

# Ordering Illegal Migration Terminology: the Migration Legality Cube

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## Abstract

*In the subject literature, the terms “illegal migration” and “illegal migrant” encompass many categories of processes, people, and phenomena that have little to do with migration as a movement of people in space. This includes, most prominently, unauthorized employment and unauthorized residence in the receiving country. Both of these circumstances may be related to prior illegal migration, but do not necessarily have to be. The physical process of migration may have taken place entirely in accordance with the law. This is the starting point for the reconsideration of the standard migration terminology, as proposed in this paper. As three basic dimensions of illegality associated to date with migration analysis may focus on one person in as many as eight different combinations, this would require us to describe a single person using three different terms, which would quickly turn out to be inefficient. For practical reasons, the most convenient term is illegal migrant. Given its vague nature, however, the paper proposes to supplement this using the classification presented in the Migration Legality Cube encompassing eight types, depending on which group of migrants is in focus. This will make it easier for analysts and laymen alike to find their way in the ocean of uncertainty in which current debates on migration drift—and often founder.*

**Keywords:** migration, legality, classification, migration legality cube

**JEL:** F2, K37

## Introduction

Migrations are among the most important and complex problems of our times. In many countries—particularly the most developed ones—they have a much greater impact on real population change than does natural increase. Most births and deaths in these countries are dutifully and accurately registered and the statistics that form the bigger picture are highly credible. However, statistical knowledge about migration flows is fragmentary and the degree of uncertainty regarding the correlation between reality and statistics—very high. The reason for this is the considerable complexity of the migration process as well as the fact that population registration systems are better suited to registering citizens in time than in space.

The complexity of the migration process has expanded the group of typologies and classifications that describe it. One of these distinguishes between legal and illegal migration. This simple classification relies on the relationship between migration and the legal landscape of both the sending and the receiving countries. However, if such a distinction at first seems concise and straightforward, closer inspection unravels the elegance. Not only can the legality of the migration flow itself be differently perceived by the two states involved, but it is also multidimensional—and certainly not as zero-sum as legal and illegal. Some of the basic components of legality include: the act of crossing the border, residence in the receiving country, and employment in the receiving country. It is not far-fetched to imagine a situation where only some of these conditions are fulfilled.

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At present, the literature on the subject has neither the terminology nor a precise way to describe migrations and migrants that fulfill only part of these criteria of legality. Are these migrations legal or illegal? The aim of this article is to redraw the terminology surrounding the legality of migration and to posit a more effective classification of migrants into specific categories of legality. The presently used terminology is examined in the context it has been usually used and then confronted with the straightforward and logical meaning of these terms. Various terms are compared with one another in a search for differences of contexts in which they have been used to date and for the logic of their use. Finally, a change in the use of these terms is proposed.

## 1 Criteria of Migration Legality

On a global level, there is no single widely accepted definition of migration or migrants. The highest-level attempt was made in the 1970s by the United Nations Statistical Commission, according to which long-term migrants are individuals who announced their intention to leave their country of origin for at least one year and have spent at least one year in the country they are now leaving. The same institution defined short-term migrants as individuals announcing their intention to leave for three to twelve months. Neither definition has found widespread acceptance (Bell 2003; Janicki 2008; Poulain 1996; Zlotnik 1999). Even within the relatively cohesive European Union, there are various criteria and definitions of migration and migrants. Oftentimes, a single country uses several different definitions and the criterion for choosing the ‘right’ one is whether the individual in question is a citizen of said country or a foreigner. Additionally, the criteria that identify a given process as immigration or emigration are not always symmetrical (tab. 1). Another fact that hampers attempts at international comparison and cripples the credibility of existing analyses is that, in many cases, the classification of migration in different databases is based on the testimony of the migrant instead of indisputable reality. This reality may differ from the stated plans and intentions of the migrant, be it due to unforeseen circumstances or simply a change of mind. Lack of data makes it impossible to conclusively diagnose the degree of inconsistency between the real state of affairs and the reported data. As such, in practice, analyzing the volume of migrations is tantamount to analyzing reports that contain data on migration processes (cf. Abel and Sander 2014).

As outlined above, there is no single common definition of a migrant or migration—not on a regional level and certainly not on a global level (Laczko and Appave 2013; Martin 2012). Attempting to analyze migrations according to their legality only drives the wedge further; to the existing ambiguity of migrations, it adds the ambiguity of their relationship with the law of the countries they traverse. In an extremely vague sense, illegal migration is relatively easy to define—it is the kind of migration that is inconsistent with the rules stipulated by the country in which it takes place (Baldwin-Edwards 2008). Similarly, an illegal immigrant is defined as a person who crosses a border illegally and not in possession of a valid residence or employment permit in the host country.<sup>1</sup> Even this preliminary, tentative definition of illegal migration and that of an illegal migrant signal to us that we are dealing with a multifaceted, heterogeneous construct that depends greatly on one’s point of view as well as the country it pertains to. Moreover, the rules that control whether a migration is deemed illegal in a given country are subject to change. This means that concepts such as illegal migration, illegal residence, illegal employment, or illegal crossing should all be examined in relation to specific points in space and time (Kraler 2009).

The issue of illegal migration is almost always approached from the point of view of the receiving country while that of the sending country is overlooked. In reality, from the latter perspective, migration can also be legal or illegal. It is illegal when a migrant has left the country without the consent of the administration (e.g., with forged documents or no passport—when the migrant illicitly crosses a border—in a sparsely guarded location, for example).

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1. See: Measurement of illegal migration in the Netherlands. By Elsbeth van Dam. *La mesure de la migration clandestine en Europe. Volume 2: rapport des experts.* (3/1998/E/no 7), Eurostat Working Papers, Luxembourg 2001, pages 96–115, [@:] <https://ec.europa.eu/eurostat/documents/3888793/5812401/KS-AP-01-007-EN.PDF/57f90449-b648-4143-89bc-c58bda8060a5>.

**Tab. 1.** Criteria of registration of migrants

Criterion	Belgium	Denmark	Germany	France	Spain	Ireland	Italy	Luxembourg	The Netherlands	United Kingdom
<b>Criteria for registering own citizens</b>										
Settling after a period of living abroad . . . . .	✓			✓	✓		✓	✓		
Return after emigration with an intention to stay . . . . .			✓							
Return after emigration with an intention to stay at least 30 days . . . . .									✓	
Return after emigration with an intention to stay at least 3 months . . . . .		✓								
Return after at least one-year stay abroad . . . . .						✓				✓
<b>Criteria for registering foreigners</b>										
Arrival with an intention to settle . . . . .			✓							
Wishing to stay in the country for at least 3 months . . . . .	✓	✓			✓		✓	✓		
Wishing to stay in the country for at least 180 days . . . . .									✓	
Arrival after at least one-year stay abroad . . . . .						✓				✓
No definition . . . . .				✓						
<b>Criteria for de-registering own citizens</b>										
Wishing to leave the country and settle abroad . . . . .	✓						✓	✓		
Checking out and leaving the country . . . . .		✓ <sup>a</sup>	✓							
Leaving the country with an intention of staying abroad > 360 days . . . . .									✓	✓
De facto stay abroad at least one year . . . . .						✓				
No definition . . . . .				✓	✓					
<b>Criteria for de-registering foreigners</b>										
Leaving the country with an intention of settling abroad . . . . .	✓	✓					✓	✓		
Checking out and leaving the country . . . . .			✓							
Leaving the country with an intention of staying abroad > 360 days . . . . .									✓	✓
De facto stay abroad at least one year . . . . .						✓				
No definition . . . . .				✓	✓					

Source: Bilsborrow et al. (1997), Langevin and Begeot (1995), and Trends in international migration. Continuous Reporting System on Migration. Annual report. 1999 Edition. SOPEMI, OECD, [a:] [https://read.oecd-ilibrary.org/social-issues-migration-health/trends-in-international-migration-1999\\_migr\\_outlook-1999-en#page1](https://read.oecd-ilibrary.org/social-issues-migration-health/trends-in-international-migration-1999_migr_outlook-1999-en#page1)

<sup>a</sup>or 6-month absence along with retained apartment

Modern times and history are replete with examples of countries in which, by law, crossing an internal administrative border requires approval from the relevant authorities. In other cases, the mere fact of crossing a border does not require any special permit, but legally taking up residence in a new location—for a longer time than is permissible by law—requires the individual to submit their exact address to the local, regional, or national authorities. In Poland in the early 1980s, a trip exceeding one week away from one's place of permanent residence had to be declared at the local militia station.<sup>2</sup> But one can only seek examples of current restrictions on internal migration in countries where free movement and free choice of one's place of residence is administratively restricted, which practically does not happen in modern-day Europe. An example of this practice can, however, be found in modern China, where the hukou system and its derivatives control registration of residence in such a fashion as to separate the city-dwellers from the inhabitants of rural areas. This is intended to prevent the mass migration from the countryside to the cities. The hukou, or urban registration, gives households the right to legally take up residence in a given location as

2. Milicja Obywatelska (Citizens' Militia) was the state police force in the People's Republic of Poland. Local squads were based in what would now be called police stations.

well as the right to health care, education for their children and other social benefits. Hukou status is inherited along maternal lines and obtaining it through legal administrative means is incredibly difficult (Liao 2008). Meanwhile, Russia offers a different set of restrictions of its own. Crossing the administrative border to Moscow is only possible after obtaining a special permit from the authorities; the northern industrial city of Norilsk and several others are similar in this regard.

On a global level, most of the restrictions pertaining to migration today are generally related to crossing borders—that is, to international migration. Authoritarian regimes routinely limit both the freedom of their own population to leave the country and the influx of immigrants. It was not long ago that this could be said of all the satellite states of the USSR as well as totalitarian and authoritarian regimes in Western Europe. For instance, in 1960s Spain, moving to neighboring France was almost always illegal because the regime did not permit emigration; Portugal had similar restrictions (Castles 2004). In modern times, the flagship example of state-initiated restrictions to emigration is North Korea. Liberal democracies, on the other hand, allow their own citizens to leave the country free of constraint, but attempt to regulate the inflow of foreigners into their own territory and limit their access to the internal labor market (*Legalna praca...* 2014), giving clear preference to legal migrants (Wojciechowski 2012). The freedom of emigration is a relatively new phenomenon in European countries. In the 17th and 18th centuries, mercantilist European monarchies considered their citizens to be their most prized possessions and refused to allow them to leave the country (Castles 2004). As recently as the 1820s, England regularly withheld her qualified specialists from leaving, particularly in view of the galloping civilizational changes of the day, the rapid expansion of industry, and the resulting demand for specialists in rival powers such as France, Russia, and Germany (Thompson 1968). Samers (2004) pointedly writes that it is due to common practices in migration policies that countries, by their very nature, generate illegal migrations, which in turn create fires that countries must then feverishly attempt to extinguish.

## 2 Who Is an Illegal Migrant?

There are many situations that result in an individual living in a state other than their country of citizenship being deemed an illegal immigrant. These include: unauthorized border crossing (e.g., in a place other than an official border checkpoint or attempting to evade border guards), crossing the border with forged documentation, overstaying one's period of authorized residence, violation of the rules of stay—e.g., taking up employment despite being in possession of a visitor visa with no work permit, or remaining in the receiving country despite that country's refusal to grant political asylum or another form of legal protection (Baldwin-Edwards 2008; Lederer 1998). Jandl (2004) simplifies the above multidimensional web of illegal immigration to three dimensions: legality or illegality of border crossing, stay, and employment. On the opposite end, Kraler (2009) names 13 different types of illegality, highlighting different combinations of five factors that determine whether a given person's presence in a given country defies legality in any way, shape, or form. These factors are: legality of border crossing, legality of stay, and three issues whose common denominator is employment: legality, formalization, and documentation (tab. 2).

A breakdown of table 2 reveals that in the formal, legal sense, one can become an illegal immigrant both by illegally crossing a state border (types 1–7) and by crossing it legally, but extending one's stay and/or taking up unauthorized employment (types 8–12). A special case involving individuals with no legal authorization to remain in a given country are the children of immigrants who are born in the parent's receiving country, which de facto does not make them migrants of any kind (Type 13). This dissonance between reality (legal crossing or no crossing at all) and the formal/legal perspective (the status of illegal immigrant) is a result of simplifying and pigeonholing all the categories of illegality—stay, residence, and employment—into one.

One can therefore be considered an illegal immigrant if the act of crossing the border was illegal, but also when the crossing itself was legal and without incident, but subsequent actions have brought the legal migrant into conflict with the law. It is striking that the status of illegal migrants is given when an individual takes up employment or extends their stay, but not when they are arrested for speeding, theft, or other illegal acts. In these situations, the individual remains a legal

**Tab. 2.** The dimensions of illegality

Type	Legality of border crossing	Legality of stay	Legality of employment	Formalization of employment	Documentation of employment	Example
1	no	no	–	–	–	Undocumented migrant in transit
2	no	no	no	–	no	Illegal immigrant, not employed
3	no	no	no	no	no	Illegal immigrant, employed
4	no	no	no	yes	yes/no	Illegal immigrant, employed, pays taxes
5	no	yes	no	no	yes	Asylum seeker or refugee without work permit
6	no	yes/no	yes/no	yes/no	yes	Refugee with “tolerated stay” status
7	no	yes	yes	yes/no	yes	Legalized immigrant
8	yes	yes	no	no	yes/no	Tourist without work permit
9	yes	yes	no	no	yes	Legal immigrant without work permit (e.g., students)
10	yes	no	no	no	yes/no	Legal immigrant overstaying visa period
11	yes	no	yes	yes/no	yes/no	Legal immigrant, self-employed, overstaying visa period
12	yes	no	no	yes	yes/no	Legal im. extending employment despite expired work permit
13	–	no	no	no	yes/no	Child of illegal immigrant born in receiving country

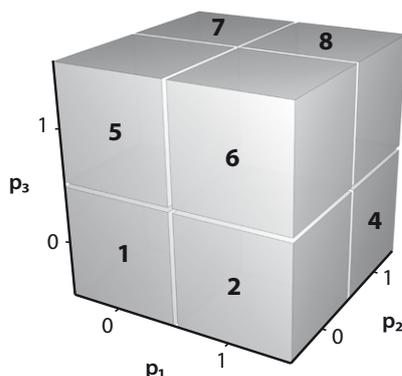
Source: Kraler (2009)

yes/no = partial/depends

migrant who has entered into conflict with the law. Conversely, if they take up employment without a work permit, they are branded illegal immigrants even though — once more — the migration itself was entirely legal. Calling the child of an illegal immigrant who was born in the parent’s receiving country an “illegal immigrant” is all the more absurd, and powerful proof of the lack of logic and consistency in using this term in the subject literature. It is therefore useful to consider alternatives to the current status quo and change existing understandings of who the ‘illegal migrant’ really is.

### 3 The Migration Legality Cube

The first intuitive solution to the conundrum above is to introduce new terminology that is etymologically related to the phenomena it purports to define. A person taking up work without a permit could thus be called, for instance, an illegal worker while a person who extends their stay could be considered an illegal resident. This would allow us to more precisely express the individual’s actual status—but it would also quickly turn out to be inefficient. In many cases, this terminology would require us to describe a single person using three different terms if the three dimensions



**Fig. 1.** Migration Legality Cube—types of migration legality ( $p_1$ —border crossing,  $p_2$ —residence,  $p_3$ —employment)

Note: Type 3 is the block behind Block 1, not visible here.

of illegality—border crossing, residence, and employment—were concentrated in a single person. This may partially explain why individuals at odds with the law are often inaccurately branded illegal immigrants.

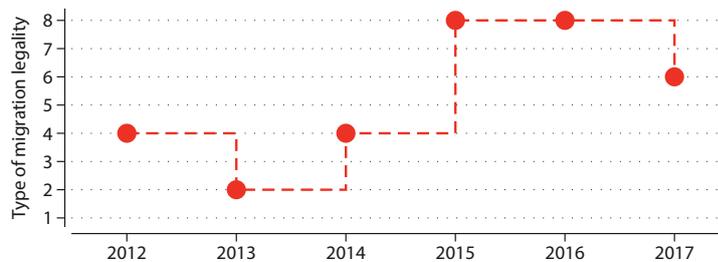
A three-dimensional matrix of legality is one alternative proposal that I would call the Migration Legality Cube (fig. 1). The Cube allows us to distinguish  $2^3 = 8$  types of illegality. Each of the three dimensions of the Migration Legality Cube refers to a different aspect of the migrant's (il)legality:  $p_1$  corresponds to crossing the border,  $p_2$  to residence, and  $p_3$  to employment. If the immigrant is illegal in all three senses, their status becomes a Type 1 illegality. If they crossed the border legally, they would fall on the right side of the cube; for instance, in the case of illegal residence, but legal employment, we are dealing with a Type 6 illegality ( $p_1 = 1, p_2 = 0, p_3 = 1$ ). If the migrant is legal in all three ways, they would fall under Type 8 (tab. 3). This framework could prove to be a very useful way of visualizing and understanding the debate on illegal immigration. The Migration Legality Cube would allow us to concisely and conclusively assess the status of an individual who is otherwise erroneously called an illegal immigrant. Moreover, it would enable us to create a simple line graph showing changes in a migrant's status over time (fig. 2).

Additionally, after having collected quantitative data on what has been to date called illegal migrants, we could separate the total number into eight categories and further elaborate on who we are really examining. Keeping in mind, but temporarily putting aside the fact of the well-known low reliability of data on migration, particularly on illegal migration, thanks to the proposed solution we could limit the level of uncertainty and better compare data concerning various areas. It may appear and be of a very much surprising nature that the vast majority of people commonly called illegal migrants fall into categories 2, 4 and 6. It would mean that they had crossed the state border legally but afterwards fell into conflict with the law and, for instance, extended their stay after the day of expected leave while having a legal job (Type 6), they undertook employment without permission while legally residing in the country (Type 4) or they violated both rules at a time

**Tab. 3.** Dimensions of illegality

Type of migration legality	$p_1$ legal border crossing	$p_2$ legal residence	$p_3$ legal employment
1	no	no	no
2	yes	no	no
3	no	yes	no
4	yes	yes	no
5	no	no	yes
6	yes	no	yes
7	no	yes	yes
8	yes	yes	yes

yes = 1 (at Migration Legality Cube axes), no = 0 (at Migration Legality Cube axes)



**Fig. 1.** Legality status of a hypothetical migrant (changes over time)

- 2012—legal entry, legal temporary residence (e.g., for three months), unauthorized work
- 2013—loses residence rights, unauthorized work continues
- 2014—legalized stay for two years, unauthorized work continues
- 2015—work permit granted (full legality)
- 2017—loses residence rights, work permit still valid

(Type 2). Therefore, none of these people is an illegal migrant *sensu stricto*. At present we tend to completely ignore this fact and put all types of illegality into one box, calling people who migrated legally—thus are fully legal migrants—with the use of the misleading term illegal migrants.

A change to this approach seems self-justifiable. Despite the traditional approach towards realism, stating that time and space exist apart from the human mind, it needs to be stressed that naming things creates reality. It is not really about self-fulfilling prophecies but rather about creating false convictions in the social space and in human minds: provided even the experts use the term illegal migrants, the majority of foreign-born present in a given area must have immigrated illegally. Multifold social and also economic consequences of this only partly unconsciously used term seem straightforward.

#### 4 Migrants: illegal, irregular, undocumented, unwanted

It is pertinent to supplement this reorganization of the illegal migration terminology with a short analysis of terms that are related or roughly synonymous to illegal migrant. They are often used interchangeably although their definitions are not identical—and worse, often ambiguous, which creates an enormous margin of error. One example of this kind of term is irregular migrant. In principle, it is broader than illegal migrant in the strict sense of the term. Two categories make up this type of migrant. The first comprises individuals who carried out a clandestine border crossing or were in possession of false papers; the Migration Legality Cube would classify them as types 1, 3, 5, or 7. The second comprises people whose entry was entirely legal (e.g., tourists), but who broke the terms of their stay—e.g., by extending it (types 2 or 6) or taking up employment in violation of their visa (types 2 or 4). From this perspective, the irregular migrant category would encompass any and all migrants who are, in some way, are on less than favorable terms with the law. On the Migration Legality Cube, this includes every type of migration except Type 8. Clarifying the term irregular migrant seems to be a smart and necessary move precisely because it would allow us to rid ourselves of the erroneous connotations of the term illegal migrant, whose imprecision lies in implying the illegality of the migration itself while simultaneously containing within it all the other forms of illegality.

Another closely related term is undocumented migrant. This term emphasizes the lack of information about the migrant in logbooks, databases, and statistics regarding a given person's residence or employment in the receiving country. It does not emphasize the nature of the migrant's travel. The undocumented migrant might be residing in the receiving country legally and might have also crossed the border legally, but their name is nowhere to be found in the registers provided the lack of an obligation to register and/or complete freedom of international travel/migration. The term undocumented migrant carries a hidden implication that the crossing and stay were both illegal due to the scarcity of information on the individual's stay in the receiving country, and this is simply completely uncalled for. Additionally, there is no widely accepted context in which the term should be used. For example, Icdygu and Unalan (2002) propose that the term undocumented migrant should extend to both individuals who have crossed a border illegally (types 1, 2, 3, and 4 on the Migration Legality Cube) and those whose residence permit has expired (types 1, 2, 5, and 6). Grzymala-Kazłowska (2005), on the other hand, writes about the 30–50 thousand undocumented Polish workers at the end of the 1990s while failing to specify the exact circumstances of their status. Given the weight of the misconception, the term undocumented migrant should not be used as a synonym for illegal migrant, as there is no way of telling in what way the migrant's presence in the receiving country violates the law.

Yet another term that often turns up when speaking of illegal migrations is unwanted migration (see also: *Legalna praca...* 2014; e.g., Uehling 2004). He highlights the notion that the complex social phenomenon that is commonly known as irregular migration should in fact be called unwanted migration, given its character. The argument here is that only actions and activities that are indisputably harmful to the country or its population are truly illegal, unwanted, and merit elimination (Uehling 2004). This framing of the issue is highly contentious; the cheap labor offered by immigrants working on the black market is in great demand among many employers. Employ-

ers—and vicariously the whole economy—reap benefits from this, often considering migrants to be a vital part of the labor market. Why, then, should they be called unwanted migrants (e.g., Kicing and Saczuk 2004)?<sup>3</sup> Besides, who is to decide whether a given migration flow is desirable or not—governments, referenda? Even academics would have widely varying opinions on the subject. The only issue on which we can expect widespread agreement is that legal migration is more beneficial to receiving countries than illegal migration (e.g., Bruquetas-Callejo et al. 2008; Castles 2006; Ekins 1992; Janicka 2009; Massey and Malone 2002). To clarify, a focus on economics would bring us to the conclusion that the legality of employment is the fundamental issue since it is through employment that the migrant can contribute to the national economy and fuel the state budget by paying taxes. To some extent, the legality of the stay itself is also important, seeing as it enables the inclusion of the individual in the social structures of the receiving country and facilitates their integration. The legality of crossing the border is therefore an issue of tertiary importance. In this sense, unwanted migration would correspond to types 1–6 on the Migration Legality Cube.

It is important to remember that the legal status of an immigrant is prone to significant changes. I mentioned above that overstaying one's welcome by remaining in the country beyond the period indicated in one's residence permit automatically renders a legal migrant illegal. A change of status in the other direction is also possible. A migrant may become legal if they take specific and effective action towards legalizing their stay. They can do this individually, within the framework of the receiving country's legal system, or take advantage of periodic regularization drives. These result in certain individuals being granted legal status—generally individuals who live in the country illegally, but also some who are legal residents, but have hitherto had some kind of transitional status or suffered other restrictions (e.g., no right to apply for a work permit). This last case is typically called normalization. The restrictions in question can include (e.g., a residence permit that is only valid in some parts of the country, with some employers, or in some profession). Time constraints are another example (e.g., limiting employment to a certain number of hours per week). In this situation, legal status can be granted indefinitely or have some kind of temporal endpoint. However, Kraler (2009) notes that refraining from deporting the migrant is already a form of tacit acceptance of their temporary presence on another nation's soil.

## Conclusions

The term illegal migrant is clearly abused and used in far too inclusive manner by both academia, policy makers and the society. It seems clear that, while violating the legal rules implies illegality of a deed, violation of the rules of legal employment should not be called illegal migration, but illegal employment. The same applies to violation of the rules of legal stay (illegal stay or illegal resident and not illegal migrant). As three basic dimensions of illegality associated to date with migration analysis may focus in one person in as many as eight different combinations, this terminology would require us to describe a single person using three different terms, which would quickly turn out to be inefficient. The Migration Legality Cube seems to be a reasonable alternative enabling precise description of legal status of a migrant and by far improving the existing understanding of what illegal migration really is. Common use of the Migration Legality Cube in all countries would enable comparisons and make them much more justifiable than they are at present. It is not far-fetched to imagine a situation where two or more sets of numbers regarding illegal migration in a number of countries, at least according to the headers of the tables, in reality regard completely different types of illegality. Use of the Migration Legality Cube would enable us to clearly state of whom we speak, and would also verify, to what extent the data are comparable.

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3. See also: Can Europe benefit from migration? Conference held on 2–4 November 2007, more information available at <https://www.ditchley.com/past-events/past-programme/2000–2009/2007/eu-migration>.

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