

Dealing with Migration: A Test for Democracies

By

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Introduction

By referendum held on 29 November 2009, the Swiss population decided a ban on the construction of minarets in Switzerland. This referendum resulted from an initiative of a nationalist populist right-wing party, an initiative which had at first not been taken seriously by Swiss mainstream politicians. The results were a shock: 57.5% of the population and 22 of the 27 cantons voted in favour of the ban. Negative reactions poured in from abroad and the Swiss government was rightly embarrassed. In effect, this referendum constituted a denial of the social reality of the 320,000 Muslims living in Switzerland, which constitute 5% of the total Swiss population. It was also the demonstration of a despairingly simplistic world view: how could the banning of minarets change anything in the sociological, political and legal situation of the Swiss Muslims or of the Swiss population in general. At the symbolic level, it was however a powerful sign of rejection of an “other”, thus caricatured and designated as the scapegoat for indistinct identity fears.

Migration as a Complex Phenomenon

Migration is a complex phenomenon that defies such caricatures². It is a constant of civilization: the history of humanity is that of an endless journey across the various continents of our planet. Time wise, it is also a generational phenomenon, triggered by a huge array of political, economic and social factors that cannot meaningfully be influenced by short term politics. At the individual level, it is a personal trajectory through several

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social spaces, with all the interactions that this implies along the way. Globally, migration can be seen as an economic transfer – of either funds or skills – that respond to push and pull factors, or a development issue, especially through “brain drain” and “brain gain”. Migration is sometimes used to fulfill demographic objectives, for example in Canada, Australia or the United States, where increasing the population is linked to an international strategic positioning: a search for a more robust economy, stronger clout in international affairs, and therefore an increase in global power.

As a vector of social transformation, it is often a focus of the political discourse on identity, with all the demagogical outpourings of hatred about the “others” that can be imagined: very often, this discourse is shaping the political agendas. Migration may pose challenges to territorial sovereignty: it may be a security concern, about which the State security agencies often refuse to share information, and is often a clandestine phenomenon, creating pockets of social invisibility. It is also a key to cultural pluralism, at the same time creating here vibrant multicultural societies, attracting there waves of communal violence or developing elsewhere into barely coexisting ghettoized communities. Although rife with human rights issues, migration, as a social phenomenon, is not yet a human right in itself: one has the right to exit any country but doesn’t have the right, save for refugees, to enter any other country than one’s country of citizenship. Migration is therefore a complex multifaceted phenomenon that should be apprehended in many ways, through multidisciplinary approaches, with methodological caution, and with the constant concern of not losing connection to the individual narratives at stake.

Migrants’ Rights are Human Rights

The background idea in this essay is that as migration is a constant of civilization, we are all migrants. We have however witnessed, over the past thirty years, the progressive devaluation of asylum. At first an immemorial tradition, asylum has recently been construed as a potential threat to national security and we are moving towards a securitized control of migration movements. Migrants have rights and the respect, fulfilment, protection and promotion of the rights of migrants, as they relate to the rights of citizens, is the next frontier in terms of human rights policies. Ultimately, we shall need to think about a reconceptualization of citizenship, in order to recognise the presence of all “foreigners” in terms of their administrative status.

We are all Migrants

Humanity on the Move

Humanity is on an ongoing endless journey. We have always been migrants, since our species appeared around 200,000 years ago in Africa and then colonised all continents. Migration is at the heart of many civilisations, as exemplified by the Exodus in the Bible, the Kadesh treaty (1275 BCE) between Ramses II and the Hittites, Homer's Odyssey, the parable of the Good Samaritan in the New Testament, the Hegira in Islam, etc.³ Our settling on the land is recent and unstable. Nomadic populations still exist, such as the Romas and some aboriginal people. Pilgrimages remain important traditions, as exemplified by the importance of Mecca or Santiago de Compostela. The rural exodus, the urbanisation process and the movement of seasonal agricultural workers, for example, all include elements of migration. Many individuals migrate for work, studies, retirement or tourism. "Expats" and "snowbirds" are all migrants. We, moreover, dream of outer space, as many novels, movies and TV series show.

Migrants represented about 3% of the world population throughout the last century, although numbers have hugely increased. Today, it corresponds to some 200 millions migrants worldwide. Migration has always existed in areas of poverty and violence to regions of prosperity and stability: the first creates push factors; the second is responsible for pull factors. We can slow migration in the short term, but can't stop it in the long term, as it responds to a basic human need, i.e. the ability to imagine a future for oneself and one's children. Most of us would also try to migrate if placed in front of the choices facing most migrants. Irregular migration results therefore from our repressive policies which interfere with the effective fulfilment and interplay of emigration and immigration needs⁴.

Domestic Policies try to Control Migration

States from the Global North design policies intended to control migrations in various ways. In countries like Canada, Australia and the United States, immigration policies are used to fulfill demographic objectives: governments create socioeconomic integration policies and cultural diversity is celebrated. In contrast, continental European States' policies have been designed to manage unskilled foreign populations, often considered as cheap labour: there were few integration measures and multiculturalism has not been considered a founding principle, when it was not rejected outright. However, migrants do integrate on the ground in both sets of countries and they experience common successes and difficulties with the coexistence of various communities.

Both groups also share common policies, such as the repression of irregular migration and resurgent temporary migrant workers' schemes.

These policies create spaces of vulnerability⁵. Temporary migrant workers and irregular migrants are often left at the mercy of employers who can trigger their deportation. This is the case, for example, in Canada, for migrants who come with the seasonal agricultural workers programme or the live-in care-givers programme. This power over the migrant's life generally silences them and creates a huge potential for exploitation: modern slavery, sexual exploitation, etc.⁶

Migration as a Human Rights Challenge to the Sovereignty Paradigm

The migrant illustrates the conflict between the territorial sovereignty and human rights paradigms. In the former, the host state decides who enters and stays, who is a member of the political community, who is a citizen. According to the sovereignty paradigm, the foreigner has no rights *a priori* in the host state: he only enjoys rights in the home state, or state of citizenship. Traditionally, the host state treats foreigners as it wishes and has administrative discretion over them, under the rule of reciprocity. The human rights paradigm, more recent and universal, posits that anyone has inherent rights opposable to any form of power, public or private. States must respect the rights of all persons within their power, everywhere, at any time. Therefore, migrants are entitled to the respect, fulfilment, protection and promotion of all their fundamental rights, including the right to equality and the prohibition of discrimination. The migrant is therefore the case in point in the conflict between the sovereignty and human rights paradigms as basic principles structuring international law and policy.⁷

The Progressive Devaluation of Asylum

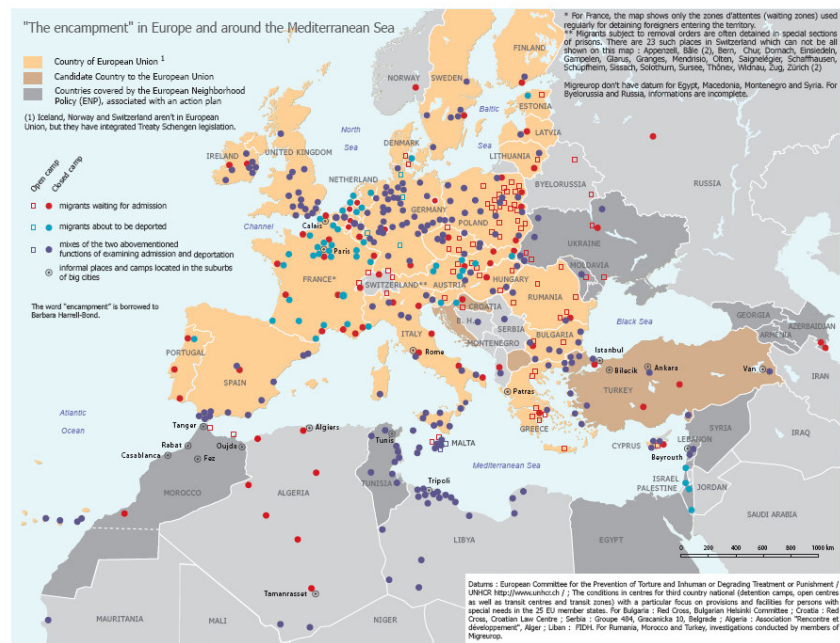
Asylum is an immemorial tradition of most civilisations, found, among others, in the Bible and in Greek tragedies. The traditional law of hospitality urges us: « Welcome the stranger, because you were a stranger in the land of Egypt »⁸. Related to this antique tradition, asylum was probably first justified by religious beliefs: it was the divine protection in a sanctuary. It recently evolved to become a personal protection offered by a Prince or a State, for political reasons⁹.

Notwithstanding this tradition, the concept of “asylum seeker” is a quite recent construct (early '80s). In 1973, the oil crisis justified the closure of the Global North borders to foreign workers. Combined with an increased accessibility to international travel and communications, the number of asylum claims soared. In Canada, it jumped from 600 in 1976 to 60 000 in 1986. States reacted to the increasing number of asylum claims with a strong anti-asylum discourse and with repressive and deterrence measures¹⁰.

Stripped from its ideological dimension with the collapse of the Soviet bloc after 1989, asylum became more and more construed as a threat to territorial sovereignty. Asylum seekers are often presented as “bogus”

refugees, whose claims are fictitious, or as irregular migrants trying to “jump the queue” of the numerous honest and worthy applicants in the legal immigration system. The public discourse frequently associates asylum with other forms of “criminality”, such as irregular migration, fraud, crime, trafficking, smuggling, terrorism, thus justifying deterrence and preventive measures against all “unlawful aliens”, including asylum seekers.

Deterrence measures attempt to discourage asylum seekers to enter the country by raising the cost and diminishing the benefits of migration. They focus on reducing the entitlements offered to migrants, such as the elimination of appeals in the refugee determination process and the reduction of access to legal aid, labour market and social protection¹¹. Migrants also face increased detention. For example, the following map¹² shows migrants detention facilities in Europe and Mediterranean countries.



Migrant smuggling is sometimes heavily criminalised and involves excessive penalties, especially when it affects persons who help irregular migrants for humanitarian purposes. Furthermore, States resort to bilateral and multilateral agreements to facilitate the return of undesirable migrants, such as the 2007 Readmission agreement between Europe and Russia or the safe third country agreements in Europe (1990 *Dublin Convention*) and North America (2002 *Canada-United States Safe third Country Agreement*)¹³.

Preventive measures are designed to impede the arrival of asylum seekers: in order to avoid the intervention of NGOs, lawyers, politicians or the media who can try to fight deportations, it is much easier to prevent migrants to set foot on “our” territory altogether¹⁴. None of these annoying actors will intervene in favour of someone who is maintained abroad. They

include visa regimes, of which the visa obligation for Mexican and Czech nationals is the most recent example in Canada, an obligation directly triggered by the rise in the number of asylum claims from these two countries. States apply carrier sanctions (fines imposed on transportation companies for bringing foreign individuals without appropriate documentation) leading to a partial privatisation of migration controls. They also resort to interception mechanisms abroad in order to prevent irregular migration: Canada has deployed migration integrity officers abroad. As well, immigration intelligence is widely shared without effective control on the transfer of personal information found on such databases. International economic cooperation arrangements – such as the Barcelona Process in the Mediterranean, the Puebla process for Central America or the EU-ACP development agreements – all contain nowadays conditionalities related to migration controls by countries in the Global South¹⁵. Borders and seas are militarized: Guantanamo during the '90s, the enduring Pacific Solution in Australia, Frontex in Europe (Lampedusa, Malta, Canary Islands). European countries have discussed the idea of an “externalisation” of asylum policies, meaning that asylum procedures would only take place abroad, in such countries as Libya, Morocco, Albania and Mauritania¹⁶.

All in all, States are progressively reinforcing, into a coherently articulated strategy, their arsenal of measures for preventing irregular movements of persons, including asylum seekers and refugees, and reducing the “burden” of such migration.

The Securitized Control of Migrations

A New Migration Security Paradigm

These measures proceed from a change of political paradigm, reflected by changes in the public discourse on migrants. Especially since 9/11, as well as the 2004 Madrid and 2005 London bombings, migrants are considered suspect, dangerous. They are even more associated with social ills in the economy (unemployment, welfare State crisis, etc.), security (inner cities, petty violence, organized crime, terrorism, etc.) and identity (demographic changes, identity markers) spheres. An “*us and them*” mentality is at work, potent with discrimination and easily manipulated into hatred¹⁷.

But migration was part of a new international security paradigm even before the attacks of the Noughties. In the past two decades, has emerged a phenomenon of securitisation of the public space. It designates the process by which a policy issue (such as international migration) becomes a security issue¹⁸. This phenomenon also includes water security, food security, energy security, communication security, environmental security, human security, urban security, to name only a few.

Since 9/11, however, this process has quickened¹⁹. Domestic developments include new legislation against terrorism, policies to fight irregular labour and institutions like the Homeland Security Department.

Administrative practices, such as the privatisation of detention, are extended, and new ones often go undetected, like discriminatory practices at the border and abroad.

The Human Rights Framework Challenged

In the meantime, international and constitutional human rights guarantees remained unchanged. 9/11 did not affect this legal framework, except for some interpretation reworking. It did not change because it is the legacy of the generation who lived through the horrors of WWII and it was designed to provide a framework for shocks even greater than 9/11.

Certainly, some States feel “trapped” by their human rights commitments, when comes the time to apply them to migrants, as they never envisaged that migrants would use them. Canada was incensed to be condemned by the UN Committee against Torture, in the *Khan* case, in 1994, for its intention to return a Kashmiri militant, as it considered that the 1984 *Convention against Torture* had not been intended for such cases²⁰.

Securitizing immigration allows States to invoke a “State of exception” against migrants²¹. For example, British Prime Minister Tony Blair suggested that his country could withdraw from the 1950 *European Convention on Human Rights* with regards to asylum seekers, if their number didn’t diminish. Canadian authorities recently rejected a communication from the UN Committee against Torture and deported an individual whom this treaty body had declared as in need of protection²².

The securitisation process thus reframed the status of migrants. Irregular migration is now considered part of “international criminality” and it is implied that irregular migrants shouldn’t be recognized any rights. Indeed, very few States (and not one State of the Global North) signed or ratified the 1990 *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*²³, which mostly restates and details the rights that all migrants, including irregular migrants, already enjoy as a result of all the previous international human rights instruments.

Criticizing the Securitisation Process against Irregular Migrants

Irregular entry is not a crime against persons or against property: it is essentially the crossing of a virtual line in the sand, which hurts no one in itself. Moreover, the use of smuggling rings is often essential, when all other avenues towards protection are closed. It has always existed and, despite being a nasty business, rife with possibilities of exploitation, examples abound when it actually saved lives: German Jews (in the movie *Casablanca*, the false travel documents were hidden in the piano), Spanish Republicans, Indochinese and Haitians boat people, and many others were saved due to migrant smuggling.

The large majority of irregular migrants pose no security risk and 9/11 terrorists were not irregular migrants. Although framed as a fight

against international criminality, the migration control mechanisms are more used to create a reassuring discourse about appropriate government action, than to effectively increase the security of citizens.

Furthermore, irregular migrants do work and pay at least direct taxes, and their exploitation in specific sectors of the economy (construction, agricultural, domestic, cleaning or catering services, for example) enhances the competitiveness of Global North economies²⁴. Actually, they are badly needed: without them, those sectors would risk being wiped out. This essential pull factor is systematically forgotten in government discourse regarding irregular migration: the fact that “we” are co-responsible for it is never mentioned.

As Antonio Guterres, United Nations’ High Commissioner for Refugees said yesterday (14 December 2009): “Politicians do not have the courage to tell people that we need more migrants. [...] Smugglers respond to a need. That’s why it’s so difficult to fight them. If the market requires more people, they will come. If you close the door, they will climb through the window. [...] All our societies will become multiethnic, multi-religious and multicultural, whether we like it or not.”²⁵

Finally, measures against irregular migration are inefficient, as they never address the root causes for migration, which are, at a macro level, the persistent failure of international development policies and the need for exploited labour in the capitalist Global North, and, at a micro level, the personal inability to imagine a future for oneself and one’s children²⁶.

Migrants have Rights

States benefit from territorial sovereignty and may exclude any foreigner from their territory, with due respect for international obligations: this traditional principle of international law remains valid. But we have added a new principle to it: everyone generally benefits from the same fundamental rights, citizens and foreigners alike.

Some Rights are reserved to Citizens, but most Rights are enjoyed by “Everyone”

Two rights are exclusive to the citizen: the right to political participation, which means the right to vote and be elected, and the right to enter and remain on the territory. This is the situation in Canada²⁷. But exceptions exist that show that it is possible to imagine another regime: citizens of European Union countries can move freely across internal borders of the European territory and may vote in local elections in their country of residence²⁸.

All other rights apply equally to the foreigner and the citizen, by virtue of their common humanity. This means, *inter alia*, that the foreigner has the right to equality and to not being discriminated against on the ground of nationality, and that she is protected against return to torture and

arbitrary detention. Foreign children enjoy specific protections. Furthermore, the foreigner must have access to recourses and due process. She benefits from guarantees even in cases of national security.

States must respect those rights. The non-discrimination standard, based on the right to equality, forbids in principle the differential treatment based on citizenship or immigration status in the implementation of fundamental rights. In Canada, according to article 1 of the *Canadian Charter of Rights and Freedoms*, a differentiation between citizens and non-citizens must be “reasonable and justifiable in a free and democratic society”²⁹. The same criteria are used in Europe.

Tribunals have started to acknowledge that Migrants’ Rights are Human Rights

This is what, still with many caveats, several tribunals have already started to affirm. The Supreme Court of Canada has curtailed the discretionary elements and the secrecy of the long-term detention without charges of persons subject to a security certificate signed by cabinet members³⁰. The United States Supreme Court has progressively imposed a due process framework to the detention in Guantanamo Bay of suspects caught in the “war against terror”, when it had not done so for the Haitian irregular migrants detained in Guantanamo Bay during the ‘90s³¹. The European Court of Human Rights has affirmed that so-called “international” zones in airports are actually national territory where all human rights guarantees apply³². The British House of Lords has decided that indefinite detention and discriminatory practices in a foreign airport were not compatible with a proper interpretation of the human rights framework that governs the country and the continent³³.

In the end, past the moral panic that followed 9/11, normal legal frameworks reassert themselves progressively. Our common universal human rights framework had been established by the generation that had lived through the horrors of World War II. Their legacy was that law must always prevail over executive power. This had been threatened by the *modus operandi* established for the “war on terror”. It is heartening to see that courts are slowly reasserting their control over laws and policies that expanded executive powers against individual freedoms. Their point is that political legitimacy is not in the objective pursued but in the procedures followed: unless public authorities submit to the normal rules of procedure and evidence, their decisions will come out as arbitrary, thus undermining the legitimacy of their action and threatening the political support needed for long-term action against terrorism.

Section V: Changing our Conception of Citizenship?

Throughout history, marginalized or vulnerable categories of population have always had to fight for their rights. In modern times, they

also fought through the courts, against the Executive, against Parliament, and often against a majority of public opinion. Among others, they include recently industrial workers, women, aboriginals, national minorities, detainees, gays and lesbians. Migrants are the latest of such vulnerable groups.

Our Political Structures are Inadequate

One cannot generally expect however the executive or the legislative powers to protect the rights of migrants, for many reasons. These are too convenient scapegoats for some woes of our societies, such as unemployment or criminality. Migrants rarely complain and are thus legally insignificant. Because they do not vote, they are also politically insignificant. Therefore, politicians are unlikely to consider their preferences³⁴. As host States authorities manipulate information and nationalist populist discourse goes uncontradicted, public opinions are easily convinced not to support migrants and frankly do not care much. It comes down to NGOs, churches, pro bono lawyers and other concerned citizens to carry the sole burden of the respect, fulfilment, protection or promotion of their rights: it is a much too heavy burden for their meagre resources. We cannot overcome the difficulties of the situation unless we take a different view on migrants.

Migrants as Local Citizens

As they are an integral part of the city, migrants should be considered local citizens. They would be citizens with a small « c », as they are not nationals. They can however be considered locally as citizens, on an equal footing with everyone who also lives and works in the city.

Migrants all work and contribute to the economy of the host State. When vulnerable or irregular, their work – and exploitation – contributes to the competitiveness of its economy in several sectors like agriculture, construction or catering. They pay taxes on everything they buy or rent, and sparingly use public services. The absence of an administrative status that recognizes the whole range of their rights is the cause of their vulnerability. Restoring coherent statuses to such persons would go a long way towards empowering them to fight exploitation.

Here are some examples of how some local communities already adopt a different attitude on vulnerable migrants. In many American cities in the United States (San Francisco is an example), the police have decided not to control immigration status in encounters with fellow citizens, so as to be able to implement their “law & order” agenda, with the confidence of all segments of the population: fighting violence becomes impossible when victims do not call the police for fear of deportation. In Toronto, all children have the right to go to school whatever the status of their parents, according to a “don’t ask, don’t tell” policy. In Massachusetts, the State hands out driver’s licences without checking the immigration status, thus

allowing irregular migrants to establish an identity giving them access to many services. In Quebec, the AH1N1 flu vaccination campaign of the fall of 2009 was available to all, irrespective of immigration status: public health measures are partially ineffective if they exclude entire segments of the population. In Paris, during the 80's, a medical dispensary for irregular migrants had been established by an NGO ("Médecins du Monde") and it benefited of an agreement with the authorities according to which the queue would not be raided by the police.

These are all examples that show that a different conception of the place of vulnerable migrants in many host societies is possible. If immigration status is still an important factor at national level, local governments (regional or municipal) can adopt a different stand. The key idea is that there would not be a special status for migrants: there would be only one status for all inhabitants of the city or local community. Any person who lives there and participates in the economic and social workings of any society should enjoy a status that allows her to benefit from services commensurate to her contribution and participate in the local political decision-making.

Conclusion: Dealing with Migrants as a Test for Democracies

Democracy is a complex relation between three essential elements: political representation, which is the expression of the will of the majority and confers electoral legitimacy; respect for human rights, which recalls the importance of the individual or minority voice and confers normative legitimacy; and the Rule of Law, which affirms the pre-eminence of human rights over political expediency, implies the availability of a recourse to a tribunal or other national human rights institution against any unfair decision, and which is the guarantee of the first two elements. Full political legitimacy is today the result of an inter-institutional dialogue between elected representatives and judges acting as guardians of human rights.

This is why the Swiss referendum-based ban on minarets is a flawed political decision and why Swiss "direct democracy" is utterly undemocratic as is. The will of the majority is never sufficient to establish a norm. Working through representatives already diminishes the risk of nationalist populist outbursts such as this one. But the protection of all human rights for all, including minorities, is essential in any democratic process. Complex issues cannot be understood, nor solved, through simplistic questions requiring simplistic answers. Complex decision-making is better left to representatives who can work with experts and be judged for their results in the next elections. Moreover, no decision by a majority should be exempt from judicial review based on the protection of human rights for all. Hopefully, the Swiss Federal Tribunal will decide that the outcome of the referendum, although clearly the will of the majority, is unconstitutional in that it violates the human rights of many in Switzerland.

Political mobilisation and legal guarantees must be combined to achieve true democracy: the history of the 20th century has demonstrated that majorities can be wrong and that individuals and minorities must be able to defend their rights against any majority. The protection of human rights is always a political struggle in which law is a tool to be used by individuals and groups, a tool that enhances and furthers political mobilisation, a tool that is generally useless without political mobilisation. The question therefore is: in the absence of political mobilisation, how, and who, can we mobilise in favour of migrants? Being the ultimate outsider, unable to use political representation, the migrant is the ultimate test for our democracies.

Since inserting art in our intellectual presentations has become a feature of this Seventh Winter Course, I shall leave you with a celebrated poem of John Donne (1572-1631), who prophetically affirms the universality of our human nature:

No man is an island,
entire of itself;
every man is a piece of the continent,
a part of the main.
If a clod be washed away by the sea,
Europe is the less,
as well as if a promontory were,
as well as if a manor of they friends's or of thine own were.
Any man's death diminishes me,
because I am involved in mankind.
And therefore never send to know for whom the bell tolls;
it tolls for thee.

Notes and References

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² See : François Crépeau, Delphine Nakache and Idil Atak, « Introduction », in François Crépeau, Delphine Nakache et Idil Atak (eds.), *Les migrations internationales contemporaines – Une dynamique complexe au cœur de la globalisation*, Montréal : Presses de l'Université de Montréal, 2009, at 8-12.

³ François Crépeau, *Droit d'asile : de l'hospitalité aux contrôles migratoires*, Bruxelles, Éditions Bruylant & Éditions de l'Université de Bruxelles, 1995, at 29-38.

⁴ François Crépeau, Delphine Nakache, "Controlling Irregular Migration in Canada: Reconciling Security Concerns with Human Rights Protection", (2006) 12 *IRPP Choices* 1, at 4-5.

⁵ *Id.*, at 18.

⁶ See, for example, on the new forms of slavery: *Siliadin v. France*, n° 73316/01, ECHR, 2005-VII.

⁷ François Crépeau, Delphine Nakache, "Controlling Irregular Migration in Canada: Reconciling Security Concerns with Human Rights Protection", (2006) 12 *IRPP Choices* 1, at 5.

⁸ Exodus, 23:9.

⁹ François Crépeau, *Droit d'asile : de l'hospitalité aux contrôles migratoires*, Bruxelles, Éditions Bruylant & Éditions de l'Université de Bruxelles, 1995, at 29-45.

¹⁰ *Id.*, at 312-316.

¹¹ François Crépeau, Delphine Nakache, "Controlling Irregular Migration in Canada - Reconciling Security Concerns with Human Rights Protection", (2006) 12 *IRPP Choices* 1, at 14.

¹² Migreurop, "The encampment' in Europe and around the Mediterranean Sea" (2009), available on-line at www.migreurop.org/IMG/pdf/L_Europe_des_camps_2009.pdf (accessed 23 November 2009).

¹³ François Crépeau, Delphine Nakache, "Controlling Irregular Migration in Canada - Reconciling Security Concerns with Human Rights Protection", (2006) 12 *IRPP Choices* 1, at 17.

¹⁴ *Id.*, at 12.

¹⁵ Delphine Nakache, François Crépeau, "Le contrôle des migrations et l'intégration économique : entre ouverture et fermeture", in Vincent Chetail (dir.), *Mondialisation, migration et droits de l'homme : le droit international en question*, Bruylant, Bruxelles, 2007, pp.189-238, at 214; Derek Lutterbeck, "Policing Migration in the Mediterranean", (2006) 11 *Mediterranean Politics* 59, at 69.

¹⁶ See, for example: Sophie Huguenet, *Droit de l'asile : le projet britannique d'externalisation*, Paris, L'Harmattan, 2004.

¹⁷ François Crépeau, Delphine Nakache, "Controlling Irregular Migration in Canada - Reconciling Security Concerns with Human Rights Protection", (2006) 12 *IRPP Choices* 1, at 4-5.

¹⁸ Thomas Faist, "The Migration-Security Nexus. International Migration and Security before and after 9/11", Malmö University School of International Migration and Ethnic Relations, Willy Brandt Working Papers, 2004, available on-line at www.dspace.mah.se/bitstream/2043/686/1/Willy%20Brandt%202003-4.pdf (last accessed 26 November 2009).

¹⁹ François Crépeau, Delphine Nakache, "Controlling Irregular Migration in Canada: Reconciling Security Concerns with Human Rights Protection", (2006) 12 *IRPP Choices* 1, at 4.

²⁰ *Tahir Hussain Khan v. Canada*, CAT/C/13/D/15/1994, UN Committee Against Torture (CAT), 18 December 1994.

²¹ Giorgio Agamben, "State of Exception", (2005) 1-4 *New Serbian Political Thought* 135.

²² *Mostafa Dadar c. Canada*, CAT/C/35/D258/2004, UN Committee Against Torture (CAT), 5 December 2005; Radio-Canada.ca, « Mostafa Dadar expulsé » (27 March 2006), available on-line at www.radio-canada.ca/regions/atlantique/2006/03/26/001-NB-dadar.shtml (last accessed 22 December 2009).

²³ On December 8th, 2009, 42 states had ratified the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (18 December 1990): United Nations Treaty Collection, "CHAPTER IV: HUMAN

RIGHTS 13. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families”, available on-line at treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en (last accessed December 8th, 2009).

²⁴ International Labour Office, *Towards a Fair Deal for Migrant Workers in the Global Economy*, Report VI (International Labour Conference, 92nd Session), Geneva, International Labour Office, 2004, at 48, available on-line at: www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/meetingdocument/kd00096.pdf (last accessed 20 December 2009).

²⁵ See: Katrin Bennhold, Caroline Brothers, “E.U. Urged to Open Doors to Migrants », *The New York Times*, 14 December 2009.

²⁶ Global Commission on International Migration, *Migration in an interconnected world: New directions for action*, Global Commission on International Migration, 2005, at 32-40, available on-line at www.gcim.org/attachements/gcim-complete-report-2005.pdf (last accessed 20 December 2009).

²⁷ *Canadian Charter of Rights and Freedoms*, part I of the *Constitution Act*, 1982 [Schedule B to *Canada Act 1982* (1982, U.K., c. 11)], art. 1-15.

²⁸ See Jean-Yves Carlier and Elspeth Guild, *The Future of Free Movement of Persons in the EU*, Brussels, Bruylant, 2006.

²⁹ *Canadian Charter of Rights and Freedoms*, part I of the *Constitution Act*, 1982 [Schedule B to *Canada Act 1982* (1982, U.K., c. 11)], art. 1.

³⁰ *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350.

³¹ *Boudemiene v. Bush*, 553 U.S. (2008); *Sale v. Haitian Centers Council*, 113 S. Ct. 2549, 113 S. Ct. 2549, 125 L. (92-344), 509 U.S. 155 (1993).

³² *Amuur v. France*, 17/1995/523/609, Council of Europe: European Court of Human Rights, 25 June 1996.

³³ *A and others v. Secretary of State of the Home Department*, [2004] UKHL 56; *Regina v. Immigration Officer at Prague Airport*, [2004] UKHL 55.

³⁴ François Crépeau, Delphine Nakache, “Controlling Irregular Migration in Canada: Reconciling Security Concerns with Human Rights Protection”, (2006) 12 *IRPP Choices* 1, at 4.