

INTRODUCTION TO SYMPOSIUM ON FRAMING GLOBAL MIGRATION LAW

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In our modern world, migrants are both highly visible and deeply invisible, from those undertaking dangerous voyages in overcrowded boats who dominate contemporary headlines, to those who toil unseen in farms, restaurants, and construction sites. What is the role of international law in governing their movement? The answer is that international law has surprisingly little to say about the transborder movement of people. The principle of non-refoulement offers the most robust governance site, but its scope is quite limited with respect to who falls within its parameters and the access and process to which they are entitled. Other areas of international law that appear relevant, such as international trade law, international labor law, and the law of the sea similarly present little by way of migration governance. As a result, there are massive flows of human beings whose travel is barely regulated, let alone coordinated, by international law.

These essays are the first part of a three-part symposium responding to this gap in the law, starting from the premise that international migration law needs to be radically redesigned. To that end, the essays engage with the idea of a new scholarly field of inquiry: global migration law. We begin with the following definition created at a November 2016 experts' workshop hosted by the Rockefeller Foundation's Bellagio Center:

Scholars of global migration law seek to understand the relationship between transnational human mobility and all levels of the law. The field of global migration law explores transnational movement of people defined broadly. It covers a broad temporal scope, from causal factors and motivations for migration to exit, transit, entry, reception, and integration. Global migration law questions the constraints and shortcomings of the primary contemporary governance structure, international refugee law, and seeks to explore the legal space beyond that regime. The field identifies current structures as historically contingent artifacts of a sovereignty-based global system in need of reform. It begins from a migrant-centered perspective, understanding the migrant as a multidimensional human being with a complex set of needs, interests, and contributions. The field focuses on cross-border migration, examining domestic movement of people only as it relates to transnational movement. The term mobility implicates human capability as distinct from movement. It also pushes back against the assumption that migration is the optimal solution to the situations faced by potential migrants, underscoring the field's relationship with development and global socioeconomic structures. Global migration law includes all levels of the law: international, regional, bilateral, transnational, national, and subnational, state and non-state, as well as law's impact in its gaps and absences. Because the relevant international law is fragmented and relatively thin, the field is best approached as a legal ecosystem. Global migration law also examines the mechanisms through which law is made and implemented on the ground. The field is necessarily interdisciplinary, drawing on empirical and qualitative social sciences, and emphasizes the importance of perspectives and research from immigrant source-states and the global South.

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Each part of the symposium, and each essay, responds to this definition in different ways. This first set of essays examines the question: What is global migration law?, which perhaps unsurprisingly gives rise to a range of responses. The next tranche of essays offers a variety of theoretical approaches to such a field. The final grouping of essays offers an assortment of applied perspectives, demonstrating how academic inquiries through a global migration law lens might see the world and the law differently.

This first portion of the symposium begins with an essay by [Peter Spiro](#) that explores the existing fragmentation of the field.¹ He identifies the two main contemporary approaches to global migration regimes as management and human rights, and considers the possibilities for conflict between the two tracks and their longer-term consolidation. The second essay, by [Jaya Ramji-Nogales](#), examines the structural flaws of international refugee law, namely its failure to address safe transit even for migrants under its protections, its narrow scope in terms of eligible subjects, and its lack of engagement with broader causes of migration.² It ends by briefly revealing the potential of a global migration law approach to more effectively respond to these key issues faced by contemporary migrants. Next, [Frédéric Mégret](#) rediscovers international law's past to sketch a picture of an international legal order that includes at its core the principle of human mobility.³ He traces the “international law of aliens” and the obligation it levied on states not to deny the right of entry arbitrarily. Recognizing the limited scope of this regime in terms of who was eligible to be mobile, he suggests that it might be possible to rehabilitate and update this original commitment to global human mobility with a modern antiracist sensibility. [Vincent Chetail's](#) contribution rounds out that history, explaining the haphazard foundation stones of international migration law.⁴ Mapping the history from Vitoria through Grotius and Vattel, he notes that contemporary human rights law finds deep historical roots in long-protected rights of aliens. Chetail next elucidates the customary international law sources of international migration law—including a right to leave—which is now supplemented by treaty law relating to refugees, migrant workers, and trafficking. A new constellation of migration-focused institutions and processes is adding a soft law overlay. This set of essays concludes with [Alexander Aleinikoff's](#) vision for the new field, proposing a global system of human mobility that would situate the individual migrant and her interests, rights, and potentialities at the center of an array of bilateral and multilateral migration regimes.⁵ His essay assesses the recent New York Declaration for Refugees and Migrants, and notes the promise of regional approaches, a topic to be covered in more detail in the next set of essays. The essays in this first portion of the symposium offer history, background, and context to the call for a new field of global migration law, as well as visions of potential outlines of this field.

¹ Peter J. Spiro, *The Possibilities of Global Migration Law*, 111 AJIL UNBOUND 3 (2017).

² Jaya Ramji-Nogales, *Moving Beyond the Refugee Law Paradigm*, 111 AJIL UNBOUND 8 (2017).

³ Frédéric Mégret, *Transnational Mobility, the International Law of Aliens, and the Origins of Global Migration Law*, 111 AJIL UNBOUND 13 (2017).

⁴ Vincent Chetail, *The Architecture of International Migration Law: A Deconstructivist Design of Complexity and Contradiction*, 111 AJIL UNBOUND 18 (2017).

⁵ T. Alexander Aleinikoff, *Toward a Global System of Human Mobility: Three Thoughts*, 111 AJIL UNBOUND 24 (2017).