Introduction

From: International Migration Law
Vincent Chetail

Content type: Book content
Product: Oxford Scholarly Authorities on International Law [OSAIL]
Published in print: 11 April 2019
ISBN: 9780199668267

Subject(s):
Migration — Immigration — International law and international relations — Soft law
(p. 1) Introduction

Mass hysteria has taken over migration. Migration is everywhere in the media, be it in newspapers, television, radio, or social media. It dominates headlines to such an extent that no one today can escape daily reports on migration. The pervasiveness of migration is not only dictated by the magnitude of information the public is confronted with in quantitative terms. It is also nurtured by the type of information conveyed and the manner in which it is portrayed by mass media. Migration is often depicted in alarming and emotional terms as an unstoppable massive influx threatening national values, identity, and security.¹ As a result of this effervescence, ‘the worldwide fear of terror has overlapped and intertwined with the fear of illegal migration. The prosperous West is under siege, this popular refrain tells us; the hordes are ascending.’²

Beyond media coverage, this narrative has been compounded by the hijacking of migration by politicians. In an era where globalization has destabilized the economic, social, cultural, and political foundations of nation-states, migrants have appeared as the ideal scapegoat for the failures of national politics. Redirecting the attention and the fault to the ‘other’, the foreigner, has provided politicians with a formidable avenue to conceal their own deficiencies and galvanize their nationals in some exclusionary form of social cohesion. This politicization of migration has not only been fuelled by the rise of populism, but also tends more broadly to permeate different spheres of politics through a growing racialization of the political (p. 2) discourse. As a result, migration has become today an intrinsic component of any political parties’ agenda for electioneering.

The moral panic spurred by extensive media coverage and the politicization of migration lacks rationality. Emotions and perceptions have taken over facts and reality. Everyone has an opinion about migration, but very few really know what migration actually is. This disjuncture between reality and representation is well illustrated by the perception Europeans have of migration. In 2018, 38 per cent of Europeans considered immigration to constitute the most important challenge over and above terrorism for the European Union (EU) in 21 EU Member States.³ A majority of 52 per cent of respondents reported having negative feelings about migration,⁴ even though Europeans overestimate the proportion of immigrants in their countries: ‘in 19 of the 28 Member States the estimated proportion of the population who are immigrants is at least twice the size of the actual proportion of immigration’.⁵ This gap between perception and reality calls for demystifying migration as the evil of the century.

Demystifying Migration: Facts and Figures

Much is to be learnt from data and statistics to inform and objectivize the debate. Three main lessons can be drawn therefrom with respect to the magnitude of the movement of persons across borders, the types and patterns of migration, and the contribution of migrants to host countries and societies.

First, while movements of persons across borders have increased and will likely continue to do so in an ever-more globalized world, this phenomenon is not a crisis of numbers. Migrants only accounted for 3.4 per cent of the world’s population in 2017, with some 258 million migrants globally.⁶ Although the relative number of migrants has increased since 1990 when they represented 2.9 per cent of the world’s population, an increase of 0.5 per cent is still very far from representing the invasion of the Global North so frequently depicted by mass media and politicians. In fact, ‘[s]ince 2000, 60 per cent of the increase of
the total number of international migrants reflected movements between countries located in the South’.  

South-South migration is thus more important than South-North migration, the former having even surpassed the pace of increase of the latter. In the period 2010–2017, the average annual rate of migrants in the North declined to 1.6 per cent whereas, in the South, it increased to 3.2 per cent. In 2017, Europe was hosting 30.23 per cent of the worldwide share of migrants, a majority of whom came from developed countries, while 22.39 per cent were in North America and 3.26 per cent in Oceania. The region with the highest share of migrants was Asia with some 79.6 million migrants, accounting for 30.89 per cent of the global migrant stock. This global picture accordingly unveils an unjustified bias on—and incorrect account of—the situation of Western countries.

Second, in contrast to the disproportionate focus on irregular migration and the so-called refugee crisis by the media and politicians, the overwhelming majority of migrants around the world are travelling in a safe and regular manner. Albeit impossible to quantify with accuracy, irregular migrants do not make up the greatest share of migrants worldwide. Most estimates suggest that 10–15 per cent are in an irregular situation, while the highest projections do not go above some 22.5 per cent in 2017. Similarly, the prevailing rhetoric of the refugee crisis in the Global North is far from representing the reality and the actual issues at stake. According to UN statistics, by the end of 2016, 82.5 per cent of the world’s refugees and asylum seekers were hosted in the Global South. Furthermore, the total number of refugees and asylum seekers in the world accounted for 25.9 million, representing 10.1 per cent of all international migrants.

If migrant workers represent the greatest share—around two-thirds—of international migrants globally, the enduring myth of the male migrant from a developing country, leaving his family behind in pursuit of a better life, does not reflect reality. Males are far from representing the global migrant population. In 2017, women accounted for 48.4 per cent of the international migrant stock, with higher percentages in Europe, North America, and Oceania. While this ‘feminization of migration’ is not a recent development in quantitative terms, women are today not only migrating as part of a household but also on their own, playing an increasingly important role as remittance senders.

Third, the current narrative spread by mass media and political discourses obstructs the important contributions made by migrants to host societies and countries of origin. Contrary to what is often claimed, evidence highlights that the overall economic contributions of migrants to host and origin countries are positive, rather than negative. Among many other similar accounts, a 2016 study suggested that, in advanced economies, ‘a 1 percentage point increase in the share of migrants in the adult population […] can raise GDP per capita by up to 2 percent’ over the long run. Migrants indeed raise labour productivity, often filling gaps in the labour market, especially in countries with ageing population. They work in sectors where both low-skilled and highly skilled workers are in short supply, such as in farms, nursing, highly-skilled manufacturing, and technology. Migrants also contribute to the economies of host countries by paying taxes and spending some 85 per cent of their salaries therein. The remaining 15 per cent of their earnings is sent (p. 5) as remittances to their country of origin. These remittances amounted to some 613 billion US dollars globally in 2017, among which 466 billion was sent to low- and middle-income countries, representing more than three times the total of development assistance.

While statistics and facts speak for themselves, the current misperceptions and manipulations say more about the vacuity of the mass media and the mediocrity of the politics than they do about the reality of migration. Migration has been polarized and instrumentalized, before being analysed and understood. Although migration is not a problem to be solved, it constitutes both a challenge and an opportunity for migrants.
themselves as well as for their countries of origin and destination. As a permanent and worldwide phenomenon, it calls for a sound understanding and a global vision. There is more than ever a crucial need for developing a pedagogy of migration through evidence-based knowledge. Lawyers should play a role in this endeavour to dispel the complexity of international law and to promote a more rational, balanced, and comprehensive narrative of migration.

Dispelling the Complexity of International Law and Migration

The role of international law in the field of migration is complex and frequently misunderstood. This complexity is inherent in the dual nature of migration as a question of both domestic and international concern. On the one hand, any discussion about migration inexorably starts by acknowledging the centrality of territorial sovereignty and the correlative right of states to control and regulate the movement of persons across their borders. While no other basic concept has raised as much controversy as the one of territorial sovereignty, its traditional function is to ‘mark a link between a particular people and a particular territory, so that within that area that people may exercise through the medium of the state its jurisdiction while being distinguished from other peoples exercising jurisdiction over other areas’. This reflects the basic axiom of classical international law built on nation-states as the paradigmatic units of the Westphalian order.

On the other hand, the movement of persons across borders is international in essence: it presupposes a triangular relationship between a migrant, a state of origin, and a state of destination. Migration is, thus, a matter of common interest that cannot be managed on a purely unilateral basis. As notably acknowledged by the New York Declaration for Refugees and Migrants, the movements of persons across borders ‘are global phenomena that call for global approaches and global solutions. No one State can manage such movements on its own.’ As further underlined by states in the Global Compact for Migration, ‘it is crucial that the challenges and opportunities of international migration unite us, rather than divide us’. Because migration is a shared responsibility of all states, ‘a comprehensive approach is needed to optimize the overall benefits of migration, while addressing risks and challenges for individuals and communities in countries of origin, transit and destination’.

From this international perspective, no one today can contest that territorial sovereignty is relative and not absolute. This evolution is not peculiar to migration; it mirrors a broader transformation of the international legal order which has evolved from a law of coexistence into a law of interdependence. As a result of the systemic evolution of international law, territorial sovereignty is both a competence and a responsibility. When transposed in this particular field, the competence of states to regulate migration at the domestic level shall be exercised in due accordance with the binding rules of international law.

In recognition thereof, the movement of persons across borders has been internationalized by a wide array of legal norms that are firmly anchored in the sources of public international law. Even the most sceptical positivists cannot fail to acknowledge the significant body of international rules that govern migration and constrain states’ sovereignty. This development has however been achieved in a piecemeal fashion over a long process of incremental consolidation. As a result, the current international legal framework governing migration consists of an eclectic set of superimposed norms that are scattered throughout a vast number of overlapping fields (such as human rights law, trade law, humanitarian law, labour law, refugee law, maritime law, air law, consular law, criminal law, etc). As described by Richard Lillich, the overall framework resembles ‘a giant unassembled juridical jigsaw puzzle’, for which ‘the number of pieces is uncertain and the grand design is still emerging’. The great diversity of applicable rules and their dispersion across a broad range of professional silos clearly undermine both the understanding and implementation of international law. This represents the most important challenge for
scholars and practitioners who are willing to understand and use international law in this area.

Against such a normative background, the broad variety of legal rules calls for a principled and global approach to conceptualize migration as a discrete field of international law with a view to promoting a comprehensive and coherent frame of analysis. As Martti Koskenniemi recalls, ‘the emergence of new “branches” of the law ... is a feature of the social complexity of a globalizing world. If lawyers feel unable to deal with this complexity, this is not a reflection of problems in their “tool-box” but in their imagination about how to use it.'

32 Although the fragmentation of international legal rules is far from being specific to this particular field, the overall framework governing migration still requires some imagination as the great diversity of applicable rules and their overlapping with other areas of international law may disturb or disconcert some. This heterogeneity is inevitable and intrinsic: it reflects the multifaceted dimensions of migration and its cross-cutting character which transcends existing silos of international law.

**International Migration Law as a Global Framework of Analysis**

Conceptualizing the great variety of applicable rules and principles within the generic label of ‘international migration law’ is critical to assembling the dispersed pieces of this jigsaw puzzle. This exercise of reconstruction follows the threefold purpose of providing a framework of analysis which is comprehensive, coherent, and contextual.

First, comprehensiveness is inherently achieved through the design of this discrete field of international law, since its primary rationale is to gather the fairly substantial, albeit eclectic, applicable legal norms. International migration law thus provides the global picture encompassing the broad variety of rules regulating the movement of persons across borders.

Second, the blend of these rules within the same normative frame of reference promotes a more coherent approach for the purpose of articulating the various legal norms among themselves. While applicable rules are located at the intersection of several branches of international law, they remain closely interconnected. None of them can be assessed in isolation. They make sense only when understood in relation to one another.

Third, and perhaps more fundamentally, bringing these rules together under the auspices of international migration law paves the way for their contextualized application in order to better take into account the specificities of migration. In sum, the main virtue of international migration law is a methodological—if not pedagogical—one: it encourages a more systemic and cogent approach in apprehending migration as a topic of analysis on its own.

With this aim in mind, international migration law may be defined as the set of international rules and principles governing the movement of persons between states and the legal status of migrants within host countries. It is meant to gather all relevant international legal norms that apply to individuals who are leaving their own country, entering another one, and/or staying therein. This working definition encompasses the whole continuum of migration: departure from the country of origin, entry into a foreign country and stay therein, as well as return into one’s own country. It accordingly embraces emigration and immigration as the two sides of the migration cycle. Moreover, while the specific legal regimes may vary from one group of persons to another, the scope of international migration law is deliberately inclusive. It covers all migrants irrespective of their motivations and grounds for admission (such as labour, family reunification, asylum, study),...
their legal status (documented or not), and the duration of their stay (transit, temporary stay, long-term residence).

(p. 8) Following this stance, an inclusive and factual understanding of the term ‘migrant’ better reflects the reach of international law as well as its unity and diversity to regulate the movement of persons across borders. By definition, a migrant is a person who has crossed an international border to live in a state other than that of his or her nationality. The United Nations Department of Economic and Social Affairs observes in this sense that: ‘while there is no formal legal definition of an international migrant, most experts agree that an international migrant is someone who changes his or her country of usual residence, irrespective of the reason for migration or legal status’.33 This definition has been notably endorsed by the International Organization for Migration (IOM) in the following terms:

IOM defines a migrant as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is.34

Instead of establishing another subfield of specialization, international migration law provides a holistic frame of analysis which places migrants at its centre. When assessed as a whole, international law—as notably enshrined in human rights treaties—provides the common legal framework that applies to all migrants. These general legal norms are further supplemented by more specialized conventional regimes focusing on specific categories of persons (such as migrant workers, refugees, smuggled migrants, and victims of human trafficking).

Migration studies have long suffered from a compartmentalized approach based on the simplistic and Manichean opposition between forced and voluntary migration alongside the priorities and policies of destination states. In practice however, the distinction between refugees and migrant workers is a legal fiction that fails to capture the complex reality of migration. Research in sociology, anthropology, and political science has unveiled the inadequacy of this binary categorization given that the movement of persons across borders is triggered by a combination of many different causes, aspirations, motivations, and factors that overlap and are not mutually exclusive.35

(p. 9) From a legal perspective, the distinction between refugees and migrant workers has also represented an enduring misunderstanding about the reach of international law based on the wrong premise that the latter’s fate is left to states’ discretion contrary to the former who are entitled to international protection. While this misperception has no legal rationale, focusing too much on the specific categories of migrants detracts attention from their wider normative context. This does not mean that categories as legal constructions of states shall be disregarded by international lawyers. Instead, they must be seen as part and parcel of a much broader and more nuanced legal framework.

The role of international law cannot be fully appraised without a holistic perspective which takes into account the fluidity of legal categories and encapsulates them within their broader normative ecosystem. From this angle, international migration law is an umbrella term which comprises both general and specific legal norms that apply to the movement of persons across borders. This characteristic is not unique to migration but inherent in international law:

All legal systems are composed of rules and principles with greater and lesser generality and speciality in regard to their subject-matter and sphere of applicability. Sometimes they will point in different direction and if they do, it is the task of legal reasoning to establish meaningful relationships between them so as to
determine whether they could be applied in a mutually supportive way or whether one rule or principle should have definite priority over the other. This is [... ] called ‘systemic integration’. 36

International migration law is an attempt to provide a systemic integration of the broad variety and number of rules governing the movement of persons across borders. It does not supersede the other branches of international law, nor does it constitute a so-called ‘self-contained regime’. On the contrary, it is built on norms existing in different legal fields with a view to articulating them through a comprehensive approach to international law.

Similar to many other disciplines (such as environmental law or trade law), international migration law is primarily a doctrinal construction inferred from the traditional sources and actors of international law. The very expression ‘international migration law’ is not a new term in legal scholarship. It was first coined in 1927 by Louis Varlez. 37 He explained in his course at the Hague Academy of International Law that studying the rules of international law governing migration ‘shows an extremely lively and fertile legislative activity, where it is possible, perhaps better than for any other phenomenon, to follow the life of law in constant evolution’. 38 As Varlez cogently underlined, international migration law ‘is not an abstract law but a living one that constantly acts and reacts on a phenomenon that is bound to regulate’. 39

Forty-five years later, in 1972, Richard Plender published a seminal book called International Migration Law which was re-edited in 1988. 40 Although this burgeoning field has been largely eclipsed by the extensive focus of scholarship on international refugee law, a significant number of edited books has been devoted to international migration law since the beginning of the 21st century. 41 Its epistemic community is growing quite rapidly, be it to map its main features under general international law 42 or to focus on more specific issues (such as the human rights of (p. 11) migrants, 43 irregular migration, 44 or interception at sea). 45 However, despite the unprecedented interest of the legal doctrine, international migration law is still a work in progress and it is not always recognized as a discrete field on its own.

Whether labelled or not as international migration law, a systemic and de-compartmentalized approach to international law is crucial to identify the broad variety of rules governing migration and to assess their potential and limits. International migration law can be compared to a pointillist painting whose clarity is only realized from a distance. As one approaches more closely, the picture becomes a juxtaposition of coloured dots which unveil the diversity of international law. The plasticity of international law opens up new avenues for rethinking migration as a global phenomenon that calls for collective action. While positivism is inevitable to take stock of existing rules, international law can be deconstructed through various perspectives, including critical studies, legal pluralism, gender and Third World approaches. 46

International migration law is clearly an imperfect law for a world of imperfect states. It mirrors the contradictions of our world composed of both independent and interdependent nations. Yet, despite its shortcomings, international law represents a vital source of legally binding commitments which constrain and channel states in relation to the movement of persons across borders.

Objective and Structure of the Textbook

The aim of this textbook is to clarify the role of international law in migration by providing a comprehensive and accessible overview of the main applicable legal norms. It combines two different levels of analysis. At the macro level, the textbook has been conceived to offer a didactic mapping of international migration law, by unveiling its main features and developments within the international legal system. At the micro level, it discusses and
details the content of the most relevant rules as well as the articulations between themselves, be they general or specific to this field. It thus provides an immersion into the very substance of international law as applied to migration.

Against this twofold level of analysis, the textbook is structured in three parts addressing respectively: 1) the origins and foundations of international migration law, 2) the specialized treaty regimes governing the movement of persons across borders, and 3) the role of soft law in global migration governance. Each part sheds light on one particular facet of a much broader field. As choices inevitably had to be made, this overview does not pretend to be exhaustive. This textbook is nothing more than a first step in the development of a thorough account of the reach of international law in this composite and multifaceted area. Its main objective is to cut through the complexity of this field by demonstrating what current international law is, and assessing how it operates. This textbook accordingly maps the evolution and the present state of international law, by providing a didactic analysis of the various applicable legal norms and suggesting how they interact and may continue to develop in the future.

Following this systemic perspective, the book departs from the narrative of abuses and the rhetoric of crisis to highlight the normality of migration as a long-standing human phenomenon. Like many human activities, leaving one country for another is not outside the realm of international law. As observed by Aleinikoff, ‘there is both more and less international law than might be supposed’. There is more international law than politicians presume, but there is less international law than activists may desire. Despite the limits inherent to our current inter-state legal system, international law offers a counter narrative to unilateralism that is grounded on binding rules of law. The virtue of international law is twofold: it provides a nuanced and rational account of migration as a traditional topic of international concern, and it unveils a comprehensive and global vision based on the mutual interests of states and the basic rights of individuals.

In Part I, the origins and foundations of international migration law remind us that migration is and has always been framed by international law. Chapter 1 sketches the long and turbulent history of international migration law from the 16th to the 20th century. History proves to be much more refreshing and subversive than is the current narrative of migration control. The free movement of persons has long been the rule in the history of international law and was not held incompatible with territorial sovereignty for a long time. Migration control is indeed a recent invention of states which was generalized at the turn of the 20th century. Meanwhile, the notion of territorial sovereignty has been rediscovered to justify border controls, even though the former was not concomitant with the latter.

However, this late resurgence of sovereignty has not eclipsed international law. The treatment of foreigners in their host states remained a classical question of international law through the law of state responsibility for injuries committed to aliens. During the second half of the 20th century, the traditional law of aliens was then reframed by the normative expansion of human rights law which has eventually become the main source of migrants’ protection. As a result of this evolution, the ethos of migration control coexists with the one of human rights as the two defining features of international migration law.

Chapter 2 focuses on the foundational principles of international migration law that are grounded on a dense and superimposed network of customary and conventional rules. This chapter thus provides the general normative framework and unveils its internal logic by governing the three constitutive components of the migration process: departure, admission, and stay of migrants. As far as the first component is concerned, departure from the country of origin is enshrined in the right to leave any country, subjected to the traditional lawful restrictions to protect national security and public order. This
fundamental freedom has been acknowledged in a broad range of conventions and constitutes today an integral part of customary international law.

The absence of a symmetric right to enter another state under human rights instruments does not mean that access into the territory operates in a legal vacuum. The admission of non-nationals is primarily governed, at the conventional level, by a plethoric number of regional agreements endorsing the right to free movement in various parts of the world. The competence of states to regulate the admission of migrants is further limited by treaty law and customary law through both substantive and procedural requirements (including in particular the principle of non-refoulement, the prohibitions of collective expulsion and arbitrary detention, and access to consular protection). Finally, the sojourn of migrants in host countries is framed by the customary law principle of non-discrimination, prohibiting any difference of treatment that is not reasonable, objective, and proportionate. As a result of this fundamental principle, most human rights apply to all migrants irrespective of their nationality and migration status.

(p. 14) The general principles of international migration law are supplemented and detailed by more specialized treaty regimes that are analysed in Part II. The conventions adopted in this field under the auspices of the United Nations (UN) focus on specific categories of migrants, namely, refugees (Chapter 3), migrant workers (Chapter 4), and trafficked or smuggled migrants (Chapter 5). While disclosing the categorization scheme of international migration law, these UN instruments provide a more nuanced picture when they are assessed from a systemic perspective. First, none of them may be understood outside the broader normative framework of international law. They must be interpreted and applied in accordance with other general conventions that shape and inform their content alongside a complex and rich normative continuum between generality and speciality. Second, the scope and content of these specialized conventions are closely interrelated and not mutually exclusive. They overlap in a significant way to provide incremental protection. Depending on the relevant instruments, the same migrant may fit in several legal categories, either simultaneously or consecutively.

The third and last part of the textbook explores the rise of global migration governance through the proliferation of non-legally binding instruments and other related consultative processes. Though not a source of law per se, soft law has been instrumental in building confidence among states and creating a routine of intergovernmental dialogue within the UN. This evolution has culminated with the adoptions, in 2016, of the New York Declaration for Refugees and Migrants and, in 2018, of the Global Compact for Safe, Orderly and Regular Migration and the Global Compact on Refugees.

This renewed commitment to multilateralism opens up new perspectives for apprehending migration as a common good through a comprehensive and balanced approach among states and international organizations. Although global migration governance has reached a new turning point that was hardly imaginable a few years ago, the expanded use of non-binding instruments remains a truly ambivalent phenomenon. While acknowledging migration as a discrete field of international cooperation, soft law reflects the reluctance of states towards legally binding rules. In order to better understand the limit and potential of this trend, Chapter 6 assesses the function and the evolution of soft law in international migration law and Chapter 7 focuses on its impact on the overall architecture of global migration governance at the multilateral level.
Footnotes:


3 European Commission, Standard Eurobarometer 89. First Results: Public Opinion in the European Union (European Union 2018) 6 concerning extra-EU migration, that is, migration of non-EU nationals. According to the Eurobarometer, terrorism ranked only at the second position, being mentioned by 29 per cent of Europeans surveyed: ibid. The survey was conducted in March 2018 in 34 countries and territories, including the 28 EU Member States and five candidate countries.


5 European Commission, Special Eurobarometer 469. Report: Integration of Immigrants in the European Union (European Union 2018) 20. The report notes that ‘[i]n some countries, the ratio is much higher: in Romania, Bulgaria and Poland, the estimated proportion of immigrants is over eight times greater than the actual figure, and in Slovakia it is nearly 14 times the actual figure’: ibid 21.


7 ibid 1.

8 ibid 1–2.

9 ibid 1.

10 ibid 2, Table I.2, according to which 43.3 million migrants in Europe were from developed regions, while 34.6 million were from developing regions. In fact, Europe is the only region where migrants from developed regions outnumbered migrants from developing regions.

11 ibid 1, Table I.1, with 77.9 million migrants in Europe, 57.7 million in North America, and 8.4 million in Oceania.

12 ibid.
IOM, World Migration Report 2010. The Future of Migration: Building Capacities for Change (IOM 2010) 29. Regional estimates in Europe similarly suggest that: ‘They were 1.9 to 3.8 million irregular migrants in the EU in 2008—7 to 13 per cent of the foreign-born population.’ As further noted by IOM, ‘In 2017, the total number of irregular border-crossings into the EU dropped to its lowest in four years. The annual 204,719 marked a 60 per cent decrease compared to the 511,047 apprehensions of 2016.’ See: IOM, Global Migration Indicators 2018 (IOM 2018) 30.


ibid.

International Labour Organization (ILO), ILO Global Estimates on Migrant Workers, Results and Methodology (ILO 2015) 5. A share of these migrant workers may however be refugees as statistical categories are overlapping. For the definition of migrant workers used by ILO for statistical purposes, see ibid 28.


ibid. The percentage of women migrants in these regions was 52 per cent in Europe, 51.5 per cent in North America, and 51 per cent in Oceania.

UNDESA accounts for a decrease in the percentage of women migrants in developing regions from 1990 to 2017 (from 47 to 43.9 per cent) and for only a slight increase in the North over the same period (from 51.1 to 51.8 per cent); ibid 9. On the relativity of the feminization of migration in quantitative terms, see for instance D Paiewonsky, ‘The Feminization of International Labour Migration’ (2009) United Nations International Research and Training Institute for the Advancement of Women, Gender, Migration and Development Series, Working Paper 1, 4; KM Donato and D Gabaccia, ‘Global Feminization of Migration: Past, Present, and Future’ (1 June 2016) Migration Policy Institute, available at <https://www.migrationpolicy.org/article/global-feminization-migration-past-present-and-future> accessed 12 October 2018.


28 UNGA Res 71/1 (19 September 2016) UN Doc A/RES/71/1, para 7.


30 ibid para 11.


34 IOM, ‘Key Migration Terms’ (IOM) <https://www.iom.int/key-migration-terms> accessed 12 October 2018. One should notice that IOM includes internally displaced persons within this definition to reflect its broad mandate that encompasses both international migration and internal displacement. Although this approach is understandable from the angle of the organization and its mandate, to include internally displaced persons within the definition of migrants goes against the ordinary meaning of the very term ‘migrant’. It also fails to reflect the legal specificities that apply to the movement of persons across borders. While the causes of international migration and internal displacement largely coincide in practice, internally displaced persons are governed by a distinct legal regime that is addressed to the state of origin. By contrast, migration involves, by definition, at least two states and this represents its defining feature under international law.

From: Oxford Public International Law (http://opil.ouplaw.com). (c) Oxford University Press, 2015. All Rights Reserved.
date: 07 August 2020


38 ibid 343.

39 ibid 344.


41 See especially in the chronological order of their publications: TA Aleinikoff and V Chetail (eds), Migration and International Legal Norms (TMC Asser Press 2003); R Cholewinski, R Perruchoud, and E MacDonald (eds), International Migration Law: Developing Paradigms and Key Challenges (TMC Asser Press 2007); V Chetail (ed) Globalization, Migration and Human Rights: International Law Under Review (Bruylant 2007); B Opeskin, R Perruchoud, J Redpath-Cross (eds), Foundations of International Migration Law (CUP 2012); V Chetail and C Bauloz (eds), Research Handbook on International Law and Migration (Edward Elgar Publishing 2014); R Plender (ed), Issues in International Migration Law (Brill 2015); GS Goodwin-Gill and P Weckel (eds), Migration and Refugee Protection in the 21st Century: International Legal Aspects, Hague Academy of International Law (Martinus Nijhoff 2015); V Chetail (ed), International Law and Migration (Edward Elgar Publishing 2016). Several collections of international migration law instruments have also been published: V Chetail (ed), Code de droit international des migrations (Bruylant 2008); R Plender (ed), Basic Documents on International Migration Law (3rd revised edn, Martinus Nijhoff 2007); R Perruchoud and K Tomolova, Compendium of International Migration Law Instruments (TMC Asser Press 2007).


A Aleinikoff, ‘International Legal Norms and Migration: A Report’ in Aleinikoff and Chetail (eds), Migration and International Legal Norms (n 41) 1, 2.

UNGA Res 71/1 (n 28).

Global Compact for Safe, Orderly and Regular Migration (n 29); and Global Compact on Refugees (Report of the United Nations High Commissioner for Refugees: Part II, Global Compact on Refugees) (2 August 2018, reissued 13 September 2018) UN Doc A/73/12.