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International Migration: Crisis or Opportunity?

How Can Human Rights, Rule of Law and Sustainable Development Make a Difference?

Part of the James Anderson Migration and Security Studies Program Series

Ms. Khan begins by illustrating the current migration situation, establishing that there are 244 million international migrants, 50% of whom are women, about 14 million are refugees. Refugees seeking relief from persecution, have the most structured protections of their human rights. Other less protected migrant groups include people who are seeking relief from conflict, poverty, disasters, among other issues. Many of these international migrants are legal, but some are not. Termed “survival migrants,” these people are the least protected by the international legal system. They are often poor and extremely vulnerable, and they are disproportionately women. Khan argues that their vulnerability stems from three points of failure: the current Rule of Law is inadequate for this crisis, institutions neglect their obligation to protect the most vulnerable, and governments have yet to find the political will to solve the current migration crisis.

Khan argues various players in the international system either lack the legal framework, or their legal frameworks are too weak to provide for universal human rights. She establishes that Rule of Law, good laws back by competent institutions, is the system that protects most global citizens and provides us with a system in which we can reach our full potential, but that this system is missing from the migration problem. As people cross borders – becoming migrants – they often leave behind physical danger only to be confronted with physical and legal vulnerability.

Khan argues multiple institutions fail to protect migrants. The current international legal system is based on citizenship, creating a hole between law and rights. All humans are rights holders, but it is clear which people or institutions hold the duty to ensure all humans retain those rights. In a well-functioning system, the state, which owes their citizens these rights, can and will assume responsibility for those rights. Yet many of the states which migrants flee cannot or will not provide legal identity to their citizens. In the system of international human rights, all people have rights, but without papers, legal documentation, there is no way to attach rights to an identity.

Khan asks who becomes responsible for enforcing human rights – for investigating and prosecuting and protecting – when the issue becomes international. She explains the current legal system was developed over the last 70 years and is flavored the geo-politics of another era. The United Nation’s 1951 Refugee Convention first established legal protections for refugees motivated to seek asylum by fears of persecution. Those legal protections included recognition of education credentials and the right to work, but limited the definition of refugees to origins on the European continent. The 1967 Protocol removed the geographical boundaries from the definition of a refugee, but did not update the acceptable motivations. Khan argues this definition does not work for today’s crisis.

Today, there are approximately 14 million refugees, migrants who have a valuable legal system to protect them – a legal system shaped around perceived motivation, not actual vulnerability. This leaves a significant portion of the remaining millions of migrants without protections. Yet vulnerability is the same for both types of migrants, the risks they face are the same. Khan argues human mobility and human dignity must go hand in hand, and references a growing trend to view migration as valuable to the economy. As experts come to understand the positive effect of migration on economics, of both the origin and terminal countries, there is an increasing push for more mobility. But Khan worries that the codification of migrants sets them as pawns of globalization rather beneficiaries. Migrants benefit the economies in the countries where they work, and their

remittances benefit their countries of origin. Yet the migrants lose in this system where, by nature of being irregular, they cannot organize to protect their human rights.

Khan believes there is a way ahead. The UN's 2030 Agenda for Sustainable Development, issued a legally non-binding but policy setting set of goals, placing emphasis on safe, orderly migration over the next 15 years. Khan hopes this will influence a paradigm shift in the international community, moving the conversation away from revenue to rights. In this and other recent UN meetings, such as the New York Declaration for Refugees and Migrants, Khan sees hints of a new framework – hints that duty bearers may emerge from a broader approach to migration, hints that human rights supporters and humanitarians will come together to solve the migration crisis.