

International cooperation to regulate (circular) migration – can private international law be a source of inspiration for a triple win?

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*Preliminary reflection: crucial distinction between, on the one hand
Asylum seekers and Refugees, and, on the other, Labour migrants
and other migrants*

Migrants and Refugees

- In the public debate, asylum seekers and refugees are often **confused** with migrant workers and other migrants.
- However, there is a crucial difference:
 - If a person claims protection and is entitled to such protection under the applicable law, that protection must be given to him or her. **He or she may not be returned to the country from which they fled or expelled to the frontiers of other territories where their life would be threatened** (principle of *non-refoulement*).
 - Economic and other migrants, on the other hand, who are not entitled to such protection, are often driven by the desire to improve their living conditions in the country to which they (seek to) migrate and, significantly, are often drawn to that country because its economy needs them.
- Important aspect of these different situations: in the case of refugees, relations between the country of origin and the host country are usually completely **severed**, whereas in the case of migrants, these relations generally continue, which offers **opportunities for cooperation** between the two countries.
- Despite the fundamental difference between case of person seeking protection as a refugee and that of other migrants, these situations are often lumped together and the various factors leading to migration are **ignored**, not least the fact that the **need for labour in the host country** is often a crucial **pull factor for migrant workers**.

Some facts and figures on international migration, labour migration and international remittances

168million International Labour Migrants – sending \$ 830billion in remittances to home countries

- According to its latest report on international migrants in the labour force (2024), the ILO estimates that
 - “the global stock of **international migrants** reached **284.5** million in 2022, with 255.7 million of them of working age (15 and over) (...). In the same year, the number of international migrants in the labour force, defined as international migrants who are employed or unemployed, was **167.7** million – over 30 million more people than in 2013. Among those, 155.6 million were employed and 12.1 million were unemployed (...)”.
 - <https://www.ilo.org/sites/default/files/2025-09/MIGRANT%E2%80%93ILO%20Global%20Estimates%20on%20International%20Migrant%20Workers.pdf>
 - As to the **international financial of in-kind transfers** made by migrants to their families or communities in their countries of origin, according to IOM’s World Migration Report 2024, “Available data reflect an overall increase in remittances in recent decades, from \$128 billion in 2000 to **\$831 billion** in 2022”.
 - <https://worldmigrationreport.iom.int/m-site/wmr-2024-interactive/>

The global legal architecture for migration

A gap in international governance regarding (labour) migration

- **Treaties:** *1951 UN Convention relating to the status of Refugees* and *1967 Protocol*: international cooperation for the protection of persecuted persons (non-refoulement – 149 States parties).
 - *1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* (60 States parties, representing 30 % world population only) binds primarily countries of origin of migrants: **Major migrant-receiving States have not joined the Convention.**
- **Institutions:** **UNHCR** – guardian of Refugee Convention; **ILO** – labour migration; **IOM** (joined UN in 2016) – operational, no normative role.
- **Global consultations:** Since 2001 global level dialogue and consultation on migration, resulting in: SDG 10.7 of 2015 Agenda 2030; 2016 High Level Meeting (New York Declaration for Refugees and Migrants); and the two **Global Compacts:** on Refugees (17 Dec. 2018) and **Migration** (19 Dec. 2018). IDI Resolution on Mass Migrations (2017). Ongoing: **International Migration Review Forum.**
- Yet, people may ask: "where is the beef?" (Peter Sullivan, 2008): **There remains an undiminished need for a practical legal framework for international (labour) migration, starting with temporary/circular migration.**

Potential benefits from regulated circular/temporary migration

Global Commission on International Migration (2005): Triple win –

- **Meets labour market needs** in destination countries while **avoiding permanent integration, asylum or refugee issues.**
- Gives migrant privileged and well-prepared **access to employment markets**
- Promotes development in home countries through the **agency of returning migrants with skills, knowledge and networks**, and a steady flow back to home countries of **remittances, skills and enterprise creation by returned migrants**
- **Mitigates brain drain** from developing home countries
- **Minimizes irregular migration**

The “Hague model” as inspiration

The “Hague model”

- The “Hague model”: Developing multilateral frameworks for cross-border cooperation on international human relationships **focused on the civil rights of individuals and families**
- Their potential use in relation to circular and other forms of temporary migration, illustrated by
 - *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption Convention (107 States Parties, incl. all EU Member States)*
 - *Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (55 States Parties + EU)*

1993 Hague Intercountry Adoption Convention and 2007 Hague Child Support Convention

The 1993 and 2007 Conventions – Common features:

- Establish a framework for **continuing direct transnational administrative and judicial cooperation** between States
- Both State of origin and receiving State must designate a **focal point** - Central Authority (CA), with **internal coordination** and **external cooperation** responsibilities
- CAs form **permanent global network** - **Regular meetings** at The Hague of CAs to review operation of Convention
- Small **permanent secretariat monitoring** operation of the instruments. Moreover:
 - **1993 Adoption Convention (107 States Parties):** Each adoption of each child requires **joint approval** of the Central Authorities of **both the State of origin and receiving State** + **Intermediary private agencies subject to licensing and supervision**
 - **2007 Support Convention (56 Parties):** Contracting States must promote use of “**most cost-effective and efficient methods available to transfer funds**”, and “shall accord the highest **priority to ...such transfer**”. Ongoing work on an IT solution for the remittance of child support payments

Existing international agreements on circular migration

Bilateral Agreements (i)

Several bilateral agreements already in place to address **temporary/labour** migration provide for:

- **The exchange of information on the characteristics of employment**
- **Information on potentially available circular employees**
- **Preparation of the migrants prior to their departure from the home country**
- **Cooperation between States with a view to migrants' return to, and their reintegration into the economy of the home State**
- Example: Spain has such bilateral agreements in place with many Latin American countries (e.g., Ecuador, Colombia, Dominican Republic)

Bilateral Agreements (ii)

- Many of these bilateral agreements provide for the equivalent of a **focal point** (“Central Authority”) in charge of the implementation of the agreement.
 - Example: Migration Agreement between Gambia and Spain
- Alternatively, such focal points are formed by “mixed committees”, i.e., entities composed of an equal number of representatives of each State party.
 - Example: Agreement between Japan and Brazil concerning migration and settlement; Mali-France Agreement concerning migration.
- In addition to **circular labor migration**, several agreements deal with the **temporary movement of migrants for educational purposes**.
 - Example: Agreement between France and Mauritania on the movement and stay of persons

Circular migration as a triple win (i)

- Recent **bilateral** migration agreements such as between Germany and Georgia (2023) explicitly take into account not only the **needs of the labour market of the country of destination** of the worker (Germany) but also the **needs of the labour market of the country of origin** (Georgia)
- The **multilateral Samoa Partnership Agreement between the EU and its Member States and the Members of the Organisation of African, Caribbean and Pacific States** (2023) considers circular migration *“asa means to foster growth and development **in countries of origin and destination**. To that end, they shall ...implement and improve...the legal frameworks for facilitating the re-entry procedures of nationals of a Member State of the [EU] or of an OACPS Member who reside legally in the territories of the OACPS Members or the Member States of the [EU] and consider aspects of their **reintegration in the countries of origin to ensure that their gained experience or qualifications can benefit the local labour market and community**”* (Art. 63).

Circular migration as a triple win (ii)

EU/ACP Samoa Agreement, cont'd:

- The Parties shall cooperate to create conditions that would **limit the negative impact of the loss of skills on the development of countries of origin** (art. 63).
- The Parties shall seek to promote cheaper, more **secure, faster and legally compliant transfer of remittances**, so as to facilitate productive domestic investments, including through the use of new technologies and innovative instruments (art. 67).
- The Parties shall cooperate to **reduce the transaction costs of remittances to less than 3 %** and to eliminate remittances corridors with costs higher than 5 %, in accordance with internationally agreed targets, and to improve regulatory frameworks for enhanced involvement of non-traditional players (art. 67).

Proposal for an innovative practical legal cooperation framework

An innovative practical legal cooperation framework

- Drawing on the “Hague model” and on existing bilateral agreements, a **new light, practical cooperation** instrument could:
 - **A.** Provide a **common infrastructure based on cooperation** between focal points (CA’s) enabling the implementation of **circular migration programs** agreed between home States and receiving States;
 - **B.** Establish and monitor a system to regulate, **license and monitor intermediaries** involved in facilitating international migration;
 - **C.** Facilitate the easy, **safe and cheap transfer of remittances** sent home by international migrants (SDG 10.c); and provide
 - **D.** Machinery to **monitor the operation of the framework**, including through periodic meetings of the focal points

A. Provide a common infrastructure based on cooperation between focal points

- *Cooperation in the implementation of circular migration program*
 - **Countries of origin** should ensure:
 - that migrants will be well documented
 - will be free to leave the country
 - be assisted in keeping contact with their families and have the right to return and re-integrate there.
 - **Countries of destination** should provide:
 - full information to the migrants, prior to their departure from the country of origin, about their rights and duties and employment conditions, about labour market opportunities, languages and skills training;
 - the necessary visas, provide work permits, monitor the implementation of work and residence permits, etc.

B. Establish and monitor a system to regulate, license and monitor intermediaries involved in facilitating international migration

- *Cooperation on licensing and regulation of intermediaries*
 - Licensing and supervising agents would be the responsibility of the government bodies designated under the treaty framework.
 - Countries would agree on certain minimum requirements as to expertise, experience, financial structure, etc. to which any agencies involved in the recruitment of international migrants should be subject, and establish a system of licensing on that basis

C. Facilitate the easy, safe and cheap transfer of remittances sent home by international migrants (SDG 10.c) (i)

- *Cooperation to facilitate international remittances*
 - Introduce and ensure **competition** between agencies
 - Make sure that families, in particular in remote areas, have **access to financial services** and receive their money.
 - Assistance to **counsel migrants, recipients and communities in countries of origin** to make effective use of remittances
 - Better regulation and international coordination would **increase both micro and macro benefits of international remittances....**

C. Facilitate the easy, safe and cheap transfer of remittances sent home by international migrants (SDG 10.c) (ii)

- ...Obstacles to remittances include:
 - Unavailability of accessible formal financial channels
 - High banking fees
 - Unfair exchange rates
- The [Remittance Prices Worldwide database](#) collected by the World Bank Payment Systems Group shows that globally, sending remittances costs an average of **6,49 % (SDG 10.c: should be <3% by 2030)** of the amount sent.
- For some smaller receiving countries, remittances comprise 25-35% of their GDP!

D. Machinery to monitor the operation of the framework, including through periodic meetings of the focal points

- Focal points in each State Party to ensure **internal coordination** and **international cooperation** with counterparts in other States Parties
- Permanent small secretariat to **monitor practical operation** of the treaty
- **Periodic meetings** of the focal points, with NGOs and professional experts to exchange **information** and **experiences**, **remove obstacles to implementation**, and **learn** from each other

The Proposal in short:

- The application of the “**Hague model**” would (initially) be strictly limited to **temporary/circular** legal economic migrants (perhaps including migration for educational purposes). It would **not** deal with integration problems (nor with asylum seekers and refugees).
- States would remain **free to decide** whom to admit, for how long and for what purpose, and conclude bilateral sub-treaties under the umbrella of the practical cooperative legal framework.
- It would **enable basic agreement** on common *standards and procedures for temporary/circular migration, control of intermediaries, and transfer of remittances*, and an ongoing dialogue on that basis, with potential spin-offs in other areas,
 - Either as a model for **global** cooperation, or
 - As a model for **bilateral** cooperation.

The model agreement in outline (Multilateral version – Preamble only)

- The States Parties to this Global Framework Convention -
- *Having regard to the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the core United Nations Human Rights Conventions, the International Labour Organization Conventions on the promotion of decent work and labour migration, the United Nations Convention against Transnational Organized Crime, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air; the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, Slave Trade, and Institutions and Practices Similar to Slavery; the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Global Compact for Safe, Orderly and Regular Migration, and the 2030 Agenda for Sustainable Development;*
- *Recognising the need for a practical and effective framework instrument to strengthen global cooperation on labour migration, while respecting States' freedom to regulate the movements of transnational workers, their numbers, their selection, and to control the exit from and admission to their territory;*
- *Wishing in particular to*
 - *- facilitate the implementation of temporary migration programmes, including circular and temporary migration, as may be mutually agreed by States,*
 - *- to regulate intermediaries and their activities,*
 - *- to facilitate the rapid, safe, inexpensive and efficient transfer of remittances, and*
 - *- to ensure networking, the sharing of experiences and the promotion of effective cooperation among States Parties....*

The model agreement in outline (Bilateral version) (i)

- *The States Parties to this Agreement,*
- *Wishing* to facilitate the implementation of temporary migration programmes, including circular (repetitive temporary) migration, as may be mutually agreed by them, to regulate intermediaries and their activities, to facilitate fast, safe, cheap, and effective transfer of remittances, and to ensure networking, sharing of experiences and promoting efficient cooperation between the States party
- *Have agreed* as follows:
- Chapter I Object, scope and definitions
- *Article 1 Object*
- The object of this Framework Convention is to promote safe, orderly, and regular migration of persons between Contracting States based on migration agreements as may be mutually agreed between any two Contracting States (hereinafter: the State of Origin and the Host State). It also establishes a system for the control and supervision of intermediaries and for the transfer of remittances.
- *Article 2 Scope*
- The Convention applies to temporary migration, including repetitive temporary migration (circular migration), whereby the migrant moves from the State of Origin to the Host State for a period mutually agreed by those States, followed by his or her return to the State of Origin.

The model agreement in outline (Bilateral version) (ii)

- Chapter II Responsibilities of the State of Origin and of the Host State
- *Article 4 Responsibilities of the State of Origin*
- The State of Origin shall ensure that the migrant who is authorised to temporarily migrate to the Host State based on the mutually agreed migration programme:
 - a) shall be provided with all the required documents to enter and temporarily reside and work in the Host State
 - b) shall be free to leave the State of Origin and return to it any time, after the expiry of the period of their agreed stay in the Host State.
 - c) shall be assisted in keeping contact with their families in the State of Origin, and with their reintegration after their return
 - d) shall facilitate the recognition of academic and vocational qualifications and skills of the returning migrant;

The model agreement in outline (Bilateral version) (iii)

- Chapter II Responsibilities of the State of Origin and of the Host State
- *Article 5 Responsibilities of the Host State*
- The Host State shall ensure that the migrant authorised to temporarily migrate to that State based on the mutually agreed migration programme: a) shall prior to their departure from their State of Origin be provided with full information about their rights and duties and the conditions of their working relations
- b) shall be provided with the necessary visas and work permits
- c) shall facilitate the recognition of academic and vocational qualifications and skills of the migrants
- d) shall have access to public services and to courts on the same footing as nationals

The model agreement in outline (Bilateral version) (iv)

- Chapter II Responsibilities of the State of Origin and of the Host State
- *Article 6 Joint responsibilities*
- The State of Origin and the Host States shall cooperate:
- a) to ensure the safe movement of the migrant from the State of Origin to the Host State and his or her safe return after the expiry of their agreed stay in the Host State
- b) to facilitate the mutual recognition of skills, qualifications and competencies of the migrant, including by issuing and recognising documents to this effect
- c) to ensure the supervision of intermediaries and their activities
- d) to ensure the fast, safe, cheap, and effective transfer of remittances by the migrant from the Host State to the State of Origin
- e) to allow for the recovery of benefits and entitlements of the returning migrant

The model agreement in outline (Bilateral version) (v)

- Chapter III Migration Focal Points
 - *Article 7 Migration Focal Points*
 - 1. Each Contracting State shall designate a Migration Focal Point to discharge the duties which this Framework Convention imposes upon them.
 - 2. The Migration Focal Point may delegate its functions to other public or private bodies as permitted by the law of its State, while keeping ultimate responsibility for the discharge of those functions.

The model agreement in outline (Bilateral version) (vi)

- Chapter III Migration Focal Points
- *Article 8 Responsibilities of the Migration Focal Points*
- 1. The Migration Focal Points shall cooperate with each other and promote cooperation amongst the competent authorities in their States to achieve the object of this Agreement
- 2. They shall take directly all appropriate measures to –
 - a. provide information as to the laws of their State concerning temporary migration and other related general information
 - b. keep one another informed about the operation of the Agreement, reply to requests from their counterpart concerning a particular temporary migrant, and, as far as possible, eliminate any obstacles to the application of the Agreement.
- 3. They shall take, directly or through public authorities, all appropriate measures to deter any practices contrary to the object of the Agreement.

The model agreement in outline (Bilateral version) (vii)

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- Chapter IV Intermediaries
- *Article 9 Intermediaries*
- 1. Accreditation shall only be granted to and maintained by migration intermediaries demonstrating their competence to carry out properly the tasks with which they may be entrusted
- 2. They shall only be acting according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation
- 3. They shall be directed and staffed by persons qualified by their ethical standards and by training or experience to perform the tasks of the intermediary
- 4. They shall be subject to supervision by competent authorities of that State as to their composition, operation, and financial situation.

The model agreement in outline (Bilateral version) (viii)

- Chapter V Remittances
- *Article 10 Fast, safe, cheap and effective transfer of remittances*
- 1. States parties shall take measures, in cooperation with the World Bank, to reduce the average transaction cost of migrant remittances by 2030 to less than 3 per cent of the amount transferred
- 2. They shall improve the remittance market, including by expanding the use of digital channels, and promoting financial services and mobile-enabled data, competition and transparency, and digital and financial inclusion
- 3. They shall cooperate to ensure that remittances effectively reach the persons and communities for which they are intended by the migrant.

The model agreement in outline (Bilateral version) (ix)

- Chapter VI Monitoring
- The States parties shall convene at regular intervals meetings of the Migration Focal Points with the participation of other relevant stakeholders, to review the operation of this Agreement, take stock of progress, identify challenges, recommend practical improvements, and consider whether any amendments are desirable.

Thank you for your attention!

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