

# The relevance of migration for the 2030 Agenda for Sustainable Development

The Global Compact  
for Safe, Orderly  
and Regular  
Migration

EDITED BY  
**CONSTANÇA URBANO DE SOUSA**



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UNIVERSIDADE  
AUTÓNOMA  
DE LISBOA



*The relevance of migration for the 2030 Agenda for Sustainable Development*  
*The Global Compact for Safe, Orderly and Regular Migration*

**EDITOR**

Constança Urbano de Sousa

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Carolina Peralta

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José Domingues (Undo)

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**ANTÓNIO VITORINO**

## *Foreword*

The Global Compact for Safe, Regular and Orderly Migration (GCM) is the first inter-governmental negotiated framework on all aspects of international migration. It aims to make an important contribution to enhanced cooperation on international migration in all its dimensions. The GCM is a non-legally binding collaborative document intended to foster cooperation among all relevant actors on migration, acknowledging that no State can address migration alone. Equally, it recognizes and upholds the sovereignty of States to determine their own national migration policies, consistent with their existing obligations under international law.

The Global Compact was developed through an eighteen-month process of informal, inclusive consultations amongst Member States of the United Nations, civil society, the private sector, trade unions, academia, parliamentarians and local authorities, migrants and diaspora organizations, and others in the form of six thematic and five regional discussions, plus multiple national and other dedicated consultations. These inclusive consultations were followed by six rounds of Member State negotiations in the United Nations General Assembly to write the GCM text.

The Compact recognizes that migration has been a part of human experience throughout history, that it has the potential of being a source of prosperity, innovation and sustainable development, and that these positive aspects can be optimized by improving migration governance. Most migrants today travel, live and work in a safe, orderly and regular manner. However, migration affects different countries, communities, migrants and their families in very different and sometimes unpredictable ways. Therefore, the Compact seeks to assist States in maximizing

the positive potential of migration for migrants, their families, and the societies from which they come from and to which they go, while minimizing factors that compel people to move or that lead them to do so in an unsafe or irregular manner, as well as the risks, exploitation and abuse too many experience, and the disruptive impacts that unmanaged migration can have on communities and societies.

The two fundamental pillars of the Compact are the recognition that today all States are States of migration – whether as countries of origin, transit or destination, or increasingly all three simultaneously – and therefore each must develop effective policies and institutions to manage migration. Secondly, as migration is by definition a transnational phenomenon, no State can effectively manage migration alone. Cooperation is required – between the multiple ministries and entities within a national government with responsibility for aspects of migration, such as labour, justice, development, environment, social affairs and many more – as well as between States. Equally, cooperation is required at all levels of government – local, national, regional and global – and with a range of non-State actors, including civil society, the private sector, employers and recruiters of migrants, trade unions, local authorities and municipalities, migrant and diaspora organizations, academia, National Human Rights Institutions, the media, community, and faith-based entities. In short, to be effective, migration requires the approaches of the entire government and of the whole society to its governance.

The Global Compact for Migration takes a 360 degree approach to migration, looking at the latest evidence and data, identifying the drivers – both positive and negative – of migration, including its fundamental links to all aspects of sustainable development – economic, social and environmental, underscoring the rights and dignity of all migrants regardless of their migration status, and the need to create conditions that allow communities and individuals to live in safety and dignity in their own countries, to save lives, keep migrants out of harm's way, and to promote inclusion and social cohesion. Through its 23 Objectives and accompanying suggested actions and best practices, the Compact seeks to (1) promote evidence-based policy making, (2) minimize the adverse drivers and structural factors that compel people to leave their countries of origin, (3) provide accurate and timely information at all stages of migration, (4) ensure that all migrants have proof of legal identity and adequate documentation, (5) enhance availability and flexibility of pathways for regular migration, (6) facilitate fair and ethical recruitment and

safeguard conditions that ensure decent work, (7) address and reduce vulnerabilities in migration, (8) save lives and establish coordinated international efforts on missing migrants, (9) strengthen the transnational response to the smuggling of migrants, (10) prevent, combat and eradicate trafficking in persons, (11) manage borders in an integrated, secure and coordinated manner, (12) strengthen certainty and predictability in migration procedures for appropriate screening, assessment, and referral, (13) use migration detention only as a measure of last resort and work toward alternatives, (14) enhance consular protection, assistance and cooperation, (15) provide access to basic services for migrants, (16) empower migrants and societies to ensure full inclusion and social cohesion, (17) eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration, (18) invest in skills development and facilitate mutual recognition of skills, qualifications and competences, (19) create conditions for migrants and diasporas to fully contribute to sustainable development, (20) promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants, (21) cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration, (22) establish mechanisms for the portability of social security entitlements and earned benefits, and (23) strengthen international cooperation and global partnerships for safe, regular and orderly migration.

It will now be up to each State to determine its next steps. Each is encouraged to develop national responses to implement the Compact, and to conduct regular and inclusive reviews at national level, such as through the voluntary preparation of a national implementation plan. Different States will prioritize different objectives and actions, depending on their national circumstances, priorities and capacities. Some of the objectives can and must be achieved in the short term, such as saving lives, whereas others can only be accomplished over the longer term, such as reducing the factors that compel persons to leave their countries of origin and should be addressed in the overall context of implementation of the 2030 Agenda for Sustainable Development.

Implementation will be supported by the creation by the Secretary General of a new United Nations network on migration to ensure effective and coherent system-wide support for implementation, in response to the needs of Member States. The International Organization for Migration (IOM) will serve as the coordinator and secretariat of the network, which will draw fully on the technical expertise and experience of relevant

entities within the UN system. Together with the IOM, the network will be guided by an Executive Committee comprised of the entities of the UN system with the most direct mandates on and relevance to work on migration. In addition, implementation will be facilitated by the establishment within the UN of a capacity building mechanism with three key components: an on-line open data source knowledge platform; a connection hub to facilitate demand-driven, tailor-made solutions; and a start-up fund for initial financing to realize project-oriented solutions. The Secretary-General of the United Nations will report to Member States through a report to the General Assembly on a biennial basis on the implementation of the Compact, the activities of the United Nations system in this regard, and on the functioning of the institutional arrangements.

Finally, progress on implementing the Global Compact at local, national, regional, and global levels will be reviewed on a regular basis within the framework of the United Nations through a State-led approach and with the participation of all relevant stakeholders. This will take place through an International Migration Review Forum every four years, starting in 2022, and by means of regional reviews every four years, starting in 2020. These reviews are intended to build on accomplishments and identify opportunities for further cooperation.

With the Global Compact for Safe, Orderly and Regular Migration, the international community now has a framework to guide national and international action on migration, and the tools needed to foster deeper cooperation and collaboration in this domain of critical importance in the 21<sup>st</sup> century.

**AUGUSTO SANTOS SILVA**

*Migration policy and the responsibility  
of the Academia*

**1.** I should like to start by noting that today, 1 October, is the day António Vitorino begins to serve as Director General of the International Organization for Migration (IOM). He holds this position after being elected Director General last July; and he was elected because Portugal put forth his candidacy. And I would like to begin by recalling the reasons for his candidacy – you will appreciate that it has everything to do with the theme of this congress.

The International Organization for Migration is a key organization for a central issue on today's international agenda. That is why we knew that the election of a new Director General of the IOM must be more than choosing a person. It had to be a decision of the organization to assume all the political and technical responsibilities that are within its remit in the times we are living. We also understood that, for that reason, it was not possible to continue with what had been, until then, the tradition of electing an American to that position. And the reason for this is simple: The United States of America has broken a longstanding consensus it had with Europe on an approach to migration as a positive and necessary phenomenon for the history of mankind.

We also believed that the IOM would have to assume greater responsibility, with a bigger and clearer political leadership. And so Portugal was not in a position to support those who felt that the best solution for the IOM would be a succession from within. We had a good candidate for the new times the IOM was experiencing, times marked by greater responsibility and clearer political leadership of the organization. Therefore,

we decided to move forward in a way that is very rare in Portuguese diplomacy, knowing that we would go against a United States candidate, and that we would not support Costa Rica (Laura Thompson's country of origin, who at the time was the IOM's Deputy Director General and also a candidate), a country so friendly to Portugal and so paradigmatic from the point of view of democratic standards.

António Vitorino's project can be summarized in three points.

The first is that migrations are an ineluctable reality of human history, which has always known systematic and massive migratory processes, and, in general, a positive factor in this history. We must therefore promote migration.

The second is that today migrations are an issue that concern everyone. Together with other fora, the IOM should be an instrument of increased international cooperation in this area. Contrary to what President Donald Trump said at the United Nations General Assembly, multilateralism remains the *sine qua non* condition for issues that are not possible to solve at the national level and are best regulated at international level.

And the third essential point of António Vitorino's programme was that for all this we need an integrated approach to migration, not only looking at migration from the perspective of security, or just from the perspective of compliance with the rule of law, or only from the perspective of the development of the countries of origin of the migrants and the countries of destination, or only from the perspective of the rights of migrants. This approach must look at the migration phenomenon from all these perspectives at the same time.

António Vitorino was elected Director General of the International Organization for Migration on his own merit. But the clarity of his candidacy and the clarity of his programme have greatly helped the election. The point is that his term begins today; and one of the key features of his mandate will be that the Heads of State or Government will sign the Global Compact for Safe, Orderly and Regular Migration on 10 and 11 December in Marrakech, to be implemented by the IOM.

**2.** The Global Compact for Safe, Orderly and Regular Migration is one of the elements of a pair which, in September 2016, on the sidelines of the United Nations General Assembly and under the impetus of the United States under President Obama's Administration, the international community decided to launch. We signed the New York Declaration, which

binds us all to the preparation, approval and subsequent implementation of a Global Compact for Migration and a Global Compact for Refugees.

It is a pair because, from my point of view, there is no strict dividing line between matters of refugees and those of migration, and it is good to look at the Global Compact for Migration bearing in mind that it is the other side of the coin of the same international commitment.

The Compact, which is now complete and ready for scrutiny by Heads of State or Government, is not, however, legally binding. It is not an international agreement and it is not binding in nature. That is not what was intended, and this does not justify any degrading of its importance. It is a political document, politically binding for the countries that endorse it: it is a collective commitment to a positive vision of migration for the promotion, through appropriate policies, of safe, orderly and regular migrations.

We will not be able to fulfil all the objectives of the 2030 Agenda for Sustainable Development if we do not make progress in managing migrations. The 2030 Agenda, which was approved in 2015 at the United Nations, represents a qualitative change in the approach to development because it essentially means that we no longer recognize ourselves in the division between North and South, in the division between the so-called developed countries and developing countries. On the contrary, it states that development is a matter that involves all of us. In order to promote the quality of education, we must fight illiteracy in the United States. In order to promote gender equality, it is necessary to fight domestic violence against women in Portugal. To promote public health, we must fight the so-called diseases of the rich in Scandinavia. To promote the quality of life in our cities, we must face traffic problems in London. And so on: we all must deal with development-related problems and opportunities. It is within this framework that the two agendas, migration and development, are so strongly connected.

The Compact sets out ten guiding principles, which I shall refrain from repeating here. I just want to draw attention to three.

The first is the idea that the Compact must be a people-centred political commitment. That is, the focus is on migrants, not national sovereignty. The focus is on people, the millions of people who are living in countries other than those where they were born in or who are in migratory flows, whether outbound, inbound or temporary.

The second principle is that international cooperation can and should be compatible with national sovereignty, recognizing that each State is sovereign in the definition of its own migration policy. In the case

of the European Union, it also means European sovereignty, because some of the key points in migration policy can only be addressed at the European level.

And the third principle is that the human rights of migrants, such as the right to health, are independent of their migratory status, that is, whether they have legal or irregular status.

**3.** The Compact is an international document. There are those who like it and those who do not. I must say I like it, not too enthusiastically, but I like it. It has 23 goals and a set of actions to make them attainable. They are, of course, principles and models or examples of action that result from the possible agreement between the countries that will embrace the Compact. And so I would attach more importance to its systematic nature as a political choice for the positive view of migration and its regulation, advocating our joint responsibility in this regulation, and as a commitment to carry out practical and concrete actions to implement it.

Portugal contributed actively to the discussion and our influence, certainly along with that of others, is perceptible in at least seven specific points in the text. First, the defence that the vision of migration cannot be exclusive or focus predominantly on security. Second, the idea that migrants are people to be protected, and that women, children, unaccompanied minors, the elderly, and people with disabilities have additional protection needs. Third, the defence of the conceptual distinction between migrants and refugees and between regular migrants and irregular migrants. Fourth, to combat trafficking networks for labour exploitation, sexual exploitation and other forms of oppression as one of the essential objectives of the Compact. Fifth, the link between migration and development and the need to address the root causes of migration. Sixth, the insistence that the obligation of national readmission, that is, the obligation of a State to readmit its nationals, should also be included in the Compact. Seventh, the role of the IOM as a coordination structure, not because a Portuguese is its Director General (he had not even been elected yet when the most of the discussion took place), but because we think that the IOM should be much more than a service provider to which States subcontract some tasks.

We still have things to do in relation to the process of approving the Compact. On the one hand, we need the Marrakesh summit to be successful. On the other, we need to counteract defections from the Compact. So

far, we know of two countries not supporting the Compact: the US and Hungary. It is very important that as many of the 193 Member States of the United Nations as possible endorse the Compact.

There is coherence between the position that Portugal has taken and takes on the external front on migrations and what it assumes in its internal politics. It is not for me to speak of the latter, but I should like to draw attention to this coherence, because I often see with sadness that we tend to underplay what we do regarding migrations. And I see no reasonable reason for doing so. Much has already been achieved in terms of migration policy in Portugal and those achievements must be acknowledged. There is surely still a lot to do, but the best way to proceed is to value what has already been achieved.

**4.** In conclusion, I would like to stress the responsibilities of scientists in this field. The first concerns public communication, information on the public debate on migration starting with the academia and research. The second is the need for academics and researchers to actively contribute to enable Europe to design a common migration policy. Nowadays, public debate takes place in complete ignorance or contempt for information and analytical knowledge, which degrades and distorts it. It is our duty to swim against this current.

I begin with public communication. It is essential that scientists and scholars demonstrate the reality and complexity of migration against the populist view, which is to offer simple and seemingly appealing answers to complex questions. The worst thing we can do is think that complex issues can be solved in simplistic ways. And this is a responsibility that all of us, academics, have. So I would say that the public debate would benefit greatly if we are able, by mobilizing our scientific knowledge, to bring into this public debate some essential facts.

Thus, migrations are a constant phenomenon in the history of humanity. As a social process, it is not stoppable through exclusive or predominantly administrative measures. It is adjustable, certainly. However, it is an illusion to believe that erecting walls, literal and metaphorical, can stop migrants from wanting to cross into our countries. What we know as scientists, economists, sociologists, historians, demographers, geographers, is that building these walls, hindering regular migration, promotes irregular migration flows. And we have a responsibility to emphasize as much. As it is said in the *Acts of the Apostles*, “we cannot fail to tell what we hear and read”.

It is not only a matter of showing the ineluctability or historical constancy of migratory processes, but also of placing them on their scale. According to the latest UN report, which uses data for 2017, the number of migrants, in the technical sense of those born in one country and living in another country for more than a year, can be estimated at about 260 million. It is true that if we compare today's reality with the beginning of the century, the proportion of international migrants worldwide has increased by 50%. It is therefore a growing trend, which has nevertheless this scale: 258 million people in a world population that is close to 7 billion, which is to say 3,4% of the world's population. In fact, if we use the concept, which some consider to be somewhat forced, of internal migrants, we will see that the flows of these migrants are superior to those of international migrants.

Then, the vast majority of the 260 million international migrants entered through legal channels or have legalized their situation: they are therefore regular migrants. And perhaps more than two thirds of the migrants considered to be irregular are so because they no longer fulfil the conditions of their legal entry, and not because they entered the countries of destination illegally.

These are the main features of the migratory phenomenon: migrants represent around 3% of the world's population, the great majority are in regular situation and the vast majority of migrants considered irregular have entered through legal channels.

Another well-known fact is that the contribution of migration to destination countries is very positive – to the growth of their economy, to take on labour market segments with little or no local demand, to the sustainability of their welfare systems and from the point of view of demographic dynamics. If it had not received migrants, the European Union would have lost population between 2000 and 2015.

Today, migrations are not only one-way. Of course, two-thirds of the migrants are concentrated in 20 countries and ahead of them are the United States, with about 50 of the 260 million migrants. But when we look at the geography of international migration, we do not only see movements from the South to the North. There are also very important South/South flows, for example in Africa, as there are North/North migrations and North/South migrations. This diversity, which is ignored by much of the discourse expressed in public, has to be strongly emphasized.

Oddly enough, the anti-immigration sentiment is not necessarily correlated with the presence of migrants. Some of the countries with the

highest anti-immigration sentiment, such as those in Eastern Europe, are precisely countries that do not have a significant migration experience.

One thing that makes the debate a little more difficult is that we are a long way from having clear distinctions between migrant and refugee status. Technically, a refugee is a person whose life is at risk in his or her country, either because it is at war or because the person or group to which the person belongs is subject to systematic persecution, or because the conditions of material and social deprivation are such that the person's life is at risk.

We have been broadening the concept of refugee, because because if we take this element of deprivation seriously, we must refer, for example, to refugees whose forced displacement is caused by climate change. And here the difference between economic migrant and refugee becomes less obvious, blurred. We must live with it and our public policies should not be built on a watertight division that no longer corresponds to reality.

The same is true of the distinction between legal migration and illegal migration. Even if there are illegal migrations, illegal by law, there are no illegal migrants, just as people who do not comply with their legal obligations, for example, the timely payment of taxes, are not illegal. We should stop using a word that is stigmatizing – “you are illegal!” – and has no scientific basis.

The growing intersection between refugee status and migrant status, on the one hand, and the existence of irregular migratory flows, on the other, mean that our policies must be realistic and, above all, that an escape mechanism must always be available, which is the periodic regularization of irregular migrants. Anyone who thinks that this mechanism is not a necessary and positive instrument does not understand today's world.

I am not saying that it is no longer analytically and normatively necessary to distinguish between a migrant and refugee, on the contrary. As I have already said, Portugal has struggled for this distinction to exist for one simple reason: we can have different national policies on migration, more open or closed, but in light of international law we cannot refuse to host and protect refugees, whoever they may be and whatever their numbers. Therefore, the normative distinction is still necessary, but it must be looked at with the complexity that the available knowledge allows us to have.

Finally, since I cannot enter into the debate here, which takes place both in the political arena and in the scientific field, between the migration

policies that value the so-called republican integration and the policies of a more multiculturalist matrix, and positioning myself in favour of the former, I stress that this debate is indispensable and cannot be circumvented by acts of faith or dogmatic impositions.

**5.** We also need the contribution of social sciences to migration policies at the European level, as this is perhaps the most divisive and potentially explosive topic in the European Union today, even more so than budgetary or security and defence matters.

The first point to take into account is that Europe has about 500 million people. Living in the European Union and having been born outside the European Union, there are only 22 million people. Most immigrants in Europe are no longer immigrants from a Single Market point of view, they are from Sweden who retired to Portugal, from Poland who work in Germany, from Italy who study in Spain. Although it is immigration from a technical point of view, from a legal point of view it is no longer. These people are no longer living abroad, they are living in a political entity to which we all belong. Therefore, immigrants as such, foreigners residing in the European Union, account for 22 million in 500 million, twice as many people as in Portugal. It is not something that is very difficult to regulate and integrate.

Then we must look closely at the characteristics of the so-called migration crisis, initially called refugee crisis and now increasingly called migration, in a semantic oscillation that is anything but innocent, experienced in Europe since 2015. It is very important to look at this crisis and its factors. And we must move towards building a European migration policy around the four dimensions that I think are necessary.

The first dimension, which I prioritise, is the organization of legal migration processes in Europe. We must put employment services at the forefront of how we combine our own need to attract people with the search for populations that want to come to Europe. Instruments for recruitment and integration into the labour market, as well as family reunification, are essential for the organization of legal migration processes. As the Secretary-General of the United Nations says in his report, the only viable alternative to illegal immigration is legal immigration.

The second dimension is of course the humanitarian one, where we have to draw the consequences of the fact that the administrative imposition of compulsory quotas for the reception of refugees by the 28 Member States is not working. In view of this, we must review the system

for granting asylum and humanitarian assistance. The idea that was discussed in September at the informal European Council in Salzburg supports this review. In my opinion, it goes in the positive direction.

There is a third dimension, that of safety itself. We will only save one of the essential elements of the European construction, which is freedom of movement, and in particular the Schengen area, if we strengthen the external borders of the Union. I am therefore in favour of strengthening the European Border and Coast Guard Agency, and we should never undervalue the fight against trafficking networks. This fight is the responsibility of both governments and nongovernmental organizations. None of us should agree to be complicit, voluntarily or involuntarily, by action or omission, resignation or militant enthusiasm, in trafficking networks and must not contribute to its expansion.

And the fourth essential dimension, when we speak of migrations, is the economic partnership with countries of origin and transit, which is the most effective means of addressing the root causes of this phenomenon.

We have already made a very important choice in the design of the next multiannual budget of the European Union, which was the great increase of resources for sovereignty policies. At this stage when we are discussing specific regulations and programmes, we must be able to draw the consequences of that decision and invest heavily in the conditions that can enable Europe to support or be a partner with Africa in its development.

We all know that the main motivation for emigrating is the aspiration to have a better life for oneself and one's family, even if it involves an enormous amount of sacrifice. It is the huge inequality between countries and regions that explains that this aspiration requires the displacement to foreign lands. The crucial answer, the one that most effectively frees people and peoples from this fate, is to make the world less unequal.



CONSTANÇA URBANO DE SOUSA

## *Introduction*

The New York Declaration for Refugees and Migrants, adopted unanimously by the UN General Assembly on 19 September 2016, introduced broad commitments regarding migrants and refugees and was the starting point of two processes leading to the adoption, in 2018, of two Global Compacts: The Global Compact on Migration and the Global Compact on Refugees.

After two years of intergovernmental negotiations, the Global Compact for Safe, Orderly and Regular Migration was adopted by more than 150 states at the Conference of Marrakesh on 10-11 December 2018.

Although not legally binding, the Global Compact represents the first step towards creating a global framework for enhanced cooperation to address current challenges of international migration. Even if it does not affect the sovereign right of States to determine their national migration policy, it is a first attempt for global and human rights-based management of international migration, recognized as a source of prosperity and sustainable development for the countries of origin and destination.

On 1 October 2018, Universidade Autónoma de Lisboa and its research centres, *Ratio Legis* (Law) and *OBSERVARE* (International Relations) co-organized, with the financial support of the Camões Institute and the FCT, an international conference on the contribution of migration to the 2030 Agenda development goals, in the light of the Global Compact on Migration and of the European migration policy.

The event brought together leading academics and politicians to discuss the relevance of international migration for the development

of origin and destination countries, the impact of European migration and asylum policy on the management of legal migration and the input of the Global Compact to tackle the current challenges of international migration, as a tool for the achievement of the Sustainable Development Goals.

This conference laid down the foundation of this collective book, which aims to contribute to a more enlightening and enlightened perspective of international migration, as advocated by the Global Compact: *“Migration has been part of the human experience throughout history, and (...) it is a source of prosperity, innovation and sustainable development in our globalized world, and (...) these positive impacts can be optimized by improving migration governance.”*

In the context of the so-called “refugee crisis” of 2015, which in many EU Member States has changed the perception of some public opinion on international migration, strongly fuelled by the anti-immigration narrative of far-right populist parties, the Global Compact is a unique opportunity for Europe to adopt an immigration policy that is more effective in addressing the challenges of international migration.

Although the EU and its Member States supported the Global Compact, participated actively and united in its negotiation, unfortunately, at the last minute, the consensus was broken. In May 2018, Hungary left the Compact, arguing that “migration is an unfavourable and dangerous process, which caused serious security challenges” and “international efforts must aim to stop migration”. Using similar arguments, several Member-States (Austria, Czech Republic, Poland, Bulgaria, Slovakia, Latvia, Estonia and Italy) followed Hungary and did not approve the Global Compact at the Marrakesh Intergovernmental Conference.

Today, more than ever, it is necessary for the academy to contribute to the construction of an immigration policy that is more founded and faithful to European interests and values. I hope this book represents a small contribution.

This book is structured in three main Parts. Each Part takes into consideration the main questions addressed in the above-mentioned international conference. Part I deals with the link between migration and development and the positive output of international migration to the development of both origin and destination countries. The assessment of the EU immigration policy and its impact on a regular and safe international migration is covered in Part II. The Global Compact on Migration is addressed in Part III.

The book is enriched with a Foreword by António Vitorino, Director General of the IOM, an introductory article by Augusto Santos Silva, Minister for Foreign Affairs of Portugal, and with the intervention of His Excellency the President of Portugal, Marcelo Rebelo de Sousa, delivered in the conference closing session. To all our most sincere thanks.



**PART. I**

*The relevance  
of migration for  
development*



**CRISTINA GORTÁZAR ROTAECHE**

*The constant link between migration  
and sustainable development:  
The 2030 Agenda and the  
“leave no one behind” principle*

**1. Introduction: revisiting the migration and sustainable development tandem**

Whether international or internal, migrations as a multidimensional phenomenon encompass diverse human movements, from completely voluntary migrations to forced migrations, in which people escape persecution, threats and catastrophes<sup>1</sup>. It should be evident that the forced or voluntary condition of these movements makes them different in many aspects and, therefore, that the ways that societies manage such migrations must also be different<sup>2</sup>. Although being aware of this logic, I refer here to migrants without distinguishing between whether their movement is voluntary or forced, since the question that concerns me

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<sup>1</sup> In 2015, approximately 244 million people were international migrants, while in 2005, internal migrants were estimated at 763 million. UN DESA. (2017): *Trends in International Migrant Stock: The 2017 revision*. (United Nations database, POP/DB/MIG/Stock/Rev.2017, New York, United Nations, Department of Economic and Social Affairs, Population Division); M. Bell, M. y E. Charles-Edwards (2013): *Cross-national comparisons of internal migration. An update of global patterns and trends* (Technical Paper No 2013/1. New York, United Nations, Department of Economic and Social Affairs. Population Division).

<sup>2</sup> Regarding the number of such international or internal migrants who are forced migrants (refugees or forced internally displaced persons), in 2015 there were more than 65 million people. Of these 65 million people, only about 21 million are recognized refugees, some 3 million are international protection applicants and the remaining 40 million are forced internally displaced. ACNUR. (2016). *Global trends in forced displacement in 2015*. Geneva.

(the link between migrations and sustainable development) covers both situations, albeit in differing ways.

However, I would not like to lose the occasion to vindicate the need to extend the special protection enjoyed by refugees to all persons whose cause of migration is forced. Unfortunately, the existing classification usually provided by governments and institutions distinguishes between refugees and the misnamed *economic* immigrants. In its current state of development, International Law understands that in cases of asylum, the State of origin has ceased to protect the person (because it does not wish to or cannot), and so the State-citizen bond has been broken. The person has been left helpless and, therefore, International Law issues a special protection statute for him or her (refugee status). The difficulty lies in the narrowness with which International Law defines the causes that give rise to refugee status: this statute applies mainly to the person with a well-founded fear of persecution or risk when such persecution or risk has some link with his/her race, religion, nationality, belonging to a certain social group or political opinion, and provided that the said person has managed to leave the country of persecution.

This definition, provided by the 1951 United Nations Convention on Refugee Status, is not well-suited to the assumptions of asylum seekers in the more globally connected society of our time. Various efforts, in different regions of the world, have been carried out to include the refugees from war and from flagrant and massive violations of human rights under the terms of international protection.<sup>3</sup> However, such protection has not yet been extended to cover refugees from climate, from (so-called) development projects, from natural disasters, from severe poverty, etc. And neither, of course, does it encompass those forced internally displaced persons (IDPs) who have not yet been able to cross an international border. For these reasons, the classification that clearly separates refugees from other migrants is artificial, and places many forced migrants in the latter category.

In this paper, I intend to re-examine the relationship between migration and sustainable development and the role that the 2030 Agenda can play in promoting its strengths and diminishing the effects of its frailties<sup>4</sup>.

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<sup>3</sup> C. Gortázar Rotaeché (2017) "La protección de los refugiados por causa de la guerra. *Sal Terrae* no. 105: 395 and following.

<sup>4</sup> UN General Assembly (2017). Making migration work for all. Report of the Secretary-General (A/72/643).

I will thus try to contribute to the answer to two questions: under what conditions can we affirm that migration is a powerful tool for reducing poverty and inequality, and a driving force behind human development? How can the 2030 Agenda help to ensure that the benefits of the migration/ sustainable development tandem are increased, whilst avoiding other, undesired effects?

Nair<sup>5</sup> was the first to employ the term co-development (joint development) as a theory to emphasize the highly positive effects<sup>6</sup> of migration on human development. The theory of co-development posits that migration is beneficial to the development of peoples and societies in general, so that international migration brings triple benefits: to the country of origin of the migration; to the country of destination of the migration; and to the migrants and their environments. The advantages of the migration process appear obvious to the people who migrate, to their families and to their communities: greater income and investments through economic remittances<sup>7</sup>, social and cultural remittances (round trip), consolidation of the connection with diasporas, etc.<sup>8</sup> In terms of transit and destination countries, migrants generally fill job vacancies, contribute to the provision of services, pay taxes and reduce low demographics.

Along with the theory of co-development, we also find the explanatory thesis of the link between migration and development based on the *3ds*

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<sup>5</sup> S. Nair (1997) «Rapport de bilan et d'orientation sur la politique de codéveloppement liée aux flux migratoires», Mission Interministérielle Migrations/Codéveloppement». <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/984000139/0000.pdf>. As early as 1994, the International Conference on Population and Development (ICPD) held in Cairo considered the need to establish a new regime for migration. The action programme that was adopted invited the countries of origin and destination to cooperate in the protection of the rights of migrants, in the reduction of irregular immigration and in adequately combating racism and xenophobia. This new migration management programme would lead to migration being beneficial both for countries of origin and countries of destination. After several worldwide and regional follow-ups to the work arising from the Cairo Conference, at a second stage, the first Global Forum on Migration and Development (GFMD) was sponsored by the Government of Belgium and held in Brussels in 2007. GFMD Global Forum on Migration and Development (2007). Summary Report, first meeting, 10-11 July (Brussels).

<sup>6</sup> Among us *inter alia*: C. Giménez, J. Martínez, M. Fernández and A. Cortés (2006): El codesarrollo en España. Protagonistas, discursos y experiencias. Madrid, Catarata; A. Sanmartín (2009): "El vínculo migración y desarrollo en el marco de la política pública española", Revista Migración y Desarrollo no. 13: 61-7; A. Cortés and A. Sanmartín (2009): "Las prácticas transnacionales de los/las migrantes vinculadas al desarrollo. Un estudio a partir del contexto español", Revista del Ministerio de Trabajo e Inmigración. Migraciones Internacionales, no. 80: 191-209.

<sup>7</sup> Remittances are the set of material and immaterial transfers that migrants send to and receive from their countries of origin (monetary remittances, products, technology and ideas and values) C. Giménez, J. Martínez, M. Fernández and A. Cortés (2006): *El codesarrollo en España...*: 23.

<sup>8</sup> J.B. Meyer; J.P. Wattiaux (2006): "Diaspora knowledge networks: vanishing doubts and increasing evidence", International Journal on Multicultural Societies, special issue on "Transnational knowledge through diaspora networks", vol. 8 no.1: 4-24.

(*demography, democracy and development*)<sup>9</sup>, where the first acts as a pull effect for immigration, and the second and third as push effects that encourage people to migrate. The poor demographic growth of Western societies leads them to push for an increase in immigration (the “d” pull effect), while the weakness of democracy and development (“2ds” push effects) of many sending societies drive the trend towards increasing flows of international migration towards economically stronger, more thriving societies in terms of democracy and development. This thesis thus produces a virtuous circle: older societies become rejuvenated, their labour markets are strengthened, and migration brings to their societies of origin both democratic values and the knowhow to strengthen their economies.

However, the migration and development relationship has shown to be less simple. The utopian scenario described above has to some extent already been refuted by reality and by later studies and theories. In other words, this virtuous circularity is achieved only if certain conditions are met, conditions requiring active policies and conceptual clarity on the part of all.

In the first place, as is well known, one cannot conclude from the theory of co-development that a higher degree of development corresponds to fewer migrations: studies show that migration tends to increase with development, since the people willing to start the migration process are not society’s most vulnerable members.<sup>10</sup> We must begin to see human migration as an option and not as a need.<sup>11</sup> This requires a change of mentality and, consequently, the adoption of adequate norms and policies. In any case, to condition official development aid such that benefiting countries effectively control the departure of people from their territories<sup>12</sup> is a policy that violates people’s rights and which is both illegal and illegitimate. In addition, and above all, its function is purely retaliatory.

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<sup>9</sup> GCIM (2005), Global Commission on International Migration. *Migration in an interconnected world: New directions for action*. Geneva.

<sup>10</sup> FAO (2018). *The State of Food and Agriculture 2018. Migration, agriculture and rural development*. Rome. Chapter 1: 6. Con Previously, H. De Haas (2010). *Migration transitions: A theoretical and empirical inquiry into the developmental drivers of international migration*. Oxford, The International Migration Institute (IMI), Oxford Department of International Development (QEH), University of Oxford.

<sup>11</sup> FAO (2018). *The State...Op. cit.*, J, Graziano da Silva (Foreword).

<sup>12</sup> C. Gortázar Rotaache (2017) “La Contradicción de Europa. “Políticas realistas” versus Derechos Humanos en la denominada Crisis de los refugiados”: TSN *Transatlantic Studies Network*. Revista de estudios Internacionales, no. II, 4: 138 y ss.

Regarding the theory of the “3ds” as pull and push effects, there is also much to say<sup>13</sup>. It is appropriate to move the focus away from industrialized societies and to recall how 38% of international migrations take place between developing countries, but only 35% from developing countries to developed countries (other international migrations, therefore, move between developed countries). As regards refugees (recognized forced migrants with special protection status), it is important to recall that 85% remain in developing countries.<sup>14</sup>

In addition, migration can be highly detrimental to the country of origin, especially when those who leave are the youngest and best-educated. The “brain drain”, which technically occurs when a country loses more than 10% of its graduates, is, in the words of Abad Márquez, “a true bleeding of human capital and one of the biggest blocks (if not the largest) to sustainable development”.<sup>15</sup>

Moreover host societies without the necessary means to receive and integrate new arrivals may experience critical situations with respect to the native population and migrations. Instead of benefiting the host society, migrants become a trigger for competition, and for the spread of xenophobia. Last but not least, it is migrants who suffer most directly the consequences of poorly managed migration.

With respect to demography, there is also much theory to revisit. Take the example of migration from sub-Saharan Africa. In 2017 the Population Division of the United Nations<sup>16</sup> confirmed that the population of sub-Saharan Africa is expected to increase from 970 million inhabitants, in that year, to 2,200 million in 2050 since, although fertility per woman in the region is expected to decrease (from 5.1 to 3.2 children per fertile woman), the population will have increased due to the increasing birth rate over previous decades. When this data intersects with the so-called crisis of migrants to Europe (2015-2016), we obtain especially sensationalistic forecasts: there are those who estimate that in 2050 a

<sup>13</sup> N.Van Hear, O Bakewell, and K. Long, (2018.) “Push-pull plus: reconsidering the drivers of migration”. *Journal of Ethnic and Migration Studies*, 44(6): 927-944.

<sup>14</sup> D. Ratha; W. Shaw (2007). *South-South migration and remittances*, Working Paper No. 102 (Washington, DC, World Bank); D. Ratha, S. Mohapatra; A. Silwal (2009). *Migration and Development Brief, 10* (Washington, DC, World Bank).

<sup>15</sup> L.V. Abad Márquez (2005): “Impacto de la emigración y las remesas en el desarrollo. Un enfoque desde las “condiciones iniciales”, *Migraciones*, no. 18 (2005):119.

<sup>16</sup> UNPD (2017) *World Population Prospects* (New York, United Nations, Department of Economic and Social Affairs, Population Division). También: UN DESA. (2017): *Trends in International Migrant Stock: The 2017revision*. (United Nations database, POP/DB/MIG/Stock/Rev.2017, New York, United Nations, Department of Economic and Social Affairs, Population Division).

quarter of Europe's inhabitants will be of African origin.<sup>17</sup> However, the most reliable studies suggest a quite different scenario, with the foreseeable proportion five times lower.<sup>18</sup>

In any case, the population growth forecast for sub-Saharan Africa is objectively worrying. *A fortiori* if the EU continues to outsource the control of its borders without opening safe channels to legal migration; or providing development aid to the authorities to help to stop the migrations<sup>19</sup>; by 2050 sub-Saharan Africa could be an even poorer region than it already is. In this undesirable scenario, we would all be the losers, and any positive initiative, including the 2030 Agenda itself, would be left in the gutter.

In addition, the direct and indirect effects of climate change will drive an increase in forced (internal and international) migrations, but human movements will occur mainly to neighbouring countries, which will increase the disproportionate urban growth of many cities and, with it, the vulnerabilities of migrants, negatively impacting the well-being of all.

Given the above, the migration-sustainable development tandem must be revisited since there are no possible clear-cut or *a priori* affirmations. Recent studies show how co-development becomes a naive idea when in practice there are no successfully managed migration policies. Without such policies, the hypothetical virtuous circle of co-development becomes a vicious circle, since poor migration management policies have a negative impact on migrants, on their countries of origin, on host and transit countries and therefore also on the Goals of the 2030 Agenda.

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<sup>17</sup> S. Smith (2018) *La Ruée vers l'Europe. La jeune Afrique en route pour le Vieux Continent*, Paris, Grasset : 15. (cited by F. Herán (2018) "Europe and the spectre of sub-Saharan migration". Population & Societies, no. 558, September 2018 [www.ined.fr](http://www.ined.fr)).

<sup>18</sup> F. Herán (2018): "Europe and the spectre of sub-Saharan migration". Population & Societies, No. 558 • September 2018 [www.ined.fr](http://www.ined.fr). Héran, critical of alarmist forecasts, explains that there are variables that must be taken into account: on the one hand, compared to people from other regions of the world, sub-Saharan Africans are less likely to migrate, precisely because of the poverty of the area. On the other hand, when sub-Saharan Africans emigrate, 70% move to another sub-Saharan country, and only 15% emigrate to Europe, with the remainder divided between the Gulf countries and North America. Herán also maintains that the extreme poverty of sub-Saharan Africa prevents migration flows from increasing very noticeably and gives the example of the current case of Nigeria. With a population of 190 million people, half of the population of West Africa, only 1% of Nigerians live abroad. Id.the I be examined some other time.

<sup>19</sup> C. Gortázar Rotaeche (2017) "La Contradicción de Europa...". Op.cit.: 135-143.

## 2. The 2030 Agenda and migrants

The fact that people are chronically mobile<sup>20</sup> leads us to the present scenario, according to which in 2015 approximately 244 million people were international migrants (3.3% of the world population). There are a further 740 million internal migrants (almost 1000 million according to the recent FAO report)<sup>21</sup> who have not reached an international border<sup>22</sup>. Of these people, only 65 million would be refugees or forced internally displaced persons.<sup>23</sup>

It is important to recall these figures because, at times, public opinion seems to have the impression that the percentages of those who have migrated across an international border are much larger. The analysis of what kinds of information drives public opinion, and what responsibility we all have towards the quality of our understanding of the reality in which we live, will be examined at a later date. International migration control policies being carried out in such an ill-advised manner<sup>24</sup>, the outsourcing of border controls<sup>25</sup> and the use of large sums of money for these purposes<sup>26</sup> may be at the origin of misadjusted perceptions, and are leading us away from the need to exchange many of the control policies for more suitable management policies. Any minimally aware actor would, for example, focus their efforts on dealing with the causes and consequences of *internal* migrations, such as the collapse and abandonment to their fate of people in large cities.

2016 brought two milestones of great relevance for the future management of migrations. On 1 January 2016, the 2030 Agenda for Sustainable Development came into force. This agenda formulated a plan to achieve seventeen Sustainable Development Goals (SDGs) over a period of fifteen years, establishing 169 specific targets for that purpose. Indeed, the 2030 Agenda aims to eradicate extreme poverty, as well as to achieve

<sup>20</sup> L. Malkki (1992): "National Geographic: the rooting of peoples and the territorialization of national identity among scholars and refugees", *Cultural Anthropology*, no. 7 (1).

<sup>21</sup> FAO (2018). *The State of ...* Op. cit.

<sup>22</sup> *Supra* note 1.

<sup>23</sup> *Supra* note 2.

<sup>24</sup> T. Gammeltoft-Hansen and J. Vedsted-Hansen (2017), *Human Rights and the Dark Side of Globalisation: Transnational Law Enforcement and Migration Control*, Abingdon and New York, NY: Routledge.

<sup>25</sup> S. Carrera, N. El Qadim, M. Fullerton, B. Garcés-Mascareñas, S. York Kneebone, A. López Sala, N. Chun Luk and L. Vosyliūtė (2018): *Offshoring asylum and migration in Australia, Spain, Tunisia and the US, lessons learned and feasibility for the EU*. CEPS (Brussels). May 2018.

<sup>26</sup> PorCausa (2017) *La industria del control migratorio ¿Quién gana en España con las políticas fronterizas de la Unión Europea?* Fundación PorCausa de investigación y periodismo. October 2017.

sustainable development in economic, social and environmental terms. In turn, on 19 September of the same year, the New York Declaration for Refugees and Migrants was adopted, marking the beginning of the preparation of two global compacts to be negotiated within two years: one of the compacts deals with Migrations (and it is promoted by the special representative for International Migrations)<sup>27</sup> while the other, entrusted to the United Nations High Commissioner for Refugees, focuses on Refugees.<sup>28</sup>

Inevitably the Global Compacts are closely linked to the 2030 Agenda. There is no doubt that the 2030 Agenda on sustainable development also has great relevance in regard to the future and much desired harmonious management of global human migration. Any reflection on the 2018 Global Compacts must therefore examine the migration-development link from the perspective of the 2030 Agenda for Sustainable Development.

The 2030 Agenda makes explicit reference to migration only in three of the targets of three of its goals (SDG 8.8, SDG 10.7, and SDG 17.18). It is worth adding the SDG 5.2, SDG 8.7 and SDG 16.2 targets, which, although not mentioning migrants, refer to victims of trafficking, forced labour and sexual or labour exploitation (as is well known, a large number of these victims are migrants).

The starting point is undoubtedly Goal 10, which is “to reduce inequality within and among countries”, whose target 7 (SDG 10.7) includes: “The facilitation of safe, regular and responsible migration and the implementation of well-managed migration policies”. The 2030 Agenda correctly sees migration as a tool for reducing inequalities between and within countries. However, the Overseas Development Institute points to the lack of reference to migrations in four other targets in the same objective<sup>29</sup>, as well as in many other targets of the different SDGs. The SDG mentions up to 32 targets in which the migration and development

<sup>27</sup> E. Guild analyzes the 2018 GCM in a separate chapter of this publication. She recalls that, although the Global Compact includes the commitment of “not backing down” with regard to the standard of pre-existing human rights’ obligations binding the states, nevertheless, she understands that these standards are incorporated ambiguously in most of the goals of the Compact. Therefore, much will depend on the political will of the different actors that must enforce it. E. Guild “The UN Global Compact for Safe, Orderly and Regular Migration and International Human Rights Law”.

<sup>28</sup> The final draft of the GCM was approved on 13 July 2018 and an Intergovernmental Conference is scheduled for 10 and 11 December 2018. The GCR was presented in September 2018 in the Annual Report of the UNHCR to the United Nations General Assembly. [systeming to en eliminated.lth](https://www.unhcr.org/press/2018/09/2018-annual-report.html).

<sup>29</sup> ODI (2017) Migration and the 2030 Agenda for Sustainable Development . London [www.odi.org](http://www.odi.org): 10 (in targets: 10, 1; 10, 2; 10.3 and 10, 4).

relationship should have been made explicit, whilst regretting that the migration-development link does not appear transversally throughout the 2030 Agenda.<sup>30</sup>

Regarding Goal 8, “Promoting inclusive and sustained economic growth, full employment and decent work for all”, it should be mentioned that target number 8 (SDG 8.8) recognizes the need to: “protect the rights of migrants and promote safe work environments for all workers, including migrant workers, particularly migrant women and those with precarious jobs.”<sup>31</sup> The fight for decent work is ever-present in the instruments of the ILO but until now has had an unsuccessful trajectory given the high number of people in the world who are or who may be victims of labour exploitation and other types of abuse. Obviously, this issue also has a direct link with the absence of efficient migration management policies, since this is precisely the reason for the existence of migrant workers in a highly vulnerable situation. Many international migrant workers in situations of labour exploitation do not disclose the identities of their exploiters for fear of possible expulsion from the territory of the country of destination, as they are in a situation of administrative irregularity as foreigners (and, therefore, also as workers).

There are three targets of different SDGs that refer to the elimination of trafficking, exploitation, forced labour and, most especially, to the worst forms of child labour. ODS 8.7 refers to the need to “take immediate and effective measures to eradicate forced labour, end modern slavery and trafficking in human beings, and ensure the elimination of child labour, including the use and recruitment of child soldiers and, by 2025, end child labour in all its forms”.

For its part, SDG16.2 proposes: “ending abuse, exploitation and trafficking and any form of violence against minors”<sup>32</sup> and SDG 5.2 “the elimination of all forms of violence against women both in the public and private areas, including trafficking and sexual or other exploitation”.<sup>33</sup>

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<sup>30</sup> Id.

<sup>31</sup> Especially in: ILO (2005) *Multilateral Framework on Labour Migration, subtitled Non-binding principles and guidelines for a rights based approach to labour migration*. These non-binding principles were adopted in 2005 in a triangular framework (governments, employers and unions) and presented at the 2007 Global Forum on Migration and Development. GFMD, Global Forum on Migration and Development (2007). Summary report, first meeting, 10–11 July (Brussels).

<sup>32</sup> SDG 16: “Promote peaceful and inclusive societies for sustainable development, facilitate access for all to justice and create effective, responsible and inclusive institutions at all levels”.systeming to en eliminated.lth.

<sup>33</sup> Trafficking, as known, does not require as a necessary element the status of foreigner of the victim of the crime, but, in fact, most trafficking crimes occur transnationally.

As I have mentioned above, there is no reference to the possible migrant status of its victims. The crime of trafficking and exploitation may be national or international. However, the high percentage of minors and migrant women subjected to trafficking and exploitation requires the adoption of state policies that protect these particular groups, whilst also preventing many of these women and migrant minors from being placed at the mercy of mafias and traffickers.

In addition to the aforementioned targets, an “indicator” of SDG number 10 (10c) makes very specific reference to the requirement to reduce the transaction costs of remittances.<sup>34</sup> But there is a need for further discussion of the issue, which would go beyond reducing its costs and improving the transparency of the process.<sup>35</sup> Remittances must be handled appropriately so that the link between migration and sustainable development may be beneficial. Not all remittances sent by immigrants have the same effects on the development of their countries of origin<sup>36</sup>. Along with financial remittances, migrants also transfer what have been called “social remittances” that can be the breeding ground for political and sociocultural changes. In the words of Abad, “(...) for the implementation of values and democratic practices, recognition of rights and institutions guaranteeing these rights, the strengthening of gender rights or demands for efficient and accessible institutions in areas such as education or health are required”.<sup>37</sup>

Finally, within the last SDG 17 on “Strengthening the means of implementation and revitalizing the World Alliance for Sustainable Development”, target number 18 (SDG 17.18) makes specific reference to the need to significantly improve the databases so as to make them high quality, accurate and up-to-date: “breaking down data by income, gender, age, race, ethnicity, immigration status, disability, geographical location, and other relevant characteristics in different national

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<sup>34</sup> The SDG 10.c implies that by 2030 the costs of remittance transactions will have been reduced to at least 3% of remittances and that corridors or routes of remittances amounting to 5% of the amount sent will have been eliminated.

<sup>35</sup> S. Castles (2000), “International migration at the beginning of the twenty-first century: Global trends and issues”. *International Social Science Journal*, no.165: 269-281; A. Portes (2007) “Migration, Development, and Segmented Assimilation: A Conceptual Review of the Evidence”. *The Annals of the American Academy of Political and Social Sciences*, 610: 73.

<sup>36</sup> According to Abad, if remittances “promote patterns of conspicuous consumption, particularly of imported goods, their effects could be null and even negative.” L.V. Abad Márquez (2005) “Impacto de la emigración y las remesas en el desarrollo. Un enfoque desde las “condiciones iniciales”, *Migraciones*, no. 18: 126.

<sup>37</sup> L.V. Abad Márquez (2005) “ Impacto de la emigración y las remesas ...Op. cit: 126.

contexts.” This is the fourth (and final) time that an SDG expressly refers to migrations.

However, despite these timely mentions, which are evident from a thorough reading of the 2030 Agenda, it is clear that what is missing is any mention of the tendency of migration to cut across categories. The Overseas Development Institute<sup>38</sup> has analysed the links (not mentioned in the 2030 Agenda) between migration and sustainable development in 13 of the 17 SDGs.

This analysis shows that migration is not a development “problem” that must be solved (as it might seem from SDG 10.7), but rather a mechanism that is essential to the achievement of sustainable development, a mechanism that needs to be well managed.<sup>39</sup> Thus, the ODI report fails to mention migration and the link between migration and sustainable development in:

- five (5) targets in SDG 1, on the need to “End poverty in all its forms around the world”;
- one (1) target in SDG 2, on the need to “End hunger, achieve food security, improve nutrition and promote sustainable agriculture”;
- two (2) targets in SDG 3, on the need to “Guarantee a healthy life and promote well-being for all ages”;
- five (5) targets in SDG 4, on the need to “Ensure inclusive, equitable and quality education and promote lifelong learning opportunities for all”;
- two (2) targets in SDG 5, on the need to “Achieve gender equality and empower all women and girls”;
- two (2) targets in SDG 6, on the need to “Guarantee water availability, its sustainable management and sanitation for all”;
- two (2) targets in SDG 8, on the need to “Promote inclusive and sustained economic growth, full employment and decent work for all”;
- one (1) target in SDG 9, on the need to “Build resilient infrastructures, promote inclusive and sustainable industrialization and foster innovation”;
- four (4) targets in SDG 10, on the need to “Reduce inequality within and among countries.”;

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<sup>38</sup> Overseas Development Institute (2017) *Migration and the 2030 Agenda for Sustainable...*Cit. This think tank has carried out eight reports in which different experts address the opportunities of the 2030 Agenda to achieve a fairer and more intelligent migratory system.

<sup>39</sup> Id:6.

- one (1) target in SDG 11, on the need to “Make cities and human settlements inclusive”;
- four (4) targets in SDG13, on the need to “Adopt urgent measures to combat climate change and its effects”;
- two (2) targets in SDG16, on the need to “Promote peaceful and inclusive societies for sustainable development, facilitate access for all to justice and create effective, accountable and inclusive institutions at all levels” and, finally,
- two (2) targets in SDG 17, on the need to “Strengthen the means to implement and revitalize the Global Partnership for Sustainable Development”.

Given these deficiencies, it is worth emphasizing two of the principles that the 2030 Agenda contains, so that we can align it with the constant link between migration and development:

- The “leave no one behind” principle is a key principle when taking into account the vulnerabilities of migrants, especially when working outside the formal market;
- The principle of due and loyal collaboration among the different actors involved at international, regional, national and local level. Of course, both principles are also interrelated. Without a well-managed migration policy, correctly coordinated by the different actors, the vulnerability of migrants increases. For this reason, I am going to use these two principles to try to shed light on the questions that I posed in the first epigraph.

### 2.1. The “leave no one behind” principle

The essentially cross-category nature of migration in the 2030 Agenda provides us with several examples in which the “leave no one behind” principle must be closely observed. I choose two because they are especially significant, although evidently they are not the only ones:

#### a) Migration, sustainable development and the access of migrants to basic public services

It is common knowledge that the access of the migrant population to public services is weak in the international community in general and also within the European Union. For reasons of time and space, I will refer to only two of the most fundamental: the access of immigrants to

education, and public health. Both rights are crucial not only for migrants but also for the host societies.<sup>40</sup>

Access to education for migrants (especially minors) is essential not only for the fulfilment of SDG 4 goal, but also for attaining most of the other the goals of the 2030 Agenda. The multiplier effect of education with respect to the possible enjoyment of other human rights and, ultimately, the right to development is also clear. In addition, the access of migrants to education has powerful generational effects. The data shows an important correlation between the results of second-generation migrant students and the educational background of their parents.<sup>41</sup> It follows that the successful integration of first generation migrants into the education system can lead to a virtuous circle of integration into the host society through the generations. In addition, remittances from migrants sent to their families may fund the education of their children.

Regarding the vulnerabilities between the migration-development tandem and education, the most significant has to do with migrants in an irregular administrative situation. It is key to strengthen investment in language skills programmes for migrant students, programmes which should be combined with support for continuous learning in their language of origin.<sup>42</sup> In addition, as has been repeatedly maintained, segregation is highly counterproductive and hinders the integration of children and, especially, their learning of the language of the host country. Both immigrant and native children must be educated in diversity, for which reason the host societies must train and improve the preparation of teachers and tutors regarding the need for, and advantages of, a diverse society.

Neither should we forget that if the host society lack the necessary means, structures and resources, the arrival of immigrant children may have a negative impact on all them: migrant and native children and educational systems of the host countries.<sup>43</sup>

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<sup>40</sup> In order to quieten xenophobic discourse, it is appropriate to recall the benefits that respect for the rights of migrants have on the native population, despite the fact that compliance with obligations recognized by international human rights law should of itself be a sufficient reason. November with human migrations.

<sup>41</sup> S. Nicolai, J. Wales y E. Aiazzi (2017) "Education, Migration and the 2030 Agenda for Sustainable Development": ODI Overseas Development Institute. *Migration and the 2030 Agenda for Sustainable...Cit*: 65.

<sup>42</sup> Ibid. Op. cit: 69.

<sup>43</sup> Human Rights Watch (2016) 'We're afraid for their future'. Barriers to education for Syrian refugee children in Jordan: <https://www.hrw.org/report/2016/08/16/>

As regards the basic right to health, the 2030 Agenda, in target 3.7, explains that “universal health coverage must be achieved, which includes access to essential health care services and to effective, quality and affordable safe essential medicines and vaccines for all.” Of course, this includes migrants, but in implementing this target, the particular vulnerabilities of migrants should be anticipated, addressed and neutralized. Currently, few countries offer public health for all.

There are many other situations in which migrants may be at an obvious disadvantage. With regard to access to the different protections derived from social protection systems, migrant workers may lose eligibility for social protection in their country of origin and may also sometimes find themselves without the legal right to social protection in the destination countries. According to ILO data, 70 countries out of the 120 analysed have legal provisions for granting equal treatment to nationals and migrants with respect to the contribution and benefits of social security.<sup>44</sup>

But even when migrants can contribute and receive benefits in the country of destination, they often cannot export those benefits to another country (to a third country or to their country of origin, if they return). It is necessary to implement further agreements between states to ensure the portability of the benefits obtained during the migration periods. On the other hand, migrants’ access to the system of social contributions and benefits is much higher in high-income countries than in low and middle-income countries and, of course, bilateral agreements for the portability of benefits are much more frequent between high-income countries.<sup>45</sup>

In this regard, as in education and health, migrants who work outside the formal economy – and irregular migrants in general – are the most vulnerable groups. It should be a priority to open channels to include migrants as taxpayers in the national social protection systems. The integration of all migrant workers into the formal economy also generates higher tax contributions and, thus the general well-being of the society of the host country.

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<sup>44</sup> C. Van Panhuys, S. Kazi-Aoul, G. Binette, G. (2017) *Migrant Access to Social Protection under Bilateral Labour Agreements: A Review of 120 Countries and Nine Bilateral Arrangements...* ILO, Geneva.

<sup>45</sup> The main ILO conventions that seek to harmonize and raise standards in this area are: Convention No. 118 of 1962 on equal treatment (social security); ILO Convention No. 157 of 1982 on maintenance of social security rights and Recommendation No. 16 of 1983 on maintenance of social security rights. See the rate of ratifications or accessions in: [www.ilo.org/ilolex/english/convdisp1.htm](http://www.ilo.org/ilolex/english/convdisp1.htm)

**b) Migration, sustainable development and the special vulnerability of migrant women and minors**

Migration empowers women when their migration project is carried out through regular channels. However, if it occurs through irregular channels, they are more at risk of abuse, violence, sexual or labour exploitation than their male counterparts. To compensate for these vulnerabilities, it is necessary to facilitate orderly, safe and responsible migration, implementing well-managed and planned migration policies, in alignment with the other objectives of the 2030 Agenda. Thus, for example, SDG 5.6 on “Universal access to sexual and reproductive health and rights” is a goal with significant consequences for migrant women. It is important to stress how the successful handling of their fertility and birth control issues can empower women in any society. Again, this assimilation of their reproductive rights impacts beneficially on the education of the second generation of migrant girls, and the benefits *sine die* can be extended.

SDG 8.8 recognizes the need to “protect the rights of migrants and promote safe working environments for all workers, including migrant workers, particularly migrant women and those with precarious jobs.” SDG 16.2 states the need “to avoid abuse, exploitation, trafficking and all violence and torture against children.” These objectives bring us closer to the tragedy of victims of human trafficking<sup>46</sup> and their sexual or labour exploitation (or the removal of organs)<sup>47</sup>, where the victims are often women and underage girls or boys. The fight against trafficking and sexual or labour exploitation (or others) must start from the holistic understanding of crimes, through the so-called 4Ps (prevention, protection, persecution and partnerships). The consent of the victim will not be taken into account due to the means used to vitiate it and, when the victim is a minor, consent will be irrelevant even when no illicit means have

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<sup>46</sup> The crime of trafficking requires, as is known, a total of three elements: an act, a means and an end. Thus, any of the following actions constitute crime of trafficking: capture, transport, transfer, hosting, reception, exchange or transfer of control of a person; whenever any of said actions are carried out by any of the following means: threat or use of force, abduction, fraud, deception, abuse of power or vulnerability (when the person has no real or acceptable alternative but to submit to abuse). Finally, it is also necessary that any of the aforementioned acts, carried out through any of the aforementioned means, be carried out for any of the following purposes: exploitation of the prostitution of others or of other forms of sexual exploitation; forced labour or services, including begging; slavery or practices similar to slavery; servitude; exploitation to carry out criminal activities or for the removal of organs. See article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, done in New York on 15 November 2000 (Palermo Protocol). November with human migrations.

<sup>47</sup> In practice, the crime of trafficking (which occurs without the exploitation itself having taken place) happens alongside other crimes: sexual and labour exploitation, slavery – or practices similar to slavery –, forced begging, forced delinquency or removal of organs.

been used (in trafficking against minors, the crime type only requires two elements: the act and purpose).

Taking into account the characteristics of the crimes, anti-trafficking regulations and policies must be clearly distinguished from the legal treatment regarding control of the border and illegal traffic of foreigners or smuggling. This necessary distinction must be carried out in such a manner because the legal rights protected by one or the other norm are clearly different: legitimate state interests in the case of smuggling, and the protection of fundamental rights in the case of trafficking. However, migratory legislation cannot ignore anti-trafficking legislation, given the high percentage of immigrant victims (those who are captured in a different State from the one in which they are finally exploited). It has been proven that there is a significant impact of a more or less restrictive migration policy on the greater or lesser demand for trafficking. When immigration policies are restrictive, trafficking increases, and when they facilitate freedom of movement, both trafficking and smuggling of human beings decrease.<sup>48</sup> Meanwhile the regulation of the labour market also influences human trafficking and exploitation. It seems that the more highly regulated a sector, the lower the demand for trafficking and vice versa.<sup>49</sup>

Finally, in order to achieve a coherent and holistic approach based on the so-called Human Rights approach and the effective protection of the current or potential victim, it is necessary to start addressing the issue of the demand for trafficking<sup>50</sup>. Strategies for leading society and the law to collaborate on the fight against trafficking should be explored, particularly how to fight it by attacking sexual and sexual-labour exploitation.

Likewise, due to the evident dilution of accountability fostered by new technologies. communication and information technologies legislation is essential to the fight against the trafficking and exploitation of migrants, especially to combatting the demand called “easy” (easy2 demand).

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<sup>48</sup> C. Rijken and E. De Volder (2009) “The European Union’s Struggle to Realize a Human Rights-Based Approach to Trafficking in Human Beings. A Call on the EU to Take THB-Sensitive Action in Relevant Areas of Law”, Connecticut Journal of International Law, V. 25.

<sup>49</sup> In my opinion, this principle should be considered with respect to the possible regulation of paid sexual services.

<sup>50</sup> C. Gortázar Rotaèche. “La trata de seres humanos con fines de explotación sexual: prevención, protección y persecución; ¿Criminalización de la demanda?” (2015) Spanish Senate Appearance before the Subcommittee for the analysis and study of trafficking in human beings for the purpose of sexual exploitation, Madrid, 17 April 2015.

Regarding the vulnerability of migrant women, another point needing attention is that of domestic workers (a sector where women abound, many of whom are migrants).<sup>51</sup> Again, as in the previous section, it is crucial to allow migrants to work formally and contribute to national social security systems. The advantages for the countries of destination (increasing the tax base) and for the social and economic integration of migrants are evident. In the end, good for them means good for their families, for their communities and for their countries of origin.

## **2.2. The principle of loyal collaboration between the different actors involved**

In the above section I have sought to emphasize that the constant link between migration and sustainable development must be present in almost all aspects of the implementation of the 2030 Agenda, so that when migrants encounter situations of vulnerability, this does not affect the entire process of sustainable development. However, the advantages of this migration-development link can only be achieved via the adoption of well-managed migration policies and, in order to achieve this, coordination between the different actors involved at international, regional, national and local levels is essential. In other words, the vulnerabilities of the migration-development tandem mentioned above – and many others – will not disappear without such coordinated management.

Thus to address the vulnerabilities of migrants, cross-category cooperation amongst all the different universal, regional, national and local actors is needed. Multilateral, renewed and updated) agreements of the IOM and the International Labour Organization (ILO) on migrant workers and of UNHCR for refugees are key. In addition, more and better bilateral agreements are called for in many areas (for example, in the portability of social benefits). Economic institutions also have much work to do. Regional organizations and States must harmonize legislation and policies on social protection, education, public health, gender-oriented migration policies, and new migrant refugees in need of protection; and additionally all these issues require local implementation.

One of the more interesting proposals of the 2030 Agenda (SDG 17) is to improve the collection of data and disaggregate it in order to identify

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<sup>51</sup> Spain is not yet a party to ILO Convention No. 189 of 2011 on domestic workers.

and neutralize the gaps in the access of migrants to basic social services, such as education and health, protection from discrimination and violence against migrant women. There are certain risks. For example, in some receiving countries (especially in Europe) development aid is used as part of a broader strategy to deter migration, which raises many concerns; not only does it render its intended purpose ineffective, but it also creates the risk of public misinformation about the true relationship between migration and development.

The Global Compact on Migration will be agreed at the end of 2018. The SDG agenda will last another 12 years and could become the instrument for the reinforcement and achievement of these goals – provided that alliances are reached at all levels, including with the private sector, with workers' unions, with employers' organizations, and with governmental and non-governmental organizations. All this should take place at the local, national, regional, and global levels.

### **3. Recapitulation**

In this paper, I have reflected on the conditions under which migration contributes to the reduction of poverty, to a decrease in inequality and to sustainable development; I have also discussed how the 2030 Agenda can contribute to improving these conditions.

I started by recalling figures and data that question the simplicity of the approach towards the co-development concept, according to which migrations (especially international ones) contribute to the development of the countries of origin, destination or transit. I have also sought to neutralize the disinformation that, from unrealistic, and even consciously distorted positions, alerts us – whether by excess of information or by its absence – to the true relationship between migrations and sustainable development. How many migrants are there? Why do they move? What should governments of origin and destination do to ensure that these human movements can contribute to reducing inequalities within and between different countries? What about the collaboration of the the remaining actors?

Regarding the 2030 Agenda, I have used the studies (mainly the reports for each item presented by the ODI in 2017) that reveal how the migration-development relationship is largely absent from the Agenda. Given these absences, I have emphasized two of the principles that the 2030

Agenda contains, with the purpose of realigning it to the necessary link between migration and development: on the one hand, the “leave no one behind” principle as of particular importance when taking into account the vulnerabilities of migrants; and on the other the principle of due and loyal collaboration between the various actors at international, regional, national, and local levels.

I am therefore particularly concerned that the impact of the issue on migration on the Agenda for Sustainable Development does not appear in such important discussions as those regarding irregular migrants’ access to basic services. In this context, major problems arise (people in an irregular administrative situation are often dismissed, out of sight and right), problems which almost always derive from the friction between the old State sovereignty and the universality of rights.

On this latter issue, which I have already dealt with elsewhere, it is worth recalling the relationship between international norms on the one hand, and purely national norms on the other. If states have no interest in being bound by treaties and other international norms, then they either should not adhere to them – or denounce them and withdraw, if they have previously consented to them<sup>52</sup> – or they should show their persistent objection to the prevailing international norms. Having it both ways cannot be an option.

I have also wished to examine, as an example of the need “to leave no one behind”, migrations from a gender perspective, that also take into account the best interests of children. The trafficking and sexual and labour exploitation that occurs with immigrant women and minors is a frightening example of an inadequate approach. In brief, vulnerabilities on the part of migrants must be addressed to ensure that migrations can play a key role in the area of sustainable development in the international community.

The second axis that I wanted to highlight for ensuring that the migration-sustainable development tandem functions is that of cooperation and coordination between all the actors involved: the states of origin, transit and destination, and international organizations of universal and regional scope; non-governmental organizations and associations; the private sector; employers, unions and organized civil society. I have also emphasized that such coordination must occur at all levels – universal, regional, national, and local.

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<sup>52</sup> Although some of the norms on international human rights law are already part of the *ius cogens*.

#### 4. Conclusion

Human migration is as necessary and beneficial for sustainable development as it is also inevitable: because it is inherent to the human condition. The relationship between migration and development is not as complex as it seems: when it comes to the effective implementation of migration-management policies, everything depends on the political will of the actors involved. Human movements cannot be controlled, at least not as some actors may desire; but they can and should be managed, unless the aim is to achieve chaos, misery and the widespread violation of people's rights.

If the appropriate policies are employed, then migration operates as a crucial and probably irreplaceable tool in the fight against poverty and inequality, with beneficial effects for all the actors involved: for migrants and their environment; for the countries of origin; and for the countries of transit and destination. However, if the different actors operating in the international community (mainly States, but also international organizations, non-governmental organizations, the private sector, trade unions and associations of various kinds, civil society, etc.) fail to act in coordination in the defence of the common good – so that co-development can operate without obstacles that prevent its beneficial circularity to reduce poverty, inequality and contribute to the enjoyment of the human rights of all – then the virtuous circle becomes a vicious circle.

The poorer a country, the less likely it is that its inhabitants will migrate to distant countries. They are much more likely to migrate to neighbouring countries which, more often than not, are equally poor. Development aid does not slow migrations, and indeed can increase them. The most desirable option is to arrive at a global model of co-development in which human migrations are a choice rather than a necessity.

This requires, first, taking measures to prevent the production of new situations of refugees and forced migrants. Regarding existing refugees, it is necessary to think about increasing the resettlement quotas in OECD countries and making these resettlement quotas proportionate, while the refugee fora (proposed by the Global Compact on Refugees 2018) should take control of recording the best or worst compliance with the resettlement commitments that the States have (voluntarily) accepted. There are many ways of imagining a system which is both flexible and effective.

Other lasting solutions for refugees would be repatriation or local integration. While repatriation must depend on a safe return, much remains to be said about local integration. The advantages for refugees are innumerable when they are integrated near their place of origin, for obvious linguistic, social, religious or other socio-cultural reasons. But managing such local integration appropriately requires a significant contribution of materials, techniques and training on the part of the country that assumes local integration. Of course, this solution should be managed by facilitating proportional quotas of economic and other aid.

Obviously, the funding assigned to the reception of migrants and refugees should not be drawn from that assigned to humanitarian assistance in the event of catastrophes. Likewise, humanitarian aid cannot be confused with development aid or official development aid: if it is, then the countries of first reception – close to the area in conflict – will have to deal with serious confrontations with those local populations who see their public services cut.

Regarding migrants and refugees as a workforce, it is necessary to provide channels for secure access to their mobility. Migrant workers especially must be protected from exploitation and abuse. This is only possible if these workers are admitted to the formal market. Such admission is economically beneficial for the economies of the States of destination. Selective immigration policies regarding qualified migration can result in the plundering of the most valuable asset of the countries of origin and have at times indeed been used to justify discrimination and the denial of the rights of less skilled migrant workers.

Several other significant errors seem to lie behind certain migration policies. For example, the EU seems to wish to outsource its responsibility for compliance with obligations to migrants themselves (especially those that meet the requirements to be refugees or people with other international protection), and by doing so is testing its commitment to human rights.

In order to carry out the seventeen Sustainable Development Goals that the 2030 Agenda proposes for 12 years from now, it is essential not to neglect the indicators of the cross-category presence of human migrations as they currently fail to occur in almost every goal in many of the proposed targets. In the opinion of some, including myself, the 2030 Agenda has missed the opportunity to faithfully portray the holistic

scenario of this crucial relationship, where taking that opportunity would ensure that the Agenda achieves its purposes.

The GCM is the perfect occasion to emphasise this point of connection between migration and sustainable development as proposed by the 2030 Agenda. It is also an opportunity to come up with strategies for collaboration between the different actors operating at different levels.

**JOÃO PEIXOTO**

*The relevance of migration to the development of the countries of destination: a new perspective on the migration-development nexus*

**1. Introduction**

Migration and development studies have focused on the impact of migration from less developed countries (or the Global South) to more developed countries (or the Global North) on the development of the former (see, for example, Sørensen et al., 2002; GCIM, 2005; Haas, 2010; Brønden, 2012; King and Lulle, 2016). This connection, as will be shown later, is not innocent, and has acted as the guiding thread for much valuable research on the subject. On the other hand, the impact of these same migratory movements on the development of destination countries has attracted less curiosity and resources. The same is true, more generally, of the impact of all other migrations, whether from North to South, North-North or South-South, on the development of sending and receiving countries. In this sense, and to some extent, we can consider that the theme of the relationship between migration and development remains, to a large extent, under-theorized.

The main aim of this paper is to fill some of these gaps, looking in depth at the migration- development nexus, but from the point of view of the development of the receiving countries of the Global North. In addition to a review of the available evidence, highlighting the economic impacts of immigration on these countries and, to a lesser extent, other

development-related impacts, the aim is to update the discussion taking into account recent innovations in concepts and policies in this area, in particular the 2030 Agenda for Sustainable Development.<sup>1</sup> The main results of a recent prospective study carried out in Portugal, in which the importance of migrations for the future of European economies is explored, are also presented. In this case, the impacts that different levels of migration will have on future sustainability will be evaluated, regarding the predictable shortage of work, in total and by levels of qualifications, and the financing of the welfare state.

## 2. Revisiting the migration-development nexus

The migration-development nexus has long been studied by migration theories. Although migratory movements – in this case adopting the notion of international migrations, that is, those crossing the border of nation-states – affect at least two countries, most of the literature has focused only on the flows from the Global South to the Global North and in the development of countries of origin, resorting to a predominantly economic approach (see, for example, Sørensen *et al.*, 2002; GCIM, 2005; Haas, 2010; Brønden, 2012; King and Lulle, 2016). Although this specification is far from obvious, because there are other types of migration (North-North, North-South and South-South) and impacts on countries (both of origin and of destination), it is not surprising to see the association of this discussion with flows from poor countries to rich countries and the development of the poorest sending countries, and not with other flows and the development of receiving countries. In our opinion, there are three reasons for this.

First, the notion of development, although broad and imprecise, has focused above all on the problems of the less developed and developing countries – the Global South. In the terminologies widely accepted internationally, such as those of the United Nations, the terms “developed countries”, “developing countries” and “less developed countries” have been used to refer to different socio-economic levels. This happens both when development is strictly associated with economic variables, a more common practice, or when broader notions such as “human

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<sup>1</sup> <https://sustainabledevelopment.un.org/post2015/transformingourworld>, retrieved on 7 August 2018.

development” (as in the United Nations index<sup>2</sup>) or human freedom and empowerment are considered (Sen, 1999). Of course, with linear scales (“more” and “less” developed countries), in particular those of an economic nature, development deficits refer only to the countries in the lowest positions. Observing the migration-development nexus tends to almost naturally affect flows from less developed countries, assessing the impact of exits on development (more or less negative or positive).

Second, the idea that the development of Southern sending countries is one of the best solutions to migratory pressure directed to the North has been increasingly on the agenda of migration policies (EC, 2015). The notion of a “crisis of control” of migration by Northern countries is now pervasive, corresponding to a structural challenge in receiving countries (Cornelius et al., 2004). It is acknowledged that regulatory difficulties are endemic, resulting from the multiple contradictions involved in migration, the complex set of factors of repulsion and attractiveness, increasing globalization and the practical difficulties of closing borders. It is also believed that despite the various causal factors that explain migration, the economic variables, whether at the level of the rational choices of (potential) migrants or at the level of global income inequalities, condition many of the exits (Massey et al., 1993; Peixoto, 2004). Since the flows from the South are so complex to regulate (or stop), it is often believed that the only truly structural solution to reduce migratory pressure is to focus on the development of the sending countries, eliminating the factors of repulsion.

It is true that it is known that the association between the development of sending countries and the slowing of migration is not automatic. Factors such as the de-structuring of traditional economies, the increase in family resources, the diffusion of wage ideologies, and the improvement of information explain that exits increase at the first level of development, only to eventually decline (Sassen, 1988). This initial increase in the number of departures followed by a subsequent deceleration, has been called migration hump (Martin and Taylor, 1996). It is also true that, for many authors, interconnection trends at global level should lead not to more egalitarian economic development, but to the worsening of structural imbalances, generating a continuous pressure on the exits (Castles and Wise, 2008). And it is still certain that the current policies of the receiving countries tend to deviate from a focus on

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<sup>2</sup> <http://hdr.undp.org/en>, retrieved on 9 August 2018.

development to one on security (EC, 2015). Yet, the only realistic solution for many of today's long-term migratory movements seems to be a reduction of income inequality worldwide. The continuation of shocking gaps in wealth and well-being will continue to generate migration, as has always been the case in the past.

Third, there has been a piecemeal reflection on the economic impacts that immigration has brought to the more developed receiving countries – the Global North – or, in a broader sense, the way immigration has affected their own development. It is true that there is considerable research on the social, political, geographical, and cultural impacts of immigration in receiving countries (see, for example, Penninx et al., 2006; Brettell and Hollifield, 2014; King and Lulle, 2016). There are many studies on the impacts on social cohesion, inclusion, social mobility, second generation, citizenship rights, identity and residential standards, for example. On the other hand, the study of the economic impacts of immigration seems more scarce and dispersed. There is research on specific themes, such as effects on the level of employment and wages, but little comprehensive research on the subject – at least in comparison with research that focuses on the development of the poorest countries. In a sense, it is as if the discussion on the impacts of immigration in the Global North were dominated by sociologists, political scientists, geographers, and anthropologists, leaving little room for economists to intervene.

For these reasons, as mentioned above, it is not surprising that most of the reflection on the migration-development nexus has hitherto had an effect on the impacts that exits have on sending countries. In concrete terms, and looking at the topics that have been examined, there has been a large number of empirical research and theorizing about the impacts of migratory outflows on skilled human resources (the losses – brain drain – or gains, in the latter case through the returns and connection to the diasporas), the role of financial transfers (financial remittances), the effects on modernization (social remittances) and social inequalities, among other issues.

Resorting to the synthesis made by Haas (2010), research in this area has presented several contrasting cycles. It started with a period marked by some optimism in the 1950s and 1960s, dominated by development theories. Later on, it moved to a mostly pessimistic phase in the 1970s and 1980s, with a predominance of neo-Marxist theories that highlighted the negative impacts of emigration. A new, mostly optimistic phase followed, in the 1990s and the beginning of the 21<sup>st</sup> century, close to neo-liberal

doctrines, when migrants became “agents of development” and the virtues of the diasporas were exalted. It was at this stage that a number of international agencies and entities, such as the World Bank, became more involved, focusing largely on the role of remittances. Finally, a more neutral phase took place, where the negative or positive impacts of the exits compelled empirical research, not allowing *a priori* theoretical assumptions. Today, the belief in the positive effects of migration on development is much more moderate than at the turn of the century (Skeldon, 2008).

However, the notion of development has been challenged recently, going beyond the strictly economic concept and the human development strand of the United Nations. The introduction of the Sustainable Development Goals (SDGs) by the United Nations in 2015, through the launching of the 2030 Agenda for Sustainable Development, further broadened the concept.<sup>3</sup> These are now targets that affect various dimensions of development, in social, economic and environmental terms, and which can be applied to both developed and developing countries. Fighting poverty and hunger, defending health and well-being, gender equality, water quality, energy sustainability, decent work, reducing inequalities, sustainable cities, responsible production and consumption, climate action, global partnerships – are some of the objectives that have now been outlined and that require a redefinition of old development models. In the context of reducing inequalities, the regulation of migration is among the goals of development.<sup>4</sup> In this sense, one can argue that the study of the migration-development nexus needs to be done again, by requiring a broader reflection than the one that was done in the past.

### **3. Main impacts of immigration on the development of destination countries**

What are the impacts that migrations have had on the development of the richest receiving countries, the Global North? As we saw in the previous section, much of the research that has been done on migration and development has focused just on South-North migration and the impacts on

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<sup>3</sup> <https://sustainabledevelopment.un.org/post2015/transformingourworld>, retrieved on 7 August 2018.

<sup>4</sup> One of the targets of the Sustainable Development Goal 10, entitled “Reducing inequalities”, is to: “Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well managed migration policies” (<https://www.unric.org/pt/ods-link-menu/31979-objeto-vo-10-reducao-das-desigualdades>, retrieved on 10 August 2018).

the countries of origin. When analysing the impacts on the destination countries of the North, the social, political, geographic or cultural consequences are mainly observed. The many studies available on migrant integration, second generation, cultural identity or residential patterns, among other issues, looking at the trajectories of migrants from Africa, Asia or Latin America, towards Europe, North America or Australia, illustrate this reality well (Penninx et al., 2006, King and Lulle, 2016). On the other hand, studies on the economic impacts of this migration are scarce and scattered – this is what will be reviewed in this section.

Studies that focus on the impacts of other migratory movements in the North, such as North-North and North-South migration, are also relatively scarce. In this context, many flows with little visibility in academic research – and public opinion – occur, such as expatriate movements within the scope of multinational enterprise activities, exchanges of independent skilled workers between rich countries, movements related to cooperation for development, or the traditional emigration from European economically weaker countries to richer countries. However, the latter have gained notoriety when flows from Eastern Europe to other EU countries increased following the 2004 enlargement, as well as the emigration from South European countries following the financial crises in the post 2011.

Given the impossibility of doing an exhaustive state of the art on all available research on the impacts of migration in destination countries in this paper, in the next paragraphs I shall only make a brief review of some contributions on the economic impacts of migration, particularly from the Global South, to the countries in the North. Despite the multi-directional nature of the flows involving Northern countries – receiving and sending migrants to and from many other contexts – and the multidimensional nature of the notion of development, reinforced by the launch of the 2030 Agenda, I believe that it is mainly the dissemination of research on the economic impact of migration from the South on the Global North that is lacking and has prevented a more consistent reflection at this level.

### **3.1. Impacts on economic growth**

The first research strand, more comprehensive, refers to the impact of immigration on the global economic growth of the richer countries. Their results are not convergent, but usually point to positive consequences.

A very recent study by d'Albis, Boubtane and Coulibaly (2018) sought to assess the economic effects of immigration – and of refugee flows – in several European countries<sup>5</sup> between 1985 and 2015. The main variables were GDP per capita, unemployment rate and the balance of public finances. Migrations were measured by means of the migration balance and the number of asylum seekers. The conclusions clearly point to the positive effect of immigration.<sup>6</sup> Per capita GDP growth, for example, may reach + 0.32% two years after the arrival of migrants.

Other studies point to the same direction. For example, Bove and Elia (2017), who present data encompassing over a hundred countries during 1960-2010, concluded that immigration and the resulting cultural diversity are beneficial to the economy of destination countries. Boubtane, Dumont and Rault (2016), in a study of 22 OECD countries during 1986-2006, revealed a positive human capital impact of migrants on GDP per capita and a positive effect of immigration on GDP per worker. Ortega and Peri (2014), when examining the comparative effects of openness to immigration and trade, concluded that immigration has a positive effect on per capita income in the long term, the same not applying to trade. Sanderson (2013), in a study involving over one hundred countries during the 1965-2005 period, found a GDP increase and improved living conditions in destination countries in the long run. Ager and Brückner (2013), with reference to immigration to the US in the 1870-1920 period, revealed that cultural diversity (without the polarization resulting from racial discrimination) explained a further growth of the economy.

Another recent study, focusing only on the Portuguese case, concluded again that immigration had a positive economic impact (Lopes et al., 2018)<sup>7</sup>. The premise adopted was that immigrants (in this case, foreign citizens residing in the country) present patterns of consumption different from natives (in this case, Portuguese). When considering equivalent consumption variations, the former focus their consumption on goods with higher added value and less use of imports; and because

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<sup>5</sup> Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Iceland, Italy, the Netherlands, Norway, Spain, Sweden, Portugal and the United Kingdom.

<sup>6</sup> The writers state: “Our estimates indicate that these shocks [on the flow of asylum seekers and the net flow of migrants] have positive effects on European economies: they significantly increase per capita GDP, reduce unemployment, and improve the balance of public finances (...). The effect of a shock on the net flow of migrants is positive from the year of that shock and remains significant for at least 2 years. An inflow of asylum seekers takes longer to significantly affect the economy (...)” (d'Albis *et al.*, 2018: 3).

<sup>7</sup> <https://www.dinheirovivo.pt/economia/mais-imigracao-da-05-a-ganhar-ao-pib-portugues/>, retrieved on 7 August 2018.

their incomes are lower, their savings rate is lower. The result is that the positive economic impact of immigration can reach 0.5% of the GDP.

### **3.2. Impacts on the labour market**

The second research strand, the most abundant in quantitative terms, is about the impact of immigration on labour markets. In this respect, the first subject that has been studied is the level of labour participation of immigrants. First and foremost, they are generally over-represented in the young adult ages, those where the connection to the labour market tends to be greater. This is due to the selection effects to which immigrants are subjected at the origin and the very nature of the migration process, which constitutes an investment in human capital that takes a long period to have a return (Chiswick, 2000; Peixoto, 2004). Of course, the exception is forced migration flows, which can be dispersed across all ages, and specific flows, such as retirees. In addition to the over-representation of young adults, immigrants tend to have a high propensity to engage in economic activity, i.e. high activity rates (OECD, 2017). This happens more in men than in women, and more in economic migrants than in refugees, but their values are usually close to those of the natives.

As a result, immigration offers significant additional volumes of labour to the countries of destination, both in terms of their quantitative size and their increased propensity to work. Therefore, it is an indispensable basis for economic growth by enabling and enriching various segments of the market. Given the current demographic outlook, which takes into account the decline and future ageing of the populations of the richer countries, with a sharp decline in the working-age population (Peixoto et al., 2017), the positive contribution of immigration can only increase. It is true that some projections of the future labour market point to a growing technological impact, including the result of the advance of artificial intelligence, so labour needs may decrease substantially in the future, making redundant much of current employment (Ford, 2015). Still, more moderate prospects suggest that replacing men with machines will not succeed in a radical way, so the need for workforce will remain in both more and less skilled jobs.

Still in the context of the labour market, the issue that has been studied the most and gathered the less consensus is the impact of immigration on the levels of employment and wages, taking into account the other

participants in the market. The main debate is whether there is complementarity or, alternatively, substitution and competition between immigrant and native workers. The available studies are not conclusive – although they agree that the effects are generally weak. Some authors point out that the effects of immigration on the natives' employment levels can be negative, even when restrictive and protectionist measures are introduced (Angrist and Kugler, 2003, Edo, 2015; Borjas, 2017). Others indicate that the effects tend to be neutral or positive, both in situations of expansion and economic crisis (Carrasco et al., 2008; Dustmann et al., 2008; Fromentin et al., 2017).

Many of the divergences are explained by technical issues, due to the difficulty in discerning the effects of different variables (Dustmann et al., 2016). Others result from the variety of contexts, because different types of flows, with distinct skills profiles, may have different impacts. Nevertheless, complementarity and non-competition seem to prevail, at least in the medium and long term. In these cases, the employment of the natives is not affected by immigration (and may even increase) and the wages of the natives may rise (with upward mobility leading to more skilled jobs).

The explanation for a positive effect of this kind is simple. As has been argued by many authors, the common idea that immigrants “take” jobs from the natives is simplistic, because it presupposes a fixed (non-dynamic) employment volume and absence of segmentation (Ferreira et al., 2004). In fact, the entry of immigrants creates conditions for the expansion of activities and, consequently, the economy, often generating a multiplier effect on employment. Moreover, immigrants enable not only meeting production needs, allowing for greater economic growth, but also they often lead to significant productivity gains, since many are overqualified for the tasks they perform. The existence of segmentation leads, in turn, to a benefit for native workers. In other words, “the assumption of wage dumping presupposes that the labour market is homogeneous”, which is not usually the case (id., *ibid.*: 51).

In this respect, it should be remembered that the insertion of immigrants in the labour market occurs in a segmented way. Since theories about labour market segmentation or the dual labour market have been advanced, it is well known that most immigrants occupy the secondary segments, the most underprivileged and unprotected, although a significant proportion goes to the primary segment and ethnic enclaves, or constitute intermediate minorities (Portes, 1995 and 1999). As the

trend towards an increase in the flexibility of labour relations became structural, there was also an over-representation of immigrants in the most precarious segments (Phizacklea, 2005; Peixoto, 2008). In a word, the numerous contingents of immigrants in the labour markets of developed countries have been able to sustain some economic activities that are not desired by the natives.

According to almost all research works, the negative impacts of immigration on employment and wages occur mainly in individuals with the same level of qualification or in the same type of jobs – usually low-skilled jobs. Instead, the levels of employment and the wages of the most skilled workers – or doing other types of tasks – often increase. Since natives and immigrants are often “imperfect substitutes”, most negative impacts occur only with low-skilled native workers and other immigrants. It is not surprising, in this respect, that some of the most negative reactions to immigration in today’s more developed countries stem from vulnerable social strata, namely workers in productive sectors at risk, poor workers and the unemployed (Bauman, 2016). As the available studies prove, these are also the population groups that have fed the most sectors and anti-immigration rhetoric.

When considering the conditions for immigrants to enter the labour market, almost all studies agree about one thing: the disadvantages are structural, both in general terms and in terms of equal levels of skills (OECD, 2007 to 2014). Much more than natives, immigrants are subject to greater flexibility and precarious work (temporary contracts, seasonal work, atypical hours, informal economy), deskilling (performing tasks that require a lower level of qualifications than the one they hold) and unemployment. Their exposure to recession and economic crisis is far superior to that of natives, as occurred in the period following the 2008 and 2011 economic and financial crises. There are, however, one-off exceptions to the rule of disadvantage: immigrants from other Northern countries, working independently or in the context of transnational companies, can have very advantageous working conditions when compared with national ones (Peixoto, 2008).

Another issue has been examined, still in the context of labour market studies. Although immigrants meet employers’ job demands (recruitment needs), increasing the supply of cheap labour may also generate a demand for specific work (Dustmann et al., 2008). In fact, on the one hand, immigration makes it possible to address situations of work shortages and/or qualifications. The lack of availability of local

labour may have to do with absolute scarcity or with motivational problems, explained by the segmentation theory. In these cases, the demand for labour is higher than the local supply, which leads to the importation of labour, that is, the entry of immigrants is indispensable to carry out activities that would otherwise not be carried out and to allow economic growth.

But, on the other hand, as Dustmann et al. (2008) point out, low-skilled immigration (or the immigration that occupy low-skilled jobs, since over-qualification is frequent) may lead to a diversion of economic activities to strengthen those that are more labour-intensive, in order to take advantage of the availability of cheap labour. In the same vein, immigration can enable economic activities that resist modernization (not incorporating organizational or technological changes to increase productivity) or that can hardly be modernized (i.e. domestic work and caring). In all these cases, low labour costs are the main means found by employers to maximize production. According to the authors, immigration has allowed plenty of cheap labour and avoided resorting to economic and labour market reforms – a situation that has characterized countries such as those in Southern Europe. In these contexts, productivity growth is scarce, and protected and regulated sectors exist side by side with very flexible and precarious sectors.

It is also known that the alternatives to immigration, to increase production, are several (Abreu and Peixoto, 2009). On the labour side, there is population increase (through increased fertility), expansion of activity rates and increase in working time. On the capital side, there are technological and organizational innovations and, in general, the replacement of labour with capital. Nowadays, it is above all technological innovations that are significant. As a result, there is a profound reconfiguration of the economic fabric, with changes in the sectors' structure, changes in productivity, re-composition of occupations and, in some cases, total replacement of work by machines. The evolution of artificial intelligence, in particular, offers perspectives for change that cannot be fully anticipated. Work needs are changing, perhaps significantly decreasing, as well as the skills profile, probably in the direction of a generalized increase in demand for skilled workers. The use of immigration may change in the future, both in terms of the number of immigrants needed and their skills profile.

It should also be borne in mind that resorting to immigration can also be replaced by relocation of production. As it has been for many

years, the mobility of capital is intense and can replace labour mobility (Sassen, 1988). As we have seen above, higher economic growth in less developed countries has not meant, at least in the short and medium term, a deceleration of migration, but may cause it in the long run. Some authors have argued that free trade and technological development, in particular as regards transport and communication, have led to an ever greater relocation of less qualified – and in some cases even qualified – activities. For this reason, the need for low-skilled immigrant labour in the richest countries have declined – with some exceptions, as in domestic work – while the need for skilled labour increases. The result is increasing restrictions on undifferentiated immigration and active demand for skilled immigrants (Peters, 2007).

### **3.3. Fiscal and other impacts**

The third main research strand on the effects of immigration in destination countries has focused on fiscal impacts, in terms of public finances in general, and social security accounts, in particular. In this case, the agreement is widespread: the impact of immigration on destination countries is usually not significant. When it is positive, this is due to the high degree of economic activity and relatively young age structure of immigrants. Even when their tax contributions are low, because they receive low incomes, access to social benefits is also limited, especially since they are usually far from retirement age. When it is negative, the low incomes and social benefits to which they have access explain why their weight in public finances is reduced.

Still, the studies find some important specifications. According to the OECD (2013), the main factors explaining fiscal impacts are the type of immigration and the demographic structure of immigrants. When flows are made up of adult economic migrants, their weight on the state accounts tends to be positive. When involving refugees and families, the contributions tend to be smaller and the benefits greater. The origin of immigrants can also be a differentiating factor: as studies carried out for the UK show, the impact of immigration from other European countries – notably stemming from free movement – is more positive than that from other countries (Dustmann and Frattini, 2014).

The in-depth observation of the impact of immigration on social security in other contexts illustrates current trends. A study carried out in

Portugal (Peixoto et al., 2011), for example, concluded that there were always higher contributions than social benefits from resident foreigners between 2002 and 2010. Although the contributions were small because of the low incomes and the frequent incorporation into informal tasks, the benefits received were even scarcer: sickness and maternity support were rare, low unemployment benefits and old-age pensions almost did not exist. In this regard, it should be remembered that many immigrants do not have immediate access to benefits because their situation is irregular or because they have not contributed enough time. In addition, the reaction to recessive situations, as occurred after the 2011 financial crisis, can take the form of either a return or new migration. Finally, it should be stressed that the current greater pressure on public finances is linked to the marked ageing of the population – a process that can only affect immigrants in the long term.

In addition to the aforementioned research strands, others have focused on the economic impact of immigration. A very productive strand has studied immigrant entrepreneurship, highlighting the significant propensity of immigrants to create their own businesses as a way to maximise some of the resources (personal or collective) available to them, to take advantage of international business opportunities or to create prospects of upward social mobility (more difficult through other means) (Oliveira and Rath, 2008, among others). The result is increased contributions to the economies of the countries of destination (and origin) in the form of more production, more employment, more innovation, and greater variety of service provision, whether or not linked to the ethnic groups of origin. Also in the case of international trade, the gains of trade balances brought about by immigration, partly (but not only) as a result of immigrants' business activities, have often been highlighted (Faustino et al., 2009, among others).

### **3.4. Impacts on development: the SDGs challenge**

From the research outlined above, the idea has emerged that the economic impacts of immigration on destination countries, in particular as regards the flows from less developed countries in the South to the richer in the North, have been generally positive. Nevertheless, concrete effects depend on specific contexts and affect distinct social groups, so generalizations are not prudent. The type of receiving economy, the

degree of labour market regulation, the nature of the welfare state, immigration policies in force, the skills profile of immigrants, the proportion of economic migrants and others (including refugees), and the demographic structure of immigrants – have very different effects. Gains or losses may also be socially unequal. Not all citizens in destination countries can benefit or be disadvantaged in the same way, and not all immigrants integrate with the same ease. A study by Aubry, Burzyński and Docquier (2016) on OECD countries in 2010 revealed that, nevertheless, immigration flows were beneficial to 69% of the OECD non-migrant population and to 83% of the non-migrant population of the OECD's 22 richest countries.

A broader notion of development also requires linking economic variables with others. In this respect, it must be borne in mind that the countries of destination in the North today face high levels of uncertainty (Beck, 1992, among others). The reaction to immigration has varied, but presents increased levels of adversity (Bauman, 2016). Fears of competition for employment and welfare state's benefits have been accompanied by insecurity and fear of terrorism. Xenophobic political doctrines and nationalist policies have rapidly spread in the richer countries. This is not the place to discuss the degree of reasonableness and plausibility of these fears. But even if the research shows that many of today's attitudes are unfounded, they mark the societies of the North in the first decades of the twenty-first century and must be taken into account in the design of policies. Although it is admitted that the incorporation of immigrants is economically positive, their social and political insertion requires considered reflection and moderate policies.

Finally, the new Sustainable Development Goals under the 2030 Agenda require some additional considerations. Some new discussions on the old migration-development nexus should thus be established when we consider global development in general and that of receiving countries in particular. The fight against poverty and hunger brings something new: improving living conditions is one of the main components of the migrants' individual decisions. The creation of political conditions to improve the standard of living in the South is an essential condition for the development of the world and of the receiving countries. The need to create mechanisms for decent work also introduces significant innovations. Policies for the integration of migrants in destination countries that prevent exploitation and marginalization and promote upward mobility are now recommended in this area. The same is true

regarding the creation of conditions that prevent the export of capital for labour exploitation in the countries of the South. The most important consequence in the context of this chapter is that the obligation to improve legal migration channels in the South-North corridor and in others, becomes explicit. And the importance of establishing global partnerships to promote sustainable development requires that international migration be viewed as a multilateral issue that is of interest to all nations involved and can only be regulated together, rather than be limited to the discretion of national policies.

#### **4. Migration and the future of European economies**

The possible impacts of migration on the future of European economies were recently examined in a study on migration and demographic sustainability in Portugal (Peixoto et al., 2017). This study started from the concept of “replacement migration”, widely publicized since the United Nations used it in 2000 (UN, 2000). The concept is based on a relatively simple calculation: given the low levels of fertility in today’s more developed societies, both now and in the foreseeable future, and the resulting decline and ageing trend, what is the value of net migration needed to regain some balance, such as the maintenance of the total population, of the working-age population and of the potential support ratio (the relationship between working-age population and the elderly). Since fertility appears incapable of achieving the level of “generation replacement”, a level of “replacement migration” can thus compensate for it. The results of this calculation, in the original UN study, showed that the levels of immigration – in net terms – needed to maintain those demographic indices would be considerable. In order to maintain the population as a whole, the necessary immigration figures would not be much higher than those in the recent past. However, in order to maintain the working-age population, the figures would need to be very high and, to stabilize the level of ageing, they would reach unrealistic figures.

The concept has been subject to several developments and widespread criticism (cf. Peixoto et al., 2017). From a limited set of countries in the first UN study, it has spread to many other countries in the world. From a methodological point of view, some extensions of the variables under analysis were tested, such as labour force (including levels of labour participation), productivity and economic growth. The extensive criticism

has often pointed to the simplicity of the exercise and to the improbability of the results. Still, some critical stances have overlooked the fact that the UN itself regarded the calculation as an exercise, not necessarily translatable into politics, and that some of the figures achieved were from the outset considered unrealistic. One of the main messages that can be drawn from this study is that the ageing process is irreversible and that to achieve an effective adaptation of societies to the new reality, immigration is far from being considered as a sufficient resource – an argument about which almost all authors agree.

In the recent study mentioned above (Peixoto et al., 2017), other methodological innovations were tested. First, the study sought to update the available information, calculating the replacement migration needed to rebalance the Portuguese demography. In view of the fact that one of Portugal's problems is the combination of a negative natural balance, resulting from one of the lowest fertility rates in Europe, and a reduced or, in some cases, a negative migration balance, as happened in the period that followed the 2011 financial crisis, this exercise is particularly relevant. Secondly, and in an innovative way in relation to the existing research, the study sought to extend this exercise to the workforce the Portuguese economy will need in the future, in total and by qualifications. To do this, we compared: (a) the expected levels of labour force in the future in the absence of migration, in total and by qualifications, applying rates of schooling, employment and unemployment to the expected demographic numbers; and (b) the human resources' needs of the economy, in total and by qualifications, applying expected levels of productivity and possible changes in the economic sectors' structure. In view of the expected demographic deficit, the result of this comparison is the migratory balance necessary to satisfy the labour needs of the economy, in total and by qualification. Thirdly, and also in an innovative way, the exercise was extended to assess the impact on public finances, in particular with regard to the old-age pension system. In this last aspect, the expected impacts of the population without migration were compared with those resulting from the existence of replacement migration.

The results obtained confirm what was established in previous studies and extend them to other areas. First of all, there is a continuing need to guarantee a positive migration input to ensure that some demographic equilibrium remain. As in the more general European case, maintaining the total population requires realistic (similar to recent)

levels of immigration, the maintenance of the working age population requires significantly higher levels (higher than the highest migratory flows in recent decades) and maintenance of the level of ageing seems implausible. In a country whose greatest risk is not excessive immigration but emigration, these figures are important: Portugal's demographic sustainability requires moderating emigration and ensuring sustained immigration, as well as other political measures.

With regard to the human resources required for the Portuguese economy, it is clear that demographic change without migration is unable to guarantee minimum levels of supply. In the absence of migration, the future Portuguese population will not be able to respond to the needs of the economy, both in total and in all levels of skills. Regarding this last point, the most deficient profile will be that of the highly qualified, that is, population with academic degrees. It is followed by that of the low-skilled workers, that is, population with levels of schooling up to basic education. Only the intermediate level of qualifications, corresponding to secondary education, seems to be almost guaranteed by demographic evolution without migration. In other words, in the future there will be a shortage of workers in Portugal. Given the above constraints, immigration may be one of the most obvious solutions to these deficits. Increasing productivity at a higher level than expected, due to increased technological intensification and, in particular, artificial intelligence, may replace some of the needs – but the scenario of productivity evolution advanced in this study was relatively optimistic and many of the current forecasts of technological replacement may prove to be unfounded.

Finally, as far as public finances are concerned, the entry of immigrants – or, in fact, a positive migratory balance – is beneficial. The comparison of the evolution scenario of the population without migrations with the scenario resulting from replacement migration indicates that the second situation is financially more favourable. In the long term, the entry of immigrants benefits, in aggregate terms, the Portuguese public finances, in this case the old age pension system.

Since the observation of the migratory reality makes it necessary to distinguish between entries (immigration) and exits (emigration), it is concluded that the greatest threats to the development of the Portuguese economy are due to the lack of immigrants and excess of emigrants, in other words, a scarce or negative migratory balance, without prejudice to other changes that are also necessary.

## 5. Conclusion

The main objective of this paper was to assess the impact of immigration on the development of the receiving countries of the Global North, thus offering a new perspective on this topic – usually focused on the impacts of emigration on the development of the sending countries of the Global South. To that end, the contributions of various studies on the impacts of immigration on the effects on economic growth, the labour market (employment and wages) and public finances, have been examined. The extent to which a new definition of development, in the light of the 2030 Agenda for Sustainable Development, could imply a new interpretation of immigration in the richer countries was also analysed. Finally, a study on the prospective importance of immigration, taking into account the current demographic deceleration, the expected needs of the economy and the social security system was mentioned.

Studies on the economic impacts of immigration show inconsistent results, although most of them point to positive effects. As for economic growth, studies generally indicate a positive impact, measured using the GDP per capita or other indicators. Increased labour force and rising aggregate consumption are two of the variables that allow growth. As for the labour market, the results are not uniform. The absolute increase in labour force is coupled with a high propensity to economic activity to explain a generally positive effect. But there are doubts about the effects of immigration on employment and the wages of other labour market participants, particularly natives. According to some authors, the effects can be negative, damaging the latter's employment and wages. According to others, the effects are neutral or positive and may even help improve their situation. The notion of labour market segmentation is at the basis of this last argument, since immigrants tend to be more a complement than competitors of the natives. Regarding fiscal effects, the empirical evidence differs according to the migrants' profile and the reception context. The effects of economic immigration are, however, generally positive. Finally, not only there is inequality between the population of the receiving country as regards the beneficiaries and losers with immigration, but also the growing uncertainty of public opinion increases reservations against migratory flows and can undermine social cohesion.

If we look at the consequences of a new definition of development arising from the 2030 Agenda for Sustainable Development, the need

to positively address immigration for the future of the richer countries becomes even more pressing. The objective of achieving a more balanced global income, as well as the need to build global partnerships, creates an obligation to accept and regulate immigration with a view to improving the conditions of receiving and sending countries.

A prospective study on the comparative evolution of demography, economy and public finances, trying to evaluate the role of migration, also led to positive results – although only referring to the Portuguese case. The expected evolution of demography without migration, as well as its subjection to expected rates of schooling and activity, will result in a certain number of working population, by level of qualification. The expected evolution of the economy, calculated through possible changes in productivity and sector structure, will in turn lead to a global need for workforce, by level of qualification. Comparing the numbers allows to conclude that migrants will be needed to fill the demographic insufficiencies. The shortage occurs mainly in the most skilled levels of the working population, although it also happens in the less skilled. Despite the difficulty in establishing evolution scenarios, in this case in relation to a very wide range of variables – demography, schooling, employment, productivity and sector changes –, an exercise of this type is useful to prepare future policies.

In conclusion: the recent discussion on immigration and immigration policies in the more developed countries, especially the one that has visibility in the media and is expressed by public opinion, has been very focused on debates on the social and political impacts. From this point of view, there are many fears and uncertainties regarding immigration flows. The in-depth examination of its economic impacts leads, however, to a much more positive view of this reality. In a time of heated discussions about the impacts of migration, the contributions of the economy are welcome, so that the design of policies is based on good reflection and not treacherous emotions.

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**RUI PENA PIRES  
ANA FILIPA CÂNDIDO**

*Emigration and development  
in the European periphery:  
Portugal's case*

In the literature on the relationship between migration and development, it is common to assess the impacts of migration on countries of origin and on destination countries separately (see Goldin, Cameron and Blarajan, 2011: 162-210). Strictly speaking, this differentiation tends to correspond to another one, made in practice but rarely specified, which involves the overlap between country of origin and developing country, on the one hand, and between country of destination and developed country, on the other. Transposing many of the conclusions of this literature to analyse the impacts of emigration in a country of origin classified as of high human development, like Portugal, is often difficult, requiring a careful selection of what is or is not applicable and analytical readiness to identify and explain particular dynamics of this type of countries: developed countries of emigration.

Portugal's case is not unique, and its study may allow future wider generalizations. In fact, today's international migrations involve all regions of the world (Massey et al., 1998: 2, 4-7; King, 2010: 40-41), with migrations between developed countries being the same in terms of numbers as those between developing countries and from the latter to the former (Goldin, Cameron and Blaranjan, 2011: 122).

## 1. Migration and development

The most common position on the relationship between migration and development emphasizes the benefits of immigration to destination countries and problematizes the effects of emigration in countries of origin. In these countries, it is suggested that emigration would have positive effects mainly through remittances and the increase in relational resources resulting from the formation of diasporas, but that it would have ambivalent effects on the transfer of skilled human resources. This ambivalence is most visible in the wake of the contributions from transnational perspectives which, by highlighting the relevance and longevity of relations between migrants and their societies of origin, have questioned the possibility of examining, separately, migrations and their development impact on the countries of origin and destination (de Haas, 2008: 33-34).

In the case of remittances, as well as in the diaspora-based transnational spaces, there is now a consensus that the benefits largely outweigh the possible costs they generate, so the debate tends to focus on identifying the means of maximizing the desired positive effects. In the case of the migrations of skilled people, the controversy is greater. At first, the focus was on the negative effects of the so-called “brain drain”. Afterwards, the emphasis was placed on the positive network effects and emulation processes supported by the dynamics of transnationalization associated with “brain circulation”. It is recognized, however, that for such circulation to occur, and for the positive effects to overcome the negative effects of the “brain drain”, conditions that do not emerge spontaneously must arise, since they depend on intentional collective decisions and actions that make them possible. We will return to these questions in the next sections.

This type of evaluation of the relationship between migration and development is relatively recent. It followed a pendulum course in which a positive logic of migration as development was emphasised, only to be contradicted by theories that saw international migrations as a means to extend underdevelopment (de Haas, 2012). In this second variant, migrations would benefit only the (central) countries of destination and would contribute to the underdevelopment of the (peripheral) countries of origin. In other words, international migration would stem from social and territorial inequalities at global level and would contribute to the reproduction of these same inequalities (Castles, 2007).

It is true that inequality between countries is still, today, the best predictor of the social position of individuals on a global scale. There is, as Milanovic points out, a citizenship prize, which benefits those born in more developed countries, and a citizenship penalty, which affects those born in less developed countries (Milanovic, 2016: 128-132). The same author points out that, in this context, migration between less developed and more developed regions is a direct consequence of the enormous inequality between countries.

However, there is a growing tendency to assume that, overall, emigration can be a factor of development for the countries of origin, more than a reproduction factor of the underdevelopment that caused it. However, in a country such as Portugal, whose population has been migrating from the beginning of the 20<sup>th</sup> century and that sends out more emigrants than the number it receives, the public and political perception of the effects of emigration, when it is intensified, is very different. The positive effect of remittances is acknowledged but underplayed and the effects of the departure of young people are perceived as negative, both when the emigration of low-skilled workers is concerned and, above all, when the most skilled persons emigrate, leading to the “brain drain” image<sup>1</sup>. The possible relational gains resulting from the constitution of an active Portuguese diaspora tend to be replaced, in public opinion as well as in political practice, by a focus on encouraging the return of emigrants.

Are these perceptions partially or totally wrong or true? Are we, at least in part, faced with erroneous but rational cognitive beliefs because those who share them have good reasons to have them (Boudon, 2003: 57-98)? And in that case, what are these reasons? In the next sections, we will attempt to outline an answer to these questions.

## 2. Remittances and development

Remittances to developing countries now account for more than three times the amount of development aid: about \$ 466 billion in 2017. They also represent roughly the same amount as foreign direct investment in those countries, or rather more if we exclude China from the analysis (KNOMAD, 2018: 3). If we consider global remittances as a whole and not

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<sup>1</sup> Namely in Gomes (2015). For an approach more influenced by the alternative theses of transnationalism, see Peixoto et al. (2016).

only those that are transferred to developing countries, their total amount rose to \$ 613 billion in 2017, according to World Bank data (KNOMAD, 2018: v). In countries with weaker economies and large emigration, remittances have a strong economic impact and may account for more than a quarter of the GDP (for instance, 28% in 2017 in the case of Nepal).

The sending of savings by emigrants to their countries of origin is one manifestation of the intensity and longevity of the social bonds between them and their original social environments, highlighted by the transnational perspectives (Castles et al., 2014: 44; de Haas, 2008: 38; Vertovec and Cohen, 1999). The fact that these ties often involve the transposition into a transnational space of family networks that do not disappear with the physical separation, justifies the arguments presented by the theorists of the new economy of migrations, who emphasize the importance of family and community strategies in the constitution of decisions and emigration pathways (Portes, 2016: 81; de Haas, 2008: 36; Massey et al., 2007: 44).

The remittance flows through the relational channels between origin and destination societies generated by the transnational networks between migrants and their original social environments are one of the most visible contributions of emigration to the development of countries of origin (Massey et al., 2007: 222). The visibility of these flows and their growth, particularly in comparison with other external financial flows between developed and developing countries, has given rise to growing optimism about the importance of remittances as a central element in the relationship between migration and development. In particular, it is argued that remittances are not only the most stable source of external financing for many emigration countries, especially those with the most fragile economies, but also play a crucial role as “social insurance” in these countries, particularly in times of crisis (Kapur, 2004).

Since remittances are private transfers, their impact is generally achieved by means of increase in household consumption (Skeldon, 2008: 8), although, particularly in rural areas, part of what is recorded as consumption may, effectively, be productive expenditure on “livestock, education, housing and land” (Massey et al., 2007: 262). In any case, whether they are used for consumption or productive expenditure, remittances, unlike development aid, are not financial flows to support the collective action of the states as resources to be used in the scope of public policies. Here, the effects of remittances are more indirect, acting mainly through the expansion of the states’ ability to act in the exchange rate plan, the tax revenues they generate, as well as the constitution of

savings that can be directed to investments considered more relevant through the creation of incentive systems, particularly in the tax field. Also indirectly, the multiplier effect of the increase in households' consumption can boost local economies, and therefore investment, regardless of the greater or lesser success of public interventions aimed at the creation of savings and their selective application.

In this context, the debate on the relationship between remittances and development tends to focus on ways of maximizing the effects of remittances on two levels. On the one hand, in terms of reducing the costs of their transfer and the promotion of formal channels regulated for that purpose. On the other hand, in terms of creating incentives for supra-individual methods of raising, saving and applying reserves (Massey et al., 2007: 239-242).

These supra-individual modalities, which allow to maximize the effects of remittances, include the cooperative transfers, called "collective remittances" (Portes, 2016: 82-83). They usually result from the organization of migrants in associations in the diaspora, whose purpose is to help the integration of migrants into host societies and the development of investment activities at their societies of origin, the so-called bottom-up transnationalism (Portes, Guarnizo and Landolt, 1999: 221). Thanks to the horizontal social capital that characterises these associations, migrants are able to carry out projects in their community of origin, fostering local development. Several studies have shown that collective remittances have enabled many communities to overcome capital constraints by financing public projects for the construction of parks, churches, schools, electrical grids, roads, and sewers, etc. (Massey et al., 1998: 260).

The support for these associations can be part of public policies that seek to encourage supra-individual types of funding, saving and investment of reserves. There are several examples of state intervention with this objective, mainly in developing countries, such as India, Armenia, Argentina and South Africa, among others (see Kuznetsov, 2008), as well as in China (Portes, 2016: 87) or in Mexico (Iskander, 2012).<sup>2</sup> Similar policies have also been applied in developed countries such as Scotland (Kuznetsov, 2008) and Ireland (Irish Abroad Unit, 2015, 2018).

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<sup>2</sup> In Mexico, one of the most well-known programs is the "3x1" or Citizen Initiative 3 by 1. Of non-governmental origin, it was set up in the 1980s in the Mexican state of Zacatecas, and 25 years later adopted by the Mexican government and generalized to the other states of the country, being the origin of several hometown associations (HTA) and bringing together immigrants from the same city or region of origin who sought to assist the development of communities in these cities or regions (Iskander, 2012).

Remittance flows, such as the migration flows of people who originate them, are not part of a self-regulated system that tends toward a balance (Portes, 2016: 76). In addition to the positive effects for the development of countries of origin, remittances also cause problems, particularly where they have significant economic consequences in the countries to which they are transferred. These problems include an increase in inequality.

Remittances are a financial symmetrical movement of the flow of people involved in emigration. As has been pointed out by several authors, the emigration of a country tends to be concentrated in a small number of regions and social segments (see, in particular, Faist, 2000).

That is, remittances do not affect evenly the populations and regions of the countries of origin of emigration, benefiting mainly part of the regions and families. On the other hand, since emigration is selective, it often involves regions and people who are more capable, not the poorest (Skeldon, 2008: 8), so the remittances they generate will not benefit the most socially and economically disadvantaged regions and families. Finally, it should be noted that in the case of lower income countries that are highly dependent on the contribution of remittances, economic vulnerability may increase because of their exposure to cyclical fluctuations in major destination countries (de Haas, 2012: 17).

In part, the new benefits from remittances compensate for the inequalities that generate emigration itself and those that resulted from its implementation and, ultimately, the inequality effects eventually generated by remittances are not clear. More visible are the multiplier effects of the emigration itself, at the origin, by the diffusion of an image of success of the emigrants that the transfer of remittances would prove, at least in terms of perceptions. These multiplier effects do not have just a symbolic origin. The flow of remittances can induce a logic of cumulative causality. Transfers of monetary and social remittances can be the origin of cumulative causal processes, contributing to the development in the countries of origin and the capacitation of those who receive them, in the sense that the term has in Amartya Sen (2003), or benefit from this development, which will be able to mobilize new resources such as money, knowledge and ties. The migratory capacities thus enlarged can be the source of new migratory aspirations and of an intensification of the migratory flow (de Haas, 2008: 17).

In Portugal, the total value of remittances received in 2016 was 3.3 billion euros, which represented around 1.8% of the GDP, and rose

to 3.6 billion in 2017, remaining stable as a percentage of the GDP due to the economic growth in the country in that period (see Pires et al., 2018, and Vidigal and Pires, 2014, for data on remittances to Portugal). In comparative terms, Portugal was the 32nd country in the world that received the most remittances, standing in an intermediate position that reflects both its relatively small population size and the fact that it is, in relative terms, the country with the highest emigration rate in the European Union (more than 20% in 2011). This relative position rises quite a lot when the amount of remittances is evaluated in terms of percentage of the GDP, with Portugal standing among the countries with the highest remittances received in terms of amount and in the top 20 with the greatest impact of remittances on the economy. Here, Portugal's position is once more intermediate. It is far below that of low-income and high-migration countries, such as Nepal, El Salvador, Lebanon, Guatemala, or the Philippines, where the value of remittances measured as a percentage of the GDP varies between 28% and 10%. But it is also clearly above the position of the majority of the developed countries that receive the most remittances, where they normally account for less than 1% of the GDP (France, Spain, Italy, Germany or the United Kingdom).

That is, the value of remittances received in Portugal is significant when evaluated in comparative terms. However, this fact is not reflected in the playing down, in terms of public and political perception, of the impacts of emigration on the country. This is probably one of the consequences of Portugal's position in the European context as an EU recipient of funds. In 2016, the total amount of European funds transferred to Portugal was 3.4 billion euros (European Parliament, 2016), slightly higher than the amount of remittances (3.3 billion). This similarity of amounts, greater than that observed in middle-and low-income countries between remittances and international development aid, contributes to underplaying, in the public and political perception, the contribution of remittances to the country's economy, which, unlike European funds, cannot be used to fund public policies to support development. Europe, not emigration, is now the reference when it comes to identifying and valuing external financial contributions to the country's development.

In summary, in Portugal's case, the usual public underestimating of the contribution of remittances to the economic development of the country originates in the smaller weight of remittances in the GDP than in less developed countries with strong emigration, as well as in the attribution

of greater importance to the European transfers as collectively usable and useful resources. It is not a false assessment, though it is exaggerated for two reasons. First, because despite all, the weight of the remittances in the GDP is higher than in other developed countries. Second, because this assessment does not incorporate the relative weight of European remittances and funds when measured in net terms, i.e. when discounting the amounts of remittances sent abroad by immigrants living in Portugal, as well as the country's contributions to the European Union's budget. In net terms, the value of remittances, 3.0 billion euros in 2016, is much higher than that of European contributions, which were 1.8 billion in the same year. These net values are, however, less publicized and, because they are slightly more complex in their meaning, they are less effective as a basis for public and political discourse.

In Portugal, the relative underestimation of remittances as a development factor and, therefore, of the contribution of emigration itself may still be part of the explanation of the surprising underestimation of the amount of remittances. This, in turn, facilitates, in retroaction, this underestimation. In fact, the analysis of the time series of remittances received in Portugal since the late 1990s shows a sharp fall in their amount between 2001 and 2002, coinciding with the entry into circulation of the euro (on 1 January 2002). This drop essentially corresponds to problems in identifying transfers between countries in the same monetary area as transfers of remittances, rather than to a real variation of the observed phenomenon. It is therefore very likely that the amount of remittances has since been underestimated in about € 1 billion, which would bring Portugal upwards in terms of the weight of remittances in the GDP, closer to 3% and therefore similar to what is observed in countries such as Mexico and India.

The missing academic and political focus on the remittances of Portuguese emigrants also partly results from the fact that some of the problems that affect their reception in less developed countries, with more incipient banking systems and less coverage of the territory, are absent. The fact that Portuguese emigration takes place today, essentially in European countries, does not, in fact, raise the problems associated with the costs of remittance transfers and the promotion of their movement through regulated formal channels. The debate on these problems tends to focus on remittances transferred from Portugal to developing countries, such as Guinea-Bissau (Có, 2004) or Brazil (Rossi, 2004), not on remittances received in Portugal.

### 3. The “brain drain”

In their consequences, migrations can be defined as transfers of human resources, regardless of the type of factors or reasons at their origin. In abstract terms, these transfers represent a loss to the countries of origin and a gain for the countries of destination. However, in the literature on the relationship between migration and development, the focus is placed not on the general loss of human resources but on the particular loss of skilled human resources.

It is therefore as if, in demographic and in unskilled labour terms, the countries of origin had abundant resources, so the impact of migration on these plans would be reduced – or even positive, by allowing a better adjustment between (high) labour demand and (reduced) supply. Conversely, in terms of skilled work, the reasoning is the opposite: skills at source are defined as scarce while needs (but not necessarily supply) are considered high. In this case, migrations would have had negative consequences as a result of the loss of resources necessary for economic modernization, which is supposed to sustain development. Therefore, the qualification of these migrations as “brain drain”. This pessimistic perspective, as it has been described (de Haas, 2008: 28-30; Portes, 2016: 84-85), tends to be incorporated into theories that emphasize the reproductive dynamics of underdevelopment through mechanisms such as unequal exchange, debt and migration, following Wallerstein’s theory of the uneven development of the world-system (Massey et al., 2008: 36), or Myrdal’s cumulative causation (Portes, 2016: 77).

The “brain drain” problem was aggravated by two sets of reasons. First, because the scarce skills that are lost have a high training cost. Second, because the probability of emigration tends to be higher when qualifications are higher, that is, on average the more skilled migrate more than the less skilled (de Haas, 2008: 17). Briefly, there are three reasons for this higher probability of emigration among the most skilled, attributable to the properties of their social position: first, because “the more skilled the potential migrant, the more possibilities he will have to use coded, impersonal, technical information to identify opportunities for migration”; secondly, because “the higher the skills, the more likely it will be for the migrant to mobilize organizational means to support the move and possibly the initial setting in at destination”; and finally, because “it is among those who are more skilled that the emergence of

cosmopolitan orientations favourable to strategies of broader territorial mobility will occur” (Pires and Pereira, 2018: 339).

At relational level, this greater willingness to emigrate is reinforced by the current predominance of selective immigration policies in destination countries, which favour the recruitment of skilled migrants. This selectivity is a clear expression of the states’ ability to directly determine migration opportunities through migration policies supported by the operation of selection-distribution mechanisms (Özden, 2006; Russell, 2010: 32; Massey et al., 2008: 238).

These policies of developed destination countries aim, simultaneously, to create barriers to immigration for the less skilled (Milanovic, 2016: 135), and to attract skilled immigrants, either through favourable admission processes, more generous concession of rights or through bilateral agreements (Czaika and Parsons, 2016: 10-15). In the end, either because of the properties of the agents or because of the selective policies that favour them, the emigration rate of skilled persons tends to be higher than the overall emigration rate.<sup>3</sup>

The debate on the consequences of skilled migration to the least developed countries began to highlight the resulting loss of resources (brain drain). However, this debate has evolved, and the growing centrality of the network concept in the explanation of empirically observable migratory dynamics (Massey et al., 1998: 42-50; Castles, de Haas and Miller, 2014: 39), as well as the contributions of the perspectives of transnationalism were decisive in transforming the way of thinking the relationship between migration and development.

The results of studies on migratory networks has shown that migrations are not simply absence/presence movements, but relational channels between local spaces at the origin and destination(s), crossing two or more national borders. Migrations are not zero-sum games. The exit of migrants corresponds to the creation of communication relations between origin and destination that allow the transfer of information from the destination and enable the transformation of unidirectional paths into circular paths along the migratory trajectory (Faist 2000: 96-123). Thus, if, in the first instance, emigration results in loss of human resources,

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<sup>3</sup> The emigration rate of skilled persons is usually calculated by dividing the number of emigrants from a country of origin with an academic degree by the number of residents in that country of origin with the same level of education. This calculation formula leads to an overestimation of the value of the rate, since some emigrants with a higher level of education obtained this qualification already in the destination country, especially if they emigrated at an early age with their families. This bias leads to an overestimation of the numbers of the so-called “brain drain”.

then it may have inverse consequences, either because of the transfer of the migrants' competences by means of communication, despite the fact that migrants remain emigrants or because of the possible movement of migrants between origin and destination, facilitated by the persistence of updated transnational links (de Haas, 2008: 39).

The creation of what is called "transnational spaces" has come to be understood as a crucial mechanism to enhance the developmental effects of migration, both in the area of remittances and in the movement of information and people. Several authors pointed out that monetary transfers were not the only relation of migrants to the society of origin, drawing attention to the "social remittances", knowledge transfers and cultural practices disseminated by the migrants, both individually and collectively, through migrant associations (Portes, 2016: 83), with impacts on the societies of origin. In short, it can be said that the permanently up-to-date persistence of relations between origin and destination favours orientation towards remittance transfer, cooperation at a distance and access to markets and to sources of investment and experts (Kuznetsov and Sabel, 2006: 3-12). It also favours the movement of migrants between destination and origin countries, as well as, ultimately, the reactivation of return projects often abandoned after the initial stages of emigration. According to several authors, the maximization of the transnationalization effects of migrant spaces is associated with the transformation of migrant populations into diasporas by processes of cultural construction and representation (Monteiro, 1994; Vertovec, 1999), with a growing political weight in the definition of policies in the countries of destination and, above all, in the countries of origin.

The substitution of the "brain drain" for cooperation processes, circulation and possibly partial return of the "brains" is facilitated by the observable fact that migratory movements and transnational relationships are greater among the more skilled migrants than among the less skilled. In particular, because the migratory processes of the most skilled persons are more often integrated into new forms of structuring the international market, which includes the internationalization of socio-professional categories such as those of specialists in intellectual and scientific activities (Iredale, 2001: 8; Salt, 1992).

This relationship allowed the emergence of compensatory transfer mechanisms from destination to origin, such as transfers of skills by emigrant scientists or economic investments by emigrant entrepreneurs (Meyer, 2001). Ultimately, it may also allow a particular form of

“brain gain”, when skilled migrants at destination, especially when they migrated very young, return to countries of origin that invested nothing in their training (Skeldon, 2008: 10-11).

The transformation of migrant populations into diasporas is not a spontaneous process, requiring a work of identity construction and representation mainly carried out by emigrants, but also with the intervention of the migrants’ states of origin. The emergence of compensatory transfer mechanisms requires, above all, specific public policies at the origin and strategic synergies, in which the “creative action of governmental organizations can foster social capital; and the link of already mobilized citizens to public bodies can increase the effectiveness of governance” (Evans, 1996: 1130). These policies include measures to support the establishment and activation of networks between origin and destination<sup>4</sup>, the intensification of diaspora effects and the facilitation and institutionalization of circulation and transfers of financial resources and knowledge (Massey et al., 1998: 253-254; Portes, 2016: 86-87; Skeldon, 2008: 13). More common in developing countries of emigration, such policies can also be defined and implemented by development organizations and destination countries governments (see, for example, Hein de Haas's 2006 analysis of policies carried out by the Netherlands, United Kingdom, France, Belgium, Germany, Italy and Spain). Whatever the context in which they are applied, these policies will only have the expected effects if, at the origin, there is an environment of economic growth and social and political stability (de Haas, 2012: 19).

In Portugal, in the public and political space and in the media, there is the idea that emigration is an obstacle to development, perceived to have a new and increasing component of “brain drain”. This view ignores the fact that the skilled emigration of Portuguese people has a much longer invisible history, which can be mapped at least back to the 1960s (Pires and Pereira, 2018: 341-343). It is true that the phenomenon not only increased throughout this century but gained greater visibility. This is not a false perception. The new Portuguese emigrants are more educated today than those who emigrated in the XX century. In 2011, 33% of the Portuguese living abroad for a year or less had a tertiary degree, a percentage that fell to 9% in the case of those who had been emigrated for more than 20 years. This is a significant variation and reveals that

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<sup>4</sup> For a good example of public policies designed to make the most of the diaspora effects, in particular by supporting the constitution and activation of networks between source and destination, see Irish Unit Abroad (2015, 2018).

Portuguese emigration tends to be a more skilled one today (Candido, 2018: 13), not only reflecting but broadening the growing qualification of the Portuguese population in general. On the other hand, and as has already been shown, the emigration rate of the Portuguese population with tertiary qualifications is about double that of the population with secondary education and four times higher than the rate registered for the population with basic education (Pires and Pereira, 2018: 347).

This pattern follows the general trend observed throughout the world and is not specific to the Portuguese situation. Its greatest public impact results, in particular, from two reasons. Firstly, it became visible when the recovery of the historical backwardness of the Portuguese population's skills deficit (Rodrigues 2017)<sup>5</sup> began to take shape. That is to say, when developmental consequences were expected as a result of the increase in the schooling of the Portuguese population, there was the realization that these consequences would now be hampered by the emigration of what in the public space is called as "the most skilled generation ever". Secondly, because, contrary to what is observed in other countries, there is a marked negative balance in skilled migrations from and to Portugal (Pires et al., 2011: 95). These facts make us forget phenomena convergent with the theses of "brain circulation", as was the case with the role of Portuguese scientists in the modernization of the country's scientific system, either by their return or by the close and regular relations that those who emigrants maintain with the Portuguese academic environment (Delicado, 2008 and 2010).

#### 4. Demographic impacts

The analysis of the demographic impacts of migration tends to focus on the contribution that the former can make to mitigate ageing in the societies of destination and, in particular, the reduction of the number of those engaged in work when compared with the number of inactive elderly. In some cases, international migration may contribute to at least partially counteract the population decline in countries of destination.

This focus on demographic impact on destination countries assumes that, as a rule, the main countries of origin of international migration

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<sup>5</sup> This historical backwardness has a clear indicator: according to Portuguese census data, in 1970 the percentage of the population aged 20 and over who had completed tertiary education was less than 1% (PORDATA, Base de dados Portugal Contemporâneo – Contemporary Portugal database).

are in a backward stage of demographic transition correlated with their level of development, and therefore have young and growing populations, while countries of destination are undergoing a phase of demographic change characterized by low fecundity, ageing and, in some cases, negative natural balances and even global population decline. In this context, the demographic impact of migrations would have positive effects at both points of the flow. In the countries of origin, because they would replicate the original transition in Western Europe in the nineteenth century, where migration served as a buffer when population growth was faster than employment generated by industrialization. In the countries of destination, because it would counteract the social and economic effects of the population recession. It meant reciprocal gains and a win-win situation.

However, whereas emigration has positive effects on young demographic systems, it has depressive effects on ageing demographics. Although uncommon, this is the situation in Portugal, particularly at the beginning of the 21<sup>st</sup> century. Portugal has had a negative natural balance since 2007, of about 24 thousand people in 2017. This balance is the result of a marked declining birth rate and fertility in the last decades. Between 1960 and 2017, the number of children per thousand inhabitants decreased from 24.1 to 8.4 per thousand. In the same period, the number of children born, on average, for each woman of childbearing age fell from 3.2 to 1.4. In 2016, Portugal, with Spain and Italy, was one of the three countries with the lowest fertility rate in the European Union and EFTA countries as a whole.<sup>6</sup>

In the 2007-2017 decade, migratory flows, instead of counteracting, have widened these recessive demographic dynamics. The Portuguese migratory balance has been negative since 2004, from a positive figure of around 35 thousand people in 2001 to a negative maximum of 102 thousand in 2013. With the economic recovery that started the following year, there was also a recovery of the balance due to the combined effect of the decrease in the number of outgoing migrants and the increase in the number of immigrants. However, in 2017, the migration balance still had a negative number of 53 thousand people. Despite the economic recovery, the total immigration, that is, the flows of nationals plus those of foreigners, did not yet compensate the exits. The maintenance of high

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<sup>6</sup> The demographic data on the Portuguese population used in this section are from the National Statistics Institute accessed through PORDATA, Portugal Contemporary Database.

emigration values since 2007 has resulted in the departure of women of childbearing age, which has broadened the more structural trends of birth rate and fertility reduction.

The consequence of all these processes has been the decrease of the resident population since 2009. Between that year and 2017, Portugal lost more than 280 thousand inhabitants, equivalent to 2.7% of its population. A similar recessive moment in the recent history of Portugal was the other peak of emigration at the turn of the 1960s and 1970s, which was halted by the arrival in Portugal of high numbers of the population repatriated from the former colonies after 1974 (more than half a million, equivalent to 5% of Portugal's population at the time) and with a young age structure (Pires, 2003: 199-218). Today, with no prospect of a similar compensatory move, the demographic effects of a new emigration peak are much more recessive. In fact, since then the ageing of the Portuguese population has been accentuated: in 1970, the ageing rate was 32.9, and in 2107 it was 153.2. Likewise, the number of individuals engaged in work per senior citizen (or potential sustainability index) fell from 6.6 in 1970 to 3.0 in 2017, putting a new strain on the sustainability of the public pensions' system.

In short, in Portugal today, as in the 1960s, international migration is expanding rather than counteracting recessive demographic trends. It would require a very large increase in immigration so that international migrations would again have an anti-cyclical effect on the demographics (Peixoto et al., 2017). In the absence of this effect, the perception of emigration as an obstacle to development is reinforced in Portugal, depriving the country not only of human resources but also of conditions of social and demographic sustainability.

## **5. Conclusion: emigration and development in a central periphery**

In current debates, the idea that emigration only contributes to the development of the countries of destination has been contradicted, perceived as being neutral or even negative for the countries of origin. For this re-evaluation, it was fundamental to pay more attention, theoretically, to network dynamics and, at analytical level, to the creation of transnational spaces. As a consequence, the consensus on the positive effects of emigrant remittances on countries of emigration was reinforced by the new concepts of "brain circulation" and by the new models on the

potential benefits of the diaspora effects. In demographic terms, there is consensus on the idea of a double gain for countries of origin and destination due to the relief of the demographic pressure on employment, in the case of young populations, and by resolving demographic deficits and labour market needs, in the case of aged populations.

In general, these conclusions point to a double coincidence: underdeveloped/origin countries, on the one hand, developed/destination countries, on the other. When this coincidence does not take place, the debate has to be continued, further qualifying the conditions of the positive emigration/development relationship in the countries of origin.

In demographic terms, it is relatively easy to identify the conditions of that positive relationship, which depend on the demographic system and the migratory balances prevailing at origin. The positive demographic effects of emigration only exist if (a) the populations of the countries of origin are young and growing or (b) if, in the case of ageing and declining populations, migration flows have a significant positive balance. None of these conditions are present in Portugal's case, so the developmental effects of emigration will not only be negative in instrumental terms, but will also be perceived as such in symbolic terms. These are good reasons behind the public perceptions of the negative effect of emigration in Portugal, which are further reinforced by the centrality, in the recent collective memory, of emigration as one of the negative results of national underdevelopment in the period of the *Estado Novo* authoritarian regime.

In terms of skilled emigration, the emergence of positive effects at origin depends on the absolute minimum of skilled non-migrant human resources at origin (Doquier and Marfouk, 2006: 173-174). They also depend on the promotion of transnational relations with the diasporas from their origin. In Portugal's case, the first condition is the one that is not met, more than the second. However, multiplying the few initiatives to create diaspora effects, both by public and private entities, would require greater public acceptance of the potential positive effects of emigration. And it is this recognition that, in symbolic terms, faces difficult conditions to be achieved. Firstly, due to the objective recessive consequences that emigration today has on demography. Secondly, due to the historically based association between emigration and underdevelopment, in a double sense: emigration as a response to development obstacles and as a factor of aggravation of those barriers. Thirdly, due to the symbolic effect currently associated with statistical-based international

comparisons, which function as multiple spontaneous developmental rankings (Thornton, Dorius e Swindle, 2015).

Emigration and qualification are two of the domains of these comparisons in which the image about Portugal seems to be relegated, for which reason no political actor dares to take a position other than to associate emigration growth with failure and emigration of skilled human resources as an aggravated failure. It is these same adverse conditions on the symbolic side that constitute the reasons behind the underplaying of emigrants' remittances.

Additional adverse conditions, political in nature, at national and European level, make it difficult to take advantage of the huge margin of progression for immigration that exists in Portugal, as a result of its reduced values in terms of stock and flow. This progression is, however, a fundamental condition for the recessive effects of emigration on demography to be counteracted.

In the field of migration, public policies in Portugal now face dilemmas of symbolic origin, which make it difficult to define and apply measures that enable transforming the relationship between migration and development into a positive one. The origin of the dilemmas is symbolic; their consequences are mainly instrumental.

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**PART. II**

*The Dilemmas  
of the European  
Immigration Policy*



**NUNO PIÇARRA**

*The European Integrated  
Border Management and its Impact  
on the Migration Policy of the  
European Union*

**1. Introduction**

The European Union (EU) policy “on border controls”, as it is called under the heading of Chapter 2 of Title V of the Treaty on the Functioning of the EU (TFEU) concerning the area of freedom, security and justice, constitutes one of the pillars of the so-called securitization of European immigration policy.

With the Maastricht Treaty, immigration policy has also become an EU policy. Since then it has always been more guided by the objective of containing or even stagnating migration flows from third countries than by the objective of managing such flows. The reasons for this option are well known and do not need to be recalled here. What needs to be pointed out is that the former objective has meanwhile been joined by the objective of fighting against terrorist and that both objectives have ended up being confused in this context in, at least, controversial terms.

In my presentation, I focus on the concept of “European Integrated Border Management” (EIBM), which has become core to the policy on border controls. I analyse in detail some elements of this concept with the greatest impact on the EU migration policy and on its securitization.

## 2. Border policy of the European Union, legislation and implementation

**1.** The aims of the EU policy on border controls are set out in Article 77(1) TFEU and do not necessarily point to the degree of securitization, i.e., the preponderance of the security value over the freedom of movement value which that policy and those of asylum and migration have come to exhibit. Such aims are: *(i)* to ensure the absence of any controls on persons, whatever their nationality, when crossing internal borders; *(ii)* to carry out checks on persons and to monitor efficiently the crossing of external borders; *(iii)* to gradually introduce an integrated management system of external borders.

Article 77(2) TFEU confers broad legislative powers upon the EU to adopt measures concerning: *(i)* the common policy on visas and other short-stay residence permits<sup>1</sup>; *(ii)* the checks to which persons crossing external borders are subject; *(iii)* the conditions under which nationals of third countries have the freedom to travel within the Union for a short period; *(iv)* the gradual establishment of an integrated management system for external borders; *(v)* the absence of any controls on persons, whatever their nationality, when crossing internal borders.

**2.** The core legal acts concerning the common visa policy are: Regulation 2018/1806 listing the third countries whose nationals must be in possession of visas when crossing external borders and those whose nationals are exempt from that requirement; Regulation 810/2009 establishing the Visa Code; Regulation 767/2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas.

The rules concerning the crossing of external and internal borders are essentially contained in Regulation 2016/399 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code – SBC).<sup>2</sup>

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<sup>1</sup> It becomes thus clear that the checks on persons crossing the external borders begin before such borders are reached, i.e., at the Member States' diplomatic and consular posts in the third countries whose nationals are required to be in possession of visas for such crossing.

<sup>2</sup> Article 2(2) SBC defines the external borders as “the Member States land borders, including river and lake borders, sea borders and their airports, river ports, sea ports and lake ports, provided that they are not internal borders”. According to Article 2(1), (3) and (4) SBC, internal borders are: *(i)* the common land borders, including river and lake borders, of the Member States; *(ii)* their airports for internal flights, i.e., any flight exclusively to or from the territories of the Member States and not landing in the territory of a third country; *(iii)* sea, river and lake ports of the Member States for regular internal ferry connections, i.e., between the same two or more

The implementation and application of this Code depends largely on the Schengen Information System – SIS (which is governed simultaneously by Regulation 1987/2006 and Decision 2007/533/JHA), on the VIS and, soon, on the Entry/Exit System (EES) established by Regulation 2017/2226 and also on the European Travel Information and Authorization System (ETIAS) established by Regulation 2018/1240.

The structuring legislative act of the European Integrated Border Management (EIBM) is Regulation 2016/1624 on the European Border and Coast Guard. It also regulates an essential element of the EIBM: the European Border and Coast Guard Agency, which succeeded and replaced the European Agency for the Management of Operational Cooperation at the External Borders of the EU Member States. The latter was created in 2004, and became better known as Frontex.

Regulation 656/2014, which lays down rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by Frontex is in close connection with Regulation 2016/1624 and also with the SBC.

**3.** Although the powers and responsibilities of the new Frontex are considerably broader than those conferred upon its predecessor, it can only participate in the implementation of EU legislation on control and surveillance of borders “by strengthening, assessing and coordinating the actions of Member States” [Article 5(3) of Regulation 2016/1624]. In other words, Frontex can only participate in the implementation of border control obligations by *providing assistance to Member States* “in circumstances requiring increased technical and operational assistance at the external borders”.

As Article 5(1) recognizes, Member States retain “primary responsibility for the management of their sections of the external borders”, “in their own interests and in the interest of all Member States”. The European Border and Coast Guard is, in accordance with Article 3 of Regulation 2016/1624, composed of Frontex and the national authorities of the Member States responsible for border management. It is therefore far from being a true EU border police, comparable in terms of coercive enforcement powers to national border polices.

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ports situated in their territory, not calling at any ports situated outside their territory and consisting of the transport of passengers and vehicles according to a published timetable.

### 3. The european integrated border management

1. According to Article 1 of Regulation 2016/1624, the EIBM aims to manage the crossing of external borders efficiently. This includes “addressing migratory challenges and potential future threats at those borders, thereby contributing to addressing serious crime with a cross-border dimension, to ensure a high level of internal security within the Union in full respect of fundamental rights, while safeguarding the free movement of persons within it”. Reflecting a time of “unprecedented migratory flows to the Union”, the second recital of Regulation 2016/1624 states that the EIBM “is central to improving migration management”, i.e., the “growing mixed migration flows”, a part of which is constituted by people in need of some kind of international protection.

Article 4 articulates the EIBM in eleven heterogeneous elements, the sequence and the reciprocal delimitation of which are not always clear. While some are globally governed by Regulation 2016/1624 itself, others are governed by EU legislative acts to which this Regulation refers. The relevance of the role of Frontex varies with respect to each of these elements but is present in all of them.

These elements, in the order listed, are: (i) border control, including measures to facilitate legitimate border crossings and, where appropriate, measures related to the prevention and detection of cross-border crime, such as migrant smuggling, trafficking in human beings and terrorism; (ii) search and rescue operations for persons in distress at sea launched and carried out in the course of maritime border surveillance operations in accordance with Regulation 656/2014; (iii) analysis of the risks for internal security and of threats likely to affect the functioning or security of external borders; (iv) cooperation between Member States supported and coordinated by Frontex; (v) cooperation between the authorities of the Member States which are responsible for border control, and between Union institutions, bodies, offices and agencies; (vi) cooperation with third countries, “focusing in particular on neighbouring countries and on those third countries which have been identified as countries of origin and/or transit for illegal immigration; (vii) technical and operational measures within the Schengen area related to border control and designed to address illegal immigration and to counter cross-border crime better; (viii) return of third-country nationals for whom a return decision has been issued by a Member State; (ix) use of state-of-the-art technology, including large-scale information systems; (x) quality control

mechanisms, in particular the Schengen evaluation mechanism; (xi) solidarity mechanisms, in particular Union funding instruments.

**2.** The analysis of these elements gives rise to two important conclusions for the definition of the concept of EIBM. On the one hand, it is not confined to measures taken at the external borders (checks and surveillance).<sup>3</sup> It also includes measures taken in and with third countries, as well as measures taken within the Schengen area, including “return measures” for third-country nationals who are irregularly in that area.

A crucial characteristic of the EIBM is its non-limitation to the external borders *proprio sensu* and its expansion upstream and downstream of such borders. According to the third recital of Regulation 2016/1624, the EIBM “comprises measures in third countries, such as under the common visa policy, measures with neighbouring third countries, control measures at the external borders, risk analysis and measures within the Schengen area and return”.

On the other hand, the EIBM clearly points to a reinforced role for Frontex: in addition to increased monitoring of the border control carried out by the competent authorities of the Member States – or at least those for whom such control is more difficult and burdensome due to migration and/or refugee pressure on their external borders as a result of the geographical situation –, Frontex became responsible for bringing together the different elements of the EIBM.

#### **4. Three impact cases of the European integrated border management in the immigration policy of the European Union**

With a view to demonstrating that the EIBM gives priority to reinforcing the EU’s external border control and to preventing and detecting illegal immigration over the facilitation of the legitimate crossing of such borders and over the genuine management of migration flows, I shall briefly examine three cases. The first relates to the saga of the “smart borders”,

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<sup>3</sup> According to Article 2(11) SBC, border checks “are carried out at border crossing points in order to ensure that persons, including their means of transport and objects in their possession, may be authorized to enter or to leave the territory of the Member States”. Border surveillance, according to Article 2(12), is carried out between border crossing points and also in border crossing points, but only “outside the fixed opening hours in order to prevent people from circumventing border checks”. Border checks and border surveillance are types of “border control”. The latter concept is defined by Article 2(10) as the activity “carried out at a border (...) in response exclusively to an intention to cross or the act of crossing that border, regardless of any other consideration”.

originally one of the main measures designed to facilitate the legitimate border crossings referred to in the first element of the EIBM. The second is the shift concerning the cooperation with third countries (sixth element of the EIBM) operated in 2016 with the New Partnership Framework with third countries under the Agenda on Migration, considered essential for the “return of third country nationals” (eighth element of the EIBM). The third case concerns the impressive expansion of large-scale information systems, the ninth element of the EIBM, notably under the motto of “interoperability”.

Any of these cases illustrates well the EU gave up to bring the aforementioned objectives together and make them a practical reality, even though all are equally essential to the area of freedom, security and justice.

#### 4.1. “Smart Borders”: the *mons parturiens fable*

1. Although Article 4(a) of Regulation 2016/1624 does not indicate any concrete measure “to facilitate legitimate border crossings”, the so-called “Smart Borders” initiative is undoubtedly one of those measures aimed at facilitating such crossings for the large majority of *bona fide* third country travellers.<sup>4</sup> The EU legislation in force does not allow for simplification of border checks for any category of third-country nationals, except for those covered by Regulation 1931/2006, which lays down rules for small cross-border traffic at the external land borders of the Member States.<sup>5</sup>

As the Commission pointed out in 2008 and 2011, third-country nationals who travel frequently to and from the Schengen area on legitimate grounds, for example, persons travelling for professional reasons and who on all occasions respect the authorized period of stay, are subject to the same thorough border checks on all entries. The same applies to persons who, subject to the visa requirement, obtain a multiple entry visa. By imposing a thorough control on all third-country nationals, the current legislative framework hampers the modernization of the way

<sup>4</sup> See the Communication from the Commission of 13.5.2015, “A European Agenda on Migration”, COM(2015) 240 final, p. 11.

<sup>5</sup> This is without prejudice to the “exceptional and unforeseen circumstances” referred to in Article 9 SBC, which may lead to the “temporary simplification” of border checks (unpredictable events causing such a heavy traffic that waiting time at the border crossing points becomes excessive, and when resources have been exhausted in terms of personnel and organization).

border control is carried out. The use of new technologies would enable automation, significantly speeding up controls at the border of *bona fide* travellers. In addition, “the imposition of identical border control to all third-country nationals, irrespective of the risk they represent or the frequency of their travels, does not lead to an efficient use of the capabilities of border guards”.<sup>6</sup>

**2.** Firstly, the Commission proposed the establishment of automated border control systems for *bona fide* travellers with a view to substantially reducing the time taken to cross the external borders. This would simultaneously allow border authorities to concentrate their workforce on groups of third-country nationals who require more attention, thus increasing overall border security. “Low-risk” third-country travellers, whether they must be in possession of a visa or not, could have access to a voluntary prior check procedure for the granting of a registered traveller status. This would allow them to benefit from simplified control, through automated doors, upon arrival at the external border. Such control would be based on automatic identity verification, without the intervention of border guards. In order to allow registered travellers to benefit from simplified control to cross any external border, the system would be centralized at the EU level. This would prevent those who travel frequently to several Member States from being required to register in all corresponding national programmes. According to the Commission, this would be costly and cumbersome.

On 28 February 2013 the Commission submitted a proposal for a regulation establishing the Registered Traveller Programme (RTP). Article 3(1) defined the RTP as a “programme which allows third-country nationals who have been pre-vetted and granted access to the RTP to benefit from facilitation of border checks at the Union external borders”. Such a programme would therefore include a centralized RTP data repository (central register) accessible to all border control authorities of the Member States and also to their authorities responsible for issuing visas.<sup>7</sup>

**3.** On the same date and in conjunction with the first proposal, the Commission also presented a proposal for a regulation establishing

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<sup>6</sup> See the Communication from the Commission of 13.2.2008, “Preparing the next steps in border management in the European Union”, COM(2008) 69 final, p. 5, and that of 25.10.2011, “Smart Borders: options and the way ahead”, COM(2011) 680 final, p. 4.

<sup>7</sup> See COM(2013) 97 final and SWD(2013) 50, 51 and 52 final, of 28.2.2013.

the Entry/Exit System (EES) for recording data on the entry and exit of third-country nationals when crossing external borders.<sup>8</sup> The data recorded and stored relate to the date and place of entry and exit of nationals who are admitted for short-term stays in order to calculate the authorised length of stay and the generation of alerts for Member States at the end of that period.

In this EES design, the objective was not to “facilitate legitimate border crossings” but rather to help identify any person who does not fulfil or no longer fulfils the conditions for entering or staying in the territory of the Member States. This would allow the authorities to identify persons who have become overstayers in order to take appropriate measures (Article 4 of the proposal).

**4.** The objective of “facilitating legitimate border crossings” is now referred to in Regulation 2017/2226 establishing an Entry/Exit System to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders and “determining the conditions for access to the EES for law enforcement purposes”, and in particular in Regulation 2017/2225 of the same date, which amends the SBC “as regards the use of the Entry/Exit System”.

The former Regulation is based on the Commission’s proposal of 6 April 2016,<sup>9</sup> replacing its 2013 proposal, this time unaccompanied by a proposal for a Regulation establishing a centralized Registered Traveller Programme at EU level. It is up to each Member State to establish national facilitation programmes “on a voluntary basis, in order to allow pre-vetted third-country nationals to benefit on entry from derogations from certain aspects of thorough checks” (recital 10 of Regulation 2017/2225). The latter regulation adds, however, to the SBC an extensive and detailed regime on “national facilitation programmes” [Article 8(d)]. It follows that the “facilitations” granted by those programmes to third-country nationals registered can only be mere derogations from the “thorough checks at point of entry” to which those nationals are subject under the SBC.

The objectives of the EES now include “to enable automation of border checks on third-country nationals” with a view to facilitating the legitimate borders crossings [Article 6(1)(e) of Regulation 2017/2226]. But it is

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<sup>8</sup> See COM(2013) 95 final and SWD(2013) 47, 48 and 49.

<sup>9</sup> COM(2016) 194 final e SWD(2016) 114, 115 and 116 final.

up to the Member States to decide whether and to what extent they will use certain technologies, as automated border control systems.<sup>10</sup>

In this regard, recital 8 of Regulation 2017/2225 states that “if such technologies are used, checks on entry and exit at external borders should be carried out in a harmonised manner and an appropriate level of security should be ensured”. In addition, according to recital 9, it is essential to supervise the use of these instruments by travellers “so as to prevent fraudulent behaviour and uses”.

The benefit for third-country nationals will be the automated preparation of border checks before they reach border guards, while at the moment they simply queue up and wait their turn. Regarding the discrepancy between the initial objective of facilitating the legitimate border crossings and the results of the two new regulations of November 2017, one can well recall the fable of the *mons parturiens...*

#### **4.2. The subordination of the cooperation with third countries to the “return of third-country nationals”: from the Global Approach to Migration and Mobility to the New Partnership Framework**

**1.** The second case chosen to illustrate the securitization phenomenon of the EU border and migration policies stands at the confluence of the sixth and eighth elements of the EIBM: “cooperation with third countries” and “return of third-country nationals”.

As stated in recital 32 of Regulation 2016/1624, “on 15 October 2015, the European Council called for an enlargement of Frontex’s mandate on return to include the right to organise joint return operations on its own initiative and an enhancement of its role regarding the acquisition of travel documents for returnees”. Such a guideline of the European Council has been broadly incorporated into Regulation 2016/1624, which devotes to the “return” six recitals (32-37) and the whole section 4 of Chapter II (Articles 27 to 33).

In accordance with Article 3(3) and (4) of the “Returns Directive” (2008/115/EC), Article 2(12) of Regulation 2016/1624 defines a “return

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<sup>10</sup> This instrument is defined by Article 1(25) SBC in the wording given by Regulation 2017/2225 as a system which allows for an automated border crossing, and which is composed of a self-service system and an e-gate. The self-service system is defined by Article 1(23) as an automated system which performs all or some of the border checks that are applicable to a person and which may be used for pre-enrolling data in the EES. Finally, according to Article 1(24) SBC, the e-gate is “an infrastructure operated by electronic means where an external border or an internal border where controls have not yet been lifted is actually crossed”.

decision” as “an administrative or judicial decision or act stating or declaring the stay of a third-country national to be illegal and imposing or stating an obligation to return that respects Directive 2008/115/EC”. “Return”, for its part, is defined by Article 2(11) through a reference to Article 3(3) of the Returns Directive as the process of a third-country national<sup>11</sup> going back, whether in voluntary compliance with an obligation to return, or enforced, to (i) his or her country of origin, (ii) a country of transit, in accordance with EU or bilateral readmission agreements or other arrangements, or (iii) another third country, to which the third-country national concerned voluntarily decides to return and in which he or she shall be accepted. It follows, therefore, that the recipient of a return decision may be sent to a third country where he or she has never been, a situation which, as it is easily understood, may not be considered as a return *proprio sensu*.

Article 2(13) of Regulation 2016/1624 adds to those definitions a new one – “returnee” – which is not included in Directive 2008/115. A returnee is “an illegally staying third-country national who is the subject of a return decision issued by a Member State”.

**2.** The concept of “return” in the meaning just recalled becomes a central element of the EIBM, recurrently referred to throughout the provisions of Regulation 2016/1624. In this field, Frontex is of great importance: it becomes competent to coordinate and organise “return operations”<sup>12</sup> so as to “reinforce the return system of Member States requiring increased technical and operational assistance to comply with their obligations to return third-country nationals in accordance with Directive 2008/115/EC” [Article 8(1)(l) in conjunction with recital 33 of Regulation 2016/1624].<sup>13</sup> The same applies to providing assistance to Member States in acquiring travel documents for such operations, “in cooperation with the proper authorities of the third-countries”.

<sup>11</sup> A “third-country national” is defined by Article 2(6) SBC as “any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and is not covered in point 5 of this Article”. Such point defines the “persons enjoying the right of freedom of movement under Union law”.

<sup>12</sup> In accordance with Article 2(14) of Regulation 2016/1624, these are operations coordinated by Frontex involving “technical and operational reinforcement being provided by one or more Member States under which returnees from one or more Member States are returned either on a forced or voluntary basis”.

<sup>13</sup> According to the Progress Report on the Implementation of the European Agenda on Migration of 14.3.2018, COM(2018) 250 final, p. 18, since mid-October 2017 Frontex has coordinated 135 return operations covering more than 5,000 third-country nationals. 111 of them took place already in 2018; see also the Progress Report on the Implementation of the European Agenda on Migration of 16.5.2018, COM(2018) 301 final, p. 17.

Frontex now also has the power to “set up pools of forced-return monitors, forced-return escorts and return specialists” [Articles 8(1)(n) and 29 to 31]. On the basis of these pools, Frontex can set up and deploy European return intervention teams during return interventions [Articles 8(1)(o), 32 and 33].

**3.** Nonetheless, the implementation of the EU return policy has been characterized by a considerable inefficiency. There are many reasons for that, the most important of them being the major difficulty, if not impossibility, of identifying many of the “returnees” due to lack of documents,<sup>14</sup> and the consequent difficulty in finding a third country accepting them in its territory.

It is too early to know whether strengthening the role of Frontex in this field will help to reverse a situation where the increase in the number of return decisions has not been matched by a similar increase in returns carried out.<sup>15</sup> Indeed, the return policy, irrespective of the degree to which it is centralised at EU level, is only a part of the policy to combat irregular migration. The other – essential – part is to address the “root causes of irregular migration flows”.

A sustainable solution can only be found by intensifying cooperation with countries of origin and transit of migrants, including through assistance to strengthen their migration and border management capacities. In this context, “migration policies must become a much stronger integral part of the Union’s external and development policies, applying the ‘more for more’ principle and building on the Global Approach to Migration and Mobility”.<sup>16</sup>

This instrument adopted in 2005 is based on “four pillars of equal importance”: *(i)* organization and facilitation of legal migration and mobility, *(ii)* prevention and reduction of irregular migration and trafficking in human beings; *(iii)* promoting international protection and strengthening

<sup>14</sup> Regulation 2016/1953 sought to remedy this difficulty by creating a European travel document for the return of illegally staying third-country nationals, valid for a single journey until the arrival of the holder to the return third country.

<sup>15</sup> The number of return decisions taken in the EU as a whole in 2017 was 516,115. It represents an increase of 4% over 2016 (493,785). However, the number of returns carried out in 2017 (188,920) decreased by around 20% over 2016 (226,150). This decrease shows a considerable drop in the EU-wide rate of return from 45.8% in 2016 to 36.6% in 2017; see the Progress Report on the Implementation of the European Agenda on Migration of 16.5.2018, COM(2018) 301 final, p.16.

<sup>16</sup> See the strategic guidelines for legislative and operational planning within the area of freedom, security and justice as defined in the conclusions of the European Council of 26/27.6.2014, point I.8, in OJ C 240, 24.7.2014, p. 14.

the external dimension of asylum policy and (iv) maximizing the impact of migration and mobility on development. It encompasses a broad range of policy instruments (regional and bilateral policy dialogues and action plans) and legal instruments (visa facilitation and readmission agreements) as well as “a wide range of programmes and project support made available to third countries and other stakeholders such as civil society, migrant associations and international organizations”.

The Global Approach also includes two partnership frameworks: a mobility partnership and a common agenda on migration and mobility, enforced in a flexible and tailored way, depending on the outcome of the overall political dialogue between the EU and the third country concerned, as well as on the interests of the EU and the interests and needs of the third country partner.<sup>17</sup>

**4.** The “unprecedented migratory and refugee crisis”, with the “sharp increase in mixed migration flows” to the EU since 2015, led the European Commission to propose, at the beginning of June 2016, the creation of a new Partnership Framework with third countries under the European Agenda on Migration, where priority is given to “finding a solution to the irregular and uncontrolled movement of people” and therefore having as its essential element “a coherent, credible and effective policy on the return of third-country nationals who remain illegally in the EU”.

According to the Commission, this Partnership Framework is a new cooperation concept aimed at producing concrete results, in particular as regards the containment of the influx of irregular migrants. Assistance and other EU policies should be adapted accordingly.

An essential component of the new Partnership Framework is the concept of “compacts”. These constitute a policy framework for permanent and operational cooperation, bringing together the different strands of work to develop a comprehensive partnership with third countries, combining the instruments, tools and incentives available to the EU and the Member States. The aim is to attain “clear goals and joint commitments” and avoid the risk of obstacles to obtaining concrete results, caused by technical negotiations with a view to a genuine formal agreement.

It is not excluded that such compacts give rise to formal international agreements, such as readmission agreements. However, an “absolute

<sup>17</sup> See the Communication from the Commission, The Global Approach to Migration and Mobility of 18.11.2011, COM(2011) 743 final, and the Report on the implementation of the Global Approach to Migration and Mobility 2012-2013 of 21.2.2014, COM(2014) 96 final.

priority” must be given, not to the conclusion of such agreements, but to “quick and operational returns”, similar to those made possible by the controversial EU-Turkey Declaration of March 2016.

The priority third countries listed by the Commission are important countries of origin or transit of irregular migration, and some are also accommodating large numbers of refugees and are confronted with the situation of internally displaced persons. In addition, most of such third countries face specific development and security issues. They are, on the one hand, Niger, Nigeria, Senegal, Mali, and Ethiopia and, on the other hand, Jordan and Lebanon.<sup>18</sup>

In approving the new Partnership Framework, the European Council stressed that “readmission and return cooperation will be a key criterion for assessing the partnership between the EU and partners”.<sup>19</sup> This confirms the focusing of the new instrument on these aspects of EU immigration policy, largely bypassing the Global Approach to Migration and Mobility, which is broader in scope. From another perspective, the New Partnership Framework adapts, in restrictive and securitizing terms, the Global Approach to Migration and Mobility to the “unprecedented migratory and refugee crisis”.

#### 4.3. The impressive expansion of large-scale information systems

**1.** The third and final illustrative example of the securitization path that the EU has been pursuing in the framework of its border and immigration policies is the strong focus on large-scale information systems, the ninth element of the EIBM. This is further boosted by the Commission’s proposal of 12 June 2018 on the creation of a new Integrated Border Management Fund (IBMF).<sup>20</sup> Through it, Member States should be provided with “vital and reinforced support to simultaneously ensure the security of the common external borders of the Union”.

The proposal places particular emphasis on EU financial support for the development of either existing or to be created large-scale IT systems (SIS II, Eurodac, VIS, EES, ETIAS), allegedly to improve the management of

<sup>18</sup> On the new Partnership Framework with third countries under the European Agenda on Migration, see the Communication from the Commission of 7.6.2016, COM(2016) 385 final, and the First Progress Report on the Partnership Framework of 18.10.2016, COM(2016) 700 final.

<sup>19</sup> See the conclusions of the European Council of 28.6.2016, point 2, *in fine*.

<sup>20</sup> COM(2018) 473 final.

external borders and to contribute to preventing and combating irregular migration and to ensure a high level of security in the Schengen area.

**2.** The fact is that the increasing interconnections between such systems, under the motto of interoperability, result in the blurring of the boundaries between the different fields of EU action. In addition, the growing use of the data contained in these systems – all of them originally designed as instruments for the management of external borders and migration – by security authorities and law enforcement authorities raises sensitive issues regarding fundamental rights and, in particular, the rights to privacy, data protection and non-discrimination. The interoperability is likely to undermine fundamental principles on data collection and processing. By emphasising the role of the new IBMF in the financing of the expansion of such systems, the proposal under consideration is yet another step towards the creation of a “European surveillance society” or a kind of “EU cyber-fortress”.

## **5. A not so optimistic final note**

The EIBM and the “extended mandate” it gives to Frontex (not to replace the Member States in the execution of the border control current tasks, but rather to “strengthen and improve them”) is far from having reached the purpose that is considered essential: the normalisation of the Schengen area in terms of external and internal borders.

On the one hand, walls and fences built on various external borders at the height of the “unprecedented migratory and refugee crisis” persist, with the aim, among others, of hindering due access to international protection by third-country nationals in need of it. On the other hand, the control at several internal borders persists, despite the expiry of all legally prescribed deadlines in the SBC.

With the worrying wave of anti-immigration populism plaguing several Member States, stimulated by demagoguery and/or by the lack of courage of many policy makers, it is becoming increasingly difficult to reverse this state of affairs.

CONSTANÇA URBANO DE SOUSA

*How to break the security-migration  
nexus and ensure a human rights-based  
management of international migration?*

## 1. Introduction

Never as in the present time international migration has been the issue of such a heated and emotional political debate. What has changed to the point that in many European countries there is a perception that it is a recent, massive and “dangerous” phenomenon, even though it is as old as humankind?

In the era of globalization, it has become more complex, diversified and intense, affecting all continents and specifically Europe, which became a major migration destination with an increasingly “non-European” pattern<sup>1</sup>. In some European countries, the resulting ethnic, racial and religious diversity has generated tensions that feed the perception that it could also be a threat to national identity<sup>2</sup>.

In the “Digital” age, it has become more visible, especially the irregular flows associated with growing humanitarian tragedies. This, amplified by the media’s attention, contributes to feed the perception of “invasion

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<sup>1</sup> See, among others, CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *The Age of Migration – International Population Movements in the Modern World*. 5th ed., New York: Palgrave Macmillan, 2014, p. 16; RODRIGUES, Teresa Ferreira, and FERREIRA, Susana de Sousa, “Portugal e a globalização das migrações. Desafios de segurança”. *População e Sociedade*, Vol. 22, 2014, p. 143; CZAİKA, Mathias, and HAAS, Hein de, “The Globalization of Migration: Has the World Become More Migratory?”, *International Migration Review (IMR)*. Vol. 48, no. 2, 2015, pp. 283-323.

<sup>2</sup> See CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, pp. 18 ff.

by massive flows of irregular immigrants”, which tends to seem stronger than what it really is.

Finally, using CASTLES, HAAS and MILLER’s qualification for the 21<sup>st</sup> century, in the “Age of Migration”, international migration is becoming increasingly politicized internally and internationally<sup>3</sup>.

The politicization of migration is closely related to its securitization process, which has led to restrictive immigration policies, largely based on border control and restrictive legal migration pathways, which prevent or impede the migratory regularity of those foreigners in need of international protection, who want to reunite their families or have a reasonable prospect of finding better living conditions in the destination country. This has contributed to increase irregular migration, largely run by criminal smugglers’ networks, as well as to the human drama associated with it, as can be witnessed in the Mediterranean, the most lethal border of the World<sup>4</sup>.

With the increasing nexus between migration and security, a vicious circle has been created that consolidates the perception of international migration as a threat to security, which, in turn, justifies more security measures and, with them, more dramatic flows of irregular migration<sup>5</sup>. How to break this vicious circle and ensure that international migration can be managed in a regular, safe and human rights-based manner, for the benefit of host and origin countries, as well for migrants themselves,

<sup>3</sup> Idem, *op. cit.*, pp. 16-17.

<sup>4</sup> See, among other authors, WIHTOL de WENDEN, Catherine, “L’inscription des Migrations dans la Mondialisation”, *Études*, no. 6, 2014, p. 10, available at: <https://www.cairn.info/revue-etudes-2014-6-page-7.htm>, [Accessed 15 September 2018]; CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, p. 323; WOHLFELD, Monika, “Is migration a security issue?”, in GRECH, Omar, and WOHLFELD, Monika (Eds.), *Migration in the Mediterranean: human rights, security and development perspectives*, Malta: MEDEC, 2014, pp. 61-77; DAUVERGNE, Catherine, *Making People Illegal. What Globalization Means for Migration and Law*, Cambridge: Cambridge University Press, 2008, pp. 10ff.; SOUSA, Constança Urbano de, “L’Emergence du droit européen de l’immigration et de l’asile: Bilan et perspectives”, *Galileu – Revista de Economia e Direito*, Vol. VIII, no. 2, 2003, pp. 139-164; DEL RE, Emanuela C., “Mediterranean Migrations: From Current Stalemate to Structural Responses”, *Current Politics and Economics of Europe*, Vol. 28, no. 2, 2017, pp. 151-170; ORTEGA VELÁZQUEZ, Elisa, “La consolidación histórica de la migración irregular en Europa: leyes y políticas defectuosas”, *Anuario Mexicano de Derecho Internacional*, Vol. XIV, 2014, pp. 637-686; BLUS, Anna, “Beyond the Walls of Paper: Undocumented Migrants, the Border and Human Rights”, *European Journal of Migration and Law*, 15, 2013, pp. 413-446; ACHILLI, Luigi, and SANCHEZ, Gabriella, “What Does it Mean to Disrupt the Business Models of People Smugglers?”, *Policy Brief 2017/09*, April 2017, pp. 4 ff., available at: [http://cadmus.eui.eu/bitstream/handle/1814/46165/PB\\_2017\\_09\\_MPC.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/46165/PB_2017_09_MPC.pdf?sequence=1). [Accessed 15 September 2018]; CRÉPEAU, François, and PURKEY, Anna, “Facilitating Mobility and Fostering Diversity – Getting EU Migration Governance to Respect the Human Rights of Migrants”, *CEPS Paper in Liberty and Security*, no. 92/ May 2016, available at: [www.ceps.eu](http://www.ceps.eu). [Accessed 15 September 2018]; EYLEMER, Sedef, and ŞEMŞİT, Sühal, “Migration-Security Nexus in the Euro-Mediterranean Relations”, *Perceptions Summer-Autumn 2007*, pp. 60 ff., available at: <http://sam.gov.tr/wp-content/uploads/2012/02/EylemerSemsit.pdf>.

<sup>5</sup> See EYLEMER, Sedef, and ŞEMŞİT, Sühal, *op. cit.*, p. 61.; WOHLFELD, Monika, *op. cit.*, pp. 75 ff.

is a complex question and has no simple answer. The main objective of this article is to identify some elements to respond to this difficult question, which could be followed at European level, always considering, that, as a matter of fact, international migration is a multidimensional, transnational and complex human phenomenon that requires a broad cooperative, holistic, pragmatic, and humanistic approach.

The UN Global Compact for Safe, Orderly and Regular Migration embodies a unique opportunity for the international community to adopt this approach and cope with the multiple challenges of international migration<sup>6</sup>. As it will be the subject of other interventions, I shall refer to them.

Due to the complexity of the theme, I divided this article into three parts:

- 1) First, I will place international migration in general and the so-called 2015 “refugee crisis” or “migratory crisis” in perspective, in order to better understand its dimension.
- 2) Next, in a chronological and analytical approach, I will point out the main elements of the migration’s securitization process in Europe, its consequences and effectiveness to manage regular migration.
- 3) Finally, I will highlight some essential elements to develop an European immigration and asylum policy that could lead to changing the *status quo*, ensure migratory regularity and human rights protection.

## 2. International Migration in Perspective

### 2.1. International Migration in the world: some data

International migration is a complex phenomenon that marks the history of humankind, characterized by successive waves of migratory movements, with varying degrees of intensity. In the 21<sup>st</sup> century, it increased and diversified, affecting every continent and not only Europe.

According to the United Nations, the number of international migrants increased from 173 million in 2000 to 258 million in 2017. Between 2015

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<sup>6</sup> See the intergovernmentally negotiated and agreed draft of 13 July 2018, in: [https://refugeesmigrants.un.org/sites/default/files/180713\\_agreed\\_outcome\\_global\\_compact\\_for\\_migration.pdf](https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf). [Accessed 15 September 2018].

and 2017, the annual growth rate slowed to 2% compared to the growth rate of 2.9% between 2005-2010<sup>7</sup>.

More than 60% of international migrants live in Asia (80 million) and Europe (78 million)<sup>8</sup>. If we look at the countries with the largest number of immigrants, the USA ranks first, with 49.8 million immigrants, followed by Saudi Arabia and Germany, with 12.2 million each, and the Russian Federation, with 11.7 million<sup>9</sup>.

The impact of migration also depends on the population size of the destination country, with countries experiencing very high immigration rates, such as the United Arab Emirates (88%), Kuwait (75%) or Qatar (65%) and others marginal rates of less than 1%<sup>10</sup>.

As for the origin of international migrants, in 2017 Asia ranked first (106 million), followed by Europe (61 million), Latin America and the Caribbean (38 million), and Africa (36 million). India is the country of origin of the largest number of migrants (16.6 million), followed by Mexico (13 million) and Russia (10.6 million). The list of the 20 countries of origin of the largest number of migrants includes several European States, such as the United Kingdom (4.9 million), Poland (4.7 million), Germany (4.2 million), Romania (3.6 million), and Italy 3.0 million<sup>11</sup>, although a significant number migrate within the EU under the free movement of persons' rules.

Also, the number of international migrants who are refugees has increased significantly in recent years as a result of wars, conflicts, human rights violations, and various persecutions. According to the UNHCR, in 2017 there were 25.4 million refugees. The main countries of origin are Syria (6.3 million), Afghanistan (2.6 million), South Sudan (2.4 million), Myanmar (1.2 million), and Somalia (about 1 million), accounting for over two-thirds of the total number of refugees<sup>12</sup>. About 85% of refugees worldwide have found refuge in less developed countries, such as Turkey (3.5 million), Pakistan (1.4 million), Uganda (1.4 million),

<sup>7</sup> UNITED NATIONS, Department of Economic and Social Affairs, Population Division, *International Migration Report 2017: Highlights*, New York: United Nations, 2017, p. 4. Available at: [http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017\\_Highlights.pdf](http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2017_Highlights.pdf). [Accessed 10 October 2018].

<sup>8</sup> *Idem, op. cit.*, p. 5.

<sup>9</sup> *Idem, op. cit.*, p. 6.

<sup>10</sup> *Idem, op. cit.*, pp. 25 ff.

<sup>11</sup> *Idem, op. cit.*, p. 9.

<sup>12</sup> UNHCR, *Global Trends. Forced Displacement in 2017*, pp. 13 ff. Available at: <http://www.unhcr.org/5b27be547.pdf>. [Accessed 15 September 2018].

Lebanon (1 million), Iran (about 1 million), Bangladesh (about 1 million) and Pakistan (1.4 million). Although Germany hosts the largest number of refugees (about 970.000), only a small percentage of the worldwide refugee population is in Europe<sup>13</sup>.

In absolute terms, these figures seem overwhelming. But we have to read them in perspective. Only 3.4% of the world's population is immigrant and international migration continues to be the exception in human behaviour. As Hein de HAAS states "*we aren't living in an era of unprecedented migration*"<sup>14</sup>. And the reality in the EU is not much different.

## 2.2. International migration to the European Union: invasion or perceived invasion?

In recent years, the EU has become a destination for more significant and diversified migration flows. According to EUROSTAT, in 2017 about 22 million of third-country nationals were residing in the EU<sup>15</sup>. In other words, only 4.2% of its population is immigrant under European Union law, as the migration of EU citizens (and their family members, irrespective of their nationality) within the EU fall under the freedom of movement, as a EU citizenship's right, and not under Immigration and Asylum law.

In absolute terms, Germany has the largest number of third-country nationals (9.2 million), but it is also the largest state (82.8 million inhabitants), followed by the United Kingdom (6.1 million for a population of 65.8 million), Italy (5 million for a population of 60.6 million), France (4.6 million for a population of 67 million) and Spain (4.4 million for a population of 46.5 million). In relative terms, considering the percentage of the foreign population (third-country and EU citizens) in relation to the total population, the migratory pressure in those Member States is, however, lower than in Luxembourg (48%), Cyprus, Austria, Belgium or even Malta<sup>16</sup>. Member States, such as Hungary, Slovakia, the Czech

<sup>13</sup> Idem, *op. cit.*, p. 20.

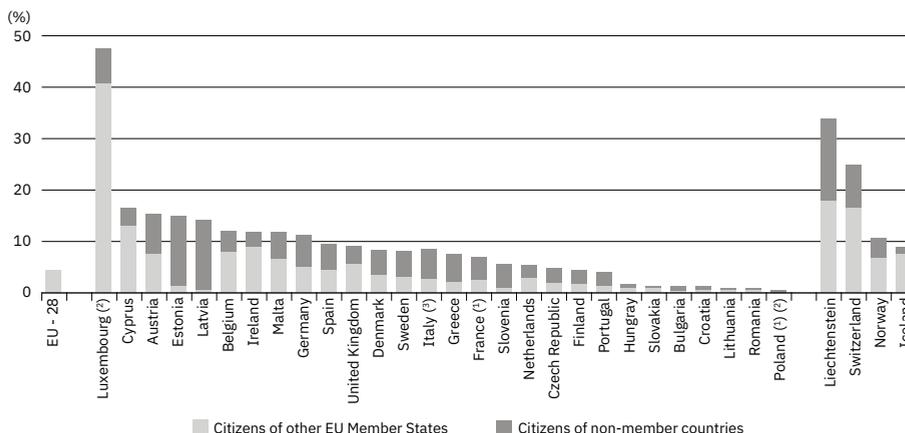
<sup>14</sup> HAAS, Hein, *Myths of migration: Much of what we think we know is wrong*, in: <http://heindehaas.blogspot.com/2017/03/myths-of-migration-much-of-what-we.html>. [Accessed 10 October 2018]

<sup>15</sup> EUROSTAT, *Migration and migrant population statistics*, March 2018. Available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Migration\\_and\\_migrant\\_population\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Migration_and_migrant_population_statistics) [Accessed 6 September 2018].

<sup>16</sup> Idem, *op. cit.*, *EUROSTAT – EU population up to almost 512 million at 2017*. Available at: <https://ec.europa.eu/eurostat/documents/2995521/8102195/3-10072017-AP-EN.pdf>. [Accessed 6 September 2018].

Republic, or Poland, which actively advocate “zero immigration” policies, are those where the percentage of immigrants is very low.

### Share of non-nationals in the population, 1 January 2017



(\*) Provisional (†) Break in series (‡) Estimated Source: Eurostat (online data code migr\_pop1ctz)

These figures show that Europe is far from being invaded, despite the perception generated by media coverage and politicization of the so-called 2015 refugee crisis. A perception that was also fuelled by daily images of desperate people trying to enter the EU through the Mediterranean route, which led to a feeling of lack of control over the external border.

### 2.3. The 2015 “refugee crisis”: brief description

2015 was marked by the so-called “refugee crisis”. Fleeing persecution, war and extreme poverty, more than one million people have sought, that year, protection in the EU.

This is not, however, a new phenomenon, as Europe had already known other “migratory crises”. In 1991, thousands of Albanians arrived in Italy and the EU-12 registered more than 600.000 asylum-seekers<sup>17</sup>. Between 1991 and 1995, Germany, France and Italy received about 1.3

<sup>17</sup> EUROSTAT, *Asylum Statistics*. Available at: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum\\_statistics#Final\\_decisions\\_taken\\_in\\_appeal](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_statistics#Final_decisions_taken_in_appeal). [Accessed 6 September 2018].

million asylum applications<sup>18</sup>. Those years were also marked by far-right riots against refugees, especially in Germany.

Between 2005 and 2007, Spain experienced the so-called “pateras” and “cayucos” crisis, when thousands of Africans tried to enter the EU through the Strait of Gibraltar and the Canary Islands. From 2008, “Lampedusa” became the largest gateway for African migrants and refugees in transit through Libya or Tunisia, and the scene of countless tragedies, such as the 2013 wreck that killed hundreds of refugees, mainly from Somalia and Eritrea. At the time, it was already estimated that since the 1990s, about 20.000 people have lost their lives in the Mediterranean Sea trying to reach Europe, victims of smuggling and human trafficking criminal organizations, increasingly complex and profitable.

By 2015, the intensity and nature of those movements changed, with a massive influx of refugees entering the EU, especially through Greece and Italy and an exponential growth of asylum applications, mainly from Syrians, Eritreans, Afghans and Iraqis, among others, in countries such as Germany or Sweden. Secondary movements of migrants and refugees within the EU and the increase in humanitarian tragedies, with a growing number of drowned migrants at Europe’s gates, have generated unprecedented tensions and undermined cohesion and solidarity among Member States.

In 2014, about 600.000 asylum applications have been registered in the EU. In 2015 and 2016, this number went up to around 1.2 million, dropping to some 650.000 applications in 2017<sup>19</sup>.

This seems overwhelming, but we must keep in mind that Europe only welcomed a relatively small percentage of the world’s refugees. For example, most Syrian refugees (about 5.6 million) are in countries such as Turkey (about 3.5 million), Lebanon (about 1 million) and Jordan (about 670.000)<sup>20</sup>.

The EU, with a population of over 511 million inhabitants<sup>21</sup>, hosts about 1 million Syrian refugees<sup>22</sup>. Compared to a small country like Lebanon, which hosts approximately the same number, it is not difficult to conclude who is assuming the greatest responsibility for their protection. But in

<sup>18</sup> CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op.cit.*, p. 226.

<sup>19</sup> EUROSTAT, *Asylum Statistics*, *op.cit.*

<sup>20</sup> UNHCR. Online: <http://data.unhcr.org/syrianrefugees/regional.php>. [Accessed 7 September 2018].

<sup>21</sup> EUROSTAT, *EU population up to almost 512 million at 2017*, *op.cit.*

<sup>22</sup> MIGRATION POLICY CENTRE, *Syrian Refugees*. Available at <http://syrianrefugees.eu> [Accessed 7 September 2018].

Europe, too, the distribution of this responsibility is unbalanced, since it is assumed by few Member States, especially Germany and Sweden.

On the other hand, if in 2014 about 282.933 people were detected entering the EU “irregularly”, in 2015 the number of “irregular” border-crossing along the EU grew exponentially to 1.8 million detections. In 2016, it dropped to about 511.047 detections and, in 2017, to 204.719 (-89% compared to 2015 and -60% compared to 2016)<sup>23</sup>. In the first seven months of 2018, there was a significant decrease to 73.500 “irregular” border-crossing detections (-43% compared to 2017), although pressure on the Spanish external border increased<sup>24</sup>.

These figures should, however, be read with caution. First, it is possible that many of the irregular cross-border detections in 2015 were double counted because, for example, many of the people who entered through Hungary and Croatia had already entered through Greece. Second, many illegal border-crossing detections concerns Syrians, Afghans and Iraqis, who are highly likely to obtain international protection in the EU and this renders legally irrelevant the “irregularity” of their entry. Third, if we also consider the figures on the return of illegally staying third-country nationals, which gives a clearer picture, we can conclude, alongside Elspeth GUILD and Sergio CARRERA, that the figures about “irregular immigration” in the EU are somehow overestimated<sup>25</sup>. Indeed, in 2017 the Member States reported 279.215 return decisions and 151.387 effective returns to third-countries (-9% compared with 2016), the lowest level since 2012<sup>26</sup>. In this regard, KNOMAD (Global Knowledge on Migration and Development) estimates that between 2009 and 2017, only 6% of immigrants who entered Europe were undocumented<sup>27</sup>. These data on return and migratory irregularity, even if not entirely reliable, show a trend: the reduced dimension of irregular migration in the EU compared

<sup>23</sup> FRONTEX, *Risk Analysis for 2018*. Available at [https://frontex.europa.eu/assets/Publications/Risk\\_Analysis/Risk\\_Analysis/Risk\\_Analysis\\_for\\_2018.pdf](https://frontex.europa.eu/assets/Publications/Risk_Analysis/Risk_Analysis/Risk_Analysis_for_2018.pdf)

<sup>24</sup> FRONTEX, *News Release*. Available at <https://frontex.europa.eu/media-centre/news-release/migratory-flows-in-july-total-number-drops-spain-accounts-for-more-than-half-of-detections-UceVoq>. [Accessed 6 September 2018].

<sup>25</sup> CARRERA, Sergio, and GUILD, Elspeth, “Addressing Irregular Migration, Facilitation and Human Trafficking: The EU’s Approach”, in CARRERA, Sergio, and GUILD, Elspeth, *Irregular Migration, Trafficking and Smuggling of Human Beings. Policy Dilemmas in the EU*. Brussels: Centre for European Policy Studies (CEPS), 2016, pp. 5 ff.

<sup>26</sup> FRONTEX, *Risk Analysis for 2018*, p. 29.

<sup>27</sup> KNOMAD- Global Knowledge on Migration and Development (World Bank Group), *Migration and Remittances, Recent Developments and Outlook. Migration and Development Brief 29*, April 2018, p. 19. Available at <http://documents.worldbank.org/curated/en/805161524552566695/pdf/125632-WP-PUBLIC-MigrationandDevelopmentBrief.pdf>.

with the number of legal migrants and/or the population. But, as Elspeth GUILD and Sergio CARRERA point out, an approach that relativizes the numbers of irregular immigration is not useful, as it would make unjustified the enormous investment that is being made to solve a problem that does not have a justifying dimension<sup>28</sup>.

Finally, in 2015 and 2016 there was also a substantial increase in the number of estimated deaths in the Mediterranean, a tragedy that seems to have no end in sight. Since 2014, around 17.000 people have died or disappeared, desperately trying to reach the EU, fleeing from war, conflict and misery. The IOM estimates that in 2014 and 2015, 3282 and 3782 migrants, respectively, died on the Mediterranean migratory routes. In 2016, there was a peak of 5143, falling in 2017 to 3139. By September 2018, it is estimated that 1565 people died or disappeared at the crossing<sup>29</sup>.

### **3. Securitization of the migration policy in Europe and irregular migration**

#### **3.1. Development of migration policies in Europe: from deregulation to control**

International migration has always marked the history of Europe, which for many centuries was a continent of emigration, such as in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, when, between 1846 and 1939, about 59 million of Europeans emigrated in search of better life opportunities, especially to the Americas, Australia, New Zealand, and South Africa<sup>30</sup>.

It was only in the 20<sup>th</sup> century, especially after World War II, that the European Western states made a transition to countries of destination of more intense and diversified migration flows<sup>31</sup>.

For centuries, migratory movements were not subject to any specific regulation. With the world's division into states and the consolidation of nation-states, the latter began to reclaim their sovereign right, under international law, to control borders and the access of foreigners

<sup>28</sup> Idem, *op.cit.*, p. 7.

<sup>29</sup> OIM, Missing Migrants, *Tracking deaths along Migratory Routes*. In: <https://missingmigrants.iom.int/region/mediterranean>, [Accessed 7 September 2018].

<sup>30</sup> CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, p. 5 and pp. 86 ff.

<sup>31</sup> Idem, *op. cit.*, pp. 84 ff.

to their territory<sup>32</sup>. At the end of the 19<sup>th</sup> century, the first immigration laws were adopted and, from World War I onwards, the migratory controls became widespread, consolidating the idea of “illegal immigration”<sup>33</sup>. Immigration Law was thus established to determine which foreigners may or may not cross borders and remain in a state’s territory, with a more or less restrictive logic of containment and control<sup>34</sup>.

Until the 1970s, the immigration laws of Western European states were generally not restrictive. Following World War II, labour immigration was even encouraged by many Western European countries, which recruited the cheap labour they needed for post-war economic development through “guest worker programmes” or bilateral agreements with Southern European countries and countries in the southern shore of the Mediterranean, or through the regularization of migrant workers who arrived spontaneously<sup>35</sup>. The growth of regular and irregular migration to Western Europe led to a certain anti-immigration climate, which justified, from the end of the 1960s, increasingly restrictive immigration policies<sup>36</sup>.

With the 1973 oil crisis and the resulting so-called “zero immigration policies”, the immigration securitization’s process began: introduction of increasingly restrictive and bureaucratic admission requirements, widespread imposition of visas, carrier sanctions, sanctions for employers of irregular migrants, stricter border controls, criminalisation of smuggling, etc.<sup>37</sup> To avoid unwanted migration, post-industrial democracies have embarked on what Stephen CASTLES, Hein de HAAS and Mark MILLER designate as “quest for control”<sup>38</sup>.

Despite these measures, immigration to Europe has increased (family reunification, proliferation of irregular migration, significant influxes of refugees and asylum seekers since the 1990s, increasing admission of

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<sup>32</sup> See, among others, CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, pp. 112 ff. GHEZELBACH, Daniel, “Legal Transfers of Restrictive Immigration Laws: A Historical Perspective”, *International and Comparative Law Quarterly (ICLQ)*, Vol. 66, 2017, pp. 236 ff.; ORTEGA VELÁZQUEZ, Elisa, *op. cit.*, p. 639; DAUVERGNE, Catherine, *op. cit.*, pp. 2 ff.; WOHLFELD, Monika, *op. cit.*, pp. 62 ff.

<sup>33</sup> On this development in Europe see ORTEGA VELÁZQUEZ, Elisa, *op. cit.*, pp. 639 ff. For the US, Canada and Australia, see GHEZELBACH, Daniel, *op. cit.*, pp. 239 ff.

<sup>34</sup> SOUSA, Constança Urbano, “Globalização e Livre Circulação de Pessoas”, *Themis*, Year XV, nos. 26/27, 2014, p. 143.

<sup>35</sup> See CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, pp. 104 ff.; EYLEMER, Sedef, and ŞEMŞİT, Sühal, *op. cit.*, p. 51; ORTEGA VELÁZQUEZ, Elisa, *op. cit.*, pp. 648 ff.; BLUS, Anna, *op. cit.*, pp. 416 ff.

<sup>36</sup> See ORTEGA VELÁZQUEZ, Elisa, *op. cit.*, pp. 648 ff.

<sup>37</sup> See, among others, ORTEGA VELÁZQUEZ, Elisa, *op. cit.*, pp. 653 ff.; CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, pp. 111 ff.; EYLEMER, Sedef, and ŞEMŞİT, Sühal, *op. cit.*, p. 51.

<sup>38</sup> *Op. cit.*, pp. 215 ff.

highly skilled workers and students), diversified (increased migration from the Maghreb, Latin America, Asia, and West Africa) and expanded (many southern European countries became countries of transit and destination of significant migratory flows)<sup>39</sup>, at the same time that it has turned into a humanitarian tragedy, especially in the Mediterranean.

And in the age of globalization, international migration will tend to increase and diversify, as it is part of the process of liberalization and internationalization of capital, commodity and service flows on a global scale, which also implies people's mobility<sup>40</sup>.

Although everyone has the right to leave his own country (Article 13 (2) of the Universal Declaration of Human Rights) or the right to seek and enjoy asylum in other countries from persecution (Article 14 (1) of the Universal Declaration of Human Rights), the truth is that, paradoxically, there is no right to immigration. It is up to the states, within their territorial sovereignty, to define which foreigners can cross their borders and remain in their territories, to include and exclude people from mobility and thereby determine the measure of "migratory irregularity". In this regard, Catherine DAUVERGNE highlights the "illegalization" of migration as a mark of the globalization, as irregular immigration and the imperative of border control have become central themes for nation states, who conceive their Immigration Law as the "last bastion of sovereignty" and as an ultimate manifestation of power against the forces of globalization<sup>41</sup>.

Therefore, there is a paradoxical tension between globalisation, characterized by the liberalization and internationalisation of the movement of goods, services and capital at a global scale, and the regulation of international migration, which continues to be predominantly national and subject to a restrictive logic of control and exclusion<sup>42</sup>. Even the EU, which guarantees freedom of movement of persons within it, does not escape this logic, through its visa, border and migration policies.

Thus, the migration policies of liberal democracies, and also of the EU, are confronted with what Virginie GIRAUDON and Christian JOPPKKE call "dilemmas of control": Between the capitalist economy (whose interest

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<sup>39</sup> CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, pp. 112 ff. See, also, EYLEMER, Sedef, and ŞEMŞİT, Sühal, *op. cit.*, pp. 51 ff.

<sup>40</sup> See, among others, CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, pp. 33 ff. DAUVERGNE, Catherine, *op. cit.*, pp. 29 ff. ; HAAS, Hein, *op. cit.*.

<sup>41</sup> *Op. cit.*, pp. 2 ff.

<sup>42</sup> SOUSA, Constança Urbano de, "Globalização ...", *op. cit.*, pp. 142 ff.; WOHLFELD, Monika, *op. cit.*, p. 63; CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, p. 325; HAAS, Hein, *op. cit.*

implies the mobility of people and the satisfaction of labour needs resorting to migrants) and politics (democratically elected governments have electoral incentive, often pressed by fear of losing voters to anti-immigration parties, to appease anxieties of public opinion on migration by introducing more restrictive immigration policies and border controls); Between politics and the rule of law (which requires the protection of migrants' fundamental rights, such the right to family life or the right to protection against *refoulement*, and therefore limits the states's ability to control migration)<sup>43</sup>.

### 3.2. The securitization process of migration policies

The introduction, for various reasons, of increasingly restrictive immigration laws has led, through their differentiation and exclusion mechanisms, to what Elisa ORTEGA VELÁZQUEZ calls the process of irregular migration building, with enormous costs in terms of human rights<sup>44</sup>.

The proliferation of irregular migration, largely due to the lack of adequate and flexible laws to rule this transnational, multidimensional and complex phenomenon, as well as the perception that irregular migration is a threat to the territorial integrity of states and to security, has led to a process of securitization of international migration. Since the 1980s, this process has been characterized by the strengthening of border controls and increasingly restrictive measures, such as generalized visa requirements, lack of legal migration pathways, carrier sanctions, employer sanctions, criminalisation of the facilitation of unauthorized entry, transit and residence and detention of irregular immigrants, among others.<sup>45</sup>

<sup>43</sup> GUIRAUDON, Virginie, and JOPPKE, Christian, "Controlling a new migration world", in GUIRAUDON, Virginie, and JOPPKE, Christian (Ed.), *Controlling a New Migration World*, New York: Routledge, 2001, pp. 8 ff.; CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, pp. 325 ff.

<sup>44</sup> *Op. cit.*, pp. 639 ff.; See, also, CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, p. 323.

<sup>45</sup> On the migration-security nexus see, among others, WOHLFELD, Monika, *op. cit.*, pp. 63 ff.; KOSER, Khalid, "When is Migration a Security Issue?", *Brookings*, 31.3. 2011. Available at <http://www.brookings.edu/research/opinions/2011/03/31-libya-migration-koser> [Accessed 30 August 2018]; FAIST, Thomas, "The migration-security nexus: international migration and security before and after 9/11", *COMCAD Working Papers*, 9, Bielefeld: Universität Bielefeld, Fak. für Soziologie, Centre on Migration, Citizenship and Development, 2005, pp. 3 ff. Available at <http://nbn-resolving.de/urn:nbn:de:0168-ssoar-378981> [Accessed 6 September 2018]; PINYOL-JIMÉNEZ, Gemma, "The Migration-Security Nexus in short: instruments and actions in the European Union", *Amsterdam Law Forum*, vol. 4:1, 2012, pp. 36-57; HUYSMANS, Jef, and SQUIRE, Vicki, "Migration and Security", in: CAVELTY, Myriam Dunn, and BALZACQ, Thierry (ed.), *Routledge Handbook of Security Studies*, London: Routledge, 2009. Available at <http://oro.open.ac.uk/17257/> [Accessed 6 September 2018]; CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, pp. 198- 209, pp. 215 ff.; BIGO, Didier, "Migration and Security",

The terrorist attacks of 11 September 2001 and the “War on Terror” have ultimately contributed to linking terrorism, crime, border and migration, leading to an even more substantial strengthening of border controls and restrictive migration measures. A new phase of securitizing migration began, which Stephen CASTLES, Hein de HAAS and Mark MILLER call “hyper-securitization”<sup>46</sup>. The link between migration and terrorism also contributed to the construction of the “Islamic threat” and to accentuate the “we” (the Western) and the “them” (the Muslim) dualism. Migrants, especially Muslims, began to be perceived as a threat to Western values, giving rise to what Gemma PINYOL-JIMÉNEZ calls the “crisis of multiculturalism”<sup>47</sup>. It is no longer just irregular migration and related offenses that are considered a threat, but migrants themselves are increasingly perceived not only as a threat to “our jobs”, “our social systems” or “our national identity”, but also, as “potential criminals”, to “our” security<sup>48</sup>.

From another angle, Didier BIGO analyses this securitization process as a construction influenced by security professionals and politicians who, with the help of the media, feed the narrative of irregular migration as a threat to security, in order to legitimize greater investments in security policies, despite the awareness that migration control alone is not the answer to the problem of irregular immigration<sup>49</sup>.

### 3.3. The securitization of the EU’s borders, asylum and migration policies

The securitization process has also influenced the EU’s borders, asylum and immigration policy which, under the Treaties and its Charter of Fundamental Rights, should be based on solidarity, fair sharing of responsibilities, respect for the right of asylum and the principle of *non-refoulement* and of fairness towards third-country nationals. For many years, the main policy strategic guidelines sought a balance between the need

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in GUIRAUDON, Virginie, and JOPPKE, Christian (Ed.), *Controlling a New Migration World*, New York: Routledge, 2001, pp. 121-149.

<sup>46</sup> *Op. cit.*, p. 201. See, also, FAIST, Thomas, *op. cit.*, pp. 3 ff.; PINYOL-JIMÉNEZ, Gemma, *op. cit.*, pp. 38 ff.

<sup>47</sup> *Op. cit.*, pp. 41 ff.

<sup>48</sup> See PINYOL-JIMÉNEZ, Gemma, *op. cit.*, pp. 42 ff. and 54.; FAIST, Thomas, *op. cit.*, pp. 10-11.

<sup>49</sup> BIGO, Didier, *op. cit.*, pp. 121 ff. Also FEIST, Thomas, *op. cit.*, p. 5, considers that securitizing migration policies such as stepped-up border controls “creates higher expectations among voters that governments are actually able to effectively control transnational movements” and may lead governments to present migration as a grave security risk, creating “incentives for political actors to engage on symbolic meta-politics”.

to maintain an open Europe (which promotes legal migration and the integration of migrants), a Europe of asylum (which protects all those who need international protection) and a Europe that prevents and combats irregular immigration (which controls its borders and ensures the return of irregular migrants)<sup>50</sup>. However, the security dimension prevailed over time. Mainly since 2005, the increasing pressure of irregular, often tragic, migratory flows in the Mediterranean has accentuated the perception of migration as a threat to security in Europe, making fight against irregular migration a special political priority<sup>51</sup>.

Indeed, in the area of legal migration, the EU has not gone beyond the lowest common denominator, opting for a bureaucratic and sector approach to harmonizing the conditions of entry and residence of certain categories of immigrants, considered less problematic (family members<sup>52</sup>, students, trainees and researchers<sup>53</sup>, highly qualified workers<sup>54</sup>, and seasonal workers<sup>55</sup>). The priority has always been border control (list of countries whose nationals must be in possession of visas when crossing the external border, Community Code on Visas, Schengen Borders Code, FRONTEX, EUROSUR, etc.) and instruments to prevent and combat irregular migration, such as the criminalisation of the facilitation of unauthorized entry, transit and residence<sup>56</sup>, the “privatisation” of migratory control functions (carrier sanctions<sup>57</sup>, carrier obligations to communicate passenger data<sup>58</sup>, employers sanctions<sup>59</sup>), creation of

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<sup>50</sup> Tampere European Council, 15 and 16 October 1999 (Presidency Conclusions); The Hague Programme, adopted by the European Council (4 and 5 November 2004); The Stockholm Programme, adopted by the European Council, 10 and 11 December 2009; Global Approach on Migration (2005) and Global Approach to Migration and Mobility (2011).

<sup>51</sup> See, among others, CRÉPEAU, François, and PURKEY, Anna, *op. cit.*, pp. 7 ff.; PINYOL-JIMÉNEZ, Gemma, *op. cit.*, pp. 39 ff.; SOUSA, Constança Urbano de, “L’émérgence...”, *op. cit.*, pp. 160 ff.

<sup>52</sup> Directive 2003/86/EC on the right to family reunification.

<sup>53</sup> Directive (EU) 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, and pupil exchange schemes or educational projects and au pairing.

<sup>54</sup> Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (Blue Card) and Directive 2014/66/UE on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer.

<sup>55</sup> Directive 2014/36/UE on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.

<sup>56</sup> Directive 2002/90/CE and Council Framework Decision 2002/946/JHA.

<sup>57</sup> Directive 2001/51/EC supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.

<sup>58</sup> Directive 2004/82/EC on the obligation of carriers to communicate passenger data.

<sup>59</sup> Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

an immigration liaison officers' network<sup>60</sup>, and promotion of return of irregular migrants and cooperation in this field<sup>61</sup>, among others.

Also, the EU external asylum and migration policy within the Global Approach to Migration and Mobility (GAMM)<sup>62</sup> is largely influenced by this securitization process. The GAMM, as the overarching framework of the EU policy's dialogues and cooperation with third-countries, has four main objectives: organising and facilitating legal migration and mobility; preventing and fighting irregular migration and traffic in human beings; promoting international protection; maximising the development impact of migration and mobility. However, the EU has always been more committed to curb irregular flows, changing development aid and other forms of support to third-countries of origin and transit for readmission agreements and their cooperation in strengthening border controls and combating irregular migration<sup>63</sup>. Even the so-called "Mobility Partnerships" with third countries are just a "pleasanter" framework for "selling" them readmission agreements and cooperation on borders control<sup>64</sup>.

Despite all, it was not possible to stop irregular migration, nor to prevent the 2015 "refugee crisis", which has put migration at the top of the political agenda. Even with a huge flow's reduction in 2017 and 2018, it continues to create enormous tensions between and within the EU Member States (for example, the government crisis in Germany in July 2018 or the refusal of disembarkation of migrants rescued in the Mediterranean by Italy's Matteo Salvini) and leads to continuous strengthening of border control and migration restraint, as evidenced by the European Council conclusions of 28 and 29 June 2018.

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<sup>60</sup> Regulation (EC) 377/2004 on the creation of an immigration liaison officers' network (amended by the Regulation (EU) 493/2011.

<sup>61</sup> Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals; Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals; Directive 2003/110/EC on assistance in cases of transit for the purposes of removal by air.

<sup>62</sup> EUROPEAN COMMISSION, *Global Approach to Migration and Mobility*, COM (2011) 743.

<sup>63</sup> See MORENO-LAX, Violeta, *Europe in crisis: Facilitating Access to Protection (Discarding) Offshore Processing and Mapping Alternatives for the Way Forward*, Red Cross EU Office, 2015, p. 15. Available at <https://redcross.eu/positions-publications/europe-in-crisis-facilitating-access-to-protection-discarding-offshore-processing-and-mapping-alternatives-for-the-way-forward> [Accessed 6 September 2018]. PINYOL-JIMÉNEZ, Gemma, *op. cit.*, pp. 46 ff.

<sup>64</sup> See SOUSA, Constança Urbano de, "Le partenariat pour la mobilité: un instrument de l'approche globale en matière d'immigration", in MAES, M., FOBLETS, M, and de BRUYCKER, P. (Eds.), *External Dimension of EU Migration and Asylum Law and Policy*, Brussels: Bruylant, 2011, pp. 343-358.

### 3.4. The EU's response to the 2015 “refugee crisis”: the imperative of border security and the obsession with immigration containment

The so-called 2015 refugee crisis was an announced one. Since 2013, the significant increase in the number of asylum applications and tragedies in the Mediterranean, such as the October 2013 wreck that killed hundreds of migrants in Lampedusa, led to the creation of the Mediterranean Task Force, which defined five areas of action, approved by the Justice and Home Affairs Council: (1) Cooperation with third-countries (Mobility Partnerships, information and awareness raising campaigns; involvement in maritime surveillance operations; strengthening their capacities to manage migration flows and border controls, readmission, etc.); (2) Regional Protection Programmes, increase of resettlement and reinforced legal pathways to access Europe, as a means to avoid hazardous journeys over the Mediterranean ; (3) Reinforced fight against international organized crime, smuggling and traffic in human beings; (4) Reinforced border surveillance to enhance maritime situational picture and to protect and save the lives of migrants in the Mediterranean; (5) Assistance to, and solidarity with, Member States dealing with high migration pressure<sup>65</sup>.

But it was only in 2015 that immigration and asylum (or rather their control) gained an unprecedented level of media and political attention, triggering multiple and enormous pressure on the EU and its Member States<sup>66</sup>. The inadequacy of European rules to organize and manage this type of flow was evident. In particular, the allocation of the responsibility for refugee protection to the first-entry Member State (the Dublin Regulation) created, in the event of migratory pressure, an asymmetrical and unfair burden-sharing system and led to inefficiencies in the European asylum system (failure to meet European standards, systemic failures in the asylum procedure and reception conditions for asylum seekers, etc.), attempts to transfer responsibilities, unilateral actions and lack of trust between Member States<sup>67</sup>.

<sup>65</sup> EUROPEAN COMMISSION, *Communication on the work of the Task Force Mediterranean*, COM (2013) 869.

<sup>66</sup> See CARRERA, Sergio, BLOKMANS, Steven, GROS, Daniel, and GUILD, Elspeth, *The EU's Response to the Refugee Crisis, Taking Stock and Setting Policy Priorities*, CEPS Essay no. 20. Available at <https://www.ceps.eu>. On the influence of media coverage of this crisis on the construction of a negative narrative regarding migration, see ANDERSON, Bridget, “The Politics of Pests: Immigration and the Invasive Other”, *Social Research*, Vol. 84, no. 1 (2017), pp. 7-28; DEL RE, Emanuela C., *op. cit.*, pp. 151 ff.

<sup>67</sup> See CARRERA, Sergio, BLOKMANS, Steven, CASSARINO, Jean-Pierre, GROS, Daniel, and GUILD, Elspeth, *The European Border and Coast Guard. Addressing migration and asylum challenges in the Mediterranean?* CEPS Task

In a first phase, the response was chaotic. The lack of coordination to organize the legal and safe arrival of those (mainly Syrians) who sought protection in the EU<sup>68</sup> fed the smugglers' organizations, led to tragedies and created unprecedented secondary movements within the EU. Several Member States have opted for national solutions, reintroducing controls at internal borders, such as Germany, Austria, France or Sweden, others erected walls, such as Hungary, and others have refused to accept refugees such as the Visegrád countries, throwing the integration process, based on solidarity and mutual trust, into crisis<sup>69</sup>, as well as the Schengen area, conceived as a common area without internal border controls<sup>70</sup>.

On 23 April 2015, in the wake of the tragic wreck that killed some 800 people, the European Council gave green light to several measures, now framed by the European Agenda on Migration<sup>71</sup>.

Among the measures adopted by the EU in this context, I highlight the following:

- 1) In 2016, transformation of FRONTEX into a European Border and Coast Guard Agency, with enhanced powers in the field of external border control and return of irregular immigrants<sup>72</sup>.
- 2) European Union military operation in the Southern Central Mediterranean (EUNAVFOR MED Sophia)<sup>73</sup>, launched in 2015 to fight against human smuggling and trafficking networks. Its effectiveness is, however, questionable, since it did not prevent insecure

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Force Report, 2017, p. 1. Available at <https://www.ceps.eu/publications/european-border-and-coast-guard-addressing-migration-and-asylum-challenges>. [Accessed 15 September 2018].

<sup>68</sup> The triggering of Temporary Protection (Directive 2001/55/EC) could have facilitated the organization of this mass influx into the European Union, ensure immediate protection, while removing pressure on national asylum systems and promote a fair distribution of asylum seekers among Member States.

<sup>69</sup> On the EU's response to the refugee crisis, see, among other authors, PIÇARRA, N., "A União Europeia e a «crise migratória e de refugiados sem precedentes»: crónica breve de uma rutura no sistema europeu comum de asilo", *e-Pública*, Vol. III, no. 2, November 2016, pp. 1-40; CARRERA, Sergio, BLOKMANS, Steven, GROS, Daniel, and GUILD, Elspeth, *op. cit.*; GREENHILL, Kelly M., "Open Arms Behind Barred Doors: Fear, Hypocrisy and Policy Schizophrenia in the European Migration Crisis", *European Law Journal* Vol. 22, no. 3, 2016, pp. 317-332.; MORENO-LAX, Violeta, *op. cit.*, pp. 1-2.

<sup>70</sup> On the impact of the refugee crisis on the functioning of the Schengen Area, see *The Future of the Schengen Area: Latest Developments and Challenges in the Schengen Governance Framework since 2016*, Brussels, 2018. Available at <http://www.europarl.europa.eu/supporting-analyses>. [Accessed 15 October 2018].

<sup>71</sup> EUROPEAN COMMISSION, *European Agenda on Migration*, COM (2015) 240, 13.5.2015. On this Agenda see, among others, TINKER, Catherine, "Saving Lives and Building Society: The European Migration Agenda", *ILSA Journal of International & International Law*, Vol. 22:2, 2016, pp. 397 ff.; CARRERA, Sergio, BLOKMANS, Steven, GROS, David, and GUILD, Elspeth, *op. cit.*, pp. 3 ff.; CRÉPEAU, François, and PURKEY, Anna, *op. cit.*, pp. 17 ff.

<sup>72</sup> Regulation (EU) 2016/1624 on the European Border and Coast Guard. On this Regulation, see CARRERA, Sergio, BLOKMANS, Steven, CASSARINO, Jean-Pierre, GROS, Daniel, and GUILD, Elspeth, *op. cit.*, pp. 43 ff.

<sup>73</sup> Decision (CFSP) 2015/778, as amended by Decision (CFSP) 2017/1385.

- journeys, translated, in 2016, into a record number of more than 5.000 drowned migrants in the Mediterranean<sup>74</sup>;
- 3) The EU-Turkey refugee agreement to stop the flow of irregular migrants and asylum seekers arriving from Turkey to Europe, which made it possible to stem the flow in the Aegean Sea, despite the legitimate legal doubts it raises, as Turkey is not a “safe third-country” as defined by the EU’s asylum law<sup>75</sup>;
  - 4) Resettlement of 20.000 people in need of international protection<sup>76</sup>, resettlement of Syrian refugees under the EU-Turkey agreement and the relocation of 160.000 asylum seekers from Italy and Greece<sup>77</sup>.
  - 5) New Partnership Framework with third-countries on migration, with the aim, in the short-term, to save lives in the Mediterranean Sea, to increase return to the countries of origin and transit and to enable migrants and refugees to stay close to their countries of origin. The long-term objective is to address the root causes of irregular migration and forced displacement. In this context, the priority is to launch comprehensive partnerships (compacts) with selected third-countries (Jordan, Lebanon, Niger, Nigeria, Senegal, Mali, and Ethiopia), reinforce the EU-Tunisia cooperation and support Libya in its efforts to manage irregular migration flows<sup>78</sup>. The real and main objective is, however, to outsource the EU migration and asylum policy, based on control and contention of immigration flows, making the support to countries of origin and transit dependent on their ability to prevent migratory flows, control borders, protect refugees and cooperate with the EU in the field of readmission and return, following a punitive logic (“less for less”) and not a positive incentive one (“more for more”).
  - 6) Financial instruments to support third-countries, such the EU Regional Trust Fund in response to the Syrian crisis, the EU Emergency Trust Fund for Africa and the Facility for Refugees in

<sup>74</sup> See CARRERA, Sergio, BLOKMANS, Steven, CASSARINO, Jean-Pierre, GROS, Daniel, and GUILD, Elspeth, *op. cit.*, pp. 31 ff.

<sup>75</sup> On the EU-Turkey agreement see, among others, GREENHILL, Kelly M., *op. cit.*, pp. 325 ff. CRÉPEAU, François, and PURKEY, Anna, *op. cit.*, pp. 21 ff.; MORENO-LAX, Violeta, *op. cit.*, p. 20 and pp. 26 ff.

<sup>76</sup> Commission Recommendation (EU) 2015/914 on a European resettlement scheme.

<sup>77</sup> Council Decision (EU) 2015/1523 and (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece.

<sup>78</sup> EUROPEAN COMMISSION, *Communication on establishing a new Partnership Framework with third-countries under the European Agenda on Migration*, COM (2016) 385.

Turkey (with an initial allocation of EUR 3 billion and an additional EUR 3 billion up to the end of 2018, provided all Turkey's commitments have been respected), encouraging them to improve control over migration and refugee flows into the EU.

- 7) Reform of the Common European Asylum System, under negotiation since 2016, with the aim of reaching a more harmonized asylum system, to avoid secondary movements of asylum seekers and refugees within the EU, to make the EU less attractive for asylum seekers and to introduce, in the Dublin Regulation, a solidarity mechanism that mitigates its negative impact on first-entry Member States in the event of migratory pressure<sup>79</sup>.

Despite the rhetoric about the need to protect the human rights of refugees, the fact is that the EU has not provided a comprehensive humanist and humanitarian response that would enable refugees to exercise their right to asylum, in a safe and legal manner<sup>80</sup>. Rather, it has chosen the “old recipe” of strengthening borders control, either directly or through outsourcing by seeking the support of third-countries of origin and transit to control their borders or encouraging them to take responsibility for refugee protection themselves (i.e. agreement with Turkey).

The only solidarity measures (resettlement and relocation) were symbolic. Until 7 March 2018, 29.314 refugees had been resettled under the various schemes, with several Member States refusing resettlement, and 33.846 asylum seekers (21.847 from Greece and 11.947 from Italy) relocated to other Member States, with some refusing to relocate (such as Hungary or Poland)<sup>81</sup>. The implementation of the relocation programme

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<sup>79</sup> The reform of the Common European Asylum System consists of seven legislative acts, proposed by the European Commission: (1) Proposal for a Regulation on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, COM (2016) 466; (2) Proposal for a Regulation establishing a common procedure for international protection in the Union, COM (2016) 467; (3) Proposal for a Directive laying down standards for the reception of applicants for international protection (recast), COM (2016) 465; (4) Proposal for a Regulation establishing a Union Resettlement Framework, COM (2016) 468; (5) Proposal for a Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), COM (2016) 270; (6) Proposal for a Regulation on the establishment of ‘Eurodac’ (recast), COM (2016) 272; (7) Proposal for a Regulation on the European Union Agency for Asylum, COM (2016) 271 and COM (2018) 633.

<sup>80</sup> See MORENO-LAX, Violeta, *op. cit.*, pp. 1-2.

<sup>81</sup> EUROPEAN COMMISSION, *Progress report on the Implementation of the European Agenda on Migration*, COM (2018) 250.

faced bureaucratic difficulties and was inadequate given the emergency of the situation, falling far short of expectations.

The strengthening of search and rescue operations was a positive development, as states have, under International Law, an obligation to assist persons in distress at sea and to deliver survivors to a place of safety<sup>82</sup>.

However, there is no clear obligation for states responsible for a SAR zone or for flag States to authorize the disembarkation of rescued people on their territory, since they may be landed in a safe third-country that accepts them. When it comes to undocumented migrants or asylum seekers, this leads to a questionable dynamic of responsibility transfer<sup>83</sup>. This is what happened in successive refusal episodes by Italy to authorize the landing of migrants rescued in the Mediterranean. In any case, the *non-refoulement* principle has to be respected<sup>84</sup>, which implies that migrants rescued in the Mediterranean cannot be landed in the territory of a third country (i.e. Libya) where there is a serious risk that they would be subjected to torture, persecution or inhuman or degrading treatment.

Despite the strong drop in the detections of illegal border-crossing at the EU's external borders and in the first asylum applications, the political tensions and divisions around migration have not diminished, nor the obsession with migration control. In its conclusions of 28 June 2018, the European Council<sup>85</sup> confirmed unequivocally the priority it attaches to the "Fortress Europe", so dear to the Visegrád Group, now accompanied by Italy, Denmark and Austria and, to some extent, by Germany. It once again placed the effective control of the external border and the effective return of irregular immigrants at the top of the political agenda, in order to stem illegal migration and prevent secondary movements. In this

<sup>82</sup> 1982 United Nations Convention on the Law of the Sea (UNCLOS), 1974 International Convention for the Safety of Life at Sea (SOLAS), 1979 International Convention on Maritime Search and Rescue (SAR). On International Law of the Sea in this context, see, among others, O'BRIEN, Kilian S., "Refugees on the High Seas: International Refugee Law Solutions to a Law of the Sea Problem", *Goettingen Journal of International Law*, 2011, pp. 715-732; BEVILACQUA, Giorgia, "Exploring the Ambiguity of Operation Sophia Between Military and Search and Rescue Activities", in: ANDREONE, Gemma (Ed.), *The Future of the Law of the Sea*, Cham: Springer, 2017, pp. 178 ff. Available at <https://link.springer.com/content/pdf/10.1007%2F978-3-319-51274-7.pdf> [Accessed 6 September 2018]; BASILIEN-GAINCHE, Marie-Laure, "Les boat people de l'Europe. Que fait le droit? Que peut le droit?", *La Revue des droits de l'homme*, 9, 2016, pp. 7 ff. Available at <https://journals.openedition.org/revdh/1838> [Accessed 6 September 2018]; COPPENS, Jasmine, and SOMERS, Eduard, "Towards New Rules on Disembarkation of Persons Rescued at Sea?", *The International Journal of Maritime and Coastal Law*, 25, 2010, pp. 377-403.

<sup>83</sup> BEVILACQUA, Giorgia, *op. cit.*, pp. 180 ff., COPPENS, Jasmine, and SOMERS, Eduard, *op. cit.*, pp. 381 ff.

<sup>84</sup> See BEVILACQUA, Giorgia, *op. cit.*, pp. 182 ff.; COPPENS, Jasmine, and SOMERS, Eduard, *op. cit.*, pp. 378 ff.; O'BRIEN, Kilian S., *op. cit.*, pp. 725 ff., BASILIEN-GAINCHE, Marie-Laure, *op. cit.*, pp. 10 ff.

<sup>85</sup> CO EUR 9, 28 June 2018, in: <http://data.consilium.europa.eu/doc/document/ST-9-2018-INIT/en/pdf>.

context, it advocated further enhancement of FRONTEX, as well as cooperation with countries of origin and transit, especially Libya (despite the dramatic situation and widely reported disregard for migrants' human rights), Turkey and others in the fight against irregular immigration and the step up of their capacity to protect borders and improve return and readmission procedures. It also called for the development of the partnership with Africa in order to address the root causes of migration and discourage migratory flows.

With regard to the reform of the Common European Asylum System, there has been only a vague appeal for a consensus based on responsibility and solidarity. As for legal migration and resettlement, not a single word, despite that both are needed to prevent irregular migration and tackle the demographic challenge of Europe!

In its eagerness to calm certain public opinion increasingly surrendered to the demagogic discourse of Matteo Salvini and Viktor Orban that is necessary to stop immigration to ensure the security of citizens, the European Council suggests two solutions for the disembarkation of rescued-at-sea migrants, in order to discourage irregular immigration, break the business model of smugglers and prevent secondary movements within the Union: (1) Regional disembarkation platforms in third-countries, in cooperation with UNHCR and IOM<sup>86</sup>, an idea advocated by Viktor Orban and other European politicians, such as Heinz-Christian Stracher and Matteo Salvini, to prevent the entry of migrants and asylum seekers in the EU. According to the European Commission non-paper on regional disembarkation arrangements<sup>87</sup>, these platforms should allow, with financial support from the EU, screening migrants in need of international protection, to whom (but not all) Member States and other countries could offer resettlement on a voluntary basis, or local solutions could be arranged. Rescued migrants without international protection needs should be swiftly repatriated to the countries of origin. (2) Set up controlled centres in Member States, on a voluntary basis and

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<sup>86</sup> On 27 June 2018, UNHCR and IOM submitted a proposal for regional cooperation agreements in the Mediterranean to ensure predictable disembarkation and subsequent processing of persons rescued-at-sea, in order to, in accordance with international law and the protection of human rights, facilitate rescue operations, ensure a quick disembarkation and adequate, safe and dignified reception conditions for people rescued-at-sea, access protection needs, provide refugees with solutions (resettlement, family reunification, humanitarian admission) and assist the return and reintegration of migrants without protection needs. This proposal is available at: <http://www.unhcr.org/5b35e60f4> [Accessed 30 August 2018].

<sup>87</sup> In: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724\\_non-paper-regional-disembarkation-arrangements\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724_non-paper-regional-disembarkation-arrangements_en.pdf) [Accessed 6 September 2018].

with the financial support of the EU, where, with FRONTEX, Europol and the European Asylum Office support, disembarked migrants could be identified, registered, subject to security screening and to assessment of their protection needs, thus allowing the swift identification of irregular migrants and their quick return. Those in need of international protection may be provided protection, in the form of relocation or resettlement, on a voluntary basis<sup>88</sup>.

These two apparently innovative measures raise, however, many legal and practical questions, which legitimately allow to doubt whether they can be successfully implemented<sup>89</sup>.

The regional disembarkation platforms in third-countries are inspired by the US<sup>90</sup> and Australia's<sup>91</sup> experiences on maritime interdiction of migrants and refugees rescued-at-sea (push-back operations) and extra-territorial processing of asylum applications, in order to prevent their entry into their territories.

Also, in the EU, the establishment of asylum-seekers' reception centres in third-countries for external processing of asylum applications is not a new idea and the introduction of offshore asylum procedures has been discussed for many years<sup>92</sup>.

In any case, regional disembarkation platforms, which are another tool for externalizing European asylum policy and transferring responsibilities to third-countries, raise a number of issues for which there is still no response (Which third-countries will take responsibilities for

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<sup>88</sup> See European Commission *non paper* on "controlled centres" in the EU, in: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724\\_non-paper-controlled-centres-eu-member-states\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20180724_non-paper-controlled-centres-eu-member-states_en.pdf). [Accessed 6 September 2018].

<sup>89</sup> See EMMANOULIDIS, Janis A., Time to move up a gear: the results of an insufficient summit, Brussels: European Policy Centre, 2018. pp. 5-9. Available at [http://www.epc.eu/documents/uploads/pub\\_8646\\_post-summitanalysis.pdf?doc\\_id=2022](http://www.epc.eu/documents/uploads/pub_8646_post-summitanalysis.pdf?doc_id=2022); MAIANI, Francesco, "Regional Disembarkation Platforms" and "Controlled Centres": Lifting the Drawbridge, Reaching out Across the Mediterranean, or Going Nowhere", *Ref Law*, 14 September 2018. Available at <http://www.reflaw.org/regional-disembarkation-platforms-and-controlled-centres-lifting-the-drawbridge-reaching-out-across-the-mediterranean-or-going-nowhere/> [Accessed 10 October 2018].

<sup>90</sup> In 1981, the US began to use maritime interdiction of asylum seeker vessels, returning asylum seekers to the point of departure without processing their asylum claims (Caribbean interdiction programme) and in the 1990s, asylum seekers were transferred to the US-controlled territory of Guantanamo Bay (Cuba), Jamaica and Turks and Caicos Islands for offshore processing of their asylum claims. See GHEZELBASH, Daniel, *op. cit.*, p. 253; MORENO-LAX, Violeta, *op. cit.*, pp. 15 ff.

<sup>91</sup> Between 2001 and 2008, Australia adopted the "Pacific Solution", which involved interception and push-back operations targeting boats' arrivals and the extraterritorial processing of asylum claims in closed reception centres managed by the IOM in Manus Island (Papua New Guinea) and in Nauru. Recognized refugees were resettled to neighbouring countries and some to Australia. Extraterritorial processing of asylum claims in Papua New Guinea and Nauru was reintroduced in 2012. Push-back operations resumed in 2013, with the military-led "Operation Sovereign Borders. See MORENO-LAX, Violeta, *op. cit.*, pp. 16 ff.; GHEZELBASH, D., *op. cit.*, p. 253.

<sup>92</sup> See MORENO-LAX, Violeta, *op. cit.*, pp. 17 ff.

migrants who are stranded there? Can it be ensured that those in need of international protection will be effectively reinstated in the EU and not remain in those centres? How to ensure that they do not further promote irregular migration? etc.)<sup>93</sup>.

In particular, if the aim (as it seems to be) is to keep refugees and asylum seekers away from the EU, their compatibility with human rights is doubtful<sup>94</sup>. The maritime interdiction practices and return of migrants without screening their protection needs undertaken by Italy have been condemned by the European Court on Human Rights in the *Hirsi* case, which found that Italy's practice of interdicting and returning migrants to Libya violated the European Convention on Human Rights, namely the prohibition of inhuman or degrading treatment, the protection against *refoulement* and the prohibition of collective expulsion, which have extra-territorial applicability and do not admit derogations<sup>95</sup>. The disembarkation of migrants rescued by European vessels and the extraterritorial processing of their asylum claims in countries that do not offer human rights protection and access to a fair asylum procedure is also incompatible with the Charter of Fundamental Rights of the European Union, which guarantees the right of asylum (article 18), prohibits collective expulsions and protects everyone from being removed “to a State where there is a serious risk that he or she would be subject to the death penalty, torture or other inhuman or degrading treatment or punishment” (article 19), there or in any other state to which he or she may be expelled.

The Parliamentary Assembly of the Council of Europe, in its Resolution 2228 (2018) adopted on 27 June 2018 (“*Human Rights Impact of the “external dimension” of the EU asylum and migration policy: out of sight, out of rights?*”) also warns of the human rights risks of outsourcing EU's migration control and asylum policies, which could compromise the rights of asylum seekers or expose migrants to inhuman and degrading treatment, discrimination, arbitrary detention, or lack of social protection. It also sees with concern the growing tendency to make development aid conditional on third-countries' commitments to border control and migration

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<sup>93</sup> See EMMANOULIDIS, Janis A., *op. cit.*, p. 7; MAIANI, Francesco, *op. cit.*, considers that the platforms “are unlikely to be the hoped-for “game changer.” On the one hand, they would have little added value in respect of externalization tools already in place. On the other hand, they would be in all likelihood difficult to “sell” to non-EU States”.

<sup>94</sup> ECRE, *European Council: regional disembarkation platforms a key objective*, 29 June 2018. Available at <https://www.ecre.org/european-council-regional-disembarkation-platforms-a-key-objective/> [Accessed 30 August 2018]. EMMANOULIDIS, Janis A., *op. cit.*, p. 7.

<sup>95</sup> ECtHR, *Hirsi v Italy*, Appl. 27765/09, 23 February 2012.

management, because “for countries which by definition lack sufficient capacity to respond to the needs of their own populations, this amounts to creating more tensions and difficulties.”<sup>96</sup>.

Considering the practical and legal obstacles for the establishment of EU centres for external processing of asylum applications, the EU should, as pointed out by Violeta MORENO-LAX, explore other options to counter smuggling and reduce deadly journeys more compliant with human rights obligations and to guarantee those in need of international protection a safe and legal access to Europe. These include more flexible and generous use of family reunification and other immigration legal provisions, the increase of resettlement, the granting of humanitarian visas, the suspension or abolition of visa requirements for refugee-producing countries (i.e. Syria, Eritrea), or the lifting/suspension of carrier’s sanctions<sup>97</sup>.

The creation of “controlled disembarkation centres” in Member States also raises many unanswered questions (Which Member State will be willing to establish such centres? How could/would other Member States support the one concerned? Would the asylum claims of people deemed to be in need of protection be processed in the Member State hosting the controlled centre or the one that saved them? How to ensure the swift return of those who do not have the right to remain without effective readmission agreements with countries of origin and transit? Are these countries willing to cooperate without adequate incentives, which also involve more channels for legal migration? etc.)<sup>98</sup>. The difficulties encountered in the implementation of the relocation programme in favour of Greece and Italy suggest that this measure is likely to fail, since the Member States hosting these centres run the risk of being responsible for the protection of all or most of the refugees disembarked there and for the deportation of migrants without protection needs<sup>99</sup>. One has to be aware that the effective enforcement of expulsion decisions faces legal obstacles (protection of human rights, respect for *non-refoulement*) as well practical difficulties (lack of documentation and little interest of origin countries on readmission, especially when their economy depends largely on remittances, a reality that the EU tends to underestimate).

<sup>96</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=24966&search=Y2F0ZWdvcnlf3RyX-2VuOiJBZG9wdGVkIHRleHQi>

<sup>97</sup> See MORENO-LAX, Violeta, *op. cit.*, pp. 31 ff.

<sup>98</sup> See, EMMANOULIDIS, Janis A., *op. cit.*, p. 8.

<sup>99</sup> See, MAIANI, Francesco, *op. cit.*

The European Council's priorities (securitization of the EU's external border, stem migratory flows and ensure effective return of irregular migrants and rejected asylum seekers) are also reflected in the recent proposals of the European Commission<sup>100</sup>: strengthening of the European Border and Coast Guard with a standing corps of 10.000 operating staff, with operational capacities in the field of border control and return of irregular migrants<sup>101</sup>; recast of the Return Directive to step up the effective and quick return of irregular migrants and rejected asylum seekers, ensure a more effective use of detention to support the enforcement of returns and improve the cooperation of irregular migrants within the return procedure, among other measures<sup>102</sup>. In the field of legal migration, the Commission only proposes to promote the admission of highly qualified migrants and symbolic measures regarding resettlement<sup>103</sup>.

The proposal for a multiannual Financial Framework for the period 2021-2027 also reflects the securitization of the EU migration and asylum policy. It foresees a threefold increase in European funding to secure border control and restrictive migration and asylum policies from around €13 billion (in the current period) to about €35 billion<sup>104</sup>. A significant part of these funds and other financial instruments (for example, the Neighbourhood, Development and International Cooperation Instrument - NDICI, with a budget of €89.2 billion) should be spent on third-countries' (especially African) capacity building to control borders, protect refugees, contain migration flows, and readmit irregular migrants.

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<sup>100</sup> EUROPEAN COMMISSION, *State of the Union 2018 – The hour for European Sovereignty*. In: [https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-speech\\_en\\_0.pdf](https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-speech_en_0.pdf) [Accessed 15 September 2018].

<sup>101</sup> EUROPEAN COMMISSION, Proposal for a Regulation on the European Border and Coast Guard, COM (2018) 631.

<sup>102</sup> Proposal for the recast of the Return Directive. COM (2018) 634.

<sup>103</sup> EUROPEAN COMMISSION – *Enhancing safe and legal pathways to Europe: an indispensable part of a balanced and comprehensive migration policy*. COM (2018) 635. In this communication on legal migration, three measures of symbolic value and limited impact were announced: (1) The swift adoption of the “EU Blue Card” Directive to improve the rules on attracting highly-skilled migrants. (2) The adoption of the Union Resettlement Framework Regulation and the step up of Member States' efforts to resettle, until October 2019, 50.000 people in need of international protection under the current EU resettlement scheme. (3) The support to Member States' pilot projects on legal migration with African countries, to reduce irregular migration, to fill labour shortages and to facilitate cooperation with third- countries on the prevention of irregular migration, readmission and return of irregular migrants.

<sup>104</sup> See Proposals for the Border Management Fund [COM (2018)473] and Asylum and Migration Fund [COM (2018)471].

### 3.5. Consequences of the securitization of migration

Border controls, prosecution of criminal smuggling and human trafficking networks, the effective return of those who do not fulfil the conditions to remain and stricter control of the employment of irregular migrants are necessary and legitimate measures. But restrictive immigration policies, based on a continuous reinforcement of border controls and restraint of immigration are, by themselves, ineffective to manage migration flows, curb immigration, combat irregular immigration, and prevent the human tragedies associated with it<sup>105</sup>. They are also, as Elisa ORTEGA VELÁSQUEZ points out, demagogic, since their objective is often to show public opinion that the state (or the EU) has effective control over migration and justify more restrictive measures<sup>106</sup>.

As Antonio GUTERRES stated in an article published in *Time* on 23 April 2015, “[...] *border surveillance alone is not an answer [...] This stems from a simple truth: we cannot deter people fleeing for their lives. They will come. The choice we have is how well we manage their arrival, and how humanely[...] Without realistic alternative channels for people to reach safety, the much-needed increase in international efforts to crack down on smugglers and traffickers is unlikely to be effective*”<sup>107</sup>.

One must be aware that international migration is a human, multidimensional and complex phenomenon, which is beyond the ability and willingness of states or the EU to unilaterally and effectively regulate and control it. Several factors explain this difficulty, such as: labour markets’ demands for migrant workers; inadequacy and inflexibility of migration laws; the own dynamic of migration, based on interpersonal links and social networks, which facilitate, construct and autonomize the migratory processes; or what CASTLES, HAAS and MILLER describe as the “migration industry,” made up of a broad spectrum of people who are interested in organizing migration processes, such as travel agents, immigration lawyers, labour recruiters, financial institutions that profit from the remittances, employers who need labour force (often

<sup>105</sup> See, among others, PINYOL-JIMÉNEZ, Gemma, *op. cit.*, p. 55; CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, pp. 323 ff.; HAAS, Hein, *op. cit.*; BLUS, Anna, *op. cit.*, p. 424.

<sup>106</sup> *Idem*, *op. cit.*, pp. 669 ff. CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, p. 323 refers to the symbolic function of restrictive measures.

<sup>107</sup> U.N. Refugee Chief: Europe’s Response to Mediterranean Crisis Is “Lagging Far Behind”, *Time*, 23 April 2015, in <http://time.com/3833463/unhcr-antonio-guterres-migration-refugees-europe/> [Accessed 30 August 2018].

unskilled), members of the communities who help their compatriots, corrupt officers, smugglers, counterfeiters and other criminals, among many others<sup>108</sup>.

Restrictive migration policies based on border control and driven by the idea that migration is intrinsically bad and, therefore, should be stopped or reduced, have several undesirable side-effects.

On the one hand, the lack of transparent and pragmatic legal migration channels is itself a powerful insecurity driver, since it contributes to intensifying the dependence of migrants on smuggling, thus fostering the market of smugglers, who are increasingly professional, profitable and dangerous<sup>109</sup>. It is the smugglers and traffickers who pose a threat to the security not only of states but of migrants and refugees themselves. Even if the strengthening of control at some borders can momentarily decrease migration flows, we cannot ignore that smuggling networks operate according to the market law of supply and demand, adapting to, and seeking increasingly long and dangerous routes, which endanger the lives of migrants, as the increase in mortality in the Mediterranean demonstrates<sup>110</sup>.

On the other hand, the constant association of migration with “irregularity” or “illegality” or with terrorist attacks or crimes involving immigrants, expanded by the mass media and the populist and anti-immigration extreme right parties, fuels the anti-migration narrative and disproportionately increases the perception of insecurity<sup>111</sup>. The resulting connection between migration, terrorism, crime, even if not founded, also leads to the “illegitimacy” of the presence of migrants<sup>112</sup>, boosted by social exclusion and the creation of ghettos due to failed integration policies. This not only hampers the integration of immigrants, but also impoverishes the capacity of host societies to overcome debilitating dualisms such as “we-they”, “citizen-alien (*hosts*, enemy)”, “citizen-irregular immigrant or criminal”. All this has contributed to feed and

<sup>108</sup> See CASTLES, Stephen, HAAS, Hein De, MILLER, and Mark J., *op. cit.*, pp. 40 ff., 51, 235 ff., p. 317 and p. 325.

<sup>109</sup> ORTEGA VELÁZQUEZ, Elisa, *op. cit.*, pp. 664 ff.; CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, pp. 236-238, p. 323; KOSER, Khalid, *op. cit.*; WOHLFELD, Monika, *op. cit.*, pp. 75 ff., PINYOL-JIMÉNEZ, Gemma, *op. cit.*, p. 55; HAAS, Hein, *op. cit.*

<sup>110</sup> See PINYOL-JIMÉNEZ, Gemma, *op. cit.*, p. 55.

<sup>111</sup> MEDAM (Mercator Dialogue on Asylum and Migration), *2018 MEDAM Assessment Report on Asylum in Europe – Flexible Solidarity: A comprehensive strategy for asylum and immigration in the EU*, Kiel: Institute for the World Economy (IfW), 2018, pp. 62 ff. Available at [https://www.ceps.eu/system/files/MEDAM-assessment-report\\_2018.pdf](https://www.ceps.eu/system/files/MEDAM-assessment-report_2018.pdf).

<sup>112</sup> EYLEMER, Sedef, and ŞEMŞİT, Sühal, *op. cit.*, p. 59; PINYOL-JIMÉNEZ, Gemma, *op. cit.*, p. 55.

sediment negative perceptions about migration, based on preconceived and unfounded ideas of the migrant as the criminal, who “takes” our jobs or threatens our culture and identity, generating “fear” and “anxiety”, racism and xenophobia, and accentuating fractures that jeopardize social cohesion and the structural values of democratic societies.<sup>113</sup>

The 2015 “refugee crisis” further accentuated the perception of “invasion” and “lack of control”, mightily contributing to the growing scepticism of the population about migration, its benefits and the ability of mainstream governments to control it<sup>114</sup>. As PAPADEMTERIOU, HOPER and BENTON argue, these fears, coupled with the globalization’s consequences for a significant part of the host societies (growing inequality in the distribution of its benefits and costs and social, cultural and demographic changes) are feeding the far-right parties and its “nativist populism”, based on a radical narrative on migration (as a crime-enhancer or incompatible with national values) and anti-immigration policies as a means of protecting the “nation” against the threats of immigration to security or to Western culture<sup>115</sup>.

This representation of immigration as a threat to security and cultural identity and the exploitation of the “fear” it creates in voters has contributed to the expressive electoral gains of far-right parties in countries such as France, Germany, the Netherlands, Denmark, Sweden, Hungary, Italy, and Austria. In turn, this situation is influencing the mainstream political actors and asylum and migration policies in Europe<sup>116</sup>. The fear of losing voters, and, therefore, power, to anti-immigration parties makes mainstream leaders obsessed with curbing migratory flows, even if this disrespects European civilizational values (such as the intransigent respect for the human rights of any person) or it is ineffective to manage migration, ensure security and put an end to the humanitarian tragedy in which migration has been transformed. This creates an irrational vicious circle that generates more restrictive measures, which in turn generate more migratory irregularity and human drama. It is urgent to break this vicious circle through a more comprehensive, pragmatic and

<sup>113</sup> KOSER, Khalid, *op. cit.*; WOHLFELD, Monika, *op. cit.*, pp. 68 ff.; FAIST, Thomas, *op. cit.*, pp. 15 ff.; PINYOL-JIMÉNEZ, Gemma, *op. cit.*, p. 38, p. 54.

<sup>114</sup> See PAPADEMTERIOU, Demetrius G., HOOPER, Kate, and BENTON, Meghan, *In Search of a New Equilibrium: Immigration Policymaking in the Newest Era of Nativist Populism*, Washington, DC: Migration Policy Group, 2018, pp. 5 ff. Available at <https://www.migrationpolicy.org/research/immigration-policy-making-nativist-populism>.

<sup>115</sup> *Op. cit.*, p. 5.

<sup>116</sup> See CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, pp. 4 ff., 317; PAPADEMTERIOU, Demetrius G., HOOPER, Kate and BENTON, Meghan, *op. cit.*

humanistic approach, less Eurocentric and more in line with the demographic challenges of Europe and its civilizational values. Otherwise, international migration will become a real threat to peace and social cohesion, as well as to democracy.

#### **4. Human-rights based management of international migration: some measures**

The answer to the question on how Europe must long-lastingly and sustainably address the challenges posed by international migration and break the vicious circle of migratory irregularity and its “obsession with control and containment”, with all its negative consequences, is not easy and will always be too complex to fit in this text.

However, I will focus on five measures that I find essential to provide Europe with a migration and asylum policy that is faithful to its civilizational values and also to its own interests in times of demographic ageing, thus allowing for a *status quo* change, migratory regularity and respect for human rights.

##### **4.1. Cooperation with countries of origin and transit in all dimensions of the phenomenon**

Since international migration is a transnational phenomenon by nature, international cooperation is absolutely essential if it is to be managed in all its dimensions and for the benefit of all<sup>117</sup>. However, this implies overcoming the inherent tension between this transnational phenomenon, which requires a global framework of multilateral cooperation for its governance, and the traditional concept of territorial sovereignty, which sees border control and migration policies as a last headlock of state sovereignty. In the area of the external dimension of European migration and asylum policy, the EU has been committed to cooperation with countries of origin and transit, but above all with the purpose of externalizing its control policies. The main objective has been to support the capacity-building of third-countries to manage flows, control borders or implement readmission agreements to facilitate the return of irregular

<sup>117</sup> See, among others, ORTEGA VELÁZQUEZ, Elisa, *op. cit.*, pp. 677 ff.

migrants and rejected asylum seekers, thus securitizing the EU's external border and preventing migrants and refugees from accessing its territory. And this “old recipe” has proved unable to manage migratory flows, to reduce incentives to irregular migration or to contain the humanitarian tragedy of migration across the Mediterranean.

Although co-operation with transit and origin countries is essential for combating smugglers' networks and for ensuring the European return policy, it will only be effective if the EU cooperates in areas of interest to these countries, such as mobility (visa facilitation), legal admission of migrant workers needed to meet existing labour shortages in the context of demographic ageing and also resettlement, relieving those countries of the huge share of responsibility they bear with refugee protection<sup>118</sup>. It should be borne in mind that, for many countries of origin, migration (regular or irregular) is a powerful driver of development, has a huge economic impact (in many African countries, remittances represent a significant portion of the GDP) and is a promoting factor of social peace (offers young people a perspective for the future and contributes to the survival of their families, while boosting the local economy)<sup>119</sup>. To get a sense of this reality, we can compare the volume of remittances to Africa and the development aid that the EU intends to give in the coming years, largely conditioned by the capability of these states to control migration and accept readmission. Under the NDCI (2021-2027), the European Commission proposes to spend 32 billion euros with Sub-Saharan Africa in seven years. According to KNOMAD (Global Knowledge on Migration and Development), only in 2017, immigrant remittances to sub-Saharan Africa accounted for 38 billion US dollars, an amount that should reach 41 billion US dollars in 2018, and 43 billion US dollars in 2019<sup>120</sup>. These figures speak for themselves!

CASTLES, HASS and MILLER consider, however, that comprehensive multilateral cooperation and governance to manage and promote migration is not possible in the near future, for a variety of reasons, including the fact that the political debate in many immigration countries deals with migration as a problem that must be eliminated or reduced<sup>121</sup>.

<sup>118</sup> MEDAM, *op. cit.*, pp. 35 ff.; EYLEMER, Sedef, and ŞEMŞİT, Sühal, *op. cit.*, p. 70.

<sup>119</sup> See, among others, WOHLFELD, Monika, *op. cit.*, pp. 71 ff.

<sup>120</sup> KNOMAD- Global Knowledge on Migration and Development (World Bank Group), *op. cit.*, p. 4.

<sup>121</sup> *Op. cit.*, pp. 321 ff.

That is why, more than ever, there is a need for a paradigm shift. One that sees immigration as an opportunity rather than as a problem, and allows to eliminate the shortcomings and irrationalities of current migration policies<sup>122</sup>. A new paradigm that must recognize that this phenomenon, transnational in nature, can only be effectively managed in a context of international cooperation and by placing migrants as human beings in its core, as advocated by the UN Global Compact for Migration.

#### 4.2. Safeguarding human life and guaranteeing the right to asylum as a legal and ethical imperative

There is also a need for a human security perspective, which sees the migrant as a human being who, when threatened, must be protected<sup>123</sup>.

Firstly, search and rescue operations of migrants at sea should continue to be a priority, as they are a legal obligation and a civilizational imperative for Europe.

Secondly, the EU must assess the negative impact of its measures to control and protect external borders and to curb immigration on people in need of international protection, who, due to lack of legal and safe access to protection in Europe, are being pushed into illegal immigration networks. A common European asylum system that guarantees people absolute respect for the right to seek asylum and the principle of *non-refoulement* is of no use to them if they later have no legal and safe way of accessing it<sup>124</sup>.

We must not forget the strong commitment of Europe to asylum. For refugees and others with international protection needs, asylum is an elementary human rights' protection tool. Furthermore, International law and European Union law impose on states the *non-refoulement* obligation, i.e. the non-derogable obligation to not repel, expel or extradite a human being to another state where he or she may be persecuted, where his or her life may be threatened or where he or she may be subjected to

<sup>122</sup> See, among others, ORTEGA VELÁZQUEZ, Elisa, *op. cit.*, p. 680.

<sup>123</sup> WOHLFELD, Monika, *op. cit.*, pp. 69 ff.

<sup>124</sup> SOUSA, Constança Urbano de, "Taking the "bogus" out of the discourse concerning Asylum", in APAP, Joanna (Ed.), *Justice and Home Affairs in the EU: Liberty and Security Issues after Enlargement*, Cheltenham, UK/Northampton, USA. C: Edward Welgar, 2004, pp. 275-280.; SOUSA, Constança Urbano de, "L'émergence...", *op. cit.*, p. 161; MORENO-LAX, Violeta, *op. cit.*, pp. 34 ff.

torture or other inhuman or degrading treatment<sup>125</sup>. It is therefore essential to guarantee access to a fair asylum procedure and to open legal and safe pathways to European territory, as it makes no sense to force those fleeing Syria or Eritrea to risk their lives to exercise their human right to seek asylum, as enshrined in Article 14 of the Universal Declaration of Human Rights. Refugee protection is not only a legal obligation, but also a civilizational responsibility of Europeans.

Until 2014, the European Commission also acknowledged that irregular entry is an important pathway for asylum seekers to gain access to protection in the EU and therefore advocated measures to ensure their legal, safe and organized access to Europe, reducing the scope for human smuggling and human tragedies, such as enhanced reinstatement, the facilitation of humanitarian visas and protected entry procedures<sup>126</sup>.

Regional Protection and Development Programmes, such as those in Lebanon, Jordan or Iraq are gut initiatives. But many refugees in these countries, with widely exhausted reception capacities, have no prospect of having a decent future and therefore will try to reach Europe, legally or illegally. By 2017, 85% of the 25.4 million refugees (mostly from Syria, Afghanistan, South Sudan, Myanmar, and Somalia) had been hosted by lower and middle-income countries (Turkey, Pakistan, Uganda, Lebanon, Bangladesh or Sudan); in Europe, there were 6.1 million refugees, of whom 3.5 million in Turkey and about 1 million in Germany<sup>127</sup>. In the light of these figures, it is not difficult to conclude that it is not the EU that takes the largest share of responsibility for refugee protection, despite its greater host capacity. If Europe wants to reduce the number of refugees who embark on dangerous journeys to seek protection and be faithful to its values, then it must have a genuine common asylum policy that offers protection to those who need it, based on solidarity and sharing of responsibilities, and enhance legal migration pathways (i.e. humanitarian visas, visa exemptions for certain nationalities) and significantly

<sup>125</sup> On this principle and the right of asylum as a fundamental right see, among other authors, GIL, Ana Rita “A crise migratória de 2015 e os direitos humanos das pessoas carecidas de proteção internacional: o direito europeu posto à prova”, in A.VV., *Estudos em Homenagem ao Conselheiro Presidente Rui Moura Ramos*, Volume I, Tribunal Constitucional, Almedina, 2016, pp. 955-983; Idem, “40 anos de Direito constitucional de Asilo-Origens e novos caminhos de um direito fundamental”, *Julgar*, no. 29, 2016, pp. 169-197.

<sup>126</sup> EUROPEAN COMMISSION, *Improving access to durable solutions*, COM (2004) 410; EUROPEAN COMMISSION, *Policy Plan on Asylum – An integrated approach to protection across the EU*, COM (2008) 360; EUROPEAN COMMISSION, *An area of freedom, security and justice serving the citizen*, COM (2009) 262; EUROPEAN COMMISSION, *An open and secure Europe: making it happen*, COM (2014) 154.

<sup>127</sup> UNHCR, *Global Trends. Forced Displacement in 2017*, in: <http://www.unhcr.org/statistics/unhcrstats/5b27be547/unhcr-global-trends-2017.html>.

strengthen resettlement, thus supporting those countries facing much more significant influxes of refugees<sup>128</sup>.

#### **4.3. Organizing and better managing migration instead of containing it: enhancing legal and flexible immigration pathways to Europe**

The EU also needs to overcome its paradox regarding immigration. If, on the one hand, its priority is curbing immigration, on the other hand, its economy needs immigration to meet the challenges of demographic ageing.

According to the European Commission, unemployment in the EU is at its lowest in a decade and there are already structural labour needs in key sectors of the economy. In the first quarter of 2018, there were at least 3.8 million vacant posts and the job vacancy rate has been increasing. The share of employers reporting difficulties to fill jobs are, on average, more than 40%, and is even higher than 50% in some Member States, such as Germany, Poland, Slovakia and Hungary. Demographic ageing and decline of the working-age population will exacerbate this trend. In the next two decades the working age population will decline by around 22 million. Even if this shortage is compensated by the greater participation of women and older people in the labour market, *“it is estimated that, by 2035, the labour force in the EU will decrease by 18.3 million”*<sup>129</sup>.

Several studies point also to this evolution. For example, a study published in 2015 estimated that Germany needs to receive more than 500,000 immigrants annually if it wants to maintain the sustainability of its economy and social system by 2050<sup>130</sup>.

Based on demographic and working age population projections, a recent report by the Joint Research Centre on the economic consequences of zero international migration in the EU estimates that by 2060 the EU production (real GDP) without immigration would be 23% lower than with immigration, the annual EU growth rate would fall from 1.5% to less than

<sup>128</sup> See, among others, MORENO-LAX, Violeta, *op. cit.*, pp. 30 ff.

<sup>129</sup> EUROPEAN COMMISSION, *Enhancing legal pathways to Europe: an indispensable part of a balanced and comprehensive migration policy*, COM (2018) 635, pp. 2-3.

<sup>130</sup> FUCHS, Johann, KUBIS, Alexander, SCHNEIDER, Lutz, *Zuwanderungsbedarf aus Drittstaaten in Deutschland bis 2050 – Szenarien für ein konstantes Erwerbspersonenpotenzial unter Berücksichtigung der künftigen inländischen Erwerbsbeteiligung und der EU-Binnenmobilität*, Bertelsmann Stiftung, 2015, p. 5. Available at [https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/Studie\\_IB\\_Zuwanderungsbedarf\\_aus\\_Drittstaaten\\_in\\_Deutschland\\_bis\\_2050\\_2015.pdf](https://www.bertelsmann-stiftung.de/fileadmin/files/BSt/Publikationen/GrauePublikationen/Studie_IB_Zuwanderungsbedarf_aus_Drittstaaten_in_Deutschland_bis_2050_2015.pdf) [Accessed 3 February 2018].

1 % and the EU output per capita would be around 10% lower than in a scenario “with immigration”, affecting 90% of the EU population. That would mean losing almost 20 years of economic growth. It concludes that international migration to the EU “*could mitigate the ageing population, sustain economic growth, mainly boosting working age population, and could have a significant positive impact on the European long-term economic prospects*”<sup>131</sup>.

In the light of these and other studies, we must recognize that restrictive immigration policies are counterproductive to tackle the huge challenges of an ageing population, in addition to creating false expectations that can never be met, because migration is inevitable<sup>132</sup>. As CASTLES, HAAS and MILLER state, “*migration should be understood as an intrinsic part of broader processes of development, social transformation and globalization, instead of a problem to be solved. This is why migration is inevitable, irrespective of political preferences*”<sup>133</sup>. Therefore, and in the words of François Crépeau, in an interview to *The Guardian*, on 22 April 2015, “*Instead of resisting migration, let’s organize it*”<sup>134</sup>.

Managing legal immigration in a globalized world is, thus, crucial for Europe, which has to see it as an opportunity rather than a threat, as it will play an important role in its growth and employment strategy and will be vital to the sustainability of the European economy and social model.

On the other hand, legal, safe, transparent, socially sustainable and pragmatic legal immigration pathways are also the most effective way of preventing and combating irregular immigration, which has become a huge business for criminal organizations that becomes much more lucrative the more restrictive access to Europe is<sup>135</sup>. This, however, must be accompanied by active policies to curb the informal economy, which feeds its labour needs with irregular migrants and thus constitutes a powerful pull factor for irregular immigration<sup>136</sup>.

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<sup>131</sup> MONGELLI, I., and CISCAR, J., *Economic consequences of zero international migration in the EU – An assessment for Europe based on the Eurostat population projections*, Luxembourg: Publications Office of the European Union, 2018. Available at <https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/economic-consequences-zero-international-migration-eu-assessment-europe-based-eurostat>.

<sup>132</sup> PINYOL-JIMÉNEZ, Gemma, *op. cit.*, p. 56.

<sup>133</sup> CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, p. 318.

<sup>134</sup> Interview by Gabrielle Jackson, *The Guardian*, 22 April 2015, <https://www.theguardian.com/world/2015/apr/22/uns-francois-crepeau-on-the-refugee-crisis-instead-of-resisting-migration-lets-organise-it>. [Accessed 15 October 2018].

<sup>135</sup> In this sense see, among many others, CRÉPEAU, François, and PURKEY, Anna, *op. cit.*, pp. 25 ff.; SOUSA, Constança Urbano de, *Taking the Bogus...*, *op. cit.*, pp. 275-280. ACHILLI, Luigi, SANCHEZ, *op. cit.*, pp. 3 ff.

<sup>136</sup> See CRÉPEAU, F., and PURKEY, A., *op. cit.*, pp. 16 ff.

The promotion of legal and flexible migration pathways is also important to ensure circular migration and mobility in the global world, since restrictive immigration policies often have the consequence of promoting permanent immigration, as migrants, for fear of not being able to emigrate again or only irregularly, tend not to run the risk of returning to their countries of origin<sup>137</sup>.

Finally, the better management of legal immigration has the potential to change perceptions about migration and boost better integration of migrants in host societies.

#### **4.4. Increased investment in integration policies and narrative change**

However, we cannot ignore the fact that more diversified and intense immigration can create, in host societies, several tensions due to the transformation of racially, culturally and religiously homogeneous societies into multicultural ones<sup>138</sup>. This can generate social conflicts that we must minimize or avoid. Therefore, there must be greater investment in targeted integration policies aimed not only at immigrants but also at host societies, in order to avoid social and economic exclusion causing social unrest and radicalization that feed terrorism, xenophobia, racism and anti-immigration sentiments. The integration policy must be multi-dimensional, ranging from education to culture, to health, housing and the promotion of social welfare, equal opportunities and non-discrimination, as well as the intransigent respect for the humanistic values of European societies.

On the other hand, in order to overcome the challenges posed by international migration and to preserve Europe's civilizational values, a disruptive discourse is needed to fight populist extreme-right anti-immigration narrative and negative perceptions, which have no factual evidence and are strongly anchored in stereotypes. It is necessary to be aware that immigration in itself is not an insecurity factor and that it does not have to be seen as a problem, but rather as an opportunity. If well managed, in the current demographic ageing context it can be a

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<sup>137</sup> CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, pp. 322 ff. HAAS, Hein, *op. cit.*

<sup>138</sup> On the transformation of receiving and origin societies through migration, see CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, pp. 55 ff.

valuable contribution to the economic development of Europe and to the sustainability of its social model.

#### 4.5. Addressing more effectively the root causes of international migration

The causes and dynamics of international migration are, to a greater or lesser extent, the same throughout the history of humankind: quest for better living conditions, poverty, insecurity, persecution, bad governance, conflicts, human rights violations, and climate change, among others.

Addressing root causes of international migration as a tool to regulate migratory flows has also been a concern of the EU, especially using its development aid policy to reduce migration. It is, however, necessary to be aware that development aid in countries of origin has little effectiveness in achieving this goal and even increases migration, which requires financial resources, since extreme poverty immobilizes people<sup>139</sup>. On the other hand, however large the development aid is, its impact on the economy of countries of origin will always be much smaller than that of remittances, which increase living conditions and reduce poverty in countries of origin, although they do not address other development problems such as inequality, corruption, poor governance, or lack of rule of law<sup>140</sup>.

Acting on root causes of migration, so that they become an option and not the only way to escape misery, violence, insecurity and disrespect for basic human rights, requires a profound and multidimensional policy change, which goes far beyond development aid policies. Foreign policy should be seriously put at the service of peace, rule of law, human rights and good governance promotion. Agricultural and trade policies should enable countries of origin to have a real opportunity to develop and improve the living conditions of their populations<sup>141</sup>. In this regard, the recent initiative of the President of the European Commission Jean-Claude Juncker is a positive one. Recognizing that “*Africa does not need charity*”, he proposed “*a continent-to continent free trade agreement, as an economic partnership between equals*”, a new Alliance between Europe and

<sup>139</sup> See CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, pp. 321 ff.; HAAS, Hein, *op. cit.*

<sup>140</sup> See HAAS, Hein, *op. cit.*

<sup>141</sup> See CASTLES, Stephen, HAAS, Hein De, and MILLER, Mark J., *op. cit.*, p. 322.

Africa that brings more private investment, education and sustainable employment to Africa<sup>142</sup>.

## 5. Conclusions

International migration is today the focus of lively and emotional political debates and tensions. Its excessive politicization is closely linked to the perverse side effects of its securitization process, such the promotion of irregular immigration and associated crimes, its artificial association with terrorism and crime and the sharpening of the polarization of European societies. This, coupled with the absence of effective integration policies, boosted the growth of anti-immigrant sentiment, fuelled by the extreme-right's populism, which explores people's "fears" and endangers the civilizational values of modern democratic societies. On the other hand, immigration policies centred on the quest for reduction create tensions in relations with countries of origin and transit. This would be avoidable if all parties recognize that international migration, if managed collectively and safely, is beneficial to all and crucial for the economic and social development of both host and origin countries.

Although border control and fight against irregular migration are necessary and legitimate, one must be aware that, just as the wind cannot be stopped with one's hands, we cannot prevent migratory movements while there are blatant economic development discrepancies, reasonable prospects for migrants to have a job and improve their lives in Europe or as long as there are conflicts, insecurity, lack of rule of law, human rights violations, large demographic diversities, etc. The securitization of migration and the unrealistic view that it is possible to stop it ignored the reality of international migration, which is inevitable and will tend to increase in the current context of the world's development disparities, growing areas of insecurity, demographic ageing in Europe and population explosion in underdeveloped countries, especially in Africa.

It is therefore necessary to break the vicious circle of migratory irregularity and implement the Global Compact on Migration and its holistic and global approach that allows for a proactive and cooperative migration

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<sup>142</sup> State of Union Address 2018 Available at: [https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-speech\\_en\\_0.pdf](https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-speech_en_0.pdf), [Accessed 15 September 2018]. See EUROPEAN COMMISSION, *Communication on a new Africa-Europe Alliance for Sustainable Investment and Jobs: Taking our partnership for investment and jobs to the next level*, COM (2018) 643.

management that protects immigrants' human rights along with more effective policies to tackle root causes, as well as stronger investment in integration policies to prepare immigrants and host societies for the inevitable social changes to ensure social peace and cohesion. Only then will migration cease to be perceived as a threat and become what it has always been: a human phenomenon as old as the history of humankind that has always shaped what we are in each moment of history.

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PHILIPPE DE BRUYCKER

*The EU policy on labour migration:  
how common it is and should it be?*

Article 79, §1 of the Treaty on the Functioning of the EU (TFEU) states that “The Union shall develop a *common immigration policy* aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings”. If this provision setting the objectives for the EU in the area of migration can be criticised due its vagueness, one should notice the word *common* characterising the immigration policy. This adjective is indeed not used for every European policy and expresses the high ambition of the EU in one area<sup>1</sup>. We have already elaborated elsewhere what the notion of “common policy” entails (not only common legislation, but also as much as necessary common implementation, common funding and a common external dimension)<sup>2</sup>. Common legislation refers to a more or less harmonised legal framework going from a directive setting minimum rules leaving to Member States a large margin of manoeuvre to a detailed regulation allowing them almost no space for adopting their own rules in between several levels of harmonisation. We have already analysed in the past the low level of harmonisation of the EU migration policy due to the different techniques used by the Council

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<sup>1</sup> Like in the area of the common policy on visas (article 77, §2 TFEU) while the idea of a *system* is expressed in relation to the external borders policy (article 77, §2, d) TFEU) and both in relation to asylum: a common policy (article 78, §1) and a common European system (article 78, §2 TFEU).

<sup>2</sup> DE BRUYCKER, P., Pour un agenda européen de recherche en matière d’immigration et d’asile, *Revue critique trimestrielle de jurisprudence et de législation*, 2016, p. 104.

to weaken the effect of EU directives in their national legal order<sup>3</sup>. In this paper, we intend to do a similar analysis regarding the EU policy on labour migration.

It is well known that legal migration is the area where progress at EU level has been limited in comparison with the visas, external borders and asylum policies. We start by putting critically into perspective the slow development of this policy in two steps, from its foundations and policy failure (1999 - 2005) (1) till its relaunch and limited progress (2005-2014) (2), including the most recent developments since the crisis of 2015 till the end of 2018. By way of conclusion, we will envisage the perspectives for the future in relation to the general policy trends and the Refit exercise undertaken by the Commission (see below). Our goal is to show to which extent this policy is common and could become more common in the future, but also to ask how common it should be on the basis of the principle of subsidiarity in contrast to a doctrine generally favourable to the intervention of the EU. Our analysis will focus on labour migration covered by four directives (single permit and common set of rights<sup>4</sup>, Blue Card for highly qualified migrants<sup>5</sup>, intra-corporate transferees<sup>6</sup> and seasonal migration<sup>7</sup>) out of the seven directives composing the EU package on legal migration. The three last ones (family reunification<sup>8</sup>, student and researchers<sup>9</sup> and long-term residents<sup>10</sup>) will only be evoked here and there when necessary for our analysis. Moreover, we will focus on the phase of the admission of labour migrants (who is targeted and the conditions that those persons have to fulfil to be admitted as workers by a Member State), including their limited mobility rights inside the EU once admitted. We have thus excluded the issue of the rights of migrant workers once they have been admitted that has raised an important debate about the emergence of a hierarchy of labour migrants and

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<sup>3</sup> DE BRUYCKER, P., *Legislative Harmonisation in the European immigration policy*, in Cholewinsky, R., Perruchoud, R. et Mac Donald, E., *International Migration Law*, Den Haag, Asser, 2007.

<sup>4</sup> Directive 2011/98 of 13 December 2011, O.J.E.U., 2011, L343/1.

<sup>5</sup> Directive 2009/50 of 25 May 2009, O.J.E.U., 2009, L155/17.

<sup>6</sup> Directive 2014/66 of 15 May 2014, O.J.E.U., 2014, L157/1.

<sup>7</sup> Directive 2014/36 of 26 February 2014, O.J.E.U., 2014, L94/375.

<sup>8</sup> Directive 2003/86 of 22 September 2003, O.J.E.U., 2003, L251/12.

<sup>9</sup> Directive 2016/801 of 11 May 2016, O.J.E.U., 2016, L132/21.

<sup>10</sup> Directive 2003/109 of 25 November 2003, O.J.E.U., 2004, L16/44

possible discriminations due the different levels of rights given to them depending on the category they belong to<sup>11</sup>.

Before analysing the process that led to the EU *acquis* in labour migration, one should keep in mind that other directives contain provisions allowing migrants to work despite not having initially been admitted for this purpose. This is the case with other directives on legal migration, like the family reunification directive giving family members the right to access employment and self-employment (article 14). There is also the students' directive guaranteeing them upon certain conditions the right to work a minimum of 15 hours per week. The same is true for some directives included in the asylum *acquis* that should not be forgotten: the directive on reception conditions for asylum seekers gives applicants access to the labour market upon certain conditions no later than nine months from the date of their application<sup>12</sup>; The so-called Qualification directive about the definition and rights of protected persons also gives them access to the labour market immediately after the granting of protection<sup>13</sup>.

## **1. Legal foundation but policy failure (1999-2005)**

The European Community became competent in migration and asylum with the Treaty of Amsterdam that entered into force on 1 May 1999. Article 63, §3, (a) TEC gave the EC the competence to adopt “measures on immigration policy within the following areas: conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification”. This provision that has been taken over by the Lisbon Treaty (see article 79, §2, (a) TFEU) potentially transferred to the EC a large competence about all types of legal migration, the reason why family reunification was especially targeted remaining mysterious. Even if some Member States tried to argue that this provision allowed to regulate, at EU level, admission on the territory of migrant workers but

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<sup>11</sup> CARRERA, S., GEDDES, A. and GUILD, E., Conclusions and recommendations: Towards a fair EU agenda facilitating legal channels for labour mobility in CARRERA, S., GEDDES, A., GUILD, E. and STEFAN, M., Pathways towards legal migration into the EU, Reappraising concepts, trajectories and policies, CEPS, 2017, p. 192.

<sup>12</sup> Article 15 of Directive 2013/33 of 26 June 2013, O.J.E.U., 2013 L180/104.

<sup>13</sup> Article 26 of Directive 2011/95 of 13 December 2011, O.J.E.U., 2011, L337/9.

not their access to the labour market, such narrow interpretation was not followed by the Council.

The conclusions of the European Council held in Tampere in October 1999 provided policy guidance to the EU institutions for the implementation of these new competences as following: “*the European Council acknowledges the need for **approximation of national legislations** on the conditions for admission and residence of third country nationals, based on a shared assessment of the **economic and demographic developments** within the Union, as well as the situation in the countries of origin. It requests to this end rapid decisions by the Council, on the basis of proposals by the Commission. These decisions should take into account not only the reception capacity of each Member State, but also their historical and cultural links with the countries of origin*” (point 20 of the conclusions<sup>14</sup>).

One will notice the rather strong support provided to the action of the EU in the area of legal migration through the idea of an approximation of national legislations. The request of “rapid decisions” by the Council goes in the same direction, despite the absence of any precise calendar.

The choice of the decisive criteria to be used for the development of this policy (demography and economy in the EU Member States as well as in countries or origin of migrants) appears particularly relevant. Taking into consideration the “reception capacity” of each Member State can be subject to controversy, as such notion evokes the idea of a tolerance threshold, while the reference to the historical and cultural links of EU Member States with countries of origin (in particular former colonies) seems logical.

However, while the Treaty of Amsterdam programmed over time a progressive evolution towards the so-called supranational method rather than a radical change, one should notice the reluctance of Member States regarding a European policy in the area of legal migration from the beginning. Due to its sensitivity from the point of view of sovereignty, the supranational method was not supposed to become automatically applicable in this area with the end of the transitional period (May 1999 till May 2004) foreseen for the creation of the Area of Freedom, Security and Justice. It actually remained subject to unanimity in Council with simple consultation of the European Parliament till the entry into force of the Lisbon Treaty in 2009.

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<sup>14</sup> <https://www.consilium.europa.eu/media/21055/conseil-europeen-de-tampere-conclusions-de-la-presidence.pdf>

This treaty amendment has been possible due to the introduction of paragraph five in article 79 TFEU stating that the competences of the EU regarding legal migration “shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed”. This provision excluding the possibility to adopt quotas of migrant workers at EU level was negotiated during the Convention that prepared the failed project for a European Constitution. It corresponds to a request of Germany that only accepted this institutional change by an explicit limitation of EU powers<sup>15</sup>. Up to date, it does not seem to have created problems for the elaboration of legislative proposals by the Commission, knowing that nobody has ever seriously envisaged the adoption of quotas of migrant workers per Member State like it has been the case for the relocation of asylum seekers<sup>16</sup>. It might, however, make discussions with third countries requesting quotas for their workers more difficult as Member States must obviously be part of any international negotiation on this issue.

Surfing the wave of the Tampere summit despite the reluctance to supra-nationalise the policy on legal migration, the European Commission published on 22 November 2000 a communication on a “Community Immigration Policy”<sup>17</sup> where it considered that “there is a growing recognition that, in this new economic and demographic context, the existing zero immigration policies which have dominated thinking over the past 30 years are no longer appropriate” (page 6) and that “it is now time to review longer term needs for the EU as a whole, to estimate how far these can be met from existing resources and to define a medium-term policy for the admission of third-country nationals to fill those gaps (of both skilled and unskilled workers) which are identified in a gradual and controlled way” (page 13). “Given the differences between Member States with respect to links to countries of origin, the capacity of reception, the development of integration policies and labour market needs, the Commission proposes that the best way to achieve a regulated immigration policy is to establish an overall framework at EU level, with

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<sup>15</sup> One should note that this provision does not cover all migrants, but only workers, and is limited to those coming from third countries, meaning that it does not include the movement of third-country workers inside the EU once they have been admitted by one Member State

<sup>16</sup> Council Decision (E.U.) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, O.J.E.U., 2015, L248/80.

<sup>17</sup> COM(2000)757.

common standards and procedures and a mechanism for setting objectives, and indicative targets, within which Member States would develop and implement national policies” (page 14).

As announced in the previous communication, the Commission made on 11 July 2001 not one but two proposals. The first was a legislative proposal for a directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities<sup>18</sup>. This proposal followed a horizontal approach as it was envisaged to cover all employed and even self-employed workers in one single text, independently of the level of the qualifications of the worker or of the sector of employment. The key rule for the admission of a worker was the need of the economy through a labour market test supposed to implement the principle of European priority according to which a third-country national coming from abroad should only be admitted as a migrant worker if nobody else was available on the labour market. The Member States would continue to be allowed to set ceilings regarding the maximum number of permits for a defined period, taking into account the overall capacity to receive and to integrate third-country nationals on their territory or in specific regions thereof. The second proposal released on the same date was a communication accompanying the proposal for a directive<sup>19</sup>. This communication envisaged to extend to the area of immigration and asylum the open method of coordination (OMC) based on soft law instruments used to coordinate the action of Member States under the supervision of the Commission. On the basis of European guidelines adopted by the Council, Member States were asked to specify annually their objectives in national action plans whose implementation was supervised by the Commission on the basis of national reports through the issuing of recommendations.

The overall system was based on the idea that the OMC is a necessary component that is complementary to the legislative framework in a system where Member States’ discretion under the directive mentioned above would be the object of the coordination mechanism in order to build progressively a common policy. Even if such proposal was a surprise for policy makers in the area of migration who expected only legislation at EU level, this initiative was understandable at a moment when the

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<sup>18</sup> COM(2001)386.

<sup>19</sup> COM(2001)387.

European Union had launched the Lisbon strategy<sup>20</sup> and the Treaty of Amsterdam created the employment policy<sup>21</sup> that were both based on the method of open coordination. However, the European Council in Laeken in December 2001 did not endorse the envisaged mechanism as expected by the Commission, which came back to this issue in 2008 with a Communication entitled “A Common immigration policy for Europe: principles, actions and tools”<sup>22</sup>, once again without success. It became indeed clear that the Member States were not ready to engage into a European labour migration policy after two years of unfruitful negotiations in the Council at technical level.

However, progress was made with the proposal made in 2004<sup>23</sup> by the Commission to facilitate the admission of a very specific category, third country researchers, defined, among other elements, as persons having a doctoral degree or the qualification giving access to a doctoral programme. This proposal was quickly adopted 18 months afterwards<sup>24</sup>. It puts in place a specific procedure facilitating and accelerating the admission of researchers inspired by the French system that was identified as the best practice in the EU. The acceleration of the admission procedure is based on a hosting convention signed by a third country researcher and a research organisation about the research project, the means of subsistence of the researcher and his sickness insurance, so that the immigration authorities remain mainly in charge of checking public order and security. The simplification of the procedure is linked to the fact that the hosting agreement covers all possible legal situations of the researchers towards the research organisation (worker, self-employed, trainee, except non-remunerated PhD students) so that it is not anymore necessary to find the right category in the immigration rules of Member States. Moreover, there is no need for researchers to have a work permit on top of the residence permit.

The easy process of adoption of this innovative instrument can be explained by two factors: firstly, the category of researchers does not concern an important number of third country nationals and the EU will need them in order to have enough researchers in line with the objective

<sup>20</sup> <https://www.consilium.europa.eu/media/21034/conseil-européen-de-lisbonne-conclusions-de-la-présidence.pdf>

<sup>21</sup> Articles 145 till 150 TFEU.

<sup>22</sup> COM(2008)359, pp. 8-9

<sup>23</sup> COM(2004)178.

<sup>24</sup> Directive 2005/71 of 12 October 2005, O.J.E.U., 2005, L289/15.

of investing 3% of GDP in research; secondly, this category fits very well with the programme of Lisbon adopted in 2000 by the EU with the aim to become the most competitive and dynamic knowledge-based economy of the world in 2010<sup>25</sup>. The adoption of the researchers' directive in 2005 actually announces the new "vertical" approach of labour migration by the European Commission based on a differentiation of migrant workers into categories instead of the originally horizontal approach chosen in 2001 that failed. This instrument is the first one giving a certain substance to the freedom of workers, albeit limited to the category of researchers, inside the EU for third-country nationals once they have been admitted by one Member State.

Before examining this last element, it is important to keep in mind for a good understanding of EU law that third-country nationals do not enjoy freedom of residence<sup>26</sup> like EU citizens on the basis of EU treaties simply because of their nationality<sup>27</sup>. The Treaty on the Functioning of the European Union (TFEU) foresees that the EU should adopt rules on "the conditions governing freedom of movement and of residence in other Member States" (article 79, §2, point b). Even if this primary law provision promises a certain freedom to third-country nationals to be realised by secondary law, it is clear that the EU can impose to them some conditions not required for EU citizens. While freedom of movement is covered by the Schengen acquis as long as the third-country national does not intend to work during this period, freedom of residence inside the EU is actually subject to immigration rules adopted at EU level or, in the absence of European harmonisation, at national level. Those rules can (or not, like in the case of the family reunification directive) be found in the directives on legal migration generally under a chapter entitled "mobility".

Article 13 of the researchers' directive makes classically a difference on the basis of the length of stay envisaged in another Member State: according to paragraph 1 for stays of less than three months, the researcher can work in another Member State on the basis of the hosting

<sup>25</sup> See point 4 of the preamble of directive 2005/71, *op. cit.*

<sup>26</sup> Freedom of residence (about stays for more than three months) should not be confused with freedom of movement (about stays for less than three months). Third-country nationals enjoy the second on the basis of the Schengen acquis; however, the Schengen acquis does not give them the right to work even during this short stay.

<sup>27</sup> There are two exceptions about privileged persons: firstly, family members of a EU citizen having exercised his freedom of residence in the EU; secondly, third-country nationals benefiting from a treaty extending freedom of residence concluded between their state of origin and the EU, which is the case of Iceland, Norway and Lichtenstein under the Economic European Area and Switzerland on the basis of a specific bilateral agreement.

agreement signed with the research institution in the first Member State; according to paragraph 2 for stays of more than three months, the Member State of destination can, but is not obliged to, require a new hosting agreement to be signed with the concerned research institution on its territory. One should not be misled by those provisions giving the impression that only a hosting agreement is required. Indeed, paragraph 3 of article 13 adds that visas or residence permits shall, if requested by the relevant legislation, be granted on a timely manner within a period that does not hamper the pursuit of the research. If the main object of such provisions seems to impose a vague deadline for their delivery, it reserves the possibility for Member States to require visas or residence permits pursuant to their national legislation in the case of short as well as long-term mobility. Therefore, its main added value comes from the abolition of the requirement of a work permit for researchers.

In comparison with the researchers' directive, the long-term residence directive adopted in 2003 does not innovate regarding freedom of residence. It starts by saying that "a long-term resident status shall acquire the right to reside in the territory of Member States other than the one which granted him/her the long-term resident status", but it ends by stipulating that this is "provided that the conditions set out in this chapter are met". Regarding work, Member States may apply a labour market test and give priority to EU citizens as well as to some third-country nationals, in particular those receiving unemployment benefits, as per §2 of article 14. As other conditions are foreseen in article 15, their situation is clearly less favourable than EU citizens and not so far from a labour migrant applying from abroad, with the consequence that long-term residents have, on the basis of EU law, no right to labour mobility despite their status of permanent migrant. The fact that the mobility of a long-term resident could lead to a permanent stay while a researcher should only reside temporarily (see below the time limit set by a new directive for researchers and students) does not justify the differences between the two regimes.

## **2. Policy relaunch but limited progress (2005-2014)**

The result of the failure of the 2001 Commission proposal was the disappearance of the labour migration issue from the European political agenda for a few years. The adoption in November 2004 of The Hague

Programme setting the European priorities for the next five-year period in the area of Justice and Home affairs provided the occasion to come back to the matter. The European Council considered that “Legal migration will play an important role in enhancing the knowledge-based economy in Europe. It emphasizes that the determination of volumes of admission of labour migrants is a competence of the Member States. The European Council invites the Commission to present a policy plan on legal migration, including admission procedures capable of responding promptly to fluctuating demands for migrant labour in the labour market before the end of 2005”<sup>28</sup>. It is important to notice that The Hague Programme linked explicitly the issue of legal migration to the idea of a knowledge-based economy as this announces the new approach of labour migration at EU level.

Building on The Hague Programme, the European Commission launched in January 2005 policy discussions by means of a green paper entitled “An EU approach to managing economic migration”<sup>29</sup>. These discussions led to the Commission’s presentation of a policy plan on legal migration on 21 December 2005<sup>30</sup>. Contrary to the horizontal proposal of 2001, the Commission decided to target some workers defined by categories rather than by their sector of activity. Four categories were identified (highly skilled workers, seasonal workers, intra-corporate transferees (ICTs) and remunerated trainees) and led, as we will see below, to the adoption of three directives, the last category having been dropped. This policy plan allowed to overcome the blockage created by the 2001 proposals, but progress was slow and remained difficult despite the evolution of the institutional framework with the entry into force of the Lisbon Treaty that finally made the passage from intergovernmentalism to the supranational method in the area of legal migration. We will start below with an analysis of the single permit mechanism<sup>31</sup> and continue with the three directives on highly skilled workers, intra-corporate transferees and seasonal workers.

The goal of the single permit directive that has a horizontal scope, reminded the 2001 horizontal proposal of the Commission as it applies not only to migrant workers but also to third-country nationals admitted

<sup>28</sup> The Hague Programme: strengthening Freedom, Security and Justice in the EU, O.J.E.U., 2005, C53/4.

<sup>29</sup> COM(2004)811.

<sup>30</sup> COM(2005)669.

<sup>31</sup> We will not cover the chapter III of the directive devoted to equal treatment as we limit this publication to the phase of admission of labour migrants in the EU.

for another purpose (like family reunification or studies, see article 3 of Directive 2011/98), is to merge the residence permit and the work permit into one single permit in order to facilitate the process of admission for migrants and their employers. Accordingly, there is logically also a single application procedure. There must, however, not be a single authority examining the applications; Member States may continue to have within their administrative system two separate examination procedures, one by an authority in charge of residence aspects and another by another authority in charge of work aspects as long as they respect the principles of the single application procedure and of the single permit. Moreover, it could be that different judges are competent about a refusal, depending on whether the motives of the decision refer to the labour or the residence aspect.

There are also two limits to the single permit. Firstly, pursuant to article 4, §3, it is “without prejudice to the visa procedure which may be required for initial entry”, meaning that Member States requiring visas for the first entry of the labour migrant on their territory may continue to do so. Secondly, Member States may indicate additional information to the employment relationship, like the place and type of work in paper or electronic format delivered together with the single permit. In case of admission and residence for purposes other than work (for instance, family reunification or studies) that fall under the scope of the directive, Member States cannot issue an additional work permit but shall indicate the information relating to the permission to work on the permit itself. The single permit directive also contains very basic procedural guarantees (delivery of the permit within four months, written notification of the reasons for any negative decision and right to appeal against decisions in accordance with national law that it is not necessarily before a judge but can be an administrative authority) that only apply if the other directives on legal migration do not contain more favourable provisions.

The directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment known as the Blue Card directive was adopted rather quickly in 2009 based on a 2007 Commission proposal<sup>32</sup>. This happened on 25 May 2009, just a few months before the entry into force of the Lisbon Treaty in December 2009, which means that it has then still been necessary to find unanimity in the Council about its content and that the European Parliament was

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<sup>32</sup> COM(2007)637.

almost out of the game (its power being limited to express an opinion not legally binding for the Council). This led, as it has been the case in the past for legal instruments adopted under the same procedure in the area of migration or asylum, to a weak text leaving a large margin of manoeuvre to the Member States, to the point that one can regret that the Commission did not wait, like it did for the other directives (see below), for the entry into force of the Lisbon Treaty to make its proposal.

The Blue Card directive defines a highly qualified worker as a person having a degree obtained three years after the completion of post-secondary studies (mainly a Bachelor degree –BA/BSc.). The system requires the third-country to have a work contract or a binding job offer. There is, in particular, a threshold for the salary, which must be at least 1,5 times the gross annual salary in the Member State concerned. The directive does not provide Blue Card holders a right to mobility<sup>33</sup> after 18 months of stay in the Member State of admission, in particular because they can be<sup>34</sup> subject to a labour market test in the other Member State where they want to work and to priority rules in favour of EU citizens or some categories of third-country nationals. Ultimately, under this classical demand-driven system they are almost treated like any labour migrant applying from abroad, knowing that in case they are admitted by another Member State, Blue Card holders must also apply for another blue card that is actually not as blue as the European flag. This directive is unfortunately a good example of an instrument offering very limited added value, partly because it has been produced by the Council of ministers for Justice and Home Affairs on the basis of unanimity and without the pressure of the European Parliament.

The Commission made proposals on seasonal workers and intra-corporate transferees only in 2010, probably waiting for the institutional change linked to the entry into force of the Lisbon Treaty (see above). It took, however, almost four years of negotiations with the Council and Parliament to agree on those two directives in 2014. This rather long legislative procedure can be explained by the very technical character of the directive on intra-corporate transferees<sup>35</sup>, and a profound revision

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<sup>33</sup> Chapter 5 of the directive dealing with this issue is significantly entitled “residence in other Member States”.

<sup>34</sup> Depending upon the choice of each Member State.

<sup>35</sup> The ICT directive is indeed a very specific and complex instrument, as it must be understood in liaison with freedom of services (in particular posted workers), the GATS, international private law on labour law, EU social security coordination system including bilateral and multilateral international agreements concluded by the EU and/or its Member States in this area, and even the Schengen acquis!

of the Commission proposal on seasonal workers on political and technical issues (see below), knowing, moreover, that the adoption of the two instruments had been politically linked by the European Parliament. One must keep in mind that the supranational procedure led to negotiations between Parliament and Council on top of internal negotiations inside those two institutions (in particular between Member States in the Council looking for a consensus rather than a qualified majority). As Fabian Lutz showed in his book about the process of adoption of the return directive, the ordinary legislative procedure with qualified majority in the Council and the co-decision with the European Parliament produced better results than unanimity in the Council with a simple consultation of the European Parliament, but it takes longer and implies more complicated negotiations<sup>36</sup>. Finally, the fact that those issues are dealt with by the Ministers for Home Affairs instead of by the Council in charge of Employment and Social Affairs guided the discussion in a certain way, where controlling migration remains a key concern despite the objective to facilitate it. It also does not help when it is about technical issues in social or labour law for which the competences of the Council for Home affairs are limited.

The ICT directive aims at facilitating the admission and mobility in the EU of third-country nationals working for multinational companies who are sent from one undertaking to another in the same company with the aim to diminish red-tape and make business easier. The persons targeted are managers, specialists and trainee employees as defined by the directive upon the condition that they work for the company from 3 to 12 months, depending on the cases. They can be transferred for a maximum period of three years in the case of managers and specialists and one year if trainees. One of the most debated issues was about the equal social rights of ICTs in order to avoid social dumping, but the directive does not go further than guaranteeing to ICTs the rights of posted workers with regards to the terms and conditions of employment. Additionally, some Member States had no rules at all on the admission of ICTs and were forced to adopt some based on the directive, whose added value comes mainly from the provisions on mobility.

The directive distinguishes between short and long-term mobility, but, in a specific way, it is advantageous for the transfer. Whereas the difference between short and long mobility refers, as usual, to stays of

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<sup>36</sup> LUTZ, F., *The negotiations of the return directive*, Wolf Legal Publishers, 2010.

less or more than 90 days, the calculation is not done on the basis of the entire stay in the EU but per Member State, so that short-term mobility can be several times 90 days in several Member States up to the maximum of one or three years indicated above, as long as they do not stay more than 90 days in one Member State per 180 days period (this classical rule prevents transforming short into long-term mobility in one single Member State). Short-term mobility is based on a simple system of notification to the Member State of destination, which may object within 20 days on the basis of the exhaustive list of reasons enumerated in article 21, §6, but mobility can take place immediately after the notification. Regarding long-term mobility, Member States have the choice to use the system of notification foreseen for short-term mobility or to require an application procedure for a permit that must be delivered not later than 90 days from the date of the application. There is even a third choice, as Member States can also apply none of the two previous procedures that gives full freedom to the ICTs, which is the choice made by the significant number of nine Member States but regarding only short-term mobility<sup>37</sup>.

The system of notification (and of course the no-procedure) is obviously the simplest and corresponds to the enforcement of the principle of mutual recognition of residence permits for the purpose of short-term work between Member States, following the case law of the Court of Justice of the European Union in its famous *Vander Elst* ruling<sup>38</sup>. The system of the application procedure can be heavy (in particular if Member States require a translation into their official language of all the necessary documents) but ICTs are allowed to start working in the Member State of destination before the delivery of the permit on the conditions enumerated in article 22, §2, (d). The way the Member States have transposed the provision on long-term mobility into their national law shows, unfortunately, that many of them have chosen the application procedure<sup>39</sup>. It is interesting to notice that the mobility provisions of the researchers' directive of 2005 (see above) have been amended in 2016<sup>40</sup> following the lines of the ICT directive. The short-term period is 180 instead of the usual

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<sup>37</sup> LUTZ, F., *Transposition of the ICT Directive: Perspective from the Commission*, in MINDERHOUD, P. and DE LANGE, T., *The intra corporate transferee directive, Central Themes, Problem issues, and implementation in selected Member States*, Wolf Legal Publishers, 2018, p. 27.

<sup>38</sup> C.J.E.U., Case C43/93 of 9 August 1994.

<sup>39</sup> LUTZ, *Transposition of the ICT Directive*, op. cit., p.27.

<sup>40</sup> See articles 28 to 30 of directive 2016/801.

90 days per Member State, which will facilitate the mobility of researchers, while the maximum period for long-term mobility is 360 days.

The directive on seasonal workers is the first one where the EU deals with non-qualified labour migrants, knowing that they are accepted mainly because of the reluctance of EU citizens to accept seasonal work, considered to be a difficult and not enough remunerative job. As the same workers may come back to work for one season in the EU from year to year, seasonal migration is actually the best example of a truly circular migration that policy makers are dreaming of without ever finding it. The directive, therefore, contains a provision (article 16) facilitating the admission of seasonal workers who have been admitted at least once during the previous five years, including the possibility to issue several seasonal worker permits in a single administrative act. Seasonal is defined as an activity tied to a certain time of the year by recurring events linked to seasonal conditions during which the necessary labour levels are significantly above normal circumstances. The directive does not define concretely seasonal activities and leaves this to Member States by requiring them to establish a list of the sectors dependent on the passing of seasons. The preamble provides as examples agriculture, horticulture and tourism under point 13. A third-country national can work on a seasonal basis in a period from a maximum of 5 to 9 months after which he is obliged to leave the territory of the Member State.

One particularity of the directive on seasonal workers is that it regulates as expected from an immigration instrument the admission for long stays, but also the admission for short-term stays. Stays of less than 90 days have indeed been included in order to avoid that many seasonal workers would not be protected by the rights guaranteed by the directive. This inclusion ended in a complex provision (article 12) combining the Schengen acquis on visas with access to seasonal work and offering no less than 6 possibilities among which Member States must choose: stays not exceeding 90 days can be covered by a short-stay visa, a short-stay visa and a work permit or a work permit where the third-country national is exempted from the visa requirement following regulation 539/2001<sup>41</sup>; stays exceeding 90 days can be covered by a long-stay visa, a seasonal worker permit and the latter permit combined with a long stay visa if this is necessary to enter the territory of the concerned Member State. Accordingly, the directive does not regulate only seasonal workers'

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<sup>41</sup> Regulation 539/2001 of 15 March 2001, O.J.E.U., 2001, L81/1 and all its subsequent amendments.

permits but also all the authorisations listed above. It is interesting to note that work permits as a stand-alone act resurrect despite the single permit directive. Moreover, even if the seasonal worker permit is delivered following a single application procedure, it does not seem to be the case when a short or long-term visa is required together with a work permit. Finally, there is an important provision about accommodation of seasonal workers considered to be an admission condition and not only a right of seasonal workers. Article 20 requires evidence that the seasonal worker will benefit from accommodation ensuring an adequate standard of living according to national law or practice and provides some protections for seasonal workers in case their accommodation is arranged by or through the employer.

One recent development must be mentioned regarding legislation in the area of labour migration. In its “Agenda on Migration”<sup>42</sup> presented on 13 May 2015 in reaction to the “asylum crisis”, the Commission included a reform of the blue card directive which was actually one of the priorities of the President of the Commission<sup>43</sup>. Contrary to the conclusion of its report evaluating the implementation of the Blue Card<sup>44</sup>, the Commission proposed a profound reform of the 2009 directive that would be repealed.

Following this proposal made in June 2016 compared to the 2009 directive (see above), the notion of “highly qualified employment” would be replaced by “highly skilled employment” as Member States should be obliged to take into consideration three years of professional experience of a level comparable to higher education qualifications. The salary threshold would be lowered to 1 time to 1,4 times the gross annual salary and even to 80% for young graduates. Regarding mobility, the proposal builds classically upon the distinction between short and long stays. For stays up to 90 days, the blue card holder would be allowed to carry out business activity on the basis of the Blue Card issued by the first Member State. Not even a system of notification is foreseen like in the case for intra-corporate transferees. For stays of more than 90 days, the highly skilled worker would be allowed after 12 months of residence to work in another Member State on the basis of his/her blue card, but he/she must apply for another blue card in the second Member State. If this application procedure is heavy, the blue card holder is allowed to start working

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<sup>42</sup> COM(2015)240.

<sup>43</sup> [https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/juncker-political-guidelines-speech_en.pdf)

<sup>44</sup> COM(2014)287.

immediately after submitting the application in the second Member State. Moreover, the possibility for Member States to apply a labour market test is limited to cases of serious disturbances in the labour market.

Unfortunately, more than two years of negotiations about the reform of the blue card have not been enough to find a compromise between Council and Parliament. One of the main points of disagreement concerns the possibility for Member States to keep national schemes in parallel to the European system. The Council cannot agree about the Commission's proposal to abolish national schemes that are in line with the particularities of their labour market, despite their possibility to adopt or keep more favourable provisions in respect of certain provisions. The Commission and the Parliament counterargue that national parallel schemes allowed by article 4, §3<sup>45</sup> of the 2009 directive explain the low number of blue cards issued and even that their survival undermines the idea of a European Blue Card in the eyes of third-country nationals. National parallel schemes have become one of the major points of disagreement between the institutions that could prevent the adoption of the directive before the elections of May 2019.

This issue reminds a provision of the Amsterdam Treaty (article 63, second indent TEC) following which "Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements". It is interesting to notice that such provision, which has been repealed by the Lisbon Treaty, was precisely about legal migration and mobility. A similar issue is very well known by specialists of the internal market who make a difference between total/complete and partial/incomplete harmonisation, Member States being no longer allowed to derogate to a directive in case of total harmonisation. It is clear that even the new blue card directive would not harmonise totally the admission of highly skilled workers and still leave a more or less important margin of manoeuvre to Member States in particular with the optional provisions allowing them to make a choice between several possibilities (optional harmonisation), so that it would seem logical to allow Member States to keep national schemes.

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<sup>45</sup> Following this provision «This Directive shall be without prejudice to the right of the Member States to issue residence permits other than an EU Blue Card for any purpose of employment». Point 7 of the preamble confirms this when stating more clearly that "The third-country nationals concerned should have the possibility to apply for an EU Blue Card or for a national residence permit".

An inter-institutional war of religion about this issue should be avoided as all stakeholders have sound arguments. One could try to tailor the authorisation given to Member States to retain and adopt more favourable provisions to answer their concerns. An interesting compromise has been proposed by Fragomen<sup>46</sup>, which is a company providing immigration services worldwide: national parallel schemes would still be allowed but if an applicant qualifies for the Blue Card and a national scheme, the EU Blue Card should be given priority. Such solution could increase the number and the visibility of the Blue Card while preserving the flexibility of national schemes and so satisfy all EU institutions.

Finally, it is worthwhile to notice one fundamental novelty about the access of students and researchers to the labour market of their host Member State that has been introduced by directive 2016/801 (see above). This instrument created a “job-seeker permit” for which researchers and students can apply after the completion of their research project or studies. This permit will allow them, upon certain conditions (in particular to have sufficient resources to cover costs of subsistence as well as a sickness insurance), to seek employment or set up a business during a period of nine months and which is renewable. After three months, Member States can check if the student or researcher has a genuine chance of being engaged, or of launching a business. This kind of supply driven mechanism was long awaited in order to help the EU Member States to retain the highly qualified persons who conducted studies or research on their territory. One may, however, regret that its reach is limited to the Member State where research or studies have been done and does not allow to seek for a job in other EU Member States.

For the rest, there have been few non-legislative developments in the labour migration policy at EU level. This is not surprising for the last years as most efforts have been devoted to face the so-called asylum crisis of 2015-16 while the political climate became increasingly hostile against the migration issue. We mention the most important below:

- The EU created an immigration portal in 2011 that is available on line<sup>47</sup>. This web portal puts information at disposal of third-country nationals willing to move to EU Member States. It allows a search

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<sup>46</sup> <http://odysseus-network.eu/wp-content/uploads/2017/02/Fragomen-Proposal-for-new-EU-BLUE-card-scheme-DEC-2016-formatted.pdf>

<sup>47</sup> [https://ec.europa.eu/immigration/node\\_en](https://ec.europa.eu/immigration/node_en)

per Member State and per category. It is available in English and French but also in Arabic, Spanish and Portuguese.

- The European Commission launched in autumn 2016 what is commonly called a “Fitness Check<sup>48</sup>” of the seven directives adopted in the area of legal migration. A fitness check is a comprehensive evaluation relying upon the five classical criteria (relevance, coherence, effectiveness, efficiency, and EU added value) but its specificity is that it applies to a package of legislations rather than a single one and includes an assessment whether the legal framework for a policy is fit for purpose by identifying excessive regulatory burdens, overlaps, gaps, inconsistencies, and obsolete measures. The study launched by the Commission is actually larger than a fitness check, as it includes a compliance assessment of the directives on legal migration regarding not only their transposition by Member States but also their practical implementation. The study will also cover a longitudinal analysis following the steps of migrants coming from a sample of ten third countries representing the migration routes from the pre-application phase in their country of origin up to their arrival and residency in the EU and their possible departure. The results of this study expected for the beginning of 2019 will be used to identify which actions (legislative and non-legislative) are necessary to improve the legislation, including the need for EU rules regarding categories of migrants not covered by the existing directives. It will be very interesting to see if the results of this study will provide the Commission with an opportunity to relaunch the debate about the legal migration policy in view of another phase of its development.
- The agenda for migration presented by the Commission in 2015 at the beginning of the crisis also contains several elements on legal migration. Apart from a reform of the Blue Card directive (see above), it is about “supporting Member States in promoting a permanent dialogue and peer review at EU level on issues such as labour market gaps, regularisation...”, a “platform of dialogue to include input from business, trade unions and other social partners”, better “tools to identify those economic sectors and occupations that face, or will face, recruitment difficulties or skills gap” and the help of

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<sup>48</sup> A fitness check is done under the Regulatory Fitness and Performance Programme (REFIT), which is part of the Better Regulation agenda.

the EU to “improve understanding of qualifications gained outside the EU”<sup>49</sup>. Only scarce information is available about the follow-up given to these initiatives in the reports on the implementation of the agenda for migration. The idea of a permanent dialogue and peer review between Member States looks like one more attempt of the Commission to come back with its proposal for an open coordination method under a lighter format.

- The Commission announced in its report on the Agenda for Migration of September 2017 its readiness “to coordinate and support financially pilot projects with third countries (...) where Member States would engage themselves in receiving certain numbers of migrants coming through legal channels, in particular including for economic purposes”<sup>50</sup>. Even if their direct objective is to promote the role that legal migration can play in the overall management of migratory flows, the idea behind these projects is that “enhanced and tailored cooperation on legal migration with third countries of origin and transit of migrants can help reduce irregular migration by offering safe and lawful alternatives to persons wishing to migrate” and also “facilitate cooperation on issues such as prevention of irregular migration and readmission and return of irregular migrants”. Almost no information is available about these pilot projects apart from what was indicated in the call for tender launched by the Commission for their implementation by Member States<sup>51</sup>. The concrete objectives are classically the promotion of specific labour migration pathways between third-countries and EU Member States, a better match between skills and demands in the EU’s labour markets, and knowledge-and experience-sharing on successful actions to promote legal migration to the EU, taking into account the needs of migrants, the host societies as well as countries of origin. The third-countries concerned should be chosen among Morocco, Tunisia, Egypt, Guinea, Ethiopia, Gambia, Niger, Senegal, Ghana and Nigeria. The projects cover capacity building by targeting especially the third-country’s institutions in charge of the management of labour markets, pre-departure measures for the migrants participating in the project, the mobility phase of those migrants in EU

<sup>49</sup> Agenda for migration, p.15.

<sup>50</sup> COM(2017)558, p.19.

<sup>51</sup> [https://www.icmpd.org/fileadmin/user\\_upload/DOC6\\_Concept\\_Note.pdf](https://www.icmpd.org/fileadmin/user_upload/DOC6_Concept_Note.pdf)

Member States and finally their reintegration in their country of origin. Projects should enter in their implementation phase in the course of 2019.

### **3. Perspectives for the Future (as from 2015)**

With the adoption of the four directives on the single permit, Blue card, intra-corporate transferees and seasonal workers respectively in 2009, 2011 and the two last ones in 2014, the policy plan on legal migration has been finalised in not less than eight years. This is a very long period on the political agenda, showing clearly that labour migration remains a difficult issue to deal with at EU level. A comparison with the asylum policy leads to underline its dynamism (a third generation of rules has unexpectedly been proposed by the Commission in 2016, to the point that one can worry about a legislative tropism) in contrast with the area of legal migration. The Tampere conclusions had planned from the beginning for the asylum policy an approach based on two steps with a minimum harmonisation in the short term (point 14) to be followed “In the longer term (by) Community rules (... leading) to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union” (point 15). Such planning missing in the area of legal migration where the Tampere conclusions only envisaged “rapid decisions by the Council” (point 20) – a request that has not been quickly implemented but quickly forgotten – shows the lower level of ambition of the EU in this area.

While its content is largely devoted to the asylum policy for obvious reasons, the fourth pillar of the Agenda for Migration announced in 2015 by the Commission in reaction to the crisis was presented as “A new policy on legal migration”, a title largely misleading as it is mainly about one single legislative proposal plus less important elements (see above) about which the Commission itself does not provide information regarding their implementation in its reports. If the Commission continues to present migration as “an important way to enhance the sustainability of our welfare system and to ensure sustainable growth of the EU economy”, it advocates only in favour of the admission of highly skilled migrants and announced a reform of the Blue Card directive.

This reform is stalled after more than two years of negotiations because of the persistent disagreements between the co-legislators, while the Commission does not seem to be able to play its role of broker

between Council and Parliament. If it is not adopted before the European elections of May 2019 as it becomes more and more likely, this will be a significant failure because it corresponds to one of the priorities of the Juncker Commission and is actually one of the rare elements in the area of legal migration which was more or less supposed to be the object of a political consensus at EU level. This unfortunate episode allows to underline that the switch from the intergovernmental to the supranational method did not correspond to a revolution. Due to several elements, like the increasing role of the European Council, the functioning of the EU actually remains dominated by an intergovernmental logic in this area. This does not mean that the institutional evolution launched by the Amsterdam Treaty is not important because the quality of legislation compared to what the Member States produced alone in Council is much better under the new method applicable to legal migration since the treaty of Lisbon due to the stronger position of the Commission and Parliament in the legislative process.

One may wonder if the policy on legal migration could find a new impetus in its externalisation like it has been the case with the asylum policy since the EU and its Member States cooperate actively with Turkey and the so-called “Libyan coast-guards”. Without entering into the debate if this fundamental evolution is positive or negative, one may doubt that this could happen as the current externalisation does not pursue the implementation of the policy on legal migration for itself but as a tool to bargain with third-countries in order to convince them to cooperate (more) in the fight against irregular migration<sup>52</sup>. The difference between the asylum and legal migration policies is that Member States want resolutely to decrease the number of refugees arriving into the EU by cooperating with third-countries, while they do not seem really willing to have more legal migration. Even if the results of the pilot projects on legal migration implemented by the Member States with the financial support of the Commission will have to be evaluated, one should keep in mind that mobility partnerships under the Global Approach pursuing the same goal were not successful, in particular regarding legal migration, their label looking like a flag of convenience<sup>53</sup>.

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<sup>52</sup> WEINAR, A., Legal migration in the EU’s external policy: An objective or a bargaining chip?, in CARRERA, S., GEDDES, A., GUILD, E. and STEFAN, M., Pathways towards legal migration into the EU, op. cit., p. 87.

<sup>53</sup> See DE BRUYCKER, P., L’approche globale des migrations de l’UE: quel progrès suite au partenariat de mobilité avec le Maroc?, in MEHDI, R., La Méditerranée, espace démocratique, Presses Universitaires d’Aix-Marseille, pp. 95-103.

Could the EU policy on legal migration be relaunched on the basis of the study initiated by the Commission, knowing that it is much larger than a Refit? We do not know yet its results and the conclusions that the Commission will draw from it. The study will without any doubt underline the existence of “overlaps, gaps, and inconsistencies” among the directives on legal migration as those elements are especially targeted by the fitness check. The academic literature has already underlined that the fragmentation of the EU labour migration policy results in a high degree of complexity<sup>54</sup> and in a lack of transparency that affects the accessibility to rules by third-country nationals and even by national practitioners<sup>55</sup>. It is not a surprise that a framework made of different legal instruments that have been prepared by the Commission at different moments as well as negotiated separately by the co-legislators raises such problems that should however not be exaggerated for practitioners used to a high level of legal complexity at national level that is not linked to EU law.

One solution could be to codify all the existing directives, a proposal that has already been made by the Commission on several occasions, in particular in its contribution to the elaboration of the Stockholm programme: “a clear, transparent and equitable approach that respects human beings is required. To do this an immigration code should be adopted to ensure a uniform level of rights for legal immigrants comparable with that of Community citizens”<sup>56</sup>. This proposal has not been included as such in the Stockholm Programme where “the European Council invited the Commission to submit a proposal for the consolidation of all legislation in the area of immigration, starting with legal migration, which would be based on an evaluation of the existing *acquis* and include amendments needed to simplify and/or, where necessary, extend the existing provisions and improve their implementation and coherence”<sup>57</sup>. While being a bit more careful in the wording of its idea of codification, the Commission came back with it in its proposals for the guidelines that have been adopted in 2014 for the next five-year period

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<sup>54</sup> In particular, because of the existence of national schemes parallel to some EU directives (see above).

<sup>55</sup> See CARRERA, S. GUILD, E. and EISELE, K., Rethinking the attractiveness of EU Labour migration policies, CEPS, 2014, p.112 and 115; CARRERA, S., GEDDES, A., GUILD, E. and STEFAN, M., Pathways towards legal migration into the EU, op. cit., p. 192.

<sup>56</sup> COM(2009)262, p.25. A proposal for a full code has been elaborated by an academic: see PEERS, S., An EU Immigration Code: Towards a Common Immigration Policy, European Journal of Migration and Law (E.J.M.L.), 2012, pp. 33-61.

<sup>57</sup> The Stockholm programme: An open and secure Europe serving and protecting citizens, O.J.E.U., 4 May 2010, C115/30.

after the Stockholm programme: “An evaluation of current legislation on legal migration would help to identify gaps, improve consistency and assess the impact of the existing framework. Further steps could be taken to codify and streamline the substantive conditions for admission, as well as of the rights of third-country nationals”. Nothing was said about this proposal in the guidelines adopted by the European Council in 2014 that remained extremely general in contrast with the detailed Stockholm programme. The announced evaluation corresponds actually to the ongoing fitness check.

There is actually an ambiguity behind this proposal. The European Council used the word consolidation in the Stockholm programme while the Commission prefers codification. The two concepts are different: consolidation refers simply to the idea of gathering in one single text different instruments without changing their content while codification may or not imply changes<sup>58</sup>. It appears that the Commission envisages in this codification important changes to ensure a “uniform level of rights for legal immigrants comparable with that of Community citizens” which recalls the text of the Tampere conclusions (see above). On the one hand, codification with such changes seems unlikely because the package of directives on legal migration reflects precisely the willingness of Member States to recognise different levels of rights to labour migrants depending on the category to which they belong. On the other hand, a pure consolidation “at constant law” would not be useless as it would improve the readability of the rules and also have a publicity effect for EU rules on legal migration, but it should not be instrumentalised to hide the blockage of the policy on legal migration and launched just for showing that legal migration is on the agenda.

It will be particularly interesting to see which conclusions the Commission will draw from its study regarding gaps about categories of third-country workers currently not covered by EU legislation. The list of potential targets is diverse and long: apart of the very large group of unskilled, and low or medium skilled migrant workers, there are self-employed third-country nationals who can be divided into sub-groups of

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<sup>58</sup> More precisely, consolidation under EU law refers to the integration of the original act and all its successive amendments into one text that has no legal value even if it is published in the Official Journal only for information. It is done by the Publications Office of the EU. Codification refers to the integration of one original act and its amendments (vertical codification) or two or several acts covering related subjects (horizontal codification) in a single new act adopted by the legislator following an accelerated procedure. The package of directives on legal migration could hardly be consolidated because horizontal consolidation is normally not envisaged as it would require changing some elements of the texts, but they could be the object of a horizontal codification.

persons bringing potentially high benefits to the EU (entrepreneurs (with a focus on start-ups?), inventors, and patent holders), investors, service providers outside the scope of the ICT directive, youth that could benefit from a working holidays scheme, highly mobile persons like transport workers or touring artists, etc.<sup>59</sup>

Deciding or not to extend the EU legal migration policy to some of those categories refers to the principle of subsidiarity included in article 5, §3 TEU. It is striking to observe that this dimension is rarely taken into consideration in the (academic) debates and literature about the European policy on legal migration. It is also interesting to remember that the Commission did not put forward convincing arguments in support of its first horizontal proposal on labour migration made in 2001<sup>60</sup>. One of the very rare studies providing an in-depth analysis of the potential added value of an EU policy on legal migration has been published by the OECD in 2016 under the title “Recruiting immigrant workers: Europe”<sup>61</sup>. The strongest argument in favour of a European intervention is without surprise linked to the objective of internal mobility that can, by nature, only be organised at EU level, but there is also the objective of facilitating the recruitment of third-country workers by improving matching systems between demand and supply at EU level or by extending the scope of labour market tests (LMTs) to all EU Member States. However, this would require an in-depth analysis regarding its potential benefits in the absence of a truly European labour market.

Applying the subsidiarity test to the *acquis* on labour migration will show that there is an easy justification for the directives on highly skilled workers and on intra-corporate transferees. The same cannot be said for the directive on seasonal workers in the absence of mobility provisions. The main reason put forward by the Commission in that case was that “The Schengen area without internal borders requires a common discipline to reduce the risk of overstaying and illegal entries that may

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<sup>59</sup> For an analysis see OECD and EU, *Recruiting Immigrant Workers: Europe*, Paris, OECD Publishing, 2016, pp. 233-254.

<sup>60</sup> Following the Commission, “The primary objective of this initiative is to determine a harmonised legal framework at EU level concerning the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities and of the procedures for the issue by Member States of pertinent permits. Currently national administrative rules and procedures regulating this field differ widely between Member States. Taking into account the significant divergence of national provisions and regulatory approaches in Member States, the establishment of a harmonised legal frame can only be achieved at Community level” (COM(2001)386, p.5). In other words, the objective is to harmonise because Member States have different rules and only the EU can harmonise! Such circular reasoning can be used to justify almost any proposal.

<sup>61</sup> *Op. cit.*, pp. 117-149.

be caused by/result from lax and diverse rules on the admission of seasonal workers”<sup>62</sup>. This argument is doubtful because the creators of the Schengen Area themselves in the Convention of 16 June 1990 implementing the Schengen agreement<sup>63</sup> limited the compensatory measures accompanying the abolition of internal border controls to a common visa policy, common external borders’ control and common rules about the determination of the Member State responsible for the examination of asylum requests (at the origin of the famous Dublin system) and so excluded legal migration from the scope of Schengen. The risk that legal migrants admitted by one Member State move to another is indeed low because by doing so they would lose their status and become illegal in the second Member State. Unless they belong to the highly skilled workers categories covered by EU law (see above), they can only reside in another Member State - and to the limited extent explained above - when they acquire the status of long-term resident after five years of legal stay, which corresponds precisely to the period during which migrants gain roots in their host country and are not so much ready to move again to another State<sup>64</sup>...

A general conclusion made by some authors is that if there are benefits to harmonise highly-skilled migration because there is a competition between Member States and also at global level to attract those migrants because of shortages on the labour market, there is no point to harmonise low or unskilled migration for the reverse reason<sup>65</sup>. Such argument will rightly shock as there might be a hidden need for low or unskilled workers because such posts are, to a certain extent, filled by illegal migrants. Some observers go much further and consider that “the principle of subsidiarity constitutes a narrow and blinded approach” or “an obsolete tool<sup>66</sup>” for the building of a common policy on labour migration. Before contesting subsidiarity as a principle, one should keep in mind that the argument differentiating the level of skills of migrants is about the harmonisation of admission conditions. Subsidiarity does not necessarily lead to the

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<sup>62</sup> COM(2010)379, p. 6.

<sup>63</sup> O.J.E.U. of 22 September 2000, p. 19.

<sup>64</sup> See in the same sense the reasoning of an economist like VON WEIZSACKER, J., *Divisions of labour: Rethinking Europe’s migration policy*, Bruegel Blueprint Series, 2008, p.46 accessible at: <http://bruegel.org/2008/10/divisions-of-labour-rethinking-europes-migration-policy/>

<sup>65</sup> BARS LUND, M. & BUSSE, M., *Labour migration to Europe: what role for EU regulation?*, in *Pathways towards legal migration into the EU*, op. cit., p. 74.

<sup>66</sup> CARRERA, S., *Building a common policy on labour immigration: Towards a comprehensive and global approach in the EU*, Ceps working document 256/2007, p. 5.

conclusion that other elements should not be harmonised for all workers. Moreover, setting policy objectives like attracting migrants is a political choice not governed by the principle of subsidiarity that applies to the later stage in order to check if the EU level is the adequate one for reaching them. For instance, the protection of migrants' rights as an objective has been justified in the proposal for a directive on a single permit and a common set of rights by the need to avoid distortion of competition due to different level of rights of migrant workers<sup>67</sup>.

The European labour migration policy is certainly not common<sup>68</sup> due to several elements, like its narrow scope of application leaving aside significant categories of workers, the prohibition of EU quotas by the treaties (even if this is not an important element as underlined above), the use of techniques of optional harmonisation and even sometimes the possibility for Member States to compete with their national scheme against the EU scheme without forgetting their initial refusal of any kind of coordination in the implementation of that policy. On the contrary, the creation of a single permit, the emergence of the first mobility provisions based on mutual recognition in the ICT directive and the creation of a job-seeker permit for students and researchers in each Member State are all elements giving a certain common dimension to this policy. However, this policy can hardly become entirely common as underlined by the European Council that prefers sometimes the wording of a "comprehensive European migration policy complementing Member States' policies"<sup>69</sup> which is different from a common policy. It is actually logical that Member States retain important competences in the area of labour migration in the absence of a common labour market that the EU calls for but that does not exist despite the freedom of workers recognised to EU citizens since 1968. The future, when the elderly Europeans will look for migrants ready to settle in the EU instead of chasing the ones staying illegally like today, will tell how much it will become more common.

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<sup>67</sup> COM(2007)638, p. 7.

<sup>68</sup> On the meaning of the notion of common policy, see DE BRUYCKER, P. under footnote 2 above.

<sup>69</sup> Point 16 of the conclusions of 14 December 2007: <https://data.consilium.europa.eu/doc/document/ST-16616-2007-INIT/en/pdf>



**PART. III**

*The Global Compact  
for Safe, Orderly and  
Regular Migration*



**ANNA TERRÓN CUSÍ**

*The International Management  
of Migration. The European Model  
and its Possible Contribution*

## **1. Introduction**

Migration formally entered the development global agenda in 2015, with its inclusion in the Sustainable Development Goals<sup>1</sup>. In September of the following year, following the High Level Conference on the large displacements of migrants and refugees, the General Assembly of the United Nations adopted a Resolution on this issue, and launched the process of endorsing two World Compacts<sup>2</sup>, one on Migrants<sup>3</sup> and another on Refugees<sup>4</sup>, which should come out before the end of 2018. While the international community is taking important steps towards international cooperation in the management of migration, voices calling for the “recovery” of control of national borders both within existing regional schemes and in relation to international asylum and humanitarian law are coming from the global North. Today’s integration and international cooperation dynamics coexist with growing crescendos of disaggregation and renationalisation, in a political context in

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<sup>1</sup> United Nations (2015) Sustainable Development Goals. Available at: <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>

<sup>2</sup> UN General Assembly (2016) New York Declaration for Refugees and Migrants : resolution / adopted by the General Assembly, 3 October 2016, A/RES/71/1, available at: <https://undocs.org/a/res/71/1>

<sup>3</sup> United Nations (2018) Global Compact for Safe, Orderly and Regular Migration. Available at: [https://refugeesmigrants.un.org/sites/default/files/180713\\_agreed\\_outcome\\_global\\_compact\\_for\\_migration.pdf](https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf)

<sup>4</sup> United Nations (2018) Global Compact on Refugees. Available at: [https://www.unhcr.org/gcr/GCR\\_English.pdf](https://www.unhcr.org/gcr/GCR_English.pdf)

which xenophobic discourses, political proposals based on nativism and attempts to national retreat gain ground. We will analyse which elements drive cooperation and which operate in the opposite direction, and whether the European Union could be a relevant actor in the incipient space of international cooperation by contributing with its own mobility of people governance model or, on the contrary, nativism and the renationalising discourse can be imposed in the European Union, putting at risk the European construction itself, and hindering the incipient efforts to increase international cooperation for a better governance of migration.

## **2. Migration on the global agenda: governance, rights and development**

The formal entry of migration into the realm of international relations is very recent. The Sustainable Development Goals<sup>5</sup> incorporate international migration and refer to it in terms of governance, rights and development. The text adopted in 2015 emphasizes the need for safe, orderly, legal, and responsible migration, while recognizing the relationship between migration and development in both countries of origin and countries of destination of migrants. In September 2016, the Summit on the large displacement of migrants and refugees was held, after which the United Nations General Assembly adopted a Declaration on refugees and migrants<sup>6</sup>. The Declaration proposes an international agenda with an important degree of detail, which makes it a relevant text in itself. Its development was entrusted to the adoption of two Global Compacts, one on migration and the other on refugees<sup>7</sup>, which must see the light at the end of 2018<sup>8</sup>. In the same session in 2016, the General Assembly decided that the International Organization for Migration would become part of the United Nations family. The importance of these facts becomes evident if we remember, for example, that at the beginning of this century

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<sup>5</sup> United Nations (2015) Sustainable Development Goals. Available at: <https://www.un.org/sustainabledevelopment/sustainable-development-goals/>

<sup>6</sup> UN General Assembly (2016) New York Declaration for Refugees and Migrants : resolution / adopted by the General Assembly, 3 October 2016, A/RES/71/1, available at: <https://undocs.org/a/res/71/1>

<sup>7</sup> United Nations (2018) Global Compact on Refugees. Available at: [https://www.unhcr.org/gcr/GCR\\_English.pdf](https://www.unhcr.org/gcr/GCR_English.pdf)

<sup>8</sup> United Nations (2018) Global Compact for Safe, Orderly and Regular Migration. Available at: [https://refugee-smigrants.un.org/sites/default/files/180713\\_agreed\\_outcome\\_global\\_compact\\_for\\_migration.pdf](https://refugee-smigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf)

it was not possible to mention international migrations in the text that comprised the Millennium Development Goals<sup>9</sup>.

The consensus on the need to address the situation of displaced persons, refugees and migrants in the international arena, both in the short and the long term, has been growing in recent years. The reference to migration in the SDGs and the New York Declaration has been possible thanks to the previous work of the international community in which the States played a preponderant role, but also civil society, academia, cities, and different regional and international organizations. The frameworks for international dialogue on migration, such as the High Level Dialogue on Migration and Development, or the Global Forum for Migration and Development, have generated an emerging common accord in this area. This international dialogue on migration has also been favoured by the changes that have taken place in the last 15 years in the dynamics and migratory geographies. The number of countries involved in the different regional or international mobility frameworks has increased significantly. The divisions between countries of origin, transit and destination, which historically resorted to international dialogue with different and sometimes conflicting interests, are less marked. These two categories have been blurred within the current, more complex mobility patterns, facilitating multilateral dialogue.

The New York Declaration and the Global Compact for Migration, as presented at the meeting in Marrakesh, reflect the concerns of the actors and stakeholders that have participated in recent years in the dialogue on migration, governance, rights and development. The Compact establishes a framework for international cooperation that is not legally binding. It is based on the sovereignty of the States in this matter, which is emphasized in the guiding principles, but it also recalls their obligations with respect to international law, recognizing that the state is insufficient to address the challenges that mobility poses. Its guiding principles include a pan-governmental<sup>10</sup> approach to managing “a multidimensional reality that cannot be addressed by a single regulatory sector of government” and advocates a pan-governmental approach that ensures horizontal and vertical policy coherence across all sectors and levels of government, on the one hand, and a pan-social approach, “a broad multi-stakeholder

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<sup>9</sup> UN General Assembly (2000) United Nations Millennium Declaration, Resolution Adopted by the General Assembly, 18 September 2000, A/RES/55/2, available at: <http://www.un.org/millennium/declaration/ares552e.pdf>

<sup>10</sup> Global Compact on Migration, guiding principles i and j.

collaboration to address migration in all its dimensions through the inclusion of migrants, diasporas, local communities, civil society, academia, the private sector, parliamentarians, trade unions, national human rights institutions, and the media and other stakeholders in migration governance. It incorporates the different regional and international organizations into the migration and development agenda, as well as the scientific community and academia, as a reference framework”. It also proposes “to integrate migration into development planning, and into sector policies at local, national, regional and global levels”.

The proposal of the Global Compact for Migration contains twenty-three Objectives (and commitments), which can be presented as follows: we would point out, in the first place, the work in the countries of origin to reduce “the adverse and structural factors that force people to leave their country of (Objective number 2), which reinforces the development agenda as we will see. Next, we group the objectives, commitments and actions that place migrants in the centre, proposing the reinforcement of their own action as development actors (16, 18, 19 and 20). Third, we identify the objectives that reinforce the rights of migrants, address and reduce vulnerabilities (7), strengthen rights in the labour sphere, especially regarding decent work (6) and in the social sphere (15 and 16), including the portability of acquired social rights (22); non-discrimination and respect for migration and migrants in public discourse (17); within the scope of the protection of rights, we include the prevention of detention for immigration reasons (13). The governance of migration is a central axis of the Global Compact; to this end, it draws attention, in the first place, to the need to provide information to migrants (3), to provide them with documents (4) and, in a very relevant way, to “increase the availability and flexibility of the regular migration paths” (5); then it refers to the fight against human trafficking (9 and 10); the integrated border management (11); the increase in “the certainty and predictability of procedures” (12), and the improvement of consular assistance, protection and coordination during the migratory cycle (14); finally, objective 21 calls for collaboration to “facilitate return and readmission in safe and dignity conditions, as well as sustainable reintegration”. The objectives and commitments, each followed by an action plan, begin with a request to “collect and use accurate and disaggregated data to formulate policies with empirical basis”, which is a recognition of the neglect that migration policies have suffered from so far, and end with a call to “strengthen international cooperation and global partnerships for safe,

orderly and regular migration” (23). The Global Compact fosters cooperation with a “capacity building mechanism that supports the efforts made by Member States to implement the Global Compact” at the United Nations, in addition to the United Nations network on migration that must “guarantee the effectiveness and coherence of system-wide foster for the implementation of the Global Compact, including the capacity building mechanism, as well as its follow-up and review, in response to the needs of Member States”, of which the IOM will act as coordinator and secretary.

### **3. The migration global agenda and national agendas**

As said earlier, the Global Compact proposal, which arises from the New York Declaration, affirms that it is not legally binding. Even so, it does not cease to be the beginning of a process that should favour the creation of some instruments – including international law – for the global governance of migrations and mobility, today practically non-existent. This possibility has been behind the whole process and still is, and accounts for the strong reluctance on the part of some States.

It is paradoxical that the most important leap forward of the last decades in the reinforcement of international cooperation on migration has occurred precisely at the same time, in the national political arenas, we see nativist rhetoric growing – when not openly xenophobic – and calls for national withdrawal, and demands for restrictive migration policies. In many States of the global North and increasingly in other areas, impulses that drive the international agenda coexist with others that push towards national withdrawal. The latter have already had an impact on the development of the 2016 Declaration. The United States has abandoned spaces that it had historically led, such as the IOM, and has moved away from the process of adopting the Global Compact, which it will not sign. In the European Union, some states have expressed reservations to the texts, and we have seen two member states, Hungary and Austria – the latter while exercising the rotating EU Presidency – announcing their refusal to ratify the Global Compact in Marrakesh, questioning the sincerity of the quest for greater and better global cooperation expressed in New York and tarnishing the relative optimism about the progress made. Alongside the dynamics that have favoured the steps taken towards an increase in international cooperation in the field of migration, we can

identify strong resistance and movements that are radically opposed to giving up any national sovereignty in this area.

This dual drive towards the strengthening of international cooperation and national withdrawal can be clearly seen in relation to the events that have marked the context in which the discussion of the SDGs was held in 2015, and which have led to the holding of the High Level Conference on the large displacements of migrants and refugees in New York, the Declaration of the United Nations Assembly and the Global Compact, especially the departure of a vast number of refugees from Syria, and other States dominated by different forms of violence. Increasingly and peaking in 2015, a more-than-foreseeable humanitarian crisis that caused hundreds of victims in the Mediterranean left thousands of refugees in a situation of vulnerability, which is incompatible with the obligations emanating from international asylum law and provoked a commotion that we still feel today. In some receiving countries, and particularly in the European Union, this situation also led to a political crisis – perhaps we should say that it aggravated it – in which we remain. The reactions to the arrival of the refugees were different, and so were the ways of dealing with it in the national political arenas on the part of the different governments. In the European States this situation had a special impact, and placed the Union itself in a critical situation. The Common European Asylum System and the mechanisms of solidarity and cooperation between States foreseen in the Treaties did not work this time either and, as a result, the duty to protect suffered a serious impairment and the free movement of people within the common territory remained – and it remains today – seriously compromised. This situation led the European Union institutions and the Member States to strengthen international action, in different ways that we are not going to mention now, both bilaterally and multilaterally.

The need to provide a better international response to the “large displacements” of unprotected human beings, on the one hand, and the need to channel political crises in the European Union and other destination States in the global North, on the other, acted as a push factor for the incorporation of migration into the international agenda, reaching a consensus that had not been possible, overcoming the distances and differences since the adoption of the Geneva Convention in 1951<sup>11</sup>. This

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<sup>11</sup> UN General Assembly (1951) Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.unhcr.org/3b66c2aa10>

has been wholly compatible with the national withdrawal reactions that we have pointed out when referring to the European political crisis.

If we were to analyse the situation in more detail, we could find greater coherence between the apparently contradictory actions of some States of the global North in the national political arena and in the international field. The crises experienced in recent years, especially the Syrian crisis, have been presented as a loss of ability to control the borders and the territory itself, and this sentiment has been transferred to some public opinions. The international aspect matters, both to try to bring together mechanisms of migration effective governance, and to manage perceptions in the national political arenas. States claim their competence in the field of mobility in the international arena, and cooperation among them is presented as a mechanism to recover management capacity and achieve the 'orderly, safe and legal' migration referred to in the SDGs and in the New York Declaration. In addition, for some, going to the international institutions allows relieving the pressure that they suffer internally, either towards the neighbouring States, claiming to the States of transit their share of responsibility towards the system, either bilaterally, via regional institutions – especially in the European Union, but also in areas such as Central America and North America -, or the international community itself.

The generic proposals to address the causes of migration at source through concerted international action are operative in the field of perceptions, and therefore in the national political arenas. To refer to development when we talk about migration, even with all the limitations we know about its impact on migratory flows, allows us to address those who feel shocked by the most inhuman realities of mobility – which are not the most relevant numerically, but are tragic and extraordinarily shocking -, and suggest an agenda that respects human rights. On the other hand, linking mobility to the extreme poverty of its protagonists allows introducing the notion of the temporality of some displacements that present themselves as unwanted by their own protagonists and therefore avoidable in the short or medium term, once again simplifying the complex reality of the migratory event. In the national political arena, this proposal makes it possible to address both those who react above all with compassion towards the most vulnerable and those who do so with fear and rejection. In turn, the development action proposal helps make restrictions and returns acceptable, not as part of a coherent migration policy, but rather as a substitute.

#### 4. The European Union, a regional model of international management of the people's movement

Migration is a constant feature of human behaviour, which has been changing in its forms in each historical moment. Today it is one more component of the globalization period in which we live. Migration is also, as we have pointed out, an element that is toxically interwoven with national political dynamics. These dynamics, increasingly clear, are growing in many countries, but in the EU, due to its very nature, has special importance.

Before the end of the last century, the European Union became a space without internal borders where freedom, rights, access to justice, the management of the mobility of persons, the protection of refugees, diversity and security were reinforced in a supranational framework. It was a unique experience in the world, which anticipated the challenges of the new century, in which technological changes and easy transportation of people, together with an economy in the process of globalization, posed new challenges and changed the functioning and the traditional role of borders. The European Union is today the most complete regional framework of international governance of the mobility of people, a space of free circulation that has developed from the Schengen Agreements<sup>12</sup>, today part of the Treaty of the European Union<sup>13</sup>.

Together with the freedom of internal circulation, the Treaty brought to the community the asylum and immigration policies that were essential for managing a space without internal borders that necessarily extends the freedom of movement to all those who are within its territory. The same applied to judicial and police cooperation, designed to prevent this inner space from making it easier for those who intend to evade justice rather than for those who must defend and impart it. The objective was to develop a Space of Freedom, Security and Justice in a balanced manner, today included in Title V of the Treaty, which guarantees the equal free movement of persons, the control of external borders, the management of asylum and immigration, access to justice and the prevention and

<sup>12</sup> Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, Schengen Agreement, 14 June 1985, Official Journal L 239, 22/09/2000 P. 0013-0018, 42000A0922(01), available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922%2801%29:EN:HTML>

<sup>13</sup> European Union (1992) Treaty on European Union (Consolidated Version), Treaty of Maastricht, 7 February 1992, Official Journal of the European Communities C 325/5; 24 December 2002, available at: [http://data.europa.eu/eli/treaty/teu\\_2012/oj](http://data.europa.eu/eli/treaty/teu_2012/oj)

fight against crime, especially against international crime. This common framework was strengthened by the incorporation of the Charter of Fundamental Rights<sup>14</sup>, whose basic principles were to govern, as the Court of Justice later ratified, any person who was in the territory of the Union, and with a determined action in the fight against racism and xenophobia, requiring typifying and criminalizing related crimes.

Guaranteeing to European citizens this area of freedom, security and justice foreseen in the Treaties requires a strong political commitment, and presupposes an almost absolute mutual trust between Member States, as well as loyal cooperation between the different national systems, which are different, but are considered equivalent in terms of security guarantees and rights. The achievements made since then have been many, and have shaped the common space in which we have become accustomed to get on with our lives, so much so that we only become aware of it when the weaknesses of the system, as has happened in recent years, come to the fore.

But the resistances have also been very strong, in a consubstantial area to the State as is the control of its territory. The obstacles to the development of cooperation in the areas of home affairs and justice by different sectors, many of them belonging to the European mainstream, have been huge, and have hindered the development of the area of freedom, security and justice as conceived. These deficiencies, especially regarding international migration and asylum policies, today hide the successes of an extraordinarily ambitious operation. Let us examine what the strengths and the weaknesses of the European common space are, what effects they have internally and how this can be projected towards the emerging will of global governance of migrations. Internally, freedom of movement and residence of Union citizens has allowed a high degree of integration, not only economic, and, for two decades, has had a high consensus, judging from the data that Eurostat has published periodically. This consensus has weakened in recent years. There are three elements that have been related to it. The existence of large wage gaps between the different labour markets of the Union, especially after the enlargement; the economic crisis that widens the gaps within and among the member states; and the inability to make agreements to manage the arrivals of asylum seekers and international migrants, with the consequent perception of loss of control in the management of the external borders.

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<sup>14</sup> European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02, available at: [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

This situation has exposed the strong internal imbalances of the Union. On the one hand, the economic crisis has uncovered the imbalances in the construction of the Economic and Monetary Union. The costs of the crisis have been distributed extremely unequally in an internal market with national labour markets and social protection systems, aggravating the differences that already existed between the different territories of the Union, and within them.

Migration policies, framed in the AFSJ, also suffer from imbalances in their development. European immigration policies have not advanced and the Common European Asylum System has shown its absolute fragility. Despite the fact that twenty years ago the need for these common policies was identified in a space of free movement with a common external border, strong resistance has prevented their development in the intended direction. While the actions against irregular immigration concentrate all the efforts of the Union, the many proposals of the European Commission to the Council and the European Parliament to develop coherently the European migration and asylum policies that are required to complete the Area of Freedom, Security and Justice, as planned since the dawn of this century, are still stuck today.

The debate on free movement and, especially, on immigration, takes place in a context of misinformation – and toxic information – which has a strong impact on society<sup>15</sup>. The distance between the information given by the data and the perception of many citizens is increasingly wider. The extreme – and not innocent – politicization of these issues, and the their divisive use puts the accent on free internal circulation and immigration, which equates and completely ignores the social dimension of the problems that we experience. The nativist and anti-European discourse grows and feeds this context. The forces that sustain it dominate the political agenda today, whether they govern or not, in a good part of the Union. To this day, they have not demonstrated the ability to manage the multiple problems that we should address, nor do national policies show evidence of regaining control of migration. Rather, if we look at the cases of Great Britain and Italy, their effect is null.

The advances in the Area of Security, Freedom and Justice have been determined by the possible balance at every moment between the need for cooperation and the trends of national withdrawal. The same governments that have promoted the AFSJ have placed obstacles to a part

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<sup>15</sup> Alesina, Alberto, Stefanie Stantcheva, and Armando Miano. Working Paper. “Immigration and Redistribution”.

of its realization. As we have seen before, there are many reasons and incentives for cooperation, and the apparent contradictions between this drive towards cooperation and attitudes of national withdrawal leave many grey areas. The mechanisms for managing the external borders are reinforced, and no country in the Union today wants to renounce the many and very sophisticated cooperation mechanisms developed within the framework of the Schengen area although the internal borders have reappeared in the Union. The very existence of the European Union makes it possible to shift the pressure from the Member States towards the Community institutions, in a game that is not exempt from risks but which, in the short term, opens spaces of comfort to the European national Governments.

The current moment is especially difficult, and the blockades, as we have seen, are many. But the current situation should not prevent us from seeing the many achievements of the European model and its enormous advantages. On the contrary, in this moment of exacerbated tension between the two tendencies that have historically guided the construction of the European Union and, in a special way, the construction of the Area of Freedom, Security and Justice, it is very important to value a model which, with all its difficulties and imperfections, has allowed a regional space with a high degree of integration; free movement; cooperation in the field of security and fight against international crime; access to justice; and the establishment of a space of law. This acquires special relevance at the time of momentum and also of fierce political resistance to the international governance of migrations, since it offers us a real experience of cooperation in matters of security, justice, mobility of people and border management. Observing the mentioned EU internal dynamics and how they favour or weaken cooperation can be useful to analyse the potential and risks of the current attempts to move towards a better international governance of migration, including refuge and forced displacement.

## **5. The external dimension of the European Union immigration policy and the global agenda**

In the European Union, the external border is common and the control of the territory – a core element of the State – is delegated to the others to the same extent that it is accepted to control the external borders of the

territory on behalf of all. Cooperation with countries of origin of migration is conducted at the same time as free movement and European migration, asylum, security and justice policies are carried out. The relationship between the external dimension of these policies and the international dialogue on migration, as well as the role of the European Union in this scenario, is the other area that we need to see in order to analyse the current situation and the potential of the international management of migrations.

The first roadmap for the development of the Area of Freedom, Security and Justice, in terms of migration, was based on the creation of a Common Asylum System, bringing together the immigrants' entry and residence policies – a common immigration policy -, the “fair treatment of third-country nationals”, and the fight against irregular migration. The Presidency of the European Council in October 1999 stated that “The European Union needs a comprehensive approach to migration that addresses political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and guaranteeing respect for human rights, in particular the rights of minorities, women and children. (...) The association with the affected third countries will also be a key element for the success of such a policy, with a view to promoting joint development.” They also mentioned the need to work with third countries in the fight against irregular immigration.

Since then, the emphasis on the external dimension of immigration policies has been a continuum in European Home Affairs and Justice policies. In 2002, at the European Council meeting in Seville, the Spanish Presidency of the Council initiated a dialogue to link migration management to EU development aid, a link that for some should include the conditionality of development cooperation to the migratory dialogue; for others, until now a majority, these two elements should be related in a positive way, that is, they should work together in the management of migration – including the improvement of border controls by the countries of origin and transit, the readmission of the nationals themselves and the fight against irregular migration -, and in the development policies, whose budget should increase as the migratory dialogue progressed. For the Union, this “positive conditionality” has been at the centre of the European strategy on the external dimension of European migration and asylum policies.

The current road map of the European Commission, the 2015 Agenda on Migration<sup>16</sup>, continues to focus on the external dimension of migration policies, to which more budgetary resources were allocated. These are aimed, in particular, at the “need to reduce irregular migration by addressing the underlying causes of migration in the countries of origin”, but also at the fight against human trafficking, cooperation in migration control in the countries of origin, and the effective return of migrants arriving by irregular means and without the possibility of obtaining a permit that allows their stay. It is obvious, and this is what the European Commission recognizes throughout its proposals to the Council and the Parliament, that a solid partnership with third countries needs a consistent European migration policy, which in the Tampere declaration<sup>17</sup> was called “an integral approach to migration”. The European Agenda on Migration presented on 13 May 2015<sup>18</sup>, with less incisive formulas, insists on this. It foresees a new reform of the Common Asylum System, and reiterates the need, never formalized, for an immigration policy – which it calls legal, a very strange adjective for a public policy – that relates it to the European labour market and economic activity, and that it brings together immigration policies, as had been foreseen almost twenty years ago.

The reform of the Common European Asylum System (CEAS)<sup>19</sup> remains stuck in the Home Affairs Council, and there are no more proposals related to immigration than those related to international competence to attract talent and resources. On the other hand, the entrustment to the Union of actions such as the fight against human trafficking and the

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<sup>16</sup> European Commission (2015) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration, 13 May 2015, COM(2015) 240, available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf)

<sup>17</sup> European Council on Refugees and Exiles (1999) Observations by the European Council on Refugees and Exiles on the Presidency Conclusion of the Tampere European Council, 15 and 16 October 1999, 16 October 1999, available at: [http://www.europarl.europa.eu/summits/tam\\_en.htm](http://www.europarl.europa.eu/summits/tam_en.htm)

<sup>18</sup> European Commission (2015) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A European Agenda on Migration, 13 May 2015, COM(2015) 240, available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf)

<sup>19</sup> European Union: European Commission, Towards A Reform Of The Common European Asylum System And Enhancing Legal Avenues To Europe, 6 April 2016, available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160406/towards\\_a\\_reform\\_of\\_the\\_common\\_european\\_asylum\\_system\\_and\\_enhancing\\_legal\\_avenues\\_to\\_europe\\_-\\_20160406\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160406/towards_a_reform_of_the_common_european_asylum_system_and_enhancing_legal_avenues_to_europe_-_20160406_en.pdf)

control of irregular immigration, have, today as in the last twenty years, attracted greater consensus. A recent example of this is the creation, within FRONTEX, of the so-called European Border and Coast Guard Agency, with the stated aim of ensuring the integrated management of the external borders and safeguarding free movement<sup>20</sup>, which was an important decision.

The Union's external strategy suffers from imbalances which, in addition to generating internal problems, are perceived as unfair by third countries. The (positive) conditionality of development aid is not, for many governments of third countries, sufficient incentive to collaborate more closely in containing flows which, for them, are more advantageous than this, so they intend to add to the package offered by the Union the demand for a more flexible visa policy, or at least, clear and accessible regulatory frameworks that can channel migration through regular paths. There are many difficulties in channelling migratory flows towards regular routes beyond those foreseen for those who have arrived in European territory and can expect a positive resolution of a request for asylum.

With these limitations, the European Commission, in agreement with the Member States within the framework of the Global Agreement on Mobility and Migration (GAMM)<sup>21</sup>, has implemented an external cooperation network with different components. Support for security policies, border control and the development of a migration and mobility policy for third countries has grown in recent years. Elements such as reception policies and social inclusion in third countries are entering the agenda. Let us not forget that south-south migration continues to be the majority, and that traditionally sending countries have also become receiving countries, as the proposal of the Global Compact affirms. Readmission agreements are part of all the instruments that have been developed under the umbrella of the GAMM, from mobility partnerships to the latest Migration Framework; the European Commission and the Member States – in many cases via bilateral arrangements – have been weaving a tight network of relations with third countries. The Union has also worked with other regional bodies to develop shared agendas, for example in

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<sup>20</sup> <https://www.consilium.europa.eu/es/press/press-releases/2016/09/14/european-border-coast-guard/>

<sup>21</sup> European Commission (2011) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions : The Global Approach to Migration and Mobility, 18 November 2011. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52011DC0743>

Africa, which could be strengthened in the framework of international cooperation.

## **6. The european contribution to the international management of migration: A conclusion**

Within the Union and its States, the coexistence of the integrating and supportive dynamics of multilateralism and the resistances and renationalizing reactions can be clearly seen. The most restrictive attitudes towards migration – which are affecting a community pillar such as free internal circulation – coexist with the increase of cooperation in the control of common external borders and the demand for more external action. Despite national discourses and attitudes like those of Hungary or Austria, noted above, the involvement of the Union and many of its Member States in the emerging international framework of migration is still important. It has been on the European side that some of the spaces left by the USA have been effectively occupied, for example, the IOM, and the Union is supporting the international community in many of the humanitarian efforts it makes, just to give some examples. Its participation in the opening of a multilateral cooperation space on migration is clear, although it has not always been sought, at least in a combined manner between the EU institutions and the Member States.

It is not difficult to observe the similarities that exist between the objectives declared in the Global Compact for migration<sup>22</sup> and the European agendas both internally and in their external dimension. To observe the internal dynamics, both in the management of the free circulation space and in immigration and asylum policies, including its external dimension, and analyse how these have favoured or weakened cooperation in the European Union's internal space and its external action, can be useful.

Article 14 of the Compact states that its success “will depend on the mutual trust, determination and solidarity of States to fulfil the objectives and commitments set forth in it”. Confidence builds very slowly and breaks down with relative ease. The greater the institutional fabric and the more effective cooperation, the greater the possibility of maintaining cooperation. This is the case today in the framework of

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<sup>22</sup> United Nations (2018) Global Compact for Safe, Orderly and Regular Migration. Available at: [https://refugeesmigrants.un.org/sites/default/files/180713\\_agreed\\_outcome\\_global\\_compact\\_for\\_migration.pdf](https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf)

the Schengen Area, where, despite the depth of the crisis, the many incentives to cooperate remain, beyond the national political rhetoric. However, the balance is today more fragile than ever. The development of cooperation frameworks provided for in the Global Compact can help, but the risks are also very present. The incentives to establish a global governance framework for migration are high, also for the European Union. Multilateral cooperation, at this moment, makes perfect sense. The external dimension of its migration policy can be reinforced within a framework of global action based on the SDGs. In the Union, each triumph of the renationalizing impulses regarding migration has especially harmful effects, since they attack their own essence. Every step towards a global migration governance system, even with all its weaknesses, should be good news. It is smart to invest knowledge, experience and energy in it and try to make the Global Compact for safe, orderly and regular migration a reality.

**ANA RITA GIL**

## *Guiding Principles of the Global Compact on Migration*

### **1. Introduction**

The Global Compact for Safe, Orderly and Regular Migration represents a huge step for the cooperation between all UN States in the field of this human and permanent phenomenon that is migration. This is quite an overwhelming move, not only because it represents a new approach to migrations, but also because it asserts political responsibilities to all participating States<sup>1</sup>.

The Compact was the result of a long process that started in 2016, with the New York Declaration for Refugees and Migrants. This declaration was adopted after the high-level plenary meeting on large movements of refugees and migrants, and resulted in a Resolution adopted by the UN General Assembly. While the meeting was mainly concerned with addressing the uncontrolled movements of migrants worldwide, the

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<sup>1</sup> On the Global Compact in general, see Elspeth Guild, "The UN's Search for a Global Compact on Safe, Orderly and Regular Migration" *German Law Journal*, Vol. 18, Issue 7, 2017, pp. 1779-1796, Victor Genina, "Proposals for the Negotiation Process on the United Nations Global Compact for Migration" *Journal on Migration and Human Security*, Vol. 5, Issue 3, 2017, pp. 682-693, Aleinikoff & Martin "Making the Global Compacts work: What future for refugees and migrants?" *Policy Brief 6*, Kaldor Centre and Zolberg Institute, April 2018, available at: <http://www.kaldorcentre.unsw.edu.au>; Gammeltoft-Hansen, Guild, Moreno-Law, Panizzon, & Roele "What is a Compact? Migrants' Rights and State Responsibilities Regarding the Design of the UN Global Compact for Safe, Orderly and Regular Migration", *Raoul Wallenberg Institute of Human Rights and Humanitarian Law*, Sweden, 2017, available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3051027](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3051027), Karen Campbell, "Will a Global Compact on Migration Lead to Lasting Change?" *Voices*, Open Society Foundations, 2016, available at: <https://www.opensocietyfoundations.org/>, Costa & Martin, "Why the UN Global Compact on Migration Matters." *Working Economics Blog*, Economic Policy Institute, 2017, available at: <https://www.epi.org/blog/why-the-un-global-compact-on-migration-matters>.

resolution pointed out towards larger goals that would encompass a broader view of the phenomenon. It established a new working path, which would envisage migration in all its forms and dimensions and that would call for a “*global approach*”.

A strong pledge was then made to Member States and the United Nations to implement the Declaration. Its Annex II mentions the intention to launch a process of intergovernmental negotiations leading to “*the adoption of a global compact for safe, orderly and regular migration*”. This was the first step to start what would be called, precisely, the *Global Compact for safe, orderly and regular migration* (hereinafter, Global Compact). The UN Declaration immediately established the main goals for the Global Compact: it would set out a range of principles, commitments and understandings among Member States regarding international migration in all its dimensions and would make important contributions to global governance of international migration. It would present frameworks for a comprehensive international cooperation on migrants and human mobility, dealing with all aspects of international migration, including the humanitarian and developmental issues. Moreover, it should be guided by the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda of the Third International Conference on Financing for Development.

As we can see, the UN Declaration paved the way to a much broader objective than it was initially intended. After its release, the work to negotiate two Global Compacts began: one on Refugees and the other on Migrants. The High Commissioner for Refugees has been requested to propose the Global Compact on refugees in his annual report to the General Assembly in 2018. As regards the Global Compact on Migration, a Special Representative for International Migration was designated for working with Member States, in partnership with other stakeholders, in order to negotiate it. This document was signed in December 2018. However, it is not a legally binding instrument, although some voices claim that it is politically binding.

The purpose of this study is to analyze the principles that are affirmed by the Global Compact on Migration. The Global Compact has a very particular structure: it starts with a preamble, with the “common vision and guiding principles” and, after that, the “cooperative framework”, where 23 objectives are highlighted. It ends by establishing the mechanisms for its implementation and also for follow-up and review. The Global Compact follows the narrative that has been characterizing the UN’s

shift from “human rights declarations” to “specific goals and actions”, closely following the philosophy of the 2030 Agenda for Sustainable Development.

## 2. Heritage

As we can read from the Preamble, the Global Compact “*rests on the purposes and principles of the Charter of the United Nations*”. That is to say, it does not aim at building a *new conception* of Human Rights, relying, on the opposite, on the already existing Human Rights order. Thus, all “core instruments” on Human Rights are recalled as the fundamental heritage that the Global Compact must always bear in mind: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights, other core international human rights treaties<sup>2</sup>, the United Nations Convention against Transnational Organized Crime, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons and the Protocol against the Smuggling of Migrants by Land, Sea and Air, the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, the United Nations Framework Convention on Climate Change; the United Nations Convention to Combat Desertification; the Paris Agreement, the International Labour Organization conventions on promoting decent work and labour migration (such as Convention n. 97 and n. 143), as well as on the 2030 Agenda for Sustainable Development.

The Secretary-General’s (hereinafter, SG) Report on the topic “Making Migration Work for all”<sup>3</sup> recalls this heritage, remembering that Member States have made numerous relevant commitments in an extensive body of international law, but recognizing that “*all too often, policy implementation lags behind the ambitions of Member States*”. In his opinion, the Global

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<sup>2</sup> Encompassing the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (even despite its small level of ratifications), the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Rights of Persons with Disabilities.

<sup>3</sup> Dated 12 December 2017.

Compact may offer a chance to bridge this gap: starting from already existing human rights declarations, and building up to an instrument dedicated to putting them in practice through specific objectives.

### 3. Unity of Purpose

The Global Compact affirms a set of understandings that may be considered as the signatory States' "common vision" on migration. The starting point of this common vision is that *migration is not a problem against which States must fight*. It tries to combat several negative or problematic-oriented narratives in order to promote the recognition that migration is a *positive phenomenon that must be organized*, so that all involved States and individuals may benefit from it. Thus, the main purpose is to promote a global regulation of an orderly and safe migration, so that we *may maximize its benefits for all*.

We may highlight three general ideas that constitute the common vision, both on the migratory phenomenon and on the path to follow. First of all, the Global Compact is grounded on the assumption that the *Human Being has always been on the move*, since earliest times, and will continue to move. That is because migration is part of our aspirations to search for a better life. Therefore, instead of fighting against what characterizes human nature, States must focus on how to make Migration benefit all. That takes us to the second premise: the Global Compact is oriented towards *maximizing the benefits of migration*, instead of obsessing about minimizing risks and, thus, to broaden the opportunities that migration may offer for all<sup>4</sup>. In this sense, preparatory documents expressly reject the prejudiced idea of migration as a "menace": in the words of the SG's document: "*it is profoundly misguided to treat migration itself as a threat*"<sup>5</sup>. The third common understanding relies on the assumption that Migration should be a matter of a choice and not an act of desperation. As the SG points out: "*migration works for all when those who travel make an informed and voluntary choice to go abroad through legal means*"<sup>6</sup>. What one should fight against is *uncontrolled and desperate migration* that leads to massive movements, violation of human rights and a spread of the feeling of

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<sup>4</sup> SG, "Making Migration Work for all", cit., p. 3, §4.

<sup>5</sup> SG, "Making Migration Work for all", cit., p. 10, §43.

<sup>6</sup> SG, "Making Migration Work for all", cit., p. 3, §4.

insecurity through all the communities involved. As the SG points out, *“this hurts States and migrants alike”*: on one hand, States feel that they are losing control over who can access to their territory, and, on the other hand, migrants do not have the support they need to be fully integrated in the new society.

These three general premises lead to the Global Compact’s major purpose, which is, as its designation expressly shows, to establish a *Safe, Orderly and Regular Migration*. Organizing migration and improving its governance would lead to its contribution to prosperity, innovation and sustainable development in a globalized world, thus contributing to the sustainable development goals. The SG’s synthesis is brilliant and clear in this context: *“(...) we must not lose sight of the reality that migration is both a positive dynamic, and one that has always been with us and one that is here to stay. (...) we must rededicate ourselves to our common commitment to make migration work for all. This is a political necessity, an economic imperative and a matter of universal human rights”*.

#### **4. Broad and Common Understandings**

The principles of the Global Compact are enshrined in a series of “common understandings” that can be seen as the starting point with which all Members States agree and which will ground both principles and objectives.

First of all, the undeniable and pacific recognition that all migrants are holders of Human Rights. The NY Declaration recalled the need to fully respect human rights and the human treatment of migrants, *regardless of migratory status*. This is a very important outcome, since it will have implications on the treatment of irregular migrants, as we will see.

Secondly, it is broadly recognized that migration is a *source of development*. This development concerns both countries of origin, of transit and of destination. The 2030 Agenda clearly recognizes the contribution made by migrants on fostering inclusive growth. As the NY Declaration affirmed, *“Migrants can make positive and profound contributions to economic and social development in their host societies and to global wealth creation. They can help to respond to demographic trends, labour shortages and other challenges in host societies, and add fresh skills and dynamism to the latter’s economies. We recognize the development benefits of migration to countries of*

*origin, including through the involvement of diasporas in economic development and reconstruction”<sup>7</sup>.*

Third, UN States have recognized that benefits of migration in the countries of destination could only be achieved by promoting *full inclusion of the migrants in the society*. The Global Compact points to an even deeper perspective: in order to maximize the benefits for all, *empowerment of migrants* shall be actively promoted.

Fourth, the Global Compact aims at making migration management accessible, understandable and predictable. This is grounded on the belief that opacity of norms and procedures leads to disorganized, irregular and dangerous movements. Thus, the rule of law and *transparency* are recognized as key-words for all migration procedures.

Fifth, from its very beginning, all the process conducting to the signature of the Global Compact reaffirmed the principle of *State Sovereignty*. It was early understood that any attempt to override this principle would lead to a failure of the negotiations. Therefore, all documents and preparatory works recall that States shall retain their sovereign powers to control migratory movements in their territory.

Finally, the Global Compact’s central message relies on the recognition that a migration that aims to be safe, orderly and regular shall be coordinated between all States involved, in spirit of shared responsibilities, cooperation and solidarity.

## **5. The expressly agreed Guiding Principles**

Bearing in mind these common understandings, the Global Compact lists a series of ten “cross-cutting and interdependent guiding principles”. Objectives and actions develop these principles and shall be read according to them.

### **5.1. People-centred**

According to the first guiding principle, “*the Global Compact carries a strong human dimension to it, inherent to the migration experience itself. It promotes the well-being of migrants and the members of communities in countries of origin,*

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<sup>7</sup> New York Declaration for Refugees and Migrants, 19/09/2016, p. 10.

*transit and destination. As a result, the Global Compact places individuals at its core”.*

While putting people at the centre of all concerns, the Global Compact clearly clarifies one important point: migration is seen as a way to promote development, but only when it leads to effective improvement of the quality of people’s lives. The Human Being (and not, for example, financial markets, or the State political or external positions) is, accordingly, at the centre of this instrument. This is clearly highlighted in the SG’s Report, which remind us that: *“this is not solely a matter of States, but of peoples. The Universal Declaration of Human Rights reminds us that “all human beings are born free and equal in dignity and rights”. Today, one of the single most fundamental determinants of the capacity of individuals to realize their full potential and rights is their place of birth. Some are born into opportunity and others into deprivation. Migration, properly managed, is a route for individuals to make the most of their lives, and achieve the dignity that our predecessors enshrined in the Universal Declaration. Their quest for equality is a legitimate one”.*

By expressly referring that it is “people-centred”, the Global Compact is not exclusively taking migrants into account. It targets all people involved or affected by the migratory process: those living in the countries of origin, in the countries of transit and in the countries of destination.

The NY Declaration mentioned that this “people-centred approach” should be *sensitive, humane, dignified* and ensure a prompt reception for all persons arriving in our countries<sup>8</sup>. In this context, a permanent concern with the rights of people in vulnerable situations has been reminded permanently during the negotiations. The NY Declaration called for special protection to women at risk, children, especially those who are unaccompanied or separated from their families, members of ethnic and religious minorities, victims of violence, older persons, persons with disabilities, persons who are discriminated against on any basis, indigenous peoples, victims of human trafficking, and victims of exploitation and abuse in the context of the smuggling of migrants.

The people-centred approach may be also perceived in the *concept of security*: to the traditional concept of public security, the Global Compact’s preparatory works added the concept of *human security*. Although the concepts are not necessarily mutually exclusive, the latter puts a stronger emphasis on the individual. This new element to the concept of security was introduced, it seems, as a result of the participatory preparatory

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<sup>8</sup> P. 5, §5.

works. As a matter of fact, consultations have highlighted the *human security* aspects, instead of the idea of *State Security*.

## 5.2. International cooperation

Principle 2 reads that: “*the Global Compact is a non-legally binding cooperative framework that recognizes that no State can address migration on its own due to the inherently transnational nature of the phenomenon. It requires international, regional and bilateral cooperation and dialogue. Its authority rests on its consensual nature, credibility, collective ownership, joint implementation, follow-up and review*”.

First of all, this principle tries to explain the very nature of the Global Compact: it is a *non-legally binding* instrument. Its authority relies not only on its consensual basis and mutually commitments, but also on the implementation, follow-up and review mechanisms that are foreseen in detail at the end of the Global Compact. A “*capacity-building mechanism*” will be instituted in the United Nations for such purpose, and a United-Nations network on migration, coordinated by International Organization on Migrations, will ensure support to implementation. Moreover, there will be biennial reports to the General Assembly on the implementation of the Global Compact. One can say that, despite not being legally binding, the system offers conditions to be strongly “politically binding”.

Secondly, there is the absolute recognition that “*no State can address migration on its own*”. The NY Declaration insisted very much on this point: migration is a global phenomenon that calls for global approaches. First, it acknowledges that cooperation would lead to a “win-win” situation, as the States in NY have put it<sup>9</sup>. That would be achieved through coordinated borders’ control and management. In this regard, the Global Compact’s objective 11 calls for managing borders in an integrated, secure and coordinated manner, while objective 14 mentions enhancing consular cooperation between States. These several objectives could contribute to address more efficiently different challenges, such as criminality phenomena (for example, smuggling of migrants and trafficking in persons), and also the return of migrants who are illegally staying. This principle can only be operationalized efficiently where cooperation encompasses

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<sup>9</sup> P. 3, §11.

both countries of origin or nationality and countries of transit and destination, as stressed by objective 21.

The NY Declaration claimed for a “shared responsibility”, in the spirit of mutual help and dialogue. This idea was translated into the Compact’s objective 23, which expressly states that “*we commit to support each other in the realization of the objectives and commitments laid out in this Global Compact through enhanced international cooperation, a revitalized global partnership, and in the spirit of solidarity*”. Moreover, there is a commitment to “*take joint action in addressing the challenges faced by each country to implement this Global Compact*”. There is an ethical message in this principle that might be translated into the assumption that “we are all in this together”. In this context, the statement made by the Global Compact, that “*we all are countries of origin, transit and destination*”<sup>10</sup> is very important.

This message does not only bind States among themselves, but also towards the individual, in what regards Human Rights Protection. As the SG points out, “*Member States must act together to protect the human rights of migrants and expand pathways for safe, orderly and regular migration, while safeguarding their borders, laws and the interests of their societies*”<sup>11</sup>. The Global Compact returned to this idea, stressing that “*we acknowledge our shared responsibilities to one another as Member States of the United Nations to address each other’s needs and concerns over migration, and an overarching obligation to respect, protect and fulfil the human rights of all migrants, regardless of their migration status, while promoting the security and prosperity of all our communities*”<sup>12</sup>.

Both the Global Compact and the preparatory works mention several means that can be used for enhancing this cooperation, such as bilateral, regional and global partnerships in accordance with international law. Partnerships shall involve not only countries of origin, transit and destination, but also international organizations<sup>13</sup>. Moreover, they would include free movement agreements, fair and dignified return and readmission agreements, portability of social security entitlements and benefits schemes, effective skills and qualifications recognition and improved skills matching<sup>14</sup>. Fostering institutional contacts between

<sup>10</sup> P. 31, §39.

<sup>11</sup> SG, “Making Migration Work for all”, cit., p. 3, §4 (5).

<sup>12</sup> P. 3, §11.

<sup>13</sup> New York Declaration, p. 11, §54.

<sup>14</sup> SG, “Making Migration Work for all”, cit., p. 14, §61.

consular authorities is also upheld, as well as financial and technical assistance.

### 5.3. National sovereignty

National sovereignty is one of the ten chosen principles to be declared as being structural to the interpretation and implementation of the Global Compact. It reaffirms the sovereign right of States to determine their national migration policy and their prerogative to govern migration within their jurisdiction, in conformity with international law. *“Within their sovereign jurisdiction, States may distinguish between regular and irregular migration status, including as they determine their legislative and policy measures for the implementation of the Global Compact, taking into account different national realities, policies, priorities and requirements for entry, residence and work, in accordance with international law”*.

This principle can be seen as a result of a commitment: any compromise asserting duties to States on migration could only be achieved *if and where* the principle of national sovereignty on that matter is safeguarded. Although not mentioning “sovereignty” *a se*, the NY Declaration expressly recognized that *“States have rights and responsibilities to manage and control their borders”*<sup>15</sup>. In the SG’s report, references to the State’s powers are scarcer. It indeed recognizes that *“Governments can set the terms for access to their territory and the treatment of migrants within their borders”*. However, it immediately reminds us that *“they cannot unilaterally override the economic, demographic, environmental and other factors that shape migration and will continue to do so”*.

The Global Compact’s final text is much more assertive: in its preamble, it clearly states that it *“upholds the sovereignty of the States”*. This sovereignty is recognized in three dimensions: regarding the drafting and choices that will shape national migration policies, regarding the prerogatives on migration management and borders’ control, and regarding legal distinctions that treat regular and irregular migrants separately. This last topic was one of the issues that lead to more tensions during the negotiations’ process. Since the Global Compact acknowledges that human rights must be recognized to anyone, irrespective of status, the old concern about recognition of rights to irregularly-staying migrants, and

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<sup>15</sup> P. 6, §24.

the fears of the so-called “call-effect” haunted the discussions. Thus, by express insistence of the European Union<sup>16</sup>, the Global Compact reminds that, irrespective of all other commitments, Member States still retain their exclusive competence to decide who fully respects national migration law.

#### 5.4. Rule of law and due process

The fourth principle is deeply connected to the already mentioned common understanding of *transparency*. The Global Compact “*recognizes that respect for the rule of law, due process and access to justice are fundamental to all aspects of migration governance*”.

This principle is paramount, for it takes migration regulation out from obscure or pure discretionary standards, bringing it to legal transparency and predictability, which shall characterize both migration norms and migration procedures. This is a cornerstone of the Global Compact, since it recognizes that safe, orderly and regular migration works for all when it takes place in a well-informed, planned and consensual manner<sup>17</sup>.

The Global Compact expressly recognizes that both public and private entities are bound to legal norms and to international law standards. In a world where transport companies and carriers have the power to decide who shall embark, or where private companies control access to detention centres (as it is the case in Portugal, regarding temporary centres located in the international airports’ areas), it is highly important to clarify that outsourced private entities are – them too – bounded by the rule of law.

The rule of law shall characterize *all phases* of the migratory process and encompasses several duties. First of all, States and other actors should act with *transparency*. This calls for clear and accessible norms that set forth which requirements and documents are needed to enter in the country, binding deadlines, existing partnerships, etc. It also demands the guarantee of rights of information to migrants. They shall have the right to be informed on the existing rules, in a language that they understand, and to ask for clarifications. Objective 3 of the Global Compact

<sup>16</sup> See, on this point, Elspeth Guild & Katharine T. Weatherhead, “Tensions as the EU negotiates the Global Compact for Safe, Orderly and Regular Migration”, *EU Immigration and Asylum Law and Policy*, available in <http://eumigrationlawblog.eu/tensions-as-the-eu-negotiates-the-global-compact-for-safe-orderly-and-regular-migration/>.

<sup>17</sup> Global Compact, p. 3, §13.

is exclusively dedicated to “*provide accurate and timely information at all stages of migration*”. These commitments are very important to achieve transparency: “*We commit to strengthen our efforts to provide, make available and disseminate accurate, timely, accessible, and transparent information on migration-related aspects for and between States, communities and migrants at all stages of migration. We further commit to use this information to develop migration policies that provide a high degree of predictability and certainty for all actors involved*”. On its turn, Global Compact’s objective 12 calls for “*strengthening certainty and predictability in migration procedures*”. Several specific ideas are put forward in order to make these goals possible, such as communicating with transparency on the requirements for entry, admission, stay, work, study or other activities, available forms of protection, as well as options for return and reintegration and introducing technology to simplify information sharing. In the countries of origin, the Global Compact calls for information campaigns, awareness-raising events and pre-departure orientations where the risks associated with irregular and unsafe migration shall be addressed. It also launches the idea of establishing information points along relevant migration routes.

Besides the right to information, the right to legal assistance and representation must also be guaranteed. We must recall that, in many cases, decisions on migration may touch upon fundamental and human rights. Legal representation is, then, a paramount guarantee for assuring the minimum respect for such rights. This right is already expressly required by EU law in several Directives (Return Directive<sup>18</sup>, Asylum Procedures Directive<sup>19</sup>). Moreover, rule of law also requires a right to seek effective remedies. Objective 7 of the Global Compact specially requires that States shall ensure that migrants have access to public or affordable independent legal assistance and representation in legal proceedings that affect them, including during any related judicial or administrative hearing, in order to safeguard that everyone, everywhere, are recognized as persons before the law and that the delivery of justice is impartial and non-discriminatory.

Rule of law also demands that all decisions made on the migratory process shall be taken after an *individual assessment*. International Law

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<sup>18</sup> Article 13, n. 3 of the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country Nationals.

<sup>19</sup> Articles 20-22 of the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

expressly forbids collective expulsions<sup>20</sup>. Legal scholars have been arguing that this prohibition should also encompass other types of decisions, such as entry refusals or detentions. Automatic or collective decisions (based, for example, on the nationality shared by the members of a certain group or based on a certain event, – for example, encompassing all migrants who have arrived at the same time and using the same transportation) must be banned.

The SG’s report pointed towards a deeper concept of the rule of law, mentioning that legality would encompass duties both toward States and towards migrants: on one hand, migrants should respect legal pathways, and move between countries in an orderly fashion. But to make this possible, “*Governments need to open routes for regular migration that respond to the realities of labour demand and supply*”<sup>21</sup>. This document expressly interconnects the rule of law with the need to create options for legal migration, arguing to a certain extent that one could only require migrants to respect migration laws if these laws offer them legal options to migrate.

### 5.5. Sustainable development

Principle 5 recalls that the Global Compact is rooted in the 2030 Agenda for Sustainable Development, and builds upon its recognition that migration is a “*multidimensional reality of major relevance for the sustainable development of countries of origin, transit and destination*”. The Global Compact aims at reinforcing that Migration contributes to positive development outcomes and to realizing the goals of the 2030 Agenda for Sustainable Development (SD), especially when it is properly managed. The relation between migration and the SD is twofold. On one hand, it is recognized that a well-managed migration is a valuable contribution to the development for countries of origin, transit and destination. On the other hand, it is recognized that the development of countries of origin leads to a chosen and not desperate migration. We will start with the latter.

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<sup>20</sup> Article 4 of Protocol 4 to the European Convention on Human Rights (ECHR). See, in particular, the following European Court of Human Rights rulings: *Hirsi Jamaa and others v. Italy*, application n. 27765/09 and *Khlaifia And Others v. Italy*, application n. 16483/12.

<sup>21</sup> SG, “Making Migration Work for all”, cit., p. 3, §4 (b).

### 5.5.1. Sustainable Development as a path to a safe, orderly and regular migration

One may say that contributing to the development of the countries of origin helps to increasingly make migration a matter of free *choice* and not a matter of *desperation*. However, it is recognizable that, even where countries of origin achieve higher degrees of development, it does not mean that migratory movements will end completely. What would happen is that migratory movements would more probably be a result of a *free choice*. This aspect is connected to the Global Compact's Objective 2, which reads "*minimize the adverse drivers and structural factors that compel people to leave their country of origin*". Under this objective, States commit to create political, economic, social and environmental conditions for people to lead peaceful, productive and sustainable lives in their own country and to fulfil their personal aspirations, while ensuring that desperation and deteriorating environments do not compel them to seek a livelihood elsewhere through irregular migration. Of course this reclaims several investments in the countries of origin, addressing, in special, the so-called "pull factors". The Global Compact names several potential initiatives that may seem quite utopic and must be read with the Sustainable Development Goals (SDG) affirmed in the 2030 Agenda: investment in programmes aimed at poverty eradication, food security, health and sanitation, education, inclusive economic growth, infrastructure, urban and rural development, employment creation, incentives to entrepreneurship, decent work, skills' development programmes, avoiding brain drain and optimizing brain gain in countries of origin, gender equality and empowerment of women and girls, resilience and disaster risk reduction, climate change mitigation and adaptation, addressing the socioeconomic effects of all forms of violence, non-discrimination, rule of law and good governance, access to justice and protection of human rights, as well as creating and maintaining peaceful and inclusive societies with effective, accountable and transparent institutions. The commitment to create mechanisms to monitor and anticipate the development of risks and threats that might trigger or affect migration is particularly connected to the Global Compact.

The development of countries of origin is then seen as a condition for a *chosen migration*, that is to say, for a safe and orderly migration. But, as previously said, a safe and orderly migration may, in turn, contribute decisively to the development of countries of origin, transit and destination.

### 5.5.2. A safe, orderly and regular migration as a path to a Sustainable Development

#### a) Contributions to the countries of origin

The Global Compact also recognizes migration itself as a powerful tool for the development of the *countries of origin*<sup>22</sup>. Objective 19 claims for “*conditions for migrants and Diasporas to fully contribute to sustainable development in all countries*”. It also foresees several measures aimed at implementing this obligation, such as empowerment of migrants and Diasporas to catalyse their development contributions. In this context, the role of the Diasporas is seen as paramount, both through investments and entrepreneurship, knowledge transfer, engagement in humanitarian emergencies and also political participation and engagement in political reforms in the countries of origin.

Another important way of enhancing the development of countries of origin is seen through Objective 20: “*promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants*”. The Global Compact calls for several actions that shall facilitate remittances for the countries of origin and make them contribute to the well-being of migrant workers and their families, as well as to the sustainable development of such countries. The SG reports that around 15 per cent of migrants’ earnings is sent back to communities of origin through remittances, which accounted, in 2017, to an estimated \$596 billion in transferred remittances globally, with \$450 billion going to developing countries. This means that remittances add up to three times the total of official development assistance<sup>23</sup>.

Also in the context of return and readmission, sustainability is not forgotten. In Global Compact’s objective 21, States commit to create conducive conditions for economic empowerment, inclusion and social cohesion in communities, in order to ensure that the reintegration of migrants upon return to their countries of origin is sustainable. To that end, several measures are foreseen, such as equal access to social protection and services, psycho-social assistance, vocational training, employment opportunities and decent work, recognition of skills acquired abroad, among other measures<sup>24</sup>.

<sup>22</sup> On this topic, see, in this book, the Chapter authored by Rui Pena Pires.

<sup>23</sup> P. 6, §20.

<sup>24</sup> P. 30, §37 (h).

***b) Contributions to the countries of destination***

Regarding migration's contribution to the countries of destination, several well-documented studies demonstrate its positive impacts<sup>25</sup>. The NY Declaration Migrants expressly recognizes that migrants can help to respond to demographic trends, labour shortages and other challenges in host societies, and add fresh skills and dynamism to the latter's economies<sup>26</sup>. The SG's report also points out several inestimable contributions to the host society. It mentions that migrants, including irregular migrants, contribute by paying taxes and often take jobs that people in local labour forces do not wish to perform. It acknowledges that migrants boost economic activity, create more jobs and offer expertise and entrepreneurship<sup>27</sup>.

However, one cannot assume that just by increasing the number of migrants the State would automatically promote a healthier economy. In order to make possible the full contribution of migrants to the *development of the host society*, the State shall guarantee their full inclusion in the community. In this regard, Objective 16 is especially focused on empowering migrants and societies to realize full inclusion and social cohesion. As the SG concludes in this context, "*fully integrated migrants are better positioned to contribute to prosperity*"<sup>28</sup>. In order to achieve this fully inclusion and empowerment, and, therefore, to allow migrants to provide the best contribution possible to the host society, the Global Compact sets forth, once again, that host States have, under their responsibility, positive obligations. Firstly, they shall work closely with host communities for promoting good integration of newly-arrived persons, namely by fostering an environment of tolerance and mutual respect towards other cultures, traditions and habits. Secondly, they shall provide tools for newcomers to get integrated in their community, for example by establishing training on basic language, orientation about social norms and habits, and also by facilitating labour market integration, family reunification, and access to education, health and other social rights.

In what regards labour and employment, the Global Compact recognizes that it is a centrepiece of the migratory process success. The SG's report already pointed out some obstacles that prevented migrants from

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<sup>25</sup> See, in this volume, the study of João Peixoto.

<sup>26</sup> P. 10, §46.

<sup>27</sup> P. 6, §20.

<sup>28</sup> Global Compact, p. 23, §32.

becoming fully integrated in the labour market, thus stopping them from “*achieving their potential*”<sup>29</sup>. Some of these obstacles consist in restrictive or ineffectual labour policies, laws and employment practices, low-wages, dangerous working conditions, exploitative contracts, and exorbitant recruitment costs. It is recognized that, in this scenario, there is a higher risk that migrants will choose to work irregularly, which would expose them to exploitation and rights’ violations, and would add nothing to the well-being of the host community<sup>30</sup>. As the report clearly stresses, “*this hurts States and migrants alike*”<sup>31</sup>.

One of the major obstacles to a fully professional integration in the host society is the demand for labour that domestic workers cannot satisfy, coupled with the insufficient legal pathways for foreign workers to meet the demand. The NY Declaration already mentioned that States would consider “*facilitating opportunities for safe, orderly and regular migration, including, as appropriate, employment creation, labour mobility at all skills levels, circular migration*”<sup>32</sup>. In the same direction, the SG’s report highlighted that “*at a strategic and long-term level, Member States should make a collective effort to expand and strengthen pathways for regular migration to match the realities of labour market needs, including anticipating future demographic trends and future demands for labour*”<sup>33</sup>. The SG also advised that Member States should take pragmatic actions more immediately, *including regularization initiatives*, to address the presence of irregular migrants within their societies<sup>34</sup>.

Inspired by these preparatory works, the Global Compact’s Objective 5 calls upon States to “*enhance availability and flexibility of pathways for regular migration*”. Under this objective, States commit to adapt options and pathways for regular migration “*in a manner that facilitates labour mobility and decent work reflecting demographic and labour market realities, optimizes education opportunities, upholds the right to family life, and responds to the needs of migrants in a situation of vulnerability*”.

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<sup>29</sup> P. 6, §20.

<sup>30</sup> SG, “Making Migration Work for all”, cit., p. 7, §25. Recent studies suggest that 23 per cent of the 24.9 million people in forced labour worldwide are international migrants while they constitute only an estimated 3.4 per cent of the world’s population. See International Labour Organisation, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, ILO, Geneva. 2017.

<sup>31</sup> P. 9, §32.

<sup>32</sup> P. 11, §57.

<sup>33</sup> P. 9, §36.

<sup>34</sup> *Ibid.*

Bearing in mind these concerns, the Global Compact urges States to “*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*”<sup>35</sup>. Several actions are again suggested, such as developing labour mobility agreements or international and bilateral cooperation arrangements, such as free movement regimes, visa liberalization or multiple country visas, develop flexible labour mobility schemes, providing flexible, convertible and non-discriminatory visa and permit options and expand available possibilities for academic mobility. All these schemes should take into account labour market needs and skills supply.

The Global Compact highlights, in particular, the need to capitalize the skills and the cultural and language proficiency of migrants. This is strongly reinforced in Objective 18, which calls States to invest in skills development and facilitate mutual recognition of qualifications and competences, in order to “*optimize the employability of migrants in formal labour markets in countries of destination and in countries of origin upon return, as well as to ensure decent work in labour migration*”<sup>36</sup>. Several actions are again foreseen, such as developing standards and guidelines for the mutual recognition of foreign qualifications, concluding mutual recognition agreements, etc. This is a very important aspect, since very often migrants do not have their qualifications recognized and end up doing lower-skilled jobs. In this scenario, not only the person will become frustrated and unhappy, but the host state will also lose the higher personnel capital that this person could bring to the country.

## 5.6. Human Rights

The Global Compact is based on international human rights’ law and upholds the principles of non-regression and non-discrimination. According to guiding principle 6, by implementing the Global Compact, States commit to “*ensure effective respect, protection and fulfilment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle*”.

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<sup>35</sup> *Ibid.*

<sup>36</sup> Global Compact, p. 25, §34.

As already mentioned, the Global Compact is grounded in, and gravitates around the paramount principle of the Universality of the Human Rights. This is an ethical principle that stemmed from all “its sources of inspiration”. Moreover, it has inescapable practical consequences – the affirmation of the universality principle in the context of migration undoubtedly assumes the profound meaning that all migrants, irrespective of their administrative status, are holders of human rights<sup>37</sup>. The NY Declaration acknowledged that “*refugees and migrants have the same universal rights and fundamental freedoms*”, “*face many common challenges and have similar vulnerabilities*”, namely in the context of “*large movements*”<sup>38</sup>. Nevertheless, this promising affirmation did not lead to the recognition of their common normative treatment, as the creation of two separate global compacts illustrates. Still, the affirmation of Human Rights is a common feature that unites both Global Compacts.

The Global Compact on Migration emphasizes some human rights that must be prioritized during the migratory process. The first is the *right to life*. The NY Declaration, aimed mostly at discussing the so-called “large movements”, which led to so many lives lost in transit, stressed that “*we are determined to save lives. Our challenge is above all moral and humanitarian*”<sup>39</sup>. One of the assumed efforts would be “*to rescue people in distress at sea*”. The SG reaffirms that, in the context of large movements of migrants, “*saving lives must at all times be a non-negotiable priority*”. Another priority would be to reduce the immediate suffering of those who are in transit, often trapped in precarious situations<sup>40</sup>. These concerns were translated into Objective 8 of the Global Compact, which points towards saving lives and establishing coordinated international efforts on missing migrants.

As already said, during the wide-ranging consultation process in the preparation phase of the Global Compact, State and public security considerations were not prominently featured. Instead, there has been an emphasis on the need to assist “*migrants in vulnerable situations*” – for example, those who have faced sexual and gender-based violence, abuse and exploitation, hunger and lack of *personal security* during the migratory process. As the SG’s report points out, consultations on human trafficking and smuggling have highlighted the primary concern over *human security*.

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<sup>37</sup> P. 9, §25. “*We are committed to protecting the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status, at all times*”.

<sup>38</sup> P. 2, §6.

<sup>39</sup> P. 3, §10.

<sup>40</sup> Op. cit., p. 16, §67 (a).

Thus, the SG urges States to act accordingly, shifting their focus from *State security* to *Human security*.

Protection of *vulnerable persons* was also a permanent concern during the preparatory works<sup>41</sup>. Objective 7 of the Global Compact points towards addressing and reducing vulnerabilities in migration. States commit to assist vulnerable migrants and to protect their human rights, in accordance with their obligations under international law. They also commit *inter alia*, to, (1) review relevant policies and practices to ensure they do not create or exacerbate, even unintentionally, the vulnerabilities of migrants; (2) establish comprehensive policies and develop partnerships that provide migrants in a situation of vulnerability, *regardless of their migration status*, with necessary support at all stages of migration, through identification and assistance, as well as protection of their human rights (especially regarding vulnerable persons); (3) ensure that migrants have access to public or affordable independent legal assistance. The most striking commitment in this context would be to develop “*accessible and expedient procedures that facilitate transitions from one status to another and inform migrants of their rights and obligations, so as to prevent migrants from falling into an irregular status in the country of destination, to reduce precariousness of status and related vulnerabilities, as well as to enable individual status assessments for migrants, including for those who have fallen out of regular status, without fear of arbitrary expulsion*”, namely “*build on existing practices to facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status, on a case by case basis and with clear and transparent criteria*”. These statements are extremely important, since they focus on regularization as an option to *protect the human rights* of the most vulnerable persons. Moreover, the Global Compact also calls States to “*apply specific support measures to ensure that migrants caught up in situations of crisis in countries of transit and destination have access to consular protection and humanitarian assistance, including by facilitating cross-border and broader international cooperation, as well as by taking migrant populations into account in crisis preparedness, emergency response and post-crisis action*”. This latter commitment is also very significant. We may read in the latter sentence, a tentative “right to passage” for those who are fleeing from conjunctures of crisis. Additionally, this instrument also calls States to “*ensure that the*

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<sup>41</sup> See, on protection of vulnerable persons in the Global Compact, Idil Atak, Delphine Nakache, Elspeth Guild, & François Crépeau, “*Migrants in Vulnerable Situations*” and the Global Compact for Safe Orderly and Regular Migration (February 15, 2018). Queen Mary School of Law Legal Studies Research Paper no. 273/2018. Available at <https://ssrn.com/abstract=3124392>.

*provision of assistance of an exclusively humanitarian nature for migrants is not considered unlawful*<sup>42</sup>.

Another important subject that is constantly recalled is the *prohibition of discrimination*. The NY Declaration condemns all manifestations of racism, racial discrimination, xenophobia and related intolerance against refugees and migrants, several times over the text<sup>43</sup>. Principle 6 of the Global Compact reads that States “*also reaffirm the commitment to eliminate all forms of discrimination, including racism, xenophobia and intolerance against migrants and their families*”. This principle is developed in Objective 17, which sets forth that States shall “*eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration*”. This calls not only for fighting against racism and xenophobia, but also for positive actions, such as promoting an open and evidence-based public discourse on migration and migrants, enabling the construction of a more realistic and humane perception of the migratory phenomenon.

Although not mentioned in Principle 6, the Global Compact’s text establishes an objective that must be read as a way to assure that all migrants have access to all rights: all migrants must have *proof of legal identity* and adequate documentation<sup>44</sup>. Several measures are foreseen for those purposes, such as ensuring accessible consular documentation, issuing of registration cards to persons living in municipalities or strengthening measures to reduce statelessness<sup>45</sup>. In this latter respect, one important measure would be to provide nationality to children born in the host State’s territory, especially in situations where the child would otherwise be stateless. In our opinion, States should apply, in this context, the concept of *de facto* statelessness. It would mean that, for example, children who could not have their foreign nationality registered, due for instance, to war or documents’ destruction in the countries of origin, should be admitted to acquire the host State’s nationality. Otherwise, although theoretically they would legally have a nationality, in practice they could not prove it nor exercise it.

One of the most important and urgent commitments is related to detention in migratory contexts. The application of *deprivation of liberty* independently of the practice of crimes has been the source of many

<sup>42</sup> P. 16, §24, (a).

<sup>43</sup> P. 3, §25, p. 8, §39.

<sup>44</sup> Objective 4, p. 10, §20.

<sup>45</sup> On statelessness and the Global Compact, see Tendayi Bloom, “Statelessness and the global compacts: initial thoughts on the zero drafts”, *Refugee Law Initiative Blog*, February 2018, available at: <https://rli.blogs.sas.ac.uk/>.

doubts. In NY, the States assumed their willingness to “*pursue alternatives to detention*”<sup>46</sup>. The SG’s report, in turn, condemns the recourse to administrative detention of migrants as a measure *with deterrent intent*. It highlights that these detentions are often undertaken without adequate guarantees and without checking whether less coercive measures could be applicable. Moreover, it recalls that migrants in detention can be exposed to overcrowding, poor sanitary facilities and violence<sup>47</sup>. Objective 13 of the Global Compact urges States to use immigration detention only as a measure of last resort and work towards alternatives. This principle reaffirms an achievement that human rights bodies and mechanisms have been stressing in their jurisprudence: *the last resort nature of the detention measure in migratory contexts*<sup>48</sup>. The Global Compact also refers to several other guarantees: (1) due process and individual assessment; (2) non-arbitrary decisions, based on law, and respecting the principle of proportionality; (3) due authorization and control; (4) detention for the shortest period of time; (5) independent monitoring; (6) access to justice; (7) right to information in a language that the migrant may understand; (8) right to communicate with a lawyer, consular representatives and family members; (9) access to food, basic safeguards of physical and psychological integrity, healthcare and adequate accommodation<sup>49</sup>.

The Global Compact’s objective 21, in its turn, calls for cooperation in *returns and readmissions*, in order to enable these mechanisms to be safe and dignified. Although it seems that the main purpose of this objective is to call for “cooperation”, a closer look at its text shows that it is embedded with human rights concerns. Returns must be safe and dignified, must guarantee a due process, individual assessment and effective remedy. It expressly forbids collective expulsions or returning migrants when there is a real and foreseeable risk of death, torture, and other cruel, inhuman, and degrading treatment or punishment, or other irreparable harm. In this context, it adopts the concept of *non refoulement*, as it stems from the international case-law, namely from the European Court of Human Rights. States further commit to ensure that their nationals are duly received and *readmitted*, “*in full respect for the human right to return to*

<sup>46</sup> P. 7, §33.

<sup>47</sup> P. 17, §20.

<sup>48</sup> See some communications of the UN Human Rights Committee (such as *Bakhtiyari v. Australia*, n. 1069/2002 and *Baban v. Australia*, n. 1014/2001) and some rulings of the ECtHR (such as *Mikolenko v Estonia*, application n. 10664/05, *Popov v. France*, n. 39472/07 and 39474/07) See also Article 17 of the so-called “Return Directive”.

<sup>49</sup> P. 21, §29.

*one's own country and the obligation of States to readmit their own nationals*"<sup>50</sup>. This is a very important reference, as it is expressly envisaged as a right of the individuals towards their country, and not as a right of the States *vis a vis* other States.

The right to *decent work conditions* is also continuously stressed. The NY Declaration claimed that particular attention should be paid to the "*application of minimum labour standards for migrant workers regardless of their status*"<sup>51</sup>. Objective 6 of the Global Compact is to facilitate fair and ethical recruitment and safeguard conditions that ensure decent work, and to protect all migrant workers against all forms of exploitation and abuse. Amongst other actions, the Global Compact calls for providing migrant workers with the same labour rights and protections extended to all workers in the respective sector and ensuring that migrants working in the informal economy have safe access to effective reporting, complaints and redress mechanisms in the cases of exploitation, but in a way that will not exacerbate their vulnerabilities<sup>52</sup>.

Fighting against exploitation is indeed a cross-cut concern of the Global Compact. Besides labour exploitation, it sets forth as one of its objectives to prevent, combat and eradicate *trafficking in persons* in the context of international migration. Besides prosecution of criminals, the instrument focuses on enhancing identification, protection and assistance to victims, namely through measures such as physical, psychological and social recovery, as well as measures that allow them to remain in the country of destination, in order to have effective access to justice, including redress and compensation<sup>53</sup>.

In some cases, the Human Rights approach was strengthened in the Global Compact's discourse. For example, in the first instruments, *family reunification* was only mentioned as a way to enhance the legal pathways for entering the territories, but not as a human right as such<sup>54</sup>. The final

<sup>50</sup> P. 29, §37.

<sup>51</sup> P. 11, §57.

<sup>52</sup> P. 13, §22 (i) (j).

<sup>53</sup> Objective 10, pp. 17-18.

<sup>54</sup> See, for example, the document of the SG: "*Member States should also assess the need for legal pathways for family formation and reunification. Family reunification accounts for a large share of regular migration in many countries and it is a positive means of upholding the right to family life and promoting social integration. Efforts to restrict this result in more irregular migration, with detrimental consequences for all family members*". On the fundamental right to family reunification, see Constança Urbano de Sousa, "Le regroupement familial au regard des standards internationaux", in AA.VV., *La Politique Européenne d' Immigration et d' Asile: Bilan Critique cinq Ans Après le Traité d' Amsterdam*, Bruylant, 2005, p. 127 e seq. and Ana Rita Gil, "Um Caso de Europeização

Global Compact’s text objective 5 calls for facilitation on access to procedures for family reunification in the context of enlarging the pathways for legal migration, but mentions that measures must be taken in this regard to promote the realization of the *right to family life*, “including by reviewing and revising applicable requirements, such as income, language proficiency, length of stay, work authorization, and access to social security and services”<sup>55</sup>.

The Global Compact also affirms some *social rights*, recognizing that access to them is paramount to a life with dignity. Objective 15 calls for access to basic services for migrants, without discrimination and avoiding exacerbation of “vulnerabilities of irregular migrants by compromising their safe access to basic services”<sup>56</sup>, but also some positive obligations, such as strengthening holistic and easily accessible points that are migrant inclusive<sup>57</sup>. Special focus is given to easy access to health care and education. In turn, objective 22 calls for the creation of mechanisms for the portability of social security entitlements and earned benefits<sup>58</sup>.

### 5.7. Gender-responsive approach

According to Principle 7, “*The Global Compact ensures that the human rights of women, men, girls and boys are respected at all stages of migration, their specific needs are properly understood and addressed and they are empowered as agents of change. It mainstreams a gender perspective, promotes gender equality and the empowerment of all women and girls, recognizing their independence, agency and leadership in order to move away from addressing migrant women primarily through a lens of victimhood*”.

This guiding principle represents a broad understanding of a gender perspective. Moving from the traditionalist approach to women and girls as vulnerable persons who must be protected, it places a heavier weight in their perspective as agents of change to be empowered. In the NY Declaration, States not only assumed their responsibility to promote gender equality and to fully respect and protect the human rights of women

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do Direito Constitucional Português – A Afirmação de um Direito Fundamental ao Reagrupamento Familiar”, *Revista de Direito Público*, ano I, 2009, no.2, pp. 9-62

<sup>55</sup> P. 12, §21 (i).

<sup>56</sup> P. 22, §31 (b).

<sup>57</sup> In this context, mention must be made to the good Portuguese practice of the “one-stop-shop” for migrants: National Centres for Migrants Support, ran by the High Commissioner for Migration.

<sup>58</sup> P. 30, §38.

and girls, but also recognized “*the significant contribution and leadership of women in refuge and migrant communities*”<sup>59</sup>. The same recognition is stressed in the SG’s report, where States are called to “*make a standalone commitment to promote gender equality and the empowerment of women and girls as a central element of the Global Compact, in line with the Sustainable Development Goal 5*”<sup>60</sup>. Moreover, it recalled that even though migrant women often face more limited employment options, they tend to remit home a higher percentage of their earnings than men<sup>61</sup>. Developing this idea, objective Global Compact’s 16 on migrant’s empowerment expressly mentions that States shall take measures to “*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*”<sup>62</sup>.

That is not to say that the protection perspective is not also taken into account. In fact, the NY Declaration assumed the need to combat sexual and gender-based violence, and some women (as pregnant women, single mothers, victims of violence, etc.) shall be considered as “especially vulnerable persons” and, thus, benefit from all the provisions aimed at their protection.

## 5.8. Child-Sensitive approach

The Global Compact elected as a cross-cutting principle, which shall be present in all issues: the adoption of a *child-sensitive approach*. It promotes international legal obligations in relation to the rights of the child, and upholds the “*principle of the best interests of the child at all times, as a primary consideration in all situations concerning children in the context of international migration, including unaccompanied and separated children*”<sup>63</sup>. This coincides with the reading that was already suggested in the NY Declaration<sup>64</sup>.

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<sup>59</sup> P. 7, §31.

<sup>60</sup> P. 14, §57.

<sup>61</sup> P. 8, §28.

<sup>62</sup> P. 23, §32 (e). On empowerment of women migrants, see Melinda Wells and Geeta Kuttiparambil, “Humanitarian Action and the Transformation of Gender Relations”, *Forced Migration Review*, issue 25, may 2016, pp. 20 *et seq.*

<sup>63</sup> P. 5, §15.

<sup>64</sup> P. 7, §32 and also p. 12, §59.

Moreover, in Objective 13, the Global Compact stresses that this primary consideration is independent of the child’s migration status<sup>65</sup>. The “Best Interest of the Child at all times” is, then, affirmed as the primary consideration of all decisions and measures when children are concerned: encompassing both decisions regarding migrant children themselves and adults who have children at their care. This consideration on the best interest of the child must be present in all legislative and also administrative proceedings and decisions. The general and guiding idea is that migrant children shall be seen, first and foremost as children, and not only as migrants.

Several particular rights are then foreseen in this regard. First, in what concerns unaccompanied children, States committed in NY to deliver their care to the national child protection authorities. Also, in NY, special reference was made to promote their access to basic health care, education and psychosocial development, as well as birth registrations. The Global Compact foresees other specific actions, such as (1) ensuring that authorities are trained on the determination of the best interests of the child (2) prevention of family separation and fostering family reunification (3) ensuring that migrant children are promptly identified at places of first arrival in countries of transit and destination and, if unaccompanied, swiftly referred to child protection authorities (4) protection against all forms of violence (5) appointment of an impartial legal guardian (6) ensuring that anyone who claims to be a child is treated as such unless otherwise determined through a “multi-disciplinary, independent and child-sensitive age assessment”<sup>66</sup> (7) return procedures must be carried out only after a determination of the best interests of the child, and after taking into account the right to family life, family unity, and only after verifying that a parent, legal guardian or specialized official accompanies the child throughout the return process, ensuring that appropriate reception, care and reintegration arrangements for children are in place in the country of origin upon return<sup>67</sup>.

One of the most assertive statements of the Global Compact concerns the commitment to *end child detention*. The SG’s report highlighted the devastating effects that detention has on children: “*even if this is only for short periods of time, it has grave and lasting effects on a child’s mental health*”

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<sup>65</sup> P. 21, §29 (h).

<sup>66</sup> P. 20, §28 (d).

<sup>67</sup> P. 30, §37 (g).

*and development, and always contravenes the principle of the best interest of the child*<sup>68</sup>. Bearing this in mind, the Global Compact recognizes that *“detention for the purposes of determining migration status is seldom, if ever, in the best interest of the child”*, and, thus, *“will work towards the ending of this practice”*<sup>69</sup>. It recalls, in this context, the range of alternative measures in non-custodial contexts that can be adopted, favouring community-based care arrangements.

### **5.9. Whole-of-government approach**

The Global Compact envisages migration as a multidimensional reality that cannot be addressed by one government policy sector alone. Thus, in order to develop and implement effective migration policies and practices, it calls for a whole-of-government approach, which will ensure horizontal and vertical policy coherence across all sectors and levels of government.

The SG’s report called upon States to prepare detailed national action plans where all sectors that may be affected by migration should be involved, such as development, security and also health, education, social security, housing, employment, social inclusion, and social protection<sup>70</sup>.

### **5.10. Whole-of-society approach**

The Global Compact also calls for broad multi-stakeholder partnerships to address migration in all its dimensions. Migrants, diasporas, local communities, civil society, academia, the private sector, parliamentarians, trade unions, National Human Rights Institutions, financial institutions, NGOs, donors, the media, and other relevant stakeholders in migration governance must all play a role in this context, and be brought together in order to identify innovative ways to respond to the Global Compact and to cooperate for its implementation.

The NY Declaration had already mentioned the support of the private sector, such as recruiters and employers and labour unions, but also of

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<sup>68</sup> P. 11, §44.

<sup>69</sup> P. 7, §33.

<sup>70</sup> P. 14, §59.

international organizations, the Red Cross and regional economic organizations<sup>71</sup>. The SG’s report emphasizes the *“importance of subnational policies in addressing migrants. Local authorities have responsibility for day-to-day service provision to migrants and their host communities. Businesses and trade unions shape the economic conditions for migrant workers to contribute their labour. Cities, communities and non-governmental actors are doing excellent work with and for migrants in schools, workplaces and in the course of their daily lives. Community engagement is the best method to prevent xenophobia and false narratives about the impact of migrants”*<sup>72</sup>.

## 6. Conclusion

Despite being deprived of legally binding value, the Global Compact on Migration undoubtedly represents an achievement that we must applaud. Its strongly positive features largely overcome their weak points and it may indeed represent a new way for all actors to look at the migration phenomenon.

First of all, it is strongly grounded in a new perspective of migration: it must be seen not as a human behaviour that we must combat, but as a natural phenomenon instead, which has accompanied Human Race throughout History and which, when duly managed, may represent a source of sustainable development for all countries involved, and also a way for allowing human beings to pursue better ways of living and, thus, reaching happiness. The Global Compact is fully committed, then, with providing tools that would allow these contributions to happen, being the “empowerment of migrants” the central idea. Secondly, it is deeply grounded in the principle of universality, recalling that all people, irrespective of nationality, migratory status or legal administrative situation, are holders of human rights. Strong focus is always made throughout the text to the rights of irregular migrants. The same can be said regarding women and children. This instrument urges us to reflect upon all strategies and decisions in a gender-sensitive manner. The approach to children’s rights is even more demanding: the Global Compact reaffirms a principle that would already stem from the Convention on the Rights of the Child: the primacy of the child’s best interests at all times. Reaffirming

<sup>71</sup> P. 4, §15 and also p. 11 §54.

<sup>72</sup> P. 14, §58.

its applicability in this context is not redundant: it recalls agents that minor migrants are, first are foremost, children.

The rule of law also plays an important role in this context. As previously said, migratory regulations were traditionally obscure areas, where discretionary powers prevailed, and where persons hardly knew their rights, possibilities and opportunities. The Global Compact recalls that, as in other areas of State regulation, migration must also respect the rule of law. This not only allows for a safe and organized migration, but also impedes recourse to irregular and clandestine alternatives, which would amount to exploitation of migrants, on one hand, and to a non-beneficial migration on the other. Finally, there is a constant concern over eradication of racist and xenophobic ideas. States are seen as holding positive duties to combat these phenomena.

Some objectives, however, seem not to have been achieved. The NY Declaration pointed towards the need to adopt solutions for especially vulnerable non-refugee migrants. Moreover, it seemed to divide migrants into two categories: on the one hand, people who move in search of new economic opportunities; and, on the other hand, those who move *“to escape armed conflict, poverty, food insecurity, persecution, terrorism, or other human rights violations and abuses”*, as well as those who *“do so in response to the adverse effects of climate change and natural disasters”*. The first group would consist of what we usually call “economic” or “voluntary migrants”. The second group would consist of the “forced migrants”. Traditionally, only refugees and those who, in regional instruments, benefit from a certain type of alternative protection (normally awarded to those fleeing conflicts or torture and inhuman or degrading treatments in their countries of origin) would qualify for any form of international protection. All others – people fleeing from poverty, hunger, climate change, etc. -, would not benefit from such protection. By putting all these migrants in the same group, the NY Declaration raised a hope that States would take steps towards the protection of all these “forced migrants”. However, no further references were made to this group of persons, and the NY Declaration ends up by adopting the same traditional division between “migrants” and “refugees”.

The SG’s report tried another approach, focusing on the concept of “vulnerability”, especially in the context of “large movements”. Although it disclaimed that the report did not aim at suggesting the creation of a new category of migrants, it points out that *“an expansion of legal protections to deal with the many aspects of forced migration may become feasible”* and that,

in the short to medium term, “*Member-States could fulfil their duty of care to migrants in vulnerable situations through a multi-layered strategy involving both humanitarian tools and options for stay*”<sup>73</sup>. The “protection of specially vulnerable persons” is a cross-cutting idea throughout the Global Compact. In objective 5, aimed at enhancing availability and flexibility of pathways for regular migration, it calls Member States to “*develop or build on existing national and regional practices for admission and stay of appropriate duration based on compassionate, humanitarian or other considerations for migrants compelled to leave their countries of origin, due to sudden-onset natural disasters and other precarious situations, such as by providing humanitarian visas, private sponsorships, access to education for children, and temporary work permits, while adaptation in or return to their country of origin is not possible*”<sup>74</sup>. Are we witnessing an evolution towards the recognition of the *right to migration due to vulnerability* and the corresponding duty of the State to protect vulnerable migrants through issuing humanitarian-based residence permits? Perhaps a new trend may be making its way. But is hard to acknowledge that such right would stem directly from Objective 5 (g) of the Global Compact. Besides the non-binding nature of this instrument, we must recall that it recognizes State’s sovereignty, as a *guiding principle of its implementation*. This means that, according to the Global Compact’s vision and, in its scope, States remain sovereign to decide who may or may not enter and remain in their territories.

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<sup>73</sup> P. 13, §53.

<sup>74</sup> P. 12, §21 (g).

**ELSPETH GUILD**

*The UN Global Compact for Safe,  
Orderly and Regular Migration  
and International Human Rights Law*

## **1. Introduction**

Migration has been politically sensitive for the international community for some decades. The simple fact that one country's citizens may be another country's migrants exemplifies the potential for disagreement among states. The treatment by immigration authorities of one state of nationals of another all too often can escalate to the political level and even perturb international relations and international justice.<sup>1</sup> There are two poles of opinion which explain this sensitivity: first, many states claim that border controls and immigration are matter of exclusive state sovereignty; secondly many states recognise that border controls and immigration are matters of shared responsibility in respect of which states cannot act unilaterally. Between these two poles there is a myriad of state positions regarding border controls and migration.

While the protection of refugees had been the preoccupation of the international community after WWII culminating in the Refugee Convention 1951,<sup>2</sup> the end of the 20<sup>th</sup> century presented different

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<sup>1</sup> For instance the Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v United Arab Emirates) No 2018/38 pending before the International Court of Justice regarding the expulsion of Qatari nationals from UAE.

<sup>2</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html> [accessed 10 September 2018]

challenges. After the end of bi-polarity including the fall of the Berlin Wall and the dissolution of the Soviet Union, migration moved up the political agenda. First it was addressed in human rights law through the migrant workers convention 1990.<sup>3</sup> But this approach was shunned by a number of countries which considered themselves migrant hosting states.<sup>4</sup> By 2018 the convention has 52 State parties, a further 15 countries which have signed it but 131 countries have taken no action. In 2000 the international community sought to address migration through international criminal law in the Palermo Protocols against smuggling and trafficking of persons.<sup>5</sup> The trafficking protocol had 173 state parties by 2018 and its smuggling counterpart 146. But this move into criminal law did not satisfy the demand for international action on migration. The International Labour Organization (ILO) which had produced two conventions on migrant workers – one in 1949<sup>6</sup> (49 ratifications) and another in 1975<sup>7</sup> (23 ratifications) then went more or less silent on the subject until 2011. In that year, it opened for signature a convention on domestic workers which covers issues related to migration (currently 25 ratifications which is substantial for a convention only opened for signature seven years from the time of writing).<sup>8</sup>

In the meantime, particularly after the attacks in the US on 11 September 2001, the international community within the UN Security Council focused on border controls as an important part of anti and

<sup>3</sup> UN General Assembly, *International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families* : resolution / adopted by the General Assembly, 18 December 1990, A/RES/45/158, available at: <http://www.refworld.org/docid/3b00f2391c.html> [accessed 10 September 2018]

<sup>4</sup> Piper, Nicola, and Robyn Iredale. "Identification of the Obstacles to the Signing and Ratification of the UN Convention on the Protection of the Rights of All Migrant Workers." *ideas*. 2003; Cholewinski, Ryszard, et al., eds. *Migration and human rights: the United Nations convention on migrant workers' rights*. Cambridge University Press, 2009.

<sup>5</sup> UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, available at: <http://www.refworld.org/docid/4720706c0.html> [accessed 10 September 2018]; UN General Assembly, *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, available at: <http://www.refworld.org/docid/479dee062.html> [accessed 10 September 2018]; Edwards, Alice. "Traffic in human beings: At the intersection of criminal justice, human rights, asylum/migration and labor." *Denv. J. Int'l L. & Pol'y* 36 (2007): 9; Gallagher, Anne. "Human rights and the new UN protocols on trafficking and migrant smuggling: A preliminary analysis." *Hum. Rts. Q.* 23 (2001): 975.

<sup>6</sup> International Labour Organization (ILO), *Migration for Employment Convention (Revised)*, C97, 1 July 1949, C97, available at: <http://www.refworld.org/docid/3ddb64057.html> [accessed 10 September 2018].

<sup>7</sup> International Labour Organization (ILO), *Migration for Employment Convention (Revised)*, C143, 24 June 1975, C143, available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C143](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C143) [accessed 10 September 2018]

<sup>8</sup> International Labour Organization (ILO), *Convention Concerning Decent Work for Domestic Workers*, 16 June 2011, PRNo.15A, available at: <http://www.refworld.org/docid/4e0d784e2.html> [accessed 10 September 2018]

counter terrorism activities.<sup>9</sup> This approach has resulted in a plethora of resolutions, action plans etc which almost invariably include measures on border controls.<sup>10</sup> This tendency has been replicated in some regional venues as well.<sup>11</sup>

Elsewhere in the UN system, many UN agencies claimed responsibility for aspects of migration. While UNHCR is generally accepted as responsible for refugees, other migrants were claimed by other agencies such as children by UNICEF, migrant workers by ILO etc. Various policy oriented approaches were developed among the highlights being the UN Population and Development Conference in Cairo 1994; the Global Commission on International Migration established by (then) Secretary General Kofi Anan in 2003; the High Level Dialogue on International Migration and Development from 2006/2013 (when the post of Special Representative of the Secretary General for International Migration was established). Most importantly, the Office of the High Commissioner for Human Rights (OHCHR), established in 1993 and responsible for the promotion and protection of human rights and implementing the UN's human rights programme, has claimed responsibility for the human rights of everyone including migrants (who are very rarely excluded from human rights provisions). The establishment of the Global Forum on Migration and Development in 2007 provided a venue for all the UN bodies which claim a stake in migration to meet. Noticeably by its absence was the International Organisation for Migration (IOM) which was formally established as an inter-governmental organization in 1951<sup>12</sup> and only became a UN-related organisation in 2016. This was not uncontroversial on account of the absence of a human rights mandate in IOM's constitution.<sup>13</sup> It may be possible for this shortcoming to be rectified by the incoming director of IOM in 2018, Antonio Vitorino.

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<sup>9</sup> See UN Security Council Resolution 1373(2001) 28 September 2001 para 2(g) "Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents..."

<sup>10</sup> Rosand, Eric. "The Security Council's efforts to monitor the implementation of Al Qaeda/Taliban sanctions." *American Journal of International Law* 98.4 (2004): 745-763.

<sup>11</sup> Lavenex, Sandra, and Nicole Wichmann. "The external governance of EU internal security." *European Integration* 31.1 (2009): 83-102.

<sup>12</sup> It was famously referred to in the 1949 film *The Third Man* (directed by Carol Reed and starring Orson Wells) as the CIA's travel agency.

<sup>13</sup> Guild, Elspeth and Grant, Stefanie and Groenendijk, Kees, IOM and the UN: Unfinished Business (March 4, 2017). Queen Mary School of Law Legal Studies Research Paper No. 255/2017. Available at SSRN: <https://ssrn.com/abstract=2927414>

Following pressure from European states which had been surprised by an influx of refugees in 2015-16, the UN launched yet another initiative on migration on 19 September 2016 through the New York Declaration for Refugees and Migrants.<sup>14</sup> The Declaration called for the negotiation and adoption of two Global Compacts one on refugees to be led by UNHCR and one on migrants to be led by the Special Representative on International Migration. The two Compacts were to be adopted within two years.<sup>15</sup> The Compact on Refugees was presented in the UNHCR's 2018 Annual Report to the General Assembly in September 2018. No specific adoption procedure was envisaged apart from the adoption of the Annual Report. An inter-governmental conference will be held on 10 – 11 December 2018 in Marrakesh, Morocco for the purpose of adopting the Global Compact Migration.

This chapter examines the Global Compact Migration (GCM) from the perspective of the UN human rights conventions.<sup>16</sup> As indicated above, migration has been a contested field in international politics. Even the application of international human rights as contained in the UN conventions to migrants has been doubted and questioned (particularly as regards delivery in practice).<sup>17</sup> It will examine two issues:

- The New York Declaration and human rights – what is the position of human rights in the Declaration;
- The Global Compact Migration through the lens of the human rights commitments set out in the Declaration; this section examines the commitments of the Declaration against the Objectives of the GCM;
- Conclusions.

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<sup>14</sup> UN General Assembly, *New York Declaration for Refugees and Migrants : resolution / adopted by the General Assembly*, 3 October 2016, A/RES/71/1, available at: <http://www.refworld.org/docid/57ceb74a4.html> [accessed 10 September 2018]

<sup>15</sup> Guild, Elspeth, and Stefanie Grant. "Migration Governance in the UN: What is the Global Compact and What does it Mean?" (2017).

<sup>16</sup> Guild, Elspeth, Stefanie Grant, and Cornelis A. Groenendijk, eds. *Human Rights of Migrants in the 21<sup>st</sup> Century*. Routledge, 2017.

<sup>17</sup> Dembour, Marie-Bénédicte, and Tobias Kelly, eds. *Are human rights for migrants?: critical reflections on the status of irregular migrants in Europe and the United States*. Routledge, 2011; Noll, Gregor. "Why human rights fail to protect undocumented migrants." *European journal of migration and law* 12.2 (2010): 241-272.

## 2. The New York Declaration

1. The NY Declaration which commenced the two year process of the Compacts places the issue of migration in the context of sustainable development. The adoption of the 2030 Agenda for Sustainable Development was a landmark not only in development but also for migrants who are referred to in the Agenda as making a positive contribution for inclusive growth and sustainable development.<sup>18</sup> This is somewhat ambiguous as the development discourse is based on the principle that there are more and less well developed countries/regions/cities/people etc. The linking of migration and development results in migration being posed as an issue of movement from countries of less development to those of more successful development to enjoy the benefits of the latter.<sup>19</sup> Even authorities which seek to justify the need for migration to more developed countries, usually justify this on grounds embedded in the development discourse (dropping populations numbers, economic needs etc). Yet, some academics have begun to examine Global North to Global South migration and its impacts with surprising evidence of numbers and trends which confound the habitual discourse.<sup>20</sup>

The Declaration continues “We reaffirm [...] the Universal Declaration of Human Rights and recall the core international human rights treaties. We reaffirm and will fully protect the human rights of all refugees and migrants regardless of status: all are rights holders.” (para 5). The Declaration states that the outcome of the process will demonstrate full respect for international law and international human rights law (para 5). The Declaration contains more than 30 references to human rights (and two to OHCHR). If quantity is indicative of resolve, then safeguarding the human rights of migrants is indeed a foremost consideration of the Declaration.

2. The legal status of a UN declaration is fairly clear. It is generally accepted as not being legal binding as such but constitutes a statement of political agreement which states should abide by. This status includes

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<sup>18</sup> Para 4 NY Declaration.

<sup>19</sup> McKenzie, David. “Poverty, inequality, and international migration: Insights from 10 years of migration and development conferences.” *Revue d'économie du développement* 25.3 (2017): 13-28; Skeldon, Ronald. *Migration and development: A global perspective*. Routledge, 2014.

<sup>20</sup> Berriane, Mohammed, Hein De Haas, and Katharina Natter. “Revisiting migration trends and theories—which way forward?” *Revisiting Moroccan Migrations*. Routledge, 2018. 24-26.

the Universal Declaration of Human Rights, notwithstanding its centrality in the UN human rights framework. Declarations are statements of intent by states and are intended to guide their actions. The status of a compact as a UN instrument is less clear, an issue I will return to later.

**3.** The Declaration commences with a statement of fact – that the world is witnessing an unprecedented level of human mobility, suggesting that more than 244 million people were migrants in 2015. This claim is difficult to substantiate not least as the definition of a migrant is fairly uncertain. A wide range of definitions are used by different UN agencies and there is no clear dividing line between for instance a tourist and a migrant. Normatively in the language of newspapers and politicians, tourists are generally perceived as positive (even though they are foreigners) benefiting the economy.<sup>21</sup> They are rarely classified as migrants unless they overstay their permitted stay or work when they are not allowed to. This in itself is indicative of the normativity attached to the category of migrant – that tourists become migrants when they behave in unauthorised ways vis-à-vis state authorities reveals the negative charge which is applied to the term ‘migrant’. The question whether the world is seeing more migration or simply that there are more border controls or that more people moving are sometimes designated as migrants remains problematic. For example, EU nationals moving from one Member State to another to live and work are rarely called migrants or counted as such. Indeed, the counting of them is fairly approximate. They are usually called EU citizens exercising their free movement rights. Europe is not the only part of the world with a free movement regime. These are common in parts of Africa (ECWAS<sup>22</sup> or SADC<sup>23</sup>) or South America (MERCOSUR<sup>24</sup>). There is little appetite to question the premise of the Declaration as those who normally do so, academics, are by and large favourable to the objective. But the use of the language of fear – large movements of refugees and migrants – is ambiguous and may in the

<sup>21</sup> Hazari, Bharat R., and Pasquale M. Sgro. “Tourism and growth in a dynamic model of trade.” *Tourism, Trade and National Welfare*. Emerald Group Publishing Limited, 2004. 185-195; Mosedale, Jan, ed. *Political economy and tourism: A critical perspective*. Routledge, 2010.

<sup>22</sup> Adepoju, Aderanti. “Fostering free movement of persons in West Africa: Achievements, constraints, and prospects for intraregional migration.” *International migration* 40.2 (2002): 3-28.

<sup>23</sup> Oucho, John O., and Jonathan Crush. “Contra free movement: South Africa and the SADC migration protocols.” *Africa Today* (2001): 139-158.

<sup>24</sup> Acosta, Diego. *The National versus the Foreigner in South America: 200 Years of Migration and Citizenship Law*. Cambridge University Press, 2018.

end prove counter-productive, reinforcing negative stereotypes about movement of people across borders.

**4.** The Declaration states that the international community acknowledges a shared responsibility to manage large movements of refugees and migrants in a humane, sensitive, compassionate and people-centred manner (para 11). This will be done through international cooperation. However, the paragraph does include recognition of the obligation fully to respect migrants' human rights and fundamental freedoms (which is somewhat unclear) and their right to live in safety and dignity. The statement that there is a shared responsibility of the international community in the management of migration places it towards one end of the state sovereignty/share responsibility spectrum. In fact, the Declaration contains no reference to state sovereignty. The reference to a shared responsibility comes up only once in the document. But the use of the term is significant. If there is shared responsibility in the field of migration this means that states are not entitled to act in ways which are detrimental to their neighbours claiming this entitlement because of their right to state sovereignty in immigration matters (including border controls). Perhaps the most topical example of such a state sovereign move is that by the president of the USA who is building a wall between his country and his neighbour to the south for the purpose of preventing migration while stating that the costs will be borne by the neighbour.<sup>25</sup> This position was strongly criticised by the Mexican authorities.<sup>26</sup> This is perhaps the epitome of the sovereignty logic and the complete negation of a share responsibility. It is not surprising then that in December 2017, when the negotiations of the Global Compact Migration were about to be opened the USA withdrew from the process.<sup>27</sup>

**5.** A shared responsibility may also include shared liability. At paragraph 24 of the Declaration, states acknowledge that they have both rights and

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<sup>25</sup> Warren, Robert, and Donald Kerwin. "The 2,000 mile wall in search of a purpose: since 2007 Visa overstays have outnumbered undocumented border crossers by half a million." *J. on Migration & Hum. Sec.* 5 (2017): 124; Miller, Todd, and Joseph Nevins. "Beyond Trump's Big, Beautiful Wall: Trump's plan to wall off the entire US-Mexico border is just one of a growing list of actions that extend US border patrol efforts far past the international boundary itself." *NACLA Report on the Americas* 49.2 (2017): 145-151.

<sup>26</sup> Ahmed, Azam. "Mexico's President Cancels Meeting with Trump Over Wall." *New York Times* 26 (2017).

<sup>27</sup> Patrick Wintour 'Donald Trump Pulls US out of UN global compact on migration' 2 December 2017 <https://www.theguardian.com/world/2017/dec/03/donald-trump-pulls-us-out-of-un-global-compact-on-migration> [accessed 10 September 2018].

responsibilities to manage and control their borders. States undertake to implement border control procedures in conformity with applicable obligations in international law, including international human rights law. They undertake to promote international cooperation on border control and management as an important element of security for states. Frequently states work together with their neighbours to seek better to implement their national migration agendas. The co-operation is often dictated by the more powerful state on to the less powerful one. This acceptance is frequently accompanied by transfers of technology, hardware and expertise in the field of border control or otherwise from the strong state with the migration related agenda to the weaker state which is counselled to accommodate the other.<sup>28</sup> This de-localisation of border control measures in pursuit of more effective migration management is common among states with preoccupations about migration such as in the EU, US, Australia etc.<sup>29</sup> But in the logic of the Declaration, such policies will give rise to responsibility by all relevant states to protect the safety, human rights and dignity of the person seeking to move, whatever their nationality. The way in which border controls are carried out will have to be negotiated among states with a view to maximising safety and human rights compliance. Any failure to deliver may give rise to liability of all the states involved in the border control project both design and implementation.

**6.** The Declaration is particularly strong in its condemnation of racism, racial discrimination (para 14), and the duty to combat xenophobia, racism and discrimination (para 39). There are numerous commitments in specific settings to combat discrimination. It is generally accepted that discrimination is one of the hurdles which migrants face often embedded in immigration laws which make residence status dependent on employment, family reunification dependent on income, access to social benefits dependent on long and secure residence etc.<sup>30</sup> However, all these forms

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<sup>28</sup> Cassarino, Jean-Pierre. "Approaching borders and frontiers in North Africa." *International Affairs* 93.4 (2017): 883-896; Cuttitta, Paolo. "Delocalization, humanitarianism, and human rights: The Mediterranean border between exclusion and inclusion." *Antipode* 50.3 (2018): 783-803; Garelli, Glenda, Alessandra Sciorba, and Martina Tazzioli. "Introduction: Mediterranean Movements and the Reconfiguration of the Military-Humanitarian Border in 2015." *Antipode* 50.3 (2018): 662-672.

<sup>29</sup> de Vries, Leonie Ansems, and Elspeth Guild. "Seeking refuge in Europe: spaces of transit and the violence of migration management." *Journal of Ethnic and Migration Studies* (2018): 1-11.

<sup>30</sup> Guild, Elspeth, and Tugba Basaran, eds. *Global Labour and the Migrant Premium: The Cost of Working Abroad*. Routledge, 2018.

of discrimination are justified by states on the basis that the ground of discrimination is nationality. Nationality is not a prohibited ground of discrimination in international human rights law. The foremost instrument against discrimination is the International Convention on the Elimination of All Forms of Discrimination (ICERD). It prohibits discrimination on the grounds of race, colour, descent, national or ethnic origin. But Article 1(2) provides that “this Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens”. General Recommendation XXX of the CERD Committee deals specifically with discrimination against non-citizens. It reiterates that human rights are, in principle, to be enjoyed by all persons. However, it focuses on those areas where discrimination is the most egregious for migrants. It calls on states to avoid discrimination among non-citizens and importantly against any particular nationality. It establishes that differential treatment based on citizenship or immigration status will constitute discrimination where it does not pursue a legitimate aim or is not proportionate to achieve that aim. It calls for states to ensure that their immigration policies do not have the effect of discriminating on the prohibited grounds, a problem which even a casual look at the immigration laws of many countries will reveal is the case. The status of ICERD vis-à-vis immigration-related discrimination and the meaning of national origin in ICERD Article 1(2) has come before the International Court of Justice (ICJ).<sup>31</sup> The dispute relates to a UAE decision of 2017 to expel all Qatari nationals from its territory. In a decision on provisional measures to protect Qatari nationals living in UAE, the ICJ granted relieve ordering both parties to refrain from taking action which could aggravate the dispute (including expelling Qatari nationals). The full hearing will revisit the correct interpretation of Article 1(2) ICERD.

The Declaration proceeds with 19 specific commitments to migrants as follows:

- Protection of safety, dignity and human rights and fundamental freedoms of migrants irrespective of their migratory status;
- Consular protection and the right to leave a country;
- Addressing drivers of migration;
- Improving educational opportunities in countries of origin;
- Addressing unintended negative consequences;

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<sup>31</sup> *Qatar v United Arab Emirates No 2018/36*.

- Recognising the positive and profound contributions by migrants to their societies;
- Recognition of the integration of migration into other UN area such as sustainable development;
- Calling on states to ratify the migrant workers convention (see above);
- Welcoming the IOM to the UN;
- Helping migrants in situations of conflict and natural disaster;
- Develop guiding principles for the treatment of migrants in vulnerable situations;
- Temporary protection where needed;
- Cooperation to facilitate migration;
- Encourage exchanges of good practices for migration and development;
- Protect children consistent with the principle of the best interests of the child;
- Encourage employment creation and labour mobility for migrants;
- Foster cooperation on return<sup>32</sup> and readmission of migrants;
- Recognition of gender perspectives on migration;
- Encourage deeper interaction between governments and non-governmental organisation.

As will be seen, when the GCM reached the end of the negotiations in July 2018, not all of these commitments were still be in the same form and others had arrived. Irrespective of the Global Compact Migration, the Declaration remains a very important document and one, which states should take into account when considering matters of migration. As a product of the General Assembly, all states are bound by the Declaration, insofar as declarations have constraining political force. The negotiation and adoption of the Compact in no way diminishes the force of the Declaration.

### **3. The Global Compact Migration and human rights**

**1.** Once the New York Declaration was adopted, two years of preparation for the Global Compacts took place. First there was a yearlong

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<sup>32</sup> Return is the 'soft' term for expulsion in all its various forms.

consultation phase, which consisted of a series of informal thematic sessions, regional consultations and stakeholder consultations. This culminated in an international conference between 4-6 December 2017, which ended the phase and ushered in the commencement of the negotiations. For the Global compact Migration (GCM) the intergovernmental negotiations commenced in January and resulted in seven drafts being published. This is a fairly substantial number for the UN where the norm is three. The first entitled the Zero Draft was published on 5 February 2018. It was followed a month later by a Zero plus draft (5 March 2018). Three revised drafts came out in fairly rapid succession: 26 March, 28 May and 29 June. The Final Draft was ready on 11 July and agreed on 13 July.

While there were over 30 references to human rights in the New York Declaration, in the final version of the GCM there are 45. Again if quantity is the objective, the GCM wins. The GCM is stated to ‘rest’ on the UN human rights acquis starting with the Universal Declaration of Human Rights and covering all the conventions from the International Covenant on Civil and Political Rights to the Convention on the Rights of Persons with Disabilities. It also rests on the relevant ILO conventions, the Palermo Protocols, the Convention on Climate Change, the 2030 Agenda and some other Agendas<sup>33</sup> and Frameworks.<sup>34</sup> The GCM is structured in six parts: a preamble, vision and guiding principles, cooperative framework, objectives and commitments, implementation and follow-up and review.

**2.** One of the unanswered questions of the Declaration was what would the Compacts be legally speaking.<sup>35</sup> After some discussion and negotiations, in the end the GCM was determined to be a non-legally binding, cooperative framework building on commitments from the Declaration (para 7). Its purpose is to foster international cooperation among all relevant actors (presumably wider than states so including international organisations and possibly many layers of government, regional authorities and possibly even non-governmental organisations). While it acknowledges that no state can address migration alone (an echo of the share responsibility language) it upholds the sovereignty of states and their obligations under international law (para 7). This is a departure

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<sup>33</sup> Addis Ababa Action Agenda and the New Urban Agenda.

<sup>34</sup> Sendai Framework for Disaster Risk Reduction.

<sup>35</sup> Gammeltoft-Hansen, Thomas, et al. “What is a Compact? Migrants’ Rights and State Responsibilities Regarding the Design of the UN Global Compact for Safe, Orderly and Regular Migration.” (2017).

from the Declaration, which was less concerned about upholding states claims to sovereignty in the field of migration.

In the section on vision and guiding principles there are three sub-headings, common understandings, shared responsibilities and unity of purpose. Under the third sub-heading there are ten principles. First the GCM is to be people-centred. This means it is designed to promote the well-being of migrants. Secondly, within its non-legally binding cooperative framework, it recognises the need for international cooperation. The authority of the GCM rests on its consensual nature, credibility, collective ownership, joint implementation, follow-up and review. Of that rather impressive list, one must bear in mind that the follow up and review provisions are rather weak. The next principle is that of national sovereignty which recognises that it is the prerogative of states to govern migration and to distinguish between regular and irregular status. The regular-v-irregular migration status question is one which has raised some controversy. Human rights law is not infrequently interpreted by courts as giving rise to duties on states to document the regularity of migrants on their territory. This is most frequently the case in matters about family reunification<sup>36</sup> but also arises in expulsion cases. Thus the attempt to lay a national sovereignty claim to the status of migrants as regular or irregular is already an incursion into the obligatory nature of human rights commitments. The next principle is rule of law which must also apply to migrants and the legislation which is applied to them. This is followed by sustainable development with the repetition of the statement that migration contributes to positive development.

**3.** The sixth principle is in respect of human rights. It states that the GCM is based on international human rights and “upholds the principles of non-regression and non-discrimination.” Implementation of the GCM will ensure effective respect, protection and fulfilment of the human rights of all migrants regardless of their migration status. The statement that the GCM is non-regressive is important not least as it was unclear whether some states would seek to rely on the GCM provisions to support restrictive interpretations of their human rights obligations in conventions. This may still occur, but if judges accept the restrictive approach they will clearly be out of step with the declared and stated objective of

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<sup>36</sup> Costello, Cathryn, Kees Groenendijk, and Louise Halleskov Storgaard. “Realising the right to family reunification of refugees in Europe: Issue paper.” (2017).

the GCM to be non-regressive. Further, this principle commits states to eliminate all forms of discrimination including racism, xenophobia and intolerance. The linking of the two, human rights irrespective of status and non-discrimination is surprising. It is certainly true that migrants in irregular status have much more trouble accessing their human rights than those with the state's imprimatur to legality. It is also true that discrimination strikes all migrants both regular and irregular.<sup>37</sup> But it is less clear that the problems are either the same or sufficiently similar to justify being rolled into one.

**4.** The next two principles are fairly straightforward – the first is that the GCM is gender-responsive and the second that it is child sensitive. The degree to which it can be seen as child sensitive may be disputed in light of Objective 13(h) which calls for the detention of children to be subject to tested against viable alternatives and engages states to work towards the end of the practice of child detention. Few children's rights advocates will be satisfied with such a weak provision on child detention. Some may have hoped that the GCM would include a call for a complete ban on child detention in immigration contexts.<sup>38</sup>

**5.** The following two principles are called whole-of-government approach and whole-of-society approach. The idea here is that all governmental policy sectors and all parts of society have to work together to deliver the commitments of GCM. The objective is to achieve horizontal and vertical policy coherence and governance. The first concern about a whole-of-government approach to migration is that it must be independent of the interior ministry's objectives in respect of immigration control. The reason for this is that interior ministries often have migration related agendas (around expulsion and exclusion) which are inconsistent with the GCM. If these ministries are empowered to interpret the whole-of-government

<sup>37</sup> Hofer, Helmut, et al. "Wage discrimination against immigrants in Austria?" *Labour* 31.2 (2017): 105-126; Dietz, Joerg, et al. "The skill paradox: Explaining and reducing employment discrimination against skilled immigrants." *The International Journal of Human Resource Management* 26.10 (2015): 1318-1334; McGinnity, Frances, and Mérove Gijsberts. "A threat in the air? Perceptions of group discrimination in the first years after migration: Comparing Polish Migrants in Germany, the Netherlands, the UK and Ireland." *Ethnicities* 16.2 (2016): 290-315; Keys, Hunter M., et al. "Perceived discrimination, humiliation, and mental health: a mixed-methods study among Haitian migrants in the Dominican Republic." *Ethnicity & Health* 20.3 (2015): 219-240.

<sup>38</sup> Bhabha, Jacqueline. *Child migration and human rights in a global age*. Vol. 22. Princeton University Press, 2014; Australia. Human Rights Commission, and President Triggs. *The forgotten children: national inquiry into children in immigration detention*. Australian Human Rights Commission, 2014; Bunting, Rebecca. "Drowning best interests: The mental health of children in offshore detention." *Hum. Rts. Defender* 26 (2017): 20; Linton, Julie M., Marsha Griffin, and Alan J. Shapiro. "Detention of immigrant children." *Pediatrics* (2017): e20170483.

commitments under the GCM the outcome is likely to be inconsistent with the human rights of migrants. For instance, objective 15 GCM calls for access to basic services for all migrants irrespective of migratory status. But if this is interpreted by a hostile interior ministry and applied by social affairs ministries consistently with that interpretation access to basic services may be conditioned on the service provider sharing personal data about the migrant to the interior ministry to facilitate expulsion. This would be inconsistent with the objective which states at 15(b) that states must ensure that cooperation between service providers and immigration authorities does not exacerbate vulnerabilities of irregular migrants by compromising their safe access to basic services or unlawfully infringing upon the human rights to privacy, liberty and security of persons at places of basic service delivery. The intention of objective 15(b) is clearly to create firewalls between service providers and interior ministries regarding the migratory status of people in need of basic services. But one can see how a malignant interpretation of the provision could be fabricated where service providers could be called upon to provide addresses and other information about irregular present migrants. The whole-of-society approach presents other issues regarding the implementation of the GCM. It calls for migrants, diasporas, local communities, civil society, academia, the private sector, parliamentarians, trade unions, National Human Rights Institutions, the media and other relevant stakeholders to be included in the process. This will be picked up later in the document, at paragraph 44, which calls on all these actors and parties to be responsible for implementing the GCM (adding to the list faith-based organizations, local authorities and the Red Cross and Crescent Movements). This is an interesting move that states which are adopting the GCM, will already make it clear that they will devolve to local authorities and private bodies the responsibility to carry out the states' commitments. I will return to this issue below.

#### **4. Comparing the Declaration Commitments and the GCM Objectives**

**1.** There are 23 objectives of the GCM which cover a very wide range of issues and do not all correspond to those set out in the Declaration. The first one, which calls for the collection and use of accurate and disaggregated data as a basis for evidence-based policies is one such objective. This objective raises some questions about its consistency with the

human right to privacy.<sup>39</sup> Although the objective includes a couple of references to upholding the right to privacy and protecting personal data some of the activities which are recommended are clearly problematic. Everyone is entitled to privacy which means that their personal data will not be collected, stored or shared without either their (genuine) consent or an overriding reason which is sufficient robust to constitute an exception to the right (such as substantial evidence of criminal activity). But the GCM calls for the sharing of information on “characteristics of migrants” (Objective 1(b)) which presupposes the creation of profiles of migrants in respect of which there is a substantial risk of use in discriminatory ways. It also calls for data on the contributions of migrants and diaspora which again seems to presuppose the collection, storage and sharing of personal data about migrants. The objective also calls for the collection through national censuses of information not only on country of birth, but that of parents, citizenship, country of residence, most recent arrival and reason for migrating. There is no justification for the collection of so much personal data on censuses. What is the purpose of this data collection and how is it proportionate to the right to privacy? This is not clear. The collection of such data may be benign but how it may be used in the future cannot be guaranteed. Nationalist projects around ethnic cleansing are often only possible to carry out (with horrific human rights violations) because national censuses and databases contain information (such as on religion) which while innocently collected makes possible genocide at some later date. Further, the objective calls for collaboration between state units on border records, visas, resident permits and other data which is clearly protected by the right to privacy. The sharing of this data across state units may in itself be a breach of the right to privacy.<sup>40</sup> Additionally, the objective calls for the development and use of country-specific migration profiles for the purposes of evidence-based migration policies. But is this consistent with non-discrimination? Border and immigration decisions must be taken on the basis of the individual facts and circumstances of each applicant, not on the basis of a country-specific migration profile. It is all too easy for such profiles to end up being prejudicial for the individual as they are based on information extraneous to his or her personal circumstances.

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<sup>39</sup> Article 17 International Covenant on Civil and Political Rights 1966 and as interpreted by the HRC The Right to Privacy in the Digital Age 30 June 2014 A/HRC/27/37.

<sup>40</sup> HRC The Right to Privacy in the Digital Age 30 June 2014 A/HRC/27/37.

**2.** Objective 15 corresponds to commitment 1 GCM – now more cautiously entitled: provide access to basic services for migrants. In both cases the principle of provision of basic services to all migrants irrespective of status is the same. However, in the Declaration, the commitment was to the delivery of human rights even though it included return and re-admission which are always human rights complex. These two fields have now been separated into different objectives. Consular protection, in the second substantive commitment of the Declaration has now become objective 14 GCM. There is no longer a reference to the right to leave a country which is a pity as it is a human right enshrined in the International Covenant on Civil and Political Rights 1966. Instead there is a focus on issuing travel documents and consular identity documents which may be very important for individuals who are stranded in their mobility but can also be instrumentalised by reluctant host states to facilitate expulsion. The third commitment, on addressing drivers of migration is now objective 2 – still designed to ensure that people are not forced to move internationally because of adverse conditions in their home country. Sustainable development is a key component of this objective. The emphasis is on displacement and preparedness. The Declaration's third commitment to education facilities in the countries of origin has largely disappeared. While educational opportunities in the country of origin are very important generally it was unclear why this commitment was included in the Declaration. Instead, in objective 18(f) there is now a call to promote private public partnerships in the field of education in countries of origin and destination. Objective 18(g) encourages bilateral partnerships such as student exchanges. Commitment 5 – addressing unintended negative consequences has similarly disappeared instead there is objective 7 on addressing and reducing vulnerabilities of migrants. In this objective there is a call to review policies and practices to ensure that they do not create, exacerbate or unintentionally increase vulnerabilities of migrants. The next commitment – recognising the positive contributions of migrants to their societies is now to be found in objective 19 creating conditions for migrants and diasporas to fully contribute to sustainable development in all countries. The concept of diaspora sits uncomfortably with objectives of integration of migrants and access to citizenship. The choices of individuals to retain or not their identity with and links to their (or their parents') countries of origin should be personal. To institutionalise links of citizens of one country with another country on

the basis of their family's past is inconsistent with the right to dignity. An individual is not obliged to declare or be associated with a country of which he or she is not a national.

**3.** The following Declaration commitment is the integration of migration into other UN policy fields such as sustainable development, humanitarian, peace-building and human rights policies and programmes. Insofar as the corresponding objective is number 23 – strengthen international cooperation and global partnerships for safe, orderly and regular migration – the focus is substantially changed. International cooperation is no longer tied to other UN areas such as development etc. The next commitment, calling on states to ratify the migrant workers convention has disappeared entirely. The only reference left in the text to that convention is in the footnote to the preamble where the GCM states that it rests on a number of international conventions. However, in objectives 9 and 10, the GCM calls for states to ratify the Palermo Protocols against smuggling and trafficking. So the loss of the call to ratify the migrant workers convention is not part of a policy decision to avoid calling on states to ratify international conventions. Rather it is evidence of 'regression' in respect of human rights, the ill which para 15 GCM promised would not occur. The Declaration's welcome to the IOM again finds no direct corresponding objective in the GCM. Instead in the section on implementation at paragraph 45 the GCM notes that IOM will establish a UN network on migration to support implementation. IOM has already begun discussions with all the other UN agencies and bodies with an interest in migration about the form the network will take and how it should operate. The key issue seems to be to avoid the unwieldiness of the current venue, the Global Forum on Migration and Development.

**4.** The next Declaration commitment relates to helping migrants in situations of conflict and natural disaster. This is reflected in objective 7 which seeks to address vulnerabilities in migration. There was substantial discussion in the stocktaking exercise about the meaning of migrants in a vulnerable situation. The objective calls for a human rights-based, gender – and disability-responsive as well as an age – and child- sensitive approach. All stages of migration are included. Labour laws and working conditions are part of workplace vulnerabilities to be challenged, migrant children merit a number of paragraphs, independent legal assistance is necessary to reduce vulnerability, as are access

to procedures. In particular to avoid vulnerability migrants should be facilitated in moving from one immigration category to another to avoid irregularly and reduce precariousness. Similarly, migrants should be provided facilitated access to regularise their status. The provision of consular cooperation and humanitarian assistance forms part of this objective including in cross-border situations. The provision of identity documents is also part of the objective. The objective is much wider than the commitment in the Declaration.

The Declaration then commits states to developing guiding principles for the treatment of migrants in vulnerable situations. This seems to have been captured in objective 15 which also relates to commitment 1 – the provision of basic services to migrants irrespective of their migratory status. However, as pointed out above, the objective has widened to include expulsion. There is also in objective 10(g) a call to develop practices for admission and stay on compassionate, humanitarian or other considerations for migrants compelled to leave their homes. The objective suggests the use of humanitarian visas, private sponsorships, access to education for children and temporary work permits. The next commitment to provide temporary protection where needed has also disappeared. While there are many references to protection, particularly in objective 10, these do not directly related to any duty to provide an immigration status or the principle of non-refoulement. The next commitment to build on bilateral, regional and global cooperation to facilitate migration corresponds rather loosely to objective 5 enhancing availability and flexibility of pathways for regular migration. In GCM this refers to labour mobility agreements and sector specific standards on employment and revising existing options and pathways for regular migration in accordance with labour market demands and skills supply. There are also echoes of this commitment in objective 6 on facilitating fair and ethical recruitment and safeguarding conditions that ensure decent work.

**5.** The next Declaration commitment is to encourage exchanges of good practices for migration and development. This is reflected in objective 23 which calls for strengthening international cooperation and global partnerships for safe, orderly and regular migration. But there is no mention of exchanges of good practices. The Declaration then commits states to protect children consistent with the best interests of the child. A little further along it also commits to recognising gender perspectives

on migration. As child-sensitivity, and gender perspectives are guiding principles of the GCM, children and gender as subjects appear in many objectives though there is none which is specific to them. Objective 6(i), the only one which refers to family reunification, calls for facilitation of the realisation of family life consistent with the principle of the best interests of the child. It calls on states to carry out this facilitation by reviewing and revising requirements such as on income, language proficiency, length of stay, work authorisation and access to social security and services. One of the most problematic areas of migration in many countries in the Global North are the highly restrictive family reunification rules which include all the ills mentioned in the objective. A revision to relax these would be consistent with the human rights principle of the right to family life.

**6.** The Declaration then sets out the commitment to encourage employment creation and labour mobility for migrants. This is covered in objectives 5 and 6 on enhancement of regular migration and fair and ethical recruitment (mentioned above). Next comes the commitment to return (expulsion) and re-admission. This is covered in objective 21 GCM which calls on states to cooperate in facilitating safe and dignified return and readmission as well as sustainable re-integration. To realise this objective states can choose among a wide range of policy options including bilateral and regional cooperation, the promotion of voluntary return, the issue of identification documents, cooperation between consular authorities and officials in the host and home states, for irregularly present migrants an individual assessment by competent authorities which includes cooperation with the country of origin, monitoring of return, mechanisms to assist reintegration in the country of origin and access to social protection and services. Objective 21(h) on the duties on states of origin in the context of re-integration of their citizens expelled from a host country are very much wider and more generous than the duties on host states to provide basic services to migrants in objective 15. This may be somewhat paradoxical considering that the template on which this process has been designed is that migrants come from poor countries and go to rich ones.

**7.** The Declaration's final substantive commitment is to encourage deeper interaction between governments and civil society, including non-governmental organizations. No reference to non-governmental

organizations has survived in the final draft GCM. But under the heading of implementation, at paragraph 44 the GCM states “We will implement the Global Compact in cooperation and partnership with migrants, civil society, migrant and diaspora organizations, faith-based organizations, local authorities and communities, the private sector, trade unions, parliamentarians, National Human Rights Institutions, the International Red Cross and Red Crescent Movement, academia, the media and other relevant stakeholders.” This is an interesting way to take forward deeper interaction with civil society. It seems to be based on states undertaking commitments in the GCM for which they have already identified sub-state bodies which will be responsible for delivering on those commitments. The most frequently addressed sub-state entity which will be responsible for delivering on the GCM commitments are local authorities. They are referred to 14 times in the final draft GCM. It is unclear to what extent states may already be in discussions with these local authorities about the conditions and financing which will be necessary for them to take up these new (or expanded) tasks. There are five references to civil society as a partner in delivering the objectives of the GCM and another five to migrants and diaspora organizations. Once again the conditions and financing of these tasks will need to be arranged at the national level. There are three references to international organizations and their duties, two to employers and workers organizations and one to faith-based organizations.

**8.** Finally, the GCM includes a number of objectives which are not related to commitments in the Declaration. These are objectives: (3) providing accurate and timely information at all stages of migration; (4) ensure that all migrants have proof of legal identity; (8) save lives and establish coordinated international efforts on missing migrants; (9) strengthen the transnational response to smuggling of migrants; (10) prevent, combat and eradicate trafficking in persons; (11) manage borders in an integrated, secure and coordinated manner; (12) strengthen certainty and predictability in procedures; (13) use migration detention only as a measure of last resort; (16) empower migrants and societies to realize full inclusion and social cohesion; (17) eliminate discrimination; (18) invest in skills and mutual recognition thereof; (20) promote faster, cheaper transfers of remittances; (22) portability of social security entitlements.

## 5. Conclusions

In this chapter I commenced with a brief overview of the international community's engagement with migration over the past 50 years and then turned to the 2016+ developments. It is clear that the New York Declaration of 19 September 2016 was a new high point in commitments by states in the international community to the promotion of migration in a context of shared responsibility for migration including border controls. The Declaration called for two compacts, at that time unknown legal instruments in the UN system, but clarified in the documents themselves to be non-legally binding cooperative frameworks. I have examined the Declaration and the GCM to identify the importance of human rights in the commitments and obligations set out in each of them and how they reflect (or not) one another. In my analysis of the GCM and the Declaration the position of human rights in the commitments and the objectives of the two tends to be symbolic and fails to be fully integrated into the content of each commitment or objective. While there are many references to human rights and human rights instruments in the two documents, with something of an inflation from the Declaration to the GCM, still great attention will need to be given to their implementation in practice. This is because the references to human rights are not fully anchored in the UN human rights conventions and insufficiently precise. This will make implementation much more difficult than it would have been had the GCM properly referenced the relevant human rights commitments in each objective and principle rather than simply referring to 'human rights' in general. The actual state of international human rights law and its application to migrants is less than adequately developed in both the instruments. Although the CGM is formally committed to non-regression as regards existing human rights obligations of states, there is much ambiguity in many of the objectives and the options for implementation. Depending on the political preferences of some governments, numerous choices are open to implementation in a manner which could result in regression from existing human rights standards. This must be avoided at all costs.



# **CLOSING SESSION**



*Intervention by His Excellency  
the President of the Republic,  
Professor Marcelo Rebelo de Sousa*

Magnificent Rector, Mr. President of the Cooperativa de Ensino Universitário, Professor Constança Urbano de Sousa, Your Excellencies, Ladies and Gentlemen,

Everything that is important to say about the topic that brings us here today, international migrations, has already been said by the experts, scholars, and all those who dedicate their lives here and abroad to this issue, which is essential for us all.

I therefore limit myself to pointing out a few pieces of evidence.

First, this is a challenge of all times, although it is a particular challenge of present times. Today, it has gained greater expression, greater acuity, greater generalized knowledge, greater demands on prevention and response, and greater civic and political accountability.

Second, it is a universal challenge, although for us Portuguese and Europeans, it seems to be a European challenge. One of the major errors of analysis and understanding was precisely this, to ignore what was happening in other latitudes and longitudes, right next to our house, our door, our street.

Third, it is a time that demands rigour in the theoretical appreciation, but also and still more commitment and effectiveness in the field. The combination of the two approaches has not always been virtuous, and, often, late and imperfect.

Fourth, it is a challenge that can neither be denied nor ignored, nor undervalued nor postponed. It was these and other attitudes of mind that are responsible for a lost time that in part can no longer be recovered.

Fifth, it is a challenge that has to be faced with anticipation. Unfortunately, it is the opposite of what has been the recurrent temptation

of those who would prefer that the situation did not exist and who believed it was worth to hide it behind seductive, promising, illusory and suggestive words.

Sixth, it is a challenge that demands detecting causes and acting on these causes, which is far from attracting an enthusiastic response from those living in increasingly shorter cycles of power. They avoid commitments or strategies in the long run, they deal poorly with intervention plans in distant areas, claim to be against wars, misery, universal inequalities, but fail to assume before their constituencies their commitment to actions with such objectives. And finally, they now adhere to the unilateralism trend, a dramatic step towards any serious and consistent effort that must be multilateral.

Seventh, it is a challenge that at the same time has to face causes to be minimally serious and effective, and must respond to immediate effects, with conjugation of wills, with unprejudiced attitudes, without sectarianism and with realism. Unilateralism in this response is a sure failure. Prejudices of any kind are sure failures. Prejudices regarding race or origin, xenophobic, chauvinistic, and excluding, besides denoting ignorance of their own and others' history, last a moment and will be inexorably submerged by reality, starting with what already exists inside walls and the one that surrounds them. Opposing prejudices of unrealistic unlimited promises of openness without a realistic framing last the same instant, before they become argumentative food for the prejudices around closure and marginalization. Intolerance towards migration and flesh and blood migrants is inexcusable by principle and in rational terms, but it must be faced with a debate of ideas and not with secretarial prohibitions, which will be a gift unnecessarily offered to the forbidden before becoming a sign of fear, defensive attitude, harassment.

Eighth, it is a challenge that is cultural, political, economic, and social in nature, but that is, above all, ethical.

It is not even necessary to have, in Portugal, a history that is made of the best and the worst, but always with migrants.

It is not even necessary to remember that the millions of Portuguese who live abroad prevent us from doing to others what we do not want others to do to them. It is not even necessary to evoke examples such as António Guterres or António Vitorino, which translate, without any doubt, what we think and feel about migrations and refugees.

It is not even necessary to underline the remarkable pioneering project of the global platform for Syrian students, created in 2013 by President Jorge Sampaio, which has now become an even wider platform for the universal access of refugees and forced migrants to higher education.

It is not even necessary to mention the Middle East refugee restaurant in Arroios market, where I took ambassadors from across the European Union, or the dozens of young Portuguese volunteers I visited in refugee camps in Greece.

It is not even necessary to say with pride that, according to the European Social Survey, Portugal is the country in Europe where the opposition to immigration has fallen the most in the last three years.

It is not even necessary to remember the national consensus among believers and non-believers, who have accepted one by one the critical and even dramatic appeals of Pope Francisco to a world and a Europe that seem to prefer to make the mistakes of a hundred years ago instead of learning from the lessons of a past too close to be forgotten.

It is enough, with realism, wisdom and a multilateral attitude, to remember the fundamental meaning of the Universal Declaration of Human Rights, whose seventy years almost all of us like to celebrate.

It is enough to understand and take up the challenge of UN Secretary-General António Guterres and to support without any reservations or hesitation the Global Compact for Safe, Orderly and Regular Migration and the Pact for Refugees, starting with the European Union itself. And with the Presidency of the EU.

It is enough to make our attitude more proactive and promote these guidelines, even if they are not yet binding, never giving up on civic pedagogy, debate and enlightenment, also present here today, on the initiative of Universidade Autónoma de Lisboa and Professor Constança Urbano de Sousa.

Basically, do we really want to turn the spirit of the Universal Declaration of Human Rights and the Marrakesh compacts into a reality? Or do we choose to exacerbate hatreds, barriers and selfishness, thinking about winning elections or cultivating personal powers, where there are no elections or they come with early data? Is this the great choice of the so-called Grand people of this world, an ethical choice?

Do you really want to be grand at the risk of looking small in the eyes of many of your followers at any given moment? Or do you want to be small, convinced that the ephemeral popularity of the moment that tells you

are grand is more important than the implacable judgment of history, always more reliable than your conscience? Is that your answer?

I see it in your presence and in your commitment today. Now, it is up to all of us to make sure that the so-called Grands of this world are not dramatically small when confronted with what has no polls, no marketing, no electoral expression, but is the most important in life and the most important in politics: ethics to drive the government of the people.

# **ANNEX**



## **ANNEX I**

### *Programme of the International Conference co-organised by UAL, RATIO LEGIS and OBSERVARE with the financial support of Instituto Camões and FCT*

#### **9h-9h30**

Recepção dos Congressistas e distribuição dos documentos / *Reception of participants and distribution of conference folders*

#### **10h00** SESSÃO DE ABERTURA / *OPENING SESSION*

Presidente da CEU / *President of the CEU*, António de Lencastre Bernardo

Magnífico Reitor da UAL / *Dean of UAL*, José Amado da Silva

Sua Excelência o Ministro dos Negócios Estrangeiros / *HE the Foreign Affairs Minister*, Augusto Santos Silva

#### **10h30-12h30** PAINEL / *PANEL 1*

**A relevância das migrações para o desenvolvimento / *The relevance of migration for development***

Ruben Bahamonde Delgado – *UAL – Ratio Legis*

#### CONFERÊNCIAS / *SPEAKERS*

- **O nexo entre migrações e desenvolvimento / *The link between migration and development***  
Cristina Gortazar – *Universidade Comillas Madrid / Odysseus Network*
- **A relevância das migrações para o desenvolvimento dos países de origem / *The relevance of migration for the development of countries of origin***  
Rui Pena Pires – *ISCTE, Lisboa*

- **A relevância das migrações para o desenvolvimento dos países de destino / *The relevance of migration for the development of countries of destination***  
João Peixoto – ISEG, Lisboa

**12h30-14h00** Almoço / *Lunch*

**14h-16h00** PAINEL / *PANEL 2*

**Os dilemas da política europeia de imigração / *The Dilemmas of the European Immigration Policy***

Luís Moita – UAL – OBSERVARE

CONFERÊNCIAS / *SPEAKERS*

- **A securitização da política europeia de imigração e o seu impacto na gestão das migrações / *The securitization of the european immigration policy and its impacts on the management of migration***  
Nuno Piçarra – FD UNL / Odysseus Network
- **Como quebrar o nexo segurança-migrações e garantir uma gestão das migrações baseada no respeito dos direitos humanos / *How to break the security-migration nexus and ensure human rights management of migration***  
Constança Urbano de Sousa – UAL / Odysseus Network
- **A regulação da migração legal na União Europeia: desafios e oportunidades / *The EU regulation of legal migration: challenges and opportunities***  
Philippe de Bruycker – ULB Brussels / Odysseus Network Coordinator

**16h-16h30** Pausa para o café / *Coffee break*

**16h30-18h30** PAINEL / *PANEL 3*

**O Pacto Global para uma migração regular, segura e ordeira / *The Global Compact for Safe, Orderly and Regular Migration***

Luís Tomé – UAL – OBSERVARE

CONFERÊNCIAS / *SPEAKERS*

- **A gestão das migrações internacionais como um desafio global / *The management of international migration as a global challenge***  
Anna Terrón i Cusí – Director of FIIAPP
- **Os princípios orientadores do Pacto Global / *The Guiding Principles of the Global Compact***  
Ana Rita Gil – FD UNL/Católica
- **Os objetivos do Compacto Global / *The objectives of the Global Compact***  
Elspeth Guild – Queen Mary, University of London / Radboud University Nijmegen / Odysseus Network

**18h30** SESSÃO DE ENCERRAMENTO / *CLOSING SESSION*

Presidente da CEU / *President of the CEU*, António de Lencastre Bernardo

Magnífico Reitor da UAL / *Dean of UAL*, José Amado da Silva

Professora Doutora / *Professor (Ph.D.)*, Constança Urbano de Sousa

Sua Excelência o Presidente da República / *H E the President of the Portuguese Republic*, Marcelo Rebelo de Sousa



## ANNEX II

# *Global compact for safe, orderly and regular migration*

Text agreed on Friday, 13 July 2018, transmitted to the Intergovernmental Conference that took place in Marrakech on 10 and 11 December 2018. Available at: <https://undocs.org/A/CONF.231/3>

We, the Heads of State and Government and High Representatives, meeting in Morocco on 10 and 11 December 2018, reaffirming the New York Declaration for Refugees and Migrants and determined to make an important contribution to enhanced cooperation on international migration in all its dimensions, have adopted this Global Compact for Safe, Orderly and Regular Migration:

### **Preamble**

1. This Global Compact rests on the purposes and principles of the Charter of the United Nations.
2. It also rests on the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the other core international human rights treaties<sup>1</sup>; the United Nations Convention against Transnational Organized Crime, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air; the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the United Nations Framework Convention on Climate Change; the United Nations

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<sup>1</sup> International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Rights of the Child, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, International Convention for the Protection of All Persons from Enforced Disappearance, Convention on the Rights of Persons with Disabilities.

Convention to Combat Desertification; the Paris Agreement<sup>2</sup>; the International Labour Organization conventions on promoting decent work and labour migration<sup>3</sup>; as well as on the 2030 Agenda for Sustainable Development; the Addis Ababa Action Agenda; the Sendai Framework for Disaster Risk Reduction, and the New Urban Agenda.

3. Discussions about international migration at the global level are not new. We recall the advances made through the United Nations High-level Dialogues on International Migration and Development in 2006 and 2013. We also acknowledge the contributions of the Global Forum on Migration and Development launched in 2007. These platforms paved the way for the New York Declaration for Refugees and Migrants, through which we committed to elaborate a Global Compact for Refugees and to adopt this Global Compact for Safe, Orderly and Regular Migration, in two separate processes. The two Global Compacts, together, present complementary international cooperation frameworks that fulfil their respective mandates as laid out in the New York Declaration for Refugees and Migrants, which recognizes that migrants and refugees may face many common challenges and similar vulnerabilities.
4. Refugees and migrants are entitled to the same universal human rights and fundamental freedoms, which must be respected, protected and fulfilled at all times. However, migrants and refugees are distinct groups governed by separate legal frameworks. Only refugees are entitled to the specific international protection as defined by international refugee law. This Global Compact refers to migrants and presents a cooperative framework addressing migration in all its dimensions.
5. As a contribution to the preparatory process for this Global Compact, we recognize the inputs shared by Member States and relevant stakeholders during the consultation and stocktaking phases, as well as the report of the Secretary-General, “Making Migration Work for All”.
6. This Global Compact is a milestone in the history of the global dialogue and international cooperation on migration. It is rooted in the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda, and informed by the Declaration of the High-level Dialogue on International Migration and Development adopted in October 2013. It builds on the pioneering work of the former Special Representative of the Secretary-General for International Migration and Development, including his report of 3 February 2017.

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<sup>2</sup> Adopted under the UNFCCC in FCCC/CP/2015/10/Add.1, decision 1/CP.21.

<sup>3</sup> Migration for Employment Convention of 1949 (No.97), Migrant Workers Convention of 1975 (No.143), Equality of Treatment Convention of 1962 (No.118), Convention on Decent Work for Domestic Workers of 2011 (No.189).

7. This Global Compact presents a non-legally binding, cooperative framework that builds on the commitments agreed upon by Member States in the New York Declaration for Refugees and Migrants. It fosters international cooperation among all relevant actors on migration, acknowledging that no State can address migration alone, and upholds the sovereignty of States and their obligations under international law.

## **Our Vision And Guiding Principles**

8. This Global Compact expresses our collective commitment to improving cooperation on international migration. Migration has been part of the human experience throughout history, and we recognize that it is a source of prosperity, innovation and sustainable development in our globalized world, and that these positive impacts can be optimized by improving migration governance. The majority of migrants around the world today travel, live and work in a safe, orderly and regular manner. Nonetheless, migration undeniably affects our countries, communities, migrants and their families in very different and sometimes unpredictable ways.
9. It is crucial that the challenges and opportunities of international migration unite us, rather than divide us. This Global Compact sets out our common understanding, shared responsibilities and unity of purpose regarding migration, making it work for all.

## **Common Understanding**

10. This Global Compact is the product of an unprecedented review of evidence and data gathered during an open, transparent and inclusive process. We shared our realities and heard diverse voices, enriching and shaping our common understanding of this complex phenomenon. We learned that migration is a defining feature of our globalized world, connecting societies within and across all regions, making us all countries of origin, transit and destination. We recognize that there is a continuous need for international efforts to strengthen our knowledge and analysis of migration, as shared understandings will improve policies that unlock the potential of sustainable development for all. We must collect and disseminate quality data. We must ensure that current and potential migrants are fully informed about their rights, obligations and options for safe, orderly and regular migration, and are aware of the risks of irregular migration. We also must provide all our citizens with access to objective, evidence-based, clear information about the benefits and challenges

of migration, with a view to dispelling misleading narratives that generate negative perceptions of migrants.

### **Shared Responsibilities**

11. This Global Compact offers a 360-degree vision of international migration and recognizes that a comprehensive approach is needed to optimize the overall benefits of migration, while addressing risks and challenges for individuals and communities in countries of origin, transit and destination. No country can address the challenges and opportunities of this global phenomenon on its own. With this comprehensive approach, we aim to facilitate safe, orderly and regular migration, while reducing the incidence and negative impact of irregular migration through international cooperation and a combination of measures put forward in this Global Compact. We acknowledge our shared responsibilities to one another as Member States of the United Nations to address each other's needs and concerns over migration, and an overarching obligation to respect, protect and fulfil the human rights of all migrants, regardless of their migration status, while promoting the security and prosperity of all our communities.
12. This Global Compact aims to mitigate the adverse drivers and structural factors that hinder people from building and maintaining sustainable livelihoods in their countries of origin, and so compel them to seek a future elsewhere. It intends to reduce the risks and vulnerabilities migrants face at different stages of migration by respecting, protecting and fulfilling their human rights and providing them with care and assistance. It seeks to address legitimate concerns of communities, while recognizing that societies are undergoing demographic, economic, social and environmental changes at different scales that may have implications for and result from migration. It strives to create conducive conditions that enable all migrants to enrich our societies through their human, economic and social capacities, and thus facilitate their contributions to sustainable development at the local, national, regional and global levels.

### **Unity of Purpose**

13. This Global Compact recognizes that safe, orderly and regular migration works for all when it takes place in a well-informed, planned and consensual manner. Migration should never be an act of desperation. When it is, we must cooperate to respond to the needs of migrants in situations of vulnerability, and address the respective

challenges. We must work together to create conditions that allow communities and individuals to live in safety and dignity in their own countries. We must save lives and keep migrants out of harm's way. We must empower migrants to become full members of our societies, highlight their positive contributions, and promote inclusion and social cohesion. We must generate greater predictability and certainty for States, communities and migrants alike. To achieve this, we commit to facilitate and ensure safe, orderly and regular migration for the benefit of all.

14. Our success rests on the mutual trust, determination and solidarity of States to fulfil the objectives and commitments contained in this Global Compact. We unite, in a spirit of win-win cooperation, to address the challenges and opportunities of migration in all its dimensions through shared responsibility and innovative solutions. It is with this sense of common purpose that we take this historic step, fully aware that the Global Compact for Safe, Orderly and Regular Migration is a milestone, but not the end to our efforts. We commit to continue the multilateral dialogue at the United Nations through a periodic and effective follow-up and review mechanism, ensuring that the words in this document translate into concrete actions for the benefit of millions of people in every region of the world.
15. We agree that this Global Compact is based on a set of cross-cutting and interdependent guiding principles:
  - (a) *People-centred*: The Global Compact carries a strong human dimension to it, inherent to the migration experience itself. It promotes the well-being of migrants and the members of communities in countries of origin, transit and destination. As a result, the Global Compact places individuals at its core.
  - (b) *International cooperation*: The Global Compact is a non-legally binding cooperative framework that recognizes that no State can address migration on its own due to the inherently transnational nature of the phenomenon. It requires international, regional and bilateral cooperation and dialogue. Its authority rests on its consensual nature, credibility, collective ownership, joint implementation, follow-up and review.
  - (c) *National sovereignty*: The Global Compact reaffirms the sovereign right of States to determine their national migration policy and their prerogative to govern migration within their jurisdiction, in conformity with international law. Within their sovereign jurisdiction, States may distinguish between regular and irregular migration status, including as they determine their legislative and policy measures for the implementation of the Global Compact, taking into account different national realities, policies, priorities and requirements for entry, residence and work, in accordance with international law.
  - (d) *Rule of law and due process*: The Global Compact recognizes that respect for the rule of law, due process and access to justice are fundamental to all aspects of

migration governance. This means that the State, public and private institutions and entities, as well as persons themselves are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international law.

- (e) *Sustainable development*: The Global Compact is rooted in the 2030 Agenda for Sustainable Development, and builds upon its recognition that migration is a multidimensional reality of major relevance for the sustainable development of countries of origin, transit and destination, which requires coherent and comprehensive responses. Migration contributes to positive development outcomes and to realizing the goals of the 2030 Agenda for Sustainable Development, especially when it is properly managed. The Global Compact aims to leverage the potential of migration for the achievement of all Sustainable Development Goals, as well as the impact this achievement will have on migration in the future.
- (f) *Human rights*: The Global Compact is based on international human rights law and upholds the principles of non-regression and non-discrimination. By implementing the Global Compact, we ensure effective respect, protection and fulfilment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle. We also reaffirm the commitment to eliminate all forms of discrimination, including racism, xenophobia and intolerance against migrants and their families.
- (g) *Gender-responsive*: The Global Compact ensures that the human rights of women, men, girls and boys are respected at all stages of migration, their specific needs are properly understood and addressed and they are empowered as agents of change. It mainstreams a gender perspective, promotes gender equality and the empowerment of all women and girls, recognizing their independence, agency and leadership in order to move away from addressing migrant women primarily through a lens of victimhood.
- (h) *Child-sensitive*: The Global Compact promotes existing international legal obligations in relation to the rights of the child, and upholds the principle of the best interests of the child at all times, as a primary consideration in all situations concerning children in the context of international migration, including unaccompanied and separated children.
- (i) *Whole-of-government approach*: The Global Compact considers that migration is a multidimensional reality that cannot be addressed by one government policy sector alone. To develop and implement effective migration policies and practices, a whole-of-government approach is needed to ensure horizontal and vertical policy coherence across all sectors and levels of government.
- (j) *Whole-of-society approach*: The Global Compact promotes broad multi-stakeholder partnerships to address migration in all its dimensions by including

migrants, diasporas, local communities, civil society, academia, the private sector, parliamentarians, trade unions, national human rights institutions, the media and other relevant stakeholders in migration governance.

## **Our cooperative framework**

16. With the New York Declaration for Refugees and Migrants we adopted a political declaration and a set of commitments. Reaffirming that Declaration in its entirety, we build upon it by laying out the following cooperative framework comprised of 23 objectives, implementation, as well as follow-up and review. Each objective contains a commitment, followed by a range of actions considered to be relevant policy instruments and best practices. To fulfil the 23 objectives, we will draw from these actions to achieve safe, orderly and regular migration along the migration cycle.

### **Objectives for Safe, Orderly and Regular Migration**

- (1) Collect and utilize accurate and disaggregated data as a basis for evidence-based policies
- (2) Minimize the adverse drivers and structural factors that compel people to leave their country of origin
- (3) Provide accurate and timely information at all stages of migration
- (4) Ensure that all migrants have proof of legal identity and adequate documentation
- (5) Enhance availability and flexibility of pathways for regular migration
- (6) Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work
- (7) Address and reduce vulnerabilities in migration
- (8) Save lives and establish coordinated international efforts on missing migrants
- (9) Strengthen the transnational response to smuggling of migrants
- (10) Prevent, combat and eradicate trafficking in persons in the context of international migration
- (11) Manage borders in an integrated, secure and coordinated manner
- (12) Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral
- (13) Use migration detention only as a measure of last resort and work towards alternatives

- (14) Enhance consular protection, assistance and cooperation throughout the migration cycle
- (15) Provide access to basic services for migrants
- (16) Empower migrants and societies to realize full inclusion and social cohesion
- (17) Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration
- (18) Invest in skills development and facilitate mutual recognition of skills, qualifications and competences
- (19) Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries
- (20) Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants
- (21) Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration
- (22) Establish mechanisms for the portability of social security entitlements and earned benefits
- (23) Strengthen international cooperation and global partnerships for safe, orderly and regular migration

## **Objectives and commitments**

### **OBJECTIVE 1: Collect and utilize accurate and disaggregated data as a basis for evidence- based policies**

17. We commit to strengthen the global evidence base on international migration by improving and investing in the collection, analysis and dissemination of accurate, reliable, comparable data, disaggregated by sex, age, migration status and other characteristics relevant in national contexts, while upholding the right to privacy under international human rights law and protecting personal data. We further commit to ensure this data fosters research, guides coherent and evidence-based policy-making and well-informed public discourse, and allows for effective monitoring and evaluation of the implementation of commitments over time.

To realize this commitment, we will draw from the following actions:

- a) Elaborate and implement a comprehensive strategy for improving migration data at local, national, regional and global levels, with the participation of all relevant stakeholders, under the guidance of the United Nations Statistical Commission, by harmonizing methodologies for data collection, and strengthening analysis and dissemination of migration-related data and indicators;

- b) Improve international comparability and compatibility of migration statistics and national data systems, including by further developing and applying the statistical definition of an international migrant, elaborating a set of standards to measure migrant stocks and flows, and documenting migration patterns and trends, characteristics of migrants, as well as drivers and impacts of migration;
- c) Develop a global programme to build and enhance national capacities in data collection, analysis and dissemination to share data, address data gaps and assess key migration trends, that encourages collaboration between relevant stakeholders at all levels, provides dedicated training, financial support and technical assistance, leverages new data sources, including big data, and is reviewed by the United Nations Statistical Commission on a regular basis;
- d) Collect, analyse and use data on the effects and benefits of migration, as well as the contributions of migrants and diasporas to sustainable development, with a view to inform the implementation of the 2030 Agenda for Sustainable Development and related strategies and programmes at the local, national, regional and global levels;
- e) Support further development of and collaboration between existing global and regional databases and depositories, including the IOM Global Migration Data Portal and the World Bank Global Knowledge Partnership on Migration and Development, with a view to systematically consolidate relevant data in a transparent and user-friendly manner, while encouraging inter-agency collaboration to avoid duplication;
- f) Establish and strengthen regional centres for research and training on migration or migration observatories, such as the African Observatory for Migration and Development, to collect and analyse data in line with United Nations standards, including on best practices, the contributions of migrants, the overall economic, social and political benefits and challenges of migration in countries of origin, transit and destination, as well as drivers of migration, with a view to establishing shared strategies and maximizing the value of disaggregated migration data, in coordination with existing regional and subregional mechanisms;
- g) Improve national data collection by integrating migration-related topics in national censuses, as early as practicable, such as on country of birth, country of birth of parents, country of citizenship, country of residence five years prior to the census, most recent arrival date and reason for migrating, to ensure timely analysis and dissemination of results, disaggregated and tabulated in accordance with international standards, for statistical purposes;
- h) Conduct household, labour force and other surveys to collect information on the social and economic integration of migrants or add standard migration

modules to existing household surveys to improve national, regional and international comparability, and make collected data available through public-use of statistical microdata files;

- i) Enhance collaboration between State units responsible for migration data and national statistical offices to produce migration-related statistics, including by using administrative records for statistical purposes, such as border records, visa, resident permits, population registers and other relevant sources, while upholding the right to privacy and protecting personal data;
- j) Develop and use country-specific migration profiles, which include disaggregated data on all migration-relevant aspects in a national context, including those on labour market needs, demand and availability of skills, the economic, environmental and social impacts of migration, remittance transfer costs, health, education, occupation, living and working conditions, wages, and the needs of migrants and receiving communities, in order to develop evidence-based migration policies;
- k) Cooperate with relevant stakeholders in countries of origin, transit and destination to develop research, studies and surveys on the interrelationship between migration and the three dimensions of sustainable development, the contributions and skills of migrants and diasporas, as well as their ties to the countries of origin and destination.

**OBJECTIVE 2: Minimize the adverse drivers and structural factors that compel people to leave their country of origin**

18. We commit to create conducive political, economic, social and environmental conditions for people to lead peaceful, productive and sustainable lives in their own country and to fulfil their personal aspirations, while ensuring that desperation and deteriorating environments do not compel them to seek a livelihood elsewhere through irregular migration. We further commit to ensure timely and full implementation of the 2030 Agenda for Sustainable Development, as well as to build upon and invest in the implementation of other existing frameworks, in order to enhance the overall impact of the Global Compact to facilitate safe, orderly and regular migration.

To realize this commitment, we will draw from the following actions:

- a) Promote the implementation of the 2030 Agenda for Sustainable Development, including the Sustainable Development Goals and the Addis Ababa Action Agenda, and the commitment to reach the furthest behind first, as well as

the Paris Agreement<sup>4</sup> and the Sendai Framework for Disaster Risk Reduction 2015-2030;

- b) Invest in programmes that accelerate States' fulfilment of the Sustainable Development Goals with the aim of eliminating the adverse drivers and structural factors that compel people to leave their country of origin, including through poverty eradication, food security, health and sanitation, education, inclusive economic growth, infrastructure, urban and rural development, employment creation, decent work, gender equality and empowerment of women and girls, resilience and disaster risk reduction, climate change mitigation and adaptation, addressing the socioeconomic effects of all forms of violence, non-discrimination, rule of law and good governance, access to justice and protection of human rights, as well as creating and maintaining peaceful and inclusive societies with effective, accountable and transparent institutions;
- c) Establish or strengthen mechanisms to monitor and anticipate the development of risks and threats that might trigger or affect migration movements, strengthen early warning systems, develop emergency procedures and toolkits, launch emergency operations, and support post-emergency recovery, in close cooperation with and support of other States, relevant national and local authorities, National Human Rights Institutions, and civil society;
- 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;
- f) Strengthen collaboration between humanitarian and development actors, including by promoting joint analysis, multi-donor approaches and multi-year funding cycles, in order to develop long-term responses and outcomes that ensure respect for the rights of affected individuals, resilience and coping capacities of populations, as well as economic and social self-reliance, and by ensuring these efforts take migration into account;

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<sup>4</sup> Adopted under the UNFCCC in FCCC/CP/2015/10/Add.1, decision 1/CP.21. 8

- g) Account for migrants in national emergency preparedness and response, including by taking into consideration relevant recommendations from State-led consultative processes, such as the Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster (MICIC Guidelines);

**Natural disasters, the adverse effects of climate change, and environmental degradation**

- h) Strengthen joint analysis and sharing of information to better map, understand, predict and address migration movements, such as those that may result from sudden-onset and slow-onset natural disasters, the adverse effects of climate change, environmental degradation, as well as other precarious situations, while ensuring the effective respect, protection and fulfilment of the human rights of all migrants;
- i) Develop adaptation and resilience strategies to sudden-onset and slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, such as desertification, land degradation, drought and sea level rise, taking into account the potential implications on migration, while recognizing that adaptation in the country of origin is a priority;
- j) Integrate displacement considerations into disaster preparedness strategies and promote cooperation with neighbouring and other relevant countries to prepare for early warning, contingency planning, stockpiling, coordination mechanisms, evacuation planning, reception and assistance arrangements, and public information;
- k) Harmonize and develop approaches and mechanisms at subregional and regional levels to address the vulnerabilities of persons affected by sudden-onset and slow-onset natural disasters, by ensuring they have access to humanitarian assistance that meets their essential needs with full respect for their rights wherever they are, and by promoting sustainable outcomes that increase resilience and self-reliance, taking into account the capacities of all countries involved;
- l) Develop coherent approaches to address the challenges of migration movements in the context of sudden-onset and slow-onset natural disasters, including by taking into consideration relevant recommendations from State-led consultative processes, such as the Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, and the Platform on Disaster Displacement.

**OBJECTIVE 3: Provide accurate and timely information at all stages of migration**

19. We commit to strengthen our efforts to provide, make available and disseminate accurate, timely, accessible, and transparent information on migration-related aspects for and between States, communities and migrants at all stages of migration. We further commit to use this information to develop migration policies that provide a high degree of predictability and certainty for all actors involved.

To realize this commitment, we will draw from the following actions:

- a) Launch and publicize a centralized and publicly accessible national website to make information available on regular migration options, such as on country-specific immigration laws and policies, visa requirements, application formalities, fees and conversion criteria, employment permit requirements, professional qualification requirements, credential assessment and equivalences, training and study opportunities, and living costs and conditions, in order to inform the decisions of migrants;
- b) Promote and improve systematic bilateral, regional and international cooperation and dialogue to exchange information on migration-related trends, including through joint databases, online platforms, international training centres and liaison networks, while upholding the right to privacy and protecting personal data;
- c) Establish open and accessible information points along relevant migration routes that can refer migrants to child-sensitive and gender-responsive support and counselling, offer opportunities to communicate with consular representatives of the country of origin, and make available relevant information, including on human rights and fundamental freedoms, appropriate protection and assistance, options and pathways for regular migration, and possibilities for return, in a language the person concerned understands;
- d) Provide newly arrived migrants with targeted, gender-responsive, child-sensitive, accessible and comprehensive information and legal guidance on their rights and obligations, including on compliance with national and local laws, obtaining of work and resident permits, status adjustments, registration with authorities, access to justice to file complaints about rights violations, as well as on access to basic services;
- e) Promote multi-lingual, gender-responsive and evidence-based information campaigns and organize awareness-raising events and pre-departure orientation trainings in countries of origin, in cooperation with local authorities, consular and diplomatic missions, the private sector, academia, migrant and diaspora organizations and civil society, in order to promote safe, orderly and regular migration, as well as to highlight the risks associated with irregular and unsafe migration.

**OBJECTIVE 4: Ensure that all migrants have proof of legal identity and adequate documentation**

20. We commit to fulfil the right of all individuals to a legal identity by providing all our nationals with proof of nationality and relevant documentation, allowing national and local authorities to ascertain a migrant's legal identity upon entry, during stay, and for return, as well as to ensure effective migration procedures, efficient service provision, and improved public safety. We further commit to ensure, through appropriate measures, that migrants are issued adequate documentation and civil registry documents, such as birth, marriage and death certificates, at all stages of migration, as a means to empower migrants to effectively exercise their human rights.

To realize this commitment, we will draw from the following actions:

- a) Improve civil registry systems, with a particular focus on reaching unregistered persons and our nationals residing in other countries, including by providing relevant identity and civil registry documents, strengthening capacities, and investing in information and communication technology solutions, while upholding the right to privacy and protecting personal data;
- b) Harmonize travel documents in line with the specifications of the International Civil Aviation Organization to facilitate interoperable and universal recognition of travel documents, as well as to combat identity fraud and document forgery, including by investing in digitalization, and strengthening mechanisms for biometric data-sharing, while upholding the right to privacy and protecting personal data;
- c) Ensure adequate, timely, reliable and accessible consular documentation to our nationals residing in other countries, including identity and travel documents, making use of information and communications technology, as well as community outreach, particularly in remote areas;
- d) Facilitate access to personal documentation, such as passports and visas, and ensure that relevant regulations and criteria to obtain such documentation are non-discriminatory, by undertaking a gender-responsive and age-sensitive review in order to prevent increased risk of vulnerabilities throughout the migration cycle;
- e) Strengthen measures to reduce statelessness, including by registering migrants' births, ensuring that women and men can equally confer their nationality to their children, and providing nationality to children born in another State's territory, especially in situations where a child would otherwise be stateless, fully respecting the human right to a nationality and in accordance with national legislation;

- f) Review and revise requirements to prove nationality at service delivery centres to ensure that migrants without proof of nationality or legal identity are not precluded from accessing basic services nor denied their human rights;
- g) Build upon existing practices at the local level that facilitate participation in community life, such as interaction with authorities and access to relevant services, through the issuance of registration cards to all persons living in a municipality, including migrants, that contain basic personal information, while not constituting entitlements to citizenship or residency.

### **OBJECTIVE 5: Enhance availability and flexibility of pathways for regular migration**

21. We commit to adapt options and pathways for regular migration in a manner that facilitates labour mobility and decent work reflecting demographic and labour market realities, optimizes education opportunities, upholds the right to family life, and responds to the needs of migrants in a situation of vulnerability, with a view to expanding and diversifying availability of pathways for safe, orderly and regular migration.

To realize this commitment, we will draw from the following actions:

- 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 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 optimize skills matching in labour markets, address 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;

- e) Promote effective skills matching in the national economy by involving local authorities and other relevant stakeholders, particularly the private sector and trade unions, in the analysis of the local labour market, identification of skills gaps, definition of required skills profiles, and evaluation of the efficacy of labour migration policies, in order to ensure market- responsive contractual labour mobility through regular pathways;
- f) Foster efficient and effective skills-matching programmes by reducing visa and permit processing timeframes for standard employment authorizations, and by offering accelerated and facilitated visa and permit processing for employers with a track record of compliance;
- g) Develop or build on existing national and regional practices for admission and stay of appropriate duration based on compassionate, humanitarian or other considerations for migrants compelled to leave their countries of origin, due to sudden-onset natural disasters and other precarious situations, such as by providing humanitarian visas, private sponsorships, access to education for children, and temporary work permits, while adaptation in or return to their country of origin is not possible;
- h) Cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin due to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, such as desertification, land degradation, drought and sea level rise, including by devising planned relocation and visa options, in cases where adaptation in or return to their country of origin is not possible;
- i) Facilitate access to procedures for family reunification for migrants at all skills levels through appropriate measures that promote the realization of the right to family life and the best interests of the child, including by reviewing and revising applicable requirements, such as on income, language proficiency, length of stay, work authorization, and access to social security and services;
- j) Expand available options for academic mobility, including through bilateral and multilateral agreements that facilitate academic exchanges, such as scholarships for students and academic professionals, visiting professorships, joint training programmes, and international research opportunities, in cooperation with academic institutions and other relevant stakeholders.

**OBJECTIVE 6: Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work**

22. We commit to review existing recruitment mechanisms to guarantee that they are fair and ethical, and to protect all migrant workers against all forms of exploitation and abuse in order to guarantee decent work and maximize the socioeconomic contributions of migrants in both their countries of origin and destination.

To realize this commitment, we will draw from the following actions:

- a) Promote signature, ratification, accession and implementation of relevant international instruments related to international labour migration, labour rights, decent work and forced labour;
- b) Build upon the work of existing bilateral, subregional and regional platforms that have overcome obstacles and identified best practices in labour mobility, by facilitating cross- regional dialogue to share this knowledge, and to promote the full respect for the human and labour rights of migrant workers at all skills levels, including migrant domestic workers;
- c) Improve regulations on public and private recruitment agencies, in order to align them with international guidelines and best practices, prohibit recruiters and employers from charging or shifting recruitment fees or related costs to migrant workers in order to prevent debt bondage, exploitation and forced labour, including by establishing mandatory, enforceable mechanisms for effective regulation and monitoring of the recruitment industry;
- d) Establish partnerships with all relevant stakeholders, including employers, migrant workers organizations and trade unions, to ensure that migrant workers are provided written contracts and are made aware of the provisions therein, the regulations relating to international labour recruitment and employment in the country of destination, their rights and obligations, as well as on how to access effective complaint and redress mechanisms, in a language they understand;
- e) Enact and implement national laws that sanction human and labour rights violations, especially in cases of forced and child labour, and cooperate with the private sector, including employers, recruiters, subcontractors and suppliers, to build partnerships that promote conditions for decent work, prevent abuse and exploitation, and ensure that the roles and responsibilities within the recruitment and employment processes are clearly outlined, thereby enhancing supply chain transparency;
- f) Strengthen the enforcement of fair and ethical recruitment and decent work norms and policies by enhancing the abilities of labour inspectors and other authorities to better monitor recruiters, employers and service providers in all sectors, ensuring that international human rights and labour law is observed

- to prevent all forms of exploitation, slavery, servitude, and forced, compulsory or child labour;
- g) Develop and strengthen labour migration and fair and ethical recruitment processes that allow migrants to change employers and modify the conditions or length of their stay with minimal administrative burden, while promoting greater opportunities for decent work and respect for international human rights and labour law;
  - h) Take measures that prohibit the confiscation or non-consensual retention of work contracts, and travel or identity documents from migrants, in order to prevent abuse, all forms of exploitation, forced, compulsory and child labour, extortion and other situations of dependency, and to allow migrants to fully exercise their human rights;
  - i) Provide migrant workers engaged in remunerated and contractual labour with the same labour rights and protections extended to all workers in the respective sector, such as the rights to just and favourable conditions of work, to equal pay for work of equal value, to freedom of peaceful assembly and association, and to the highest attainable standard of physical and mental health, including through wage protection mechanisms, social dialogue and membership in trade unions;
  - j) Ensure migrants working in the informal economy have safe access to effective reporting, complaint, and redress mechanisms in cases of exploitation, abuse or violations of their rights in the workplace, in a manner that does not exacerbate vulnerabilities of migrants that denounce such incidents and allow them to participate in respective legal proceedings whether in the country of origin or destination;
  - k) Review relevant national labour laws, employment policies and programmes to ensure that they include considerations of the specific needs and contributions of women migrant workers, especially in domestic work and lower-skilled occupations, and adopt specific measures to prevent, report, address and provide effective remedy for all forms of exploitation and abuse, including sexual and gender-based violence, as a basis to promote gender-responsive labour mobility policies;
  - l) Develop and improve national policies and programmes relating to international labour mobility, including by taking into consideration relevant recommendations of the ILO General Principles and Operational Guidelines for Fair Recruitment, the United Nations Guiding Principles on Business and Human Rights, and the IOM International Recruitment Integrity System (IRIS).

## **OBJECTIVE 7: Address and reduce vulnerabilities in migration**

23. We commit to respond to the needs of migrants who face situations of vulnerability, which may arise from the circumstances in which they travel or the conditions they face in countries of origin, transit and destination, by assisting them and protecting their human rights, in accordance with our obligations under international law. We further commit to uphold the best interests of the child at all times, as a primary consideration in situations where children are concerned, and to apply a gender-responsive approach in addressing vulnerabilities, including in responses to mixed movements.

To realize this commitment, we will draw from the following actions:

- a) Review relevant policies and practices to ensure they do not create, exacerbate or unintentionally increase vulnerabilities of migrants, including by applying a human rights- based, gender- and disability-responsive, as well as an age- and child-sensitive approach;
- b) Establish comprehensive policies and develop partnerships that provide migrants in a situation of vulnerability, regardless of their migration status, with necessary support at all stages of migration, through identification and assistance, as well as protection of their human rights, in particular in cases related to women at risk, children, especially those unaccompanied or separated from their families, members of ethnic and religious minorities, victims of violence, including sexual and gender-based violence, older persons, persons with disabilities, persons who are discriminated against on any basis, indigenous peoples, workers facing exploitation and abuse, domestic workers, victims of trafficking in persons, and migrants subject to exploitation and abuse in the context of smuggling of migrants;
- c) Develop gender-responsive migration policies to address the particular needs and vulnerabilities of migrant women, girls and boys, which may include assistance, health care, psychological and other counselling services, as well as access to justice and effective remedies, especially in cases of sexual and gender-based violence, abuse and exploitation;
- d) Review relevant existing labour laws and work conditions to identify and effectively address workplace-related vulnerabilities and abuses of migrant workers at all skills levels, including domestic workers, and those working in the informal economy, in cooperation with relevant stakeholders, particularly the private sector;
- e) Account for migrant children in national child protection systems by establishing robust procedures for the protection of migrant children in relevant legislative, administrative and judicial proceedings and decisions, as well as in all migration

- policies and programmes that impact children, including consular protection policies and services, as well as cross-border cooperation frameworks, in order to ensure the best interests of the child are appropriately integrated, consistently interpreted and applied in coordination and cooperation with child protection authorities;
- f) Protect unaccompanied and separated children at all stages of migration through the establishment of specialized procedures for their identification, referral, care and family reunification, and provide access to health care services, including mental health, education, legal assistance and the right to be heard in administrative and judicial proceedings, including by swiftly appointing a competent and impartial legal guardian, as essential means to address their particular vulnerabilities and discrimination, protect them from all forms of violence, and provide access to sustainable solutions that are in their best interests;
  - g) Ensure migrants have access to public or affordable independent legal assistance and representation in legal proceedings that affect them, including during any related judicial or administrative hearing, in order to safeguard that all migrants, everywhere, are recognized as persons before the law and that the delivery of justice is impartial and non-discriminatory;
  - h) Develop accessible and expedient procedures that facilitate transitions from one status to another and inform migrants of their rights and obligations, so as to prevent migrants from falling into an irregular status in the country of destination, to reduce precariousness of status and related vulnerabilities, as well as to enable individual status assessments for migrants, including for those who have fallen out of regular status, without fear of arbitrary expulsion;
  - i) Build on existing practices to facilitate access for migrants in an irregular status to an individual assessment that may lead to regular status, on a case by case basis and with clear and transparent criteria, especially in cases where children, youth and families are involved, as an option to reduce vulnerabilities, as well as for States to ascertain better knowledge of the resident population;
  - j) Apply specific support measures to ensure that migrants caught up in situations of crisis in countries of transit and destination have access to consular protection and humanitarian assistance, including by facilitating cross-border and broader international cooperation, as well as by taking migrant populations into account in crisis preparedness, emergency response and post-crisis action;
  - k) Involve local authorities and relevant stakeholders in the identification, referral and assistance of migrants in a situation of vulnerability, including through agreements with national protection bodies, legal aid and service providers, as well as the engagement of mobile response teams, where they exist;

- l) Develop national policies and programmes to improve national responses that address the needs of migrants in situations of vulnerability, including by taking into consideration relevant recommendations of the Global Migration Group *Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations*.

**OBJECTIVE 8: Save lives and establish coordinated international efforts on missing migrants**

24. We commit to cooperate internationally to save lives and prevent migrant deaths and injuries through individual or joint search and rescue operations, standardized collection and exchange of relevant information, assuming collective responsibility to preserve the lives of all migrants, in accordance with international law. We further commit to identify those who have died or gone missing, and to facilitate communication with affected families.

To realize this commitment, we will draw from the following actions:

- a) Develop procedures and agreements on search and rescue of migrants, with the primary objective to protect migrants' right to life that uphold the prohibition of collective expulsion, guarantee due process and individual assessments, enhance reception and assistance capacities, and ensure that the provision of assistance of an exclusively humanitarian nature for migrants is not considered unlawful;
- b) Review the impacts of migration-related policies and laws to ensure that these do not raise or create the risk of migrants going missing, including by identifying dangerous transit routes used by migrants, by working with other States as well as relevant stakeholders and international organizations to identify contextual risks and establishing mechanisms for preventing and responding to such situations, with particular attention to migrant children, especially those unaccompanied or separated;
- c) Enable migrants to communicate with their families without delay to inform them that they are alive by facilitating access to means of communication along routes and at their destination, including in places of detention, as well as access to consular missions, local authorities and organizations that can provide assistance with family contacts, especially in cases of unaccompanied or separated migrant children, as well as adolescents;
- d) Establish transnational coordination channels, including through consular cooperation, and designate contact points for families looking for missing migrants, through which families can be kept informed on the status of the search and

- obtain other relevant information, while respecting the right to privacy and protecting personal data;
- e) Collect, centralize and systematize data regarding corpses and ensure traceability after burial, in accordance with internationally accepted forensic standards, and establish coordination channels at transnational level to facilitate identification and the provision of information to families;
  - f) Make all efforts, including through international cooperation, to recover, identify and repatriate the remains of deceased migrants to their countries of origin, respecting the wishes of grieving families, and, in the case of unidentified individuals, facilitate the identification and subsequent recovery of the mortal remains, ensuring that the remains of deceased migrants are treated in a dignified, respectful and proper manner.

#### **OBJECTIVE 9: Strengthen the transnational response to smuggling of migrants**

25. We commit to intensify joint efforts to prevent and counter smuggling of migrants by strengthening capacities and international cooperation to prevent, investigate, prosecute and penalize the smuggling of migrants in order to end the impunity of smuggling networks. We further commit to ensure that migrants shall not become liable to criminal prosecution for the fact of having been the object of smuggling, notwithstanding potential prosecution for other violations of national law. We also commit to identify smuggled migrants to protect their human rights, taking into consideration the special needs of women and children, and assisting in particular those migrants subject to smuggling under aggravating circumstances, in accordance with international law.

To realize this commitment, we will draw from the following actions:

- a) Promote ratification, accession and implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organised Crime (UNTOC);
- b) Use transnational, regional and bilateral mechanisms to share relevant information and intelligence on smuggling routes, modus operandi and financial transactions of smuggling networks, vulnerabilities faced by smuggled migrants, and other data to dismantle the smuggling networks and enhance joint responses;
- c) Develop gender-responsive and child-sensitive cooperation protocols along migration routes that outline step-by-step measures to adequately identify and assist smuggled migrants, in accordance with international law, as well as to facilitate cross-border law enforcement and intelligence cooperation in order to prevent and counter smuggling of migrants with the aim to end impunity for

- smugglers and prevent irregular migration, while ensuring that counter-smuggling measures are in full respect for human rights;
- d) Adopt legislative and other measures as may be necessary to establish the smuggling of migrants as a criminal offence, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit for the smuggler, and include enhanced penalties for smuggling of migrants under aggravating circumstances, in accordance with international law;
  - e) Design, review or amend relevant policies and procedures to distinguish between the crimes of smuggling of migrants and trafficking in persons by using the correct definitions and applying distinct responses to these separate crimes, while recognizing that smuggled migrants might also become victims of trafficking in persons, therefore requiring appropriate protection and assistance;
  - f) Take measures to prevent the smuggling of migrants along the migration cycle in partnership with other States and relevant stakeholders, including by cooperating in the fields of development, public information, justice, as well as training and technical capacity- building at national and local levels, paying special attention to geographic areas from where irregular migration systematically originates;

**OBJECTIVE 10: Prevent, combat and eradicate trafficking in persons in the context of international migration**

26. We commit to take legislative or other measures to prevent, combat and eradicate trafficking in persons in the context of international migration by strengthening capacities and international cooperation to investigate, prosecute and penalize trafficking in persons, discouraging demand that fosters exploitation leading to trafficking, and ending impunity of trafficking networks. We further commit to enhance the identification and protection of, and assistance to migrants who have become victims of trafficking, paying particular attention to women and children. To realize this commitment, we will draw from the following actions:
- a) Promote ratification of, accession to and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (UNTOC);
  - b) Promote the implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons and take into consideration relevant recommendations of the UNODC Toolkit to Combat Trafficking in Persons and other

- relevant UNODC documents when developing and implementing national and regional policies and measures relating to trafficking in persons;
- c) Monitor irregular migration routes which may be exploited by human trafficking networks to recruit and victimize smuggled or irregular migrants, in order to strengthen cooperation at bilateral, regional and cross-regional levels on prevention, investigation, and prosecution of perpetrators, as well as on identification of, and protection and assistance to victims of trafficking in persons;
  - d) Share relevant information and intelligence through transnational and regional mechanisms, including on the modus operandi, economic models and conditions driving trafficking networks, strengthen cooperation between all relevant actors, including financial intelligence units, regulators and financial institutions, to identify and disrupt financial flows associated with trafficking in persons, and enhance judicial cooperation and enforcement with the aim to ensure accountability and end impunity;
  - e) Apply measures that address the particular vulnerabilities of women, men, girls and boys, regardless of their migration status, that have become or are at risk of becoming victims of trafficking in persons and other forms of exploitation by facilitating access to justice and safe reporting without fear of detention, deportation or penalty, focusing on prevention, identification, appropriate protection and assistance, and addressing specific forms of abuse and exploitation;
  - f) Ensure that definitions of trafficking in persons used in legislation, migration policy and planning, as well as in judicial prosecutions are in accordance with international law, in order to distinguish between the crimes of trafficking in persons and smuggling of migrants;
  - g) Strengthen legislation and relevant procedures to enhance prosecution of traffickers, avoid criminalization of migrants who are victims of trafficking in persons for trafficking-related offences, and ensure that the victim receives appropriate protection and assistance, not conditional upon cooperation with the authorities against suspected traffickers;
  - h) Provide migrants that have become victims of trafficking in persons with protection and assistance, such as measures for physical, psychological and social recovery, as well as measures that permit them to remain in the country of destination, temporarily or permanently, in appropriate cases, facilitating victims' access to justice, including redress and compensation, in accordance with international law;
  - i) Create national and local information systems and training programmes which alert and educate citizens, employers, as well as public officials and law enforcement officers, and strengthen capacities to identify signs of trafficking in persons,

such as forced, compulsory or child labour, in countries of origin, transit and destination;

- j) Invest in awareness-raising campaigns, in partnership with relevant stakeholders, for migrants and prospective migrants on the risks and dangers of trafficking in persons, and provide them with information on preventing and reporting trafficking activities.

### **OBJECTIVE 11: Manage borders in an integrated, secure and coordinated manner**

27. We commit to manage our national borders in a coordinated manner, promoting bilateral and regional cooperation, ensuring security for States, communities and migrants, and facilitating safe and regular cross-border movements of people while preventing irregular migration. We further commit to implement border management policies that respect national sovereignty, the rule of law, obligations under international law, human rights of all migrants, regardless of their migration status, and are non-discriminatory, gender-responsive and child-sensitive.

To realize this commitment, we will draw from the following actions:

- a) Enhance international, regional and cross-regional border management cooperation, taking into consideration the particular situation of countries of transit, on proper identification, timely and efficient referral, assistance and appropriate protection of migrants in situations of vulnerability at or near international borders, in compliance with international human rights law, by adopting whole-of-government approaches, implementing joint cross-border trainings, and fostering capacity-building measures;
- b) Establish appropriate structures and mechanisms for effective integrated border management by ensuring comprehensive and efficient border crossing procedures, including through pre-screening of arriving persons, pre-reporting by carriers of passengers, and use of information and communication technology, while upholding the principle of non-discrimination, respecting the right to privacy and protecting personal data;
- c) Review and revise relevant national procedures for border screening, individual assessment and interview processes to ensure due process at international borders and that all migrants are treated in accordance with international human rights law, including through cooperation with National Human Rights Institutions and other relevant stakeholders;
- d) Develop technical cooperation agreements that enable States to request and offer assets, equipment and other technical assistance to strengthen border

management, particularly in the area of search and rescue as well as other emergency situations;

- e) Ensure that child protection authorities are promptly informed and assigned to participate in procedures for the determination of the best interests of the child once an unaccompanied or separated child crosses an international border, in accordance with international law, including by training border officials in the rights of the child and child-sensitive procedures, such as those that prevent family separation and reunite families when family separation occurs;
- f) Review and revise relevant laws and regulations to determine whether sanctions are appropriate to address irregular entry or stay and, if so, to ensure that they are proportionate, equitable, non-discriminatory, and fully consistent with due process and other obligations under international law;
- g) Improve cross-border collaboration among neighbouring and other States relating to the treatment given to persons crossing or seeking to cross international borders, including by taking into consideration relevant recommendations from the OHCHR Recommended Principles and Guidelines on Human Rights at International Borders when identifying best practices.

**OBJECTIVE 12: Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral**

28. We commit to increase legal certainty and predictability of migration procedures by developing and strengthening effective and human rights-based mechanisms for the adequate and timely screening and individual assessment of all migrants for the purpose of identifying and facilitating access to the appropriate referral procedures, in accordance with international law.

To realize this commitment, we will draw from the following actions:

- a) Increase transparency and accessibility of migration procedures by communicating the requirements for entry, admission, stay, work, study or other activities, and introducing technology to simplify application procedures, in order to avoid unnecessary delays and expenses for States and migrants;
- b) Develop and conduct intra- and cross-regional specialized human rights and trauma-informed trainings for first responders and government officials, including law enforcement authorities, border officials, consular representatives and judicial bodies, to facilitate and standardize identification and referral of, as well as appropriate assistance and counselling in a culturally-sensitive way, to victims of trafficking in persons, migrants in situations of vulnerability, including children, in particular those unaccompanied or separated, and persons affected

- by any form of exploitation and abuse related to smuggling of migrants under aggravating circumstances;
- c) Establish gender-responsive and child-sensitive referral mechanisms, including improved screening measures and individual assessments at borders and places of first arrival, by applying standardized operating procedures developed in coordination with local authorities, National Human Rights Institutions, international organizations and civil society;
  - d) Ensure that migrant children are promptly identified at places of first arrival in countries of transit and destination, and, if unaccompanied or separated, are swiftly referred to child protection authorities and other relevant services as well as appointed a competent and impartial legal guardian, that family unity is protected, and that anyone legitimately claiming to be a child is treated as such unless otherwise determined through a multi-disciplinary, independent and child-sensitive age assessment;
  - e) Ensure that, in the context of mixed movements, relevant information on rights and obligations under national laws and procedures, including on entry and stay requirements, available forms of protection, as well as options for return and reintegration, is appropriately, timely and effectively communicated, and accessible.

**OBJECTIVE 13: Use immigration detention only as a measure of last resort and work towards alternatives**

29. We commit to ensure that any detention in the context of international migration follows due process, is non-arbitrary, based on law, necessity, proportionality and individual assessments, is carried out by authorized officials, and for the shortest possible period of time, irrespective of whether detention occurs at the moment of entry, in transit, or proceedings of return, and regardless of the type of place where the detention occurs. We further commit to prioritize non-custodial alternatives to detention that are in line with international law, and to take a human rights-based approach to any detention of migrants, using detention as a measure of last resort only.

To realize this commitment, we will draw from the following actions:

- a) Use existing relevant human rights mechanisms to improve independent monitoring of migrant detention, ensuring that it is a measure of last resort, that human rights violations do not occur, and that States promote, implement and expand alternatives to detention, favouring non-custodial measures and community-based care arrangements, especially in the case of families and children;

- b) Consolidate a comprehensive repository to disseminate best practices of human rights- based alternatives to detention in the context of international migration, including by facilitating regular exchanges and the development of initiatives based on successful practices among States, and between States and relevant stakeholders;
- c) Review and revise relevant legislation, policies and practices related to immigration detention to ensure that migrants are not detained arbitrarily, that decisions to detain are based on law, are proportionate, have a legitimate purpose, and are taken on an individual basis, in full compliance with due process and procedural safeguards, and that immigration detention is not promoted as a deterrent or used as a form of cruel, inhumane or degrading treatment to migrants, in accordance with international human rights law;
- d) Provide access to justice for all migrants in countries of transit and destination that are or may be subject to detention, including by facilitating access to free or affordable legal advice and assistance of a qualified and independent lawyer, as well as access to information and the right to regular review of a detention order;
- e) Ensure that all migrants in detention are informed about the reasons for their detention, in a language they understand, and facilitate the exercise of their rights, including to communicate with the respective consular or diplomatic missions without delay, legal representatives and family members, in accordance with international law and due process guarantees;
- f) Reduce the negative and potentially lasting effects of detention on migrants by guaranteeing due process and proportionality, that it is for the shortest period of time, safeguards physical and mental integrity, and that, as a minimum, access to food, basic healthcare, legal orientation and assistance, information and communication, as well as adequate accommodation is granted, in accordance with international human rights law;
- g) Ensure that all governmental authorities and private actors duly charged with administering immigration detention do so in a way consistent with human rights and are trained on non- discrimination, the prevention of arbitrary arrest and detention in the context of international migration, and are held accountable for violations or abuses of human rights;
- h) Protect and respect the rights and best interests of the child at all times, regardless of their migration status, by ensuring availability and accessibility of a viable range of alternatives to detention in non-custodial contexts, favouring community-based care arrangements, that ensure access to education and healthcare, and respect their right to family life and family unity, and by working to end the practice of child detention in the context of international migration.

**OBJECTIVE 14: Enhance consular protection, assistance and cooperation throughout the migration cycle**

30. We commit to strengthen consular protection of and assistance to our nationals abroad, as well as consular cooperation between States in order to better safeguard the rights and interests of all migrants at all times, and to build upon the functions of consular missions to enhance interactions between migrants and State authorities of countries of origin, transit and destination, in accordance with international law. To realize this commitment, we will draw from the following actions:

- a) Cooperate to build consular capacities, train consular officers, promote arrangements for providing consular services collectively where individual States lack capacity, including through technical assistance, and to develop bilateral or regional agreements on various aspects of consular cooperation;
- b) Involve relevant consular and immigration personnel in existing global and regional fora on migration in order to exchange information and best practices about issues of mutual concern that pertain to citizens abroad and contribute to comprehensive and evidence- based migration policy development;
- c) Conclude bilateral or regional agreements on consular assistance and representation in places where States have an interest in strengthening effective consular services related to migration, but do not have a diplomatic or consular presence;
- d) Strengthen consular capacities in order to identify, protect and assist our nationals abroad who are in a situation of vulnerability, including victims of human and labour rights violations or abuse, victims of crime, victims of trafficking in persons, migrants subject to smuggling under aggravating circumstances, and migrant workers exploited in the process of recruitment, by providing training to consular officers on human rights-based, gender- responsive and child-sensitive actions in this regard;
- e) Provide our nationals abroad the opportunity to register with the country of origin, in close cooperation with consular, national and local authorities, as well as relevant migrant organizations, as a means to facilitate information, services and assistance to migrants in emergency situations and ensure migrants' accessibility to relevant and timely information, such as by establishing helplines and consolidating national digital databases, while upholding the right to privacy and protecting personal data;
- f) Provide consular support to our nationals through advice, including on local laws and customs, interaction with authorities, financial inclusion, and business establishment, as well as through the issuance of relevant documentation, such as travel documents, and consular identity documents that may facilitate access

to services, assistance in emergency situations, the opening of a bank account, and access to remittance facilities.

### **OBJECTIVE 15: Provide access to basic services for migrants**

31. We commit to ensure that all migrants, regardless of their migration status, can exercise their human rights through safe access to basic services. We further commit to strengthen migrant- inclusive service delivery systems, notwithstanding that nationals and regular migrants may be entitled to more comprehensive service provision, while ensuring that any differential treatment must be based on law, proportionate, pursue a legitimate aim, in accordance with international human rights law.

To realize this commitment, we will draw from the following actions:

- a) Enact laws and take measures to ensure that service delivery does not amount to discrimination against migrants on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other grounds irrespective of cases where differential provision of services based on migration status might apply;
- b) Ensure that cooperation between service providers and immigration authorities does not exacerbate vulnerabilities of irregular migrants by compromising their safe access to basic services or unlawfully infringing upon the human rights to privacy, liberty and security of person at places of basic service delivery;
- c) Establish and strengthen holistic and easily accessible service points at local level, that are migrant inclusive, offer relevant information on basic services in a gender- and disability- responsive as well as child-sensitive manner, and facilitate safe access thereto;
- d) Establish or mandate independent institutions at the national or local level, such as national human rights institutions, to receive, investigate and monitor complaints about situations in which migrants' access to basic services is systematically denied or hindered, facilitate access to redress, and work towards a change in practice;
- e) Incorporate the health needs of migrants in national and local health care policies and plans, such as by strengthening capacities for service provision, facilitating affordable and non-discriminatory access, reducing communication barriers, and training health care providers on culturally-sensitive service delivery, in order to promote physical and mental health of migrants and communities overall, including by taking into consideration relevant recommendations from

the WHO Framework of Priorities and Guiding Principles to Promote the Health of Refugees and Migrants;

- f) Provide inclusive and equitable quality education to migrant children and youth, as well as facilitate access to lifelong learning opportunities, including by strengthening the capacities of education systems and by facilitating non-discriminatory access to early childhood development, formal schooling, non-formal education programmes for children for whom the formal system is inaccessible, on-the-job and vocational training, technical education, and language training, as well as by fostering partnerships with all stakeholders that can support this endeavor.

**OBJECTIVE 16: Empower migrants and societies to realize full inclusion and social cohesion**

32. We commit to foster inclusive and cohesive societies by empowering migrants to become active members of society and promoting the reciprocal engagement of receiving communities and migrants in the exercise of their rights and obligations towards each other, including observance of national laws and respect for customs of the country of destination. We further commit to strengthen the welfare of all members of societies by minimizing disparities, avoiding polarization and increasing public confidence in policies and institutions related to migration, in line with the acknowledgment that fully integrated migrants are better positioned to contribute to prosperity.

To realize this commitment, we will draw from the following actions:

- a) Promote mutual respect for the cultures, traditions and customs of communities of destination and of migrants by exchanging and implementing best practices on integration policies, programmes and activities, including on ways to promote acceptance of diversity and facilitate social cohesion and inclusion;
- b) Establish comprehensive and needs-based pre-departure and post-arrival programmes that may include rights and obligations, basic language training, as well as orientation about social norms and customs in the country of destination;
- 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.
  - f) Establish community centres or programmes at the local level to facilitate migrant participation in the receiving society by involving migrants, community members, diaspora organizations, migrant associations, and local authorities in intercultural dialogue, sharing of stories, mentorship programmes, and development of business ties that improve integration outcomes and foster mutual respect;
  - g) Capitalize on the skills, cultural and language proficiency of migrants and receiving communities by developing and promoting peer-to-peer training exchanges, gender-responsive, vocational and civic integration courses and workshops;
  - h) Support multicultural activities through sports, music, arts, culinary festivals, volunteering and other social events that will facilitate mutual understanding and appreciation of migrant cultures and those of destination communities;
  - i) Promote school environments that are welcoming and safe, and support the aspirations of migrant children by enhancing relationships within the school community, incorporating evidence-based information about migration in education curricula, and dedicating targeted resources to schools with a high concentration of migrant children for integration activities in order to promote respect for diversity and inclusion, and to prevent all forms discrimination, including racism, xenophobia and intolerance.

**OBJECTIVE 17: Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration**

33. We commit to eliminate all forms of discrimination, condemn and counter expressions, acts and manifestations of racism, racial discrimination, violence, xenophobia and related intolerance against all migrants in conformity with international human rights law. We further commit to promote an open and evidence-based public discourse on migration and migrants in partnership with all parts of society, that generates a more realistic, humane and constructive perception in this regard. We also commit to protect freedom of expression in accordance with international

law, recognizing that an open and free debate contributes to a comprehensive understanding of all aspects of migration.

To realize this commitment, we will draw from the following actions:

- a) Enact, implement or maintain legislation that penalizes hate crimes and aggravated hate crimes targeting migrants, and train law enforcement and other public officials to identify, prevent and respond to such crimes and other acts of violence that target migrants, as well as to provide medical, legal and psychosocial assistance for victims;
- b) Empower migrants and communities to denounce any acts of incitement to violence directed towards migrants by informing them of available mechanisms for redress, and ensure that those who actively participate in the commission of a hate crime targeting migrants are held accountable, in accordance with national legislation, while upholding international human rights law, in particular the right to freedom of expression;
- c) Promote independent, objective and quality reporting of media outlets, including internet-based information, including by sensitizing and educating media professionals on migration-related issues and terminology, investing in ethical reporting standards and advertising, and stopping allocation of public funding or material support to media outlets that systematically promote intolerance, xenophobia, racism and other forms of discrimination towards migrants, in full respect for the freedom of the media;
- d) Establish mechanisms to prevent, detect and respond to racial, ethnic and religious profiling of migrants by public authorities, as well as systematic instances of intolerance, xenophobia, racism and all other multiple and intersecting forms of discrimination in partnership with National Human Rights Institutions, including by tracking and publishing trends analyses, and ensuring access to effective complaint and redress mechanisms;
- e) Provide migrants, especially migrant women, with access to national and regional complaint and redress mechanisms with a view to promoting accountability and addressing governmental actions related to discriminatory acts and manifestations carried out against migrants and their families;
- f) Promote awareness-raising campaigns targeted at communities of origin, transit and destination in order to inform public perceptions regarding the positive contributions of safe, orderly and regular migration, based on evidence and facts, and to end racism, xenophobia and stigmatization against all migrants;
- g) Engage migrants, political, religious and community leaders, as well as educators and service providers to detect and prevent incidences of intolerance, racism, xenophobia, and other forms of discrimination against migrants and

diasporas and support activities in local communities to promote mutual respect, including in the context of electoral campaigns.

**OBJECTIVE 18: Invest in skills development and facilitate mutual recognition of skills, qualifications and competences**

34. We commit to invest in innovative solutions that facilitate mutual recognition of skills, qualifications and competences of migrant workers at all skills levels, and promote demand- driven skills development to optimize the employability of migrants in formal labour markets in countries of destination and in countries of origin upon return, as well as to ensure decent work in labour migration.

To realize this commitment, we will draw from the following actions:

- 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;
- d) Use technology and digitalization to evaluate and mutually recognize skills more comprehensively based on formal credentials as well as non-formally acquired competences and professional experience at all skills levels;
- e) Build global skills partnerships amongst countries that strengthen training capacities of national authorities and relevant stakeholders, including the private sector and trade unions, and foster skills development of workers in countries of origin and migrants in countries of destination with a view to preparing trainees for employability in the labour markets of all participating countries;
- f) Promote inter-institutional networks and collaborative programmes for partnerships between the private sector and educational institutions in countries of origin and destination to enable mutually beneficial skills development opportunities for migrants, communities and participating partners, including by building

- on the best practices of the Business Mechanism developed in the context of the Global Forum on Migration and Development;
- g) Engage in bilateral partnerships and programmes in cooperation with relevant stakeholders that promote skills development, mobility and circulation, such as student exchange programmes, scholarships, professional exchange programmes and trainee- or apprenticeships that include options for beneficiaries, after successful completion of these programmes, to seek employment and engage in entrepreneurship;
  - h) Cooperate with the private sector and employers to make available easily accessible and gender-responsive remote or online skills development and matching programmes to migrants at all skills levels, including early and occupation-specific language training, on- the-job training and access to advanced training programmes, to enhance their employability in sectors with demand for labour based on the industry’s knowledge of labour market dynamics, especially to promote the economic empowerment of women;
  - i) Enhance the ability of migrant workers to transition from a job or employer to another by making available documentation that recognizes skills acquired on the job or through training in order to optimize the benefits of upskilling;
  - j) Develop and promote innovative ways to mutually recognize and assess formally and informally acquired skills, including through timely and complementary training to job seekers, mentoring, and internship programmes in order to fully recognize existing credentials and provide certificates of proficiency for the validation of newly acquired skills;
  - k) Establish screening mechanisms of credentials and offer information to migrants on how to get their skills and qualifications assessed and recognized prior to departure, including in recruitment processes or at an early stage after arrival to improve employability;
  - l) Cooperate to promote documentation and information tools, in partnership with relevant stakeholders, that provide an overview of a worker’s credentials, skills and qualifications, recognized in countries of origin, transit and destination, in order to enable employers to evaluate the suitability of migrant workers in job application processes.

**OBJECTIVE 19: Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries**

35. We commit to empower migrants and diasporas to catalyse their development contributions, and to harness the benefits of migration as a source of sustainable

development, reaffirming that migration is a multidimensional reality of major relevance for the sustainable development of countries of origin, transit and destination. To realize this commitment, we will draw from the following actions:

- a) Ensure the full and effective implementation of the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda by fostering and facilitating the positive effects of migration for the realization of all Sustainable Development Goals;
- b) Integrate migration into development planning and sectoral policies at local, national, regional and global levels, taking into consideration relevant existing policy guidelines and recommendations, such as the GMG Handbook on Mainstreaming Migration into Development Planning, in order to strengthen policy coherence and effectiveness of development cooperation;
- c) Invest in research on the impact of non-financial contributions of migrants and diasporas to sustainable development in countries of origin and destination, such as knowledge and skills transfer, social and civic engagement, and cultural exchange, with a view to developing evidence-based policies and strengthening global policy discussions;
- d) Facilitate the contributions of migrants and diasporas to their countries of origin, including by establishing or strengthening government structures or mechanisms at all levels, such as dedicated diaspora offices or focal points, diaspora policy advisory boards for governments to account for the potential of migrants and diasporas in migration and development policy-making, and dedicated diaspora focal points in diplomatic or consular missions;
- 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;
- f) Provide easily accessible information and guidance, including through digital platforms, as well as tailored mechanisms for the coordinated and effective financial, voluntary or philanthropic engagement of migrants and diasporas, especially in humanitarian emergencies in their countries of origin, including by involving consular missions;
- g) Enable political participation and engagement of migrants in their countries of origin, including in peace and reconciliation processes, in elections and political reforms, such as by establishing voting registries for citizens abroad, and by parliamentary representation, in accordance with national legislation;
- h) Promote migration policies that optimize the benefits of diasporas for countries of origin and destination and their communities, by facilitating flexible

modalities to travel, work and invest with minimal administrative burdens, including by reviewing and revising visa, residency and citizenship regulations, as appropriate;

- i) Cooperate with other States, the private sector and employers organizations to enable migrants and diasporas, especially those in highly technical fields and in high demand, to carry out some of their professional activities and engage in knowledge transfer in their home countries, without necessarily losing employment, residence status, or earned social benefits;
- j) Build partnerships between local authorities, local communities, the private sector, diasporas, hometown associations and migrant organizations to promote knowledge and skills transfer between their countries of origin and countries of destination, including by mapping the diasporas and their skills, as a means to maintain the link between diasporas and their country of origin.

**OBJECTIVE 20: Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants**

36. We commit to promote faster, safer and cheaper remittances by further developing existing conducive policy and regulatory environments that enable competition, regulation and innovation on the remittance market and by providing gender-responsive programmes and instruments that enhance the financial inclusion of migrants and their families. We further commit to optimize the transformative impact of remittances on the well-being of migrant workers and their families, as well as on sustainable development of countries, while respecting that remittances constitute an important source of private capital, and cannot be equated to other international financial flows, such as foreign direct investment, official development assistance, or other public sources of financing for development.

To realize this commitment, we will draw from the following actions:

- a) Develop a roadmap to reduce the transaction costs of migrant remittances to less than 3 per cent and eliminate remittance corridors with costs higher than 5 per cent by 2030 in line with target 10.c of the 2030 Agenda for Sustainable Development;
- b) Promote and support the United Nations International Day of Family Remittances and the IFAD Global Forum on Remittances, Investment and Development as an important platform to build and strengthen partnerships for innovative solutions on cheaper, faster and safer transfer of remittances with all relevant stakeholders;

- 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;
- f) Provide accessible information on remittance transfer costs by provider and channel, such as comparison websites, in order to increase the transparency and competition on the remittance transfer market, and promote financial literacy and inclusion of migrants and their families through education and training;
- g) Develop programmes and instruments to promote investments from remittance senders in local development and entrepreneurship in countries of origin, such as through matching- grant mechanisms, municipal bonds and partnerships with hometown associations, in order to enhance the transformative potential of remittances beyond the individual households of migrant workers at skills levels;
- h) Enable migrant women to access financial literacy training and formal remittance transfer systems, as well as to open a bank account, own and manage financial assets, investments and business as means to address gender inequalities and foster their active participation in the economy;
- i) Provide access to and develop banking solutions and financial instruments for migrants, including low-income and female-headed households, such as bank accounts that permit direct deposits by employers, savings accounts, loans and credits in cooperation with the banking sector.

**OBJECTIVE 21: Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration**

37. We commit to facilitate and cooperate for safe and dignified return and to guarantee due process, individual assessment and effective remedy, by upholding the prohibition of collective expulsion and of returning migrants when there is a real and foreseeable risk of death, torture, and other cruel, inhuman, and degrading treatment or punishment, or other irreparable harm, in accordance with our obligations under international human rights law. We further commit to ensure that our nationals are duly received and readmitted, in full respect for the human right to return to one's own country and the obligation of States to readmit their own nationals. We also commit to create conducive conditions for personal safety, economic empowerment, inclusion and social cohesion in communities, in order to ensure that reintegration of migrants upon return to their countries of origin is sustainable.

To realize this commitment, we will draw from the following actions:

- a) Develop and implement bilateral, regional and multilateral cooperation frameworks and agreements, including readmission agreements, ensuring that return and readmission of migrants to their own country is safe, dignified and in full compliance with international human rights law, including the rights of the child, by determining clear and mutually agreed procedures that uphold procedural safeguards, guarantee individual assessments and legal certainty, and by ensuring they also include provisions that facilitate sustainable reintegration;
- b) Promote gender-responsive and child-sensitive return and reintegration programmes, that may include legal, social and financial support, guaranteeing that all returns in the context of such voluntary programmes effectively take place on the basis of the migrant's free, prior and informed consent, and that returning migrants are assisted in their reintegration process through effective partnerships, including to avoid they become displaced in the country of origin upon return;
- c) Cooperate on identification of nationals and issuance of travel documents for safe and dignified return and readmission in cases of persons that do not have the legal right to stay on another State's territory, by establishing reliable and efficient means of identification of own nationals such as through the addition of biometric identifiers in population registries, and by digitalizing civil registry systems, with full respect to the right to privacy and protection of personal data;
- d) Foster institutional contacts between consular authorities and relevant officials from countries of origin and destination, and provide adequate consular

- assistance to returning migrants prior to return by facilitating access to documentation, travel documents, and other services, in order to ensure predictability, safety and dignity in return and readmission;
- e) Ensure that the return of migrants who do not have the legal right to stay on another State's territory is safe and dignified, follows an individual assessment, is carried out by competent authorities through prompt and effective cooperation between countries of origin and destination, and allows all applicable legal remedies to be exhausted, in compliance with due process guarantees, and other obligations under international human rights law;
  - f) Establish or strengthen national monitoring mechanisms on return, in partnership with relevant stakeholders, that provide independent recommendations on ways and means to strengthen accountability, in order to guarantee the safety, dignity, and human rights of all returning migrants;
  - g) Ensure that return and readmission processes involving children are carried out only after a determination of the best interests of the child, take into account the right to family life, family unity, and that a parent, legal guardian or specialized official accompanies the child throughout the return process, ensuring that appropriate reception, care and reintegration arrangements for children are in place in the country of origin upon return;
  - h) Facilitate the sustainable reintegration of returning migrants into community life by providing them equal access to social protection and services, justice, psycho-social assistance, vocational training, employment opportunities and decent work, recognition of skills acquired abroad, and financial services, in order to fully build upon their entrepreneurship, skills and human capital as active members of society and contributors to sustainable development in the country of origin upon return;
  - i) Identify and address the needs of the communities to which migrants return by including respective provisions in national and local development strategies, infrastructure planning, budget allocations and other relevant policy decisions and cooperating with local authorities and relevant stakeholders.

**OBJECTIVE 22: Establish mechanisms for the portability of social security entitlements and earned benefits**

38. We commit to assist migrant workers at all skills levels to have access to social protection in countries of destination and profit from the portability of applicable social security entitlements and earned benefits in their countries of origin or when they decide to take up work in another country.

To realize this commitment, we will draw from the following actions:

- a) Establish or maintain non-discriminatory national social protection systems, including social protection floors for nationals and migrants, in line with the ILO Recommendation 202 on Social Protection Floors;
- b) Conclude reciprocal bilateral, regional or multilateral social security agreements on the portability of earned benefits for migrant workers at all skills levels, which refer to applicable social protection floors in the respective States, applicable social security entitlements and provisions, such as pensions, healthcare 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.

**OBJECTIVE 23: Strengthen international cooperation and global partnerships for safe, orderly and regular migration**

39. We commit to support each other in the realization of the objectives and commitments laid out in this Global Compact through enhanced international cooperation, a revitalized global partnership, and in the spirit of solidarity, reaffirming the centrality of a comprehensive and integrated approach to facilitate safe, orderly and regular migration, and recognizing that we are all countries of origin, transit and destination. We further commit to take joint action in addressing the challenges faced by each country to implement this Global Compact, underscoring the specific challenges faced in particular by African countries, least developed countries, landlocked developing countries, small island developing States, and middle-income countries. We also commit to promote the mutually reinforcing nature between the Global Compact and existing international legal and policy frameworks, by aligning the implementation of this Global Compact with such frameworks, particularly the 2030 Agenda for Sustainable Development as well as the Addis Ababa Action Agenda, and their recognition that migration and sustainable development are multidimensional and interdependent.

To realize this commitment, we will draw from the following actions:

- a) Support other States as we collectively implement the Global Compact, including through the provision of financial and technical assistance, in line with national

- priorities, policies action plans and strategies, through a whole-of-government and whole-of-society approach;
- b) Increase international and regional cooperation to accelerate the implementation of the 2030 Agenda for Sustainable Development in geographic areas from where irregular migration systematically originates due to consistent impacts of poverty, unemployment, climate change and disasters, inequality, corruption, poor governance, among other structural factors, through appropriate cooperation frameworks, innovative partnerships and the involvement of all relevant stakeholders, while upholding national ownership and shared responsibility;
  - c) Involve and support local authorities in the identification of needs and opportunities for international cooperation for the effective implementation of the Global Compact and integrate their perspectives and priorities into development strategies, programmes and planning on migration, as a means to ensure good governance as well as policy coherence across levels of government and policy sectors, and maximize the effectiveness and impact of international development cooperation;
  - d) Make use of the capacity-building mechanism and build upon other existing instruments to strengthen the capacities of relevant authorities by mobilizing technical, financial and human resources from States international financial institutions, the private sector, international organizations and other sources in order to assist all States in fulfilling the commitments outlined in this Global Compact;
  - e) Conclude bilateral, regional or multilateral mutually beneficial, tailored and transparent partnerships, in line with international law, that develop targeted solutions to migration policy issues of common interest and address opportunities and challenges of migration in accordance with the Global Compact.

## **Implementation**

- 40. For the effective implementation of the Global Compact, we require concerted efforts at global, regional, national and local levels, including a coherent United Nations system.
- 41. We commit to fulfil the objectives and commitments outlined in the Global Compact, in line with our vision and guiding principles, by taking effective steps at all levels to facilitate safe, orderly and regular migration at all stages. We will implement the Global Compact, within our own countries and at the regional and global levels, taking into account different national realities, capacities, and levels of development,

and respecting national policies and priorities. We reaffirm our commitment to international law and emphasize that the Global Compact is to be implemented in a manner that is consistent with our rights and obligations under international law.

42. We will implement the Global Compact through enhanced bilateral, regional and multilateral cooperation and a revitalized global partnership in a spirit of solidarity. We will continue building on existing mechanisms, platforms and frameworks to address migration in all its dimensions. Recognizing the centrality of international cooperation for the effective fulfilment of the objectives and commitments, we will strive to reinforce our engagement in North-South, South-South and triangular cooperation and assistance. Our cooperation efforts in this regard will be aligned with the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda.
43. We decide to establish a capacity-building mechanism in the United Nations, building upon existing initiatives, that supports efforts of Member States to implement the Global Compact. It allows Member States, the United Nations and other relevant stakeholders, including the private sector and philanthropic foundations, to contribute technical, financial and human resources on a voluntary basis in order to strengthen capacities and foster multi-partner cooperation. The capacity-building mechanism will consist of:
  - a) A connection hub that facilitates demand-driven, tailor-made and integrated solutions, by:
    - i. advising on, assessing and processing country requests for the development of solutions;
    - ii. identifying main implementing partners within and outside of the United Nations system, in line with their comparative advantages and operational capacities;
    - iii. connecting the request to similar initiatives and solutions for peer-to-peer exchange and potential replication, where existing and relevant;
    - iv. ensuring effective set-up for multi-agency and multi-stakeholder implementation;
    - v. identifying funding opportunities, including by initiating the start-up fund.
  - b) A start-up fund for initial financing to realize project-oriented solutions, by:
    - i. providing seed-funding, where needed, to jump start a specific project;
    - ii. complementing other funding sources;
    - iii. receiving voluntary financial contributions by Member States, the United Nations, international financial institutions, and other stakeholders, including the private sector and philanthropic foundations.
  - c) A global knowledge platform as an online open data source, by:

- i. serving as a repository of existing evidence, practices and initiatives;
  - ii. facilitating the accessibility to knowledge and sharing of solutions;
  - iii. building on the GFMD Platform for Partnerships and other relevant sources.
44. We will implement the Global Compact in cooperation and partnership with migrants, civil society, migrant and diaspora organizations, faith-based organizations, local authorities and communities, the private sector, trade unions, parliamentarians, National Human Rights Institutions, the International Red Cross and Red Crescent Movement, academia, the media and other relevant stakeholders.
45. We welcome the decision of the Secretary-General to establish a United Nations network on migration to ensure effective and coherent system-wide support to implementation, including the capacity-building mechanism, as well as follow-up and review of the Global Compact, in response to the needs of Member States. In this regard, we note that:
  - a) IOM will serve as the coordinator and secretariat of the network;
  - b) the network will fully draw from the technical expertise and experience of relevant entities within the United Nations system;
  - c) the work of the network will be fully aligned with existing coordination mechanisms and the repositioning of the United Nations Development System.
46. We request the Secretary-General, drawing on the network, to report to the General Assembly on a biennial basis on the implementation of the Global Compact, the activities of the United Nations system in this regard, as well as the functioning of the institutional arrangements.
47. Further recognizing the important role of State-led processes and platforms at global and regional levels in advancing the international dialogue on migration, we invite the Global Forum on Migration and Development, Regional Consultative Processes and other global, regional and subregional fora to provide platforms to exchange experiences on the implementation of the Global Compact, share good practices on policies and cooperation, promote innovative approaches, and foster multi-stakeholder partnerships around specific policy issues.

### **Follow-up and review**

48. We will review the progress made at local, national, regional and global levels in implementing the Global Compact in the framework of the United Nations through a State-led approach and with the participation of all relevant stakeholders. For follow-up and review, we agree on intergovernmental measures that will assist us in fulfilling our objectives and commitments.

49. Considering that international migration requires a forum at global level through which Member States can review the implementation progress and guide the direction of the United Nations' work, we decide that:
- a) The High-level Dialogue on International Migration and Development, currently scheduled to take place every fourth session of the General Assembly, shall be repurposed and renamed "International Migration Review Forum";
  - b) The International Migration Review Forum shall serve as the primary intergovernmental global platform for Member States to discuss and share progress on the implementation of all aspects of the Global Compact, including as it relates to the 2030 Agenda for Sustainable Development, and with the participation of all relevant stakeholders;
  - c) The International Migration Review Forum shall take place every four years beginning in 2022;
  - d) The International Migration Review Forum shall discuss the implementation of the Global Compact at the local, national, regional and global levels, as well as allow for interaction with other relevant stakeholders with a view to building upon accomplishments and identifying opportunities for further cooperation;
  - e) Each edition of the International Migration Review Forum will result in an intergovernmentally agreed Progress Declaration, which may be taken into consideration by the High Level Political Forum on Sustainable Development.
50. Considering that most international migration takes place within regions, we invite relevant subregional, regional and cross-regional processes, platforms and organizations, including the United Nations Regional Economic Commissions or Regional Consultative Processes, to review the implementation of the Global Compact within the respective regions, beginning in 2020, alternating with discussions at global level at a four year interval, in order to effectively inform each edition of the International Migration Review Forum, with the participation of all relevant stakeholders.
51. We invite the Global Forum on Migration and Development to provide a space for annual informal exchange on the implementation of the Global Compact, and report the findings, best practices and innovative approaches to the International Migration Review Forum.
52. Recognizing the important contributions of State-led initiatives on international migration, we invite fora, such as the IOM International Dialogue on Migration, Regional Consultative Processes, and others to contribute to the International Migration Review Forum by providing relevant data, evidence, best practices, innovative approaches and recommendations as they relate to the implementation of the Global Compact for Safe, Orderly and Regular Migration.

53. We encourage all Member States to develop, as soon as practicable, ambitious national responses for the implementation of the Global Compact, and to conduct regular and inclusive reviews of progress at the national level, such as through the voluntary elaboration and use of a national implementation plan. Such reviews should draw on contributions from all relevant stakeholders, as well as parliaments and local authorities, and serve to effectively inform the participation of Member States in the International Migration Review Forum and other relevant fora.
54. We request the President of the General Assembly to launch and conclude, in 2019, open, transparent and inclusive intergovernmental consultations to determine the precise modalities and organizational aspects of the International Migration Review Fora, and articulate how the contributions of the regional reviews and other relevant processes will inform the Fora, as a means to further strengthen overall effectiveness and consistency of the follow-up and review outlined in the Global Compact.

## LIST OF CONTRIBUTORS

**Ana Filipa Cândido** is a master's student at ISCTE-IUL and an assistant researcher at the Inequality Observatory.

**Ana Rita Gil** is Professor at the Law Faculty of "NOVA" University of Lisbon and at the Catholic University of Lisbon. She holds a Ph.D. in Law (Human Rights of Immigrants). She authored a vast bibliography on Immigration.

**Anna Terrón Cusí** is the Director of FIIAPP – Fundación Internacional y para Iberoamérica de Administración y Políticas Públicas (International and Ibero-American Foundation for Administration and Public Policies, Spain's public institution dedicated to International Cooperation. She is an expert on migrations and human mobility and author of important bibliography in this area. She was Spain's Secretary of State for Immigration (2010-2011) and Secretary of the Autonomous Government of Catalonia for the European Union (2004-2010). She was a Member of the European Parliament (1994-2004).

**António Vitorino** is the Director General of the OIM (since October 2018). He is the former European Commissioner for Justice and Home Affairs (1999-2004) and the former Minister of the Presidency and National Defence (1995-1997). He enjoyed a career as a lawyer, judge of the Constitutional Court and member of the Portuguese Parliament, among other functions.

**Augusto Santos Silva** is the Minister for Foreign Affairs of Portugal (since 2015). He has held several political functions, including as a Member of Parliament and Minister of several governments (1999-2002, 2005-2011). He holds a Ph.D. in Sociology and is a Full Professor at the Faculty of Economics of the University of Porto. He is the author of several books on the epistemology of the social sciences, sociology of culture and development, and political thought.

**Constança Urbano de Sousa** is a Professor at Autónoma University of Lisbon and a Researcher at *Ratio Legis* and *OBSERVARE*. She is member of the Odysseus Academic Network for Legal Studies on Immigration and Asylum in Europe. She is a member of the Portuguese Parliament (since 2017), the former Home Affairs Minister of Portugal (2015-2017) and Coordinator of the Justice and Home Affairs Unit of the Portuguese Permanent Representation to the EU. She has published in migration and asylum Law.

**Cristina Gortázar Rotaeche** is Professor of International Public Law, International Relations and European Union Law at the Pontifical University Comillas (Madrid) where she also teaches Immigration and Asylum Law. She is a member of the Odysseus Academic Network for Legal Studies on Immigration and Asylum in Europe and the holder of the Jean Monnet Chair in EU Immigration and Asylum Law. Between 2007 and 2012, she was Director of the University Institute of Studies on Migration of the Pontifical University Comillas in Madrid. She is the author of extensive bibliography in the areas of immigration and asylum.

**Elsbeth Guild** is the holder of the Jean Monnet Chair at Queen Mary University of London and Professor at Radboud University Nijmegen (The Netherlands). She is the author of a vast bibliography in the fields of immigration, asylum and internal security. She is co-editor of the *European Journal of Migration and Law* and of the *Free Movement of Workers* (e-journal of the European Commission). She is a regular consultant to several international institutions in the fields of immigration and asylum (European Parliament, European Commission, Council of Europe, UNHCR).

**João Peixoto** is Full Professor at the Lisbon School of Economics and Management of the University of Lisbon (ISEG/Universidade de Lisboa). He is a Researcher and President of SOCIUS/CSG - Research Centre in Economic and Organizational Sociology, ISEG/ULisboa. He is the author of extensive bibliography in the area of International Migration and Demography, and coordinator of the project "Replacement Migrations and Demographic Sustainability: Perspectives of the Evolution of the Portuguese Society and Economy", funded by Fundação Francisco Manuel dos Santos. He was a researcher in several international projects, such as "New Emigration in Europe: The Effects of the Economic Crisis in Southern Europe and Ireland", funded by the European Commission and coordinated by Marek Okólski, Centre of Migration Research, Warsaw University, Poland.

**Marcelo Rebelo de Sousa** is the President of the Portuguese Republic (since 2016) and a Retired Full Professor of the Faculty of Law of the University of Lisbon. He was a journalist, commentator and has had several political positions throughout his career. He is the author of a vast bibliography in the field of Public Law.

**Nuno Piçarra** is a judge before the Court of Justice of the European Union. He was Professor at the Faculty of Law of Nova University of Lisbon. He is a member of the Odysseus Academic Network for Legal Studies on Immigration and Asylum in Europe and of the Free Movement of Workers and Social Security Coordination. He has published several articles and monographs on issues of constitutional law and European Union law, especially on the Area of Freedom, Security and Justice.

**Philippe de Bruycker** is a Professor at the at the Institute for European Studies of the Université Libre de Bruxelles (ULB), a specialist in European Immigration and Asylum Law and Freedom of Movement for European Citizens. He coordinates the Odysseus Academic Network for Legal Studies on Immigration and Asylum in Europe. He holds the Jean Monnet Chair for European Immigration and Asylum Law. During the time he worked for DG Home at the European Commission, he drafted several legislative proposals in the field of legal migration. He is an expert and consultant to several institutions, like European Parliament, UNHCR, IOM, and ICMPD, among others. He is the author of numerous publications in the area of immigration and asylum law.

**Rui Pena Pires** is a Professor at the University Institute of Lisbon (ISCTE-IUL), a researcher at the Centre for Research and Sociology Studies (CIES-IUL) and the scientific coordinator of the Emigration Observatory. He was a member of the Management Board of the European Union Agency for Fundamental Rights (2007-2010). He is the author of a vast bibliography on Migration.

The Global Compact for Safe, Orderly and Regular Migration, adopted at the Conference of Marrakesh on 10-11 December 2018, is the first step towards creating a global framework for enhanced cooperation in all the dimensions of international migration. It recognises it as a source of prosperity and development, and is a first attempt for its global and human rights-based management.

This book represents a small contribution to the discussion on the relevance of international migration for the development of origin and destination countries. It casts light on the impact of European migration policy on regular and safe migration. It further stresses the input of the Global Compact in tackling the current challenges of international migration as a tool for the attainment of the goals of the 2030 Agenda for Sustainable Development.

