

Model International Mobility Declaration

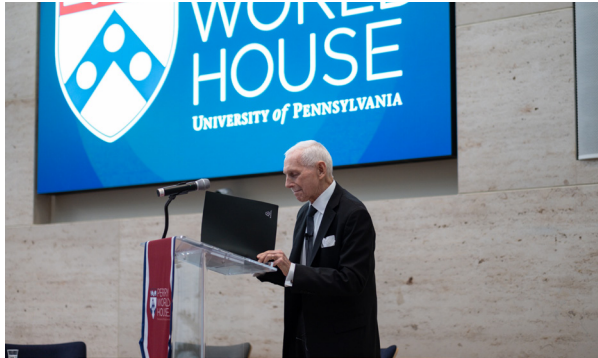
WORKSHOP REPORT

FEBRUARY 2019



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Workshop Report



Ambassador William Swing gave a public keynote address titled “Orderly Migration in a Disorderly World” the evening before the workshop.

Opening Remarks

“Migration is the human face of globalization.”
- Ambassador Bill Swing

Ambassador William L. Swing, the former Director General of the International Organization for Migration, began by drawing the audience’s attention to “three worlds,” two of which we currently live in, a third which the Model International Mobility Declaration (MIMD) offers to usher in. The first world is comprised of ever-growing migration. Amb. Swing explained that although international migrants comprise only three percent of the global population (and have for about fifty years), the actual number of international migrants is greater than ever because the global population quadrupled during the Twentieth Century. Amb. Swing also examined the important economic benefits of migration and growth created through mobility.

Amb. Swing, however, noted that there is a growing and worrying trend of forced and irregular migration from developing states to developed ones. He argued that this is driven by a combination of forces: international economic disparities between developed and developing states; a demand for labor in the

developed states which is being driven by their aging populations, in contrast to the young populations which characterize developing states; armed conflicts; climate change; the digital revolution and other “distance-shrinking technologies.”

Amb. Swing commended the Model International Mobility Convention (MIMC) for suggesting protections which would ensure that all migrants, regardless of their reasons for traveling, are protected and treated with dignity. He further applauded the MIMC for attending to the needs of different groups of migrants. And that it was “integrated with the recently approved Global Compacts for Migration (GCM) and on Refugees (GCR) and the Sustainable Development Goals.”

The second world Amb. Swing described is a world in conflict. It is characterized by the highest levels of forced migration since the Second World War; tens of millions of people at serious risk from climate change; xenophobia, anti-migrant sentiment, and a belief that governments cannot manage migration; an absence of political leadership; human trafficking; an erosion of international organizations’ moral authority; a disproportionate burden of caring for refugees in the Global South; and the widespread violation of international humanitarian law. These factors make a “perfect storm” against the interest of migrants.

In this second world, walls rather than bridges are constructed between states, and politicians exploit fears of migration for political gain. Many of these fears are based on smears. Contrary to those who claim that “we do not need migrants,” Amb. Swing drew attention to developed states’ need for migrants; he maintained that migrants create jobs; are overwhelmingly not criminals, nor do they exploit welfare systems; or pose a security threat. In summation, Amb. Swing claimed that “there is a crying need to demythologize migration and migrants in the interest of all.”



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The convening at Perry World House reviewed the Model International Mobility Declaration, an abbreviated version of the Model International Mobility Convention.

The final world is one where the MIMD is effective and is able “to establish a common floor of protections applicable to all persons on the move no matter where they are.” This world would “address the migration drivers to reduce forced and irregular migration; to facilitate safe, orderly and regular migration; and, to respect and protect the human rights of all migrants, whether regular or irregular.”

In this world, states would prioritize the saving of immigrants lives above all else; irregular migration would be decriminalized; immigrants would have portable social security and pension benefits; they too would have access to multiple-entry visas, and smugglers and traffickers would be prosecuted.

Amb. Swing expressed hope that this final world might be realized. However, to achieve it, governments would have to change the narrative around migration and make it more positive; manage diversity and integrate migrants; stop armed conflicts and plan for natural disasters.

Amb. Swing concluded by emphasizing that migration is “inevitable,” “necessary,” and “desirable.” And he argued that the “Model International Convention and Declaration promises to be a major tool with which to manage human mobility.”

Welcome Remarks

“The Commission and the signatories invite you to join in the long march of advocating for a comprehensive regime for international mobility.”

- Professor Michael Doyle

Michael Doyle, former Director of the Columbia Global Policy Initiative and University Professor at Columbia University, opened the MIMD Workshop by remarking that the Declaration summarizes the key points in MIMC, a convention negotiated by over thirty experts from around the world. The MIMD is designed to be an accessible platform for further revision and Professor



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Doyle noted there would be no more success coming out of the Expert Meeting than for the MIMD to continue to change.

The MIMC was created to serve as a cumulative and comprehensive treaty for mobility. The rights protected within the treaty not only cover migration but also provide an agenda for mobility as the MIMD packages rights for visitors, tourists, and students, laborers and investors, and forced migrants, refugees, and those trafficked. The treaty distinguishes particular rights and responsibilities appropriate to each when they move across borders and represents the first-ever attempt to comprehensively establish mobility rights. Visitors need access to basic rights, retirees need access to property and bank accounts, workers need access to labor unions, and forced migrants and refugees need rights almost equivalent to nationals as they attempt to establish a new life. The MIMC innovatively establishes a ladder of increasing rights to protect the varying needs of individuals engaged in global movement.

The vision for mobility extends beyond existing human rights treaties for temporary migrant workers and forced migrants to include new protections under the MIMC. The Migrant Workers Convention of 1990 has both too many entitlements and too few rights to adequately protect temporary migrant workers. In contrast, the MIMD increases mobility protections for temporary migrant workers by establishing multiple entry visas, portable pensions, and time limitations on temporary status. At the same time, governments are incentivized to recruit temporary workers through a number of clearly delineated limitations to the entitlements of temporary migrant workers that avoid creating undue financial burdens.¹ The new provisions create a win-win situation for the state and laborers that allows for the

maintenance of family ties for temporary migrant workers and reasonable expectations for governments. In terms of forced migrants, the 1951 Refugee Convention narrowly established a persecution standard on the grounds of race, religion, nationality, social group, or political opinion for refugees. The MIMC creates a new category for humanitarian protection that more broadly defines forced migrants to include 1951 Convention refugees and others experiencing a threat of “serious harm” to better protect individuals whose life is threatened by external causes.²

Other legal innovations include strengthening the governance mechanism through a multistakeholder system, developing new frameworks to facilitate the efficient and safe movement of people across borders, and improving responsibility sharing. The Mobility Visa Clearing House increases safe and regular immigration by allowing for those seeking employment to post the jobs they are hoping to attract on a website accessible to states, corporations, nongovernmental organizations, and individuals. States will also post the number and types of labor and investor visas they propose to offer. The responsibility sharing system proposed is more equitable, organized, and systematic than the mechanism proposed in the GCR. MIMD further improved governance through a multistakeholder committee to monitor the MIMC, manage the needed governance commitments, and settle disputes.

Despite the innovations in the current draft, the opening remarks noted the need for feedback and discussion to continue improving the Declaration and strengthening the treaty through the Expert Workshop. Comments are welcomed during the day and Professor Doyle noted the need for continued dialogue after the workshop.

¹ MIMC Art 98-110

² MIMC Art 98-110 Chapter V



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Visitors, Tourists, and Students

“A compromise to treat people better as you strengthen a state’s long-standing right to filter at its borders.”

- Professor Beth Simmons

The first session was led by Professor Beth Simmons of the University of Pennsylvania. She began it by noting that the MIMC is a “human rights treaty for those who move” and later clarified that it differs from other such treaties by acknowledging a high level of interdependence. She further noted that the MIMD does not give persons more rights to migrate, but rather grants them greater protection as they move.

Professor Simmons further noted that the Convention is a “grand bargain” between developed and developing states, which is the solution to a collective action problem. Developing states, which tend to be origin

states for migration, would receive more favorable protections during migration for their citizens, whilst developed states would receive a more favorable border security regime. The lynchpin of the proposed security regime—machine-readable passports—would be particularly attractive to major industrial countries, which desire a better sense of who is crossing their borders. However, as was noted by many attendees, although there are legitimate grounds for states to know who is crossing their borders, biometrics were potentially exploitable invasions of privacy.

Professor Simmons further noted that the sections which ascribe rights to both tourists and students essentially formed a package of consumer protections. She noted that the MIMC and the MIMD form a floor of protections, upon which individual states could build. It was noted by other participants that other elements of the MIMD, especially its clauses on environmental protection, formed a similar floor too.



Professors Michael Doyle and Beth Simmons discuss the MIMD’s role in strengthening protection for migrants crossing international borders.



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However, it was noted that the MIMD provides an incomplete floor. A participant noted that it does not stipulate consumer protection for healthcare malpractice, for example. And it was agreed that a modified declaration might include such protections. Moreover, when Simmons called for a clearer stance on human trafficking, a second participant mentioned the ban on sex tourism might clash with the laws of those states which have legalized prostitution, and further debate was needed on the implications of this clause.

Labor and Investors

“Tying costly obligations to admissions would give the restrictionists another weapon in their cause and may induce governments to admit fewer workers.”

- Professor Howard Chang

The second session focused on Section IV of the MIMD covering labor and investor rights and included commentary from Howard F. Chang, the Earle Hepburn Professor Law at the University of Pennsylvania Law School. The discussion exposed the possibility of unintended consequences of broader rights for temporary migrant workers and debated whether the inclusion of higher obligations could create a deterrent to mobility.

Professor Chang’s commentary applauded progress in the area of labor and investor rights through specific provisions that support the fair enforcement of labor laws and employment contracts. The MIMD makes modest and appropriate demands by requiring states to assist and protect migrants from abusive practices and creates mechanisms for migrant workers to lodge complaints and engage in dispute resolution.³ In addition, temporary migration would be



Professor Howard Chang discusses implications of the MIMD’s proposals for migrant workers and labor rights.

fostered by those workers enjoying equal protection with nationals regarding access to courts and are provided with reasonable protections for resolving employment disputes.⁴

In other areas, however, the broader rights created by the MIMD could lead to lower levels of mobility in practice. Professor Chang identified specific provisions that create the possibility for discrimination by host countries and the potential for greater restrictions on the admission of low-skilled labor. The MIMD provides the opportunity for foreign workers who are in good standing to reapply for new work authorization after a period of five years. After seven years, however, the MIMD requires either that

³ MIMD Section IV, Paragraph 8

⁴ MIMD Section IV, Paragraph 20 (a)



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temporary workers be sent home or given permanent status with access to national employment training opportunities⁵ and “means-tested social rights.”⁶ Instrumental calculations on the part of governments will likely then create a dynamic where states face incentives to limit the numbers of temporary migrant workers. Rather than creating more international mobility for temporary workers, the MIMD could unintentionally create a labor market that restricts the immigration of low-skilled workers.

In response, it was noted that although the MIMC and MIMD are designed to be human rights commitments, both documents privilege the sovereignty of states and prioritize the rights of citizens above foreigners. The drafters of MIMC were motivated by a concern that an absence of restrictions on the length of temporary migration would tend to create a bifurcated labor market in which the lesser rights of (effectively permanent) temporary labor would incentivize employers to favor hiring them over permanent labor and thereby erode the hard-won labor and social rights of national labor. The MIMC and MIMD were designed to allow for greater labor mobility and eliminate global inefficiencies by simultaneously providing more opportunities for temporary migrant workers while protecting existing domestic workers by limiting the duration of temporary status.

It was further noted that the MIMD was designed to prevent a race to the bottom by creating a more level playing field in the competition for labor that encourages countries to meet the floor standards.

Participants raised important points for the Commission to consider during the revision process of the MIMD and recommended making connections beyond the discussion of labor and investor rights. First, two

participants urged the Commission to consider implications for the Global South as the most educated might be incentivized to migrate from the Global South to the Global North, leaving developing countries worse-off. Others replied that given diverse labor demands and if industrial countries behaved rationally, they would have incentives to admit workers from all industries and skill levels. Second, another participant raised a connection between individuals and groups and suggested thinking expansively about collective rights as people come from families and communities.

Forced Migrants and Refugees

“The Declaration is a bold and remarkable attempt to ensure human rights.”
- Dr. Michel Gabaudan

The third session was on forced migrants and refugees. It had two presenters: Michel Gabaudan and Sarah Paoletti, both of the University of Pennsylvania. Dr. Gabaudan, a Visiting Fellow with Perry World House and former President of Refugees International with a long career with the UN Refugee



Dr. Michel Gabaudan argues for a more coherent global refugee regime.

⁵ MIMD Section IV, Paragraph 20 (b)

⁶ MIMD Section IV, Paragraph 26



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Agency, praised the MIMD for placing its model for protecting refugees into a broader framework of human rights and for its definition of “serious harm,” which is more reflective of who deserves asylum. He further argued that the MIMD gives refugees rights which are comparable to those possessed by nationals of their host states. This, he contended, would lead toward better inclusion and integration. Ultimately, he commended the MIMD for its ambition. In particular, he recognized that the MIMD – in addition to standardizing elements of evolving practice over the past decades, and broadening into only one category the definition of migrants who are subject to non-refoulement – addresses two major weaknesses in the current international protection mechanisms. First, it tackles the question of shared responsibility among UN members. Second, the MIMD offers a model for improving compliance.

Dr. Gabaudan noted that the MIMD’s discussion of “international refuge” has to be simplified. This is because there would be confusion over different levels of rights were the MIMD adopted by countries who already host refugees under the Refugee Convention, and forced migrants under different categories of “complementary protection.”



Professor Sarah Paoletti suggested that the MIMD’s authors should support the use of technology in order to improve information sharing amongst migrants.

He further suggested that the authors of the MIMD establish which rights are considered derogable and which are not. Additionally, Dr. Gabaudan noted that although it would not be possible to calculate the real cost of asylum, any direction on this issue that the MIMD could provide would be valuable. This is because experience has proved that defining the costs incurred by host countries of mass arrivals are very difficult to calculate. Finally, Dr. Gabaudan warned that the UN High Commission for Refugees would find it difficult to verify the status of refugees or those who faced serious harm at home, when they would be coming directly from their country of origin.

Professor Paoletti, Practice Professor of Law and Director of the Transnational Legal Clinic at Penn Law School, also commended the MIMD on its definition of “serious harm,” which she claimed would save lawyers from trying to force vulnerable migrants into a legal framework which does not match their reality. She, moreover, stressed the importance of technology. On the one hand, she noted that it can be used to spread misinformation, but on the other, it could empower asylum seekers. She suggested that the MIMD’s authors should support the use of technology in order to improve information sharing amongst migrants.

In the discussion, one participant noted that there were significant similarities between the MIMD and the 1951 Refugee Convention. Another voiced concern over what would be a reasonable determinant of when a forced migrant did not have a safe internal flight option. And, in a later communication, a third attendee warned that care needs to be taken that refugees fleeing across a border do not spread civil war conflicts to their asylum countries.



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Ambassador Zeid Ra'ad Al Hussein emphasizes the need for more robust governance mechanisms at the international level.

Governance

“There is scope for thinking creatively about governance... Are we dreaming or are we dreaming thoughtfully?”

- Ambassador Zeid Ra'ad Al Hussein

The fourth session focused on governance mechanisms found in Section VIII of the MIMD and included commentary from Zeid Ra'ad Al Hussein, Distinguished Global Leader In-Residence at the University of Pennsylvania's Perry World House, and former Permanent Representative of Jordan to the United Nations, Ambassador of Jordan to the United States, and United Nations High Commissioner for Human Rights. The discussion produced three broad classes of recommendations for the Commission: the relation to existing human rights organizations, the value of an assembly and

tribunal, and the relation to prior human rights treaties.

First, the leadership sharing aspect of the Committee was questioned. Section VIII provides for the reviewing and implementing of the Declaration through a multi-stakeholder Committee that is chaired by the International Organization for Migration (IOM) and the United Nations Refugee Agency (UNHCR).⁷ More attention should be given to the dynamics of power sharing between the IOM and the UNHCR, and the Commission should consider the possibility for an independent, third party head of the committee.

Ambassador Al Hussein urged the Commission to consider including formal governing bodies. For dispute resolution, consideration should be given to the merits of a tribunal and delegation to a third party

⁷ MIMD Section VIII, Paragraph 3



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for impartial adjudication of disputes. In order to prevent non-compliance, a dispute resolution body could be added to the Declaration to settle disputes, determine the appropriate enforcement of remedies, and reinforce the informal system of monitoring by NGOs. Participants noted the value of legalizing the disputes rather than only looking at conflict practically or administratively. In addition, an assembly was proposed to support cooperation between member states. The option of an assembly was a welcome suggestion as the Declaration should facilitate multilateral collaboration where states can express views and commentary.

Finally, it was suggested that the Commission should thoughtfully consider how the Declaration relates to existing human rights conventions. The Declaration was applauded for having all the hallmarks of a classic treaty. Ambassador Al Hussein noted that the Remittance Subcommittee, Mobility Visa Clearing House, and responsibility sharing aspects make the MIMD more ambitious than a normal human rights treaty body, but there is the danger of creating the possibility of forum shopping where states can pick and choose which regime to use in any given situation and avoid obligations. Professor Doyle noted the intention of the Commission is to simply but radically incorporate and succeed both the 1951 Refugee Convention and the Migrant Workers Convention in order to prevent forum shopping.

The open discussion produced additional suggestions for the Commission related to integration and global coordination. All commentators stressed the importance of considering mobility comprehensively and how the ambitious aims of the MIMD will be incorporated into the current structure of human rights protections and governance mechanisms. One participant questioned how the Visa Clearing House and the Global Refugee Fund will fit with existing



Cory Winter and Maggie Powers, formerly of the Columbia Global Policy Initiative, were instrumental in shepherding the document through its development and revision.

mechanisms from the GCM and GCR. In a similar vein, another participant raised the International Labour Organization mechanisms and questioned where these existing features fit within the structures and discussions around the Convention. A third participant stressed the need for crisis response mechanisms and committees to deal with emergencies.

Advocacy Strategy and Policy Development

“Cities are the ideal advocates for migration reform.”

- Sozi Tulante

The fifth session, on advocacy strategy and policy development, had three presenters. Professor Ilgü Özler of SUNY New Platz, Dr. Rebecca Brubaker of the United Nations University, and Mr. Sozi Tulante of the University of Pennsylvania’s Perry World House and Penn Law School. Professor Özler first pointed to three problems which are faced by advocates of the MIMD. The first is that the current global political climate is very hostile towards migrants and refugees. The second is that the civil society



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institutions which might otherwise support the MIMD are currently “on the defensive” in the face of this public hostility. Consequently, she suggested, they might be unwilling to support such an ambitious proposal as the MIMD at this time. Instead, they might support smaller and more incremental advances. Third, Professor Özler argued that the MIMD was developed by academics, apart from NGOs, IGOs, and states. She therefore suggested that it has to be made more accessible to them and translated into stories and actionable items, in order to convince these agents that they need to have a stake.

Professor Özler, however, offered three reasons for optimism. First, because many NGOs are currently campaigning for the wellbeing of migrants and refugees, they would not need to be convinced of the MIMD’s importance. Second, historically, many human rights treaties emerged despite states’ initial resistance. Third, some states might be amenable to the Model International Mobility Declaration.

Professor Özler, therefore, made three recommendations. First that the MIMD’s architects should support NGOs that are

under pressure. Second, she suggested that advocates for the MIMD ought to engage in a deliberative process with NGOs, in order to strengthen the MIMD. Third, she suggested that the MIMD ought to be supported by a civil society coalition with a few champion states. The states suggested by various attendees were Argentina, Canada, Chad, Chile, Ecuador, Ethiopia, Mexico, New Zealand, Portugal, Spain, Thailand, and the members of the African Union. Dr. Gabaudan noted that if developing countries took up the MIMD, they could apply some pressure to developed states. Various civil society organizations were suggested by participants as potential partners of the MIMD, including Amnesty International, United Nations Office for the Coordination of Humanitarian Affairs, the United Nations High Commission for Human Rights, Religions for Peace, and the Quakers.

Dr. Brubaker argued that there had to be greater awareness of the MIMD within United Nations circles if it is to be successful. In response, it was suggested by a participant that the United Nations University might be an ideal partner in that regard.



The workshop brought together scholars from Penn and beyond with practitioners to debate the MIMD’s proposals.



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As part of developing a broader strategy of advocacy for the MIMD, Sozi Tulante emphasizes the role of city governance and networks among cities around the world.

Mr. Tulante, former Philadelphia City Solicitor, argued that cities were ideal advocates for the MIMD for three reasons. First, much of what seems aspirational about MIMD are actually tasks currently performed by cities, and this could be an important framing device for the MIMD. Second, cities have the ability to lobby their national governments and could therefore advance the MIMD if they took it up. Third, cities can help change the public narrative that surrounds immigrants and refugees. Mr. Tulante further noted that city and other municipal officials, such as the police, would be amenable to the MIMD as they prioritize building relationships with immigrant communities.

Three points were noted on Mr. Tulante's argument. First, one participant remarked in the discussion that the MIMD largely reflected views from the Global North. Many participants concurred and highlighted the potential of cities in the Global South to both develop and advocate for the MIMD. Second,

a participant suggested that the coordinated action that mayors have taken on climate action might provide a model for their advocacy for the MIMD. Third, it was noted that in many countries without federal systems, mayors would have little ability to link the MIMD to their current practices. Nonetheless, it was generally agreed that mayors could be important allies for the MIMD and that they ought to be approached.

Finally, it was agreed that any advocacy work would have to take place over a number of decades. In response to this timeline, one participant pressed architects of the MIMD to decide whether they wished to take an incrementalist approach or aim for the declaration to be implemented in one go. Many of the attendees suggested a preference for a big leap, rather than incrementalism. It was thus further suggested that the MIMD's architects clarify which elements of the MIMD are non-negotiable, and which elements could be compromised on.



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Closing Remarks

Professor Michael Doyle thanked participants for a fruitful day of discussion and expressed gratitude for the thoughtful suggestions and detailed commentary. The feedback from the workshop will be used to inform changes to the MIMD and make necessary modifications. Following the workshop, the Commission will make revisions to the MIMD and circulate to other members and workshop participants. Professor Doyle welcomed the submission of comments after the workshop and continued dialogue on revisions to the MIMD.

Participants were encouraged to consider advocacy approaches as the MIMD moves from development to implementation. The current leaders of the Model International Mobility Convention seek new partners and advocates as the team shifts from conceptualization of necessary mobility rights to formulating an adoption strategy. Partners are welcome from private and public industry, and the discussion revealed important potential for collaboration with city mayors, the United Nations University, and NGOs. Academia will continue to be an important component of the effort and Professor Doyle encouraged the development of committees and multidisciplinary teams at universities and research institutes. Discussion also suggested the democratization of the development process, with the inclusion of more voices from the Global South and from many of the principal communities affected by the provisions of the MIMD and MIMC.

Workshop participants were also urged to consider taking a larger leadership role in the promotion of the MIMD. The future home institution of the MIMD is uncertain, and the possibility exists for a new organization, state, or individual to become its champion. Volunteers and new leaders are welcome to play a larger role as we continue in the effort of making the protections embodied in the Convention and Declaration a reality for mobile individuals around the world.

Rapporteurs: Nathan Hillel Feldman and Rachel Ann Hulvey