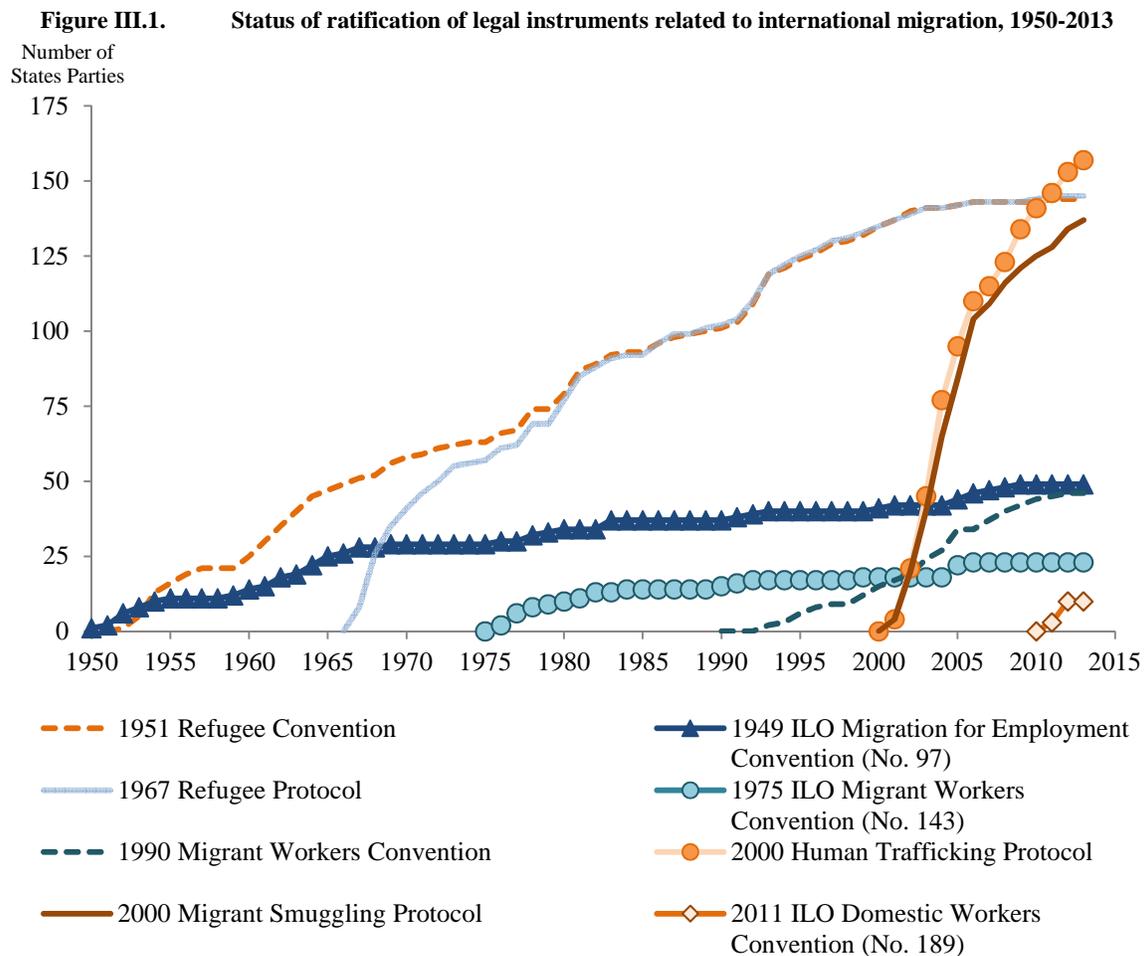


### III. LEGAL INSTRUMENTS ON INTERNATIONAL MIGRATION

The international normative framework on international migration includes instruments pertaining to the human rights of migrants and the rights of migrant workers, and the protection of refugees as well as instruments designed to combat migrant smuggling and human trafficking. These instruments have been ratified in varying degrees by Member States. As of 1 December 2013, instruments designed to protect refugees and to combat migrant smuggling and human trafficking had been ratified by more than three-quarters of Member States, whereas instruments protecting the rights of migrant workers had been ratified by less than one-quarter of all Member States (figure III.1).

#### A. REFUGEES

The 1951 Convention and the 1967 Protocol, both relating to the Status of Refugees, are the central elements in the international regime of refugee protection. The 1951 Convention defines the term “refugee”,<sup>i</sup> enumerates the rights of refugees, and establishes the legal obligation of States to protect refugees. The Convention prohibits the expulsion or forcible return of persons accorded refugee status: no refugee should be returned in any manner to a country or territory in which his or her life or freedom would be threatened (non-refoulement).



Sources: United Nations Treaty Collection; see <http://treaties.un.org> (as of 1 December 2013) and NORMLEX Information System on International Labour Standards; see <http://www.ilo.org/> (as of 1 December 2013).

Note: Does not include ratifications by the Holy See or the European Union.

TABLE III.1: STATUS OF RATIFICATION OF INTERNATIONAL LEGAL INSTRUMENTS RELATED TO INTERNATIONAL MIGRATION<sup>1</sup>

Instrument	Year of entry into force	Parties to international instruments	
		Number	Percentage
<b>Refugees</b>			
1951 Convention relating to the Status of Refugees <sup>2</sup> .....	1954	144	75
1967 Protocol relating to the Status of Refugees <sup>2</sup> .....	1967	145	75
<b>Migrant workers</b>			
1949 ILO Convention concerning Migration for Employment (Revised 1949) (No. 97) .....	1952	49	26
1975 ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Supplementary Provisions) (No. 143) .....	1978	23	12
1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families .....	2003	47	24
2011 ILO Convention concerning Decent Work for Domestic Workers (No. 189) .....	2013	10	5
<b>Smuggling and trafficking</b>			
2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children <sup>2</sup> .....	2003	157	81
2000 Protocol against the Smuggling of Migrants by Land, Sea and Air <sup>2</sup> .....	2004	137	71

Sources: United Nations Treaty Collection; see <http://treaties.un.org> (as of 1 December 2013) and NORMLEX Information System on International Labour Standards; see <http://www.ilo.org/> (as of 1 December 2013).

Notes:

<sup>1</sup> Of Member States of the International Labour Organization (185) or the United Nations (193).

<sup>2</sup> Does not include ratifications by the Holy See or the European Union.

The 1967 Protocol extended the application of the 1951 Convention to persons who became refugees after 1 January 1951, without any geographic limitation. By the end of 2013, the 1951 Convention and its 1967 Protocol had been ratified by 144 and 145 United Nations Member States, respectively; with 142 States Parties to both instruments. The 147 States that had ratified either the 1951 Convention or the 1967 Protocol collectively hosted 6.7 million refugees in 2013, 42.6 per cent of the global refugee population.

## B. MIGRANT WORKERS

The International Labour Organization (ILO) has adopted three legally-binding instruments that are relevant for the protection of migrant workers: the Convention concerning Migration for Employment (Revised 1949) (No. 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of

Equality of Opportunity and Treatment of Migrant Workers (Supplementary Provisions) (No. 143) as well as the 2011 Convention concerning Decent Work for Domestic Workers (No. 189).<sup>ii</sup> All three have been complemented by non-binding recommendations.

The 1949 Convention concerning Migration for Employment covers recruitment and working conditions' standards for migrant workers. It establishes the principle of equal treatment of migrant workers and nationals with regard to laws, regulations and administrative practices that concern living and working conditions, remuneration, social security, employment taxes and access to justice.

The 1975 Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers was the first multilateral attempt to address irregular migration and to call for sanctions against

traffickers of human beings. It emphasized that Member States are obliged to respect the basic human rights of all migrant workers, including irregular migrants. It also provided that lawfully present migrant workers and their families should not only be entitled to equal treatment but also to equality of opportunity, e.g. equal access to employment and occupation, trade union and cultural rights and individual and collective freedoms.

The 2011 Convention concerning Decent Work for Domestic Workers, which entered into force in 2013, was the first multilateral instrument to establish global labour standards for domestic workers, guaranteeing them the same basic rights as other workers. The convention establishes that domestic workers, regardless of their migration status, have the same basic labour rights as those recognized for other workers: reasonable hours of work, a limit on payment in-kind, clear information on the terms and conditions of employment, as well as respect for fundamental principles and rights at work, including freedom of association and the right to collective bargaining.

As of 1 December 2013, 49 ILO Member States out of 185 had ratified ILO Convention No. 97; 23 Member States had ratified Convention No. 143; and 10 Member States had ratified Convention No. 189. In total, two of ILO's 185 Member States—Italy and the Philippines—had ratified all three instruments, representing less than one per cent of ILO Member States and hosting less than three per cent of all international migrants worldwide (5.9 million) in 2013.

The 1990 International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families is the third and most comprehensive international treaty on migrant rights. It establishes international definitions for categories of migrant workers and formalizes the responsibility of States in upholding the rights of migrant workers and members of their families. The Office of the High Commissioner for Human Rights monitors the implementation of

the convention and works to further its ratification.

As of the end of 2013, 47 Member States (out of a total of 193 United Nations Member States) had ratified the convention. They collectively hosted 17 million international migrants in 2013, about seven per cent of the global migrant population. None of the States Parties to the 1990 Convention were major migrant receiving countries, and only six of them hosted more than one million international migrants. Overall, 87 countries had ratified at least one of the four instruments regarding migrant workers. Together they hosted 32 per cent of the world migrant population in 2010, or 75.8 million in absolute figures.

### C. SMUGGLING AND TRAFFICKING

The two protocols seeking to stem irregular migration concern human trafficking and migrant smuggling, supplementing the United Nations Convention against Transnational Organized Crime. The 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children took effect in 2003 and had been ratified by 157 United Nations Member States as of 1 December 2013. The Protocol defines human trafficking as the acquisition of people by improper means, such as force, fraud or deception, with the aim of exploiting them. The Protocol aims to prevent and combat trafficking in persons, to protect and assist victims of such trafficking, in particular women and children, to prosecute perpetrators of such crimes and to promote cooperation among States Parties.

The 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air took effect in 2004 and had been ratified by 137 United Nations Member States as of 1 December 2013. As set out in the Protocol, smuggling of migrants involves the procurement for financial or other material benefit of the illegal entry of a person into a State of which the person is not a national or permanent resident. The Protocol is an effective tool for combating and preventing the smuggling of “human cargo”. It reaffirms

TABLE III.2: DISTRIBUTION OF STATES PARTIES TO LEGAL INSTRUMENTS RELATED TO INTERNATIONAL MIGRATION BY DEVELOPMENT GROUP AND MAJOR AREA (percentage)

	States Parties to United Nations instruments <sup>1,2</sup>					States Parties to ILO instruments <sup>1,2</sup>		
	1951 Refugee Convention	1967 Refugee Protocol	1990 Migrant Workers Convention	2000 Human Trafficking Protocol	2000 Migrant Smuggling Protocol	1949 Migration for Employment No. 097	1975 Migrant Workers No. 143	2011 Domestic Workers No. 189
World .....	75	75	24	81	71	26	12	5
Developed regions.....	94	96	4	94	92	38	24	4
Developing regions.....	68	68	31	77	64	23	9	6
Africa .....	89	89	33	81	70	19	13	4
Asia .....	40	40	21	70	51	16	9	2
Europe .....	95	95	5	95	93	40	28	5
LAC.....	82	82	52	97	88	45	3	15
NA.....	50	100	0	100	100	0	0	0
Oceania.....	57	57	0	36	29	9	0	0

Sources: United Nations Treaty Collection; see <http://treaties.un.org> (as of 1 December 2013) and NORMLEX Information System on International Labour Standards; see <http://www.ilo.org/> (as of 1 December 2013).

Notes: LAC refers to Latin America and the Caribbean, while NA refers to Northern America.

<sup>1</sup> Of Member States of the International Labour Organization (185) or the United Nations (193).

<sup>2</sup> Does not include ratifications by the Holy See or the European Union.

that migration in itself is not a crime, and that migrants may be victims in need of protection. The United Nations Office on Drugs and Crime (UNODC) assists Member States in implementing the two protocols. The rapid increase in the ratification of the human trafficking and the migrant smuggling protocols indicates the growing concern of Member States about irregular migration and its detrimental effects.

As of the end of 2013, ratification for the above-mentioned conventions and protocols differed greatly by development group and major area (table III.2). For the 1951 Convention and its 1967 Protocol, both relating to the status of refugees, the rate of ratification is low in Asia (40 per cent) and in Oceania (57 per cent), while the remaining areas show ratification rates above 80 per cent for at least one of the two instruments. Ratification rates of the protocols relating to human trafficking and migrant smuggling are highest for Member States in Northern America (100 per cent) and Europe (95 and 93 per cent, respectively). Ratification of the two protocols was higher among countries in the

developed regions than among countries of the developing regions.

Overall, the three instruments relating to migrant rights' protection show lower ratification rates compared to the other migration-related instruments in all major areas. Latin America and the Caribbean had the highest ratification rate for at least one migrant rights' instrument of these three, whereas Northern America has not ratified any instruments.

#### NOTES

<sup>i</sup> The 1951 Refugee Convention defines a refugee as someone who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country".

<sup>ii</sup> It should be noted that a significant proportion of all domestic workers are migrants, particularly migrant women.