

International Migration Law



Vincent Chetail

Oxford University Press, 2019, pp. 512

Reading *International Migration Law* by Vincent Chetail has been an intellectual journey. Consisting of three parts and seven chapters, the book provides new insights about the international legal framework that applies to the movement of people around the globe.

The first part of the book examines the history and principles of international migration law. It offers a great variety of perspectives to help the reader understand and conceptualize the philosophy and legal history behind the movement of people: from Francisco de Vitoria's idea that the free movement of persons should be acknowledged as a rule of international law through the right of communication between people (pp. 19–23); Hugo Grotius's thesis about two corresponding rights—the right to leave one's own country and the right to remain in a foreign country (pp. 23–26); Christian Wolff's concept of emigration understood as a “permission to go to voluntary exile” (p. 30); Alfred Verdross's theory of the “international law of aliens” that establishes universal rules binding nation-states (pp. 62–64); to modern human rights law as the primary source of protection for those on the move.

The second part of the book examines the treaty regimes of international migration law and outlines definitions of refugees, migrant workers, trafficked and smuggled migrants, as well as their treatment within the global migration order and contemporary migration governance schemes.

The third part of the book analyzes the functions of soft law as a collection of non-binding norms outlining the division of responsibility between United Nations bodies, its specialized agencies, and affiliated organizations on the overall architecture of global migration governance.

Capturing a Complex Reality of Modern Migration and Asylum Law and Practice

The migration crisis that unfolded in Europe starting in 2015 forced a discussion on conceptualizing who is a refugee and has the right to asylum and who is ineligible for refugee status but can be protected under the European Union member states' obligation of non-refoulement. A fundamental principle of international human rights law, non-refoulement prohibits states from removing individuals from their jurisdiction when they are at risk of irreparable harm upon return, including persecution, torture, ill-treatment, or other serious human rights violations.

Quoting several court statements, the author makes a distinction between the state's duty of non-refoulement and the state's right to grant asylum (p. 191). The cornerstone of international refugee protection consists of a negative obligation forbidding the exclusion of a refugee (i.e., the principle of non-refoulement) and a positive obligation of granting refuge and residence in opposition to the jurisdiction of another state. Each state has a right, rather than a duty, to grant asylum. The non-refoulement obligation applies to both asylum seekers and recognized refugees and is binding on all the state's bodies, personnel, or entities acting on its behalf (pp. 186–190).

This conceptual distinction is crucial to people in search of refuge. With the decline of successful asylum claims around the globe, the question remains whether the non-refoulement obligation of a state can or cannot become the last resort for people in need. As Chetail notes, non-refoulement is weak in providing comprehensive protection, because it depends on the legal framework of a sovereign state where treaty law, domestic legislation, and court practices continue to be more powerful than customary international law (pp. 186–199).

Another point that attracted the author's attention is the issue of migrant trafficking and smuggling. Chetail insists on definitions of trafficking and their constitutive elements; linkages between trafficking, smuggling, and unauthorized migration; and the system of international protection of trafficked persons and smuggled migrants. He then argues that migrant trafficking and smuggling have become new challenges that involve not only the countries of origin but also those of transit and destination, while creating ambiguity in law and enforcement practice. Most migrants who arrived in Europe using irregular migration routes did so by crossing the Mediterranean with assistance from human handlers. Nowadays, trafficking and smuggling have become almost indistinguishable from each other because a migrant can be smuggled and trafficked at the same time.

While trafficking and smuggling seem to have similar cumulative elements, such as the procurement of illegal entry, victims of trafficking are considered victims of a crime under international law, while the victims of smuggling are not. Chetail gives an explanation of trafficking as an offence against a person, while smuggling is an offence against a state. He makes clear why smuggling and

trafficking are “two different offences that are governed by separate legal instruments” (p. 258) and why it is the duty of states to protect smuggled migrants and trafficked persons under general human rights instruments such as the UN treaty bodies. Implementing restrictive immigration controls and enforced border security measures (pp. 252–277) often ignores the fact that restrictive migration controls are more likely to exacerbate smuggling and trafficking rather than stopping them.

The book assessed the modern architecture of global migration governance in detail, as it is anchored in the UN system through its political structures, specialized agencies, and affiliated organizations. Chetail’s strongest contribution lies in his review of the pillars of global migration governance: (1) the intergovernmental pillar through the Global Forum on Migration and Development and (2) the inter-agency pillar through the Global Migration Group. The author searches for answers: What constitutes, institutionally, the global governance of migration? What kind of governance and why does a specific type of governance exist? Why do mandates and competencies among UN agencies and organizations working on migration overlap and compete with one another? Some questions remain unresolved, some find detailed answers in the book.

The author analyzes the evolution of the global migration-development nexus (pp. 300–340) and classifies the UN framework on migration into three types, depending on its functions and objectives: (1) organizations with an exclusive focus on migration and refugee protection such as the International Organization for Migration, UN High

Commissioner for Refugees, the UN Relief and Works Agency for Palestine Refugees in the Near East, etc.; (2) organizations with a mandate that includes the movement of persons across borders, such as The International Labour Organization, the Office of the UN High Commissioner for Human Rights, the World Trade Organization, etc; and (3) organizations with a mandate that fractionally intersects with the movement of persons across borders, such as the UN Development Programme, the UN Children’s Fund, the World Health Organization, etc. (pp. 346–347).

Vincent Chetail’s book explains what international migration law actually is, how it has been applied, the consequences for disconnections between international migration law and national legal guidelines, and what impact migration (dis)order has on migrants’ rights across borders (p. 400). It is a notable and timely book that captures and revises the modern reality of human mobility, while it contests the migration regulations that national, intergovernmental, and international institutions have adopted at different times. *International Migration Law* is analytical yet written in a highly readable style. It will be of great interest to legal scholars, political scientists, practitioners, and policy-makers.

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