

UNSAFE, DISORDERLY, AND IRREGULAR MIGRATION? EXAMINING
THE ASSUMPTIONS UNDERLYING THE UNITED NATIONS' NEW
YORK DECLARATION

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The argument of this article is that achieving safe, orderly, and regular migration requires states to embrace their responsibilities in international human rights law, including at their borders. This can only be done effectively by disaggregating border control from migration regulation and law enforcement. The attempt to use border control to further the latter is one of the most important contributing factors to unsafe, disorderly, and irregular migration. The vast majority of people who cross international borders do so safely, orderly, and in a regular manner. Only a very small proportion of them are placed at risk. By examining the differences between the movement of the majority and the risks suffered by the very small minority, it will be possible to take effective measures to promote safe, orderly, and regular migration. The international human rights responsibilities of states when exercising their state sovereign entitlement to control their borders and the movement of persons across them includes an obligation to desist from applying measures which result in unsafe, disorderly, and irregular movement.

UNSAFE, DISORDERLY, AND IRREGULAR?

The New York Declaration, adopted by the United Nations General Assembly Resolution of 19 September 2016,¹ is intended to contribute to safe, orderly, and regular migration around the world. This is a very important objective on which all states represented at the UN can agree. The New

York Declaration calls for action in light of large movements of refugees and migrants.² Further, the overarching framework of the New York Declaration is the 2030 Agenda for Sustainable Development, perhaps not the most obvious as migrant and refugee protection are not self-evidently development issues as such, though there are development angles.³

The immediate objective is that by the end of 2018, the New York Declaration will be provided implementing measures in the form of two Global Compacts: one on refugees, and one on safe, orderly, and regular migration. The Global Compact on Refugees has been allocated to the United Nations High Commissioner for Refugees (UNHCR) to develop and lead. The Global Compact on Safe, Orderly, and Regular Migration⁴ will be led by an intergovernmental process supported by the Secretary-General of the UN. The UN Special Representative for International Migration⁵ has a leading role in the process, while the International Organization for Migration (IOM) has been allocated a supporting role.⁶ This article addresses a number of legal and policy issues which must be addressed in order to achieve an international system which privileges safe, orderly, and regular migration. Many of the issues which are developed here are also relevant for refugees who are frequently among those most at risk from unsafe, disorderly, and irregular movement across borders. However, refugees are not the main focus of this article, not least as they are beneficiaries of the UN's 1951 Convention Relating to the Status of Refugee and its 1967 Protocol⁷, which provides for specific obligations of states towards refugees, including regarding their admission at the border.⁸

The argument of this article is that achieving safe, orderly, and regular migration requires states to embrace their responsibilities in international human rights law, including at their borders. This can only be done effectively by disaggregating border control from migration regulation and law enforcement.⁹ The attempt to use border control to further the latter is one of the most important contributing factors to unsafe, disorderly, and irregular migration. The vast majority of people who cross international borders do so safely, orderly, and in a regular manner. Only a very small proportion of them are placed at risk. By examining the differences between the movement of the majority and the risks suffered by the very small minority, it will be possible to take effective measures to promote safe, orderly, and regular migration. The international human rights responsibilities of states when exercising their state sovereign entitlement to control their borders

and the movement of persons across them¹⁰ includes an obligation to desist from applying measures which result in unsafe, disorderly, and irregular movement. The New York Declaration affirms that “States have rights and responsibilities to manage and control their borders” (para 24).¹¹ That these rights come with responsibilities is a generally accepted principle of law. States’ right to control their borders is accompanied by the responsibility to ensure respect for the human rights of those crossing them—migrants. Their right to dignity and physical integrity is the responsibility of states to assure in their application of border controls and related measures.¹² This is also an intrinsic part of the recognition in the New York Declaration that migrants (and refugees) are rights holders.

We reaffirm the purposes and principles of the Charter of the United Nations. We reaffirm also the Universal Declaration of Human Rights and recall the core international human rights treaties. We reaffirm and will fully protect the human rights of all refugees and migrants, regardless of status; all are rights holders. Our response will demonstrate full respect for international law and international human rights law and, where applicable, international refugee law and international humanitarian law.”
New York Declaration (para 5).¹³

Starting from this reaffirmation by the international community of their objectives regarding the establishment of an international system of safe, orderly and regulation migration, I will examine why the key to achieving the objective is grounded in a disaggregation of border controls from immigration regulation and law enforcement.

MIGRANTS AND MIGRATION

Before proceeding further, some terminology in particular needs to be made clear: who are migrants? Many words are used to describe people who cross international borders. The most traditional binary categorization is between citizens of the state (the territory of which being entered) and aliens. “Alien” is a general term which has been commonly used in international law to describe anyone who is not a citizen of the state in which he or she is found.¹⁴ But this simple terminology is out of fashion. Instead, many alternative terms are used such as foreigner, migrant, tourist, visitor, refugee, asylum seeker, and many more. Each term seeks to express differences of attributed intentions and objectives of the person described mainly in terms

of length of stay on the territory and activities or links there. Each term also seeks to capture the legitimacy of migratory ambitions of people who cross international borders (hence the terms “illegal,”¹⁵ undocumented, or irregular migrant are in common currency).¹⁶ However, the allocation of one term to one group and another elsewhere is mostly based on speculation and assumptions founded on very partial information and knowledge.¹⁷ The presumption by state authorities regarding the objectives of people based on collective characteristics extrinsic to the individual such as place of birth, nationality, or place of departure are inherently discriminatory and offend the right to dignity of all people.¹⁸

It is worth bearing in mind that the UN World Tourism Organization estimates that there are more than 1.2 billion tourists who travel across borders each year.¹⁹ What is the difference between a tourist and a migrant? The International Organization for Migration (a UN-related organization) defines a migrant as “any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.”²⁰ This definition is so wide that it includes people who move house even within the same city (let alone within the same country). It is probably too wide to be valuable for the purposes of the Global Compact which is focused on migration which has an international border element.

The Office of the High Commissioner for Human Rights (OHCHR) defines migrants as people who live outside the borders of their state of origin.²¹ Instead of creating normative categories such as travelers, tourists, visitors, migrants, asylum seekers, refugees, repeat border offenders²², or any of the multitude of other words used, deploying one term only—migrant—creates a level playing field. In order to describe the cross-border movement of people in a consistent manner which is not tainted by normative constructions which are created by imputing intentions to people moving, the term migrant is useful. If all cross-border travelers are described in the same manner, that is to say as migrants, the term “migrant” may lose its stigma as a term to describe only unwanted aliens.²³

This also resolves the citizen-alien binary where cross-border movement is determined by reference to a state of nationality.²⁴ Christina Oelgemöller has examined in depth the arrival of the “transit country” as a mechanism of

migration management by a number of states which avoids the conundrum of the rights of citizens by placing people on the move in an intermediate territory (the transit state) where they do not enjoy citizenship rights but are suspected of planning onward movement.²⁵ This allows states to treat some people, in particular those outside their jurisdiction, as migratory or law enforcement risks without having to address the problem that these people are citizens in their own state, subject to the laws of their own state. Anxiety about people on the move can then be expressed without offending the authorities of other states about the imputed intentions of their citizens. But migrants are also citizens of some country²⁶ and their home state is entitled to champion their interests irrespective of what country they are in. This is affirmed in the New York Declaration:

We commit to safeguarding the rights of, protecting the interests of, and assisting our migrant communities abroad, including through consular protection, assistance and cooperation, in accordance with relevant international law.²⁷

The international community is composed of all states and its policies must reflect the interests of all states to protect their citizens including when they are migrants in another state.

Similarly, I will also use the term migration to cover arrival and stay (of any duration) of a migrant in a country of which he or she is not a national. Increasingly in policy and even academic papers, officials and academics seek to differentiate between mobility and migration.²⁸ However, there is no clarity what the difference between the terms is other than the insinuation that one is positive (mobility) and the other risky (migration). This creation of different terms for what is fundamentally the same act mirrors the categorical differentiation between tourists and migrants. It is equally empty of real content. I recognize the political objective of some policymakers and academics to “rescue” cross-border movement of persons from the pejorative appellation of migration, but I am not convinced that it is intellectually sustainable.²⁹ Thus, I will avoid this false differentiation between mobility and migration and use the term migration to cover all cross-border movement of migrants.

UNSAFE MIGRATION

Unsafe migration and the loss of life in migratory movements across countries and seas is a stain on the international community’s commitment

to protecting human rights. It is a tragedy for the people who suffer and sometimes die and for their families. It is unacceptable that states allow these tragedies to occur. According to the IOM's project, *Missing Migrants*, by April 2017, 1,178 persons had been lost in international migratory movements worldwide in that year.³⁰ The majority of these losses (663) took place in the Mediterranean, accounting for 56.3% of the total. According to the same source, the tally in 2016 was 7,763 losses with Europe, accounting for 5,098 of them, or 65.7% of the total. These losses are terrible and a blight on the reputation of all countries which are implicated in them.

These losses take place in particular places: in the Mediterranean Sea and, for North America, at the land border between Mexico and the USA. They do not take place at airports. Nor do they take place at sea borders in North America or land borders in Europe. The greatest loss of life at a European airport in 2016 was 33 people who died in a terrorist attack at Zaventem airport in Brussels on March 22nd.³¹ Most of these people were also travelers, or in the language of OHCHR, migrants.

The migrants who lost their lives at Brussels airport were victims of a bomb attack, a very sad but rare event in Europe and in most of the world.³² The migrants who lost their lives crossing the Mediterranean did so because the only boats which they could catch were unseaworthy, the personnel (to glorify the role of those guiding the boats) un-unionized, and the conditions incompatible with European health and safety standards. The migrants trying to leave Belgium who were killed in the bomb attack and the migrants who lost their lives in unsafe boats have little if anything in common other than premature death.³³ The migrants at Zaventem airport were the victims of a plot by a very small number of politically motivated people, at least two of whom died while carrying out the attack.³⁴ But those who suffer and in some cases die in boating accidents in the Mediterranean do so because they cannot get access to safe travel as a result of obstacles placed in their way by states.³⁵ Migrants do not need to die crossing the Mediterranean.³⁶ There are thousands of safe ferry crossings across the Mediterranean from the Southern to Northern shores and vice-versa every day; these are also very cheap—often less than \$55 (Canadian).³⁷

Safe migration is available for most migrants—the 1.2 billion people who move every year as tourists.³⁸ Unsafe migration is the exception. It is the result of obstacles which states place in the way of some people which make safe migration unavailable.³⁹ These obstacles include visa requirements

and sanctions on carriers which do not refuse transport to migrants without the right documents. They also include databases filled with various bits of personal data of questionable quality⁴⁰ about migrants. The contents of these databases are frequently shared among groups of countries⁴¹ with exclusionary consequences for migrants.

DISORDERLY MIGRATION

Disorderly migration is a lesser misfortune than unsafe migration in that it does not necessarily result in people's lives being at risk.⁴² It is a headache for a relatively small number of state officials (border guards) responsible for orderly border crossing, which is mainly an administrative issue. When people turn up at borders in unexpected places where border guard facilities are not available, then administrative formalities are not completed.⁴³ If the numbers become substantial, state authorities may become concerned about the accuracy of their knowledge about who is on their territory. There is always some disorderly border crossing going on, for instance, where owners of pleasure boats decide to change their destinations and arrive at small islands, for example, in the Mediterranean or Caribbean where there are no border guards present. Ramblers on traditional country trails may stray across international borders unwittingly and thus arrive in a "disorderly" fashion in another country.⁴⁴ But these forms of disorderly arrival are not those which the UN's New York Declaration seeks to address. These and many other forms of "disorderly" border crossing by persons are dealt with by administrative presumptions which resolve, legally at least, the disorder.⁴⁵

The more successful states' efforts to channel movement of persons into and out of their territory, the less disorderly that movement becomes. Thus, airports are places which tend to be well organized in separating those arriving from another country from those moving within the state. Similarly, those departing to another country tend to be well segregated from those arriving both internationally and nationally. Much of this kind of airport management regarding citizens and migrants is built into the architecture of the buildings.⁴⁶ The construction of highways capable of simplifying arrival of cars and trucks at specific places along international borders has the same function of bringing the majority people crossing the border to places where there are officials expecting them. State efforts to make border crossing more difficult for some people may have the effect of creating disorderly migration by pushing those migrants who are determined to attempt to cross the

border towards more perilous and disorderly arrival.⁴⁷

Disorderly migration can, in principle, take place anywhere people arrive across an international border. Whether the arrival is orderly or disorderly depends primarily on whether the relevant state authorities are present in sufficient numbers to undertake the job of border control, and whether the job of border control is properly articulated to the numbers of persons crossing the border. It is worth remembering that the EU's border agency, FRONTEX, has calculated that each EU border guard has a total of 12 seconds to decide on admission or refusal of each person crossing an EU external border.⁴⁸ The reason for this is very simple, and FRONTEX explains it well in its report. Efficiency and the expectations of travelers and authorities that border posts will operate both quickly and smoothly is paramount. Delays in processing travelers can cause tremendous pressures at airports, long queues at land borders and delays for ships and ferries. These inconveniences are not acceptable to our politicians, our citizens, our businesses, and ourselves. One common way of dealing with unexpectedly large numbers of people arriving at international borders is to relax the intensity of controls on them. This happens regularly at airports where on account of weather conditions, unexpectedly large numbers of airplanes arrive at once causing backlogs.⁴⁹ Another state response is to claim a crisis is occurring.⁵⁰ What is key is that disorderly migration is a consequence of state authorities' choices regarding border control activities. It is neither a natural phenomenon nor a normal one but is, to a very large degree, created by the actions of state authorities.⁵¹

The numbers show that disorderly migration is very much the exception. It is much easier for border guards to do their job if migrants arrive where they are expected. Encouraging them to do so through good infrastructure simplified everyone's lives. Taking only two parts of the world, the EU and the USA (both of which express substantial concern about disorderly migration) the USA admitted over 76.5 million people (in the non-immigrant categories) in 2015.⁵² Its authorities refused admission to 253,509 people at the border in the same year.⁵³ The EU admitted about 289.5 million people in 2016 and refused admission to 206,656 persons that year.⁵⁴ The admission figures are particularly conservative leaving out substantial categories of migrants. The refusal figures are particularly accurate, at least so the relevant authorities claim.

IRREGULAR MIGRATION

Irregular migration introduces quite a different issue from unsafe and disorderly migration. Border crossing is primarily based on rules defined in terms of the possession of travel documents. There is a presumption that a migrant in possession of the requisite travel documents will be admitted to the state, as the statistics above on refusal of admission to the EU and USA show. Stay on the territory of a state is normally covered by another set of rules which are based on how long the migrant wants to stay, and what he or she wants to do there. This second set of rules which apply within the state's territory determine regularity or irregularity of a migrant's situation. Well-designed immigration rules accommodate the reasonable ambitions of migrants – such as family reunification or studies – so that migrants do not become irregular and outside the applicable national residence laws. The separation of regular from irregular migration presupposes that a state has a system not only of border control but also of migration laws and requirements against which the requests of migrants can be judged.⁵⁵ The immigration laws of the state where the migrant is present apply in respect of stay and activities permitted. States of departure cannot know what the requirements of those laws are. This irrelevance of the immigration laws of destination states is expressed in the US practice of not conducting border controls on migrants (including US citizens) leaving the state. Similarly, in the EU the relevant law, the Schengen Borders Code, requires a border check on everyone leaving the territory but exclusively for the purpose of checking that migrants have complied with the time limit on their EU stay. There is no reciprocity in border controls vis-a-vis the immigration laws of a destination state. Equally, law enforcement depends on national criminal and civil laws which are extraneous to border controls.⁵⁶ Law enforcement is an activity which takes place within states, and is only exceptionally relevant in respect of border controls.

Irregular migration is linked to a migrant's presence within the territory of the state not with the state's border practices.⁵⁷ The two become linked as states seek to use border control tools to regulate migration and then justify the elision of border and migration control into one process. It is this confusion between border control and immigration control which is at the center of many of the problems of unsafe, disorderly and irregular migration. The same is true of the elision of border control and law enforcement. These two fundamentally different state activities cannot be merged without negative

impacts on safe and orderly migration.

Regular or irregular migration is premised on the law. It is the law of destination state which is at issue. That law is entitled to define what the status of a migrant is. Before a migrant arrives at a state's border, he or she is neither a regular nor an irregular migrant by reference to the possible destination state. This is because the law of the destination state does not (yet) apply to him or her. Extraterritorial application of national law is a complex and controversial field of law. Immigration laws are so varied and complex that it is very difficult if not impossible to reach any international agreement on extraterritorial application of these national rules.

As a matter of consular agreement between host and destination states, authorities may require migrants to obtain visas at their consulates abroad before traveling. But in order to determine whether a migrant is regular or irregular, he or she will have to be within the territory of the destination state. This is an immigration control tool, not a border control activity. It is the interaction with the state's laws which creates the distinction between regularity and irregularity when they interact with the presence and ambitions of the migrant.⁵⁸ This will only become apparent after the individual has arrived in the state and is staying there. Borders are particularly ill-adapted for complex decisions on immigration status.

Further, a migrant can be regular one day and irregular the next as the result of the passage of time (the end of a period of permitted entry and residence) or of the law (a change of the migration category which places the migrant outside the new requirements). It can be one of activity, for instance, where a foreign student is permitted to work for a specific number of hours a week, but in fact works more hours one week, and thus, is no longer regular in accordance with the terms of his or her student visa.⁵⁹ If the following week the student's hours of work drop below the threshold he or she may dip back into regularity. The place where irregularity takes place is related to the territory of the state (within that territory) and subject to the laws of the state where the migrant is present. Only the officials of that state will know definitively what their laws mean and how they should be applied to migrants. This is their job, not that of officials of other countries or private companies.⁶⁰ This application of national law within the state to migrants is even more pronounced in respect of law enforcement. National laws are under the exclusive control of national authorities and vary dramatically from one state to another. The creation of offences which only

migrants can commit, such as the criminalization of irregular stay, is equally nationally determined.⁶¹ This has numerous negative externalities which have been highlighted by academics and human rights authorities. Such laws may encourage policymakers to consider border controls as a venue where law enforcement can be used to stop migration crimes from being committed. This is a profound mistake. Border controls on migrants cannot be used to predict who might commit an immigration crime subsequently.

WHO DETERMINES REGULAR MIGRATION?

The national law of each of the 193 Member States of the UN determines which migrants are regular and which are not.⁶² Only the national law of each state can express the state sovereign entitlement to determine which migrants are permitted to enter and remain on their territory, and which are to be refused or expelled.⁶³ Some groups of states may pool their state sovereign entitlement to create common travel areas such as the European Union⁶⁴ or MERCOSUR⁶⁵ in South America, but this is only another expression of the state sovereign entitlement to allow or refuse migrants residence on their territory. Any attempt to shift of the focus for determining what is regular migration from the destination state to all other states may need to be examined in the UN's process of adopting its Global Compact on Safe, Orderly and Regular Migration.⁶⁶ The argument here is that determining regular migration from its irregular counterpart and law enforcement activities should not be woven into border controls. Regularity, irregularity, and law enforcement are matters of national law and under the control of each state separately, subject only to (fairly limited) international and supranational obligations. Therefore, they are activities which should take place within state's jurisdictions (and within their territories) and cannot effectively be transferred to the international community.⁶⁷ If states want other countries to undertake their immigration control or law enforcement activities, they need to start by agreeing what laws will apply to immigration. Only after they have reached agreement on common immigration laws can there be any question of common application. Common application will also require common interpretation, so a supranational dispute resolution mechanism will be required. This is not impossible; the EU's laws on free movement of workers is a good example. Since 1967, all nationals of the EU Member States have been entitled to cross intra-EU borders to look for and take work in any other Member State.⁶⁸ Where they do so, they are regular because the

Member States have agreed on a law which applies to all of them and which requires all states to recognize the regularity of migrant workers from other Member States. This position is not incompatible with expulsion—if an EU migrant worker commits an offence of sufficient gravity to invoke the exception of public policy or security, the host state can expel him or her.⁶⁹ But the key is that these states have agreed to a common immigration law which applies to the citizens of all the Member States and which all Member States apply.

Further, in the EU example, a determination whether an EU migrant worker is a threat to public policy or security cannot be taken at the border in the absence of a previous expulsion decision backed up by a lawful re-entry ban. Any issue about the regularity or irregularity of the EU migrant worker's activities or planned activities on the host Member State's territory must be dealt with by the immigration officials within the state. Sadly, these clear and efficient rules which apply to EU nationals moving among the Member States are not applicable to third-country national migrants (nationals of countries outside the EU) arriving for the first time at the EU external border. The political argument against simple immigration rules which are inclusive and permit people to carry out their life projects is that rich countries will be inundated with people from poor countries.⁷⁰ Yet the experience of the European Union points to the contrary—even free movement, work, and residence for nationals of a wide range of countries with very different GDP and unemployment levels to and in other countries of much higher GDP and lower unemployment—does not result in massive movement of persons from poorer to richer countries.⁷¹ It is worth noting that this common immigration law of the EU has resulted in only 2.8% of the EU population living in a Member State other than that of their nationality.⁷² There are substantially fewer EU national migrants living in other Member States than non-EU national migrants living in the EU.⁷³ The argument that national immigration control measures (including border controls) are central to preventing mass migration is not substantiated by the reality of free movement of persons in the European Union over the past sixty years.

Further, even in parts of the world where strong border controls and restrictive immigration rules apply, the vast majority of migrants are regular. The 1.2 billion migrants counted by the UN World Tourism Organization are mainly regular.⁷⁴ This is also in light of the fact that the dividing line

between regularity and irregularity is not always clear in national law. For the reasons set out above, this line is generally incomprehensible outside the national territory. But one measure of whether a state considers a migrant to be irregular or not is when the state takes expulsion action against a migrant. This is a clear and internationally recognizable act that a state has determined a migrant to be irregular and no longer welcome on its territory. In many countries, this is also a law enforcement activity. Thus, it is not unreasonable to have regard to statistics on expulsion in order to understand the seriousness with which states take irregularity and migration law enforcement. These are publically available in at least two parts of the world, both of which express substantial concern regarding the regularity of migrants and law enforcement: the EU and the USA.

Expulsion matters, as it is the most decisive act of a state regarding the unwanted nature of a migrant. State authorities need to make decisions based on evidence that a specific migrant is no longer welcome, and then take action to send him or her home. According to the US Department of Homeland Security, the USA expelled 438,000 people in 2013.⁷⁵ In 2014, 34.5 million people visited the US.⁷⁶ The state lauded this figure because it was up from the previous year. This would seem to indicate that although a limited number of people are unwelcome after they arrive, that has little impact on state policy to encourage increasing numbers of arrivals.

In the EU, a part of the world much convulsed by unsafe, disorderly, and irregular arrivals of substantial numbers of refugees and migrants in 2015–2016, there are fairly reliable statistics on the expulsion of migrants. According to the EU's border agency, FRONTEX, 79,608 migrants were subject to forced expulsions in 2016.⁷⁷ This figure is consistent with previous years. FRONTEX also counts arrivals (though rather loosely), estimating 289 million people entered the EU in 2016 (as voluntarily reported by national border guards).⁷⁸ Thus, a similar picture emerges for the EU as that seen in the USA. These two parts of the world are much concerned about the application of their immigration regulations internally and insist on compliance by migrants. The incidence of failure to comply which results in expulsion is very low in comparison with the migration figures. The facts do not support the argument that immigration regulation must be woven into border control procedures.

THE STARTING PLACE FOR SAFE, ORDERLY, AND REGULAR MIGRATION

In this article, I suggest that the starting place for a Global Compact which promotes safe, orderly and regular migration must be the disaggregation of border controls from immigration regulation and law enforcement. Migration regulation and law enforcement should take place within states. Border controls must have clearly limited purposes, permitting states to know who is on their territory and to check that those arriving are documented. They should take place only at the borders of states, not within the territory of other countries or international waters. Practices which push even tiny numbers of migrants to arrive undocumented and unsafely must be avoided. This is part of states' responsibilities to the international community regarding their border controls.

Migration regulation must be limited to its field of action within the state determining what migrants can do, and for how long on the territory. Full respect for human rights, including family reunification, labour standards etc., must be the priority of migration regulation. Migrants who have arrived for one purpose should be permitted to change to another status, provided that they meet the relevant national rules. Mandatory prior visa requirements should be used sparingly, and only in circumstances where genuinely necessary information to determine an application is only available to the decision maker in the country of origin of the migrant.

Using the border as a mechanism to force people to travel long distances in uncertainty in pursuit of the application of migration regulations is a key component of unsafe, disorderly, and irregular migration. Families must be allowed to live together, refugees must be given international protection, and businesses must be able to hire the workers they need in accordance with clear and simple migration rules.

The international community needs to recognize a presumption in favour of migration for all people irrespective of their nationality. This presumption should only be displaced where states have specific grounds to refuse entry to a migrant on the basis of facts specific to the migrant's behaviour. Rule of law requirements must cover border controls, migration regulation, and law enforcement. These rules must be contained in law which is clear, precise, and accessible to people so that they know what they must do to comply. These simple actions by states would contribute enormously to safe, orderly, and regulated migration around the world.

ENDNOTES

1. UN General Assembly, *New York Declaration for Refugees and Migrants*, A/71/L.1, para 24, September 19, 2016, accessed at <https://refugeesmigrants.un.org/declaration>.
2. This is rather hard to define and the Declaration makes no attempt to do so.
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 12. UN Human Rights Committee (HRC), *General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add.13, May 26, 2004, accessed at <http://www.refworld.org/docid/478b26ae2.html>.
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