

---

# MIGRATION, INTERNATIONAL TRADE AND FOREIGN DIRECT INVESTMENT IN THE TWENTY-FIRST CENTURY

---

Towards a New Common Concern of Humankind

The opinions expressed in the report are those of the authors and do not necessarily reflect the views of the International Organization for Migration (IOM). The designations employed and the presentation of material throughout the report do not imply expression of any opinion whatsoever on the part of IOM concerning the legal status of any country, territory, city or area, or of its authorities, or concerning its frontiers or boundaries.

IOM is committed to the principle that humane and orderly migration benefits migrants and society. As an intergovernmental organization, IOM acts with its partners in the international community to: assist in meeting the operational challenges of migration; advance understanding of migration issues; encourage social and economic development through migration; and uphold the human dignity and well-being of migrants.

---

Publisher: International Organization for Migration  
17 route des Morillons  
P.O. Box 17  
1211 Geneva 19  
Switzerland  
Tel.: +41 22 717 9111  
Fax: +41 22 798 6150  
Email: [hq@iom.int](mailto:hq@iom.int)  
Website: [www.iom.int](http://www.iom.int)

Required citation: Cottier, T. and A. Shingal (2021). *Migration, International Trade and Foreign Direct Investment in the Twenty-first Century: Towards a New Common Concern of Humankind*. International Organization for Migration (IOM), Geneva.

---

ISBN 978-92-9268-003-9 (PDF)

© IOM 2021



Some rights reserved. This work is made available under the [Creative Commons Attribution-NonCommercial-NoDerivs 3.0 IGO License](https://creativecommons.org/licenses/by-nc-nd/3.0/igo/legalcode) (CC BY-NC-ND 3.0 IGO).\*

For further specifications please see the [Copyright and Terms of Use](#).

This publication should not be used, published or redistributed for purposes primarily intended for or directed towards commercial advantage or monetary compensation, with the exception of educational purposes e.g. to be included in textbooks.

Permissions: Requests for commercial use or further rights and licensing should be submitted to [publications@iom.int](mailto:publications@iom.int).

\* <https://creativecommons.org/licenses/by-nc-nd/3.0/igo/legalcode>

---

# MIGRATION, INTERNATIONAL TRADE AND FOREIGN DIRECT INVESTMENT IN THE TWENTY-FIRST CENTURY

---

Towards a New Common Concern of Humankind

**Thomas Cottier**

and

**Anirudh Shingal**





# ACKNOWLEDGEMENTS

---

The authors would like to thank Akshaya Agarwal for the excellent research assistance. They are most grateful to the International Centre for Trade and Sustainable Development (ICTSD), in particular Ricardo Mendez and Marie Chamey, for initiating and accompanying the project with the International Migration for Organization (IOM). The authors particularly thank Marina Manke, Head of Labour Mobility and Human Development Division; Deepali Fernandes, Senior Migration and Economic Development Specialist; and Joanne Irvine, Mainstreaming Migration Knowledge Specialist; from IOM for their critical review, comments and suggestions made on the first draft and in editing the paper.

---

The study was completed in 2019. A shorter version was published with the permission of IOM in T. Cottier and A. Shingal, *Journal of World Trade*, 55(1):51–76 (2021).

---



# AUTHORS' BIOS

---

## **Thomas Cottier**

[thomas.cottier@wti.org](mailto:thomas.cottier@wti.org)

Thomas Cottier is Professor Emeritus of European and international economic law and former managing director of the World Trade Institute (WTI), University of Bern. He is a Senior Research Fellow at WTI and Adjunct Professor of Law at the University of Ottawa.

## **Anirudh Shingal**

[ashingal@icrier.res.in](mailto:ashingal@icrier.res.in)

Anirudh Shingal has a PhD in Economics and is an Associate Professor in Economics at the SP Jain Institute of Management and Research in Mumbai and formerly a Senior Research Fellow at the World Trade Institute, University of Bern. He is also affiliated with the Global Governance Programme at the European University Institute in Florence.



# ABSTRACT

---

This paper explores the linkages between migration, international investment and trade from both economics and legal perspectives. The literature review reveals that the triangle of migration, investment and trade (MIT) shows complex interdependences, both in terms of substitution and complementarities, though its components remain largely separated both institutionally and legally. The 2018 Global Compact for Safe, Orderly and Regular Migration addresses a number of trade- and investment-related issues. Recent treaty developments also encourage considering the triangle in a more integrated manner. The paper suggests undertaking such an effort under the emerging principle of Common Concern of Humankind, which provides a new foundation of international cooperation, obligations to do homework and enhance legal compliance in international relations. Given its importance and pressing needs, migration along other areas is destined to be developed as a Common Concern of Humankind. The emerging principle offers the potential to further develop the linkages between migration, trade and investment and shape the law and policies in a mutually supportive and more coherent manner. The paper sets out a number of preliminary ideas suggesting ways in which migration could be addressed in international trade regulation and trade policies, particularly agricultural trade, and in the field of investment protection.







# CONTENTS

---

Acknowledgements .....	iii
Authors' bios.....	iv
Abstract.....	v
List of abbreviations and acronyms.....	ix
1. Introduction.....	1
1.1. Trade and investment linkages in the Global Compact for Migration .....	1
1.2. Difficulties and challenges.....	5
1.3. Towards greater coherence .....	6
2. Assessment of mutual impact.....	7
2.1. Substitution or complementarity? .....	7
2.2. The impact of trade on migration .....	7
2.3. The impact of foreign direct investment on migration.....	9
2.4. The impact of migration on trade .....	10
2.5. The impact of migration on investment (foreign direct investment).....	12
2.6. Migration policy, trade and investment.....	13
2.7. Conclusions .....	14
3. The legacy of fragmentation in international law .....	15
3.1. Labour migration.....	16
3.1.1. Global law .....	16
3.1.2. Regional integration .....	17
3.1.3. Bilateral labour mobility agreements.....	17
3.2. Bilateral investment treaties .....	17
3.3. The multilateral trading system of the World Trade Organization.....	18
4. Legal linkages and limitations .....	19
4.1. Trade and labour migration .....	19
4.2. Investment protection and migration.....	20
4.3. Regional integration and preferential agreements.....	21
5. Migration as a Common Concern of Humankind.....	23
5.1. Towards a new principle of law .....	23
5.1.1. The duty to cooperate and negotiate.....	25
5.1.2. The duty to do homework and the protection of human rights .....	25
5.1.3. Compliance.....	27
5.2. Rethinking sovereignty .....	28
5.3. Linkages to multilevel governance.....	29

6. Implications for trade and investment law and policy.....	31
6.1. International trade regulation .....	31
6.1.1. Agricultural policies .....	31
6.1.2. Local content rules .....	32
6.1.3. Labour migration and services .....	32
6.1.4. Financial services and remittances .....	33
6.1.5. Basic services for migrants.....	33
6.1.6. Government procurement .....	33
6.1.7. Waivers for refugee support .....	33
6.2. From investment protection to investment cooperation .....	34
6.2.1. Training and export promotion.....	34
6.2.2. Tax breaks and corporate social responsibilities .....	34
6.2.3. Supporting diaspora investments .....	35
6.3. Architecture and mechanism securing compliance .....	35
6.3.1. Trade dispute settlement .....	35
6.3.2. Investment dispute settlement .....	35
6.3.3. Compliance and economic sanctions .....	36
7. Conclusion .....	37
Bibliography .....	39



# LIST OF ABBREVIATIONS AND ACRONYMS

---

<b>ASEAN</b>	Association of Southeast Asian Nations
<b>BIT</b>	Bilateral investment treaty
<b>CECA</b>	India-Singapore Comprehensive Economic Cooperation Agreement
<b>CETA</b>	European Union–Canada Comprehensive Economic and Trade Agreement
<b>COMESA</b>	Common Market for Eastern and Southern Africa
<b>CSR</b>	Corporate social responsibility
<b>ECOWAS</b>	Economic Community of West African States
<b>EEA</b>	European Economic Area
<b>EFTA</b>	European Free Trade Association
<b>EPZ</b>	Export processing zone
<b>FDI</b>	Foreign direct investment
<b>GATS</b>	General Agreement on Trade in Services
<b>GATT</b>	General Agreement on Tariffs and Trade
<b>GFMD</b>	Global Forum on Migration and Development
<b>GPA</b>	Government Procurement Agreement
<b>GVC</b>	Global value chain
<b>ILO</b>	International Labour Organization
<b>IOM</b>	International Organization for Migration
<b>LDC</b>	Least developed country
<b>MERCOSUR</b>	Mercado Común del Sur (Southern Common Market)
<b>MFN</b>	Most-favoured nation
<b>MIT</b>	Migration, investment and trade
<b>NAFTA</b>	North American Free Trade Agreement
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>PTA</b>	Preferential trade agreement

<b>SADC</b>	South African Development Community
<b>TRIMs</b>	Agreement on Trade-Related Investment Measures
<b>TRIPs</b>	Agreement on Trade-Related Aspects of Intellectual Property Rights
<b>UN</b>	United Nations
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>USMCA</b>	United States–Mexico–Canada Agreement
<b>WTO</b>	World Trade Organization



# 1. INTRODUCTION

---

Migration, trade and investment amount to key economic factors in domestic and international economic relations. While closely intertwined and studied in economics, these have been dealt with in isolation in law and policymaking. This is certainly true for migration. It is dealt with in a decoupled manner from other areas in international law. Moreover, labour migration – other than the law of refugees – has mainly been the prerogative of domestic law and central governments seeking to maintain control over immigration. Recent times show some indication of gradual approximation. First, labour migration dealt with in bilateral relations is increasingly being integrated in trade agreements that also deal with investment law. Second, the Global Compact for Safe, Orderly and Regular Migration – adopted by the UN General Assembly on 19 December 2018 – entails a number of marginal linkages to trade and investment that indicate the need to consider the triangle of migration, investment and trade (MIT) more closely.

This paper seeks to take stock and analyse this relationship and explore avenues for further developing the triangle of MIT. It aims to do so by considering migration as a Common Concern of Humankind that is being developed in environmental law, and may equally be useful in other areas of public international law. No longer can and should migration be considered an exclusive and unilateral prerogative of national governments. Given its impact, it must form part of international cooperation and concertation, with international law playing a stronger role in securing compliance with international commitments entered. Common Concern of Humankind also offers the umbrella to establish closer linkages to investment and trade rules and how they could and should be shaped in support of meeting the challenges of human migration in times of increasing income disparity and the age of climate change.

## 1.1. Trade and investment linkages in the Global Compact for Migration

The negotiations and development of the draft Global Compact for Safe, Orderly and Regular Migration – concluded on 13 July 2018,<sup>1</sup> discussed at the Marrakech Conference on 10–11 December 2018 and adopted by the United Nations General Assembly on 19 December 2018<sup>2</sup> by a vote of 152 States against 5 States and 12 States abstaining – marks an initial step and important milestone towards a better integration of migration, trade and foreign direct investment (FDI) in addressing the challenges of migration in the twenty-first century. While most of the policies envisaged in the soft law instrument belong to the realm of labour and migration law, they also marginally touch upon areas intersecting with economic aspects. The Global Compact for Migration partly addresses international trade and investment in the context of sustainable development upon which the Global Compact for Migration is based.<sup>3</sup> While these two regulatory

<sup>1</sup> See Annex (United Nations General Assembly (UNGA), Draft outcome document of the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration, A/Conf.231/3, Marrakech, Morocco, 10 and 11 December 2018 (30 July 2018)).

<sup>2</sup> See Annex (UNGA Seventy-third Session, Resolution adopted by the General Assembly on 19 December 2018, A/Res/73/195 (11 January 2019)). Czechia, Hungary, Israel, Poland and the United States of America voted against; 12 States abstained from voting in the General Assembly (Algeria, Australia, Austria, Bulgaria, Chile, Italy, Latvia, Libya, Liechtenstein, Romania, Singapore and Switzerland) (UNGA Seventy-third Session, Sixtieth Plenary Meeting Wednesday, 19 December 2018, A/73/PV.60); United Nations, “General Assembly endorses first-ever Global Compact on Migration, urging cooperation among member States in protecting migrants”, Press release, General Assembly Plenary, Seventy-third Session, Sixtieth and Sixty-first Session, 19 December 2018, available at [www.un.org/press/en/2018/ga12113.doc.htm](http://www.un.org/press/en/2018/ga12113.doc.htm). See also <https://blogs.lse.ac.uk/mec/2019/05/09/what-is-the-fuss-over-the-uns-global-compact-for-safe-orderly-and-regular-migration/> and <https://sdg.iisd.org/news/unga-votes-to-endorse-marrakech-compact-on-migration/>.

<sup>3</sup> The following references to various provisions of the Global Compact for Migration cover only those portions of the Global Compact for Migration text that the authors have considered relevant for the discussions in this paper.

fields of international law go unnoticed in the Preamble except for a reference to the past and the prohibition of slave trade, Objective 2 – seeking to minimize adverse drivers of migration and structures that compel people to leave their countries – recalls the relevance of international trade and investment in section 18(d) and (e) of the Global Compact for Migration:

- (d) Invest in sustainable development at local and national levels in all regions, allowing all people to improve their lives and meet their aspirations, by fostering sustained, inclusive and sustainable economic growth, including through private and foreign direct investment and trade preferences, to create conducive conditions that allow communities and individuals to take advantage of opportunities in their own countries and drive sustainable development;
- (e) Invest in human capital development by promoting entrepreneurship, education, vocational training and skills development programmes and partnerships, productive employment creation, in line with labour market needs, as well as in cooperation with the private sector and trade unions, with a view to reducing youth unemployment, avoiding brain drain and optimizing brain gain in countries of origin, and harnessing the demographic dividend;

Throughout the document, laying the foundations of international cooperation and the rule of law, while respecting national sovereignty in defining migration policies, the Global Compact for Migration indirectly touches upon areas relevant for international trade and FDI. Many relate to the provision of services. Objective 5 seeks to enhance the availability and flexibility of pathways for the regulation of migration, providing for bilateral, regional and multilateral labour mobility agreements and the protection of labour rights in para. 21 (a) to (d) of the Global Compact for Migration:

- (a) Develop human rights-based and gender-responsive bilateral, regional and multilateral labour mobility agreements with sector-specific standard terms of employment in cooperation with relevant stakeholders, drawing on relevant International Labour Organization (ILO) standards, guidelines and principles, in compliance with international human rights and labour law;
- (b) Facilitate regional and cross-regional labour mobility through international and bilateral cooperation arrangements, such as free movement regimes, visa liberalization or multiple-country visas, and labour mobility cooperation frameworks, in accordance with national priorities, local market needs and skills supply;
- (c) Review and revise existing options and pathways for regular migration, with a view to optimizing skills-matching in labour markets and addressing demographic realities and development challenges and opportunities, in accordance with local and national labour market demands and skills supply, in consultation with the private sector and other relevant stakeholders;
- (d) Develop flexible, rights-based and gender-responsive labour mobility schemes for migrants, in accordance with local and national labour market needs and skills supply at all skills levels, including temporary, seasonal, circular and fast-track programmes in areas of labour shortages, by providing flexible, convertible and non-discriminatory visa and permit options, such as for permanent and temporary work, multiple-entry study, business, visit, investment and entrepreneurship;

Objective 15 seeks to secure the non-discriminatory provision of basic services to migrants, including legal and medical and educational services in para. 31. Objective 16 seeks to empower migrants to become active and well-integrated members of society in reciprocal relations with local communities and based on national law. Para. 32, in particular, sets forth in relation to labour markets in lit. (c) to (e):

- (c) Develop national short-, medium- and long-term policy goals regarding the inclusion of migrants in societies, including on labour market integration, family reunification, education, non-discrimination and health, including by fostering partnerships with relevant stakeholders;
- (d) Work towards inclusive labour markets and full participation of migrant workers in the formal economy by facilitating access to decent work and employment for which they are most qualified, in accordance with local and national labour market demands and skills supply;
- (e) Empower migrant women by eliminating gender-based discriminatory restrictions on formal employment, ensuring the right to freedom of association and facilitating access to relevant basic services, as measures to promote their leadership and guarantee their full, free and equal participation in society and the economy;

Objective 18 sets out the goal to facilitate mutual recognition of skills to foster, to this effect, mutual recognition agreements in paras. 34 (a) to (d):

- (a) Develop standards and guidelines for the mutual recognition of foreign qualifications and non-formally acquired skills in different sectors in collaboration with the respective industries with a view to ensuring worldwide compatibility based on existing models and best practices;
- (b) Promote transparency of certifications and compatibility of national qualifications frameworks by agreeing on standard criteria, indicators and assessment parameters, and by creating and strengthening national skills profiling tools, registries or institutions in order to facilitate effective and efficient mutual recognition procedures at all skills levels;
- (c) Conclude bilateral, regional or multilateral mutual recognition agreements or include recognition provisions in other agreements, such as labour mobility or trade agreements, in order to provide equivalence or comparability in national systems, such as automatic or managed mutual recognition mechanisms;

Objective 19 addresses the potential of diaspora communities to contribute to social and economic developments in home and host countries alike. In particular, para. 35 (e) provides for the facilitation of diaspora investment and the development of business activities:

- (e) Develop targeted support programmes and financial products that facilitate migrant and diaspora investments and entrepreneurship, including by providing administrative and legal support in business creation, granting seed capital-matching, establish diaspora bonds and diaspora development funds, investment funds, and organize dedicated trade fairs.

Objective 20 seeks to promote faster, safer and cheaper transfer of remittances, thus relating to the provision of financial services in para. 36, inter alia, by harmonizing relevant market regulations and by creative competitive and innovative remittances markets. Para. 36 includes, inter alia, the following regulatory goals in paras. (c) to (e):

- (c) Harmonize remittance market regulations and increase the interoperability of remittance infrastructure along corridors by ensuring that measures to combat illicit financial flows and money laundering do not impede migrant remittances through undue, excessive or discriminatory policies;
- (d) Establish conducive policy and regulatory frameworks that promote a competitive and innovative remittance market, remove unwarranted obstacles to non-bank remittance service providers in accessing payment system infrastructure, apply tax exemptions or incentives to remittance transfers, promote market access to diverse service providers, incentivize the private sector to expand remittance services, and enhance the security and predictability of low-value transactions by bearing in mind de-risking concerns, and developing a methodology to distinguish remittances from illicit flows, in consultation with remittance service providers and financial regulators;
- (e) Develop innovative technological solutions for remittance transfer, such as mobile payments, digital tools or e-banking, to reduce costs, improve speed, enhance security, increase transfer through regular channels and open up gender-responsive distribution channels to underserved populations, including for persons in rural areas, persons with low levels of literacy and persons with disabilities.

Finally, Objective 22 seeks to provide for appropriate social security for migrants and enhance mobility and portability of social security entitlements. To this effect, countries commit to non-discriminatory policies and the proliferation of social security agreements in paras. 38 (a) to (c):

- (a) Establish or maintain non-discriminatory national social protection systems, including social protection floors for nationals and migrants, in line with the ILO Social Protection Floors Recommendation, 2012 (No. 202);
- (b) Conclude reciprocal bilateral, regional or multilateral social security agreements on the portability of earned benefits for migrant workers at all skills levels that refer to applicable social protection floors in the respective States and applicable social security entitlements and provisions, such as pensions, health care or other earned benefits, or integrate such provisions into other relevant agreements, such as those on long-term and temporary labour migration;
- (c) Integrate provisions on the portability of entitlements and earned benefits into national social security frameworks, designate focal points in countries of origin, transit and destination that facilitate portability requests from migrants, address the difficulties women and older persons can face in accessing social protection, and establish dedicated instruments, such as migrant welfare funds in countries of origin that support migrant workers and their families.



These provisions of the Global Compact for Migration show that a comprehensive and fact-based approach to migration inevitably touches upon issues closely related to international trade, particularly trade in services, and FDI. Both areas are of importance in maximizing gains and limiting losses from migration flows as these may provide substitutable functions. At the same time, these are equally important in enhancing the livelihood of migrants in host countries, fostering trade in a complementary manner with home countries and providing employment opportunities to foreign affiliates in home countries.

## 1.2. Difficulties and challenges

Among the three areas of MIT to be compared and interlinked, migration is obviously the most complex and sensitive one, psychologically, culturally and politically. New migrants are exposed to xenophobia and racism when moving and settling in. Goods can be disposed of, services can be terminated, while migrants are people and families bringing along their own culture and habits and come to stay in the future and form part of the societies to which they move to. They depend upon IDP transitional arrangements for adaptation. As they work and pay taxes, they contribute to general welfare and fiscal income, while refugees are more dependent on taxpayers' support due to their inability to work. Unlike goods, migrants thus raise legitimate considerations among residents that are politically amplified by nationalist political parties seeking to enlarge their electorate. Populist political movements all over the world capitalize on migration, cultivating fears of loss of cultural identity and exposure to enhanced competition, often exaggerating the reality of the problem beyond proportion of reasonable debate and policymaking. The fact that migrants do not have political rights and are not politically represented largely explains this exploitation. No alternative and countervailing narrative, stressing the economic and societal advantages of migration throughout history has emerged in the public debate, except for discussions in the International Organization for Migration (IOM), the Global Forum on Migration and Development (GFMD) and the negotiations on the Global Compact for Migration.

A particular difficulty is that migration occurs for multiple motives, and categories are not clearly defined in international law. It essentially encompasses all transboundary movement of persons while these come under different headings. The status of political refugees is defined in international law. Migrant workers – short-term and long-term – are defined in the regional law of integration. International law distinguishes between skilled and non-skilled labour. Yet, there is no defined legal category of irregular and de facto economic migrants in international law, that is, those seeking new opportunities yet are short of contractual arrangements. They are forced to travel as asylum seekers and thus are frequently rejected as they do not comply with conditions of acceptance. Or, they travel unlawfully, subject to human trafficking at high financial and emotional costs. Subject to the fundamental principle of non-refoulement – recognized *jus cogens* in international law – they are eventually repatriated or disappear into a life of humans *sans papiers*.

There also are no well-defined legal categories operating based on numerical thresholds, possibly leading to breakdowns of national systems designed for dealing with individual applicants, such as the UN Convention on Refugees or the Schengen/Dublin system of the European Union. Also, there is no particular category of environmental migrants: people forced to leave due to naturally induced deterioration, particularly climate refugees. The Global Compact for Migration includes all except political refugees and internally displaced persons who are dealt with under a separate instrument. Dealing with labour mobility and economic migration in such a broad sense remains a difficulty in defining the relationship between migration, trade and investment.

### 1.3. Towards greater coherence

Given this background, the effort to bring about the Global Compact for Migration cannot be overestimated in the process of multilateral rule-making within the United Nations in addressing these issues. Albeit shaped in terms of soft law, it comprehensively sets out long-term policy goals in addressing migration in international relations in order to create awareness, gradually building international cooperation and overcoming the bias of lacking reciprocal interests in a globalized and interdependent world. It lays the foundations to address the regulatory imbalances between trade, investment and migration in international law. Much work lies ahead within the law of migration properly speaking, not limited to human rights law. This suggests that much work will be required in trade and investment law in order to comply with the goals of the Global Compact for Migration. In fact, the question arises as to what can be done to achieve greater coherence within the three main pillars of international economic law and bring them on par with mutually interacting regulatory levels (Cottier and Sieber-Gasser, 2015).

Against this background, the purpose of this paper is to explore the relationship between trade, investment and migration from the perspective of international trade policy and policies pertaining to investment protection. So far, there is little direct connection between them in law and policy, though the relevance of migration, particularly labour migration as a production factor, to economic policy is obvious. The latter subject has been well-researched in economics.

Taking into account the theoretical and empirical literature in economics and law, and also substantial obstacles based upon recourse to prevailing precepts of national sovereignty, this paper seeks to provide a normative foundation based upon the principle of Common Concern of Humankind, depicting areas of law which inherently, and best, should and can be addressed by international cooperation and by taking recourse to trade and investment measures. This paper also seeks to identify cross-over areas that could possibly lead to the reconsideration of trade and investment policies, with a view to bringing about greater coherence in the policy domains of trade, investment and migration, each of which is still dealt with distinctly today.

The paper is structured as follows. Section II provides a select review of the comprehensive economics literature examining the relationship between trade, investment and migration, including the policy domains of each. Section III discusses the legacy of fragmentation in international law, while Section IV looks at the legal interlinkages between trade, investment and migration. Section V discusses the role of migration as a Common Concern of Humankind, while Section VI examines the implications of this role for trade and investment law and policy. Section VII concludes this paper.



## 2. ASSESSMENT OF MUTUAL IMPACT

---

### 2.1. Substitution or complementarity?

While legal relations among trade, investment and migration have remained loose and fragmented, the mutual impact of the three areas and factors have been studied extensively in the economics literature. Overall, economic theory suggests that the three areas may be mutually supportive. In the classical analysis, trade and migration are expected to be substitutes; the more trade creates employment opportunities and leads to improved welfare outcomes in the home country, the less are people expected to leave their home countries. Yet, trade and migration are also expected to be complementary: migration is likely to increase trade between home and host countries, and the influx of migrants in the labour force is expected to contribute to enhanced exports or imports. The same linkages hold true for FDI. Inward FDI flows are expected to have beneficial impacts on the labour market in home countries and thus reduced pressures to migrate. At the same time, FDI flows also depend upon open labour markets in home countries, including the option to hire foreign personnel, in accordance with Mode 4 commitments and rights under the General Agreement on Trade in Services (GATS).

Despite the joint determination of migration, FDI and trade, the large and growing theoretical and empirical economics literature on the subject, has not explored the MIT nexus in an integral manner. For instance, diaspora and human capital effects have been studied in the migration–FDI literature; the nature of FDI (vertical or horizontal) has been emphasized in the FDI–trade literature;<sup>4</sup> and the issue of substitutability–complementarity is examined in the trade–migration literature. This demarcation led Schiff (2007), in his survey of literature on this subject, to conclude that the MIT linkages are complex, “making it difficult to draw suggestive policy recommendations for source or sending countries”. It is noteworthy that recent reports by the World Bank (2018) and IOM (2017) partly touch upon these issues, but do not address them systematically.

In what follows, a review of the economics and scarce legal literature that explores the impact of trade and FDI on migration is first provided. The paper then reversely turns to reviewing the impact of migration on international trade and on FDI.

### 2.2. The impact of trade on migration

Do trade flows and trade liberalization have an effect on migration flows, or does liberalizing international movement of people have an effect on trade? The initial questions raised on this topic were to find out whether trade and factor movement were complements or substitutes. Two seminal papers studying this relationship are Mundell and Markusen, though they show contradictory results. While Mundell (1957) shows trade and factor movement to be substitutes in a Heckscher–Ohlin framework, Markusen (1983) demonstrates that eliminating barriers to factor movements results in reversal of the relationship between the two.

---

<sup>4</sup> Economic models of trade and FDI distinguish between vertical FDI (VFDI) that takes advantage of differences in factor costs and tariff-jumping or horizontal FDI (HFDI) that seeks to avoid trade costs. With high trade costs, HFDI takes place, while with sufficiently different factor proportions between countries (and sufficiently low trade costs), there is greater scope for VFDI.

Under Heckscher-Ohlin assumptions, the factor price equalization theorem provides a strong basis for trade and immigration being substitutes. Essentially, as people move from the home to the host country, the relative factor endowments of the two countries become more similar (absent any changes in capital stocks), resulting in limited potential for trade based upon comparative advantage. *Prima facie*, therefore, economic theory suggests that trade liberalization is likely to deter out-migration from the home country; in fact, this was marketed as a likely benefit of the North American Free Trade Agreement (NAFTA) (Aroca and Maloney, 2005).

However, the migration–trade relationship can also be rendered complementary under several circumstances. For instance, Razin and Sadka (1997) note that dropping the assumption of identical production technologies or allowing for increasing returns to scale allows for trade and migration to be complements as opposed to substitutes. If bilateral trade is intra-industry and depends on the existence of scale economies and product differentiation, trade could happen even with identical factor endowments, thereby rendering the migration–trade relationship complementary (Blanes and Martín-Montaner, 2006). Martin and Taylor (1996) note that trade liberalization and migration can become long-term complements if non-tariff barriers, subsidies, higher productivity, technological advantages and economics of scale in the North harm the competitiveness of the South even in the production of labour-intensive goods, thereby leading to the shift of economic activities to the North, along with more immigration to support them. In fact, Venables and Norman (1995) conclude that migration and trade could be either complements or substitutes depending on the prevailing assumptions and context.

Existing empirical literature generally provides support for complementarity between trade liberalization and migration. For instance, López and Schiff (1998) show that migration of low-skilled/unskilled workers who belong to financially constrained families is directly proportional to trade liberalization in a developing country with stable population, with almost no effect on the migration of skilled workers. Acevedo and Espenshade (1992) present illustrative findings on the implications of NAFTA on the undocumented flows of Mexicans to the United States. There were some key provisions included in this agreement that would have an effect on migration. For instance, United States and Canadian banks, investment and insurance companies were allowed to operate in Mexico, which would facilitate intra-corporate transfers. The paper predicted that NAFTA would result in an increase in migration flows from Mexico to the United States at least in the short and medium run. Corroborating this, Robertson (2005) concluded that the positive effects of trade due to NAFTA would have been more evident in terms of reduction in the wage gap and labour market integration if not for rising border enforcement.

Apropos to the NAFTA, Markusen and Zahniser (1999), Feenstra and Hanson (1995) and Markusen and Venables (1997) all suggest that trade (and FDI) effects of NAFTA are more likely to increase the relative skilled wage in Mexico, without altering the incentives for unskilled workers to migrate North. Even generally, the migration literature (for instance, see Greenwood, 1997; Lucas, 1997) has failed to document any significant effect of migration on wages or unemployment rates in the home country. Thus, any effect of trade (and FDI) on migration via the home country's labour market is at best tenuous. In fact, there is increasing evidence for liquidity constraints being a barrier to migration (Stark and Taylor, 1991). In so far as trade (and FDI) relax these constraints, there may be more as opposed to less migration (López and Schiff, 1998). Note, however, that Aroca and Maloney (2005) find trade (and FDI) to substitute labour flows in Mexico, work through the local labour market and have substantial deterrent effects. In other work, Baizán and González-Ferrer (2016) emphasize the interaction between economic restructuring and labour demand in the host country and the multiplier effect of networks in explaining Senegalese migration to Europe between 1976 and 2008.

Overall, the literature on trade and migration has emphasized complementarities either because of credit constraints preventing the emigration of unskilled workers or because of diaspora effects operating via ethnic networks in international trade. Evidence supporting complementarities

in bilateral trade between home and host countries has been found for the United States (for instance, see Gould, 1994; Head and Ries, 1998; Rauch and Trindade, 2002; and Rauch and Casella, 2003). The role of the diaspora has also been emphasized in several studies on the information technology (IT) sector between the United States and India and between the United States and Israel (for details, see Arora and Gamberdella, 2005).

One well-known instance of multilateral trade policy impacting migration is provisions on the “movement of natural persons” (or Mode 4) under the World Trade Organization’s (WTO) GATS. Broude (2011) notes that high-skilled labour movement is normally regulated as trade in services, primarily (but not exclusively) through the GATS. In contrast, low-skilled labour migration is generally regulated (if at all) through bilateral labour agreements or in similarly designed migration clauses in preferential trade agreements (PTAs), discussed below.

However, as pointed out by Ghosh (2007), one of the major weaknesses in the GATS Mode 4 provisions emanates from their conceptual ambiguity on the labour issue. Not only is “temporariness” of movement left undefined, but the distinction between the movement of (service sector) migrant workers and that of service providing natural persons (or between employment contracts and service trade contracts) remains blurred. “A clearer articulation specifying that Mode 4 is concerned only with mobility linked to actual or anticipated trade transactions and not employment contracts could perhaps have avoided much of the existing confusion” (Ghosh, 2007). This said, given the temporary nature of this movement to deliver services, WTO members have emphasized the importance of GATS Mode 4 as a non-migration agreement.

Several trade agreements also deal with issues directly or indirectly linked to migration and labour mobility. The best known and most advanced example is that of the European Union, which explicitly recognizes and promotes the free movement of labour. In Africa, Economic Community of West African States (ECOWAS) and Common Market for Eastern and Southern Africa (COMESA) have agreed protocols on free movement though these remain unimplemented. Similarly, in South America, the Andean Community and Southern Common Market (Mercado Común del Sur or MERCOSUR) have agreements facilitating cross-border movement and residence. According to Hatton (2007), all such agreements are more likely to work as they have been negotiated between partners at comparable income levels, leading to the possibility of reciprocity in commitments and two-way flows based on comparative advantage. In contrast, the United States–Mexico relationship in the context of NAFTA or its reincarnation – the United States–Mexico–Canada Agreement (USMCA) – does not offer these possibilities.

### **2.3. The impact of foreign direct investment on migration**

Global cross-border movement of people is also affected by investment agreements and FDI flows. For instance, FDI in a developing country can give rise to multifarious employment opportunities that could lead to reduction of emigration of unskilled/low-skilled labourers, together with the potential to allure highly skilled migrants via intra-corporate job transfers, for instance (Gera et al., 2004). It may thus be concluded that inward FDI and migration are substitutes with respect to unskilled/low-skilled labour and complements with respect to skilled labour. In fact, FDI in export processing zones (EPZs) has been shown to have the potential to trigger internal migration and if these EPZs are located in border areas with richer countries, as in the case of the United States–Mexican border, then this may result in increased “spillover” migration (Martin, 1995).

Ivlevs and De Melo (2010) explore the links between the patterns of migration (high versus low skill), trade policy and FDI from the perspective of sending countries. Findings from their general equilibrium model, with a non-traded good and sector-specific labour, suggest that if exports are low-skill intensive, emigration of high-skilled labour leads to positive inward FDI, suggesting

that migration and FDI are complements. The authors also provide empirical evidence for this conjecture using FDI and emigration data for 102 migration-sending countries over the period 1990–2000. In other work relying on United States data, Kugler and Rapoport (2005, 2007) find FDI in services to be positively correlated with diaspora stocks indicating complementarities, whereas for manufacturers, unskilled diaspora and FDI are found to be substitutes. Docquier and Lodigiani (2007) find evidence of positive externalities between skilled migration and FDI suggesting “brain gain” effects associated with skilled migration.

## 2.4. The impact of migration on trade

Turning to the effect of migration flows on trade, economic theory suggests that migration can be mutually beneficial both for the home, as well as the host country in terms of facilitating trade (both imports and exports), increased remittances, technological transfer, new knowledge, innovations, attitudes and information (for instance, see de Haas, 2005). At the macrolevel, population growth due to immigration leads to a rise in demand for certain goods in the host country, for which immigrants had consumer preferences in their home country, thereby boosting imports of these goods into the host country.<sup>5</sup>

In fact, Ilevs and de Melo (2010) point out the three channels that have been identified to transform “brain drain” into a “brain gain”: (a) the relatively large remittances emanating from skilled migrants; (b) the presence of selective immigration policies in host countries that may raise the attractiveness of migration for high-skilled individuals; and (c) network effects that may lead to technology transfer via FDI between host and home countries.

Empirical evidence supports the positive links between immigration and trade. For instance, Gould (1994) found a strong and positive impact of immigrant links in facilitating trade between the United States and its 47 trading partners over 1970–1986. The study found a robust effect on both exports and imports, with a greater effect on consumer rather than producer goods. Beginning with this seminal study, a large literature has emerged examining the effects of immigrants on trade flows. Tadesse and White (2011) provide a table summarizing this extensive literature. In their meta-analysis of 48 studies conducted between 1994 and 2010, Genç et al. (2011) associate a 10 per cent increase in the stock of migrants in a given country with an increase in trade volume between the country of origin and residence by 1.5 per cent, on average.

The empirical literature reports on direct and indirect channels via which immigrants affect flows between their host and home countries. For instance, White (2007) and Dunlevy and Hutchinson (1999) indicate that immigrants’ consumer preferences for goods from their home countries directly increase host countries’ imports of these goods from the respective home countries, especially if substitutes are unavailable in host country markets. Similarly, Tadesse and White (2008) and Rauch and Trindade (2002), respectively, note that by bridging differences and matching exporters with importers, and/or informally enforcing contracts, immigrants facilitate the initiation and completion of trade deals. The Mexico–United States literature has particularly expanded on this point (for instance, see Zabin and Hughes, 1995; Massey and Espinosa, 1997; Winters et al., 2001; McKenzie and Rapoport, 2004). Hiller (2013) shows that for Denmark, immigration and hiring of immigrants deploys beneficial effects on exports.

<sup>5</sup> However, it also raises concerns related to loss of jobs and lower wages for the locals (for instance, see Okkerse, 2008 and Hanson, 2009).



Bryant et al. (2004), Girma and Yu (2002) and Gould (1994) emphasize the knowledge of the languages spoken and understanding of business practices in both the home and host countries, which enables immigrants to bridge communication gaps and/or reduce search costs, thus directly contributing to increased trade flows between those countries. Immigrants may also indirectly affect host country imports if their consumption of home country-produced goods influences the preferences of native-born residents or those of immigrants from other countries living in the host country such that they too consume home country goods. Through remittances and direct investment flows, immigrants may also enable home country residents to consume and/or produce at higher levels than would otherwise be possible, thus indirectly affecting home country's trade with the host or other countries (Gupta et al., 2007; Murat and Pistori, 2009). Finally, immigrants may also influence trade generally since migration has a positive impact on global income levels which, in turn, increases aggregate demand for tradable goods and services (Lewer and Van den Berg, 2009). More specifically, Ottaviano et al. (2013) find that a 1-percentage point increase in immigrants from a particular country into a local labour market leads firms in that area to export 6 to 10 per cent more services to that country (a bilateral effect). Since immigrants bring a specific skill set with them to the host country, firms can take advantage of this and substitute intermediate services that were previously offshored and imported, thereby decreasing their overall costs. Moreover, immigrants may help in developing new services consistent with consumer preferences in their home country markets, along with improvement in already offered services, eventually increasing sales and profits from the host country market. For instance, Ottaviano et al. (2018) find that those countries that differ the most from the United Kingdom in terms of legal system and are therefore difficult to enter by United Kingdom firms benefit the most from migration since the immigrants are in a better position to guide these firms in the right direction by minimizing asymmetries in information about systems in the home country.

Despite the consensus in the findings in this review of literature, the magnitudes of the observed effects vary greatly across the examined host and home country cohorts. It is also questionable whether similar positive effects of immigration can be observed in home countries. While a larger immigrant population within a host country generally encourages imports from the home country, this does not necessitate an equivalent effect in terms of greater emigrant flows, encouraging exports from the home country to host countries. Brain drain reduces the potential of home countries to export advanced products on the world market. The flow of remittances cannot compensate for such effects (cf. de Melo, 2007). In fact, literature documents several reasons why this equivalence may not happen.

For instance, immigrants may reduce the home country's exports to a given host if immigration increases the production of the home country's exportable goods in the host countries (Bryant et al., 2004). Moreover, by increasing the relative prices of the home country's non-tradable goods and, in turn, reducing the production and exports of the home country's tradable goods, increased remittances may have a Dutch disease effect on the home country's exports to the world (World Bank, 2006). Likewise, the extent to which immigrants (emigrants) affect trade flows may vary according to the anthropogenic make-up of the immigrant (emigrant) population. In this regard, Head and Ries (1998) and Tadesse and White (2011) both report significant differences in the extents to which refugee and non-refugee immigrants affect their home countries' trade with Canada and the United States respectively. Head and Ries (1998) find independent Canadian immigrants to have the largest influence on trade, refugees the least, with family immigrants in between; Tadesse and White (2008) show that the influence of United States refugee immigrants on trade is minimal compared to that of non-refugee immigrants.

In contrast, Epstein and Gang (2006) note that immigrants who are aware of developments that influence trade or who have persistent cultural/ethnic ties to their home countries play greater roles as trade facilitators. The tendency of immigrants to maintain regular contacts with individuals in their home countries and the persistence of such ties may also differ across emigrant populations from different home countries. For instance, Rauch and Trindade (2002) find immigrants of Chinese origin to exert pro-trade influences on their host countries' trade with their home countries due to their strong ethnic (emigrant-to-emigrant) networks that give them the power to enforce sanctions in the face of default on agreements. However, in the presence of well-functioning legal and institutional frameworks, the trade-facilitating role of emigrants' ethnic networks may not be as strong.

In other work, Baghdadi and Cheptea (2010) use a new database on French migrant associations together with data on the stocks of migrants to differentiate between organized and, respectively, non-organized migrant-based networks. They find that the creation of a new association of migrants is accompanied by important jumps in bilateral trade and investment between the home and host countries. This effect adds on top of the impact of non-organized migrant communities, documented in the literature. Non-organized networks affect trade via preference and information channels, while organized networks play mainly an informational role.

## **2.5. The impact of migration on investment (foreign direct investment)**

The positive theoretical links between migration and trade also hold in the case of investment decisions. In fact, Aubry et al. (2012) note that the transmission of information from migrants about business opportunities in the country of origin is equally relevant for investors as for exporters. The migrant network effect, coupled with the privileged information migrants have about the origin-country market, can reduce the transaction costs associated with foreign sales, in which case migration would act as a complement for both trade and FDI. In an empirical test of this theory, the authors modelled both exports and FDI along with migrant stocks to find a positive migrant elasticity of trade and FDI, which was particularly pronounced for higher-skilled migrant populations.

Using data on phone traffic, Portes and Rey (2005) show that information barriers are important in determining cross-country capital flows. Information, search and contract enforcement costs matter for decisions to invest abroad. Lower costs increase potential profits and attract investors. Cost advantages provide members of an organized network higher incentive to invest in their countries of origin, including by being intermediaries for interested foreign firms. In both situations, networks generate additional FDI, which is largely export-substituting tariff-jumping in nature. Immigration brings along an awareness of locally produced goods, the associated brand, as well as the similarity in consumer tastes and preferences between the home and host countries, all of which are likely to influence the acquisition of a larger market share by the investor. It is also likely to reinforce the probability that the FDI operation will take place in the first place but may even influence the intensive margin of investment.

Empirical literature confirms the role of migrant networks on FDI. For instance, Buch et al. (2006) find West German States hosting a large foreign population to have higher stocks of inward FDI from the origin country than States located in the east of the country. Kugler and Rapoport (2007) use United States data to show the dynamic links between migration and FDI as migrants provide information about future investment opportunities in their country of origin. Bhattacharya and Groznik (2007) find United States investments in a foreign country to be positively affected by the income of the migrant group living in the United States. Likewise, Javorcik et al. (2006) show that an increase in the migrant population in the United States from a specific country positively affects the amount of United States investment in that country. Javorcik et al. (2006)



and Kugler and Rapoport (2007) also show that via the larger presence of FDI, college educated migrants contribute more to the integration of their home country within the global economy than unskilled migrants.

However, the impact of immigration on investment or innovation at the regional or national level is supported by little empirical research (Hanson, 2009). Other evidence suggests that international migration may increase the flow of ideas between countries. For instance, the migration of skilled labour from China, India and Taiwan Province of the People's Republic of China to the Silicon Valley – where Indian and Chinese immigrants account for a third of the engineering labour force – has been followed by increased trade and investment from the United States (Saxenian, 2002). Thus, even where migration is permanent, having emigrants abroad may help a country lower its barriers to trade, investment and technology flows.

## 2.6. Migration policy, trade and investment

Research on immigration policy has traditionally assumed that as migrants leave their home countries and settle in another country, they break ties with their country of origin. But this pattern of abandoning ties with the home country is changing because of globalization as it has become easier to connect due to advanced technology (cf. Collier et al., 2018). According to the World Bank, remittances to low- and middle-income countries increased by 8.5 per cent from USD 429 billion in 2016 to USD 466 billion in 2017 with India (USD 69 billion), China (USD 64 billion), Philippines (USD 33 billion) and Mexico (USD 31 billion) being among the top remittance recipients.<sup>6</sup> However, continued growth of remittances could result in impediments like stringent immigration policies in the form of abusive screening and hiring procedures prior to admission in a foreign market and increased regulation of money transfer operators in many remittance-source countries, all of which are likely to have adverse effects on trade and FDI.

In contrast, Bradford (2013) highlights that home countries often adopt policies that actively encourage migrants to send remittances home. These include policies to match remittances to further encourage them. Mexico, for instance, matches migrants' contributions made via "hometown associations" to improve the infrastructure of migrant-sending areas of Mexico. The Government of Mexico's 3x1 Program for Migrants provides USD 3 for each USD 1 contributed this way for local development projects (Aparicio and Meseguer, 2012).<sup>7</sup> The well-documented macroeconomic effects of these remittances also spill over into creating trade and investment opportunities for the home country.

Similar positive effects can be witnessed when the home country creates incentives for the migrant to channel investment and capital flows back home using networks created in the host country (Trebilcock and Sudak, 2006). Mexico's Migrant Business Fund, for instance, provides subsidized loans to Mexicans living in the United States willing to invest in Mexico (Aparicio and Meseguer, 2012). Similarly, India offers some of its emigrants preferential treatment under its investment and banking laws, comprising more generous investment terms than those available to foreign investors or resident Indians (Barry, 2006).

<sup>6</sup> See [www.worldbank.org/en/news/press-release/2018/04/23/record-high-remittances-to-low-and-middle-income-countries-in-2017](http://www.worldbank.org/en/news/press-release/2018/04/23/record-high-remittances-to-low-and-middle-income-countries-in-2017).

<sup>7</sup> Launched with a USD 300,000 investment, the 3x1 Program leveraged more than USD 1 million in the first year. By 2001, the annual amount increased to USD 7.5 million and was used to support 130 projects in 30 Zacatecan municipalities. From 1999–2008, the Federación established over 2,000 community development projects across the State of Zacatecas and leveraged over USD 103 million from the Government of Mexico for projects. Given the model's success, it has been replicated in several Mexican states.

## 2.7. Conclusions

The theoretical economics literature suggests that international trade and investment may substitute labour migration by creating jobs in home countries and reducing incentives to migrate. A review of the empirical literature, in contrast, shows more evidence supporting complementarities between trade, FDI and investment.

From a theoretical point of view, trade liberalization may make an important contribution to addressing problems of regional and global migration, particularly in the field of agriculture. Enhanced international flows of agricultural products from developing countries are still associated with a major section of the population in rural agriculture and is likely to create jobs and employment in home and exporting countries, thereby reducing the need for temporary migrant workers, who are often subject to dismal conditions in host countries. The elimination of export subsidies in agriculture achieved by 2020 thus amounts to a major contribution in addressing the underlying causes of migration from countries having the potential of agricultural production for home consumption and export beyond subsistence farming. Additional steps in market opening, specifically in Europe, Japan and the United States in accordance with goals set forth in the Doha Development Agenda, particularly reducing border protection and domestic support, could further enhance the substitution of migration by international trade.

Similar effects can be expected from enhanced FDI in creating local jobs and deploying knowledge transfer and education.

However, it is important to emphasize that increases in exports and FDI will not reduce incentives to migrate in the short- and middle-term run. Enhanced welfare effects will often translate along a U-shaped curve (migration hump) in accelerated migration, as people can increasingly afford to travel and move abroad (Vogler and Rotte, 2000; World Bank, 2018; and IOM, 2017).<sup>8</sup> Lasting and stabilizing effects can only be expected in the long run. As much as for development assistance, no false expectations should thus be created in the public discourse supporting enhanced linkages of trade, FDI and migration flows.

From a political point of view, enhanced trade liberalization substituting migration will face much resistance, particularly in agriculture, and will be difficult to realize as motives of national identity endorse agricultural protectionism and alleged food sovereignty in the age of climate change. It is thus important to develop a political discourse based upon factual evidence that enables to address issues in a comprehensive manner and better understand the interlinkages between trade, investment, migration and other non-trade concerns, particularly education, culture and family. All this will have significant implications for the development and implementation of MIT policies in both host and home countries.

<sup>8</sup> .....  
Vogler and Rotte state, id. at 489: "Combining all these different arguments leads to the theoretical idea of an inverse U-shaped relationship between development and migration. Starting with very low income levels in the Third World, dissolving financial restrictions, population growth, social change, improved communications and expanding networks will lead to increased migration to the industrialized countries in the short and medium run. In the long run, however, potential convergence of incomes and home preferences will cause migratory movements to fall". See also World Bank (2018:116) on GDP rates and migration rates in 1990, 2000 and 2010; and IOM (2017:156).



### 3. THE LEGACY OF FRAGMENTATION IN INTERNATIONAL LAW

In law, the three areas of MIT have evolved in an isolation and are only intersecting gradually in recent periods; the same is true for human rights of migrants and human rights in general. The fragmentation within international law is due to institutional divisions of responsibilities within national administrations and international organizations. As a consequence, the areas of MIT are unequally developed in international law. They operate with different normative densities. Migration is essentially dominated by domestic law, except for asylum seekers and labour relations. Regulating investment in many countries is subject to bilateral investment agreements. International trade is dominated by disciplines of the multilateral trading system and a wide network of PTAs. Jointly, they form the common law of international trade, strongly shaping domestic law and policies in the field (Cottier, 2015b).

The legacy of fragmentation and unequal normative density of international cooperation, structure and comparable legal disciplines in international law are at the heart of the problem confronting the interface of the three areas consistently. The law of migration has not been able to catch up with the process of economic globalization and enhanced mobility of persons with reduced costs of transportation and communication. Moreover, the epistemic communities of trade, investment and migration, in particular, differ and struggle in finding a common language. IOM summarizes the challenges as follows:<sup>9</sup>

The domains of trade and migration are becoming increasingly connected. Trade in goods, capital, investment and services has expanded with reduced costs of transport, globalization and information availability. This has produced a realistic range of mobility options based on increasing opportunities to travel, live, study or work abroad. However, migration regimes across borders that facilitate the movement of persons have not kept up with increasing mobility. Furthermore, members of the migration community analyse the movement of persons across international boundaries from a completely different perspective than the members of the trade community.

Despite a recognizable increase in the intersection of issues that concern the two communities, the extent of the overlap is not entirely clear. Trade officials operate with different terminology and priorities than migration officials. Migration policymakers tend to look at migration from a regulatory perspective focused on border security and labour market needs. While much migration analysis takes place on a macroscale similar to that undertaken by the trade community (countries of origin and destination), consideration is also given within the migration community to individual issues and concerns for the treatment and well-being of migrants themselves, including the following:

- Social/cultural integration of migrants into their host community;
- Language barriers;

<sup>9</sup> IOM website, Developing Migration Policy/Migration and Trade (no longer available, on file with authors).

- Humanitarian considerations for asylum seekers and refugees;
- Family reunions;
- Security concerns;
- Human rights; and
- The role of migrants in the domestic economy and workforce.

Economists and trade policy analysts often view the movement of persons across national borders from an entirely different perspective. Migrants are considered as one “factor of production”, described as “natural persons”, and understood in terms of their economic value by way of the services they can provide or the production they can generate.

From the trade community’s perspective, market access is to be increasingly provided to trading partners. However, trade negotiators’ demands for increased market access for the global labour force tend to run up against restrictive immigration regimes whose degree of openness in industrialized countries is determined by sensitive labour market issues, and more recently, complicated by overriding security concerns.

### 3.1. Labour migration

Migration essentially pertains to national law when it comes to economic migration (Cornelius et al., 1994). The nineteenth-century tradition of non-discriminatory access and treatment of foreigners under liberal Friendship, Commerce and Navigation treaties in Europe made way for unilateral migration policies ever since the First World War in what Hollifield termed the “emerging migration state” (2007). After the Second World War, international commitments focused on regional integration in Europe, and eventually led to a multitude of bilateral migration agreements around the world. No binding multilateral framework, however, has emerged on the global level comparable to the trading regime. The focus has been on regional and bilateral agreements facilitating labour mobility.

#### 3.1.1. Global law

Labour migration essentially is a prerogative of national law and policymaking. It is defined by managing low-skilled migrants’ labour movements and controlling access to labour and residence, temporary and lasting establishment. Subject to agreements, the status of migrants is unilaterally defined, according to the economic needs of host countries (Martin, 2015). In international relations, migration policies follow the patterns of *beggar-thy-neighbour* (Cerna et al., 2015), a phenomenon that can be observed even today within federacies and political unions in allocating refugees. Countries seek to optimize benefits from foreign labour while avoiding burden-sharing in times of crisis and major migratory movements that need to be addressed. There has been a fundamental lack of reciprocal interest between home and host countries of migrants, rendering cooperation difficult (Bradford, 2013; Hatton, 2007; Cholewinsky, 2015). The law did not develop a concerted framework, but as a “political economy of dissonance” (Broude, 2011). Accordingly, international law has remained marginal on the global scale.

Universal human rights protection for migrants has remained weak according to François Crépeux, the former United Nations Special Rapporteur on the Human Rights of Migrants (United Nations, 2013, 2014a, 2014b, 2015b, 2017b; Crépeux, 2017). Labour standard agreements for migrant workers developed in the International Labour Organization have remained of limited membership

in particular by industrialized countries and thus have been of limited impact.<sup>10</sup> The 1951 Refugee Convention, finally, does not extend to labour markets and leaves refugees without access to work and protection of national laws relating to working conditions.<sup>11</sup>

Institutionally, several international organizations deal with migration: United Nations High Commissioner for Refugees, ILO and IOM, the latter still without formal treaty-making functions (United Nations, 2013).

### 3.1.2. Regional integration

Advanced regimes on international labour migration are found in the context of regional integration. The 1952 Nordic Passport Union enabled free movement among Denmark, Iceland, Norway and Sweden (excluding Greenland and Svalbard). The 1957 European Economic Community brought about free movement of workers. While formally a matter of international law, it essentially amounts today to a sui generis federal system. It was gradually extended in concentric circles to neighbouring countries by means of bilateral agreements and the European Economic Area, and partly to third-country nationals (Iglesias Sánchez, 2015). The level of labour or persons movement and integration reached in Europe amounts to one of the main motives for Britain leaving the European Union in 2019. Likewise, but implemented to a much lesser extent, free movement of persons can also be found in other regional organizations and free trade agreements, particularly African Union, COMESA, Southern African Development Community, Association of South-East Asian Nations, as well as ECOWAS (Adepoju, 2015), the Andean Community, MERCOSUR<sup>12</sup> and the Eurasian Economic Union.

### 3.1.3. Bilateral labour mobility agreements

Of significant and increasing importance are more than 700 bilateral labour migration agreements facilitating market access for labour<sup>13</sup> (Chilton and Posner, 2017; Bisong, 2015; Martin, 2015; Battistella, 2015; Thiollet, 2015; Naiki, 2015). More recently, such agreements also form part of economic cooperation agreements, jointly addressed with trade and investment, for example in the 2017 Canada–European Union Comprehensive Economic and Trade Agreement (CETA)<sup>14</sup> and the 2005 India–Singapore Comprehensive Economic Cooperation Agreement (CECA),<sup>15</sup> both focusing on skilled labour.

## 3.2. Bilateral investment treaties

Problems of lacking reciprocity do not exist to the same extent as in migration in the field of international investment protection. Apart from customary international law, investment protection is mainly based upon bilateral investment treaties (BITs), concluded between industrialized and developing countries (Nadkavukaren Schefer, 2016). While investment protection among industrialized countries has traditionally been a matter of domestic administrative and constitutional law, additional disciplines were important to foster and attract investment in developing countries,

<sup>10</sup> Convention concerning Migration for Employment (Revised), 1949 (Migration for Employment Convention (No. 97)); Recommendation concerning Migration for Employment (Revised), 1949 (Migration for Employment Recommendation (Revised) (No. 86)); Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (Migrant Workers (Supplementary Provisions) Convention (No. 143)); Recommendation concerning Migrant Workers, 1975 (Migrant Workers Recommendation) (No. 151).

<sup>11</sup> See [www.unhcr.org/1951-refugee-convention.html](http://www.unhcr.org/1951-refugee-convention.html).

<sup>12</sup> Bernal et al., 2015.

<sup>13</sup> See University of Chicago, Bilateral Labor Agreements Dataset, available at [www.law.uchicago.edu/bilateral-labor-agreements-dataset](http://www.law.uchicago.edu/bilateral-labor-agreements-dataset) (accessed July 2019).

<sup>14</sup> See <http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/>.

<sup>15</sup> See <http://dot.gov.in/sites/default/files/India%20Singapore%20CECA%2001.08.2005.pdf>.

lacking strong traditions of the rule of law. Private State arbitration emerged in order to compensate for such deficiencies while providing assurances to investors. Binding investment dispute settlement, mainly under the auspices of the International Centre for Settlement of Investment Disputes Agreement, is now a mainstay of international economic law. Other than in the WTO, disputes are settled ad hoc and not subject to unifying appeals that partly impacts on legal coherence in the field. Today, there are more than 2,950 BITs worldwide (UNCTAD, 2018), while efforts to multilateralize investment protection so far have failed in the Organisation for Economic Co-operation and Development (OECD), as well as at the WTO, albeit provisions enshrined in the Legal Texts of the WTO entail important elements of investment protection in goods, services and intellectual property protection. In recent years, private State arbitration has become contentious as it has been increasingly applied to emerging economies and even among developed countries. Recent agreements, often placed within comprehensive economic cooperation agreements, are moving away from ad hoc arbitration towards a system of standing tribunals assessing claims of expropriation and regulatory takings.

### **3.3. The multilateral trading system of the World Trade Organization**

Among the three areas, international trade regulation is the most advanced, in terms of substance and procedures in international law. It is here that reciprocal interests are paramount and drive legal integration. Based upon the disciplines on goods, services and intellectual property of the WTO, policies of beggar-thy-neighbour have been overcome after the Second World War with the advent of the General Agreement on Tariffs and Trade (GATT) 1947 (van den Bossche and Prévost, 2016; Cottier and Oesch, 2005). The fundamental principles of non-discrimination in terms of most-favoured nation treatment and of national treatment and rules of transparency shape the system. The rule of law is most advanced in this area, subject to mandatory dispute settlement of panels and the Appellate Body under the Dispute Settlement Understanding. The relationship to non-trade concerns, particularly environmental concerns, essentially has been shaped by the case law of the GATT and WTO. The legitimacy of the system has been a long-standing issue, firstly challenged by developing countries claiming that the system is biased towards the economic interest of rich OECD countries. However, with a secular rise in the trade shares of developing countries and emerging economies in recent years, these concerns have largely been alleviated (Cottier, 2009). More recently though, such concerns have made way for populist claims in the United States alleging that the system is biased against the United States and unable to properly regulate trade relations with emerging China. It is interesting to observe that these voices have emerged on a ticket hostile to migration. It indirectly threatens the multilateral trading system today though, ironically, little operational connections exist among the two as of today.



## 4. LEGAL LINKAGES AND LIMITATIONS

---

Legal overlaps between migration, investment and international trade have been minimal in terms of policies and common rules at the global level despite obvious linkages of trade and the production factors of capital and labour. It is more interrelated in regional and bilateral trade agreements and on par in integration agreements, such as the European Union. While the relationship between trade, investment and migration has been extensively studied and developed in economics discussed above, legal linkages between the three areas in legal research are still at an infant stage (Martin, 1995; Cottier and Sieber-Gasser, 2015; Cerna et al., 2015). Trade, investment, migration and capital flows are essentially dealt with in isolation, even in domestic and regional law. And more so is the need for these linkages to be explored in international law and treaties on global scales.

### 4.1. Trade and labour migration

Temporary labour migration is legally addressed by means of Mode 4 obligations in GATS. Members have adopted a horizontal obligation to grant temporary access to foreign workers providing services. The obligation covers natural and self-employed persons providing services abroad. It entails natural persons employed by a service provider located within a WTO Member State who are sent abroad. Movements under Mode 4 mostly relate to intra-company transferees in managerial and critical positions of the company limited to a period of three to four years (Bast, 2011; Broude, 2007; Panizzon, 2010a, 2010b, 2010c, 2011; Sieber-Gasser, 2017b). Importantly, labour as such was not recognized as a service per se, much to the dismay of developing countries. The rationale for Mode 4 mobility relies on the provision of a service requiring a close local connection with the person providing the service. Mode 4 thus does not generally grant access to the labour market. The scope of the general provision depends upon the commitments scheduled by individual members.

Mode 4 commitments apply across the board to all services but may be subject to exemptions, economic needs tests and qualification requirements in specific sectors. While the scope of these obligations remains limited to highly skilled workers, they are of importance in the context of migration, as they bar a country from operating quotas for this category unilaterally. The status of low-skilled labour has been traditionally addressed, as indicated, in bilateral labour agreements outside of the trading system. Article VII(2) of GATS provides for conditional most-favoured nation (MFN) on mutual recognition of professional qualifications that are of crucial importance to labour market access. However, there are no relations to other forms of migration, particularly to refugees and migrants in irregular situation.

The WTO does not explicitly address labour standards. Efforts to include them were rejected in a favour of adopting core labour standards in the ILO. They may however be imported in justifying trade restrictions on related goods and services invoking public morals. Conceptually, they address the status of competing domestic workers abroad and are not designed to protect migrant workers. These rights are addressed outside of the WTO by ILO Agreements on Migrant Workers.<sup>16</sup>

---

<sup>16</sup> See footnote no. 10.



WTO law does not provide the basis to take measures on trade in goods and services in addressing issues of migration with other members. Trade restrictions are product-related and cannot be invoked independently, unless a case can be made for the threat to essential national security interests. However, members could grant a waiver for trade preferences under Article IX(4) of the Marrakesh Agreement establishing the WTO in order to take into account special circumstances that might be induced by particular migration flows (see 6.1.7. Waivers for refugee support).

Overall, WTO law as it stands does not specifically support the goals set forth in the Global Compact for Migration in legal terms. Its contribution flows from the general process of trade liberalization which, as the review of the economics literature above has shown, may be both substituting and complementing migration flows. A particular potential to enhance migration's trade effects rests with trade facilitation under the Trade Facilitation Agreement. To the extent that the agreement contributes to the development of tradable products in developing countries and lowers transaction costs, the same extent will also contribute to job creation in exporting countries.

## 4.2. Investment protection and migration

Investment law in customary international law and bilateral investment is limited to the protection of investors and may entail provisions facilitating recruitment of foreign personnel comparable to Mode 4 of GATS, expressing a commitment of host States to facilitate entry, sojourn and issuing of visas and work permits for nationals of the other party (or, sometimes, for individuals regardless of nationality). They increasingly address labour standards, but migration as such is not addressed in bilateral investment agreements in a meaningful way.<sup>17</sup>

Equally, investment-related provisions in trade regulation do not directly address migration. Indirectly, obligations to grant national treatment are of importance as they protect investments and imported products by immigrants in host countries. The ban on local content requirements under the Agreement on Trade-Related Investment Measures (TRIMs) of the WTO imposes strict standards of national treatment and does not allow imposing preferences for local components and products in the context of international value chains. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) requires national treatment in the protection of intellectual property of investors; the GATS agreement only does so to the extent that the service scheduled is limited to Mode 4 commitments.

Companies may promote goals coherent with the Global Compact for Migration but are not required to do so under BITs or customary international law. Investment law does not yet provide legal foundations of international cooperation between home and host countries. It essentially leaves education and training of the workforce to domestic law and market forces. They fall short of promoting investment cooperation beyond the protection of foreign-controlled corporations and upon exceptions to defend public interests, including the rights of the workforce and the population at large. Host countries thus depend on the goodwill of corporations to voluntarily contribute to the goals set forth in the Global Compact for Migration and commitments to corporate social responsibility (CSR).

.....  
<sup>17</sup> Communication by Anthony Vanduzer, 27 November 2018, University of Ottawa (on file with authors).



### 4.3. Regional integration and preferential agreements

Other than at the global level, trade, investment and migration are increasingly dealt with under the umbrella of the same treaty in regional integration, albeit in different chapters often following their own logic and procedures. The Treaty on the Functioning of the European Union deals with trade, investment and migration on par, expressed by free movement of goods and services (trade), free movement of persons (migration) and free movement of capital (investment). They are subject to essentially the same principles of non-discrimination, disciplines and exceptions. However, disciplines operate on their own and are not mutually dependent and coordinated. Integration of migration, trade and investment have clearly stimulated equally comprehensive approaches in third-party relations, exporting European Union law to countries like Switzerland, or to Liechtenstein, Norway and Iceland within the European Economic Area.

Other systems of regional integration are less comprehensive. They deal with migration closer to the disciplines of WTO law while expounding detailed rules on trade and investment (CECA, CETA, NAFTA, USMCA). Sometimes, existing legal disciplines on migration are not fully implemented due to political resistances and the lack of deeper integration or the lack of awareness in companies of trade commitments made in relation to labour migration in such agreements. Bilateral trade agreements normally entail provisions similar to Mode 4 of the GATS and do not go beyond such obligations (Sieber-Gasser, 2017b). Bilateral labour market agreements often stand alone, but increasingly incorporated into comprehensive economics agreements such as CETA.

Overall, regional integration and PTAs legally support the goals of the Global Compact for Migration more extensively than global rules. However, these are still devoid of an underlying doctrine. The authors suggest framing such doctrine in terms of understanding migration as a Common Concern of Humankind.





## 5. MIGRATION AS A COMMON CONCERN OF HUMANKIND

### 5.1. Towards a new principle of law

Other than in international trade and FDI, it is observed that reciprocal interests in international cooperation on migration are much reduced and essentially limited to bilateral labour migration agreements, defining rights and obligations of two parties in the pursuit of a common interest. For much of the rest, including refugees, reciprocal interests are absent, and States essentially follow policies of beggar-thy-neighbour and free-riding on commitments made by one but not the other. Countries are interested in unilaterally defining the legal status of migrants in a manner beneficial to them. They are not interested in international cooperation unless they extract benefits from it. The problem is comparable to the protection of the global commons, such as the high seas or the atmosphere, or biodiversity. There is a need to define and recognize particular long-term obligations in order to counterbalance the lack of reciprocal interests in specific configurations.

The 1992 United Nations Framework Convention on Climate Change as well the 2015 Paris Agreement recognizes that climate change amounts to a Common Concern of Humankind (UN, 1992a, 2015a). The same is true for the loss of biodiversity, access to genetic resources and the threats to cultural heritage (UN, 1992b, 2003). The notion of Common Concern of Humankind, at present, is not further defined in these instruments but simply called upon. The contours of the future principle still need to be defined, as well as their implications and impact that need to be defined.

The authors submit that Common Concern of Humankind is not limited to these areas. It may also be applied, for example, to transfer of technology on renewable energy, marine pollution, the enforcement of human rights or basic problems of income inequality, or to monetary and financial stability.<sup>18</sup> Common Concern of Humankind essentially addresses shared and transnational problems that nations cannot solve on their own and which, if remained unresolved, amount to a threat to international peace and stability. Given the political importance and sensitivity of migration, the principle of Common Concern of Humankind is suitable to express the importance and gravity of the challenge and the need to cooperate particularly in managing movements, assimilation and integration. It may and should thus apply to unresolved and pressing problems of global migration (Cottier and Losada, forthcoming); the more so as climate change entails the problem of climate migration (Baldwin and Fornalé, 2017), and thus already is partly recognized as a common concern.

<sup>18</sup> These issues are addressed in T. Cottier (ed.), *The Prospects of Common Concern of Humankind in International Law* (Cambridge University Press, 2021).

While not using the term of Common Concern of Humankind, the principles and goals of the Global Compact for Safe, Orderly and Regular Migration, in many aspects, express the essence and spirit of understanding labour migration and management as a matter of international coordination and cooperation. It will be up to the international community to explicitly recognize and define migration as a common concern in a process of claims and responses. Common Concern of Humankind as applied to a regulatory area is not a given, but the result of a political process essentially shaping rights and obligations as applied to the field. This process could be led, in the field of migration, in the follow-up work to the Global Compact for Migration. The proposition finds support in joint political statements made<sup>19</sup> and research calling migration to amount to a common good (Ghosh, 2007) or what in ECOWAS is considered a “common approach” (Bisong, 2015). It supports the call for a more cosmopolitan and less statist approach to migration (Broude, 2007).

The emerging doctrine of the Common Concern of Humankind offers the potential to rebalance international law based upon territoriality, sovereignty and a reframing of international institutions to better manage global public goods. As applied to migration, it includes the responsibilities of States towards migration governance, both at home and abroad. The principle can therefore entail responsibilities, among others, to cooperate between home and host countries in areas of social security, remittances and diaspora contributions. This could also comprise the responsibility to act extraterritorially while respecting existing international agreements (for example, taking steps to address conditions abroad that contribute to global migration concerns, such as underdevelopment and climate change).

In terms of instruments, this paper mainly relies upon tools available and to be developed in international economic law, and upon those available in domestic constitutional law and rules in regulating migration flows. These approaches are developed and supported based on empirical evidence on the efficacy of policy. In doing so, the authors recognize that States have the power to deny entry and expel foreigners who do not have adequate immigration status and their security agencies have a legitimate mandate to investigate security risks related to the presence of foreigners within their jurisdiction.

As indicated, this paper defines common concern as a problem that inherently cannot be solved alone and requires international cooperation. Yet, not every problem amounts to a Common Concern of Humankind. The authors suggest defining a high threshold, commensurate with threats to international peace, security and stability and challenges of similar magnitude, should the problem remain unresolved. Common Concern of Humankind thus entails preventive and remedial action. In the field of migration, this essentially addresses large flows of migration following economic crisis, warfare or civil war and unrest, or following forced migration due to climatic changes, such as increased sea levels threatening the livelihood of residents. By and large, it covers areas of migration flows, which, based upon existing agreements and domestic law, cannot be managed without a particular effort on the part of the international community and States. The Common Concern of Humankind essentially relates to the challenge of allocating migrants to different destinations, migration adaption and the transitional period until people are settled in the country of destination. Such problems and configurations call upon the international community to cooperate and work towards common solutions.

<sup>19</sup> “Ongoing large-scale movements of refugees and migrants are a major challenge for the international community. We need to deal with this challenge in a spirit of shared responsibility. We underline the need to address the root causes of recent large-scale migration and to safeguard human rights of refugees and migrants. In order to reap the benefits of human mobility, it is crucial to achieve a better migration management, to replace smuggler-driven illegal border-crossings by legal pathways, and to foster labour market integration of migrants and refugees. To these ends, we welcome the ongoing UN processes to adopt the Global Compact for Safe, Orderly and Regular Migration, as well as the Global Compact on Refugees.” (Final paragraph, WTO, 2017a)

What are the legal implications once a problem is recognized as a Common Concern of Humankind in international law and relations? The authors suggest that they are threefold. The doctrine and principle of Common Concern of Humankind allows for the development of appropriate structures of international cooperation, the definition of homework by States and of remedies in case of State failures and international intervention.

#### 5.1.1. The duty to cooperate and negotiate

Firstly, Common Concern of Humankind triggers obligations towards international cooperation and a duty to negotiate (Cottier, 2021; Cottier and Losada, 2021; Cottier, et al., 2014; Cottier, 2015a; Nadakavukaren Schefer and Cottier, 2013). So far, such obligations only exist based on specific customary or treaty provisions. No State, under the doctrine of self-determination and national sovereignty, is otherwise obliged to work with other States if it does not wish to do so. This is particularly true in the field of migration. Apart from specific customary or treaty provisions, States are free to act on their own and determine conditions and duration of residence of foreigners on their territory. It is even doubtful today whether binding rules, particularly the principle of non-refoulement and guarantees of human rights, trigger obligations at international cooperation in the field.

Recognizing migration and its problems as a Common Concern of Humankind establishes a basic and general obligation to cooperate and is fully in line with international efforts undertaken since the first High-level Dialogue on International Migration, fostering international cooperation and the need for it. The doctrine and emerging principle of Common Concern of Humankind provides a general heading to cooperation and renders it legally binding. It assists in conceiving migration and development much more as a reciprocal relationship (de Haas, 2005) as a regulatory matter of mutual interest to home and host countries. It strongly supports and underpins the efforts towards a global migration regime as suggested by Martin (2000). The proposition is in line with findings in research that interests in migration cooperation exist to avoid – parallel to international trade – what Sykes (2013) called migration diversion, that is, enhanced flows and pressure of migrants on open-minded countries due to restrictive policies of others. It reinforces the finding that cooperation within an international organization and a proper forum facilitates the achievement of multilateral results, comparable to the structure of the WTO (Trachtman, 2011). The duty to cooperate also accommodates and supports the idea to create an appropriate migration fund that would ensure the destination countries for potential adverse effects of migration and compensate source countries for adverse outward effects of migration (Bradford, 2013).

#### 5.1.2. The duty to do homework and the protection of human rights

Secondly, the principle of Common Concern of Humankind will entail responsibilities to act within a given jurisdiction (Cottier, 2021; Cottier and Losada, 2021; Cottier and Wermelinger, 2014; Cottier, 2015a; Nadakavukaren Schefer and Cottier, 2013). States are obliged to do their homework in addressing the common concern identified. These obligations may stem from commitments incurred under human rights instruments and promises made, including the Sustainable Development Goals and the Global Compact for Migration. However, these are not limited to those but also call for autonomous measures and action in addressing the problem. In contrast to the principle of permanent sovereignty, the principle of Common Concern of Humankind not only authorizes but obliges governments to take action in addressing the common concern within their own jurisdictions and territories with a view to achieve pledged goals under the Paris Agreement of 2015. In climate change, for example, national efforts at abating global warming therefore emanate from this principle independently of treaty obligations, as much as efforts to stop depletion of fisheries within their own territorial waters and the exclusive economic

zone. The same could be true for migration and the treatment of migrants and aliens pledged under the Global Compact for Migration consecutive instruments. In a communication to the authors, François Crépeau, the former UN special rapporteur on the rights of migrants, wrote:

Much of homework obligations in the field on migration will be defined by human rights. There are, at this stage, many open questions which will need to be addressed. The crucial question pertains as to how legitimate public interests may be invoked to restrict specific human rights guarantees as they apply to various categories of migrants, taking into account the rights and security needs of citizens and other categories of foreigners. The lack of a well-established corpus of law dedicated to migrants, defining their inalienable, specific rights (beyond the 1990 International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families, which is ill-ratified, Global North countries having never accepted its legitimacy), leaves us with the task of identifying and interpreting relevant rights and freedoms as general instruments of human rights protection. Many questions come to mind. What is the relevance of due process of law in the context of migration procedures? What is the extent, in favour of migrants, of the right to family unity or the right to privacy? What are the implications of the fact that migrants are denied political rights, often for a long period of time, often forever, and are therefore prevented to directly access the political stage to voice their concerns? What are the human rights implications on persons not having appropriate identification or travel documentation? What is the meaning of human dignity when applied to migrants, and especially to migrants who are inherently vulnerable or placed in a very precarious legal status or social position? What access should migrants, regardless of status, be permitted to public and private services, in implementation of the right to food and shelter, or the right to health services, or the right to education? What are the implications of general exception clauses expressing public interests and security concerns, as they should be applied to migrants? Why should all migrant workers, regardless of migration status or lack of, not benefit from labour law or health and safety protections guaranteed to all workers? What is the meaning of “access to justice” in a context where migrants without relevant social capital are denied information, time to prepare, free and competent legal representation, free and competent interpretation and translation services, and easy access to effective recourses and remedies? Why are most countries turning a blind eye to underground labour markets, which sustain the competitiveness of many economic sectors (agriculture, care, construction, extraction, fisheries, hospitality, to name a few), but at the same time foster high levels of labour exploitation and human rights abuse by migrant smugglers, unethical recruiters, exploitative employers or greedy landlords, who actively benefit from an atmosphere of complete impunity for their crimes.

Homework will equally entail measures affecting trade and investment, discussed below, both by implementing international obligations and developing corresponding domestic policies addressing transitional tasks and needs of migrants in the process of adaption.

The principle of Common Concern of Humankind also authorizes within homework obligations to take action in facts relating to the common concern produced outside the proper jurisdiction of a State. Rights and obligations relating to common concerns go beyond the traditional precepts of territoriality because the problem is recognized as a common concern and potential threat to peace and stability. While today action can be defended if the nexus to the own territory is sufficient, Common Concern of Humankind would not require such linkages but depend upon examination whether the measure and action is able to support the attainment of a common concern as defined by the international community. In the field of migration, extraterritorial functions may arise in the context of pressing humanitarian crisis and the need to intervene even in the absence of consent and violations of law committed, for example in relief from natural disasters occurred. They may occur in the context of civil unrest and internal strife, even in the absence of violations of international law in order to sustain homework obligations. They may be necessary abroad to orderly manage migration flows and support integration and transition. It remains to be explored to what extent extraterritorial effects could be deployed in migration law beyond these configurations.

The implementation of unilateral or concerted measures and policies relating to defined areas of Common Concern of Humankind in particular by large powers and markets may be met with opposition, resistance and perhaps reprisals. Governments will continue to invoke traditional precepts of sovereignty. Yet, taking seriously Common Concern of Humankind as a right and obligation to address these concerns beyond territorial jurisdiction has to take these tensions into account and channel them towards the establishment of global governance able to handle these issues more effectively and based upon commonly agreed rules beyond soft law recommendations of groups or fora such as the GFMD and the Global Compact for Migration. The principle of Common Concern of Humankind provides therefore the incentives for working towards agreed regimes. It allows both for bottom-up and top-down approaches: it is these two approaches that will bring about progress in international law and relations in addressing Common Concerns of Humankind.

### 5.1.3. Compliance

Thirdly, in light of the threshold and seriousness of the problem, the principle of Common Concern of Humankind entails obligations to comply with international obligations incurred and domestic unilateral promises made (Cottier, 2021; Cottier and Losada, 2021; Cottier and Wermelinger, 2014; Cottier, 2015a; Nadakavukaren Schefer and Cottier, 2013). Failure to do so triggers countermeasures on the part of States particularly affected, and also by the international community at large. For example, in climate change as a Common Concern of Humankind, governments can be authorized to take appropriate action against highly polluting means of production in other countries bluntly ignoring the common concern of global warming. Likewise, governments can be authorized to take action in response to blatant and systematic neglect of obligations to cooperate on migration. Defining a problem to be a Common Concern of Humankind implies that obligations are obligations *erga omnes*, similar to *jus cogens*, and entitle measures also on the part of States not directly affected. Moreover, Common Concern of Humankind entails a fundamental duty to act, similar to the concept of Responsibility to Protect (R2P) in systemic and persistent violations of the non-alienable essence of human rights, such as genocide or torture equally protected as *jus cogens* and peremptory norms. Duties to act are subject to the principle of proportionality (Cottier et al., 2017). They will not trigger obligations to act if goals cannot be properly achieved under the circumstances. As a fundamental principle, however, it obliges governments to justify non-action in a transparent manner. The principle thus also enhances accountability of governments and will reinforce taking up joint action.

While commitments under the Global Compact for Migration are voluntary, under soft law and legally non-binding, failure to honour such commitments may violate the principle of good faith and trigger responsibilities under the principle of estoppel if failure to honour unilateral promises results in harm done to other States (Cottier and Müller, 2012).

## 5.2. Rethinking sovereignty

Common Concern of Humankind in the field of migration, as indicated, will immediately be opposed by recourse to the exclusive right of States to control migration flows into the territory. It will be challenged as an inappropriate intrusion and restriction of self-determination and independence. Sovereignty indeed has been a major obstacle to effective international migration management and refusal to enter into effective international cooperation and hard law obligations beyond the UN Convention on Refugees and Mode 4 GATS obligations. As Martin (2000) observed: “While few would question that states have both the authority and the responsibility for making decisions concerning immigration, sovereignty limits the ability of states to address the realities of today’s international migration.”

The debate on Common Concern of Humankind thus implies and requires rethinking sovereignty and to recall that the notion is not limited to self-determination and independence in its respective field of application. In this context, it is important to recall that sovereignty of the State (as opposed to the ruler as a sovereign) at the outset of the doctrine was justified by goals of keeping peace and bring about prosperity and welfare within the community. Jean Bodin, writing in the midst of religious wars in France, stressed these welfare goals.<sup>20</sup> Similarly, Thomas Hobbes justified sovereignty and centralization of powers at the expense of individual autonomy by welfare effects produced for the individual and society.<sup>21</sup> Protecting it from foreign intervention was but one goal among others. From this perspective, sovereignty is not limited to self-determination but equally and foremost justified and legitimized by impending welfare effects. To the extent that such effects cannot be produced individually and depend upon international cooperation, sovereignty inherently becomes what today is called cooperative sovereignty (Besson, 2004).

The authors submit that the notion of cooperative sovereignty not only explains division of labour and global value chains (GVCs) in the trade field and in mutual interests in FDI, but also informs the field of migration. At least within the threshold defined for Common Concern of Humankind, and in the face of migration that cannot be dealt with by single States, welfare effects can only be produced by means of international cooperation and compliance with rules and disciplines under international law. This leads to considering the role of multilevel governance.

<sup>20</sup> « Or, si la vraie félicité d'une République et d'un homme seul est tout un, et que le souverain bien de la République en général, aussi bien que d'un chacun en particulier, gît [dans les] vertus intellectuelles et contemplatives, comme les mieux entendus ont résolu, il faut aussi accorder que ce peuple-là jouit du souverain bien, quand il a ce but devant les yeux, de s'exercer en la contemplation des choses naturelles, humaines, et divines, en rapportant la louange du tout au grand Prince de nature. Si donc nous confessons que cela est le but principal de la vie [p. 62] bienheureuse d'un chacun en particulier, nous concluons aussi que c'est la fin et félicité d'une République. » Bodin (1583) 46; footnotes omitted, referring to Cicero and Aristotle).

<sup>21</sup> “The final Cause, End, or Designe of men (who naturally love Liberty, and Dominion over others) in the introduction of that restraint upon themselves, (in which wee see them live in Common-wealths) is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of Warre, which is necessarily consequent (as hath been shewn) to the naturall Passions of men, when there is no visible Power to keep them in awe, and tye them by feare of punishment to the performance of their Covenants, and observation of those Lawes of Nature set down in the fourteenth and fifteenth Chapters.” (Chapter XVII of Hobbes, 1909)



### 5.3. Linkages to multilevel governance

Conceptualizing migration as a common concern thus inherently leads to cooperative sovereignty and the recognition of the need for international cooperation. In this context, we need to come to grips with the allocation of rights and domestic obligations of States and the role of international organizations in the field. States will benefit from mutual support and collective action. They create appropriate international fora for such cooperation. They cooperate with other fora in coordinating different policy areas discussed above. The framework thus offers the potential for greater coherence. Finally, it not only sets out the boundaries of State action, but also the obligations to act in case States fail to assume their proper homework responsibilities.

In allocating powers to different levels of governance and particularly defining international obligations, international cooperation and homework tasks in the field of migration, the doctrine of Common Concern of Humankind can draw from different theories of multilevel governance in constitutional and international economic law (Jackson, 2006; Cottier and Hertig, 2003; Cottier, 2011). Such an approach offers a framework wherein the allocation of tasks in producing appropriate public goods and policies relating to migration can be reasonably assigned. It assists in defining the level at which a particular issue should best be addressed and regulated, that is, local, regional, national, continental or global. Multilevel governance thus transgresses fundamental boundaries between domestic and international law and allocates powers and tasks commensurate to the public good to be produced. It will, in the field of migration, foster the constitution of appropriate structures on the global level and in regions beyond Europe.

The pressure for cooperative approaches for the better management of migration flows is particularly relevant and evident in the international community. These cooperative approaches form the bases for the different ongoing multilateral dialogues on migration and development issues. The nature of transnational migration demands international cooperation; however, to reach this point, regional measures must be coordinated among States that are active in a specific region. Still, as migration policy is primarily formulated at the domestic level, so it must be at this point where the coherence should stem from.

With this theoretical background, the discussion now turns to addressing future developments of migration, trade and investment.





## 6. IMPLICATIONS FOR TRADE AND INVESTMENT LAW AND POLICY

---

Migration as a Common Concern of Humankind will foster the understanding among voters and the public at large that international challenges of migration adaption call for international cooperation at appropriate levels. The process of claims and responses, developing migration under the principle of Common Concern of Humankind will facilitate future developments towards cooperation in the law of international trade and FDI, both at multilateral and bilateral levels discussed below. As convictions of shared responsibilities grow and policies of beggar-thy-neighbour retreat, policymakers will be able to further develop the interaction of migration, trade and investment in public international law and to mutually take into account respective concerns in the short and medium term. The following suggestions to this effect are proposed for discussion in responding to the goals set out by the Global Compact for Migration and reproduced in the introduction of this paper.

### 6.1. International trade regulation

Migration as a common concern will facilitate and foster reforms in international trade regulation globally, regionally, bilaterally and unilaterally. Partly, efforts can be undertaken within the existing framework. Partly new rules should be developed in response to migration as a Common Concern of Humankind.

#### 6.1.1. Agricultural policies

Recalling the importance of agriculture, migration as a common concern will generate insights into the linkages between current levels of agricultural protectionism in industrialized and emerging economies and migration movements that could be curbed if exports of agricultural product from developing countries enjoy better market access. This is a long-standing and well-known petition of developing countries, dating back to the 1974 New International Economic Order, pursued throughout the Tokyo Round, the Uruguay Round and the Doha Development Agenda with little success, except for overall tariffication and transparency and the abolishment of export subsidies for agricultural products by 2020. Resistance to more open markets is partly because linkages between agricultural trade policies and migration have not been sufficiently made in the public debate. Pushing for migration as a common concern may foster such awareness in industrialized countries protecting their agriculture and add an important goal to agricultural policies next to food security. Substitution of migration by trade may work best in areas with ample low-skilled labour of which agriculture in developing countries is the main sector.

To this effect, the preservation of agricultural land and sustainable use is of utmost importance. Degradation will increase people's desire to move as they lose their livelihoods and look for opportunities to make a living. Efforts need to be made to strengthen agricultural policies and exportation of foodstuffs from countries with large rural populations. Policy measures should therefore include the lowering of border protection in importing countries, the further reduction of production subsidies in OECD countries, and Green box subsidies need to be assessed in

terms of ecological contributions and strictly focus on non-trade and non-production concerns. Importation of feedstuff and fertilizers should be limited to curb intensive agriculture and stressing soil quality. Product and production standards need to contribute to preserving soil quality abroad and will be implemented with the cooperation of producers and importers. Food aid, necessary in case of emergencies and migratory movements, needs to be clearly carved out and set aside while avoiding implied export subsidies of excess production. These policy goals, from a migration point of view, are commensurate to those under climate change as a recognized common concern and able to operate in tandem in reforming agricultural trade rules and policies.

### 6.1.2. Local content rules

Current restrictions on local content rules under TRIMs Agreement should be reviewed under the angle of migration as a common concern and GVCs with a view to foster jobs and vocational and professional skills within developing countries. GVCs, under principles of CSR, should be shaped in a manner taking note of job creation as a deterrent to forced migration. The point is closely related to investment law discussed below (see section 6.2 of this report).

### 6.1.3. Labour migration and services

The goals of reducing trafficking of irregular migration and effective protection of human rights agreed upon in the Global Compact for Migration cannot be achieved without enhanced regular market access for the labour force of developing countries in industrialized and emerging economies. Migration as a Common Concern of Humankind calls for disciplines beyond Mode 4 for service suppliers. WTO law should recognize, in principle, that labour is a regular service. It should be scheduled accordingly by Member States and properly circumscribed in terms of sectors, conditions and restrictions negotiated and imposed. It could also be extended to refugees, recognizing the need to provide job opportunities. Such disciplines should provide the basis for bilateral agreements on labour migration which should be negotiated and incorporated in bilateral or plurilateral economic cooperation agreement, entailing trade, investment and additional disciplines such as competition law. Regional integration agreements, entailing full market access rights for citizens of the Member States, such as the European Union, should gradually extend market access rights to third-country nationals, unilaterally or on the basis of bilateral agreements or alternatively well-defined criteria.

Experiences in Japan show that concessions on market access can be best achieved in the context of trade-offs with other regulatory areas, while stand-alone agreements on migration are more difficult to achieve (Naiki, 2015). It is therefore advisable to include labour migration into the framework of comprehensive economic cooperation agreements.

Article VII(2) of GATS provides for important and appropriate rules on conditional MFN, obliging members to agree to negotiations in equivalence of professional qualifications upon request. Bilateral agreements should define relevant sectors, provide for training and determine durations and conditions for market access, including social security benefits, in balancing interests with the domestic labour force. It would seem that temporary migration, based upon contracts concluded with agents of employers in the home country of migrants, would allow migrants to lawfully enter the country, and also to leave again upon the expiration of the contract, thereby meeting trade obligations at least on the face of it.

#### 6.1.4. Financial services and remittances

Based on financial commitments and the Understanding on Financial Services in the GATS, negotiations should target the area of remittances and bring about rules and disciplines providing for rapid and cheap transmission of remittances to migrants' home countries. Fees currently absorb up to 9.5 per cent of the proceeds (IOM, n.d.). Liberalization of banks offering integrated remittance services that could include other financial products linked to savings, investments and insurance should be fostered and may lead to greater financial inclusion of developing countries in the world economy. Common rules may be negotiated under the auspices of Article VI of GATS.

#### 6.1.5. Basic services for migrants

Services aligned to migration integration such as legal advice, health services, cultural services, education and skills matching services, should be assessed for diaspora and expat communities. It should be further examined how these services should be scheduled in GATS or bilateral or regional commitments and opened to providers from abroad, in particular home countries of diaspora communities. Such rights would offer diaspora communities enhanced legal security and protect them internationally, particularly from arbitrary and capricious treatment by domestic authorities of the host State.

#### 6.1.6. Government procurement

Migration has not been an issue and angle considered in the context of government procurement. Next to green procurement achieved in the revised WTO Government Procurement Agreement (GPA), extensions to social procurement should also include migration as a Common Concern of Humankind and shared responsibility. Members and procuring entities should be entitled to offer privileges to companies who employ migrants, particularly those offering work and training to young refugees with pending admissions or those who were rejected, or making a particular effort to support social integration of the migrant workforce and their communities.

#### 6.1.7. Waivers for refugee support

Recent discussions suggest introducing trade preferences for countries under duress due to massive influx of refugees (Herman, 2018). Such initiatives were taken in the context of the Syrian refugee crisis. The European Union–Jordan Compact offers temporary preferences for Syrian products partly produced by refugees in terms of rules of origins, zero tariffs and zero quotas (Panizzon, 2019). Turkey and Qatar tabled a draft ministerial decision at the December 2017 WTO Ministerial Conference, asking ministers to recognize “that the refugee and migration are issues that require responsibility sharing and international cooperation” and to take appropriate action.<sup>22</sup> The Ministerial Conference in Buenos Aires declined to adopt the motion as such preferences are controversial from the point of view of WTO because they potentially violate MFN and do not qualify for PTAs (Panizzon, 2019). Moreover, zero tariff policies are already in place for least developed countries (LDCs), and additional preferences are not available. Migration as a common concern, however, will foster efforts to seek creative options in trade to effectively address concerns so far voiced by Jordan, Turkey and Qatar in the future. Special programmes seeking additional support for exports of countries in duress, for example in the field of agriculture, could best be achieved by means of temporary waivers under Article IX(3) of the Marrakesh Agreement establishing the WTO.

<sup>22</sup> WTO, 2017b. For the background, see UNHCR, 2016.

## 6.2. From investment protection to investment cooperation

Migration as a Common Concern of Humankind also supports the movement in investment law from protection of investors to investment cooperation between home and host countries. Job creation will depend upon appropriate framework conditions and strengthening of the rule of law, as well as sustainable development in host countries (Lalani and Polanco, 2015). Home countries not only have an obligation to protect nationals in foreign jurisdictions by means of diplomatic protection or to facilitate investor–State arbitration by means of bilateral investment treaties. They also assume responsibilities for the conduct of incorporated companies in line with CSR and thus for the protection of workers, including migrant workers, and the environment in the host country. National courts of law are increasingly called upon to affirm civil liabilities to this effect (Simons and Macklin, 2014). The shift from investment protection to investment cooperation entails enhanced levels of international cooperation. Recognizing migration as a Common Concern of Humankind will foster the transition from investment protection to investment cooperation in international law. As work and life conditions of local populations improve, such commitments may contribute to the reduction of emigration, while also protecting immigrants. The following areas may be considered.

### 6.2.1. Training and export promotion

With a view to retaining talent and labour and fostering investment, home countries assume responsibilities to coordinate private sector activities with developing assistance and aid programmes in the field of education and vocational and professional training. Next to developing infrastructure, the emphasis will be on the development of tradable and exportable products in the private sector and by trade facilitation. Particular efforts should be made in the field of agricultural production for three reasons: firstly, in most developing countries, more than 50 per cent of the workforce is employed in agriculture. Secondly, such investment has the potential of substantial job creation in rural areas. Thirdly, such investment responds to enhanced risk management in the context of climate change, as production needs to be geographically diversified in response to risks of droughts and floods and genetic mutations.

### 6.2.2. Tax breaks and corporate social responsibilities

The shift from investment protection to investment cooperation entails enhanced levels of international cooperation. Recognizing migration as a Common Concern of Humankind will foster the transition from investment protection to investment cooperation in international law. Companies investing abroad and engaged in job creation should benefit from tax breaks in the home country while respecting OECD standards on Base Erosion and Profit Shifting.<sup>23</sup> Companies operating abroad shall be subject to disciplines of CSR, enforceable under the law of unfair competition as incorporated in the TRIPs Agreement of the WTO (Riffel, 2016; Cottier and Wermelinger, 2014). They have to respect human rights and internationally agreed labour and employment standards of local populations, preserving their livelihoods in the process of extracting resources.

<sup>23</sup> See [www.oecd.org/tax/beps/beps-actions.htm](http://www.oecd.org/tax/beps/beps-actions.htm).

### 6.2.3. Supporting diaspora investments

Remittances are of key importance to social and economic development.<sup>24</sup> They have several macro and micro development impacts (IOM, n.d.). Lindley (2009) shows that the effectiveness is strongly dependent upon peaceful relations. It depends upon a solid regulatory framework. Investment cooperation should facilitate projects based upon pooling remittances for investment (de Haas, 2005; de Melo, 2007; Wucker, 2004) and facilitate appropriate channels of communication and financial services. Tax incentives should be studied and possibly addressed in bilateral double taxation agreements or investment cooperation agreements between countries concerned.

## 6.3. Architecture and mechanism securing compliance

Migration as a Common Concern of Humankind may inspire and contribute to rethinking the architecture and mechanisms of compliance in investment and trade cooperation, with a view to bring about shared responsibilities and joint approaches in addressing major migration flows.

### 6.3.1. Trade dispute settlement

Disputes on migration and related issues will be dealt with under the umbrella of the WTO dispute settlement or dispute settlement provided for under bilateral or plurilateral trade agreements, based on rights and obligations incurred. Likewise, trade disputes are dealt with in the framework of bilateral or plurilateral agreements and should encompass labour mobility agreements as incorporated into comprehensive economic partnership agreements. It would seem best to locate disputes relating to labour migration within the overall umbrella of the WTO, and comprehensive economic cooperation agreement as instruments and tools used to bring about compliance with the principle of Common Concern of Humankind will be economic and trade related. WTO dispute settlement could also be extended to PTAs, making available experienced institutions to adjudicate (Cottier, 2015b; Malebakeng, 2015). This is of particular importance to migration, as labour migration is essentially dealt with in bilateral agreements that often fail to be subject to effective dispute resolution.

### 6.3.2. Investment dispute settlement

As investment protection moves to investment cooperation, there is a need to review existing disciplines and procedures, also engaging the home State. Private–State arbitration will move from the current system to a two-tier system engaging a standing court of appeal (CETA). Ultimately, in the authors' view, the system will be integrated into the WTO dispute settlement system following the review of trade remedies. Investment disputes will become matters before domestic courts (as traditionally in industrialized countries), subject to strict substantive and procedural standards enshrined in a future WTO Agreement on Investment Cooperation. These court decisions will be subject to review by panels and the Appellate Body of the WTO.

<sup>24</sup> See sec. 2.6. Migration policy, trade and investment. For recent figures, see also Table 4 at 31 of IOM, 2017.

### 6.3.3. Compliance and economic sanctions

To the extent that migration as a common concern is addressed in investment and trade law, appropriate tools for compliance and enforcement should be made available in accordance with the third basket of the principle of Common Concern of Humankind. Violations of international obligations incurred are subject to the law of State responsibility and may incur countermeasures under general public international law, subject to the principle of proportionality (Cottier et al., 2017). The question arises whether financial compensation is sufficient in dealing with failures in investment cooperation or whether additional remedies need to be developed to address matters relating to labour migration and the workforce. Failure to pay compensation triggers general liabilities, but this may not be adequate to induce compliance with obligations towards cooperation. As for trade in goods, services and intellectual property, WTO law, however, does not allow for unilateral action prior to dispute settlement. Moreover, countermeasures allowed for are strictly product related. Except for UN Security Council resolutions and essential national security interests, non-product sanctions cannot be imposed under the WTO. Such measures may, in the authors' view, be justified in response to failures to cooperate in migration as a Common Concern of Humankind in managing major migration crises, particularly the hosting of an appropriate share of refugees or refusal to grant working permits to immigrants. The question arises whether this is sufficient to respond to free-riding or whether additional sanctions need to be developed.





## 7. CONCLUSION

---

There seems to be a consensus in the empirical economics literature reviewed in this paper about the complementary nature of the relationship between trade, FDI and migration, at least in the short and medium run. This suggests the need for devising and implementing policies that can facilitate this complementarity and also harness the gains that emanate from the positive effects of MIT on socioeconomic outcomes. This is particularly salient in the current protectionist climate where stringent immigration policies in the form of abusive screening and hiring procedures prior to admission in host countries, and increased regulation of money transfer operators could have adverse effects on trade and FDI. At the same time, given the political and cultural sensitivities involved, there is also a need for policies that can minimize any adverse effects of migration or facilitate the integration of migrant communities in host countries to enable the prompt and effective realization of the positive spillover effects of migration on trade and investment that most of the empirical economics literature documents.

It is also useful to point out that the theoretical long-run substitutability between trade/FDI and migration is impeded by policies in the host countries that generally only promote the cross-border movement of skilled labour. This means that wage differentials between home and host countries for semi- and unskilled labour continue to prevail, and in the absence of adequate opportunities in the home country, the incentives to migrate do not cease. This points to the need to liberalize trade and investment in home-country sectors that are more semi- and unskilled labour intensive; the agriculture sector, subject to protectionist trade policies globally, is a likely candidate here both in the context of unilateral national/domestic policies and within the ambit of PTAs. The LDC Services Waiver, in so far as it provides unilateral preferences to semi- and unskilled Mode 4 labourers in LDCs, is another illustration of such a policy in the host country at the multilateral level, exemplified by India's waiver of visa fees for LDC tour guides and language teachers, for instance. The discussion in this paper also points to the need to develop more inclusive policies and obligations for home countries of identifying and developing skills, as well as working with host countries on diaspora policies as they relate to trade and investment.

The legal analysis provided in this paper reveals that the policy structure with respect to MIT, at different levels of governance, is fragmented. Even the policy suggestions briefly outlined in section 6 of this paper are hostage to this reality, notwithstanding the complex linkages between MIT. Against this background, another policy implication is the need for more policy coherence at various levels of governance between home and host countries to optimize and better harness the gains from complementarities between trade, FDI and migration. Efforts need to be made to enhance cooperation and concertation among departments of governments concerned, and of international organizations operating in the MIT triangle.

To this effect, and building on the Global Compact for Safe, Orderly and Regular Migration, this paper suggests framing the MIT nexus by conceiving important migration flows as a Common Concern of Humankind. According to the emerging doctrine, this entails duties to cooperate and negotiate, to do homework and enforce legal obligations in areas that cannot be solved in isolation and are of major importance to peaceful relations. It also entails duties to act in addressing failures to comply with international obligations, subject to the principle of proportionality. Finally, Common Concern of Humankind also informs the allocation of regulatory tasks on the local, national, regional and global levels. In migration, it forms the basis for appropriately regulating policy tasks.

On this basis, the paper submits a number of suggestions for better integration and coordination of the MIT nexus. It briefly sets out policy options for trade and investment policy that could be taken up at domestic, regional and global levels. There is much room to manoeuvre once enhanced awareness is created for migration being a Common Concern of Humankind that can no longer be dealt with in isolation. In doing so, this paper hopes to stimulate the debate.



# BIBLIOGRAPHY

---

- Acevedo, D. and T. Espenshade  
1992 Implications of a North American Free Trade Agreement for Mexican migration into the United States. *Population and Development Review*, 18(4):729–744.
- Adepoju, A.  
2015 Operationalizing the ECOWAS Protocol on Free Movement of Persons: Prospects for sub-regional trade and development. In: *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (M. Panizzon, G. Zürcher and E. Fornalé, eds.). Palgrave Macmillan, Basingstoke, pp. 441–462.
- Ambler, K., D. Aycinena and D. Yang  
2015 Channeling remittances to education: A field experiment among migrants from El Salvador. *American Economic Journal: Applied Economics*, 7(2):207–32. <http://dx.doi.org/10.1257/app.20140010>.
- Aparicio, F.J. and C. Meseguer  
2012 Collective remittances and the state: The 3×1 program in Mexican municipalities. *World Development*, 40(1):206–222.
- Arcarazo, D.A.  
2014 Is free movement in Europe an anomaly? The new open borders policy in South America. EU Law Analysis: Expert insight into EU law developments, 14 November. Available at <http://eulawanalysis.blogspot.ch/2014/11/is-free-movement-in-europe-anomaly-new.html>.
- Aroca, P. and W. Maloney  
2005 Migration, trade and foreign direct investment in Mexico. *The World Bank Economic Review*, 19(3):449–472.
- Arora, A. and A. Gambardella  
2005 *From Underdogs to Tigers: The Rise and Growth of the Software Industry in Brazil, China, India, Ireland and Israel*. Oxford University Press, New York.
- Aubry, A., M. Kugler and H. Rapoport  
2012 Migration, FDI and the margins of trade. Mimeo. Paris School of Economics.
- Baghdadi, L. and A. Cheptea  
2010 Migrant associations, trade and FDI. *Annals of Economics and Statistics*, 97/98:71–101.
- Baizán, P. and A. González-Ferrer  
2016 What drives Senegalese migration to Europe? The role of economic restructuring, labour demand and the multiplier effect of networks. *Demographic Research*, 35(1):339–380.
- Baldwin, A. and E. Fornalé  
2017 Adaptive migration: Pluralising the debate on climate change and migration. *The Geographical Journal*, 183(4):322–328. <http://dx.doi.org/10.1111/geoj.12242>.
- Barry, K.  
2006 Home and away: The construction of citizenship in an emigration context. *New York University Law Review*, 81(11):11–59.

- Bast, J.  
2011 Bilateralism and multilateralism in International Migration Law. *Proceedings of the Annual Meeting of the American Society of International Law*, 105:412–415.
- Battistella, G.  
2015 Labour migration in Asia and the role of bilateral migration agreements. In: *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (M. Panizzon, G. Zürcher and E. Fornalé, eds.). Palgrave Macmillan, Basingstoke, pp. 299–324.
- Bernal, N., M.A. Prada and R. Urueña  
2015 Intra-regional mobility in South America: The Andean Community and MERCOSUR. In: *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (M. Panizzon, G. Zürcher and E. Fornalé, eds.). Palgrave Macmillan, Basingstoke, pp. 507–534.
- Besson, S.  
2004 Sovereignty in conflict. In: *Towards an International Legal Community? The Sovereignty of States and the Sovereignty of International Law* (C. Warbrick and S. Tierney, eds.). British Institute of International and Cooperative Law, London, 2006, pp. 168–171. Also in: *European Integration online Papers* (EloP), 8(15) (2004). Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=594942](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=594942).
- Bhattacharya, U. and P. Groznik  
2007 Melting pot or salad bowl: Some evidence from US investments abroad. *Journal of Financial Markets*, 11(3):228–258.
- Bisong, A.  
2015 Migration partnerships and the role of public–private partnerships: The Nigeria–Switzerland migration partnership. In: *The Palgrave Handbook of International Migration: Law and Policy Perspectives* (M. Panizzon, G. Zürcher and E. Fornalé, eds.). Palgrave Macmillan Basingstoke, pp. 463–506.
- Blanes, J. and J. Martín-Montaner  
2006 Migration flows and intra-industry trade adjustments. *Review of World Economics*, 142(3):567–584.
- Bodin, J.  
1583 *Les six livres de la République: Un abrégé du texte de l'édition de Paris de 1583* (Édition et présentation de Gérard Mairet. Paris, Librairie générale française, 1993).
- Bradford, A.  
2013 Sharing the risks and rewards of economic migration. *University of Chicago Law Review*, 80(29):29–57.
- Broude, T.  
2007 Moral aspects of international labor migration regimes. *Proceedings of the Annual Meeting of the American Society of International Law*, 101:313–318.  
2011 Explaining the normative duality of trade and migration agreements. *Proceedings of the Annual Meeting of the American Society of International Law*, 105:419–422.
- Bryant, J., M. Genç and D. Law  
2004 Trade and migration to New Zealand. New Zealand Treasury Working Paper 04/18. New Zealand Treasury, Wellington.
- Buch, C.M., J. Kleinert and F. Toubal  
2006 Where enterprises lead, people follow? Links between migration and FDI in Germany. *European Economic Review*, 50(8):2017–2036.

- Cerna, L., J. Hollifield and W. Hynes  
 2015 Trade, migration and the crisis of globalization. In: *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (M. Panizzon, G. Zürcher and E. Fornalé, eds.). Palgrave Macmillan, Basingstoke, pp. 17–40.
- Chilton, A.S. and E. Posner  
 2017 Why countries sign bilateral labor agreements. Coase-Sandor Working Paper Series in Law and Economics, No. 807. Available at [https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2497&context=law\\_and\\_economics](https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2497&context=law_and_economics).
- Cholewinsky, R.  
 2015 Evaluating bilateral labour agreements in the light of human and labour rights. In: *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (M. Panizzon, G. Zürcher and E. Fornalé, eds.). Palgrave Macmillan, Basingstoke, pp. 231–252.
- Collier, W., M. Piracha and T. Randazzo  
 2018 Remittances and return migration. *Review of Development Economics*, 22(1):174–202. Available at <http://hdl.handle.net/10419/58847>.
- Cornelius, W.A., P.L. Martin and J.F. Hollifield (eds.)  
 1994 *Controlling Immigration: A Global Perspective*. First edition. Stanford University Press, Stanford, California.
- Cottier, T.  
 2009 The legitimacy of WTO law. In: *The Law and Economics of Globalisation. New Challenges for a World in Flux* (L. Yueh, ed.). Edward Elgar Publishing, Cheltenham and Northampton, pp. 11–48.  
 2011 Towards a five storey house. In: *Constitutionalism, Multilevel Trade Governance and International Economic Law* (C. Joerges and E.-U. Petersmann, eds.). Revised edition. Hart Publishing, Oxford and Portland, Oregon, pp. 495–532.  
 2015a Improving compliance: Jus cogens and International Economic Law. In: *Netherlands Yearbook of International Law*, 46:329–356.  
 2015b The common law of international trade regulation and the future of the World Trade Organization. *Journal of International Economic Law*, 18(1):3–20.  
 2021 The Principle of Common Concern of Humankind. In: *The Prospects of Common Concern of Humankind in International Law* (T. Cottier, ed.). Cambridge University Press, pp. 1–94.
- Cottier, T., P. Aerni, B. Karapinar, S. Matteotti, J. de Sépibus and A. Singhal  
 2014 The Principle of Common Concern and Climate Change. *Archiv des Völkerrechts*, 52(3):293–324.
- Cottier, T., R. Echandi, R. Liechti-McKee, T. Payosova and C. Sieber  
 2017 The principle of proportionality in international law: Foundations and variations. *Journal of World Investment and Trade*, 18(4):628–672.
- Cottier, T. and M. Hertig  
 2003 The prospects of 21st century constitutionalism. *Max Planck Yearbook of United Nations Law Online*, 7(1):261–322.
- Cottier, T. and R.M. Losada  
 2021 Migration as a common concern of humankind. In: *The Prospects of Common Concern of Humankind in International Law* (T. Cottier, ed.). Cambridge University Press, pp. 292–346.
- Cottier, T. and J.P. Müller  
 2012 Estoppel. In: *The Max Planck Encyclopedia of Public International Law* (R. Wolfrum, ed.). Volume III. Oxford University Press, Oxford, pp. 671–677.

- Cottier, T. and M. Oesch  
2005 *International Trade Regulation: Law and Policy in the WTO, the European Union and Switzerland: Cases, Materials and Comments*. Staempfli Publishers/Cameron May, Berne/London.
- Cottier, T. and C. Sieber-Gasser  
2015 Labour migration, trade and investment: From fragmentation to coherence. In: *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (M. Panizzon, G. Zürcher and E. Fornalé, eds.). Palgrave Macmillan, Basingstoke, pp. 41–60.
- Cottier, T. and G. Wermelinger  
2014 Implementing and enforcing corporate social responsibility: The potential of unfair competition rules in international law. In: *Corporate Social Responsibility. Verbindliche Standards des Wettbewerbsrechts?* (R.M. Hilty and F. Henning-Bodewig, eds.). Springer, Heidelberg, New York, Dordrecht, pp. 81–97.
- Crépeau, F.  
2017 A new agenda for facilitating human mobility after the UN summits on refugees and migrants. *OpenDemocracy*, 24 March. Available at [www.opendemocracy.net/beyondslavery/safepassages/fran-ois-cr-peau/new-agenda-for-facilitating-human-mobility-after-un-summits-on-refuge](http://www.opendemocracy.net/beyondslavery/safepassages/fran-ois-cr-peau/new-agenda-for-facilitating-human-mobility-after-un-summits-on-refuge).
- de Haas, H.  
2005 International migration, remittances and development: Myths and facts. *Third World Quarterly*, 26(8):1269–1284.
- de Melo, J.  
2007 Migration, remittances, and the Brain Drain: A symposium in memory of Riccardo Faini – An introduction. *The World Bank Economic Review*, 21(2):173–176.
- Docquier, F. and E. Lodigiani  
2007 Skilled migration and business networks. *Open Economies Review*, 21(4):565–588.
- Dunlevy, J.A. and W.K. Hutchinson  
1999 The impact of immigration on American import trade in the late nineteenth and early twentieth centuries. *Journal of Economic History*, 59(4):1043–1062.
- Epstein, G. and I. Gang  
2006 Ethnic networks and international trade. In: *Labor Mobility and the World Economy* (R. Langhammer and F. Foders, eds.). Springer, Verlag, pp. 85–103.
- Faini, R.  
2004 Trade liberalization in a globalizing world. IZA Discussion Paper No. 1406. Paper presented at the Annual World Bank Conference on Development Economics.
- Feenstra, R.C. and G.H. Hanson  
1995 Foreign direct investment and relative wages: Evidence from Mexico's maquiladoras. National Bureau of Economic Research (NBER) Working Paper, No. 5122. Cambridge, Massachusetts.
- Genç, M., M. Gheasi, P. Nijkamp and J. Poot  
2011 The impact of immigration on international trade: A meta-analysis. Discussion Paper, No. 6145, Institute for the Study of Labour, Bonn.
- Gera, S., S.A. Laryea and T. Songsakul  
2004 International mobility of skilled labour: Analytical and empirical issues and research priorities. Working Paper 2004 D-01. Human Resources Development Canada, Industry Canada and Social Sciences and Humanities Research Council.

- Ghosh, B.  
2007 Managing migration: Whither the missing regime? How relevant is trade law to such a regime? *Proceedings of the Annual Meeting of the American Society of International Law*, 101:303–306.
- Ghosh, B. (ed.)  
2000 *Managing Migration: Time for a New International Regime*. Oxford University Press, Oxford.
- Girma, S. and Z. Yu  
2002 The link between immigration and trade: Evidence from the United Kingdom. *Review of World Economics*, 138(1):115–130.
- Gould, D.  
1994 Immigrant links to the home country: Empirical implications for U.S. bilateral trade flows. *The Review of Economics and Statistics*, 76(2):302–316.
- Greenwood, M.J.  
1997 Internal migration in developed countries. In: *Handbook of Population and Family Economics*. Volume 1, Part B (M. Rosenzweig and O. Stark, eds.). Elsevier, Amsterdam, pp. 647–720.
- Gupta, S., C. Pattillo and S. Wagh  
2007 Making remittances work for Africa. *Finance and Development*, 44(2):1–8.
- Hanson, G.H.  
2009 The economic consequences of the international migration of labour. *Annual Review of Economics*, 1(1):179–207.
- Hatton, T.  
2007 Should we have a WTO for international migration? *Economic Policy*, 22(50):340–383.
- Head, K. and J. Ries  
1998 Immigration and trade creation: Econometric evidence from Canada. *Canadian Journal of Economics*, 31(1):47–62.
- Herman, L.L.  
2018 Harnessing trade law to support refugees and host countries. World Refugee Council Discussion Paper, No. 3. Centre for International Governance Innovation, Ontario.
- Hiller, S.  
2013 Does immigrant employment matter for export sales? Evidence from Denmark. *Review of World Economics*, 149(2):369–394.
- Hobbes, T.  
1909 *Leviathan*. Reprinted from the edition of 1651. Clarendon Press, Oxford.
- Hollifield, J.F.  
1992 Migration and international relations: Cooperation and control in the European community. *International Migration Review*, 26(2):568–595. <http://dx.doi.org/10.2307/2547072>.  
1999 Ideas, institutions and civil society: On the limits of immigration control in liberal democracies. In: *IMIS-Beiträge*, 10 January, pp. 57–90. Available at [www.imis.uni-osnabrueck.de/fileadmin/4\\_Publikationen/PDFs/imis10.pdf](http://www.imis.uni-osnabrueck.de/fileadmin/4_Publikationen/PDFs/imis10.pdf).  
2007 The emerging migration state. *International Migration Review*, 38(3):885–912.  
2012 Governing migration: Public goods and private partnerships. In: Organisation for Economic Co-operation and Development (OECD), *Free Movement of Workers and Labour Market Adjustment: Recent Experiences from OECD Countries and the European Union*. OECD Publishing, pp. 277–291. <http://dx.doi.org/10.1787/9789264177185-en>.

- Iglesias Sánchez, S.  
 2015 Free movement law within the European Union: Workers, citizens and third-country nationals. *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (M. Panizzon, G. Zürcher and E. Fornalé, eds.). Palgrave Macmillan, Basingstoke, pp. 361–381.
- International Organization for Migration (IOM)  
 2017 *World Migration Report 2018*. Geneva. Available at <https://publications.iom.int/books/world-migration-report-2018>.  
 n.d. Remittances. Global Compact Thematic Paper. Available at [www.iom.int/sites/default/files/our\\_work/ODG/GCM/IOM-Thematic-Paper-Remittances.pdf](http://www.iom.int/sites/default/files/our_work/ODG/GCM/IOM-Thematic-Paper-Remittances.pdf).
- Ivlevs, A. and J. De Melo  
 2010 FDI, the brain drain and trade: Channels and evidence. *Annals of Economics and Statistics*, 97/98:103–121.
- Jackson, J.H.  
 2006 *Sovereignty, the WTO and Changing Fundamentals of International Law*. Cambridge University Press, Cambridge.
- Javorcik, B.S., C. Özden, M. Spatareanu and C. Neagu  
 2006 Migrant networks and foreign direct investment. World Bank Policy Research Working Paper, No. 4046. World Bank, Washington, D.C.
- Kampan, P. and A.R. Tanielian  
 2017 Thailand's role in updating ASEAN immigration policy. *Kasetsart Journal of Social Sciences*, 38(3):233–241. <http://dx.doi.org/10.1016/j.kjss.2016.07.003>.
- Keijzer, N., J. Héraud and M. Frankenhaeuser  
 2016 Theory and practice? A comparative analysis of migration and development policies in eleven European countries and the European Commission. *International Migration*, 54(2):69–81. <http://dx.doi.org/10.1111/imig.12191>.
- Koinova, M.  
 2017 Diaspora mobilisation for conflict and post-conflict reconstruction: Contextual and comparative dimensions. *Journal of Ethnic and Migration Studies*, 44(8):1251–1269. <http://dx.doi.org/10.1080/1369183X.2017.1354152>.
- Kugler, M. and H. Rapoport  
 2005 Skilled emigration, business networks and foreign direct investment. CESifo Working Paper, No. 1455. CESifo Group Munich.  
 2007 International labor and capital flows: Complements or substitutes? *Economics Letters*, 94(2):155–162.
- Lalani, S. and R. Polanco (eds.)  
 2015 *The Role of the State in Investor-State Arbitration*. Brill | Nijhoff, Leiden and Boston.
- Lavenex, S.  
 2018 Regional migration governance – Building block of global initiatives? *Journal of Ethnic and Migration Studies*, 45(8):1275–1293. <http://dx.doi.org/10.1080/1369183X.2018.1441606>.
- Lewer, J.J. and H. Van den Berg  
 2009 Does immigration stimulate international trade? Measuring the channels of influence. *The International Trade Journal*, 23(2):187–230.
- Lindley, A.  
 2009 Remittances and conflict: Some conceptual considerations. *Jahrbücher für Nationalökonomie und Statistik/Journal of Economics and Statistics*, 229(6):774–786.



- López, R. and M. Schiff  
1998 Migration and the skill composition of the labour force: The impact of trade liberalization in LDCs. *The Canadian Journal of Economics*, 31(2):318–336.
- Lucas, R.E.B.  
1997 Internal migration in developing countries. In: *Handbook of Population and Family Economics*. Volume 1, Part B (M. Rosenzweig and O. Stark, eds.). Elsevier, Amsterdam, pp. 721–798.
- Malebakeng, A.F.  
2015 *The Relationship of WTO Law and Regional Trade Agreements in Dispute Settlement: From Fragmentation to Coherence*. Kluwer Law International, Leiden.
- Markusen, J.  
1983 Factor movements and commodity trade as complements. *Journal of International Economics*, 14(3–4):341–356.
- Markusen, J. and A.J. Venables  
1997 The role of multinational firms in the wage-gap debate. *Review of International Economics*, 5(4):435–451.
- Markusen, J. and S. Zahniser  
1999 Liberalization and incentives for labor migration: Theory with applications to NAFTA. NBER Working Paper, No. 6232. Cambridge, Massachusetts.
- Martin, P.  
1995 Investment, trade and migration. *International Migration Review*, 29(3):820–825.  
2015 Low-skilled labour migration and free trade agreements. In: *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (M. Panizzon, G. Zürcher and E. Fornalé, eds.). Palgrave Macmillan, Basingstoke, pp. 205–230.
- Martin, P.L. and J.E. Taylor  
1996 The anatomy of a migration hump. Workshop, Development Strategy, Employment and Migration: Insights from Models. OECD, Paris, pp. 43–62.
- Martin, S.  
2000 Toward a global migration regime. *Georgetown Journal of International Affairs*, 1(2):119–127.
- Massey, D.S. and K.E. Espinosa  
1997 What's driving Mexico–U.S. migration? A theoretical, empirical and policy analysis. *American Journal of Sociology*, 102(4):939–99.
- Mckenzie, D. and H. Rapoport  
2004 Network effects and the dynamics of migration and inequality: Theory and evidence from Mexico. Stanford Center for International Development Working Paper, No. 201. Stanford University, Stanford, California.
- McKenzie, D. and D. Yang  
2015 Evidence on policies to increase the development impacts of international migration. *The World Bank Research Observer*, 30(2):155–192. <http://dx.doi.org/10.1093/wbro/lkv001>.
- Menard, A. and A. Gary  
2018 Aid, trade and migration: How do bilateral flows interact? *The World Economy*, 41(2):431–456. <http://dx.doi.org/10.1111/twec.12550>.
- Mundell, R.  
1957 International trade and factor mobility. *The American Economic Review*, 47(3):321–335.

- Murat, M. and B. Pistoresi  
2009 Emigrant and immigrant networks in FDI. *Applied Economics Letters*, 16(12):1261–1264.
- Nadakavukaren Schefer, K.  
2016 *International Investment Law: Text, Cases and Materials*. Second edition. Edward Elgar Publishing, Cheltenham and Northampton.
- Nadakavukaren Schefer, K. and T. Cottier  
2013 Responsibility to protect (R2P) and the emerging principle of common concern. In: *Die Schutzverantwortung (R2P) – Ein Paradigmenwechsel in der Entwicklung des internationalen Rechts?* (P. Hilpold, ed.). Kluwer, Leiden and Boston, pp. 123–142.
- Naiki, Y.  
2015 Labour migration under the Japan–Philippines and Japan–Indonesia Economic Partnership Agreements. In: *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (M. Panizzon, G. Zürcher and E. Fornalé, eds.). Palgrave Macmillan, Basingstoke, 341–360.
- Nijenhuis, G. and M. Leung  
2017 Rethinking migration in the 2030 Agenda: Towards a de-territorialized conceptualization of development. *Forum for Development Studies*, 44(1):51–68. Available at [www.tandfonline.com/doi/full/10.1080/08039410.2016.1276958](http://www.tandfonline.com/doi/full/10.1080/08039410.2016.1276958).
- Organisation for Economic Co-operation and Development (OECD)  
2009 *Policy Coherence for Development: Migration and Developing Countries*. Paris. <http://dx.doi.org/10.1787/9789264026100-en>.  
2011 *Tackling the Policy Challenges of Migration: Regulation, Integration, Development*. Development Centre Studies, Paris. <http://dx.doi.org/10.1787/9789264126398-en>.  
2012 *Free Movement of Workers and Labour Market Adjustment: Recent Experiences from OECD Countries and the European Union*. Paris. <http://dx.doi.org/10.1787/9789264177185-en>.  
2016 *Perspectives on Global Development 2017: International Migration in a Shifting World*. Paris. [http://dx.doi.org/10.1787/persp\\_glob\\_dev-2017-en](http://dx.doi.org/10.1787/persp_glob_dev-2017-en).  
2017 *Interrelations between Public Policies, Migration and Development*. Paris. <http://dx.doi.org/10.1787/9789264265615-en>.
- Okkerse, L.  
2008 How to measure labour market effects of immigration: A review. *Journal of Economic Surveys*, 22(1):1–30.
- Ottaviano, G., G. Peri and G.C. Wright  
2013 Immigration, offshoring and American jobs. *American Economic Review*, 103(5):1925–1959.  
2018 Immigration, trade and productivity in services: Evidence from U.K. firms. *Journal of International Economics*, 112(C):88–108.
- Panizzon, M.  
2008 Labour mobility: A win-win-win model for trade and development: The case of Senegal. National Centres of Competence in Research (NCCR) Working Paper, No. 7. NCCR, Bern.  
2010a Temporary movement of workers and human rights protection: Interfacing the “Mode 4” of GATS with non-trade bilateral migration agreements. *Proceedings of the Annual Meeting of American Society of International Law*, 104:131–139.  
2010b Trade and labor migration: GATS Mode 4 and migration agreements. Dialogue on Globalization: Occasional Paper No. 47. Friedrich-Ebert-Stiftung, Geneva.  
2010c International Law of Economic Migration: A *ménage à trois*? GATS Mode 4, EPAs and bilateral migration agreements. *Journal of World Trade*, 44(6):1207–1252.  
2011 Introductory remarks by Marion Panizzon. *Proceedings of the Annual Meeting of the American Society of International Law*, 105:407–409.

- 2019 The EU-Jordan Compact in a trade law context: Preferential access to the EU market to 'keep refugees in the region'. In: *Constitutionalising the External dimensions of EU Migration Policies in Times of Crisis: Legality, Rule of Law and Fundamental Rights Reconsidered* (S. Carrera, J. Santos Vara and T. Strik, eds.) Edward Elgar Publishing, Cheltenham and Northampton.
- Panizzon, M., G. Zürcher and E. Fornalé
- 2015 Introduction: Conceptualizing a pluralist framework for labour migration. In: *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives* (M. Panizzon, G. Zürcher and E. Fornalé, eds.). Palgrave Macmillan, Basingstoke, pp. 1–14.
- Portes, R. and H. Rey
- 2005 The determinants of cross-border equity flows. *Journal of International Economics*, 65(2):269–296.
- Rauch, J.E. and A. Casella
- 2003 Overcoming informational barriers to international resource allocation: Prices and ties. *The Economic Journal*, 113(484):21–42.
- Rauch, J.E. and V. Trindade
- 2002 Ethnic Chinese networks in international trade. *Review of Economics and Statistics*, 84(1):116–130.
- Razin, A. and E. Sadka
- 1997 International migration and international trade. In: *Handbook of Population and Family Economics*. Volume 1, Part B (M. Rosenzweig and O. Stark, eds.). Elsevier, Amsterdam, pp. 851–887.
- Riffel, C.
- 2016 Protection against Unfair Competition in the WTO TRIPS Agreement: The Scope and Prospects of Article 10bis of the Paris Convention for the Protection of Industrial Property. World Trade Institute Advanced Studies, Volume 2. Brill | Nijhoff, Leiden and Boston.
- Rittener, O., R. Losada, L. Perriard and S. Toscano
- 2011 Swiss migration partnerships: A paradigm shift. In: *Multilayered Migration Governance: The Promise of Partnership* (R. Kunz, S. Lavenex and M. Panizzon, eds.). Routledge, London and New York, pp. 249–264.
- Robertson, R.
- 2005 Has NAFTA increased labor market integration between the United States and Mexico? *The World Bank Economic Review*, 19(3):425–448.
- Saxenian, A.L.
- 2002 *Local and Global Networks of Immigrant Professionals in Silicon Valley*. Public Policy Institute of California, San Francisco.
- Schiff, M.
- 2007 Migration, investment and trade: Substitutes or complements? *Revue d'Economie du Développement*, 15(2):7–35.
- Sieber-Gasser, C.
- 2017a Mode 4 commitments in the General Agreement on Trade in Services. In: *Elgar Encyclopedia of International Economic Law* (T. Cottier and K. Nadakavukaren Schefer, eds.). Edward Elgar Publishing, Cheltenham and Northampton, pp. 500–502.
- 2017b Mode 4 commitments in preferential trade agreements. In: *Elgar Encyclopedia of International Economic Law* (T. Cottier and K. Nadakavukaren Schefer, eds.). Edward Elgar Publishing, Cheltenham and Northampton, pp. 502–503.

- Simons, P. and A. Macklin  
 2014 *The Governance Gap: Extractive Industries, Human Rights, and the Home State Advantage*. Routledge, London and New York.
- Stark, O. and J.E. Taylor  
 1991 Migration incentives, migration types: The role of relative deprivation. *Economic Journal*, 101(408):1163–1178.
- Sykes, A.  
 2013 International cooperation on migration: Theory and practice. *University of Chicago Law Review*, 80(1):315–339.
- Tadesse, B. and R. White  
 2008 Do immigrants counter the effect of cultural distance on trade? Evidence from US state-level exports. *Journal of Socio-Economics*, 37(6):2304–2318.  
 2011 Emigrant effects on trade: Re-examining the immigrant-trade Link from the home country perspective. *Eastern Economic Journal*, 37(2):281–302.
- Thiollet, H.  
 2015 The regional politics of labour import in the Gulf monarchies. In: *The Palgrave Handbook of International Labour Migration* (M. Panizzon, G. Zürcher and E. Fornalé, eds.). Palgrave Macmillan, Basingstoke, pp. 325–340.
- Trachtman, J.  
 2011 Coherence and the regime complex for international economic migration. In: *Multilayered Migration Governance: The Promise of Partnership* (R. Kunz, S. Lavenex and M. Panizzon, eds.). Routledge, London and New York.
- Trebilcock, M.J. and M. Sudak  
 2006 The political economy of emigration and immigration. *New York University Law Review*, 81(1): 234–293.
- United Nations  
 1992a United Nations Framework Convention on Climate Change, adopted by the General Assembly on 9 May 1992 (31 I.L.M. 849, 851). Available at <https://unfccc.int/resource/docs/convkp/conveng.pdf>.  
 1992b Convention on Biological Diversity, adopted by the General Assembly on 5 June 1992 (31 I.L.M. 818, 822). Available at [www.cbd.int/doc/legal/cbd-en.pdf](http://www.cbd.int/doc/legal/cbd-en.pdf).  
 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, adopted by the General Assembly on 17 October 2003 (MISC/2003/CLT/CH/14). Available at <http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>.  
 2013 Report of the Special Rapporteur on the human rights of migrants, 7 August 2013 (A/68/283). Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/421/15/PDF/N1342115.pdf?OpenElement>.  
 2014a Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Human rights of migrants in the post-2015 Sustainable Development Agenda. 11 August 2014 (A/69/302). Available at <https://undocs.org/A/69/302>.  
 2014b Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Labour exploitation of migrants, 3 April 2014 (A/HRC/26/35). Available at <https://undocs.org/A/HRC/26/35>.  
 2015a Transforming our world: the 2030 Agenda for Sustainable Development, adopted by the General Assembly on 25 September 2015 (A/RES/70/1). Available at [www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A\\_RES\\_70\\_1\\_E.pdf](http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_70_1_E.pdf).  
 2015b Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants, 8 May 2015 (A/HRC/29/36). Available at <https://undocs.org/A/HRC/29/36>.

- 2017a Towards Actionable Commitments: Input to the zero draft of the Global Compact for Orderly, Safe and Regular Migration by the United Nations Special Rapporteur on the Human Rights of Migrants. Report to the Special Representative of the United Nations Secretary-General on International Migration, 6 July 2017.
- 2017b Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility, 28 April 2017 (A/HRC/35/25). Available at <https://undocs.org/A/HRC/35/25>.
- United Nations Conference on Trade and Development (UNCTAD)
- 2018 UNCTAD website, Investment Policy Hub. Available at <https://investmentpolicyhub.unctad.org/>.
- United Nations High Commissioner for Refugees (UNHCR)
- 2016 *Evaluation of UNHCR's Emergency Response to the Influx of Syrian Refugees into Turkey, January 2014–June 2015*. Full Report, ES/2016/03. Geneva. Available at [www.unhcr.org/research/evalreports/58a6bbca7/evaluation-unhcrs-emergency-response-influx-syrian-refugees-turkey-full.html](http://www.unhcr.org/research/evalreports/58a6bbca7/evaluation-unhcrs-emergency-response-influx-syrian-refugees-turkey-full.html).
- Van den Bossche, P. and D. Prévost
- 2016 *Essentials of WTO Law*. Cambridge University Press, Cambridge.
- Venables, V.D. and A.J. Norman
- 1995 International trade, factor mobility and trade costs. *Economic Journal*, 105(433):1488–1504.
- Vogler, M. and R. Rotte
- 2000 The effects of development on migration: Theoretical issues and new empirical evidence. *Journal of Population Economics*, 13(3):485–508.
- White, R.
- 2007 Immigrant-trade links, transplanted home bias and network effects. *Applied Economics*, 39(7):839–852.
- Winters, P., A. de Janvry and E. Sadoulet
- 2001 Family and community networks in Mexico-U.S. migration. *Journal of Human Resources*, 36(1):159–184.
- World Bank
- 2006 *Global Economic Prospects 2006: Economic Implications of Remittances and Migration*. World Bank, Washington, D.C.
- 2018 *Moving for Prosperity: Global Migration and Labor Markets*. Policy Research Report. World Bank, Washington, D.C.
- World Commission on Environment and Development
- 1987 *Our Common Future: Report of the World Commission on Environment and Development*. Oxford University Press. Available at [www.un-documents.net/our-common-future.pdf](http://www.un-documents.net/our-common-future.pdf).
- World Trade Organization (WTO)
- 2017a Joint press release by Federal Chancellor Angela Merkel, OECD Secretary-General Angel Gurría, IMF Managing Director Christine Lagarde, World Bank Group President Jim Yong Kim, ILO Director-General Guy Ryder and WTO Director-General Roberto Azevêdo on the occasion of their meeting in Berlin on 10 April 2017. News item, 10 April. Available at [www.wto.org/english/news\\_e/news17\\_e/pres\\_10apr17\\_e.htm](http://www.wto.org/english/news_e/news17_e/pres_10apr17_e.htm).
- 2017b Cooperation for Providing Employment for Displaced Syrians, Communication from Qatar and Turkey. Ministerial Conference, Eleventh Session, Buenos Aires, 10–13 December 2017, WT/Min(17)/10/Rev.1. 10 December. Available at [www.wto.org/english/thewto\\_e/minist\\_e/mc11\\_e/documents\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/mc11_e/documents_e.htm).

Wucker, M.

2004 The perpetual migration machine and political power. *World Policy Journal*, 21(3):41–49.

Zabin, C. and S. Hughes

1995 Economic integration and labor flows: Stage migration in farm labor markets in Mexico and the United States. *International Migration Review*, 29(2):395–422.





International Organization for Migration  
17 route des Morillons, P.O. Box 17, 1211 Geneva 19, Switzerland  
Tel.: +41 22 717 9111 • Fax: +41 22 798 6150 • Email: [hq@iom.int](mailto:hq@iom.int) • Website: [www.iom.int](http://www.iom.int)