

International Immigration Law: The Basics and Current Application

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News detailing migrant crises surrounds us, from recent surges in New York City to a newly controversial deal between Syria and Italy. Migration is not just in itself hard to talk about, but it can develop both emotions and fears. In connection with these emotions, migrant crises have been taken by politicians and used as somewhat of a weapon in recent years. The subject has both swayed opinions of certain politicians, and has therefore been the source of great divide and polarization. Although many can find common ground in terms of humanity and true and apparent morals, the issue becomes more complex, as we consider the history of immigration law, its potential flaws, and what restrictions it places on political actions. Before one continues, however, they must consider the facts of migration: as rationality has become strayed as polarization has turned into a loop of misinformation. For one, many fail to consider the true patterns of migration. This thought of “irregular migration” is untrue, as general patterns are known to be consistent: there is always migration happening and there will continue to be in an increasingly globalized world. Migration must be understood and analyzed as opposed to instrumentalized and polarized. The nature of migration as not just a singular but dually-identifying issue (domestic and international): regardless of its nature, migration is of common interest. After establishing a basic knowledge and understanding of migration and the toughness of the subject, we can transition to the basis of law and its application in connection with recent events affecting thousands of people seeking refugee, in order to develop a greater understanding of disputes and momentous decisions.

Migration law in itself is complex. Looking at it from a distance, migration law covers all migrants, their status (documentation), and the duration of their stay (temporary versus long-term stay). Territorial sovereignty, which correlates to a given state’s right to regulate movement, is important to understand, as its purpose is to link people and their territories in order to clear potential jurisdictional disputes. This concept of sovereignty falls under the Westphalian state system, where there is an apparent separation of domestic and international spheres (a state cannot intervene in another state’s affairs). The concept gets more complicated as we consider that migration happens between states, which then guides us to a set of complex “norms” rather than “laws” in the international sphere of migration. Even lawyers in many fields cannot comprehend the complexity of international migration law as it consists of overlapping rules with no definite regulations— it is more holistic.

To give application to international immigration law and specific rulings, we can examine multiple current applicable events. For example, a majorly controversial deal between Italy and

Albania has been struck, where Albania will shelter migrants that Italy has been struggling to handle (in terms of the amount of resources available and legal protection). The deal has been cited as a breach of international law, as many human rights advocates have also called attention to the lack of care and drowning that migrants have had to face, calling for a legislative change in Italy. In terms of the legal protections of the deal itself, few have been set in place to protect the migrants, bringing the idea of a violation of international law which states that migrants must be protected via this deal. Critics have stated that instead of putting these migrants in this harmful system, a greater focus should be placed on adequate asylum procedures and safe routes to Albania. Albania's specific laws state adequate protection and accessible and free legal protection, but questions have sparked on if this is actually being initiated.

Another major crisis that has been a major subject of legal criticism has been migration on the U.S.-Mexico border. With nearly 250,000 encounters during December of 2023, the subject has become a major dispute on the political front, with many creating falsehoods about asylum policy. To make a definite claim about U.S. and international migration law, seeking asylum at the border is a guaranteed right under both categories. No migrant is to be criminalized or turned back, as long as they are seeking safety and protection (under the definition of asylum). Also, one must be considered a refugee to be granted asylum, however, refugee determination is a lengthy process and therefore under international law, a refugee can seek certain protections before they officially meet that status. In the case of the United States, certain laws have been tried to pass, such as Greg Abbott's S.B.4 (making irregular border crossings illegal), but there has been no settlement of the crisis this far and just a continuation of both political debates and a lack of resources for these migrants seeking refuge.

These events both showcase the apparent vagueness leading to strong controversy of international migration law, but also both highlight the human suffering leading to a need for collective support and development of resources and tolerating communities for these migrants to settle into while awaiting legal aid and processes. One major note to take away is the definite obligation of all states to protect and fulfill the notion of human rights. Recent crises showcase both the faults and upholdings of these principles, as it is apparent that some states have followed them more than others. Regardless, international law and its application to these events truly shapes more than the migrants themselves and plays into everyday discussions/debates, future policies (their creation), and the lives of those in areas receiving and caring for migrants.

Resources:

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