

**“Workshop on the Figure of the Migrant in Law and Literature:  
Push Back or Acceptance? Limbo or Integration?  
Common Places, Norms and Evolving Narratives”,**

**Organised by the *Department of Criminology of Ryerson University, the Département de littératures et de langues du monde de l’Université de Montréal, and the Hans & Tamar Oppenheimer Chair in Public International Law at McGill University,***

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***Facilitating human mobility  
to change the public narrative  
on migrants over a generation***

**Pr. François Crépeau**

United Nations Special Rapporteur on the Human Rights of Migrants  
2016-2017 Drinan Visiting Professor of Human Rights, Georgetown University Law Center  
Director, McGill Centre for Human Rights and Legal Pluralism  
Hans & Tamar Oppenheimer Professor in Public International Law  
Faculty of Law, McGill University

These are only a few ideas coming from the experience of my UN mandate since 2011.

**Migrants are not represented**

Electoral democracies don’t know how to “represent” migrants. Human rights struggles have been mostly won based on the political claim to equal citizenship: industrial workers, women, Aboriginals, detainees, gays and lesbians know that. Politicians paid attention and changed their language, their behaviour, their conceptions, in turn altering the perceptions of the electorate.

This will not be happening for migrants. The right to vote and be elected is reserved, even in international human rights law, to citizens. We are facing a structural limit of electoral democracy: if one is not represented, one’s rights are not respected, protected and promoted in the political system. “No taxation without representation” said the American Revolution: most migrants respect the law and pay taxes, and yet aren’t represented.

Nationalist populist politicians establish the dominant narrative, saying that migrants steal jobs, create insecurity or change our values – all assertions which have been proven wrong by social science – with total impunity. Mainstream politicians are not taking the electoral risk of picking a fight in favour of persons who are politically non-existent. With the exception of the USA, due to the size of the 30-million strong Hispanic electorate.

In effect, in most countries, there is no coherent, sophisticated, positive narrative on migrants, mobility and diversity, which mainstream politicians, left and right, can use to win elections. I fear that Europe will have to endure a stretch of nationalist populist governments whose brutal policies will miserably fail, before Europeans realise that they need a different approach to mobility and diversity.

### **The failure of deterrence and prohibition policies**

Migrants move due to push and pull factors. The push factors are well-known. The pull factors are much less discussed. All migrants, including refugees, mostly try to go where there are jobs, where they can start integrating and creating a future for their children. And destination countries have jobs for migrants in the official or underground labour markets of dynamic, open and diverse cities. A considerable number of employers are actually calling for more exploitable migrants to fill their cheap labour needs. Migrants are responding to the opportunities of such labour markets and would not come otherwise.

Now, if you have push and pull factors and you put a barrier between them, prohibiting mobility, but responding neither to the need to leave nor to the need to hire, you create perfect conditions for underground labour markets and smuggling markets to flourish.

Without regular migration channels for refugees and much needed low-wage migrants, prohibitions and repressive policies only entrench smuggling operations and underground labour markets.

Prohibition is part of the problem, not of the solution. This was the case for the Prohibition era in America, when it took American authorities thirteen years to figure out that legalisation, regulation and taxation of alcohol was much more cost-effective and life-saving than prohibition. We are slowly going in the same direction in the present “war on drugs”, thanks to safe injection sites and the legalisation of marijuana.

On migration issues, as for the regulation of drugs and alcohol, we must choose the path of a harm-reduction policies rather than that of zero-tolerance policies. We know Einstein’s definition of insanity<sup>1</sup> and need to increase the legalising, regulating and taxing of mobility.

The only way to actually reduce smuggling and unethical recruiting is to take over the mobility market from the hands of smugglers and exploitative recruiters, by offering regular, safe, accessible and affordable mobility solutions, in the form of visas or of visa-free travel opportunities, with all the identity and security checks that efficient visa regimes can provide.

### **Externalisation won’t work on the long run**

And externalisation doesn’t respond to mobility needs and labour market shortages. The premise that transit countries will voluntarily create a migration problem for themselves in order to help richer countries responsible for attracting those migrants to their labour markets in the first place has not proven workable until now, unless the geography helps. The EU-Turkey Statement fails to convince and has increased the number of deaths at sea. The Australian model of “stopping the boats” through utterly violating the rights of thousands of migrants in the hope of deterring many others isn’t a long-term solution either. It violates the principle at the root of all international human rights law, Immanuel Kant’s categorical imperative: “Never treat the other only as a means,

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<sup>1</sup> “The definition of insanity is doing something over and over again and expecting a different result” (maybe apocryphal).

but always also as an end”<sup>2</sup>. The Australian policy is only possible in the absence of constitutional human rights guarantees which would allow the judiciary to judge immigration policies and practices.

### **Adopting a long term post-crisis strategic mobility policy vision**

Kenneth Roth, head of Human Rights Watch, said: “if there is a crisis, it is one of politics, not capacity”. The Global North has the capacity to integrate millions of migrants and refugees, but is facing a crisis of moral and political leadership.

Unfortunately, one cannot get out of a crisis unless one provides a post-crisis vision and positive narrative. There will be no tackling the present “migration crisis” (in Europe and elsewhere) until politicians delineate a long term human-rights-based strategic mobility and diversity policy vision that will give meaning and direction to the actions presently taken.

We need to change our collective mind-set and accept that migrants will come, no matter what, because of push and pull factors. The goal is to have most migrants using official channels to enter and stay in host countries.

Two axes will be key:

- Developing refugee resettlement programmes to serve considerably more refugees than the present 1%. Private sponsorship will be part of that.
- Recognising our own labour needs at all skill levels and opening up considerably more visa opportunities or visa-free travel programmes.

With proper selection, the numbers would be entirely manageable. After the 2005 EU enlargement, a million and a half Central Europeans came to the UK and Ireland, and made a great economic contribution. When the crisis struck in 2009, many left the UK. This is a mobility to be celebrated, which matches labour needs and individual skills. We should want it not only between the cities of our countries, or within regional zones such as the EU, but also planet wide as a longer term objective.

Such facilitated mobility would have obvious advantages, as it would:

- Reduce significantly the market for smugglers.
- Allow for all the security checks by intelligence agencies to be made abroad.
- Reduce considerably the workload of refugee status determination systems in destination countries.
- Provide the opportunity to show the electorate of destination countries that borders are respected, that authorities are managing this migration properly, that there’s no “chaos on the beach”, that reception mechanisms are in place, employers are integrating migrants in the labour market, that investments have been made in integration programmes, and that the fear-mongering discourse of nationalist populists is based on stereotypes, myths and fantasies.

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<sup>2</sup> « Act in such a way that you treat humanity, whether in your own person or in the person of any other, never merely as a means to an end, but always at the same time as an end” (*Immanuel Kant, (1993) [1785] Grounding for the Metaphysics of Morals*. Translated by Ellington, James W., 3rd ed., Cambridge (MA): Hackett, p. 30.

This type of mobility is not science-fiction. In the 50s and 60s, millions of North Africans and Turks entered Europe either without a visa or with an easily obtainable visitor's visa, which they changed into a work permit as soon as they found a job. There was almost no market for smuggling. No one died in the Mediterranean. Yet IDs and travel documents were controlled at every border.

The idea is not to diminish border controls. On the contrary, it is to increase them and make them more effective. By offering most foreigners easier access to appropriate travel documents, such as refugee resettlement visa, visitor visa, family reunification visa, work visa, resident visa or student visa, we allow States to concentrate their intelligence and deterrence efforts on the minute percentage of foreigners who really need to be excluded.

We can set ourselves the goal of achieving this mobility within a generation, say a quarter century, through the progressive expansion of visa liberalisation and visa facilitation regimes, with benchmarks along the way.

Such a strategy will also command long-term investments in diversity and integration policies, education strategies, providing migrants with tools of empowerment, access to justice and support for the fight against marginalisation and discrimination that fuel disenfranchisement.

### **The road ahead after the New York Declaration**

This is not a utopian solution. I would argue that the utopia is on the side of those who proclaim that migration can be stopped, that we can continue to live peacefully with millions of disenfranchised migrant youths, or that we can deport millions of migrants and “seal” the borders, while respecting human rights.

Responding to the complexity of human mobility, States need to develop a long-term strategic vision of how their mobility policies will look like in a generation from now, with precise timelines and accountability benchmarks. States do this strategic planning for energy, environmental, public transit or industrial policies, in order to determine the investments needed to achieve the objectives. Why not do it for mobility and migration policies?

In target 10.7 of *Agenda 2030 for Sustainable Development*, States agreed to “facilitate” migration and mobility in the next fifteen years. “Facilitating” means making migration easier, lowering barriers to mobility. It doesn't mean open borders or absolute free movement. It means developing many more creative visa avenues for all migrants and refugees.

On 19 September 2016, the UN General Assembly *High-Level plenary meeting on addressing large movements of refugees and migrants* adopted the *New York Declaration* which, despite manifest flaws, establishes a two-year process leading to an international conference that will see the adoption in 2018 of two “Global Compacts”, one on refugees and one on migration.

This opportunity should be seized by all stakeholders to ensure that the Global Compacts are not the end of the process, but its beginning. One could imagine States agreeing, in the Global Compact on Migration, to initiate a fifteen-year “agenda”, parallel to the *2030 Agenda on Sustainable Development*, which would include successive benchmarks and accountability mechanisms. It would be punctuated by the annual meetings of the Global Forum on Migration and Development and a series of UN General Assembly High-Level Dialogues, to ensure that the implementation of the agenda stays on course. As such agenda will start in 2018, it could be called the *2033 Agenda on Sustainable Human Mobility*.

### **Conclusion: the silver linings**

In conclusion, let me outline a few silver linings showing that the changing narrative is already under way:

- Artists and writers have, as always, anticipated our mobility and diversity dilemma and they help us to process the changes.
- NGOs, churches, unions, lawyers are everywhere doing a great job in trying to protect individual migrants and alter public perceptions.
- Courts, tribunals, national human rights institutions, ombudspersons are often coming down on the side of migrants, reminding everyone that migrants are rights-holders and should benefit from the Rule of Law.
- Journalists in good media outlets are much better educated on migration issues than say ten years ago. Their stories help a new narrative emerge.
- The business community knows that mobility and diversity are huge opportunities in terms of innovation and creativity. They need to start speaking up.
- Cities around the world have absorbed millions of migrants from the countryside or from abroad. They embrace mobility and diversity without the need of “securitising” their borders, while policing their territory. Their dynamism should inspire our national migration policies.
- Youth is much more diverse and mobile than we were at their age, and they share social integration challenges whatever their background. Hopefully, diversity and mobility policies will come to them naturally when they will take charge in thirty years from now.
- Thousands of citizens have come forward to help individual migrants and families, in Europe, in Canada and elsewhere.
- The migrants themselves show an agency, a resilience and a creativity which is already making an impact on many of the host society citizens they are encountering in their everyday life. Their lives embody the narrative we need.

Despite the present reticence of States, all this tells me that mobility and diversity may be more and more recognised and celebrated as central features of our societies.

The grand narrative that gives legitimacy to our constitutional, legal and political structures could thus get more sophisticated in the coming years.

For sure, the nationalist populist narrative is dominating at present. I hope that we can see beyond their fantasies and threats, and start preparing for a different, more productive narrative.