

## Concept and theoretical aspects of international migration law

Concepto y aspectos teóricos del derecho internacional migratorio

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### ABSTRACT

The article is dedicated to the history of the emergence and formation of international migration law. Moreover, the author has systematically studied the interpretation of foreign scholars on the criteria for the isolation of branches of international law and the emergence of new industries in the system of international law. In the article, the author gives the concept of international migration law, and controversy enters into controversy by various foreign scientists about whether international migration law is an independent and formed branch of international law. The author substantiates his knowledge about the formation of a new chapter of international law as follows. Firstly, today in the world the cooperation of states in the field of migration has formed. Secondly, this branch of international law has the object and subject of legal relations; thirdly, these legal relations are regulated by separate international legal documents and mechanisms. Fourth, this branch of international law simultaneously uses the forces and capabilities of other branches of international law, while they also use it. As well as developing as an independent branch of international law, it simultaneously develops different areas of international law. Fifthly, the author divides the subjects of international migration law into categories as holders of special status.

**Keywords:** international law, law of international treaties, law of international organizations, international migration law, protectionism.

### RESUMEN

El artículo está dedicado a la historia del surgimiento y la formación del derecho internacional de la migración. Además, el autor ha estudiado sistemáticamente la interpretación de los académicos extranjeros sobre los criterios para el aislamiento de las ramas del derecho internacional y la aparición de nuevas industrias en el sistema del derecho internacional. En el artículo, el autor da el concepto de derecho de migración internacional, y la controversia entra en controversia por varios científicos extranjeros sobre si el derecho de migración internacional es una rama independiente y formada del derecho internacional. El autor confirma su conocimiento sobre la formación de un nuevo capítulo del derecho internacional como sigue. En primer lugar, hoy en el mundo se ha formado la cooperación de los estados en el campo de la migración. En segundo lugar, esta rama del derecho internacional tiene el objeto y el sujeto de las relaciones jurídicas; tercero, estas relaciones legales están reguladas por documentos y mecanismos legales internacionales separados. Cuarto, esta rama del derecho internacional usa simultáneamente las fuerzas y capacidades de otras ramas del derecho internacional, mientras que también lo usan. Además de desarrollarse como una rama independiente del derecho internacional, desarrolla simultáneamente diferentes áreas del derecho internacional. En quinto lugar, el autor divide los temas del derecho internacional de la migración en categorías como titulares de un estatus especial.

**Palabras clave:** derecho internacional, derecho de los tratados internacionales, derecho de las organizaciones internacionales, derecho internacional de la migración, proteccionismo.

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## Introduction

In the 21st century where interstate cooperation is intensifying in all areas and deepening of integration relations, migration processes are becoming more important as trade and capital turnover between the countries grows.

The main reasons for this are: **firstly**, the unstable political and economic situation in different countries, and **secondly**, the presence of various environmental problems, and, **thirdly**, the aggravation of the international labor market.

Today, legal regulation of migration relations between countries has become an urgent problem. Firstly, it is directly related to the specific position and political will of states in managing migration processes, and secondly, directly related to the formation and development of norms relating to specific categories of human rights. This is not only the problem of labor migration by the states to protect their citizens abroad and the recipient states to create equal conditions for all citizens in their home countries based on the principles of equality, fairness and non-discrimination, but also economic, social and security issues between the countries.

Effective management of international migration by the states is the first part of the problem, the second one is the implementation of the increasingly closed (practicalist) migration policy. "According to the UN data in 2017, the number of migrants reached 258 million, which is 14 million more than in 2015. Of these, 48% are women, 36.1 million children, 4.4 million students, and 150.3 million workers are migrant workers (<https://www.un.org/ru/sections/issues-depth/migration>, 2019).

Today, scholars have different opinions about the formation of separate branches of law in the system of international law. For example, "The doctrine of division of spheres is not formed in the doctrine of international law, but the debate is about the objective existence and criteria for the separation of the fields of international law (Safronova E. V, Electronic resource).

There are different approaches to theoretical controversies about the formation and development of international migration law, which we think are controversial and controversial. First, it is based on the subjective and objective theoretical views of various scholars on the field, and secondly, it is directly related to the socio-political processes in society. In our opinion, it is desirable to study various theories on the emergence of international migration law in the international legal system, using common and proprietary methods of studying the subject "International Migration Law". The general method is based on nature, reasoning, and society's regularities, but on a personal basis (systematic, comparative, historical, sociological, logical). In a systematic manner, the free movement of individuals, the right to move from one area to another, and the right to seek asylum and refugee status are studied as a single subject as a set of rights as migrant workers.

The comparative method examines comparisons between different concepts and situations that need to be distinguished. For example, it is a comparative study of the international norms on migration entities in different regions (refugees, stateless, migrants, migrant workers) and their mechanisms, national laws and national mechanisms.

Historically, especially from the historical point of view, great nations migrated to the west, and in the east a great emigration from the Prophet, the noble Prophet and His Companions, as well as the forced deportation of nations after World War I and World War II or trends in the development of institutions and international law that govern social relations as a result of their migration and the migration processes are studied.

Sociological data are collected and analyzed. These include various types of questionnaires, public questionnaires, targeted surveys. In addition, using anonymous or open questionnaires to address problems arising in the migration process can help to address existing issues and increase the effectiveness of decisions made.

In a logical way, the migration process is a means and methods of learning the subjects of the first and second generation of human rights (refugees, stateless, migrant workers) within the rights of individual categories. Different foreign scholars have different views on the separation of branches in the international law system.

For example, Russian scholar E.F.Safronova believes that traditional international law theory differs from the criteria for separation in the domestic legal system (the subject and method of regulation) by the basic criteria for divorce. Because they are the same. Therefore, the debate on additional (optional) signs of separation in the field of international law does not stop. According to D.I. Feldman, the only common method and character of interstate sovereignty is the harmonization of the will of the states. The proposed criteria are the separation of the norms of a particular group. According to E.A.Shibaveva, the specificity of legal norms and their creation is that there is a need for the formation of independent areas of law. According to S.A.Malinin, the interest of society in the development and improvement of legal regulation of social relations refers to qualitatively divided relations. A

wide range of regulatory documents and their “transitions” are for specific industry relations (Yu.K.Kolosov). The codification of international legal norms of social relations in a particular area (S.A.Gureev). Existence of special international law principles (Anufrieva L.P., Ustenko E.T.).

According to the Russian scholar Safronova, the theory of international law traditionally assumes that the basics of separation (the subject and method of legal regulation) in the field of domestic law are not applicable to the field of international law, because the subject (method and method of legal regulation) is the same in international law. Several additional criteria, selected and recommended by international law theorists, should be used, first of all: the public's interest in the development of a particular group of social relations; specific functions; adequate normative materials; special principles that make up the components; codification of international law norms in a particular area, etc (<https://www.academia.edu//5687144/>). In our view, it is desirable to include the object of legal relations as one of the main criteria for the separation of international law. Specifically, the object of the study is that “a particular group of social relations needs to be perfected and studied as a scientific and theoretical problem” (Alemasov V. V, 2015), and secondly, the study and research of its subject without clarifying the subject of the research will cause much confusion.

Given the fact that international relations are not static and are constantly evolving, we have every reason to believe that the international legal system, in close connection with human rights and treaty law, and the institutions of the population, has formed a special area of international migration law. According to the Russian scientist N.N.Zinchenko, the right to migration is a common international legal norms and principles that regulate a wide range of migration relations at the universal and regional levels, as well as separate positions in the international legal system through bilateral agreements and linked with many of its institutions and networks. These include, first of all, population and regional institutions, international labor law, international humanitarian law, etc (Zinchenko N. N, 2017). The author draws on the controversial conclusions about the role and significance of migration law in the international legal system, based on the study of social and legal regulation of migration processes, the analysis of Russian federal law and international law, legal practice developed by the international community in this field. In a new summary of the quality of the formation of the subject matter of modern international law, including international law, he argues that international migration law is not an independent field of international law, but certainly its institution is probably one of the most promising sectors. **In our opinion, the law of international migration should not be considered as a new branch in the system of international law, but as a fully formed field. In particular:**

First, the formation of international cooperation in specific interstate migration relations;

Secondly, the existence of the subject and subject of international migration law;

Thirdly, the formation of separate international legal and institutional frameworks and mechanisms for regulating international migration processes;

Fourthly, the existence of a tool for the use of the power and capabilities of other international law as a field of international migration law;

Fifthly, international migration is divided into separate categories of subjects of the process.

The need for cooperation in protection of rights of migrants in inter-state migration requires the need to strengthen bilateral and multilateral cooperation on the basis of international cooperation and respect for human rights, which is one of the basic principles of international law. This process, in turn, is: universal, within the UN, ILO, IOM; at the interregional level within the framework of the Organization for Security and Cooperation in Europe; develops multilateral cooperation of the countries within international organizations such as the European Union, the Council of Europe, the CIS.

The object of international migration law is international legal relations related to migration, international legal regulation of migrants, labor migration, and legal protection of the rights of labor migrants, refugees, and refugees and asylum seekers.

International and international treaties on the subject of international migration, protection of rights of migrants, migrant workers, refugees, and foreign nationals, such as international treaties, national bases, international and national institutional mechanisms.

A separate international legal framework for the regulation of international migration processes, as well as the rule-making process in this area, shows that modern international law is developing on the basis of jus cogens, i.e. international “hard law” and international “soft law.” Secondly, these norms also develop as normative results

of universal, interregional, regional and bilateral cooperation of states. Mechanisms for regulating international migration processes are subdivided into universal, interregional, regional and subregional mechanisms. The law of international migration is developing and developing in international law, in close connection with the human rights field and the international human rights institution. Also, the field of international migration is directly related to the rights of certain categories of individuals. International migrants are divided into five major categories:

- legally immigrant or non-immigrant immigrants;
- labor migrants under a contract;
- Immigrant immigrants;
- persons seeking asylum;
- refugees (Vitkovskaya G, 2004).

The concept of international migration law has a distinct history. He first applied Louis Vuitton's "International Migration Law" in Richar in 1927 before his publication at the Hague Academy in 1972. Over the past two decades, many textbooks have been published to reflect this growing field of international law. International migration law is a universal international regulation governing the legal status of migrants in host countries and the movement of individuals between countries. However, international migration law does not replace other areas of international law and is not an autonomous regime. On the contrary, it is designed to formulate clear rules in various fields of law. Like many other legal disciplines (for example, environmental law or trade law), international migration law has a doctrinal structure based primarily on the sources and subjects of international law (Vincent C, 2016). According to Nicolas Sitaropoulos, Deputy Director of the Office of the Commissioner for Human Rights of the Council of Europe, international migration law is not an autonomous regime. It is a multi-tiered set of rights consisting of various international, regional or bilateral treaties and agreements (Nikolaos S, 2015).

The Glossary in the Field of Migration states that international migration law has been applied to international migration law (<http://www.ejiltalk.org/why-ternational>). In our opinion, the legal nature of international migration law is not fully understood in the above definitions. In particular, they study universal, interregional, regional and regional institutions and their activities related to international migration law, bilateral and multilateral international agreements on the subjects of migration processes and their rights and obligations, international and national mechanisms of control and international migration. A special area of international law. One of the main factors in the formation of international migration law in the global legal system is, firstly, the rapid development of interstate relations in the regulation of international migration processes, and secondly, the separate categories of migrants (refugees, refugees, parents, migrant workers, illegal migrants). Increasing the scope of universal, interregional and regional and sub-regional human rights agreements will be ignited. Third, it is desirable to study the rights of international migrants, refugees, asylum-seekers and labor migrants, as well as the citizens in the field of international migration.

**The foregoing points to the theoretical implications of the emergence of international migration law include:**

**First**, there are various approaches to the emergence of the field of "international migration law" today. For example, this area is studied as a branch and institutional system. This is a matter of great controversy among scientists. In our view, given the the strengths and capabilities of "International Migration Law", "Human Rights in International Law" and "Law of International Organizations" and "International Treaty Law" and the Institute of Population in International Law there is an independent sphere of the international legal system, which systematically studies a separate complex of rights, has specific subject and regulated relations, objects and subjects and methods of study.

**Secondly**, the development of international migration law, in turn, has a direct impact on the development and improvement of other areas of international law, particularly in the areas of "International Migration Law", "Human Rights in International Law" and "Law of International Organizations". This, in turn, creates a direct link between the study of international migration relations within the above-mentioned areas of international law and within the framework of "International Migration Law".

**Third**, in our opinion, the legal nature of international migration law is not fully understood in the descriptions cited by various scholars. In our opinion, international migration law is a sphere of International law which studies bilateral and multilateral international treaties on the subjects of migration process and their rights and obligations, mechanisms of international and national control, and universal, interregional, regional, regional institutions and international law which directly and indirectly deals with international migration activities.

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