific outcomes in two “compacts”:<sup>27</sup>

1. To adopt a global compact for safe, orderly and regular migration in 2018, a set of guidelines for shared principles and approaches (Para 63, NYD).<sup>28</sup>
2. To develop guidelines on the treatment of migrants in vulnerable situations (These guidelines will be particularly important, for example, for the increasing number of unaccompanied children on the move) (Para 52, NYD).<sup>29</sup>
3. To achieve a more equitable sharing of the burden and responsibility for hosting and supporting the world’s refugees by adopting a global compact on refugees in 2018 (Para 68, NYD).<sup>30</sup>

These are big promises, and fulfilling them requires much better

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24. *Mid-Year Trends 2016*, UNHCR (Feb. 17, 2017), <http://www.unhcr.org/statistics/unhcrstats/58aa8f247/mid-year-trends-june-2016.html>, [<https://perma.cc/NH5R-MXF4>].

25. G.A. Res. 71/1, *supra* note 5, ¶ 4 (Oct. 3, 2016).

26. Office of the Press Secretary, *Fact Sheet on the Leaders’ Summit on Refugees*, WHITE HOUSE (Sept. 20, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/09/20/fact-sheet-leaders-summit-refugees>, [<https://perma.cc/PP3N-8643>]. It remains to be seen whether the promises are kept.

27. G.A. Res. 71/1, *supra* note 5.

28. *Id.* ¶ 63.

29. *Id.* ¶ 52.

30. *Id.* ¶ 68.

leadership and new reform coalitions. But we also need new and sensible standards to shape the movement of people across borders that also address all three of those challenges collectively, not in siloed agreements. The latter is what we have tried to provide in the MIMC.

Our Commission thus decided to address the gaps and flaws in two major treaties: the Refugee Convention of 1951 and its 1967 Protocol and the Migrant Workers Convention of 1990. Some inconsistencies we cannot address. We live in an incoherent world of sovereign States in which everyone has a right to leave any country<sup>31</sup> but no one has a right to enter any State except his or her country of origin, unless a special treaty regime permits it.<sup>32</sup>

Each treaty, however, can be improved. For refugees, the narrow definition of grounds for protection (persecution on the basis of race, religion, nationality, social group or political opinion)<sup>33</sup> needs to be broadened to include flight from life-threatening drought or floods (such as are increasingly caused by climate change)<sup>34</sup> or from civil wars and generalized violence.<sup>35</sup> Refugees have a right to non-refoulement—not to be expelled—once arrived to the territory of another state, but no right to enter a state and make a claim for international protection.<sup>36</sup> Once refugees gain protected status, the Refugee Convention grants rights equivalent to other aliens,<sup>37</sup> but this

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31. G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 13(2) (Dec. 10, 1948), <http://www.un.org/en/universal-declaration-human-rights/> [https://perma.cc/BPS8-T7ZQ].

32. Such as the Schengen, passport-free area in Europe, part of the unfettered mobility authorized by The Treaty on the Functioning of the European Union 45. *Schengen Area*, EUR. COMMISSION, MIGRATION AND HOME AFF., [http://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen\\_en](http://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen_en) [https://perma.cc/VB4K-ASFX]; Treaty on the Functioning of the European Union, art. 45, Dec. 13, 2007, C 326/47, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN> [https://perma.cc/H562-GKYN].

33. Refugee Convention, *supra* note 1.

34. Somini Sengupta, *Climate Change Is Driving People From Home. So Why Don't They Count as Refugees?*, N.Y. TIMES (Dec. 21, 2017), <https://www.nytimes.com/2017/12/21/climate/climate-refugees.html> [https://perma.cc/8DMN-NKVM].

35. Already envisaged in the Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Nov. 22, 1984, and the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (“OAU Convention”), Sept. 10, 1969, 1001 U.N.T.S. 45.

36. Refugee Convention, *supra* note 1, art. 33.

37. *Id.* arts. 17 and 21.



may not include rights to employment or access to higher education, unless the country of asylum chooses to do so.

Many governments, fortunately, are more protective than the existing treaty obligations require.<sup>38</sup> However, they are still susceptible to reactionary backsliding and potential lack of political will to implement their promises. We need to establish a common floor of protections applicable to all persons on the move no matter where they are, not just within a few rights-respecting States. The MIMC addresses all of these issues and more. It expands the grounds for asylum to include “forced migrants” based on a “serious harm” standard that goes beyond state-based persecution. For refugees and forced migrants, the MIMC provides equivalent rights; and it offers rights equivalent to nationals, rather than to aliens, without a waiting period. It specifies that there is a right to enter if fleeing directly from persecution or threat to life of serious harm. The MIMC makes this realizable by establishing genuine shared responsibility among States.<sup>39</sup> It curtails arbitrary distribution of duties of asylum based predominantly on proximity, by adding consideration of capacity to provide assistance (borrowing from the EU asylum proposal—taking into account population, GDP, past refugee numbers protected, and rates of domestic unemployment).<sup>40</sup>

With respect to migrant workers, the 1990 Migrant Workers Convention importantly mandated rights to unionization, pay equal to nationals in similar jobs, legal process guarantees and many other rights.<sup>41</sup> For temporary migrants, critics say the 1990 Convention has “too many rights,” when it mandates rights equal to nationals to education access, subsidized housing, higher education, health care,

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38. For example, African governments that implement the AU Convention and South American governments that implement the Cartagena Declaration. Moreover, many European countries have a more progressive implementation too, especially those implementing EU Directive 2011/95. We borrow many of these protections and introduce them in the Model International Mobility Convention.

39. It thus responds to the eloquent pleas of the Elders in *THE ELDERS, IN CHALLENGE LIES OPPORTUNITY: HOW THE WORLD MUST RESPOND TO REFUGEES AND MASS MIGRATION* (2016),

[http://theelders.org/sites/default/files/the\\_elders\\_report\\_on\\_refugee\\_and\\_mass\\_migration\\_-\\_sept2016\\_-\\_final.pdf](http://theelders.org/sites/default/files/the_elders_report_on_refugee_and_mass_migration_-_sept2016_-_final.pdf) [<https://perma.cc/6CK9-HN2W>].

40. *Proposal for a COUNCIL DECISION establishing provisional measures in the area of international protection for the benefit of Italy, Greece and Hungary*, EUROPEAN COMM’N (Sept. 9, 2015), [http://eur-lex.europa.eu/resource.html?uri=cellar:7a15efe3-053d-11e5-8817-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](http://eur-lex.europa.eu/resource.html?uri=cellar:7a15efe3-053d-11e5-8817-01aa75ed71a1.0001.02/DOC_1&format=PDF) [<https://perma.cc/7YRA-SRMX>].

41. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 16 (judicial process), art. 25 (equal pay), art. 26 (participation in unions), Dec. 18, 1990, 30 I.L.M. 1517, 1521.

etc.<sup>42</sup> Unfortunately, this tends to mean that destination countries with extensive social welfare sectors will not fill positions that, had they been filled, would have benefitted both migrants and the origin countries from which the migrants come. Consequently, the 1990 Convention has very few ratifications by countries of net immigration because it has not been seen as meeting their interests.<sup>43</sup> This is a problem because its major purpose is to provide protections for immigrant labor in destination countries.

The MIMC addresses these concerns by creating a special regime for temporary workers.<sup>44</sup> This regime establishes a number of clearly delineated permissible modifications of the rights or benefits of temporary migrant workers while also granting rights not now widely available to them. This includes facilitating multiple visa entries so that temporary labor can retain close ties to families and communities of their origin countries.<sup>45</sup> It moreover proposes portable pensions so that temporary laborers can benefit from the retirement funds they earn in countries of destination wherever they retire.<sup>46</sup> The regime also sets time limits for temporary labor, ensuring that temporary laborers have a path to permanent residency and do not become a permanent class of disadvantaged laborers.

Beyond reforming and improving upon existing legal instruments, the MIMC also adds a number of novel regulations and protections for areas of human mobility that until now have largely lacked coverage by any existing global regime. To do so, the MIMC creates a framework for tourists, international students and migrant residents (those who are not employed, retirees etc.) to provide further protections for the rights of all mobile persons.

The MIMC concludes with an implementation chapter that creates committees to monitor and resolve disputes and proactively facilitate compliance. It adds two important mechanisms: one identifies demand and provides a clearing house market for labor through a Mobility Visa Clearing House<sup>47</sup> and the other establishes a Respon-

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42. See, e.g., MARTIN RUHS, *THE PRICE OF RIGHTS: REGULATING INTERNATIONAL LABOR MIGRATION* (2013).

43. Only Chile and Argentina are countries of net immigration (2007–2015) among the thirty-eight signatories.

44. MIMC, *supra* note 9, arts. 98–110.

45. *Id.* art. 104. Douglas S. Massey, *Theories of International Migration: A Review and Appraisal*, 21 *POPULATION & DEV. REV.* 631 (1995).

46. Special Representative of the Secretary-General for Migration, *Report of the Special Representative of the Secretary-General for Migration*, ¶¶ 64–65, U.N. Doc A/71/728 (2017).

47. MIMC, *supra* note 9, art. 209.

sibility Sharing procedure (modeled after the Paris Climate Agreement) to help countries pledge and implement commitments to extend funding and resettlement opportunities for refugees and forced migrants.<sup>48</sup> The two mechanisms are connected: forced migrants and refugees are provided resettlement opportunities by gaining priority access to a quota of labor visas under the Visa Clearing House (without losing their protected status).

The overall aim of the MIMC is not to limit the generosity or openness of States, but to establish a floor; a minimum framework on which countries unilaterally, bilaterally and regionally can build.

## COMPLIANCE

The MIMC strengthens the human rights claims of all those crossing borders, including undocumented labor migrants, forced migrants, refugees and those trafficked. And the MIMC applies *erga omnes*—every refugee or forced migrant or labor migrant is protected whether her or his home country ratifies or not. Good as that is, there arises a serious problem: how to ensure reasonable compliance given this significant expansion of rights?

The biggest winners are the mobile. Refugees get adequate protection to save their lives, unskilled migrants can multiply their incomes by a factor of ten, and skilled migrants find a ready market for their skills. Compliance by mobile persons is reliable.<sup>49</sup> Countries of origin lose skilled labor but, through remittances, gain \$432B p.a. (2015),<sup>50</sup> vastly more than foreign aid flows. According to most studies, migrants are either economically beneficial (or of negligible cost) to destination countries.<sup>51</sup> But they are also in nearly inexhaust-

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48. *Id.* art. 211. For an insightful analysis of the importance of labor mobility for refugees, see KATY LONG & SARAH ROSENGERTNER, MIGRATION POL'Y INST., PROTECTION THROUGH MOBILITY: OPENING LABOR AND STUDY MIGRATION CHANNELS TO REFUGEES (2016), <http://www.migrationpolicy.org/research/protection-through-mobility-opening-labor-and-study-migration-channels-refugees> [https://perma.cc/BP3M-X5UZ].

49. Those same laborers, of course, and the businesses that exploit their labor are not good candidates for compliance with mobility restrictions.

50. WORLD BANK GROUP, MIGRATION AND DEVELOPMENT: A ROLE FOR THE WORLD BANK GROUP (2016), <http://pubdocs.worldbank.org/en/468881473870347506/Migration-and-Development-Report-Sept2016.pdf> [https://perma.cc/9VP5-BQV8].

51. *Is migration good for the economy?*, ORG. FOR ECON. CO-OPERATION AND DEV. (2014), <https://www.oecd.org/migration/OECD%20Migration%20Policy%20Debates%20Numero%202.pdf> [https://perma.cc/LP6M-CS6E]. See also, Jonathan Woetzel et al., *Global migration's impact and opportunity*, MCKINSEY GLOBAL INST. (Nov. 2016),

ible supply. According to a recent Gallup study, up to 700 million want to move.<sup>52</sup> As Professor Rey Koslowski has argued, these unequal dynamics have meant that destination countries can set unilateral terms.<sup>53</sup> Motivating them to comply with a multilateral convention that expands rights is the challenge.

Potential noncompliance with treaty-established regulatory frameworks can be deterred by the threat of retaliation, as it is with the World Trade Organization.<sup>54</sup> But, clearly, the MIMC cannot rely on this for many of its provisions—States are not likely to be moved by: “if we don’t take their refugees, they won’t take ours.” But there are reciprocal benefits exclusive to joining the club. Signatories extend benefits to other signatories, as they do in the new refugee and forced migrant obligation to allow access (not mere protection against refoulement) which is conditioned on effective support from the Responsibility Sharing scheme (Art. 140, MIMC).<sup>55</sup> Refugee hosting countries gain a Responsibility Sharing procedure (resettlement visas and funding) and priority access to labor visas for resettlement (Arts. 209-213, MIMC).<sup>56</sup> Countries of destination such as the United States and those in the EU benefit from universal machine readable and biometric passports to improve security at the border (Art. 10, MIMC).<sup>57</sup>

There are also features of interest-based, “diffused” reciprocity that makes the MIMC an attractive package for States.<sup>58</sup> Destina-

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<https://www.mckinsey.com/global-themes/employment-and-growth/global-migrations-impact-and-opportunity> [<https://perma.cc/QVD2-AS4L>] (“Highly skilled professionals are not the sole source of this productivity effect; low- and medium-skill migrants similarly contribute. Their presence can enable destination countries to achieve growth by expanding their workforces and filling in labor force gaps. A large body of research has shown that immigrants have a negligible impact on the wages and employment of native-born workers and on the fiscal resources of destination countries.”).

52. Dato Tsabutashvili, *Number of Potential Migrants Worldwide Tops 700 Million*, GALLUP NEWS (June 8, 2017), <http://www.gallup.com/poll/211883/number-potential-migrants-worldwide-tops-700-million.esps?version=print> [<https://perma.cc/9CAY-MN7Z>]. Needless to say, not all of these potential migrants succeed in obtaining a visa or choose to migrate.

53. Rey Koslowski, *Conclusions: Prospects for Cooperation, Regime Formation, and Future Research*, in *GLOBAL MOBILITY REGIMES* 260–61 (Koslowski ed., 2011).

54. See, e.g., Andrew Guzman, *A Compliance Based Theory of International Law*, 90 CAL. L. REV. 1826 (2002).

55. MIMC, *supra* note 9, art. 150.

56. *Id.* arts. 209–13.

57. *Id.* art. 10.

58. Robert Keohane, *Reciprocity in International Relations*, 70 INT’L ORG. 1 (1986).

tion countries gain laborers and investors but, more indirectly and collectively, also gain a more regularized and orderly regime for the movement of people. The MIMC, overall, promises a more reliable and thus profitable regime, including facilitation of the travel and tourism industry and of international education. In 2016 alone, international tourism generated four trillion dollars, five percent of global GDP, adding 145 million jobs worldwide;<sup>59</sup> while foreign students spent thirty-two billion dollars in the U.S. alone in 2015 and generated 400 thousand jobs.<sup>60</sup>

Nonetheless, compliance, as with so many human rights treaties, will also call upon reserves of ethical solidarity “enforced” by common decency and ethical responsibility (plus in the background naming and shaming). No one has expressed this better than did Shakespeare writing in the “Book of Sir Thomas More,” a play by Anthony Munday that Shakespeare as “script doctor” was called in to improve. The background was 1590 anti-immigrant riots that resonated with an earlier set of riots in 1517 confronted by Sir Thomas More, when he was sheriff of London. The Londoners were rioting against refugees who allegedly were taking their jobs. Thomas More, according to Shakespeare, speaking to rioters who scorn the refugees, says:<sup>61</sup>

Grant them [refugees] removed, and grant that this your noise  
Hath chid down all the majesty of England;  
Imagine that you see the wretched strangers,  
Their babies at their backs and their poor luggage,

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59. This is an estimate based on the data that international tourism generates a little over half of the direct revenue of tourism, international and domestic. “Global Benchmarking Report 2017,” WORLD TRAVEL TOURISM COUNCIL (2017), <https://www.wttc.org/research/economic-research/benchmark-reports/> [https://perma.cc/QFW4-43BT].

60. Consider that foreign students spent thirty-two billion in the U.S. in 2015 and generated 400,000 jobs (Let me as a professor declare an interest!). *New NAFSA Data: International Students Contribute \$32.8 Billion to the U.S. Economy*, ASSOCIATION OF INTERNATIONAL EDUCATORS (NAFSA), (Nov. 14, 2016), [http://www.nafsa.org/About\\_Us/About\\_NAFSA/Press/New\\_NAFSA\\_Data\\_International\\_Students\\_Contribute\\_\\$32.8\\_Billion\\_to\\_the\\_U\\_S\\_Economy/](http://www.nafsa.org/About_Us/About_NAFSA/Press/New_NAFSA_Data_International_Students_Contribute_$32.8_Billion_to_the_U_S_Economy/) [https://perma.cc/A8EM-WKCR].

61. Michael Hiltzik, ‘Your Mountainish Inhumanity’: *Shakespeare’s Ringing Defense of Immigrants and Refugees*, L.A. TIMES (Dec. 24, 2016), <http://www.latimes.com/business/hiltzik/la-fi-hiltzik-shakespeare-20161224-story.html> [http://perma.cc/RJD8-5W8G]. Curiously, this short, passage is the only handwritten manuscript of Shakespeare’s to survive. It matches the handwriting of the historical Shakespeare from Stratford.

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Plodding to th'ports and coasts for transportation,  
... You'll put down strangers,  
Kill them, cut their throats, possess their houses,  
... Say now the king  
... Should so much come to short of your great trespass  
As but to banish you, whither would you go?  
What country, by the nature of your error,  
Should give you harbor? Go you to France or Flanders,  
To any German province, to Spain or Portugal,  
Nay, any where that not adheres to England,  
Why, you must needs be strangers. Would you be pleased  
To find a nation of such barbarous temper,  
That, breaking out in hideous violence,  
Would not afford you an abode on earth,  
... what would you think  
To be thus used? This is the strangers' case;  
And this your mountainish inhumanity.<sup>62</sup>

#### ANTICIPATED OUTCOMES

The Commission's long run hope, its moonshot, is that after testing the MIMC with UNHCR, IOM, the Office of the U.N. High Commissioner for Human Rights (OHCHR), the International Committee of the Red Cross (ICRC) and key NGOs associated with refugees and migrants, that well-motivated countries will take up the project and find the MIMC useful in formulating a comprehensive multilateral treaty, as Canada did in taking up a civil society generated initiative that began the successful Mine Ban Treaty process. But, well short of that outcome, we see value in the MIMC. The MIMC identifies a better future regime for migration and mobility. It addresses and fills the sad gaps in existing international law. It displays potential coherence in a comprehensive set of rules, using language that is clear, and action-, rights- and duties-oriented. By demonstrating what a better international mobility regime could look like, we hope to take away undue concerns, assure uneasy publics and inspire action.

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62. SIR THOMAS MORE: A PLAY BY ANTHONY MUNDAY AND OTHERS (Gabrieli Melchiori & Giorgio Melchiori eds., 1990).

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Following Brexit, the election of Donald Trump, the expulsion of the Rohingya from Myanmar, the bilateral ethnic cleansings of South Sudan, and the continuing hazards of the Mediterranean crossing, these are not auspicious times for creative, multilateral humanitarianism. But it is better to do the analytical work now, when times are inauspicious, so that the hard work of the diplomats will be that much easier when the sun of cooperation shines again and the international community is ready to seize the moment to make a comprehensive multilateral treaty for migrants and refugees.

#### PLAN OF THE SPECIAL ISSUE

I conclude by thanking the spirit of cooperation and volunteerism that characterized the work of the Commission and the patient and tireless efforts of the Secretariat that shepherded the entire process.

I particularly thank the following Commission members who are contributing commentary in this special issue on various aspects of the MIMC. They include the following comments, starting with general reflections and then ranging across the MIMC from visitors and tourists through labor migrants to forced migrants and refugees:

Ms. Emma Borgnäs, a recent Master of International Affairs graduate of Columbia and the Project Coordinator for International Migration of the Global Policy Initiative, provides an overview that explains how the chapters of the MIMC build on and complement each other. She explains the visualization on page 240 of the rights outlined in the MIMC and shows how the different categories of persons covered by the MIMC are provided varying rights and protections.

Professor Parvati Nair, Founding Director of the United Nations University Institute on Globalization, Culture and Mobility (UNU-GCM) and Professor of Hispanic, Cultural and Migration Studies at Queen Mary University of London, comments on “Beyond Mapped Horizons: Reflections on the Model International Mobility Convention.” Professor Nair puts the MIMC in the context of ongoing international efforts to address global migration. She traces the New York Declaration and the two compacts, for migrants and for refugees, now under negotiation to establish a new regime for persons moving across borders. Professor Nair indicates how the MIMC builds on this momentum and points the way to further progressive reform in international migration governance.

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Professor Tendayi Achiume, Assistant Professor of Law at UCLA School of Law, highlights the significance of the Commission's working within the framework of a "realistic utopia," accepting as a given the international order based on sovereign States and seeking to reform it. She eloquently notes how far short of an ideal global order of common humanity existing international law (and the MIMC) is. Professor Achiume emphasizes the challenge posed by the concept of "state sovereignty at the heart of international law" to the establishment of a world of free and fair mobility. She suggests conceptualizing an international law that looks toward subnational actors, such as cities or regional provinces, for creating inclusive governance structures for international migrants.

Professor Rey Koslowski of the University at Albany, State University of New York, comments on the need to "Think Mobility Instead of Migration: Leveraging Visitors, Tourists and Students for More International Cooperation." He highlights the MIMC's focus on the "global mobility" regime, referring to movements of people across international borders for any length of time or purpose. Professor Koslowski notes that by focusing broadly on mobility—and the larger terrain of overlapping state interests, from travel, tourism, to education, and labor, that this entails—the MIMC creates the groundwork for a "richer network of interlocking, interdependent, and mutually beneficial" forms of multilateral coordination and cooperation.

Dr. Diego Acosta, Reader in Migration and European Law at the University of Bristol, U.K., reflects on "Undocumented or Irregular Migrant Workers under the Model International Mobility Convention: Rights and Regularization." He shows how the MIMC advances several important rights granted to migrant workers regardless of their administrative situation. These include access to emergency medical care, equal treatment in respect of remuneration and other conditions of work, and certain provisions applicable to women and children, including access to education in the case of the latter.<sup>63</sup> Placing these proposals in the content of regional migration policies, Dr. Acosta argues that the MIMC both builds upon and importantly extends existing State practices.

Ms. Sarah Rosengaertner, a migration and development expert at the Columbia Global Policy Initiative and consultant for various United Nations entities on migration issues, highlights the four key features of Chapter IV of the MIMC in her "Pathways to Protec-

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63. MIMC, *supra* note 9, arts. 56–67.



tion and Permanency: Towards Regulated Global Economic Migration and Mobility.” After demonstrating how the MIMC builds on existing international law, she notes how it expands existing protections with particular emphasis on the rights of women migrant workers. She then draws attention to the new and strong language on pathways to permanent status for migrant workers and residents, novel provisions to regulate the visa policies of States; and the clearly delineated limitations on the rights of temporary migrant workers. She concludes by observing how each of these innovations would benefit by further refinement in the policy implementation process.

Professor Randall Hansen, Interim Director of the Munk School of Global Affairs, University of Toronto, explores the MIMC’s approach to economically driven mobility in “Labor Migration and International Mobility: Normative Principles, Political Constraints.” Professor Hansen offers a kind-hearted but tough-minded critique of the MIMC. He finds the MIMC reflects normative commitments associated with human rights and, importantly, does better than existing legal instruments to “respect the political, economic and social constraints involved in translating these commitments into binding law.” But it would, he notes, not win support from the Donald Trump’s or Marine LePen’s of the world. More significantly, he argues, the MIMC would have difficulty winning over the Angela Merkel’s and Justin Trudeau’s. In this last observation, he identifies the difficult advocacy work the supporters of the MIMC have in front of them.

Professor T. Alexander Aleinikoff, Director of the Zolberg Institute on Migration and Mobility and University Professor at The New School and former United Nations Deputy High Commissioner for Refugees, makes an eloquent case for how mobility must play a larger role in the refugee regime. He argues that the international community should move beyond the current situation where forced migrants are subject to displacement followed by constrained movement; instead freely chosen resettlement should be integrated into the refugee regime. The MIMC recognizes “the important link between refugee agency and mobility.” It includes provisions for Responsibility Sharing and the requirement that States Parties allocate at least 10 percent of labor visas to persons who have refugee and forced migrant status.”<sup>64</sup> But more needs to be done.

Dr. Sarah Deardorff Miller of Columbia’s School of International and Public Affairs focuses her comment on “The Mobility

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64. MIMC, *supra* note 9, art. 211.

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Treaty's Contribution to Addressing Socioeconomic Issues in Protracted Refugee Situations." Addressing the persistent and long-term realities of contemporary forced displacement, she notes that the average refugee situation lasts for a staggering twenty-six years, with entire generations growing up in exile and without access to some of their most basic human rights. She stresses the importance in the MIMC of naturalization and the right to work, while indicating needed next steps to account for and solve situations of protracted displacement.

Professor Kiran Banerjee of the Department of Political Studies at the University of Saskatchewan, examines the case for reforming the contemporary refugee regime. His comment "Rethinking the Global Governance of International Protection" highlights the MIMC's addition of "forced migrants" to those warranting protection, its expansion of those protections to make them nearly equivalent to rights enjoyed by nationals and the introduction of additional rights to entry (under special circumstances) for those seeking refuge. He emphasizes how these proposals to expand the scope and increase the rights offered to those in need of international protection cannot be separated from the creation of robust and effective responsibility sharing mechanisms.

Professor Yasmine Ergas, the Associate Director of the Institute for the Study of Human Rights at Columbia University, explores in the concluding comment a crucial cross-cutting concern when she discusses "Negotiating for Women's Mobility Rights: Between Definition and Contestation." She argues that the MIMC "marks important steps forward in defining women's rights in the context of mobility, thus shifting the baseline for future negotiations." She also notes that advocates for women's rights will want to press ahead to strengthen protections for domestic workers beyond those embodied in the MIMC. And, equally importantly, the question of what constitutes a family, and hence which women can benefit from the rights related to family reunification "will continue to constitute a site of contestation between and among women's rights advocates as well as States."

Lastly, I recall with gratitude the inspiring 2015 workshop at Columbia's School of International and Public Affairs that first explored with me the purpose and potential content of a model convention on migration and refugees. I thank The Endeavor Foundation, The Lenfest Group, and the Huo Global Policy Initiative Research Fellowship sponsored by the Huo Family Foundation (UK) Limited for their support. I thank the Open Society Foundations' International Migration Initiative, and Maria Teresa Rojas most particularly, for

the loan of the meeting space and gift of hospitality that made the Commission meetings both productive and pleasant. The Sutherland Team, led by Gregory Maniatis, was a constant resource for expert advice. None of this effort would have been possible without the good guidance and managerial talents of Maggie Powers and Cory Winter and the Columbia Global Policy Initiative established by President Lee Bollinger.