

*Statement of Dr. Moreno-Lax, Queen Mary University of London,
to Thematic Discussion IV, 14 November 2017, Panel III: How can
we expand access to complementary pathways for admission?*

Submission on “primary” pathways to admission

Thank you Madam Chair.

This is a reaction to the overall direction in which the discussion has gone so far, within and beyond this forum, and an invitation to take a step back and reflect on ‘primary’ pathways for admission.

The prevailing understanding of ‘complementary’ pathways is that they are **voluntary** and **good-will based**, that there is no real obligation for States to engage in them in a systematic way. This, in turn, draws from an understanding that there is NO RIGHT OF IMMIGRATION and no obligation for States to take anybody in but their own nationals as a matter of law.

As a result, there is NO refugee-specific manner in which flight from persecution and ill-treatment can be undertaken in safe and regular fashion (on the basis of a person being a (not-yet-recognised) refugee).

Moreover, measures of *non-entrée* are becoming increasingly sophisticated and widespread, containing flows ever closer to the loci of crises.

My submission is that a change of approach is required, based on two key legal elements

- On one hand: the RIGHT TO LEAVE ANY COUNTRY, which, although *per se* may be insufficient to secure entry to any other country apart from one’s own, when coupled with the PROHIBITION OF *REFOULEMENT*, creates a distinct obligation for States to admit the person concerned.

Of the combination of the two emerges what I call the RIGHT TO FLEE (the right to leave in order to withdraw oneself from a situation of peril) with LEGALLY BINDING force.

- On the other hand: the RIGHT TO ASYLUM, enshrined in ALL regional instruments of human rights protection (in America, Africa, and the

EU), recognised, as they are, to produce LEGALLY BINDING OBLIGATIONS by their respective regional Courts. The right to asylum provision therein, as any other of the clauses contained in those Conventions, should be understood to include a positive duty to ensure that it can be EFFECTIVELY EXERCISED by those in need.

The consequence, in summary, is that international law has today progressed to a point where one can claim there is an **individual RIGHT TO ACCESS INTERNATIONAL PROTECTION** that should cause a fundamental rethink of any discussion on pathways for admission towards a **RIGHTS-BASED PARADIGM**; that should give rise to a reflection on how 'primary' pathways for admission are to be designed and implemented – prior to any discussion on 'complementary' pathways to protection.

Thank you.

* * *

For the full book-length elaboration of this argument, see:

Moreno-Lax, *Accessing Asylum in Europe* (Oxford University Press, 2017):
<https://global.oup.com/academic/product/accessing-asylum-in-europe-9780198701002?cc=gb&lang=en&>