

## European Human Rights Law Conference (University of Cambridge)

### **Do the 'Risks' to Public Order Posed by the Journeys of Transnational Migrants Challenge the Stability, Effectiveness and Redemptive Power of International Human Rights Law to Protect Migrant Rights?**

#### **Abstract**

Whether through the Mediterranean, the English Channel or other routes, migrants and refugees, through crossing national borders in their attempt to reach an international destination, challenge an international system built on the premise of state sovereignty, thereby testing national jurisdictions and the effectiveness of international human rights law at three levels: first, migrant flows expose the existing inadequacies and gaps in the international human rights frameworks for migration governance (the question of *substance*); second, they raise the question of how international human rights law should adapt, evolve and develop in light of the so-called 'migration-crisis' (the question of *process*); and, third, the issue of what should be the appropriate response of states to the crisis, e.g. responses through legislations/lawmaking, policies, judicial strategies or through consensus building and action plans (the question of *choices*) comes to the fore. The paper asks if the 'risks' to public order posed by the irregular journeys of transnational migrants across international seas and external state borders challenge the stability, effectiveness and redemptive power of international human rights law to protect the rights of migrants such as to require changes in *substance*, *process* and *choices*.

Adopting the policy-oriented New Haven School methodology, which provides a contemporary theoretical approach to analysing international law through the process of authoritative and controlling decision making, the paper argues that it does, for two reasons. First, unlike in many other transnational matters, international human rights law in the area of migration lacks coherent global governance or a multilateral treaty framework that is holistic and effective enough to address the current global risks to public order such as those posed by the global migrant crisis. Second, current international efforts to effectively adapt international human rights law in the face of the crisis focus on doctrines of legal positivism, viewing law solely as a body of rules for which the independent moral value of obedience is assumed, rather than a policy-oriented approach where law becomes a theory for making social choices. This doctrinal view of the law undermines the cooperation function of international law that underpins state practice in the field of migration. Therefore, in order to enhance the stability and effectiveness of international human rights law, policy and practice, the paper suggests that a revised and more holistic and harmonious international human rights law framework that builds upon the newly adopted, although, non-legally binding UN Global Compact for Safe, Orderly and Regular Migration is needed. The paper outlines what, at an institutional level, feasible global migration governance framework that is human rights and public order compliant would look like; what in political terms, the basis and consensus for such a regime should be; and what normative claims for the legitimacy and acceptability of that regime would be required.

**Dr Luke Nwibo Eda**

**(Lecturer in Law, University of the West of England, Bristol, UK)**