INTERNATIONAL MIGRATION: TRENDS, CHALLENGES, AND THE NEED FOR COOPERATION WITHIN AN INTERNATIONAL HUMAN RIGHTS FRAMEWORK

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I. INTRODUCTION

International migration is a growing phenomenon with the estimated number of international migrants worldwide currently at 214 million. The

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States responded by introducing restrictive migration policy measures, such as restricting the inflow of migrants and encouraging their return, in addition to protecting labor markets for native workers. Although this phenomenon has resulted in slowing the flow of new migrants in many states, the overall stock of migrants has not decreased.

At present, a state is under no specific obligation to permit migrants entry into its territory, nor do most states provide adequate and effective civil and political or economic, social, and cultural rights to them. Irregular migrants, that is, migrants without proper legal status in transit, or host countries, are especially vulnerable and hence, generally face severe discrimination, exploitation, and criminalization of migration-related offenses. As the number of migrants is likely to continue to increase, the need is apparent for international cooperative measures to address the migration challenges the international community will face in the future. Anticipating such a need, international efforts are ongoing, primarily under the auspices of the United Nations, to create a normative and institutional framework to manage migration and protect the rights of migrants.

This essay focuses on these efforts. In Part II, the current trends and challenges of international migration is presented. Part III features selected international efforts to ensure that international migration issues are seriously and thoughtfully addressed and appropriately and effectively managed while protecting migrants within a human rights framework. Part IV is the concluding section.

II. TRENDS AND CHALLENGES OF INTERNATIONAL MIGRATION

A. Trends

According to the International Organization for Migration’s (IOM) World Migration Report for 2010, international migrants, currently numbering approximately 214 million, compared with an estimated 150


4. See id. at 122.

5. Estimated to be 405 million by 2050. Id. at xix (Foreword by the International Organization of Migration Director General William Lacey Swing).
million in 2000, constituting 3.1 percent of the global population. Perhaps 10–15 percent of all international migrants are irregular migrants, and an estimated one-third of all migration from developing countries could be in that situation. In addition, the number of internal migrants in the world is estimated at 740 million. The remittances sent home by migrants were estimated at $414 billion in 2009, and in 2008 remittances in ten countries accounted for more than 20 percent of the gross domestic product. At the end of 2008, the number of refugees stood at 15.2 million and the number of internally displaced persons at 26 million.

The IOM Report projects the number of international migrants worldwide to continue to increase in the foreseeable future and to reach 405 million by 2050. Although there is uncertainty about the number of migrants resulting from environmental change, varying from 50 million to one billion by 2050, the most widely cited figure is up to 200 million people, and in 2008 approximately 20 million people were displaced by climate-related natural disasters. However, as the Report aptly mentions:

There is no agreed definition or defined category, and no explicit legal or normative framework pertaining to people moving as a result of the effects of environmental change. In other words, even if such movements are already taking place or are likely to in the future, they may not be recognized, categorized or counted as distinct from other types of movement.

It is likely that most of this migration will be internal, rather than international. Also, such movement could be temporary and hence the Report focuses on adaptation and capacity building to address this

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6. Id. at xix.
7. Id. at 29, 115. See generally id. at 29–44.
8. World Migration Report 2010, supra note 1, at 120.
9. Id. at 117 (citing the United Nations Development Programme, Human Development Report 2009).
10. Id. at 117–18.
13. Id. at 2 (citing estimates from the United Nations Office for the Coordination of Humanitarian Affairs and Internal Displacement Monitoring Center).
phenomenon. It enumerates several requirements for capacity building, including establishing a better evidence base, developing adaptation strategies, filling gaps in the legal and normative framework, and for states to amend national immigration laws and policies, and implement national laws and policies on internal displacement, and ensure provision for humanitarian assistance.\(^{15}\)

B. Challenges

In addition, the enormous challenge migration poses to countries of origin, transit, and destination, as well as to the individuals involved, daily headlines are a constant reminder that international migration has become one of the defining issues of our time.\(^{16}\) Consequently, while the subject figures prominently on the global policy agenda,\(^{17}\) policy makers in most countries face formidable challenges in managing it because of its complexity, as well as its legal, political, economic, and social implications. While language and integration tests are becoming commonplace today as immigration criteria, the debate has intensified in Europe on the use of cultural identities, ethnicity, religion, and race for that purpose, although the legitimacy of some of these criteria may be questionable.\(^{18}\)

In a recent study, Liav Orgad focused on France, Germany, the Netherlands, the United Kingdom, and Denmark to describe their new restrictive migration policies and explore whether culture is a legitimate criterion for regulating migration and access to citizenship.\(^{19}\) He convincingly demonstrates how these countries are “raising a ‘cultural wall’

15. \textit{Id.} at 74–86.


17. \textit{See section III, infra,} for a discussion of the work of the United Nations and other international entities on migration issues. In addition, most states—whether states of origin, transit, or destination—confront various aspects of immigration issues, and at stake are individuals’ lives and well-being.


19. \textit{Id.}
on [their] road to citizenship by means of culture-based courses, tests and contracts."

Migrant flows are not confined to developed countries. Thomas Weiss, Chief of Mission in Mexico City for the International Organization for Migration, states that the tendency in the West to feel overwhelmed with migrants "is without understanding exactly that many developing countries are at the present facing irregular flows that are much stronger and much more difficult to be absorbed by society and by local labor markets." A Migration Policy Institute study for the BBC World Service released in October 2010, examined the impact of the global financial collapse of Fall 2008 on migration flows, remittances, employment, and poverty rates, with a special focus on Germany, Ireland, Spain, the United Kingdom, and the United States. It found that the crisis hit immigrants disproportionately. However, migration flows have remained steady.

Since the mid-1990s, the debate on international migration, especially the status of undocumented aliens, has intensified. Migrants, especially irregular migrants, often face resentment and backlash, not only in developed countries, but also in developing countries. To illustrate, while angry residents of Arizona or Texas want irregular immigrants from Mexico deported, equally angry Mexican residents tell those from Guatemala and Honduras who use Mexico as a passageway to the United States to go back to their home countries. In the United States, the tragic events of 9/11 had a profound impact on the ongoing debate in the country over immigration reform.

The enhanced concern with national security compounded the problem for immigrants, who were already suffering discrimination, as critics continued to link immigrants with criminality. This link was vigorously asserted in California by supporters of Proposition 187, a ballot initiative aimed at denying undocumented aliens social services, health care, and public education. Chairperson of the California Commission for Immigration Reform and one of the drafters of the proposition, Barbara

20. Id. at 105. See generally id. at 57–96 (describing European laws and policies which tend to force migrant cultural assimilation).


22. See Two Years After the Financial Collapse, supra note 2.


Coe, wrote in an op-ed piece: "Violent crime is rampant. Illegal-alien gangs roam our streets, dealing drugs and searching for innocent victims to rob, rape, and, in many cases, murder those who dare violate their 'turf'."

In a similar vein, in the debate on the enactment by Congress of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, which created several new federal immigration crimes, Senator Orrin Hatch, Republican from Utah, and Chairman of the Senate Judiciary Committee, stated:

This is an important bill. It is one of the most important bills in this country's history. We can no longer afford to allow our borders to be just overrun by illegal aliens. . . . Frankly, a lot of our criminality in this country today happens to be coming from criminal, illegal aliens who are ripping our country apart. A lot of the drugs are coming from these people.

The outcome has been to increasingly regulate migration through the criminal justice system, so that criminal enforcement of migration issues has become routine and this has led to a trend of declining procedural protections of criminal prosecutions for immigration-related offenses.

After conducting a comprehensive survey of the relationship between immigration and crime in 20th-Century America, Professors Ramiro Martinez, Jr. and Matthew T. Lee have concluded in their study that "immigrants are usually underrepresented in criminal statistics," however, immigration law and criminal law have indeed become conflated in the United States.


On the linkage between migration and security, the Global Commission on International Migration released a report in October 2005. The Commission, established in December 2003 by a Core Group of States "with a mandate to provide the framework for the formulation of a coherent, comprehensive and global response to the issue of international migration," is composed of nineteen people from different parts of the world with high-level international experience. The report states:

The linkage between migration and security has become an issue of [great] international concern. Recent incidents involving violence committed by migrants and members of minority groups have led to a perception that there is a close connection between international migration and international terrorism. Irregular migration, which appears to be growing in scale in many parts of the world, is regarded by politicians and the public alike as a threat to the sovereignty and security of the state. In a number of destination countries, host societies have become increasingly fearful about the presence of migrant communities, especially those with unfamiliar cultures and that come from parts of the world associated with extremism and violence.

Just as in the United States, there is unease with migrants in Europe and far-right political parties keen to restrict lenient immigration policies have experienced unprecedented success in the Netherlands and Sweden. France has officially banned the burqa, which completely covers the face and body, a practice challenged in other European countries, as well.

32. Id. at vii.
33. Id. at 8–9.
35. See, e.g., Mona Eltahawy, Rending the Veil—with Little Help, WASH. POST, July 17, 2010, at A13; Robin Givhan, Runway Fashions and the Burqa: In France, They Know About the Power of Clothes, WASH. POST., Oct. 3, 2010, at E05; Danna Harman, French Muslims Feel Increased Scrutiny Amid Terror Concerns: Many Muslims in France Feel Increasingly Targeted Amid Growing Terror Concerns and What Some See as Anti-Muslim Measures, Such as the Banning of Burqas in Public, CHRISTIAN SCI MONITOR, Oct. 8, 2010; See also Kristi Severance, Migration Policy Institute, Migration Information Source, France’s Expulsion of Roma Migrants: A Test Case for Europe, Oct. 21,
Switzerland has banned minarets, and in Germany, there is disquiet about Turkish immigrants.

Environmental migration poses special challenges. Predictions about the impact of climate change on displacements are in the hundreds of millions. The United Nations Development Programme puts the figure at 330 million people being temporarily or permanently displaced through sea level rise and flooding if global temperatures rise by 3–4 degrees Centigrade. According to the IOM, "the most widely repeated prediction" is that 200 million people will be displaced because of climate change by 2050.

However, there is a great deal of uncertainty about these numbers and about the role of climate change in causing migration and displacements. Environmental degradation—from drought, desertification, or flooding, for example, and due to climate change and/or other causes—may not be the sole driver of migration, whether internal or international, temporary or long-term, or perhaps even permanent. It is likely that in conjunction with environmental degradation, other factors—demographic, economic, and political—could have precipitated the move. Also, it is possible that people may not move, but adapt to the changed environmental conditions, by modifying land use practices, for example.

Notwithstanding these challenges and notwithstanding the enormity of the problems humanity faces because of migration—whether voluntary or forced—and displacement, states have a sovereign right under international law to decide who enters the country and under what conditions, who stays, and the right to regulate the movement of persons within their borders. They are under no obligation to admit foreigners to their territory and are free to decide on whom to confer nationality and to determine the criteria for that decision.


39. INTERNATIONAL ORGANIZATION FOR MIGRATION, MIGRATION AND CLIMATE CHANGE 9 (IOM Migration Research Series No. 31, 2008).
Consequently, immigration law and policies are within the purview of each state. Although international migrants often make valuable contributions in the countries of destination, they are vulnerable to a range of abuses, enduring exploitation, discrimination, xenophobia, racism, and violation of basic human rights, especially denial of access to education and health. This happens despite the existence of various international instruments under which states have an obligation to respect and protect the human rights of all individuals under their jurisdiction regardless of their nationality, origin, or immigration status.

III. SELECTED INTERNATIONAL EFFORTS TO ADDRESS MIGRATION ISSUES AND TO PROTECT MIGRANTS

In light of the trends and challenges of international migration discussed above, migration issues are receiving serious national, regional, and international attention. International entities actively involved with international migration issues include the United Nations and its various agencies, especially the Office of the United Nations High Commissioner for Human Rights, the Special Rapporteur on the Human Rights of Migrants, and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families. The Global Migration Group and the Global Forum on Migration and Development are two special initiatives by the United Nations. Other organizations include the World Bank, the International Organization for Migration, and the Organization of Economic Cooperation and Development. In the United

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States the Migration Policy Institute, the Population Reference Bureau, and the Annie E. Casey Foundation are major actors.

Migration issues cover a wide spectrum of topics. However, after noting the pertinent international norms and standards that apply to international migration, the discussion here is limited to the work of selected international entities on the following major issues: protection of the rights of migrant workers and their families, with special reference to migrant domestic workers; protection of the rights of irregular migrants; protection of women migrant workers' rights, and the rights of children in the context of migration; and climate change, migration, and displacement.

A. Pertinent International Norms and Standards

In addition to the Universal Declaration of Human Rights, pertinent treaties include the two International Covenants—on Economic, Social, and Cultural Rights and on Civil and Political Rights—the 1990 International Convention on the Protection of All Migrant Workers and Members of their Families (Migrant Workers Convention), and two International Labor Organization (ILO) Conventions—ILO Convention 97 on Migration for Employment (1949) and ILO Convention 143 on Migrant Workers (1975) (Supplementary Provisions), which are commonly referred to as constituting an international charter on migration. Together these provide for protection of all migrants' rights, whether they are in regular or irregular status. In addition, several international

55. Convention Concerning Migration for Employment, July 1, 1949, 1616 U.N.T.S. 120.
instruments place migration in a human rights context. Among these are core United Nations human rights conventions, such as the Women’s Rights Convention (CEDAW),\textsuperscript{57} Convention on the Rights of the Child,\textsuperscript{58} the Torture Convention,\textsuperscript{59} the Elimination of Racial Discrimination Convention,\textsuperscript{60} and the Refugee Convention\textsuperscript{61} and its Protocol.\textsuperscript{62}

B. Protection of the Rights of Migrant Workers and Members of Their Families with Special Reference to the Rights of Migrant Domestic Workers

The pertinent conventions are the Migrant Workers Conventions and the two ILO Conventions mentioned above. Although the Migrant Workers Convention has received just forty-four ratifications as of December 15, 2010,\textsuperscript{63} and the ILO Conventions even fewer, other conventions mentioned above have been widely ratified, with a large number of states having become parties to these conventions. However, even in states that are parties to these conventions, migrants often are subjected to human rights violations such as discrimination, xenophobia, and racism. They face violence, exploitation and unsafe conditions, and sexual harassment, and are often denied access to basic health care, education, and adequate housing—all in breach of states’ obligations under international law, which guarantees these rights to migrants.

The Migrant Workers Convention is one of the core United Nations human rights treaties, embodying migrant workers’ rights within a human rights framework. It contains a comprehensive definition of migrant workers, as it defines a migrant worker as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.”\textsuperscript{64} Under Article 7, states are to respect


\textsuperscript{64} Migrant Workers Convention, \textit{supra} note 54, art. 2(1).
and ensure the rights contained in the Convention "without distinction of any kind, such as sex, race, color, language, religion or conviction, political or other opinion, national, ethnic, or social origin, nationality, age, economic position, property, marital status, birth or other status." It grants a fairly broad series of rights to all migrant workers and members of their families, regardless of their migratory status. It assigns additional rights to migrant workers and members of their families who are documented or in a regular situation. It especially provides for interstate consultation, cooperation, and information sharing on various aspects of international migration.

The implementation of the Convention is monitored by a Committee—the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (the Committee)—consisting of fourteen experts elected by the state parties, under Article 72. Under Articles 76 and 77, a state may make a declaration recognizing the competence of the Committee to receive communications from state parties and individuals, respectively, about noncompliance with the Convention's provisions.

Commemorating the 20th anniversary of the Convention, the United Nations High Commissioner for Human Rights, Ms. Navi Pillay, addressed the Global Forum on Migration and Development at Puerto Vallarta, Mexico, in November 2010, calling:

[F]or the strengthening of anti-discrimination measures everywhere. Racist violence and xenophobia against foreigners must be countered with all appropriate legal and administrative means, perpetrators must be prosecuted vigorously, and education that promotes our common human values, teaches respect and tolerance—in short, human rights education—must be pursued with urgency. This is the minimum effort incumbent upon all countries, whether countries of origin, transit or destination, in order to prevent manifestations of xenophobia and stem intolerance at its roots.

65. Id. arts. 8-35.
66. See generally id. arts. 37-56.
67. Id. arts. 64-71.
68. Id. art. 73(1)(a). In May 2008, the Committee on the Protection of the Rights of All Migrant Workers and their Families released a set of guidelines for states parties' submission of their periodic reports to the Committee as required under Article 73(1)(a) of the Convention.
Since there are no express references to either domestic work or domestic workers within either a national or international framework of law, the Committee issued a General Comment in November 2009 to provide guidance to states on how to implement their obligations under the Migrant Workers Convention regarding migrant domestic workers.70

After noting that the term “domestic worker” generally refers to a person who performs work within an employment relationship in or for other people’s private homes, whether or not residing in the household,71 it observes that such workers face even “heightened risk of certain forms of exploitation and abuse.”72 The Comment identifies problems faced by such workers and members of their families, for these workers remain vulnerable throughout the migration cycle—recruitment, predeparture, and in countries of transit, at arrival, during employment, and upon return.73 Family unity could be negatively affected because of the prolonged absence of such workers, and this often results in the violation of the rights of children who have remained in the home country.74

The Comment further describes the reintegration problems of migrant domestic workers upon their return home. Also, as most cannot stay in the country of employment after the termination of their employment relationship, they may be unable to seek remedies if their employers have violated their rights by refusing to pay due compensation or having abused the workers.75

The Comment notes that while international treaties regarding human rights law and labor law amply cover migrant workers, many national laws categorically exclude domestic workers “in ways that contribute to exploitative labour practices and limit avenues for legal redress in cases of violations.”76 It then details the gaps for migrant domestic workers in the legal system—labor law, immigration law, contract law, and social security laws. Domestic workers are frequently excepted from the protections of labor laws, as they do not work for regular “employers,” and they are

70. Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, General Comment No. 1 on Migrant Domestic Workers, U.N. Doc. CMW/C/12/CRP.2/Rev. 2 (Nov. 30 2010) [hereinafter Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families].

71. Id. ¶ 5.

72. Id. ¶ 7.

73. Id. ¶¶ 9–14, 16, 17.

74. Id. ¶ 15.

75. Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, supra note 70, ¶¶ 16–17.

76. Id. ¶ 18.
treated as “family helpers,” which leads to an “unrecognised” status as “workers” and an inability to exercise their due rights and freedoms under labor law.\textsuperscript{77}

Domestic workers are often prevented from organizing for their labor rights and in household settings they do not benefit from the monitoring and inspections available to other workers.\textsuperscript{78} Restrictive immigration laws in destination countries often cause undocumented or irregular migrant domestic workers to be present in overly large numbers, leaving them further vulnerable to exploitation because of their dependence on the continued sponsorship of specific employers.\textsuperscript{79} Women migrant domestic workers may face even further gender-based hardships, such as losing their permit if they get pregnant or are found to be HIV-positive.\textsuperscript{80} Furthermore, domestic migrant workers are often deprived of the application of national contract laws and social security laws.\textsuperscript{81}

The Comment next reviews gaps between the protections provided to such workers in law and in practice. It identifies some of the practical obstacles they face because of the “hidden” nature of the domestic work and others which prevent or deter them from claiming their rights and seeking redress.\textsuperscript{82} Finally, the Comment makes recommendations to State Parties aimed at protecting the rights of domestic workers. These include developing predeparture programs for raising awareness and training migrant workers about their rights under other states’ laws and practice.\textsuperscript{83}

The Comment notes that since State Parties share the responsibility to regulate and monitor recruitment and placement processes, they are under an obligation to ensure that labor workers, recruitment agencies, and other intermediaries respect the rights of migrant domestic workers.\textsuperscript{84} Detailed provisions are included regarding migrant domestic workers’ conditions of work and the application of states’ social security benefits to the domestic workers on the basis of equal treatment with nationals.\textsuperscript{85} The Comment specifically provides for protection of the migrant domestic workers’ right

\textsuperscript{77} Id. ¶ 19.
\textsuperscript{78} Id. ¶ 20.
\textsuperscript{79} Id. ¶ 21.
\textsuperscript{80} Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, supra note 70, ¶ 22.
\textsuperscript{81} Id. ¶¶ 23–24.
\textsuperscript{82} Id. ¶¶ 25–27.
\textsuperscript{83} Id. ¶¶ 28–30.
\textsuperscript{84} Id. ¶¶ 31–36.
\textsuperscript{85} Committee on the Protection of the Rights of all Migrant Workers and Members of Their Families, supra note 70, ¶¶ 37–44.
to organize for collective bargaining, freedom of religion or belief and freedom of expression, and access to justice and remedies.\textsuperscript{86} Other provisions call for access to regular channels for migration status, respect for family unity, special protection for children, and sensitivity to gender perspective.\textsuperscript{87} Finally, the Comment recommends that embassies and consulates of states of origin should be actively involved in protecting the rights of their nationals employed as migrant domestic workers.\textsuperscript{88} Furthermore, in the development and implementation of legislative and other measures related to the protection of migrant domestic workers' rights, migrant domestic workers and civil society organizations should be genuinely consulted and State Parties should specifically report their efforts to monitor migrant domestic workers' situations and statistical data.\textsuperscript{89}

C. Irregular Migrants

No precise and accurate information is currently available about the number of irregular or undocumented international migrants in transit or in host countries worldwide. However, the Global Migration Group on the Human Rights of Migrants in Irregular Situation (GMG)\textsuperscript{90} estimates the number in the tens of millions.\textsuperscript{91}

A 2002 study of the International Labor Organization explains the impact of globalization on migration and the reasons for preference for irregular migrants by stating that:

\begin{quote}
[T]he demand for foreign labour reflects the long term trend of informalization of low skilled and poorly paid jobs, where irregular migrants are preferred as they are willing to work for
\end{quote}

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\item \textsuperscript{86} \textit{id.} ¶¶ 45–50.
\item \textsuperscript{87} \textit{id.} ¶¶ 51–61.
\item \textsuperscript{88} \textit{id.} ¶¶ 62–64.
\item \textsuperscript{89} \textit{id.} ¶¶ 65–66.
\item \textsuperscript{90} Global Migration Group, http://www.globalmigrationgroup.org (last visited Mar. 15, 2011). GMG is a UN inter-agency group comprising of twelve UN agencies, the World Bank, and the IOM; and was established in 2006 and is aimed at promoting the application of relevant international instruments and norms relating to migration and at encouraging the adoption of comprehensive and more coherent and coordinated approaches to the international migration issue.
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inferior salaries, for short periods in production peaks, or to take physically demanding and dirty jobs.

It is widely reported in the media that irregular or undocumented migrants often suffer exclusion. For example, in the United States, Congress passed the 1996 Personal Responsibility and Work Opportunity Reconciliation Act as part of an immigration reform movement. The Act specifically denies Medicaid and other local benefits to undocumented migrants, who are referred to as “undocumented aliens,” as contrasted with qualified aliens, Lawful Permanent Residents, asylees, and refugees. In Texas, an undocumented worker may be unable to recover any lost wages for discriminatory termination of his employment by his employer.

These workers also face discrimination, abuse, and exploitation. The Economist narrates the story of the Vega family, undocumented migrants from southern Mexico, who succeeded in crossing the border after several attempts, suffering abuse and violence along the way, and frequent deportation by officials. The family was finally employed in Arizona as farm workers. They were reported as feeling:

[H]ated much of the time. Some people hurl racial slurs at them, give them dirty looks or call them “wetbacks,” a term of abuse recalling someone who has just swum the Rio Grande. Felix

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\item[92.] Patrick A. Taran & Eduardo Geronimi, Globalisation, Labour and Migration: Protection is Paramount, 3E PERSPECTIVES ON LABOUR MIGRATION 5 (2002).
\item[95.] Id.
\item[96.] Id. § 1641(b).
\item[97.] See, e.g., Escobar v. Spartan, 281 F. Supp. 2d 895, 897 (S.D. Tex. 2003), in which the court held, citing Hoffman Plastic Compounds, Inc. v. Nat’l Labor Relations Board, 535 U.S. 137 (2002), that Escobar was “not entitled to back pay on his claims under Title VII, such a remedy being foreclosed by the fact that he was an undocumented worker at the time he was employed by Spartan.” See also Crespo v. Evergo Corp., 841 A.2d 471, 477 (2004), where the court held that the plaintiff could not recover because of the “Congressionally mandated disqualification, violation of which imposes criminal liability upon not only the employer but the employee as well. . . . [I]t is the illegality of plaintiff’s employment which precludes both economic and non-economic damages the claims resulted from the termination of that employment.”
\item[98.] Fields of Tears, ECONOMIST, Dec. 18, 2010, at 39.
\end{footnotes}
Vega says that the mood has become noticeably more hostile this year, perhaps because a controversial state law in Arizona has legitimized such animosity. That law . . . would make illegal immigration a state crime and oblige local police to enforce it. After studying the plight of irregular migrants, the GMG vividly describes that plight in its statement, which urges states to protect the fundamental rights of all persons regardless of their migration status. As the statement clearly and convincingly makes the case for irregular migrants protection, it seems appropriate to cite it here extensively. After enumerating fundamental rights of all human beings under international human rights instruments and customary international law, the GMG calls on states to review the situation of such migrants and further calls upon:

[S]tates, civil society, the media and host communities to address the demand side of trafficking and exploitation, to work actively to combat xenophobia, racism and incitement to discrimination in national politics and in public discourse to protect all migrants, as well as to actively promote tolerant societies in which every person can enjoy his or her human rights, regardless of migration status.

According to the GMG statement, undocumented international migrants:

[O]ften face prolonged detention or ill-treatment, and in some cases enslavement, rape or even murder. They are more likely to be targeted by xenophobes and racists, victimized by unscrupulous employers, and sexual predators, and can easily fall prey to criminal traffickers and smugglers. Rendered vulnerable by their irregular status, these men, women and children are often afraid or unable to seek protection and relief from the authorities of countries of origin, transit or destination.

After especially describing the plight of children in the context of migration and female migrants in such situations, the statement adds:

99. Id. at 42.
100. GMG Statement, supra note 91.
101. Id.
102. Id.
Too often, States have addressed irregular migration solely through the lens of sovereignty, border security or law enforcement, sometimes driven by hostile domestic constituencies. Although States have legitimate interests in securing their borders and exercising immigration controls, such concerns cannot, and indeed, as a matter of international law, do not, trump the obligations of the State to respect the internationally guaranteed rights of all persons, to protect those rights against abuses, and to fulfill the rights necessary for them to enjoy a life of dignity and security.\textsuperscript{103}

The United Nations High Commissioner for Human Rights, Ms. Navi Pallay, who was then chairing the GMG, said to the media on September 30, 2010, after the adoption of the GMG statement, that it was a "landmark statement," which was "historic," since the GMG had "[spoken] out with one voice for the protection of the human rights of all migrants, particularly those who are caught in an irregular situation."\textsuperscript{104} Since this GMG call is not obligatory on states, their implementation of this historic call for action, as for similar other calls, will obviously depend on the state’s politics and its decision making processes, for immigration issues tend to be volatile in many states.

D. Protection of the Rights of Women Migrant Workers and the Rights of Children in the Context of Migration

Women migrant workers and children in the context of migration are especially vulnerable and often are subjected to exploitation and abuse.

1. Women Migrant Workers’ Rights

The United Nations Development Fund for Women (UNIFEM) has been actively engaged in activities and programs aimed at ensuring protection of women migrant workers’ rights. In a 2003 Briefing Paper, it emphasized the role of globalization in enhancing demand for labor in many countries and the consequent increased migration numbers to meet that demand, growth in the informal sector and decreased regulation of the labor market. These trends, the Briefing Paper argued, had set "the scene for exploitation of those most desperate: irregular border-crossers, those in

\textsuperscript{103} Id.

the informal sector, and the poor. For women, these trends spell increased vulnerability to exploitation and abuse, and continuing inequality with men.\textsuperscript{105}

In a September 2010 consultation, UNIFEM co-organized with the Government of Mexico.\textsuperscript{106} The participants expressed concern with “the continuing reports of the grave human rights abuses committed against all categories of women migrant workers at all stages of migration.”\textsuperscript{107} They were also concerned that women migrants, including domestic workers, may not receive adequate labor law protection.\textsuperscript{108} They called upon participating states and civil society organizations attending the Global Forum on Migration and Development’s meeting in November 2010 in Mexico,\textsuperscript{109} \textit{inter alia}, to:

Mainstream a gender-sensitive human rights perspective and provisions to eliminate stigma and discrimination, including for domestic workers, into migration, labor, population and development policies, legislation . . . plans and budgets, with strong accountability mechanisms at national/local levels in countries of origin, transit, and destination.\textsuperscript{110}

Among other recommendations are those calling for information sharing, awareness raising, and capacity building of migrant women workers.


\textsuperscript{107} Id.

\textsuperscript{108} Id.


\textsuperscript{110} Mexico City Conclusions, \textit{supra} note 106.
Earlier, in July 2009, the United Nations Secretary-General issued a report, which referred to the pertinent international legal framework, including the Migrant Workers Convention and the ILO Conventions mentioned above, and other instruments related to violence against women migrant workers. These instruments included the United Nations Convention against Transnational Organized Crime and its Protocols, including the Protocol against Smuggling of Migrants by Land, Sea and Air. After describing the activities undertaken by states and the United Nations, such as those related to preventive measures, new legislation and policy development, protection and support for women migrant victims of violence, the report made several specific recommendations to states, including one calling on states to:

[E]nsure that migration policies are gender-sensitive, rights-based and promote safe migration, and that all relevant policies and strategies ensure the protection of the human rights of all women migrant workers and comprehensively address violence against women migrant workers, including measures to prevent violence, prosecute perpetrators and protect and support victims.

2. The Rights of Children in the Context of Migration

The Office of the High Commissioner for Human Rights and the Special Rapporteur on the Human Rights of Migrants have been actively involved in studying and reporting on this issue. Two recent reports, one by the High Commissioner on July 5, 2010, and the other by the Special

111. U.N. Secretary-General, Violence Against Women Migrant Workers, U.N. Doc. A/64/152 (July 16, 2009) [hereinafter Violence Against Women Migrant Workers].


113. Violence Against Women Migrant Workers, supra note 111, at 50.


Rapporteur on May 14, 2009, thoroughly analyzed the situation. In his study, the Special Rapporteur, after presenting an overview of the applicable international legal framework, with a focus on the Convention on the Rights of the Child, the Special Rapporteur noted protection gaps: 1) on deportation and detention, and 2) the other on public policies that do not take into account the specific conditions and needs of migrant children.

The Special Rapporteur categorized children affected by the migration process into three groups—those left behind by migrating family members, migrant children moving across borders, and migrant children in host countries. He referred to the problems faced by children in each one of these categories and identified the protections they need. He recommended to states that they should ratify relevant international human rights instruments and implement them through their national laws and policies. In addition, he urged them to emphasize a human rights approach to the issue, protect the most vulnerable, share information, and take measures to protect children in all the categories listed above. He also called for inter-institutional coordination at the national level and international collaboration by all participants.

The study by the High Commissioner for Human Rights also focused on the existing normative standards to protect the rights of the child in the context of migration, with special focus on the Convention on the Rights of the Child. Its discussion of the challenges in implementation included

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117. Id. at 43.

118. Id. at 44.

119. Id. at 45–51.

120. Id. at 52–65.


122. Id. at 82–83.

123. Id. at 84–87.

124. Id. at 88–89.

125. Id. at 90–126.


detention and access to health, housing, education, and work.\textsuperscript{128} It provides an overview of selected practices of governments, international organizations, and NGOs, among others, regarding the initiatives they have taken on several aspects of the topic,\textsuperscript{129} and offered a similar set of recommendations as suggested by the Special Rapporteur.\textsuperscript{130}

\textbf{E. Climate Change, Migration, and Displacement}

As mentioned above, uncertainty exists about the nature and scope of migration and displacement to be attributed to environmental degradation, and as to how much of that harm is due to climate change. Several international organizations, including the IOM, the United Nations High Commissioner for Refugees (UNHCR), and the Representative of the Secretary General on the Human Rights of Internally Displaced Persons, acknowledged this uncertainty in their submission of February 2009:

While there are no scientifically verified estimates of climate change-related displacement or of overall population flows triggered by the effects of climate change, it is evident that gradual and sudden environmental changes are already resulting in substantial human migration and displacement. This trend is expected to continue, with anywhere between 50 and 200 million people moving as a result by the middle of the century, either within their countries or across borders, on a permanent or temporary basis. There is a possibility of even higher numbers if the [Intergovernmental Panel on Climate Change’s] worst-case scenarios materialize. In some cases, in particular at early stages of environmental degradation and for those with the resources to move, migration may be an adaption mechanism, allowing, for example, to diversify the sources of income. In other instances, in particular in cases of natural disasters and for those with fewer means to move, leaving their places of habitual residence may be an expression of failed adaption and constitute a survival mechanism.\textsuperscript{131}

\begin{itemize}
\item \textsuperscript{128} \textit{Id.} ¶¶ 31–78.
\item \textsuperscript{129} \textit{Id.} ¶¶ 79–85.
\item \textsuperscript{130} \textit{Id.} ¶¶ 86–87.
\end{itemize}
They added that “[e]nsuring that migration and displacement triggered by climate change are systematically considered and addressed by the international community is our shared responsibility. This cannot be achieved unless these consequences are duly acknowledged in the successor-agreement to the Kyoto Protocol.”\textsuperscript{132}

At the Sixteenth Conference of the Parties of the United Nations Framework Convention on Climate Change at Cancún, Mexico, November 29 to December 10, 2010, the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention decided to undertake enhanced action on adaptation and as part of that action included “[m]easures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration, and planned relocation, where appropriate, at national, regional and international levels.”\textsuperscript{133}

Considerable research is currently being undertaken on climate change, environment, migration, and displacement, by several United Nations entities as well as professional groups,\textsuperscript{134} including the Climate Change, Environment and Migration Alliance,\textsuperscript{135} the United Nations University Institute for Environment and Human Security,\textsuperscript{136} and the

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{132} Id.
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Refugee Studies Center. As mentioned earlier, the World Migration Report 2010 emphasizes migration-capacity building to effectively address challenges arising from the effects of environmental change, and discusses essential requirements for this purpose.

IV. CONCLUSION

Projections for international migration are that it will continue to grow. The two main reasons are globalization and demographic trends in several developed countries for slow population growth, and for some states, such as Japan and Russia, even shrinkage. On the supply side of the equation, many developing states with meagre economic resources are witnessing an ongoing population rise. This results in a lack of the needed absorptive capacity for all those seeking work, and thus pushes some to move abroad. In light of these trends and projections, the world community must remain vigilant and determined in its quest for effective solutions to the myriads of problems and challenges associated with international migration.

To the credit of the international community, it has created a comprehensive international legal framework, primarily under the United Nations leadership, to address issues pertaining not only to international migrants in general, but also to the needs and protection issues of women and children, and equally important, the struggles migrant domestic workers face. The major challenge is to ensure that states implement the existing norms and standards by incorporating them in their legislation, and that their policies faithfully reflect these norms and standards in action.
