# Symposium on Reconceptualizing International Economic Law for Migration: To Reimagine Must be to Decolonize

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International economic law (IEL) seems largely to ignore the governance of international migration. Yet most international migration is conditioned by economic conditions. Historically, the coerced migration of enslaved Africans, and other regimes of territorial relocation were instrumental to the imperial advancement and economic profiteering that served as the precursor to contemporary global economic and political interconnection. But even today, the global economy depends on international migration. The International Labor Organization estimates that "migrant workers constitute 4.7% of all workers" globally. First World economies (at least according to reported data) rely on international migration even more than those of the Third World—"[a]s a proportion of all workers, migrant workers constitute 18.5 percent of the workforce of high-income countries, but only 1.4 to 2.2 percent of the labour

force of law income countries."

Furthermore, economic conditions are leading determinants of international migration, and scholars such as Chantal Thomas have gone so far as to demonstrate how trans- and international economic policy function as drivers of international displacement. Some international economic migrants are able to traverse the globe seamlessly in part on account of their nationality, race, class, gender and other structures. Whereas for others, attempts to migrate in search of better economic opportunities risk their lives altogether. Research has also shown how international migration from one region to another can benefit markets and communities that understand themselves as entirely disconnected from that migration. Maxim Bolt's study on undocumented Zimbabweans working under conditions of exploitation on South African farms, for example, notes how these workers produce oranges that allow for year-round consumption of the fruit in European countries.

Yet within the study and governance of movement of persons across borders, focus is most concentrated on migration or displacement that is defined to exclude any meaningful consideration of economic factors. Although international migration law more broadly exists, and even as efforts are underway to develop a field of inquiry that engages more holistically or "globally" with international migration, as it stands, the global refugee law regime remains the most robust international legal constraint on how states treat foreign nationals today. This mismatch, which is a serious problem, rightly motivates this symposium, which prompts us to consider reimagining IEL for migration.

Indeed, because IEL neglects international migration, and because both policy and scholarly treatment of international migration tends also to neglect IEL, it is tempting to view robust integration of the two fields as an urgent necessary goal for better governance of international migration. And considering the orthodoxy of liberalization within IEL, there can be a tendency to consider liberalization of international migration as an important pillar of what "better" governance of international migration concretely entails. Yet a fair amount of caution is necessary here, especially for those invested in how international law and policy affect nations, communities and individuals historically marginalized by centuries of imperial intervention. It is worth noting that the existing

international migration regime, which seems cut off from IEL, was actually developed in significant part to advance the colonial and postcolonial economic and political imperatives of First World nations. Without more, merely integrating international migration into IEL governance risks transferring and reifying existing inequities embedded in IEL into international migration law. I offer an example from southern Africa to illustrate.

In a recent article in the Third World Approaches to International Law Review, Tamara Last and I examine the migration governance framework that the Southern African Development Community (SADC) has developed both to reflect and advance its vision for regional economic integration. Migration patterns in SADC in the past and present are shaped by a host of factors, but transnational economic forces remain key among them. Indeed, among the stated aspirations of SADC is deep economic interconnection across regional borders. But as we explain, there are many ways in which migration governance in SADC undercuts the goals of promoting interconnection that enhances the means of self-determination, especially of socio-economically marginalized populations in the region. But we further point out that the governance issues in the region run deeper. In a move that aligns regional economic goals with migration governance, SADC migration policy seeks reform that prioritizes free movement of *labor*. On our analysis, by framing people primarily as labor, migration policy in the region commodifies foreign nationals and makes them subject to determinations about national and corporate labor needs, discounting the exploitation and inequities that inhere in the neoliberal construction of labor in the region. This approach, among other things, belies the cultural, ethnic, and familial interconnection that has always bound southern African communities together across the contemporary postcolonial borders in the region.

A brief reflection on the history of the region illustrates more sharply my broader point on the nature of the reimaging required when we consider IEL and international migration. The colonial history of southern Africa is essential context for understanding contemporary migration and mobility flows in the region. Colonial expansion and extraction especially in the settler colonies in the region such as South Africa and Zimbabwe could only be sustained through reliance on transnational migrant laborers. As an economic model, colonial capitalism necessitated transnational interconnection. Although migration was

undoubtedly a precolonial feature of the region, colonialism restructured this migration and generated new and often precarious movement towards mines and farms and other industry, as the case of South Africa—the colonial and "post"-colonial hegemon of the region--demonstrates. Among the distinctive features of colonial migration governance is that rather than coherently promote and protect even mobility that was economically essential for colonial governments and populations, it forced many to move unlawfully, introducing "illegal" migration to the region and ensuring an exploitable pool of labor drawn from across the borders of the region—borders that were established and policed for the benefit of colonizing populations. Historians such as Francis Musoni offer detailed accounts.

One diagnosis is that the changes necessary to improve conditions of migration would have been for colonial authorities more freely to permit transnational labor migration, and to ensure that laborer's rights to work and move were properly protected. In other words—the reform proposal would have been migration liberalization. But while such reforms may have resulted in material improvements for individual migrant laborers, it is difficult to imagine that such reforms would have sufficiently transformed the material conditions of colonial subordination of the African communities to which migrant laborers belonged. Put a different way, migration reforms such as securing the passage and work rights of Rhodesian and Nyasa labor migrants seeking employment in South African mines would have been unlikely to shake their ultimate status as exploitable racial subordinates of European colonial communities.

Where, then, does this leave scholars of IEL and of international migration? It suggests that the project of reimagining IEL for migration is intimately bound up with the project of *decolonizing* IEL. Otherwise transdisciplinarity risks at best only mitigating exploitative conditions of migration or at worst further compounding neocolonial inequities by tying migration policy to unjust and exploitative international and regional economic law.

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