International Journal of Law in Context (2025), 1–15
doi:10.1017/S1744552325100049

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SPECIAL ISSUE ARTICLE

Redefining the mobility paradigm in international law

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Abstract

From global tourism and free movement to refugees and climate-related displacement, human mobility is both a driver and an effect of what we think of as globalisation. Yet, the role of international law in constituting human mobility remains critically undervalued. In this contribution, we call for a radical rethinking of the role of international law in shaping our globe through the tenets of the mobilities paradigm in the social sciences. More specifically, we argue for the adoption of a mobile ontology of international law, which pits the constant flow of persons, goods and capital against dominant globalisation narratives predicting the end of place to take a focus on re-territorialisations of power. Taking human mobility as our starting point, we first show how mobility has been central to the foundation of key building blocks of international law. Second, we turn to the example of the global tourism regime to explore how law recursively disperses mobility around the world. Third and finally, we argue that the relationship between international law and human mobility is co-constitutive, as constant shifts in mobilities create unexpected effects, which in turn prompt further evolutions in law. We conclude by reflecting on the space for empirical and critical investigation that may open up by re-imaging (international) law as quintessentially mobile.

Keywords: international law; international migration law; human mobility; mobilities theory

Mobility gives effect to what we think of as our globe. The mobility of persons, goods, money, information and pollutants are all defining elements of globalisation. Among these, however, human mobility is perhaps the least well-understood phenomenon. This is perhaps because it is difficult to comprehensively map its scale and scope. Every year, more than 4.5 billion people are carried through commercial air travel (World Bank 2016), and more than 1.25 billion tourists travel to international destinations (Statista 2023). Many remain for longer periods. The International Organization for Migration (IOM) reports that globally, there are more than 282 million migrants – a number which has more than doubled since 1990 (IOM 2022). These migrants send more than $700 billion worth of remittances annually, a figure that easily dwarfs the annual gross domestic product of many national economies (IOM 2022). Added to this are the numbers of daily cross-border commuters, refugees or irregular migrants, maritime crew, pilots, navy officers and modern pirates, to give just a few examples of persons who draw their own maps by tracing connections through mobile pathways.

Human mobility has always been a key precondition for economic development, cultural exchange and ultimately survival. Yet few other issues today are subject to such elaborate legal restrictions. Whereas, historically, limitations to human mobility were predominantly geographical and technological, today, a wide assembly of different laws – from visa rules and travel standards to immigration codes and security regulations – play a key role in determining

who gets to move, how easily, to where and for how long they get to stay. Laws related to human mobility thus define livelihood opportunities and social structures, (e.g. Bauman 1998; Munshi 2020). Mobility law is furthermore highly stratified, and highly stratifying. It enables some people to move around the globe at high speed and low cost, while for others it makes mobility slower, more expensive and cumbersome (Spijkerboer 2018). In large parts, this follows well-known class and Global North–South cleavages. However, the role of law in creating and facilitating mobilities – and the divides arising from them – remains substantially underexplored.

This is striking, as historically mobility has been central to the development of international law, from mercantile origins to sovereignty and citizenship to the protection of minorities and human rights (e.g. Chetail 2013). Yet legal conceptualisations of mobility have long been tethered to territorial paradigms: first, with the notion of state consent as the source of legal rights and obligations (Werner, 2016); and second, with the grounding sociological assumption of the state as a fixed entity – a relatively culturally and socially homogenised area that comprises the source of its moral authority (Holland 2010). While the notion of the state has always been a kind of legal fiction (Lewis 2021), as traditional binaries of domestic/ international have come under strain, calls have been increasingly made for a remapping of law as fundamentally global (Walker 2014) or transnational (Zumbansen, 2021).

In this contribution, we want to take a step back from the discourse of what makes law global and instead ask: how does law make the globe? We share the sentiment expressed within this collection of articles that what we think of as the global in international law is a reified construct, attached to paradigms which do not always mirror empirical realities. However, we go further to challenge the foundational assumption of sedentarism, whereby the baseline for human life is conceived as static and jurisgeneratively fixed to territory. While others have cast the reach of international legal imagination as a kind of 'ying and yang' of sovereignty and property (Koskenniemi 2021), we seek to draw attention to the co-constitutive relation between mobility and immobility in shaping the rule of international law over movements across the globe.

In doing so, we draw inspiration from the 'mobilities turn' in social sciences, with its foundational posit that human identities and relations are not fixed but 'move at different speeds, scales, and viscosities' (Sheller and Urry 2006). Mobilities theory problematises traditional sociological assumptions arising from territorialised notions of home, family and state, but it also rejects the 'de-territorialisation' discourses which predict the end of territory, in light of omnipresent borderings and re-territorialisations of power (Sheller and Urry 2006). While this is a transdisciplinary body of research, its primary argument is anthropological; and thus what we locate as 'mobile' from this perspective is determined by a 'circumference' of vision that demarcates the spatial and temporal frame of reference (Burke 1945) – from the smallest movement of a particle to the global visa regime as a form of carceral control of cross-border movement that maps the reality for large parts of the world's populations.

However, discussions of law have been surprisingly absent from this agenda (a brilliant exception is Peters 2014). Dominant frameworks tend to picture law as at best a dependent variable in complex systems driven by political and economic forces (Urry 2000; Xiang and Lindquist 2014), and not itself as a driver of global inequality. Vice-versa, existing applications of mobilities theory to law are focused on the role of mobilities in shaping legal relations of the citizen and state and thereby constituting mobilities (Kmak 2024; Barr 2016), at the expense of looking past the crucial role that law plays in structuring mobilities, and thereby drawing its own map of the globe. In contrast, we argue that this relationship is co-constitutive: as law liberalises but also controls, and its power always has unexpected flow-on effects which impact (im) mobilities around the world.

Unfolding this dynamic will require us to do our own kind of mapping exercise to discover how mobility shapes law, how law shapes mobility and what emerges from this relationship. We argue that cognising this relation requires a reorientation of the legal imagination towards a 'mobile ontology' (Everuss 2020a) that decentres the *human* in mobilities – so that it is not just about the

https://doi.org/10.1017/S1744552325100049 Published online by Cambridge University Press

migrant, nor merely about the law. Drawing from related insights in infrastructural studies, we subsequently build upon the empirical (Büscher and Urry 2009) and critical (Adey 2006) trajectories of mobilities theory to re-imagine the mobility paradigm, which is part diagnostic but also in part a kind of prefigurative politics, as it seeks to open up space for thinking about what we could be otherwise by considering (international) law as mobile (Cowan and Morgan 2023).

The article proceeds as follows. In parts 1 and 2, we first revisit the different roles that human mobilities have played in the development of foundational paradigms in international law, outlining its integral role in the birth of the modern nation-state and the (re)making of state sovereignty. In parts 3 and 4, we move to show how law shapes mobility through a discussion of the global tourism regime and the COVID-19 pandemic. In the final part, we move to envisage empirical and critical windows that emerge from our analysis by conceptualising the role of law in global mobility as an infrastructural process.

1 Mobilities in the historical development of international law

The common doctrinal narrative of the role of human mobility in international law would begin with the formalisation of migration pathways in the twentieth and twenty-first centuries through the international minimum standard of treatment for aliens, and the emergence of international refugee law and human rights of migrants, as the legal paradigm for conceiving the movement of persons across state borders (e.g. Chetail 2019; Opeskin, Perruchoud and Redpath-Cross 2012). While this narrative is certainly valid in terms of describing the legal origins of a large part of what we now call international migration law (IML), it remains attached to territorialist assumptions and a static ontology that tends to neglect the characteristics of human sociality as essentially mobile.

A more revisionist history is now casting new light on this dominant legal narrative from two main angles. First, a growing number of scholars have come to recognise the colonial roots of IML. For example, Vitoria's right to communication between peoples ostensibly provided for freedom of movement but also served to justify colonial expansions through Spanish conquest (Chetail 2016). For Vitoria, this *ius communicatios* was not limited to a right to travel and corresponding duties of the receiving state to provide hospitality; is also included free trade and navigation and *ius soli* (Chetail 2016). Based on an opening reference to Virgil's portrayal of the shipwrecked refugee Aeneas, Grotius similarly expanded mobility rights based on the principle of hospitality, from which he inferred the rights of innocent passage and freedom of the high seas, and further articulated rights to leave and a right to remain in a country (Gammeltoft-Hansen 2017). On the one hand, these were seemingly liberal endeavours; on the other, they aided Dutch colonial profiteering (Tuck 1999, pp. 78–108).

Second, some scholars have come to emphasise that freedom of movement is not just a modern corollary of regional trade regimes, but a persistent feature – and what makes history 'human' (e.g. Manning 2012). This is evident from the earliest movements from Africa, but became patently clear as migration dramatically increased with the development of technologies necessary to traverse bodies of water (Bhabha 2017). This has led legal scholars to argue that contemporary restrictions on international movement may be more of a historical aberration rather than the norm (Juss 2004). Similarly, the sovereign right to exclude aliens – which is often regarded as stemming from the writings of Vattel, Pufendorf and Wolff – has been shown to be more a product of judicial reiteration in the twentieth century informed by racialist premises, rather than representing any firm basis in early modern customary international law (Nafziger 1983; de Vries and Spijkerboer 2021).

From different angles, then, human mobility has been central to the development of international law. Yet, this literature largely presumes that the role of law in generating mobility is largely epiphenomenal. This narrative further imbues contemporary accounts of international migration law, which is often described as a 'deconstructivist design' (Chetail 2017) or a 'giant unassembled juridical jigsaw puzzle' (Lillich 1984). As the institutional framework for migration

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has proliferated across international and regional legal regimes, some scholars have predicted the rise of regime complexity (Betts and Kainz 2017) or legal fragmentation (Chetail 2017; Wilde 2017) yet these arguments continue to take the premise that the normal state of law is fixed and not in transient form, that law responds to mobility rather than being ontologically bound to it.

Perhaps a better way to approach the problem is to conceive of human migration as but one species of mobility in light of its historically transformative role in shaping what we now think of as our globe. This is no sleight of hand but the core of our research problem: international legal scholars know a lot about how law operates when people leave from or arrive at another country, but much less about how it operates while persons are mobile. The legally cognisable 'migration circle' is thus often described as 'departure from the country of origin; admission into the territory of the destination State and sojourn therein' (Chetail 2014). However, empirical evidence has shown that the vast majority of mobility takes place at nearby distances (Deutschmann and Recchi 2024), and that among people on the move, only a small minority are migrants as traditionally defined – understood as a person who has changed their country of residence (e.g. Caron 2024). What is required is an epistemic reorientation that takes into account the difference between migration as a legal category, pertaining to persons who cross borders and reside regularly or irregularly for a certain period of time and the quality of mobility itself, which denotes an essential aspect of movement – a state of being mobile.

As a concept, mobility captures a world that is in constant flux with regard to people and identities but also ideas, goods and (in)tangible objects. As a point of distinguishing transient form, it also requires that some things will remain immobile. Mobility is thus not just about movement; it is about meanings: 'mobility can do little on its own until it is materialised through people, objects, words, and other embodied forms' (Salazar 2016). From this point, it is not too difficult to see how mobility is key to social structuring. It is 'a relationship through which the world is lived and understood' (Adey 2010). Mobility tends to be associated with globalisation discourses on the presumption that there is now more of it and that this should be valued as improving human lives. Yet, scholars have persuasively shown how 'mobility' – and crucially, the regulation of its forms – is neither a cause nor by-product of globalisation, but rather a central aspect of modernity (Cresswell 2006). In feudal societies both landowners and serfs were tied to the land and those who were not were exiles. In the early modern period, commercial mobilities de-rooted feudalism and called for new techniques of surveillance and 'the poor' to be managed through a developing idea of national welfare (see further Sassen, 2008).

Mobility, moreover, was central to the birth of the modern nation-state as a political entity which exercises moral authority over a territorially bounded class of persons. This was not just a material transformation but also reflected in the political philosophies of the time. Hobbes borrowed from Galileo's notion that movement was the natural state to articulate his idea of mobility as being at the heart of individual freedom (Cresswell 2006). Moving from the state of nature thus entailed not only state monopolisation of violence but also legitimate movement as an essential aspect of the transition from feudalism to capitalism (Torpey 2002). This in turn required a new ideology of mobility with the idea of citizens being granted the right to move within a state, subsequently exported in colonial distinction between 'citizens', who held political rights, and the colonised, who were only considered 'nationals' (Kmak 2024). Mobility thus went hand in hand with liberalism in creating the 'ordered movement' and 'ordered freedom' of imperialist extensions of the state that were categorically granted to some persons but restricted for others (Kotef 2015).

Far from just a historical contingency, mobility moreover continues to play a powerful role in constituting what we think of as state sovereignty today. Writing in the vein of law and geography, scholars have demonstrated how sovereignty is constantly contested or even redefined by mobile populations (Everuss 2020a), such as in the case of Australia's excision of offshore territories, to categorically exclude asylum seekers who arrive by boat from protection obligations (Mountz 2011). Others have argued that sovereignty is a 'zombie category', a social institution that is

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sustained through ongoing generative performances of inclusion and exclusion (Everuss 2020b). Attenuations to sovereignty may also arise through 'state mobilities' exercised by the state itself as a mobile actor (Mountz 2011), through mechanisms such as 'shifting borders' (Shachar 2020), simultaneously restricting and liberalising sovereign space across multiple sites of governance (Dickson 2015; Everuss 2020a). Even beyond claims to state territory, international law facilitates shifts to sovereignty through, for example, means of migration control, detention or controlling populations through the exploitation of 'legal black holes' across different levels of materiality, such as land, air and sea (Peters 2014; Wilde 2013; Mann 2018).

What this literature points to is the powerful capacity for mobility to constitute international law – not only by shaping its doctrine, but also making up its material building blocks. However, a large part of this scholarship, in working within a legal paradigm frames law as merely responsive to the social, political and economic forces that undergird human movements. Vice-versa, research from mobilities theory tends to approach law as relatively homogenised, inseparable from entities such as the citizen and the nation-state, rather than as a powerful driving force of mobility, with its own impetus and trajectories, in all of its granularity and in its own right. In the next part, we thus explore the further purchase of mobilities theory for analysing the power of law to map a globe by controlling movements around the world.

2 The role of law in shaping human mobilities

International law provides a vocabulary to order this world (Koskenniemi 2021), but its world-making practices also encapsulate human sociality and values (Mansouri 2022). It enables cognitive categories which help us to sort configurations of norms and practices as a constituted juridical reality (Uruena 2024) including for how we, as humans, experience mobility. The law pertaining to persons who move across borders spans a broad set of legal regimes. It comprises what might be thought of as a 'general part' arising from customary international law standards for the treatment of aliens and the protections of international human rights law (Cf. Gammeltoft-Hansen and Madsen 2021) but also a range of specialised areas of international law covering specific classes of mobile populations – for example, transnational labour law, refugee law, international criminal law, diplomatic law, the law of the sea (Gammeltoft-Hansen 2016) and international trade law (Panizzon 2011). Mobility law provisions can further be found in legal regimes which are largely universalised as facilitating international co-operation, such as international aviation law (e.g. Huremagić and Kainz 2020) and international health law (Ó Cuinn and Switzer 2019). One could add the vast body of regional and sub-regional laws for mobility, such as the ECOWAS, EU, MERCOSUR and Andean Community free movement agreements (Acosta 2018).

Yet from a doctrinal legal perspective, there currently remains no overarching normative framework for mobility law. In its absence, we lack a clear understanding of how its different elements interact and shape mobility patterns. Calls to expand legal research have underscored the importance of cross-sector approaches that look to the intersections of legal frameworks (Costello and Mann 2020), as well as engaging multidimensional perspectives on the transnational movement of persons (Ramji-Nogales and Spiro 2017) and interdisciplinary analysis of the evolution of the migration regime outside of formal processes (Janmyr 2021). Other scholars propose that research on migration law needs to abandon state-centric paradigms by re-imagining 'a global system of human mobility' that puts humanity at the forefront (Aleinikoff 2017). The majority of this literature, however, is directed towards expanding existing trajectories in migration law research, rather than approaching law as constituting human mobility more broadly.

This paramount purchase of the mobilities turn in the social sciences emerges at this point in helping to foreground the multi-faceted nature of mobility, as well as the socio-material dynamics that underpin it. Mobilities theory has antecedents in the spatial turn in the social sciences and its vision of space as a social construction (Lefebvre 1991; see also, in international legal scholarship, Lythgoe 2024), as well as descriptions of the socially constitutive linkages of relation in 'network

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society' (Castells 2011) and the characteristics of 'liquid modernity' where social meaning arises transnationally (Bauman 2000). As such, mobilities theory calls for a 'sociology beyond societies' (Urry 2000), which entails a departure from the idea that 'society' is fixed to geographically contained units. Yet it also challenges narratives of the decline of space as a scheme of social organisation, with the posit that social meanings are always contingently re-formed through mobile pathways – whether they encompass persons, goods, information or ideas and notions (Sheller and Urry 2006).

Mobilities theory is an eclectic body of research, but it unites around a foundational paradigm of a 'mobile ontology' that presupposes that 'movement is primary as a foundational condition of being, space, subjects, and power' (Everuss 2020a; see also Nail 2015, 2018). This shifts analytical attention away from static concepts such as state and society and towards 'resonances, connections, continuities, and disruptions that organise the world into ongoing yet temporary mobile formations' where mobilities are 'located and materialised' or linked with 'moorings' (Sheller and Urry 2006; Hannam, Sheller and Urry 2006). Mobilities are typically taken as comprising material, symbolic and practical elements, and often described as assemblages where agency is distributed between humans and non-humans (Büscher and Urry 2009; and further Latour 2002), or as complex systems (Hannam et al. 2006). When perceived as an assemblage, mobile relations are typically taken to exhibit network-type effects, and when analysed as complex systems, mobilities are 'simultaneously economic, physical, technological, political and social' (Everuss 2020a). Mobilities theory is a critical agenda, and thus while everything in theory is mobile, mobilities theory tends to focus on the contingently mobile. Its proponents adopt different registers for locating critique, from relational studies (Adey 2006) to more hierarchical studies of, for example, biopolitics (Sheller 2016).

Thus far, however, law has remained largely absent from these discussions. Mobilities scholars from other disciplines tend to view law as a background variable and largely static factor in human mobility, and the bureaucracy of 'regulation' as something that must be worked around (e.g. Xiang and Lindquist 2014). Within socio-legal scholarship, it has been argued that law is mobile insofar as transnational communities appropriate and frame it within new settings (von Benda Beckmann et al. 2005). Working from the tradition of jurisprudence, others have shown how legal movement is technical and material, and constantly reproduced through 'place making activities' such as colonial projects (Barr 2019). Most recently, Kmak (2024) has persuasively elucidated how mobility provides a constitutive force for social systems and thereby renders forms of stability as political power. Yet, each of these analyses tends to neglect the role of law in shaping mobilities and the recursive relations between law and mobility that arise through this dynamic relationship.

In the following, we seek to move from these analyses to outline how, on the one hand, international law not only plays a much more prominent role in shaping global mobilities and, on the other, how adopting a mobile ontology enables novel insights for legal analysis. We do so by employing two paradigmatic examples from existing social science studies on human mobility. First, the classic sociological protagonist of the tourist – here highlighting the intricate but also highly bifurcated legal infrastructure for global leisure travel. Second, the more recent COVID-19 pandemic and its cataclysmic legal effects for global mobility – here pointing to the intimate relations between human and non-human elements in mobility cycles.

3 The global tourism infrastructure

Within mobilities theory, as well as sociology on globalisation more generally, the tourist arguably remains the quintessential mobile subject of 'liquid modernity' through their ability to move throughout the globe at high speed, transcending social systems and cultures. (Bauman 1996, 2000; McCabe 2014; Sheller 2004) The mobility of tourists is exemplary of the operation of the 'mobility infrastructure' that links geographies through socio-technical systems which manage people's physical movements both over long distances and in their daily routines, and at least

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partially by redistributing mobility between types of movement and populations (Xiang 2024). Just as roads enable transport for cars, railways link towns and cities, airports link centres and peripheries spread across regions. Each scale of mobility is comprised of a technical element, a physical infrastructure that moves and sorts mobilities, but also practices that enact sociality and norms, such as 'drive on the left', and symbols to stop and go. To draw an analogy from Latour (1990), this is a socio-technical platform; a pilot does not fly, '(f)lying is a property of the whole association of entities that includes airports and planes, launch pads and ticket counters.' Similarly, it is not tourists that travel, but constellations of humans and socio-technical platforms – enabling, for example, a cruise ship to operate as 'floating cities' (Gammeltoft-Hansen and Mann 2024; for a similar argument see Xiang and Lindquist 2014). From this angle, it becomes clear that '(t)he question of how people are moved is at least as important as the question of how people move' (Xiang 2024) as mobility infrastructures play a crucial role in 'categorising moments in production' (Lin et al. 2017).

The global visa regime, as an enormous scheme of regional and bilateral treaty arrangements, provides a glaring example of the constitutive role of law in terms of accelerating travel for persons from the Global North and de-accelerating it for persons from the Global South (Spijkerboer 2018). However, nationality – and hence geography – is not the only dividing line in this regard. Many visa waiver programmes are moreover class-based in exempting specific categories of travellers, such as diplomats, business travellers and/or government officials. For travellers who do need to obtain a visa, personal net worth, social position and education are often key assessment criteria (Infantino 2019). In this way, the visa as a legal device effectively reveals the patterns of discretion and arbitrariness enabled by law to control mobilities on a local scale, but with consequential effects in mapping a mobile globe. The visa is not just a stamp in the passport; rather, it is a whole host of interlocking logics – from private intermediaries to various forms of policing – that provide a 'constant assertion of power over moving bodies' (Megret 2024).

The experience of the visa regime thus suggests that the international tourism infrastructure operates quite differently from the liberal narrative espoused by, for example, the UN World Tourism Organization for 'bringing the world closer' (UN 2024). The Global Passport Index (Passport Index 2024) is another way to gauge this global disjunction. Each year, it ranks national passports by ease of restriction, and thereby paints a stark picture of a virtual visa apartheid between the Global North and South (Mau et al. 2015). From this perspective, the tourist infrastructure can be seen as emblematic of a 'racialized border', one that 'privileges "whiteness" in international mobility and migration' through supposedly neutral legal categories, such as a 'right to leave' one's country of origin (Achiume, 2023). The material aspects of tourism infrastructures, such as aeroplanes, boats and roads further interlock with a whole host of international and national laws that enable and constrain movement of persons around the globe. Law, in other words, plays an integral role in facilitating and conditioning global tourist mobility through a physical and ideational infrastructure.

Borders remain the most obvious manifestation of the materiality of this infrastructure, and the legal construction of the border as a site of material and symbolic violence has been subject of extensive scholarship (e.g. Dijestelbloem 2021; van den Meerssche, 2022). However, legal studies in this area tend to focus exclusively on legal sources pertaining to and mobilities to the Global North; a reflection of the wider epistemic bias in migration law scholarship (Spijkerboer 2021; Chimni 1988). A different narrative of the global visa regime could recognise the role of law in the recursive (re) generation of mobilities, as restrictive visa policies in the Global North has also been accompanied by visa reconfigurations in African and South America regional blocs (Czaika et al. 2018). These flow-on effects are not always positive. As part of so-called externalisation policies, the EU and its member states have entered into mobility partnerships in several regions, whereby third states are encouraged to more closely control secondary movements and impose national border controls in an exchange for development assistance (Byrne and Gammeltoft-Hansen 2024). The price for

https://doi.org/10.1017/S1744552325100049 Published online by Cambridge University Press

regional free movement in the Global North is thus undercutting those very same freedoms and regional mobility arrangements in other parts of the world.

Similarly, when we think of global mobility, our imagination is often drawn to the hyper-mobile. International aviation is emblematic in this regard, encapsulating the supposed virtues of human mobility in connecting human lives for social connection, leisure and commerce. While the facilitation of international aviation through visa laws enables international tourism, the wealthiest 10 per cent (and among the world's most mobile) consume a disproportionately large share of fossil fuels and thereby contribute to the generation of 'climate mobilities', which in turn are causing livelihood depletions in other parts of the world through their 'high-energy life-styles' (Sheller 2020; Boas et al. 2022). Tourists have furthermore long moved through other routes that operate through their own vicious logics. The fastest-growing form of international tourism, cruise ships, were originally branded as the world's first single-class form of travel, and owes much of its success to its hyper-mobile constitution – breaking with fixed routes and destinations in favour of making mobility the destination in and of itself. Yet, from a legal perspective, the cruise ship navigates a complex web of laws: on the one hand, drawing from colonial structures of freedom of navigation to late-sovereigntist constructs such as open registries; and on the other, relying on private law protections and trans-regional networks of limited liability waiver contracts for both passengers and crews. Far from the egalitarian consumer narratives of bringing affordable luxury to the masses, the cruise ship itself thus emerges as an example of a compressed global value chain, replete with sweatshop conditions of labour below deck and negative externalities in the form of excessive and largely unregulated aerosol and maritime pollutants (Gammeltoft-Hansen and Mann 2024). The spectacle and performance of tourism (McCabe 2014) thereby elides the foundational role of law in enabling class-based injustices and causing damage to the natural environment.

In sum, these examples show the powerful control that law exerts over mobilities by defining space through 'deeply spatialized theoretical categories' such as jurisdiction that cast a legal imagination on 'a portion of the surface of the globe' (Lythgoe 2022). However, law is also performed in places such as border zones by actors such as immigration control (Rajkovic et al. 2016), and these sites can spatially extend beyond geographies through practices (Walters 2022), are enacted through materialities such as the passport (Lloyd 2003) and carried around the world through sociotechnical objects, such as aviation and cruise ships (Salter 2007; Gammeltoft-Hansen and Mann 2024). In this way, mobility functions through a dense infrastructure that extends the normative reach of law to a globe of corporeal control over movements, as we always carry our mobility markers – such as nationality, class and race, and thus jurisdictional status – in our bodies (Merlaeu-Ponty 1945; Sheller 2018; Kmak 2024). In the next part, we will further explore how law travels through mobile pathways through an exposition of the role of international law in the COVID-19 pandemic.

4 Global mobility and the virus

In the previous part, we sought to show how the way in which we experience the world-making power of mobility may be radically different depending on its actualisation in place and space; that is, law provides the 'circumference' for being mobile (Burke 1945). This world of interconnected mobilities and immobilities experienced significant disruption from 2020 onwards with the COVID-19 pandemic – itself a highly mobile virus that affected humans and non-humans alike, and spread transnationally through traditional vehicles of mobility such as tourism and transportation networks.

The negative impacts of the COVID-19 pandemic on the transnational movement of people, goods, services and capital are well known. The virus spread from a market in Wuhan to a ski resort in Ischgl, was subsequently transported from buses to Innsbruck airport, and thereafter exported as tourists returned to their homes throughout the globe (Oltermann and Hoyal 2020).

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In the shutdowns enacted from March 2020, much human mobility immediately came to a halt; airline traffic dropped by more than 70 per cent, cruise ships were locked out at sea, transient forms of labour migration declined, and foreign nationals were trapped – often with little aid from their host or home governments (Achiume et al. 2020). However, the 'global mobility apartheid' which separates the world through legal devices did not cease or become levelled out – despite the fact that infection numbers were much higher in the hyper-mobile Global North during early parts of the pandemic. Rather, it was exchanged for a 'fluctuating sanitary apartheid' (Heller, 2021), shifting existing restrictions on mobility between states downwards along socio-material divides within states and local communities (Ogg and Simić, 2022), and introducing new socio-legal devices that enabled limited mobility for some, but not for others.

The first narrative of the COVID-19 pandemic, in respect of the role of law in mobilities, is one of infrastructural breakdown – an event that brought the character of its operations into full scope (Star 1999; Bowker and Star 1999) by causing 'a vast intensification of existing uneven relations of (im)mobilities' (Adey et al. 2021). The most immediate manifestation were world-wide border closures, which heightened already strained relations in many parts of the world, otherwise accustomed to bilateral or regional freedom of movement in areas such as the Schengen zone (Byrne and Gammeltoft-Hansen 2024). It also led to a host of legal challenges from expatriate citizens whose states of nationality either prevented or failed to sufficiently assist them from coming home (Simic 2021), and it further stratified existing social and class-based inequalities. The introduction of 'COVID-19 passports' is a notable example in this regard, as it made admission contingent on being in possession of a valid virus test (Dehm and Loughnan 2022) with a pronounced detrimental impact for citizens in countries where access to testing was more difficult, or for groups already disenfranchised from access to national healthcare such as irregular migrants (Lang and Ramji-Nogales 2020).

The second narrative of the COVID-19 pandemic's impact on mobility is much less well known but equally informative. It highlights how legal measures in relation to mobility rarely, if ever, have one-sided or foreseeable effects. As borders shut, the pandemic sparked what is quite possibly the largest human return migration in modern history (Guadagno 2020). Across the globe, lockdowns led to mass reverse migration of persons such as students, seasonal workers, precarious labour migrants and even many long-term expats – each deciding to return due to a combination of different factors, whether the loss of opportunities ensuing from the lockdowns, the importance of social networks in the home country or because of the protective ambit enabled by the legal device of citizenship. The exact scope of this return migration is difficult to quantify. One of the most well-documented examples concerns the tens of millions of urban workers in India returning to their rural regions of origin, many of whom suffered significant discrimination on the 'long walk home' (Misra 2022). In some cases, governments forcibly repatriated migrant workers, such as the Iranian government's expulsion of some 850,000 Afghans. In others, states adopted novel measures for containing their nationals within the home state, such as the Philippines' ban on the emigration of nurses, and repatriating its own citizens from abroad (Xiang 2020). Thus, while the majority of COVID-19 measures were intended to stymie population mobility, the lockdowns also created new patterns of large-scale mobility.

At a second level, the pandemic and the ensuing return migration highlight the Global North's fundamental dependency on mobility in the form of a steady supply of migrant labour and a transnational service industry. Across Western countries, COVID-19 immobilities coincided with supply shocks, many of which continue to reverberate today – for example, in the form of significant labour shortages across many key industries. COVID-19, in this sense, represents a case of 'shock mobility' in the sense that not only the pandemic itself, but also governmental efforts to legally regulate it, significantly altered the 'speed, directions, meanings, and consequences of existing mobilities', with a particular impact on persons from the Global South (Xiang 2020). However, the COVID-19 pandemic was further revealing of the organic lock-in between industry and society in the era of 'anthropocene mobilities' (Baldwin et al. 2019; Adey et al. 2021). It

https://doi.org/10.1017/S1744552325100049 Published online by Cambridge University Press

provided a window into how human mobilities interact with other types of mobility – in this case, the mobility of goods through traditional supply chains – which in turn created flow on effects in certain national labour markets. In this light, the interlocking of different types of mobility regimes gives rise to their own kinds of political economy through the logics of logistics (Cowen 2007; Cresswell et al. 2016), in which the mobility of labour plays an analytically important, but by no means qualitatively dominant role (Kaufmann et al. 2004; Glick-Schiller and Salazar 2013).

Last, but not least, the COVID-19 pandemic revealed the capacity for otherwise well-established normative complexes to shift or move, as new patterns and configurations emerge from infrastructural breakdowns or sudden disruptions (Adey et al. 2021). In the case of international law, COVID-19 could be seen to accelerate existing structural trends, such as the ongoing privatisation of international legal services. For example, the pandemic led to further outsourcing of security functions (Mégret 2021), as commercial providers stepped to provide quarantine services in a number of countries (Bosworth and Zedner (2022). At the same time, new normative trajectories also emerged. For example, scholars began to invoke new schemes for migrant rights in the wake of the pandemic (Kysel and Thomas 2020) and new mobility pathways emerged not only in practice, but also in law for 'essential workers' (Robin-Olivier 2020). In these ways, the COVID-19 pandemic revealed the classic elements of international law as a 'crisis discourse', as it provided a tool to develop international law and fill existing gaps (Charlesworth 2002; d'Aspremont 2021). However, the COVID-19 pandemic also had a crystallising effect on other fields of law, such as international health law (Clements 2024), and spurred across a wide range of legal developments as the normativity of public health became entangled in new legal domains (Gammeltoft-Hansen and Madsen 2021). For instance, in Brazil during the onset of the crisis local authorities deployed WHO health regulations to militarise the border and deny migrants the protection of human rights law (Hoffmann and Nascimento dos Reis Santos 2024). In other circumstances, however, new trajectories in health law were rights-enhancing, as gaps in the legal architecture for migrants became sites for compassion. For example, Portugal adopted emergency regulations enabling irregular migrants with pending cases to be treated as 'residents', thereby securing their access to free public health care on par with nationals (Achiume et al. 2020).

5 Conclusion: the space for critique in mobile ontologies

In this article, we have called for a fundamental rethinking of the mobility paradigm in international law, which pits territorial boundedness as the normal state of affairs, and considers transnational mobility as the aberration rather than the norm. We have argued that the failure of international legal scholarship to recognise the cardinal significance of mobility to international law is striking, as historically mobility has been integral to the development of international law – from colonial and mercantile origins to the formation of migration pathways.

At the same time, we have called for a broader rethinking of what mobility means for international law, and have sought to disassociate it from migration in order to embrace a broader focus on movement itself. Mobility is integral to the ontology of international law, as it provides the foundation for corporeal control and infuses territories and borders with the legal meaning through doctrines such as state sovereignty. Through the example of global tourism, we have sought to show how international law concretely exerts control over human bodies, through material devices such as the visa, practical implementation in means of border control and integration into socio-technical platforms such as the airport. The example of the COVID-19 pandemic further showed how mobility in international law functions as a process of co-constitution, whereby mobility shapes law and law shapes mobility – a hermeneutic cycle with no identifiable start or end point. This points in the further direction of thinking about mobility as a particular quality of law (Kmak 2024) as it characteristically 'drips' and 'wobbles' (Barr 2019) and extends its normative reach over new spheres of regulation, new activities and relations, through the mobility of interests, ideas and political paradigms.

https://doi.org/10.1017/S1744552325100049 Published online by Cambridge University Press

At this point, it is worth reflecting on the added value for re-imaging the mobility paradigm at this post-pandemic juncture. While some scholars have regarded the pandemic as a potential 'constitutional moment' for international law (Shany 2021), historical examples also highlight how real or perceived health crises may also have long-standing after-effects in the naturalisation of control over bodies (Xiang 2024). The invitation extends from this point to re-consider international law's temporal and spatial scales, where 'questions do not begin with [the givenness] of international space and progressive time' (McNevin 2022), but from the larger scale of the ecosystem and the relational qualities of the smallest organism (Adey et al. 2021). One particularly promising avenue in this regard is taking an empirical and critical focus on 'mobility assemblages – constellations of actors, actions, and meanings that are influenced by mobility regimes that govern who and what can move (or stay put), when, where, how, under what conditions, and with what meanings' (Sheller 2018), with a reflexive agenda that avoids the pitfalls of *a priori* reasoning and being open to unexplored potentials. The first potential that arises is for decentring mobility in law, because mobility is not just about crossing borders. The second is for decentring the mobile subject, because it is not only humans that are mobile. The final call is for decentring the role of law in mobility, because law is never static, but rather it recursively infrastructures society. What this may ultimately require is new ways of seeing law beyond a static circumference of vision – to appreciate its quality as a mobile property and a means of liberation and control.

Funding statement. This research is funded by the Danish National Research Foundation Grant no. DNRF169 and conducted under the auspices of the Danish National Research Foundation's Center of Excellence for Global Mobility Law

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Cite this article: Byrne WH and Gammeltoft-Hansen T (2025). Redefining the mobility paradigm in international law. *International Journal of Law in Context*, 1–15. https://doi.org/10.1017/S1744552325100049