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### Moving forward

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Dijstelbloem, H.; Horn, C.; Jarvis, C.

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## 8. Moving forward

Between Utopian and Dystopian Visions of Migration Politics

*Huub Dijstelbloem, Carolyn Horn and Catriona Jarvis*

### Abstract

The chapter presents the authors' views on 'Moving Forward', specifically on the development of better data to evaluate the impact of competing migration policies on border deaths, the need for an overarching vision for border control and migration, and the requirements for what is perhaps the most viable option currently, 'muddling through'. Even in today's difficult environment, many practical, legal, and technological initiatives flourish that could help prevent deaths; these initiatives provide a pragmatic way forward. To keep continued crises from becoming the new normal, we must use these promising practices to develop, and gain acceptance of, a migration framework that prevents border death.

**Keywords:** Open borders, Right of movement, Human rights, Evidence-based policy, Humanitarian corridors, Pragmatic humanitarianism

A common sentiment today is that there is little hope of 'moving forward' – the immediate goal is not to move in reverse. The externalization of borders, the rise of populism and nationalism, and heightened anti-immigration measures are aimed at reducing mobility among some segments of the population and undermining protection guarantees. This intensification of border control often has severe side effects, such as increases in border deaths as people take riskier routes, de facto stimulation of human trafficking, and the violation of fundamental rights. The situation is dire.

On top of these bleak circumstances, states are touting their restrictive measures as a means for reducing deaths along the border, effectively claiming a 'humanitarian border' (see Chapters 1, 3 and 7). Many believe any reduction of deaths on the physical border masks potentially higher

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death rates in transit countries and countries of origin, but good data to evaluate these competing claims are missing. This lack of data hobbles efforts to combat border deaths generally. There are no comprehensive data on existing initiatives, little data on whether policies raise or lower death rates (see Chapter 2), and no open debate on alternatives.

In the meantime, many actors, such as refugee and migration lawyers and local humanitarians, continue to muddle through, trying to maintain core protections for refugees and migrants in the face of intensifying opposition from those advocating greater restrictions. To manage these challenging circumstances, we suggest two perspectives:

1. A focus on better data and, importantly, more coordination amongst different types of actors in the identification and collection of data; and
2. The continued pursuit of pragmatic policy initiatives, combined with an attempt to frame these initiatives within a re-envisioned legal framework governing migration.

The current situation will not last forever and neither will the current regulatory framework. States, the public, media, NGOs and volunteers have to be provided with the conceptual repertoire and vision to cope with changing circumstances, as they deal with immediate demands (see e.g. Chapters 4 and 6). While existing protections must be guarded, a broader vision is required for the future, particularly since change, if and when it comes, might happen quickly. Meanwhile, many promising initiatives and ideas already exist. Exploring these options may lead to a pragmatic humanitarianism – pragmatic, not in the sense of some diminution of fundamental rights, but in the intellectual tradition of pragmatism, namely ‘oriented at action’.

### **The need for more comprehensive data sources**

There are fundamental gaps in knowledge in all areas relating to border deaths. Large sections of the world are ignored, and data are rarely disaggregated to provide details on subcategories, such as gender and age. Information is needed to serve a variety of purposes: guiding migrants and refugees so that they can remain as safe as possible, providing operational guidance for those seeking to offer life-saving aid, evaluating policy options for their impact on saving lives, holding institutions accountable for their failure to meet responsibilities (see e.g. Chapter 4), and raising public awareness. Simply put, in order to prevent deaths, it is vital to know on which routes

migrants are dying, why they are dying, whether migration policies will prevent those deaths or simply displace them to another region, and what measures, including humanitarian relief and ensuring respect for legal rights, will be most effective in saving lives. Even generally accepted policies, such as increasing developmental aid, must be evaluated with better data, as the data might show that better standards of living increase migration and thus potentially increase border deaths – making developmental aid possibly desirable for improving local conditions but ineffective in preventing death. Given these needs, there must be a more expansive view of data, with guidance and protocols as to the type of information to be gathered and the appropriate rules governing its collection, storage and dissemination.

The critical need for better data is illustrated by the existence of ‘rival hypotheses’ on the impact of migration policies on border deaths (Spijkerboer 2018: 2, citing Last 2018). Academics argue that ‘those crossing borders in an irregular manner are *endangered* by intensified border controls, which result in them choosing more dangerous manners of irregularized border crossings’ and ‘higher migrant mortality’ (Spijkerboer 2018: 2)<sup>1</sup>. In contrast, many state policy makers now argue that ‘intensifying border control will lead to a *smaller volume* of irregular border crossings’, resulting in lower mortality (Spijkerboer 2018, 2). This is the argument that the Australian government presented when it claimed that it reduced border deaths by imposing its stringent border policy, Operation Sovereign Borders (Australia Border Death Database 2018). In essence, states are justifying their border controls as satisfying any obligation, moral or legal, that they might have to prevent the continuing border deaths of thousands of people. These claims have important legal ramifications, discussed below, but they also speak to the need for data: the data used by states are incomplete and focus on deaths at the physical border. Full, objective data are required, which must include all deaths potentially attributable to migration policies, including those in countries of origin and in transit countries. Little of this data is currently available (see Chapter 2 for a detailed discussion of the challenges and ways forward for border death data collection and dissemination).

States have a wealth of data that they collect for migration control and to classify people in terms of their mobility rights (Dijstelbloem 2017), but this information is typically unavailable to researchers and the public, and sometimes not used by states themselves, even when it could save lives.

1 If this view is accurate, these border controls represent a form of ‘necropolitics’, an exercise of sovereignty that equals a ‘control over mortality’ (Mbembe 2003, 12). See Chapter 6 for an analysis of disappeared migrants as ‘necro-figures’.

For example, states and NATO are accused of having known the location of a distressed boat in 2011, yet allowing the migrants to die, in the tragic 'left-to-die' case. The journey of this boat started when 72 migrants, fleeing Tripoli, ran out of fuel and were left to drift for 14 days until they landed back on the Libyan coast, with only nine surviving (Heller and Pezzani 2016). Even though authorities apparently made contact with the boat, no rescue was attempted. In general, whether in individual instances such as this or in general policy debates, authorities have been unwilling to devote the surveillance technologies they have deployed throughout the world, and the data they have collected, for the purpose of saving lives (Gkliati 2019).

It is likely that non-state parties will need to fill the gap<sup>2</sup>. These entities collect significant data but for divergent purposes, and these divergent purposes constrain the extent to which data collection can be coordinated. There are differences between operational and research data, and different ethical constraints on those collecting the data. For example, rescuers could help identify the dead and the missing, and they could potentially provide information, through interviews, on what motivates migrants, how migration policies have influenced their decisions, what migration route they took, how and why routes are shifting, and whether undocumented deaths are occurring along those routes – all of which is valuable information in formulating initiatives to prevent deaths. However, as just mentioned, rescuers have operational and ethical constraints that limit their ability to gather data. They are already overburdened. The purpose of interviews after rescues may differ from that of law enforcement and academics. Some fear being co-opted by governments and law-enforcement, who might seek access to the interview data, causing rescuers to lose the trust of migrants. Plus, there is little ability to follow up, as contact may be lost following the rescue, and there is concern about re-traumatizing migrants and traumatizing the rescuers themselves. Some organizations, such as Last Rights<sup>3</sup>, are developing guidance on evidence gathering, based on human rights law, which could address some of the concerns of both state and non-state search and rescue teams and permit the collection of more information on how many have

2 The monitoring of international mobility is also deployed by NGOs, academics and activists (Dijstelbloem 2015; Dijstelbloem 2017). Increasingly, these actors use digital instruments, visual means, mapping tools, cartographies and search and rescue itself to represent the consequences of border control and to influence debate (Cuttitta 2017; Last et al 2017; Heller and Pezzani 2016). See e.g. the Forensic Architecture Project (<https://www.forensic-architecture.org/project/>).

3 'Constructing a new framework of respect for the rights of missing and dead migrants and their bereaved families' (Last Rights Project: <http://lastrights.net>).

died and what might prevent these deaths.<sup>4</sup> Yet, many of the underlying constraints will probably remain, due to the different mission of rescuers.

There are various sources that could provide data relevant to preventing deaths, including big data, such as GPS information, social media, and the testimony of migrants themselves. Similar limitations may apply to this data, but it is nonetheless critical that those with access to these different data sources coordinate and interact (see Chapter 2). In today's political environment, 'cross-fertilization' will ensure that promising data sources, and potential solutions, will be identified and pursued.<sup>5,6</sup>

### Pragmatic policy experiments

With regard to the appropriate course of action, muddling through may be the best option given the current political environment. However, with the continuous and ongoing changes in international mobility and migration control, there is still a need to formulate an overarching vision. Indeed, the debate between vision and muddling through might be a false choice, as the small-scale efforts to address problems inform the ultimate solution, and the grand vision may help to provide coherence to the multitude of efforts and afford a common language. But what should be the focus?

It is commonly assumed that more legal pathways for migration would reduce border deaths, as people will forego risky routes if given the option. This has led some to advocate for 'open borders', with often conflicting understandings of that term (Bauder 2018). States in turn deride 'open borders' as utopian. They prioritize their sovereign right to control borders, giving only lip service to state responsibilities and the individual right of movement. However, it is utopian, and far from 'realistic', to claim that

4 On 11 May 2018, international civil society signed *The Mytilini Declaration for the Dignified Treatment of all Missing and Deceased Persons and their Families as a Consequence of Migrant Journeys* (Mytilini Declaration). The Last Rights Project is finalizing a Protocol to the Mytilini Declaration, including detailed guidance for all those working with the families of the missing and the deceased, an Explanatory Note and Glossary. This work is set to conclude in May 2019 (<http://lastrights.net>).

5 For example, Craig Spencer at Columbia University has initiated research on migration deaths in the Sahara because of his experience serving on a rescue boat and his being told by migrants that their experience in the Saharan desert was worse than almost dying on the Mediterranean. This research might help illuminate the risks of crossing the desert and the impact European policy initiatives are having in either increasing or decreasing those risks.

6 See Chapters 2 and 3 and the Preface for a critique of the collection and use of numbers, and data more generally, in the context of 'knowledge' on border deaths.

states can prevent high levels of migration, particularly given the disruptive conditions prevailing around the world. We suggest that, by adopting an evidence-based approach, a more pragmatic response to migration might be possible. Borders are best seen as selection mechanisms that allow the circulation of *some* people, goods, finances and information whilst excluding others (Casas Cortes et al 2015; Dijstelbloem and Broeders 2014; de Haas et al 2016). Various options exist that permit the circulation of *more* people and these can be tested and ‘actively promoted in a coordinated and systematic manner’ (Cyrus 2018: 14), even under today’s conditions.

This systematic process, espoused by Cyrus, is one way to meld today’s muddling through with ultimately achieving a differently ordered, more protective framework for migration. It is possible to consider both the sovereign right to control borders and the individual right of movement as fundamental, with their relative importance calibrated in the context of particular situations – just as freedom of speech is fundamental yet regulated under certain circumstances (Cyrus 2018: 4). The right to movement, for example, can accommodate reasonable investigations to prevent the entry of those who are dangerous, or even require a visa. The way forward could be to focus on smaller initiatives, advocating for more open migration in those situations, and demanding that any restrictions in this smaller setting be justified on an objective basis related to actual circumstances (Cyrus 2018: 8-9). This could guide research as well: ‘[s]egmenting the analysis of reservations against an individual Right to Freedom of Movement into small and manageable research units provides the possibility to search for practical proposals responding to reservations’ (Cyrus 2018: 9).

In general, migration policy is susceptible to symbolic action, border theatre and low levels of trust. Infusing policy debates with promising examples and better information could therefore be indispensable. Unfortunately, this idea of evidence-based policymaking in the context of migration has itself become a contested issue. As Baldwin-Edwards et al (2018) conclude, for instance, there is a ‘substantial gap’ between existing data on migration and European Union policy responses, even when the underlying research is directly funded by European governments. Despite these limitations, the possibilities of evidence-based policy making should be explored further, using smaller initiatives to build trust.

In this respect, it might be useful, as a model, to look at the rise of the evidence-based movement in the medical sciences and the problems it has experienced. Currently, evidence-based medicine is often identified with corporate-directed and financially intensive clinical trials, where supporting corporate profits and goals conceivably outweighs addressing the needs of

individual patients – much as governments might distort migration data to serve their goals, rather than human needs. Various scholars have argued that a true evidence-based movement would be informed, at the ground level, by the clinician's collective experience with individual patients, each presenting different health profiles and aspirations (Greenhalgh et al 2014; Sackett et al 1996).

This 'bottom-up' approach, if applied to migration, could ideally lead to an overall, unifying vision (Cyrus 2018: 11; see Chapter 6 and Preface). The creation of humanitarian corridors and NGO-sponsored resettlements (Palm 2018) is an example of small efforts that could potentially be used to create principles and practices later generalized on a larger scale. More expansive legal access has been repeatedly advocated in global agreements, such as the New York Declaration for Refugees and Migrants and the UN Global Compact for Safe Orderly and Regular Migration<sup>7</sup> (GCM, adopted 10 December 2018), but little has been achieved by nations along these lines. The EU, for example, announced the creation of resettlement channels from Niger, in consideration for relocation of migrants from Libya to that country, but that resettlement has stalled (Palm 2018). At least initially, NGO efforts might need to stand in for state efforts, even though they are currently too small to address overall migration. In one such initiative, a group of civil institutions and the Italian Ministries of Foreign Affairs and of the Interior signed a Protocol of Agreement for the resettlement to Italy of 1,000 vulnerable people from Lebanon, Morocco and Ethiopia in 2016 and 2017 (Palm 2018; Gois and Falchi 2017). Effectively, states such as Italy are substituting these smaller efforts, where they can control information and the cost is borne by civil society, for larger endeavours implemented by the UN High Commissioner for Refugees (UNHCR). Nonetheless, it is worth incorporating these smaller endeavours into the overall vision and determining what issues arise and what features, if any, could be scaled up to make resettlement more effective.

In a recent report, the Dutch Scientific Council for Government Policy (WRR 2018) advised facilitating external processing of asylum requests at the embassies of EU member states in the countries of origin of would-be migrants. This measure could potentially prevent people from taking dangerous routes and allow people who might have a right to asylum a quicker and safer procedure. Other recommendations in the same spirit included experiments with circular migration and more specific and

7 <https://www.un.org/pga/72/wp-content/uploads/sites/51/2018/07/migration.pdf>



wider labour migration policies, all potentially endeavours with which to experiment.

Another potential solution to prevent border deaths is removing visa obligations, which would make borders not entirely open (because controls could still be in place) but much more open than they are now. Indeed, it was in part the imposition of visa requirements by Spain and other Mediterranean EU countries that resulted in the irregularization of travels in this region and is one of the origins of recent border deaths (see Afterword and Preface). Removing visa requirements would be a return to the historical norm of movement and history suggests that adverse effects might be less than states warn. For example, Poland's accession to the EU and Schengen occurred without significant adverse effects, despite some predictions to the contrary, and coincided with the end of deaths along the German border (UNITED 2018).

These smaller endeavours could also identify the potential for adverse consequences before problems become overwhelming. For example, even proponents of open borders express concerns that these could 'have disturbing unintended consequences'; they could overstrain welfare systems, increase labour competition, and lead some states to revamp citizenship requirements (Bauder 2018: 5). Resettlement likewise could raise issues as, depending on the circumstances, it could be considered a form of forced movement or indentured labour. With smaller projects, these problems could be addressed before they become overwhelming.

Ultimately, the goal is to use these pragmatic steps to develop support, and experience, for a shift in paradigm. The legal framework already exists to demand that states meet their responsibility to individuals (see e.g. Chapters 5 and 6; UN GA 2017; Last Rights Project 2017). States have an obligation to protect the lives of individuals from foreseeable risk, without discrimination, whether or not the individual is acting lawfully; here, the risk is foreseeable, as governments 'know that people will die attempting to cross dangerous border regions, including deserts, rivers and seas' (UN GA 2017: para 59). Governments are obligated to investigate these deaths and to determine how to prevent them (*ibid.*: para 52). The obligation to protect life could even *require* that states issue humanitarian visas, or institute other legal routes of migration, if the failure to do so would put an individual's life at risk (Spijkerboer 2018).<sup>8</sup>

8 More specific legal paradigms, supported by regional agreements, also exist. In the EU, instead of interpreting the principle of solidarity enshrined in Article 80 TFEU as limited to EU members, this principle could be read as requiring solidarity between the EU and external subjects, including refugees and migrants (Redondo Ibarrondo 2018).

The Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees<sup>9</sup> constitute starting points for developing initiatives. These Compacts expressly envisage further collaboration and provide a potential framework for mainstreaming individual initiatives. Furthermore, academics and NGOs are developing additional guidance on how migration can be regularized and deaths reduced. Examples of such guidance range from the model international mobility convention (The Model International Mobility Commission 2017), which provides a comprehensive framework for all mobility, to the Mytilini Declaration (Last Rights Project 2018b), which addresses the specific issue of the rights of those who die or disappear during migration and the rights of their families. Early June 2019 saw an important legal development in that two lawyers lodged a comprehensive and detailed written submission with the International Criminal Court arguing that the European Union is culpable of crimes against humanity in relation to its acts and omissions regarding the deaths of migrants. The response of the court is awaited (Bowcott 2019).

## Conclusion

If there is a conclusion to be drawn, it is that there are many policy options between the utopian and dystopian visions of borders and migration politics. Between the harsh measures of states and extreme border rhetoric on the one hand and humanitarian ideals and fundamental rights on the other, many practical initiatives flourish already. These initiatives, some of which we have described (see Chapters 4, 5, 6 and 2 for additional initiatives), can function not only as possible policy options, but also as building blocks for a different kind of evidence-based policy-making: one based on monitored pilot projects, on local initiatives, on solidarity actions of people, NGOs and local governments, which potentially escape from the misleading dichotomies between 'open' and 'closed' borders or 'utopian' and 'dystopian' visions.

In order to prevent crises from becoming the new normal, and solutions becoming the exception and emergency-driven, we have emphasized the need to 'zoom out' and use these small endeavours to develop the guiding principles for the ultimate paradigm change. These promising practices deserve to become the accepted normal. The next step should consist of developing an

9 <https://www.unhcr.org/events/conferences/5b3295167/official-version-final-draft-global-compact-refugees.html>

overarching framework into which these practices fit – a framework that demands that states meet their obligations to recognize a right of movement and to protect all individuals during migration from any risk to life.

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## About the authors

**Huib Dijstelbloem** is Professor of Philosophy of Science and Politics at the University of Amsterdam (UvA) and Senior-Researcher and Project Leader at the Scientific Council for Government Policy (WRR) in The Hague. His research focuses on migration policies, the monitoring of mobility, border control and the deployment of technologies.

**Carolyn Horn** is Senior Advisor to Dr. Agnes Callamard, U.N. Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions. She is a former partner of Arnold & Porter. Her research focuses on migration policies and the increasing criminalisation of humanitarian aid.

**Catriona Jarvis**, LL.M, MA, is a retired judge from the United Kingdom. She sat for some twenty-one years, most recently in the Upper Tribunal, Immigration and Asylum Chamber. She is, with Syd Bolton, Co-Founder and Co-Convener of the Last Rights Project.

