

Crisis and containment: risks of enhanced global migration governance

Loren B Landau

Introduction

Crises open space for reconsidering prevailing principles and practices. The outcomes of such duress-induced deliberations are typically imprinted by the most wily and well-resourced negotiators. With this in mind, this paper cautions against promoting global responses to international migration in an era of populist fear. Building on research and public engagement across migrant sending and receiving countries across Africa and parts of the Middle East,¹ I raise two primary concerns:

- It is unlikely that a reformed, state-centered migration policy will produce positive outcomes for migrants and citizens of the global south. Underlying this is a broader disquiet with how current proposals solidify patterns of global inequality and external military and economic interventions.
- There are significant ethical and practical issues of building global migration regimes constructed around distinct ‘refugee/forced migrant’ and ‘voluntary migrant’ distinctions. In part because these are often empirically fuzzy distinctions, there are potential dangers and dysfunctions of assigning or sanctioning people’s rights based on state adjudicated migration histories.

I responds to these by calling for an *intersectional* approach that (perhaps unrealistically) decenters state-sovereignty and migration categories.

Contextualizing global architecture

Presumptions underlie the draft global compacts and *Model International Mobility Convention* (MCIM), regarding states *de facto* sovereignty and abilities to define migrants’ well-being and behavior. Yet across the global south, the spaces they ostensibly regulate are

¹ This paper is based on empirical research on migration management and protection in South Africa, Kenya, Mozambique, Uganda, the Democratic Republic of Congo, and Pakistan and partnerships in Lebanon and Jordan. My current work examines European strategies to govern African migration.

often socially and politically fragmented. In the border zones and cities where most of the world's migrants seek (and will seek) lives there are a myriad of overlapping formal and informal regulatory regimes that ration opportunity according to varied registers and calculations. Rapid often unregulated urban growth and increased reliance on markets within 'migration management' only furthers the disconnection between state law and the practical regulation of mobility.

My own work across sub-Saharan Africa, legal status and documentation are relatively unreliable predictors of migration outcomes. Moreover, state-recognized refugee status is a poor indicator of someone's substantive experience or mobility motivation.² Instead, access to income, housing, and physical security correspond most consistently with individual characteristics and social relations. Where vulnerability is widespread and humanitarian resources are limited – as they are in most southern cities – it is these horizontal relationships, not legal status, that become protection's *de facto* lynchpins. State policies make a difference, but the chain between international standards and implementation is long and often broken. Yet global discussions of refugee and migration law and global standards generally remain formalistic, migrant-centric, and largely shaped by epistemological nationalism.

Some will respond to these southern 'brown areas' with calls for better legal implementation and enforcement. Yet we must be wary of such calls. For one, poor enforcement and incapacity often create the permeability migrants use to negotiate *de facto* integration and protection. Without naively celebrating informality, demands from the IOM and others for 'safe and legal' are potentially dangerous. As with efforts to combat trafficking and slavery, these campaigns risk extending state regulation and action in ways that disrupt existing livelihoods while generating dangerous underground economies that threaten almost everyone. This is all the more likely given the vogue for more strictly regulated mobility regimes (even as the African Union and others feebly push for permeability).

We must also be wary that international norms surrounding human rights are typically domesticated when there are strong local and international interests for doing so. Yet there is almost no domestic pressure across the global south mobilizing in favor of migrants. When calls for migrant rights emanate from external actors – the UN, USAID, Amnesty International, or Human Rights Watch – they easily fuel nationalist sentiments working

² These findings were first described in Landau and Duponchel (2011); also Madhavan and Landau (2011).

against migrant interests. But these are rarely the forms of international interest we see today. Instead, African and Middle Eastern countries increasingly face pressure to contain. Heightened controls and rationing mobility rights are one aspect of international structural reform likely to find domestic support across the global South. In this case, “a country’s international credibility and moral and other standing” (conference concept note) may be enhanced precisely by furthering regimes working against poor people wishing to move.

Lastly, contemporary strategies to further global migration governance naturalize Westphalian principles of controlling entry. Indeed, the political acceptance of any global migration strategy is premised on doing so. As Achiume (2018; 2017) and others note (see Sassen 2010; Bauman 2016), this reinforces existing patterns of global inequality with enhanced and expensive systems of population registries, coercion, deportation, and bordering. Doing so also creates erasures about the geographic sources of such global inequality and conflict – imperialism, colonialism, extraction, armed intervention, environmental degradation – for which wealthy countries bear disproportionate responsibility (Achiume 2018; 2017). Most people will not migrate, but it requires ethical gymnastics to exclude those who move from the wealth their countries and communities helped build. Until states persuasively address their role in past and current injustices, normalizing mobility towards global metropolises is as ethically imperative as it is politically unpalatable. (Strategies to promote *aiutiamoli a casa loro* (help where they live) are cynical efforts promoting ‘containment development’). There may be little option, but granting states rights to severely limit movements effectively ossifies the effects of global inequality.

Mobility management as categorical conundrum

Here I wish to question the dangers of migration policy, *per se*, as a means of managing people’s mobility. Current forms of mobility regulation strategy and mark people in ways that are ethically questionable and practically problematic. If we take, for example, the MIMC, it reinforces states’ rights to exclude. It also rations rights based on a state-adjudicated migration history in which forced migrants are granted more protections and support than those deemed to have moved voluntarily. While an ethics of sanctuary may open space for few, it incentivizes states to raise the bar to asylum. Doing so will mean mass exclusion, exploitation, and corruption (see Wellman and Landau 2015). It also demands people perform vulnerability in ways that are deeply problematic (see Ticktin 2011; Fassin 2013). Moreover, where hosts are desperately poor, requiring migrant rights claims based on histories of

suffering sets people in direct competition from other equally, historically vulnerable populations. This, as we have seen across Africa, makes them ready targets for political scapegoating.

More effective strategies to promote mobility for the interests of movers and hosts are likely to come from global intervention and norm setting strategies that mainstream various forms of domestic and global mobility. Under Sustainable Development Goal 11, countries are instructed to “make cities and human settlements inclusive, safe, resilient and sustainable.” A current initiative by the Cities Alliance aims to integrate migrants of all categories into such broader development initiatives, helping them to remain invisible and become part of a broader urban constituency. Where aid, assistance, or budgeting is tied to promoting inclusion of migrants, the urban poor, and other potentially vulnerable populations, local politicians and leaders may have a reason to embrace rather than exclude newcomers.

Intersections and recommendations

There is an acute irony that in this era of mass containment, the possibility of facilitating multi-lateral cooperation and compliance regarding migration governance may be greater than ever. Wealthy western countries and activists are largely driving this agenda – most notably through the global compacts, but also through varied forms of inter-regional cooperation – and will shape these initiatives in line with their interests. Given the global shift to categorization and containment, many ‘southern’ states (particularly those in Africa), are likely to sign on to initiatives effectively authored elsewhere. Their willingness to almost uncritically adopt IOM authored policies or EU authored initiatives that denaturalize movement is indicative in this regard. Yet while this may create a more integrated global regime, it is one that not only perpetuates historical inequality but may ultimately normalize forms of severe and savage sovereignty.

In these environments then what should be done to promote a political viable and human system of global migration governance? There is no simple solution. A good start is peppering global law and agenda setting with humility and the messiness of local politics. In this regard, I propose a pedagogy of the commons: learning from those who are finding ways of migrating successfully amidst precarity and diversity before we intervene or propose global initiatives. This will require an approach that is much more social, much more political, and much more spatially aware.

As part of this, we must be acutely aware of the specific space of migrants in domestic politics. These are not citizens whose rights and welfare are likely to garner a strong domestic constituency. Indeed, invisibility in is often the best protection. Beyond that, we should heed Ford's words that, 'Rights require a relationship of mutual respect and obligation...' (Ford 2011: 68). The question then becomes how can international norms best to create the kind of localized solidarities that can help to enable access to rights without constraining refugees or placing targets on their backs?

Recognizing this, I suggest working towards a kind of a complementary politics and law informed by a spatial and social understanding of rights violations and potential for empowerment. In terms of the humanitarian and legal enterprise three principles can guide the effort. The first is *stealth migration governance*. Given the vulnerability that may be associated with visibilizing and fixing refugees within contention spaces, there is a need to shroud interventions in a language that is both more flexible and in solidarity with non-migrant populations; to find ways of encouraging *back routes to rights* and solidarity with a diverse range of locally legitimate actors who have the power to bring about positive change. The cities alliance is one such initiative.

One of the first steps in realizing a form of stealth humanitarianism is developing a global architecture that that *shift from people to place*. Writing in a different context, Soysal (1996) notes, '...the nation state as a territorial entity is no longer the source of legitimacy for individual rights.' Recognizing the diversity of scales, solidarities, threats, and opportunities within sites migrants occupy, analysis and interventions should begin by improving life within these sites. This means taking advantage of opportunities for bureaucratic or do-it-yourself incorporation in which migrants gain access to service based less on legally defined rights than by appeals to bureaucrats' professional ethos or broader principles of neighborliness and self-interest (See Marrow 2009). Indeed, appealing to more generalized interests, around housing, crime, or other concerns – not rights – can help appeal to local political incentives that do not draw lines or make references to discourses which are seen as foreign, threatening or unwelcome. In all cases, this demands high levels of *local literacy* which allows one to frame policy proposals in line with locally legitimate interests. Engaging within the legal regulation of space through housing and labor markets or policing can open space for refugees to build lives (i.e., achieve *de facto* protection and human security) that neither bind them to space nor alienate them from those surrounding them. Interventions,

legal or otherwise, that improve conditions in refugee affected areas may also help build political support for their presence.

This is not a propitious period for making humane, pragmatic migration policy. Yet amidst the quest to contain, careful lateral engagements may at least temper risks for migrants, hosts, and those who remain behind.

References

- Achiume, T.E. 2018. 'The Fatal Flaw in International Law for Migration: Model International Mobility Convention Commentary,' *Columbia Journal of Transnational Law* 56: 259-263.
- Achiume, T.E. 2017. 'Re-Imagining International Law for Global Migration: Migration as Decolonization?,' *American Journal of International Law Unbound*.
- Bauman, Z. 2016. *Strangers at Our Door*. Cambridge: Polity.
- Fassin, D. 2013. 'The Precarious Truth of Asylum,' *Public Culture* 25(1): 39-63.
- Ford, R.T. 2011. *Universal Rights Down to Earth*. New York: W.W. Norton.
- Hansen, T.B. and F. Stepputat (Eds.), 2010. *States of Imagination: Ethnographic Explorations of the Postcolonial State*. Durham: Duke University Press.
- Holston, J and A. Appadurai. 1996, 'Cities and Citizenship,' *Public Culture*, 8(2):187-204.
- Landau, L.B. and M. Duponchel. 2011. 'Laws, Policies, or Social Position? Capabilities and the Determinants of Effective Protection in Four African Cities,' *Journal of Refugee Studies* 24(1): 1-22.
- Marrow, H.B. 2009. 'Immigrant Bureaucratic Incorporation: The Dual Roles of Professional Missions and Government Policies,' *American Sociological Review* 74(5): 756-776.
- Madhavan, S. and L.B. Landau, 2011. 'Bridges to Nowhere: Hosts, Migrants and the Chimera of Social Capital in Three African Cities,' *Population and Development Review* 37(3): 473-497.
- Sassen, S. 2010. 'A Savage Sorting of Winners and Losers: Contemporary Versions of Primitive Accumulation,' *Globalizations*: 7(1): 23-50.
- Simone, A. and E. Pieterse. 2017. *New Urban Worlds: Inhabiting Dissonant Times*. Cambridge: Polity
- Soysal, Y.N. 1996. 'Changing Citizenship in Europe: Remarks on Postnational Membership and the National State,' Pp. 17-29 in D. Cesarani (Ed.) *Citizenship, Nationality, and Migration in Europe*. London: Routledge.
- Ticktin, M. 2011. *Casualties of Care: Immigration and the Politics of Humanitarianism in France*, Berkeley: University of California Press.
- Wellman, E. and L.B. Landau, 2015. 'South Africa's Tough Lessons on Migrant Policy,' *Foreign Policy: Democracy Lab* (14 October).