

SECTION II: HUMAN RIGHTS IN THE NEW ERA

NEW YORK DECLARATION FOR REFUGEES AND MIGRANTS. A NEW WORLD PACT TO A SAFE, ORDERLY AND REGULATED MIGRATION - A MORAL AND HUMANITARIAN CHALLENGE

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ABSTRACT

The issue of migrants and refugees is one of the main topics of interest both in terms of legislation adopted in this area and the need for alignment of these regulations at national and international level, and in terms of guaranteeing human rights of these categories of persons that they should avail themselves of. In this context, the adoption of the Declaration in New York relating to Refugees and Migrants, on the 19th of September 2016, which also includes a startup World Pact in order to ensure a safe, orderly and regulated migration following the U.N. Resolution A/RES/71/6 April 2017 280² regarding the arrangements for intergovernmental negotiation of Global Compact for a safe, orderly and regulated migration; it represents much more than a moral challenge and through international humanitarian cooperation constitutes a step towards the harmonization of the regulatory framework in this field. The observance of the human rights of migrants implies respect for their dignity as individuals, but also creates conditions for economic and social development, respect for values such as responsibility, solidarity, humanity and human diversity and, last but not least, the promoting and guaranteeing human migration in a balanced way.

Keywords: *migrants, refugees, human dignity, mobility, pact.*

Migration and refugees issues became a major topic in recent years and, as expected, was given due attention by everyone, at national, regional and international level. The present reality proves that migrants and refugees are often among the most vulnerable people in society, and the racism, xenophobia and intolerance specific of many communities determine most of the time, the emergence of a phenomenon such as social isolation and the risk for them to be subject to

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² http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/280.

discrimination, exploitation and abuse. Regarding the issue of refugees, „a number of international regulations were enacted during the international reunions and conferences. Facing the increasing immigrants waves, the Western countries were forced to adopt new policies on the status of the foreigners, defined by reducing the number of refugee assistance programs, which did not allow a clear distinction between them and the migrants³.

Managing this phenomenon emphasizes the need to improve the global approach to migration, the recourse to legal migration, border management and effectiveness and a fair distribution of asylum seekers with respect to the fundamental rights of migrants. The complexity of the phenomenon of migration involves a complex response grounded both in terms of the causes of the phenomenon and avoiding the negative effects of this phenomenon in addition observing the rights of these people.

In the context, including at European Union level, it is considered that there is a necessity to remind regularly to the Member States the balanced implementation of the partnerships for mobility, including by it the emphasis on actions related to legal migration, human rights and the protection of refugees⁴, taking into account that the current crisis of migration and refugees, the most serious so far (in 2015 and 2016), has revealed on the one hand, the deficiencies of this legislation and, on the other hand, deficiencies of regulations so far in migration policy, on September the 19th, 2016, during the United Nations General Assembly at New York, that addressed issues related to migration and refugees resolutions - *the New York Declaration concerning Refugees and Migrants*.

Thus, a total of 193 Member States of the United Nations have recognized the need for an integrated approach to mobility and facilitation of reinforced cooperation at global level through the establishment of mechanisms that would enable and ensure the protection of migrant populations, taking into account the different national realities, the capacity and the level of development of each state and in accordance with national policies and priorities. The „New York Declaration” reinforces the importance of international protection, but it opens the way for the adoption of new agreements in 2018, such as global agreement on refugees and global agreement for ensuring safety, order and legal regulation in the field of migration.

Through the text of the Declaration, the Member States express their deep solidarity with those forced to take refuge, reaffirms its own obligations to complete observance of the human rights of refugees and migrants, they are committed to support countries affected by large numbers of refugees and migrants and they are committed to work on the adoption of the agreement on refugees and a global

³ Mădălina Cocoşatu, Analyzing the cases of exclusion from refugee protection, Bulletin of the 'Carol I' National Defence University /Oct-Dec2012, Issue 4, p. 212-217.

⁴ Special report carried out by the European Court of Auditors concerning the expenditure incurred by the EU until 2014, in its eastern neighbourhood countries and southern Mediterranean foreign policy with regard to migration, 2016, p. 19.

agreement for ensuring safety, order and the legal regulation in the field of migration⁵. The Declaration states that the challenge faced by the world's states is above all a moral and humanitarian one.

The New York Declaration has been characterized as „historical, but it has also been criticised on the grounds that it has no clear goals and concrete commitments. The New York Declaration is the result of extensive negotiations, the harmonisation of such different positions being a laborious process. This document – unimaginable a few years ago – is absolutely necessary in the current global context. One of its most important elements are the recognition of the fact that the management of migration fluxes represents a shared responsibility. The international community realizes the complexity and the seriousness of the situation, and the solution can only be the identification of multilateral mechanisms, in which an essential role belongs to the United Nations⁶”. Also, „particular attention is paid to the protection of women, girls and children, ensuring education for their children, ending their detention until determining their status, preventing sexual violence, ensuring the participation of migrants and refugees in identifying solutions and measures to combat xenophobia⁷”.

A novelty is the signing of the agreement by which the International Labour Organisation became officially an organization associated with the United Nations system, by the consolidation of the global comprehensive approach to migration⁸.

The Declaration, reiterates the idea that „all human beings are born free and equal in dignity and rights, that everyone has the right to be recognized everywhere as a person that must submit to the law” and „discrimination of any kind based on race, colour, sex, language, religion, political views or other national or social origin, property, birth or other status” is prohibited. However there are still racist and xenophobic attitudes addressed to refugees and migrants, which is why this document condemns firmly acts „and manifestations of racism, racial discrimination, xenophobia and associated intolerance, which are often stereotypes applied to them, in particular on the basis of religion or beliefs. Diversity enriches every society and contributes to social cohesion”.

In the annex II of the Declaration from New York⁹ it is provided the initialization of a *World Pact for a safe, orderly and regulatory migration*, with the goal of launching

⁵ <http://www.unhcr.org/ro/homepage/guverne-si-parteneri/guverne-si-partenericonferintesi-intalniri/declaratia-de-la-new-york-privind-refugiatii-si-migrantii>.

⁶ See Ioan Jinga in <http://www.euractiv.ro/we-develop/ion-jinga-ambasador-la-onu-sa-ne-imaginam-ca-intr-o-zi-ne-am-putea-afla-in-situatia-refugiatilor-5649>.

⁷ *Ibid.*

⁸ See the Report on the mission of European Parliament following the ad hoc Delegation's participation at the „high-level meeting of the General Assembly concerning refugees and migrants U.N.”, New York, USA, from 07.02.2017, p. 6.

⁹ U.N. Resolution 71/1 of 19 September 2016 concerning New York Declaration concerning Refugees and Migrants http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf.

a process of intergovernmental negotiations to establish a number of principles, commitments and agreements between the Member States with regard to international migration in all its forms. It will deal with all aspects of international migration, including the humanitarian ones, as well as issues related to human development and human rights and other aspects of migration. The commitment of Member States to cooperate to ensure that migrations are safe, regular and ordered, ensures a compliance at the same time not only with the human rights of migrants, but also with their dignity as individuals.

In order for the idea of this Pact to become achievable, there were devised various items that could be part of the Pact, such as addressing the views on migration and its effects, possible arrangements to facilitate orderly migration and international cooperation (a better management of it through the effective protection of the human rights of migrants and combating trafficking of human beings), the economic impact on both countries (country of origin and the host country) policies inclusion and protection of the right to work. At the same time, the responsibility and obligations of the migrants in host countries and the development and promotion of anti-discrimination policies and tolerance in the host States represents a challenging concrete aspect to face and develop, which constitutes the gist of this Pact.

The Annex establishes the necessary guidelines for achieving this global agreement, so that the objective be achieved through intergovernmental negotiations during 2017 and 2018.

In the before mentioned document is recognized „the important contribution of migrants and migration to development in countries of origin, transit and destination, the interdependence between migration and development” as well as the "positive contribution of migrants to the sustainability and inclusiveness of international migration", that is „multidimensional and of a major importance for developing countries of origin, transit, destination, requiring consistent and comprehensive answers." Only that way it will be possible to provide a "reliable, orderly and regulated migration involving total observance for the human rights and humane treatment of migrants, regardless of their migration status" and to ensure "respect for the dignity of migrants and protection of their rights, including the principle of non-discrimination under international law”.

Prior to this Pact, the *Resolution A/RES/71/280 of 6 April 2017 on arrangements for intergovernmental negotiation of Global Compact for a safe, orderly and regulated migration was adopted*; the adoption Pact will be held at the United Nations' Headquarters in New York in the fall of 2018, before commencing the opening debate of the seventeenth session of the General Assembly, as well as the necessary way to achieve it. The United Nations' Resolution adopted on the 6th of April 2017 also mentions various cooperation agencies of U.N., as well as other international organizations and the involvement of civil society in the preparation of the Pact.

Preparing the Pact will involve three stages: stage I or the stage of consultations, stage II or the stage of the results and, at last, stage III or the stage of intergovernmental negotiations.

Phase I or the consultation stage is from April to November 2017; during this period it will address both the issue of migrants' rights, social inclusion and the forms of irregular and regular migration, discrimination, as well as international cooperation and migration policy. At the same time, contributions of diaspora and migrants will be analysed in order for them to contribute to sustainable development and to identify solutions to the triggering factors of migration and sustainable development. Last but not least, will be the subject of consultations, among others, trafficking of human beings and migrant smuggling.

Summaries and recommendations resulting from the consultation of this first phase will constitute prerequisites for the discussions of the second stage, the results phase which will take place between November 2017 and January 2018, in Mexico. Thus, they will analyze the contributions provided by the Member States concerning the facilitation of migration into safe, legal and orderly manner and possible means of implementation. This phase will conclude with a preliminary draft of the Pact and, on behalf of the General Secretary and of the International Organization for Migration, a report with data, issues, and opportunities that are based on the contributions made and they will provide recommendations for the Member States before the start of the final phase.

Stage III, the intergovernmental negotiations, will last from February until July 2018 and will start with the submission by the Member States of the preliminary draft of the Pact in February 2018.

Finally, in the fall of 2018, an Intergovernmental Conference will be held at the headquarters of the United Nations in order to adopt a global Pact for a safe, legal and orderly migration derived from the New York Declaration of 19 September 2016 for refugees and migrants.

In order to ensure a safe, orderly and legal migration, it is necessary to promote regularity as a phenomenon determined by international mobility, facilitating access to legal norms for the effective exercise of rights and adequate information regarding administrative procedures, rules and updating of the visa system in order to examine the various situations of the international mobility of people, ensure the protection of the rights of all migrants without discrimination (in particular, consideration should be given to the situation of women, children and adolescents) and their integration through access to the labour market, to education and public health services, to the fight against xenophobia, racism and discrimination, to reinforce international cooperation with the states of origin, transit and destination in order to help migrants etc.

States must develop a more effective management of migration, based on the protection and promotion of human rights, but also on the strengthening of the institutional framework through regulation and the creation of new tools aimed at

facilitating access to the rights of the migrant population, due to compliance with the principles that govern the migration policy (equality of treatment in the exercise of rights between nationals and aliens, non-discrimination, socio-cultural integration, respect for the diversity and cultural identity, gender equality etc.). Human rights, fundamental freedoms and respect for the dignity of migrants should be promoted and effectively protected by the state, ensuring that the fundamental rights of migrants and refugees are not violated.

Recognition of the social and economic contribution of migrants and refugees in the countries of destination will ensure a constructive attitude at the expense of one promoting division, and the chance of a better life, as an alternative for development, should lead to an increased mobility and orderly manner. At the same time, the world will support the policies of social inclusion and equality, human rights, in a world characterised by greater solidarity and humanity.

The World Pact must pursue a wider and applied perspective in relation to human rights, supporting the human rights of migrants and refugees, especially regarding the existing problems and anti-migrant attitudes, xenophobia and discrimination by taking measures to impose tolerance and respect for all migrants, to deal with prejudice and social stigma of migrants.

At the same time, the Pact completes the objectives of *The U.N. 2030 New Agenda for sustainable development*¹⁰, in which migration and human mobility are included in four of the 17 objectives of sustainable development, recognizing the positive contribution of migrants themselves and the fundamental role of migration in the process of sustainable development. Here is emphasized the need to ensure respect and support of human rights and humane treatment of migrants, irrespective of their status. This global approach, aims at strengthening the link between migration and development and accentuates the necessity of having effective migration management that reflects the economic requirements of the host state, the development needs of the countries of origin and migrant's rights.¹¹

World Pact should be regarded as an opportunity for all Member States to align migration and refugee policy at the international level, and acknowledging that only effective international cooperation will provide the possibility of achieving positive results, while respecting the principles and values of human rights. This is a huge challenge for creating a viable world vision, a challenge with positive effects in the long term, by providing new insights into host countries, but also by stimulating economic growth and socio-cultural development of the respective communities.

¹⁰ 2030 Agenda for sustainable development was adopted by the United Nations, on 25 September 2015.

¹¹ Special report carried out by the European Court of Auditors concerning the expenditure incurred by the EU until 2014, in its eastern neighborhood countries and southern Mediterranean foreign policy with regard to migration, 2016, p. 32.

With the adoption of the New York Declaration related to Refugees and Migrants, established on the 19th of September 2016, it is considered that „it is time that the EU, in the light of this Statement, to revitalize its commitments, not only between EU Member States, but also with the states of origin, transit and refuge. A common approach, principled and pragmatic to handle refugees and migrants is possible and easily achieved within the E.U. [...] founded on the principles of respect for fundamental rights, responsibility, solidarity and trust¹²”. It requires restoring the sense of solidarity, through relocation and reformation of resettlement programmes, so that all EU Member States fulfil their obligations, the increase in partnerships with countries of origin and transit, the development of a positive perception of migration, taking into account that it can stimulate national economies by creating new demand for goods and services, through the development of new models of social mediation and intercultural dialogue.

Convinced that migration will remain a central issue for the political agenda of every state, for European and international policy, world states must see in migration, more humane and dynamic mobility of people, whose momentum has got a new dimension in the context of globalization, aimed at strengthening solidarity and responsibility of each state, and less of a short-term crisis. Migration should be a priority not only for the countries most directly affected, but also for all states of the world, whether or not they are subject to mixed migration fluxes, aiming to extend the cooperation between states beyond the issue of refugees.

In order for the Pact to become a reality it takes a sustained international cooperation for the development of a global policy on migration and refugees, there is a need to create conditions for a sustainable economy and social responsibility and solidarity. As the international dimension of human rights has progressively imposed itself through slow but sustainable development, and in spite of certain reluctance, quickly becoming a reality¹³, also the next period will demonstrate the ability of the U.N. member states to cooperate and find appropriate solutions together for a single policy relating to migration and refugees.

A World Pact for a safe, orderly and regulated migration in spite of the moral and humanitarian challenge in all states would eliminate many of the gaps in the current legal regulations at the international level and would provide a corpus of general applicability, leading to the cooperation and coordination of legislation and institutions involved at national and international level.

¹² UNHCR, better protection for refugees in the EU and globally, 2016, p. 2.

<http://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=589b51184>.

¹³ Jean-Francois Renucci, *Treaty of european human rights law*, Hamangiu Publishing House, 2009, p. 9.