

The right to migration in international conventions

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Abstract

The right to migration and movement is one of the most important human rights sought by citizens of the Third World. It is no exaggeration to say that this right has become a dream for individuals in poor and developing societies. The international community has been keen to protect the economic and social rights of migrants through international conventions, from the Charter of the United Nations to the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families.

In this paper, we will try to present international attempts to regulate this right as a human right. As well as a statement of the most important foundations and rules for this right at the international level to clarify the rights and obligations of the migrant in our contemporary world.

Free movement of persons, also called by some "freedom of movement" and "freedom of departure and return" has its roots in Islamic thought, which calls it "freedom of departure and souls". Freedom of movement, mobility rights, or the right to travel is a human rights concept encompassing the right of individuals to travel from place to place within the territory of a country⁽¹⁾.

It is stated in the Holy Qur'an "It is He who made the earth manageable for you, so travel its regions, and eat of His provisions. To Him is the Resurgence"⁽²⁾. It means that a person is free to travel and move within and outside his country without obstacles that prevent him, Person is not prevented from moving according to Islamic law except for an interest that necessitated the preservation of lives, as the Kaliph Omar Ibn Al-Khattab did in the plague of Emmaus⁽³⁾. When people were prevented from traveling to the Levant, which was affected by this epidemic, he did so only in

(1) A. SHAMSELDIN, Criminal Protection for Objective, Connective Personal Freedom, A Comparative Study, Dar Aal-Nahda Al-Arabiya, Cairo, 1996, P.34.

(2) Surah Al-Mulk, verse 15.

(3) The plague of Emmaus is an epidemic that occurred in the Levant in the days of the caliphate of Omar Ibn Al-Khattab in the year 18 AH "640 AD" after the conquest of Jerusalem, and many Muslims and companions of the Prophet, may God bless him and grant him peace, died in it, for more details see R. ABDULLAH, The Plague of Emmaus, Tikrit University Journal of Science, Issue 2, Volume 20, 2012, P. 287, See at, <http://iasj.net/iasj?func=fulltext&aId=68790,13-2-2016>.

application of the command of the Prophet Mohammed (peace and blessings of Allah be upon him).

In order to encourage people to exercise their right to freedom of movement, Islam prohibits assault on travelers, stalking them on the roads, and inflicts severe punishment on those who block roads and terrorize people "Harabah"⁽¹⁾, and movement, travel, and spirits are a natural human right, required by the conditions of human life, such as work, earning and education, and this right is manifested in various forms, including the right to emigrate.

International conventions and treaties stipulate the right of individuals to emigrate and the right to leave the territory of the State of which they are nationals or reside permanently, which is the real basis for freedom of movement. Since its inception, the United Nations has been keen to pay attention to rights and freedoms, including the right to emigrate, and this is represented in the provision of the right to migration explicitly or implicitly in the charters and treaties issued by it. Talking about the right to immigration is a real talk about the individual's right to movement and his freedom to go and live.

(1) Harabah is an Islamic term that means Robbery or Banditry, and we can define this term as "crime that causes public disruption".

On this basis, we divide this research into three points:

- 1- The right to migration in the Universal Declaration of Human Rights (UDHR).
- 2- The right to migration in the International Covenant on Civil and Political Rights (ICCPR).
- 3- The right to migration in International Labor Organization (ILO) conventions.

1- The right to migration in the Universal Declaration of Human Rights:

The Charter of the United Nations did not provide a list of human rights and freedoms, which is why the Universal Declaration of Human Rights of 1948 filled the gap in the Charter, and the Universal Declaration of Human Rights provided freedom of travel explicitly and implicitly.

Article III of the Universal Declaration of Human Rights stipulates a general provision to the effect that everyone has the right to life, liberty, and security of personality, which here includes freedom of travel and movement and the right to emigrate as a human right.

Article 13/2 of the Declaration expressly states that "... Everyone has the right to leave any country, including his own, and to return to his country", and if you look at the text of the previous

article, you will find that the Universal Declaration of Human Rights recognizes everyone the right to leave and return to any country, including his own.

According to article 13/2 of the Universal Declaration of Human Rights, every citizen, or non-citizen, has the right to leave any country, whatever the reason for leaving, and whatever the duration of his stay abroad. It is understood from the preceding text that the Universal Declaration was keen to reveal the right of the individual to move and to leave and return to his country without arbitrariness⁽¹⁾.

The provision of freedom of movement in the Universal Declaration of Human Rights does not imply the right to unregulated release, but rather to regulate and guarantee it in accordance with the law⁽²⁾.

The Declaration restricts it when it states in the second paragraph of Article 29/2 that " In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due

(1) R. CHOLEWINSKI & Others, International Migration Law, Developing Paradigms and Key Challenges, T.M.C Asser Press, 2007, P.50.

(2)I. SLINCKX, Migrants' rights in UN human rights conventions, Cambridge University Press, 2009, P.123.

recognition and respect for the rights and freedoms of others

Then it was reinstated with a new restriction, and article 29/3 of the Declaration stated that "These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations".

2- The right to migration in the International Covenant on Civil and Political Rights:

The Universal Declaration of Human Rights enshrines freedom of movement, which is why the provisions of the International Covenant on Civil and Political Rights have expanded the definition of this right. Article 12/2 of the 1966 International Covenant on Civil and Political Rights "ICCPR" states that " Everyone shall be free to leave any country, including his own",

As the Universal Declaration of Human Rights did, the term migration was not expressly stated, but the ICCPR provided for the right of movement for everyone, as in the Universal Declaration of Human Rights⁽¹⁾.

The United Nations Human Rights Committee has made a valuable contribution to the understanding of this right through its general comment No. 27 of 1999 on article 12 of the above-

(1) R. CHOLEWINSKI, Op. Cit., P.53.

mentioned International Covenant, which emphasized the interdependence of rights, considering that the right to movement is linked to many other rights⁽¹⁾.

However, article 12 of the International Covenant made no reference to the right to enter a foreign country, which was deliberately omitted to protect the right of a State to maintain its sovereignty over its territory.

A State cannot be compelled to receive aliens on its territory against the will of its authorities. Freedom of movement from one State to another, as well as the right to emigrate, does not imply the obligation of the State to receive foreigners on its territory based on the desire of foreigner's decisions seeking to reside on its territory, as this right is restricted by legislative controls, necessary to protect national security, public order, health, and public morals to the immigration country. But there are some countries that have sought to set difficult rules and conditions for the entry of foreigners to their territories and have reached the prevention, especially when it comes to the right to immigration⁽²⁾.

Infringement of the right to migration constitutes a case of discrimination based on sex prohibited by the Universal Declaration of Human Rights and the International Covenant on

(1) DAILLIER (P.) et Auteurs, Droit International Public, L.G.D.J, 2009, P.125.

(2) I. SLINCKX, Op.Cit, P.125.

Civil and Political Rights, and the Government's failure to issue a passport or personal identity document is an impediment to the exercise of this right, and thus a violation of the right to migrate⁽¹⁾.

3- The right to migration in (ILO) conventions.

The ILO's interest in defending workers and their interests and regulating working conditions was not isolated from its interest in a group of workers most exposed to exploitation and discrimination, so the ILO directed its attention to the development of rules that protect migrant workers, and this was reflected in the conclusion of two important conventions that establish a number of principles and standards of interest to this group of workers⁽²⁾:

- 1- **The Migration for Employment Convention, 1949** (ILO Convention No. 97), which entered into force on January 22, 1952, contains 32 articles and three annexes, and provides that each State Party undertakes to establish an appropriate and free administration to assist migrant workers by providing them with correct information and data to counter misleading propaganda on migration issues (Article 2), and obliges States Parties to take measures to facilitate the departure, travel, and

(1) R. CHOLEWINSKI, Op.Cit., P.58.

(2) P. GUCHTENEIRE & Other's, Migration and Climate Change: An Overview, Refugee Survey Quarterly, Oxford University Press, Volume. 30, Number. 3, 2011, P.12.

reception of migrants for the purpose of work (Article 4), and also undertakes that migrants shall enjoy adequate medical care (Article 5) and be treated the same as their nationals without any discrimination (Article. 6).

- 2- **The Convention concerning Migration in Abusive Conditions and the Promotion of Equal Opportunities and Equal Treatment of Migrant Workers of 1975 (ILO Convention No. 143)**, is divided into two parts: section I, deals with migration in arbitrary conditions and stipulates that fundamental human rights of all migrant workers must be respected, and obliges States parties to limit the illegal employment of workers residing in their territory, as well as to limit the migration of workers in conflict with international conventions and national legislation. Section II obliges States parties to the Convention to achieve equal treatment between foreign workers and domestic workers in the fields of employment, social security, trade union rights and individual and collective freedoms, and this Convention has not received an international welcome from most labor-receiving States, as only 11 States had ratified it until the mid-nineties.

Research in international conventions on the right of migration cannot be complete without familiarizing ourselves with the provisions and principles of the International Convention on the

Protection of the Rights of All Migrant Workers and Members of their Families (CRMW) 1990.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families:

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CRMW) is a global diplomatic deal to guarantee dignity and equality in an era of globalization. The UN General Assembly adopted Decision 45/158 without a vote on December 18, 1990.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families culminates the discussions, reports, and recommendations made over many years about the rights of migrant workers.

The United Nations was first concerned in 1972 on the issue of the rights of migrant workers when the Economic and Social Council, in its decision 1706 (D-53), expressed concern about the illegal transfer of workers to some European countries and the exploitation of workers from some African countries under conditions like slavery and forced labor⁽¹⁾.

(1) It should be noted that the issuance of this convention by the United Nations was the result of many efforts, reports (1), and recommendations related to the "rights of migrant workers", as the United Nations has been preoccupied with this issue since 1972, when the Economic and Social Council, through its decision 1706, expressed concern about the illegal importation of African workers to European countries, in

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In the same year, in its decision 2920 (II), the General Assembly condemned discrimination against foreign workers and called upon Governments to put an end to such practices and improve reception arrangements for migrant workers. At the request of the Economic and Social Council in 1973, in 1976 the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted a report on the exploitation of labor through illegal and clandestine trafficking. The report recommended the elaboration of a United Nations convention on the rights of migrant workers. The World Conference against Racism and Discrimination

conditions akin to "slavery and forced labor". In the same year, the United Nations General Assembly, Decision 2920, in which it condemned "discrimination against migrant workers and called on member states to eliminate all forms of discrimination and improve the living conditions of migrant workers." In 1976, the Committee on the Elimination of All Forms of Discrimination and Protection of Minorities (ECOSOC) issued its report on "Clandestine and Illegal Exploitation of Migrant Labor", noting in its report that this involves the illegal movement of labor on the one hand and the forms of discrimination to which migrant workers are subjected in receiving countries. The Committee recommended that a United Nations Convention for the Protection of Migrant Workers should be promulgated. The World Conference against Racism and Racial Discrimination, held in Geneva in 1978, adopted this idea (the idea of an international convention for the protection of migrant workers), and in the same year (1978) the United Nations General Assembly decision 33/163 was adopted to "support the means necessary to improve the situation and respect the human rights and dignity of all migrant workers." This was followed by the adoption of United Nations General Assembly decision 34/172 on 17 December 1979. (by forming a working group composed of delegates of any of the interested Member States, and this group is supported by all specialized agencies of the United Nations, and this group has completed the preparation of the text of the Convention, in 1990.

reiterated the racist meeting in Geneva in 1978 and recommended, as reiterated by the General Assembly in its decision 33/163 measures to improve the situation of all migrant workers and to ensure their human rights and dignity.

After the adoption by the General Assembly of decision 34/172 on 17 December 1979, an open-ended working group of all States parties was established in 1980 with the task of preparing a convention. The relevant international bodies and organizations, namely the Commission on Human Rights, the Commission for Social Development, the International Labor Organization, the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the World Health Organization (WHO), were invited to contribute to the fulfillment of this task.

The Working Group, reconstituted in successive annual sessions of the General Assembly, finalized the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 1990, and on 18 December 1990, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted without a vote and opened it for signature to all States Members of the United Nations.

This Convention did not receive the required number of ratifications until 2003, and entered into force, as of June 1, 2003, and the number of countries ratifying this Convention reached 68

countries until March 2022, most of which are labor-exporting countries, which requires redoubling efforts, in order to increase the number of acceding countries, especially labor-receiving countries, where the greatest degree of protection of migrant workers is carried out, in labor-receiving countries⁽¹⁾.

The right to migrate has been specifically recognized at the international level when the United Nations General Assembly adopted on December 18, 1990, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁽²⁾.

This Convention provides for the right to migrate through the provisions it contains, and it applies to any migration of workers, including departure, transit, length of stay, paid work in the State of employment, and return to the State of the origin or the State of habitual residence. Article 1/2 stipulates that " The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of

(1) A. AL-BORAI, International Convention on the Protection of All Migrant Workers and Members of Their Families, Scientific Seminar, Asylum and Migration, Problems and Solutions, Naif Arab University for Security Sciences, Tunisia, July 2007, P. 5.

(2)The Convention entered into force on July 1, 2003, and to date, only 50 Parties have been Parties. Egypt acceded to it on February 19, 1993, under Presidential Decree 446 of 1991.

stay and remunerated activity in the State of employment as well as return to the State of the origin or the State of habitual residence".

The Convention defines migrant workers as persons who are in the process of practicing, practicing, or have engaged in remunerated work in a State of which they are not nationals (Article. 2)⁽¹⁾.

(1) Article 2 "For the purposes of the present Convention:

1. The term "migrant worker" refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.
- 2.(a) The term "frontier worker" refers to a migrant worker who retains his or her habitual residence in a neighboring State to which he or she normally returns every day or at least once a week;
- (b) The term "seasonal worker" refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year;
- (c) The term "seafarer", which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national;
- (d) The term "worker on an offshore installation" refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national;
- (e) The term "itinerant worker" refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her occupation;
- (f) The term "project-tied worker" refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer;
- (g) The term "specified-employment worker" refers to a migrant worker:

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Finally, the Convention recognizes that migrant workers and members of their families are free to leave any State, including their State of origin (Article. 8/1)⁽¹⁾.

The Convention aims to establish minimum standards that states parties are obliged to apply to migrant workers and members of their families regardless of their immigration status. In the preamble, the real reason for recognizing the rights of

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- (i) Who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or
 - (ii) Who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or
 - (iii) Who, upon the request of his or her employer in the State of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief; and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work;
 - (h) The term "self-employed worker" refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements.
- (1) Article 8/1 " Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention."

undocumented migrant workers was reaffirmed, as States parties considered that migrant workers in irregular situations were often exploited and subjected to serious human rights violations and that States should be encouraged to take appropriate action to prevent and end the clandestine movements of migrant workers and to prohibit trafficking in them. While ensuring the protection of their human rights at the same time.

This Convention was followed by the establishment of the Commission on Human Rights and the appointment of a Special Rapporteur on the human rights of migrants in 1999 in accordance with Decision 44/1999, since then, the mandate of the Special Rapporteur has been extended by Commission on Human Rights Decisions 62/2002 and 47/2005, and Human Rights Council resolutions 10/8, 12/17 and 19/26, for a period of three years each time. The mandate of the Special Rapporteur covers all countries, regardless of whether or not a State has ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families⁽¹⁾.

In the end, we can say that we have tried during the past pages to show the importance of recognizing the right to migration in

(1) BARRAL(M.), La Convention des Nations-Unies sur les droits des migrants: un luxe pour l'Union européenne?, Policy Paper No. 24, P.9, Voir à, http://www.institutdelors.eu/media/policypaper24-immigration-fr_01.pdf?pdf=ok, 13-1-2022.

international conventions as one of the most important human rights at the global level, whose importance increased at the end of the twentieth century.

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