By now we all know that “globalization” has transformed our world. Activities once confined primarily within national boundaries now have international consequences of still unknown scale and impact. Yet, while strong opinions about globalization have been expressed from most quarters, the term continues to mean different things to different people.

One of the more common usages of “globalization” focuses on international trade – both the economic benefits of freer commercial exchanges and the potential labor, environmental, and other dangers. Another usage emphasizes the new technologies, which make possible a sharing of information and transportation that in turn creates opportunities for a variety of global interactions. At times “globalization” is used to describe the growing number and influence of regional organizations like the European Union, the African Union, or the Organization of American States. On still other occasions the term reflects the increased acceptance of multiple identities and allegiances – to two or more states, to a state and a regional association of which it is a part, or to two or more other entities that each demand some measure of official loyalty. Globalization can also refer to the enhanced collaboration of policymakers, researchers, educators, and others across national boundaries, in search of solutions to common problems. With the end of the Cold War, international cooperation in such diverse fields as business,
security, human rights, health, agriculture, environmental protection, and crimefighting holds out new promise. The international character of leading NGOs is yet another element of globalization. So, too, is the expanded reach of international law and international regulation into areas previously assumed to be within the realm of almost unfettered national sovereignty.

These various components of globalization often defy separation, but the prime concern of this paper is that last component – the growth of international regulation. While international law now regulates an unprecedented range of human activities, certain activities are more heavily regulated by the international community than others. Some subjects are so historically, politically, and functionally suited to international regulation that the need for such regulation is seldom questioned. No one today could seriously dispute the practical need for international agreement on such matters as international aviation, telecommunications, or postal services. For certain other activities the primacy of national sovereignty was the historical rule.

Among the latter, two have stood out as the last bastions of national sovereignty – the powers of a state to decide, first, who its own nationals are and, second, which foreign nationals shall be granted physical access to its territory. These are the two classic examples, long cited by international writers, of quintessentially sovereign decisions with which the international community should not interfere. If sovereignty means anything at all, it has often been said, surely it means that a state has the sovereign power to decide with whom to share bonds of allegiance and protection and whom to admit into its territory. Yet, as this paper will show, such is the force of globalization that even these twin paradigms of national sovereignty have
increasingly given way to consensual international regulation. There is no inherent contradiction here, since the sovereignty of a state obviously encompasses the power willingly to cede a portion of its sovereignty by entering into international agreements.

The modesty of the claim made in this paper requires emphasis, however. I do not suggest that in recent years we have moved from a world of literally exclusive state sovereignty over nationality and immigration to a world in which international regulation of these areas is the norm. Admittedly, neither depiction would be accurate. For centuries, disputes over the nationalities of particular individuals have sometimes been played out in the international arena, through a combination of law, diplomacy, and military force. Conversely, even with the dramatic changes in outlook that this paper will describe, the vast majority of legal norms on both nationality and immigration today are still prescribed by states, not by the world community – just as is true of virtually all other areas of public life. The claim here is merely one of degree – that assertions of sweeping state sovereignty over nationality and immigration decisions must now be asterisked by a dramatically expanded set of qualifications. The last bastions of sovereignty are, today, virtually indistinguishable from almost any other area of regulated human activity; they are constrained by a combination of domestic and (significant) international rules.

The paper will also comment on the forces that account for this transformation. Some of them are generic phenomena that have influenced globalization generally; others are specific to nationality and immigration. Chief among the explanations is the post-World War II crumbling of the classical international law notion that only states have rights. The expanded reach of
international human rights norms, firmly rooted in the premise that individuals have rights in
international law, has had much to do with the globalization of both nationality law and
immigration law, as the paper will illustrate.

Section I of the paper examines changes in the willingness of states to accept international
regulation of nationality. Section II does the same for immigration. The forces responsible for
these changes are the subject of section III.

I
THE INTERNATIONAL REGULATION OF NATIONALITY

Most states afford multiple routes to nationality. Individuals might acquire the nationality of a
particular state by virtue of birth on that state’s soil (the principle of jus soli), by birth to one or
more parents who possess the nationality of that state (jus sanguinis), or by taking steps to
acquire the nationality of that state some time after birth (naturalization). State practices vary
considerably, but the typical state adopts more than one of these possibilities and attaches
limitations to all of them.

1For examples, see Randall Hansen & Patrick Weil (eds.), Citizenship, Immigration and
Nationality Law in the EU (2001); Atsushi Kondo (ed.), Citizenship in a Global World –
Comparing Citizenship Rights for Aliens (2001); United States Office of Personnel Management
Similarly, states have differing rules for terminating nationality. A state might withdraw a person’s nationality because of defects in the naturalization process (“revocation of naturalization,” or “denaturalization”), because of the individual’s voluntary renunciation of nationality (“expatriation”), or because the individual’s conduct evidences either a lack of allegiance or other undesirable qualities (“denationalization”).

The combination of the rules for acquiring nationality and the rules for losing it means that not every person has exactly one nationality. Some have more than one (“dual nationals”), and some have none (“stateless persons”). Moreover, application of the rules often requires findings of fact or resolutions of difficult legal questions. Special complications can arise when states dissolve or merge or achieve independence. For all these reasons, whether a given individual possesses a particular nationality is sometimes uncertain.

The uncertainty can arise in any number of contexts. In the domestic context, it might arise if the government proposes to deport a person or bar him or her from entering the country, and the person claims to be a national of that country. It might arise when the person seeks to bring a spouse, children, or other family members into the country pursuant to laws that grant such privileges to designated family members of the country’s own nationals. It might arise when the person applies for a passport. It might arise when the person attempts to register to vote. Since various countries build various nationality or citizenship restrictions into various laws, the uncertainty might also arise when a person applies for military service or other government
employment, or for public assistance, or even for certain professional licenses. Or it might arise when the person’s children seek to assert nationality on the basis of jus sanguinis.

In the international context, nationality questions can surface when an individual is maltreated by the government of one country and seeks diplomatic intervention from the government of his or her assumed country of nationality. It might arise when a country attempts to conscript a person whom it regards as its own national or, more dramatically, when two or more countries lay similar claims to the same person’s military service. It might arise when one or more countries believe they are entitled to income tax. It might arise when a country requests extradition and the requested country has a law that prohibits extradition of its own nationals. Or it might arise when a country wishes to deport a person to his or her assumed country of nationality, and the latter country denies that the person is its national. If two or more countries agree to grant special travel privileges to each others’ nationals (as in the European Union, for example), then nationality questions can arise for that purpose as well.

In these and other contexts it can become crucial to determine the person’s nationality. And since two or more states might have differing views on that question, it becomes crucial to decide who decides. As to that, the conventional wisdom – not always stated in absolute form, admittedly – has been that it is up to each state to decide who are, and who are not, its own nationals.

This view has emerged repeatedly, from different sources, and in different contexts. It appears in the writings of the classical international lawyers at least as early as the sixteenth century, albeit
with occasional qualifications. The now defunct Permanent Court of International Justice, while acknowledging the dynamic nature of international law, made clear that, at least at the time of its 1923 decision in the *Tunis and Morocco Nationality Decrees Case*, “questions of nationality are . . . within this reserved domain” (referring to “the jurisdiction of a State”). The 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws explicitly provides that “It is for each State to determine under its own law who are its own nationals,” though importantly it allows other States to withhold recognition from such decisions when they are not “consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality.” The same Convention adds: “Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State.” The International Court of Justice repeated this principle in 1955 in the *Nottebohm* case, even as the Court diminished the practical significance of this statement by refusing to recognize the nationality state’s right of diplomatic
intervention when the link between the individual and the state of nationality was too flimsy. The United States Department of State also follows the principle that “[e]ach country establishes its own law of nationality.”

The qualifications that typically accompanied the classical view deserve acknowledgment. As noted above, the 1930 Hague Convention permitted states to disregard other states’ nationality decisions in those limited circumstances where the decisions violated international law – the clear implication being that international law did indeed place some constraints on the power of a sovereign state to make nationality decisions. In Europe, the 1963 Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, as its name implies, put at least some limitations not only on the power of states to conscript dual nationals but also, more importantly here, on state laws that would result in dual nationality in the first place. And several multinational conventions have sought to restrain state nationality practices that result in statelessness.

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7 U.S. Dept. of State, 7 Foreign Affairs Manual 1111.4.


But the inroads into sovereign state control over nationality have now gone far beyond the narrow exceptions of earlier days. One fertile field for international regulation has been dual nationality. A combination of increased levels of international migration and a greater willingness of states to tolerate dual nationality has resulted in a spectacular growth in the population of dual nationals in the world. The international community has responded with a numbing series of universal, regional, and bilateral agreements. Many of these agreements focus on specific consequences of dual nationality (especially how to accommodate conflicting military obligations), but many others attempt to regulate the very acquisition of a second nationality.\(^{10}\)

Probably one of the liveliest international forays into matters of nationality has been the longstanding concern with the problem of statelessness. As noted earlier, several international

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agreements specifically on statelessness have been concluded over the years, though the range of participation has been generally disappointing. Perhaps more striking than the statelessness conventions themselves, however, have been the repeated inclusion in more general human rights instruments of specific provisions aimed at preventing statelessness by requiring states to recognize nationality in certain instances where statelessness would otherwise result. Article 15(1) of the Universal Declaration of Human Rights (UDHR),\textsuperscript{11} for example, says: “Everyone has the right to a nationality.”\textsuperscript{12} Article 20 of the American Convention on Human Rights\textsuperscript{13} repeats this language and then gives flesh to it by adding: “Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.” Interpreting this provision, the Inter-American Court in 1984 said:

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\textbf{12 See generally Yaffa Zilbershats, The Human Right to Citizenship (2002).}
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\textbf{13 OAS Treaty Series No. 36 at 1, OAS Off. Rec. OEA/Ser.L/V/II.23 doc. rev. 2 (done at San José, Nov. 22, 1969).}
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It is generally accepted today that nationality is an inherent right of all human beings. Thus despite the fact that it is traditionally accepted that the conferral and regulation of nationality are matters for each state to decide, contemporary developments indicate that international law does impose certain limits on the broad powers enjoyed by the states in that area, and that the manner in which states regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction; those powers of the state are also circumscribed by their obligations to ensure the full protection
of human rights.\textsuperscript{14}

\textsuperscript{14} Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica, No. OC-4/84 (advisory opinion, Jan. 19, 1984), reported, 5 Human Rts. L.J. 161 (1984). The Court went on to hold, however, that Costa Rica would not violate article 20 by withholding naturalization from a woman whose former state’s withdrawal of nationality (upon marriage to a Costa Rican national) had rendered her stateless. In such a case, the Court suggested, any fault would lie with the country of origin, not with Costa Rica.
The right to a nationality has been accorded specific recognition in the case of children. Both the International Covenant on Civil and Political Rights (ICCPR),\textsuperscript{15} in article 24(3), and the Convention on the Rights of the Child (CRC),\textsuperscript{16} in articles 7 and 8, explicitly require states to ensure the child’s right to a nationality.

A closely related but more general international incursion into state control over nationality decisions has been the law that governs loss of nationality.\textsuperscript{17} That body of law generally covers two distinct situations – that in which a state unilaterally terminates a person’s nationality against his or her will (denationalization) and that in which an individual voluntarily attempts to terminate his or her nationality (expatriation).

Most of the international activity has related to denationalization. At the most general level, article 15(2) of the UDHR provides: “No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality (emphasis added).” The UDHR does not speak to the issue of when a deprivation of nationality will be considered arbitrary, but other instruments take up that challenge in particular contexts.

\begin{itemize}
\item \textsuperscript{15} 999 U.N.T.S. 171 (done at New York, Dec. 19, 1966).
\item \textsuperscript{16} 1577 U.N.T.S. 3 (done at New York, Nov. 20, 1989).
\item \textsuperscript{17} See generally the fine paper by Gerard-René de Groot, \textit{Loss of Nationality: A Critical Inventory}, in Martin & Hailbronner, supra note 10, ch. 9.
\end{itemize}
One context in which the problem has historically recurred, for example, is the (asymmetrical) state practice of automatically terminating the nationality of a woman who marries a foreign national (or terminating her nationality upon similar termination of her husband’s nationality). In 1957 the Convention on the Nationality of Married Women\footnote{18 309 U.N.T.S. 65 (done at New York, Feb. 20, 1957).} essentially prohibited this practice. Article 9 of the Convention on the Elimination of All Forms of Discrimination Against Women (the Women’s Convention)\footnote{19 UNGA Res. 34/180, 34 UN GAOR Supp. (No. 46) at 193, UN Doc. A/34/46 (1980) (adopted Dec. 18, 1979).} reaffirmed that restriction, added the more general requirement that “States Parties shall grant women equal rights with men to acquire, change or retain their nationality,” and required the states parties to “grant women equal rights with men with respect to the nationality of their children.”

In one other area, international agreements have attempted to do the opposite – i.e., to encourage states to denationalize in certain situations to minimize the incidence of dual nationality. These efforts have yielded a combination of universal, regional, and bilateral agreements that have become less popular in recent years as states increasingly accept and even applaud dual nationality.\footnote{20 For a compilation of these treaties, see Legomsky, supra note 10, at 114-19.}
In some instances it is the individual who wishes to terminate his or her nationality and the state that resists. The most famous historical example was the British doctrine of “perpetual allegiance,” whereby Britain refused to recognize a British subject’s renunciation of nationality. When this practice led Britain to capture British-born, U.S.-naturalized sailors and impress them into the British Navy, the stage was set for the War of 1812.21 Today, the doctrine of perpetual allegiance is seldom invoked, but occasionally states still prevent their nationals from renouncing, for example when dual nationals attempt to renounce one of their nationalities on the eve of military conscription. For the most part, international law has had little to say on the permissibility of such restrictions.22

By far the most comprehensive international attempt to regulate loss of nationality has been the 1997 European Convention on Nationality.23 Article 7 prohibits denationalization except in certain specific situations, such as when the person voluntarily acquires another nationality, acquired the state’s nationality by fraud, voluntarily served in a foreign military, engaged in conduct “seriously prejudicial to the vital interests of the State Party,” habitually


22 On that subject, see Legomsky, supra note 10, at 109-14.

23 European Treaty Series No. 166, Council of Europe (done at Strasbourg, Nov. 6, 1997). This convention is thoroughly analyzed in De Groot, supra note 17.
resides abroad and lacks a “genuine link” to the state party, etc. Article 8 requires each state party to recognize an individual’s voluntary renunciation of nationality except to prevent statelessness and except when the person habitually resides abroad.

Other European developments furnish additional examples of international regulation of nationality. As noted earlier, the Council of Europe in 1963 sponsored the 1963 Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, which among other things put some limitations on state laws that would result in dual nationality. Of specific relevance here, a 1993 Protocol to that Convention adopted several exceptions to the Convention provision for automatically terminating one nationality when the individual acquired another. Among the situations in which such terminations will no longer automatically occur are those in which the person was born in and resides in the naturalization state, as well as certain other situations that involve marriage or minors.

Of course, the most familiar European example of international regulation of nationality is the European Union. Apart from the many provisions of EU law that speak specifically to the rights

24 See supra note 8 and accompanying text.

and obligations of nationals of the member states vis a vis other member states, the entire EU arrangement is seen by many as itself a type of federation that might form the basis for a European “citizenship” much resembling traditional nationality. That concept is controversial and well beyond the scope of the present paper.26

Finally, though less relevant here, international law now comprehensively regulates the ways in which states treat their own nationals. Among the general human rights limitations on state actions toward even their own nationals are provisions that require states to accept their own nationals into their territories and provisions that prohibit states from expelling their own nationals.27

II
THE INTERNATIONAL REGULATION OF MIGRATION

Parallel developments have occurred with respect to international migration. The historical

26 For excellent treatments, see Hanson & Weil, supra note 1, chs. 13, 14.

mantra that states are free to decide which foreign nationals to admit into their territories, while still recited today, is now subject to a wide range of limitations imposed by international law.

Statements of the classical view are perhaps most closely associated with the United States Supreme Court, which from the outset has expounded the notion that control over a nation’s territory is a distinctively sovereign function. In 1812 Chief Justice Marshall declared “Jurisdiction over its own territory to that extent is an incident of every independent nation. It is a part of its independence.” 28 Quoting that language, the Supreme Court in 1889 handed down its seminal decision in *Chae Chan Ping v. United States (Chinese Exclusion Case).* 29 There, upholding the power of the U.S. Congress to exclude noncitizens from the United States, the Court invoked Chief Justice’s Marshall’s general notion that the power to exclude noncitizens is inherent in the very concept of a sovereign state. (The Court then glided effortlessly from a recognition of this power in international law to the nonrecognition of domestic constitutional limitations on the power – a tragic nonsequitur that would distort the shape of United States constitutional law for more than a century. But that is a story for another day.) 30


29 130 U.S. 581 (1889).

At any rate, this view since then has been frequently reaffirmed and even expanded to the realm of deportation. A series of Supreme Court decisions have relied specifically on the theory of territorial sovereignty to justify broad congressional powers over the admission and expulsion of noncitizens. Analogous reasoning appears in the British cases, where the courts have been more prone to rely on the royal prerogative and the act of state doctrine to uphold Crown actions rooted in the sovereign power to control access to the state’s territory.

In recent years, commentators have drawn welcome attention to the international legal constraints that attach even to such traditionally sovereign powers as the exclusion and expulsion of noncitizens. These constraints today span almost every sub-area of migration law, from

31 The foundational decisions for this application of territorial sovereignty, apart from The Exchange and the Chinese Exclusion Case, include Ekiu v. United States, 142 U.S. 651, 659 (1892), and Fong Yue Ting v. United States, 149 U.S. 698 (1893) (extending the sovereignty theory to deportation). Twentieth century reaffirmations include United States ex rel. Knauff v. Shaughnessy, 338 U.S. 537, 542 (1950), and Kleindienst v. Mandel, 408 U.S. 753, 766 (1972).

32 See Legomsky, supra note 30, at 87-95.

refugees, to migrant workers, to family reunification, to children, to cooperation in matters of law enforcement, to human rights, to harmonization, to agreements concerning readmission and special travel or residence privileges.

In no sub-area of migration law, however, has the influence of international law been felt as keenly as it has with respect to the law of refugees and asylum. Far too many books on international refugee law have been written to permit even a partial list.\textsuperscript{34} At the heart of this body of law are the 1951 UN Convention Relating to the Status of Refugees (the 1951 Convention)\textsuperscript{35} and the 1967 UN Protocol Relating to the Status of Refugees (the 1967 Protocol).\textsuperscript{36} As of March 2001 some 133 states had signed both the Convention and the Protocol. (The United States signed the Protocol only, but doing so binds it derivatively to the Convention as well.) Together, the Convention and the Protocol define the term “refugee” to

\textsuperscript{34} The main treatises have been Guy S. Goodwin-Gill, The Refugee in International Law (2d ed. 1996); Atle Grahl-Madsen, The Status of Refugees in International Law (2 vols., 1966 and 1972); and James C. Hathaway, The Law of Refugee Status (1991).


require a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion,” 37 and they assign an array of legal consequences to that definition.

The principal significance of refugee status is that article 33 of the 1951 Convention prohibits states parties from returning refugees to their countries of persecution (with some limited exceptions). This is the principle of “nonrefoulement.” In addition, however, the Convention lays out an assortment of other protections that states parties are bound to respect. The protections range from nondiscrimination to freedom of religion, certain property rights, certain labor and employment rights, freedom of association, access to court, rights to public assistance and to education, and freedom of movement, among others. 38

The Convention delegates supervisory responsibility for its implementation to the United Nations High Commissioner for Refugees (UNHCR), 39 a 5000-employee agency headquartered in Geneva but with offices (and the vast majority of its staff) deployed all over the world. UNHCR is, arguably, the most active and practically significant of all the UN agencies. It performs the dual function of protecting refugees in individual cases and promoting larger and

37 1951 Convention, art. 1.A.2, as amended by 1967 Protocol, art. 1.2.

38 See 1951 Convention, arts. 3-34.

39 Id., art. 35.
more permanent solutions to refugee problems.

Other large bodies of international refugee law emanate from the Convention and the Protocol and from the efforts of UNHCR and other refugee resettlement agencies. For quite some time UNHCR and others have promoted cooperation among refugee-receiving countries to resettle refugees and to help fund refugee resettlement efforts elsewhere. These sorts of “responsibility-sharing agreements” have succeeded on a limited basis in the past and are hoped to play a larger international legal role in the future. In addition, UNHCR is seeking to forge international consensus on the rules (mostly in the western states) for returning asylum-seekers to the typically less prosperous “third countries” through which they have passed en route.  

More generally, much has been written on the various forms of “harmonization” in process within the European Union.


41 See, e.g., Gregor Noll, Negotiating Asylum – The EU Acquis, Extraterritorial Protection and the Common Market of Deflection (2000); see also the many books that cover both migration and asylum issues in the European Union, selectively cited infra note 49.
Aside from the Convention, the Protocol, and their derivative sources, general human rights instruments are playing an increasingly important role in constraining state practices with respect to refugees. The UDHR, in article 14 says: “Everyone has the right to seek and to enjoy in other countries asylum from persecution.” Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) prohibits a state party from sending anyone to another state “where there are substantial grounds for believing that he would be in danger of being subjected to torture.” Article 3 of the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)42 prohibits subjection to “torture or to inhuman or degrading treatment or punishment,” and the European Court of Human Rights has interpreted this provision as also barring states parties from sending individuals to other states in which there is a “real risk” of such conduct occurring.43 The practical effect is to establish an additional form of nonrefoulement.

Beyond the refugee context, international law has increasingly concerned itself with labor migration generally and the rights of migrant workers in particular. The international legal norms have surfaced in the areas of human rights, labor law, trade law, and development.44


44 Useful treatment of each of these topics appears, respectively, in chapters 10 (Joan Fitzpatrick), 13 (Virginia Leary), 14 (Steve Charnovitz), and 15 (B.S. Chimni), of Aleinikoff &
General human rights law has also begun playing an increasingly important role in the internationalization of migration policy. A number of international human rights agreements require respect for the family.\textsuperscript{45} Others confer specific family unification protection on the child, including in the migration context.\textsuperscript{46} Still other international agreements insist on certain minimum procedural protections before noncitizens may be expelled, absent national security considerations.\textsuperscript{47}

Still other international norms reflect cooperative ventures among states, typically in the realm of

\textsuperscript{45} E.g., ICCPR, arts. 17, 23; European Convention on Human Rights, art. 8; African Charter on Human and Peoples’ Rights, OAU Doc. CAB/LEG/67/3 Rev. 5 (done at Banjul, June 26, 1981), reproduced in 21 I.L.M. 59 (1982), art. 18; Amer. Convention on Human Rights, art. 17; see generally Kate Jastram, \textit{Family Unity}, in Aleinikoff & Chetail, supra note 27, ch. 11.

\textsuperscript{46} Amer. Convention on Human Rights, art. 19; Convention on the Rights of the Child, arts. 9,10,16; see generally Jacqueline Bhabha, \textit{Children, Migration and International Norms}, in Aleinikoff & Chetail, supra note 27, ch. 12.

law enforcement. Agreements of this type have been forged in such areas as illegal immigration (partly through readmission agreements), human trafficking, and counterterrorism.\footnote{See, e.g., David Fisher, Susan Martin & Andrew Schoenholtz, \textit{Migration and Security in International Law}, in Aleinikoff & Chetail, supra note 27, ch. 6; David Kyle & Rey Koslowski (eds.), \textit{Global Human Smuggling: Comparative Perspectives} (2001); Vitit Muntarbhorn, \textit{Combating Migrant Smuggling and Trafficking in Persons, Especially Women: The Normative Framework Reappraised}, in Aleinikoff & Chetail, supra note 27, ch. 9.}

Finally, the European Union provides the clearest regional example of international regulation of migration. First, within the EU are various arrangements for the freedom of movement of nationals of EU member states (and their non-EU family members) to other member states. Second, the EU has been working on a series of arrangements, some completed and some still in progress, for the “harmonization” of certain substantive and procedural rules for dealing with asylum seekers and in some instances other migrants.\footnote{Here there is a wealth of literature. A sampling includes Pieter Boeles, \textit{Fair Immigration Proceedings in Europe} (1997); Elspeth Guild, \textit{Immigration Law in the European Community} (2001); Kay Hailbronner, \textit{Immigration and Asylum Law and Policy in the European Union} (2000).}
WHY THE CHANGE?

What explains the increased willingness of states to submit to international regulation of such traditionally sovereign policy decisions as nationality and migration? Here are my top ten reasons:

Reasons Generally Related to State Interests

1. Even though states have legitimate interests in deciding what enters their territories, they have long accepted the need for international regulation of the flow of goods, services, money, information, and even ideas (particularly intellectual property) across national boundaries. They have done so because the international implications are so obvious that some legitimate role for the international community can scarcely be denied. States have come to realize that the movement of human beings across national boundaries presents issues that are not sufficiently different.

2. States are increasingly aware that, for every act of immigration to a state, there is a corresponding act of emigration from a state (unless the person originated from the High Seas, Antarctica, or outer space). Conversely, any time a state denies admission to someone, the practical result is that the person will eventually enter another state. Thus, the state that makes the admission decision is not the only state with a legitimate interest in the outcome.
3. In an age of technological advances in information and readier access to transportation, people are far more mobile than in former times. That fact does not merely accentuate the importance of deciding to what extent migration should be internationally regulated; it also multiplies the impact of migration on the affected countries.

4. Today, international movements of people are increasingly multinational, not just binational. This is especially true with respect to refugees, who are now more prone to seek out the first port in a storm and then resume the journey later. The results are circuitous routes that involve a greater number of countries and make the international implications more conspicuous.

5. In the case of refugees, the world community has come to recognize that international agreements can make migrations safer, more orderly, more predictable, and more equitable for those countries whose geographic proximity to countries of origin leaves them susceptible to disproportionate responsibilities.

6. Some of the most significant contemporary migration-related problems lend themselves to international cooperation. These include terrorism, human trafficking, and illegal immigration. In each of these areas, states have found collaborative law enforcement efforts to be effective and efficient.

7. Once one accepts the legitimacy of some international regulation of policies that govern the admission and expulsion of non-nationals, acceptance of international regulation of the very
determination of who is a national logically follows. Otherwise, a state could falsely disclaim a person’s nationality in order to defeat limitations on exclusion and expulsion. Moreover, the vastly increased number of dual nationals in the world and the possible conflicts dual nationality presents make international agreements critical in many contexts.

Reasons Generally Related to Individual Interests

8. Classical international law and its emphasis on states as the exclusive possessors of rights has so clearly given way to a regime that finds room for recognizing the human rights of individuals. This modern regime requires a body of international law to define and protect those rights. In particular, international agreements like the Race Convention and the Women’s Convention, as well as specific prohibitions contained in the more generic human rights conventions, now make nondiscrimination a guiding principle for the international community.

9. In a world in which government officials wield awesome physical power over individuals, the need for protection has become unusually vital. Among the protections have been the existence of a state with the power and the responsibility to intervene (hence the renewed emphasis on international rules designed to minimize statelessness) and the willingness of the international community to intervene when the state of nationality is either unable or unwilling to do so.

10. The increased recognition that human beings are capable of multiple allegiances has carried over to the international sphere. In our more cosmopolitan society, national citizenship as the source of legal rights has inevitably been devalued and the role of the international community
CONCLUSION

For a while, it appeared that globalization would leave untouched two formerly sacrosanct elements of state sovereignty – deciding who a state’s nationals are and deciding which non-nationals to admit into a state’s territory. But that was not to be. As this paper has demonstrated, the logic of globalization leaves little reason to insulate even these two classical sovereign functions from international regulation. For the reasons summarized in section III, globalization now embraces state policies on nationality and immigration as surely as it embraces any other fields of human activity.