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THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION AND THE PROTECTION OF HUMAN RIGHTS OF MIGRANTS

Abstract: The report is aimed at presenting the philosophy and main aims of the Global Compact for Safe, Orderly and Regular Migration, adopted by the United Nations Intergovernmental Conference held on 10 — 11 December 2018 in Marrakech, Morocco. The Global Compact is not legally-binding instrument, pretending foster 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. The document recalls that refugees and migrants are entitled to the same universal human rights and fundamental freedoms, which must be respected, protected and fulfilled at all times. In fact these fundamental rights and freedoms of the migrants are violated every day. The report presents some European votes “against” and the abstaining vote of Bulgaria. The paper discusses the establishing of universal catalogue of migrants human rights.

Key words: migration, regular migration, irregular migration, COVID-19 pandemic, Global Compact for Safe, Orderly and Regular Migration, right to a legal identity, right of life, right of work, vulnerability in migration, immigration detention, inclusion and social cohesion.

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INTRODUCTION

Globalization and the greater mobility of the population turn the migration problems worldwide into a complex situated on the border between the political and the legal regulation.

According to United Nations High Commissioner for Refugees in 2018 65, 6 million people are forced to leave their homes. Of these, approximately 22.5 million are refugees, over half of whom are under the age of 18 [1].

The latest accessible data on the site of the International Organization for Migration are 271,6 mln migrants in the world in mid-year 2019 [2]. The same data (271 642 105 migrants) are delivered for 2019 by the United Nations Population Division, the Department of Economic and Social Affairs [3].

The problem of migration has not a comprehensive regulation in international public law. The international refugee law on universal level is relatively well developed through the Convention Relating to the Status of Refugees of 1951 and its 1967 Protocol [4]. Worldwide there are large groups of people who formally do not fall under the definition of “refugee” according to the Refugee Convention.

Partially are treated the trafficking of migrants (the Palermo protocols on trafficking in persons [5] and migrant smuggling [6] to the Convention against Transnational Organized Crime [7]), the labour exploitation of migrants (international labour standards in relevant International Labour Organization Conventions), and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families [8] (which is not widely ratified or implemented). The lack of universally recognized rules for the regular migration, as well for prevent and combat irregular migration represents a challenge for all countries in the world: countries of origin, transit and final destination of the migrants flows.

The report is not aimed at discuss the problem of definition of “migration”, “migrant”, “refugee”, “new migrants”, etc. and focuses on the aspect of the human rights of migrants according to the Global Compact for Safe, Orderly and Regular Migration (GCM). There is universal consensus that refugees and migrants are entitled to the same universal human rights and fundamental freedoms, which must be respected, protected and fulfilled at all times. The Global Compact for Safe, Orderly and Regular Migration, adopted by the United Nations Intergovernmental

Conference held on 10 — 11 December 2018 in Marrakech, Morocco addresses this issued on comprehensive and holistic manner.

The pandemic of COVIT-19 poses another problem, not treated in the GCM, but linked with some of its objectives: the vulnerability of the migrants in countries already impacted. As of 17 June 2020 migrants accounted at least 8 % of the population in 8 of the 15 countries with the highest number of COVID-19 cases [9]. Increasing border restrictions also have a negative impact on the mobility of migrants. There are new forms on discrimination against the migrants, based on the COVID-19 pandemic situation. This problematic falls outside of the scope of the report.

1. SHORT HISTORY OF THE DRAFTING OF THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION

The first attempt to put the issue of migration on the table of order of the United Nation was the adoption of the 2030 Agenda for Sustainable Development in September 2015 [10]. The idea to convene an international conference tackling with the issues of migrants and refugees is attributed to the then Special Representative of the Secretary-General for International Migration, Peter Sutherland. His efforts led to the first meeting of Heads of States in the General Assembly on migration and to the adoption in 2016 of the New York Declaration for refugees and Migrants [11].

On 19 September 2016 heads of state and government came together for the first time ever at the global level within the UN General Assembly to discuss issues related to migration and refugees. This sent an important political message that migration and refugee matters had become major issues squarely in the international agenda. In adopting the New York Declaration for Refugees and Migrants, the 193 UN member states recognized the need for a comprehensive approach to human mobility and enhanced cooperation at the global level. This document is based on the following principles:

- protect the safety, dignity and human rights and fundamental freedoms of all migrants, regardless of their migratory status, and at all times;
- support countries rescuing, receiving and hosting large numbers of refugees and migrants;

— integrate migrants — addressing their needs and capacities as well as those of receiving communities — in humanitarian and development assistance frameworks and planning;

— combat xenophobia, racism and discrimination towards all migrants;

— develop, through a state-led process, non-binding principles and voluntary guidelines on the treatment of migrants in vulnerable situations; and

— strengthen global governance of migration, including by bringing International Organization for Migration (IOM) into the UN family and through the development of a Global Compact for Safe, Orderly and Regular Migration [12].

Annex II of the New York Declaration set in motion a process of intergovernmental consultations and negotiations culminating in the planned adoption of the Global Compact for Migration at an intergovernmental conference on international migration in 2018.

This process started on April 2017, on 13 July the member states finalized the text of the Global Compact. It was adopted on 10 — 11 December 2018 by the majority of UN Member States at an Intergovernmental Conference in Marrakesh, Morocco [13].

The UN General Assembly officially adopted the GCM in a vote on 19 December 2018. There were 152 votes in favour, with five countries voting against and twelve abstaining. The countries voting against were: Hungary, Poland, the USA, the Czech Republic and Israel. The countries abstaining were: Algeria, Australia, Austria, Bulgaria, Chile, Italy, Latvia, Libya, Liechtenstein, Romania, Singapore and Switzerland.

Brazil was among the countries voting in favour of the GCM. However, after taking office in January 2019, the new Brazilian President Jair Bolsonaro said that Brazil would no longer be party to the Compact.

Among the twelve abstaining countries are EU members Austria, Bulgaria, Italy, Latvia and Romania. Slovakia did not vote. [14]. The vote of Visegrad group (including the missing Slovakia) was based on their well-known position against the relocation policies and quota system for asylum-seekers in EU [15].

Péter Szijjártó, Hungary's Minister for Foreign Affairs and Trade, stated that the General Assembly was about to commit a serious mistake by endorsing "this unbalanced, biased and pro-migration document". Migration is "a dangerous phenomenon," he said, emphasizing that Hungary reserves the sovereign right to decide on migration and security measures.

The representative of Bulgaria said his delegation joined several European nations, including Italy and Switzerland, in abstaining vote. The main reasons provided: the proposed visa liberalization measures might lead to lesser control over migrants in general and the term “newly arrived migrants” may leave room for various interpretations. The representative noted that Bulgaria is not in a position to adhere fully to certain commitments and concrete actions associated with them. In Slovakia, the foreign minister Miroslav Lajčák resigned in November 2018, after the country’s parliament voted against signing-up to the Global Compact [16].

2. LEGAL NATURE OF THE GLOBAL COMPACT

What is the legal nature of the Global Compact ? The terminology used by the United Nations is “inter-governmentally negotiated agreement”, prepared under the auspices of the United Nations, covering all dimensions of international migration in a holistic and comprehensive manner. Nevertheless it is to emphasize that is not a legally binding treaty in the sense of the Art. 2, 1 (a) of the Vienna convention on the law of treaties [17]. The Global Compact respects the sovereign rights of the states to determine who enter, reside and work on their territories and represents an added value to the international cooperation on migration. According to the United Nations it presents a new opportunity to improve the governance of migration, to address the challenges to the migration and thus facilitate their contributions to sustainable development at the local, national, regional and global levels.

The Global Compact is framed in a way consistent with target 10.7 of the 2030 Agenda for Sustainable Development in which Member States committed to cooperate internationally to facilitate safe, orderly and regular migration.

Still the Preamble of the GCM emphasizes that the document is not legally binding, and represents a cooperative framework for cooperation, builds on the commitments agreed upon by member states in the New York Declaration for Refugees and Migrants. The document pretends to preserve the interests of the all countries of origin, transit and destination. It recognizes that no country alone can address the challenges and opportunities of this global phenomenon.

The proclaimed aim is 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 the Global Compact.

The wording of the document poses some theoretical questions with serious practical implications. The main problem, in my doctrinal opinion, is the term used “commitment” not only for the states, but also for the civil society, the private sector and others stakeholders. If the “commitment” is a real obligation under the law, the question of responsibility is raised, The problem is well presented and analyzed by Christina Oelgemöller and Kathryn Allinson [18].

In Paragraph 15 are listed the following Guiding principles of the Global Compact for Safe, Orderly and Regular Migration:

(a) **People-centred.** The Global Compact carries a strong human dimension, inherent to the migration experience itself;

(b) **International cooperation.** The Global Compact is a non-legally binding cooperative framework that recognizes that no State can address migration on its own because of the inherently transnational nature of the phenomenon;

(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;

(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;

(e) **Sustainable development.** The Global Compact is rooted in the 2030 Agenda for Sustainable Development

(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, is to ensure effective respect for and protection and fulfilment of the human rights of all migrants, regardless of their migration status, across all stages of the migration cycle. The GCM 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, that their specific needs are properly understood and addressed and that they are empowered as agents of change;

(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;

(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;

(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.

3. THE HUMAN RIGHTS ASPECT IN THE GLOBAL COMPACT OBJECTIVES

The cooperative framework comprises 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.

Several objectives of the GCM address the human rights of the migrants. In this report are analyzed solely the objectives with relevance to the protection of the migrants human rights.

The first objective “Collect and utilize accurate and disaggregated data as a basis for evidence-based policies” seems not to be relevant to the subject matter of this report. Nevertheless, collecting, analysing and disseminating of accurate, reliable and comparable data, disaggregated by sex, age, migration status and other characteristics relevant in national contexts, must be carried out by observing **the right to privacy** under international human rights law and protecting personal data.

Objective 3 is aimed at providing accurate and timely information at all stages of migration and also contains some aspects of the human rights. The Global Compact envisages, *inter alia*, to 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 that the person concerned understands.

The same objective contains the commitment of the states to 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 access to basic services.

Objective 4 “Ensure that all migrants have proof of legal identity and adequate documentation” is based on the fundamental **right of all individuals to a legal identity**. The GCM strives to fulfil this right 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. There is a further commitment for the states 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.

In order to realize this commitment, the following action *inter alia* are drawn: facilitate access to personal documentation, such as passports and visas, and ensure that relevant regulations and criteria for obtaining 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;

The explanation of the Bulgarian representative in the Marrakech conference are seriously based on problems related to legal identification of illegal migrants in Bulgaria. Starting with the Kadzoev case C-357/09 PPU/30. 11. 2009 [19] the problems with the persons without identity documents are standing present in the practice of the migration institutions and the case-law in Bulgaria.

Objective 5 is aimed at enhancing availability and flexibility of pathways for **regular migration**. The main aim is 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.

Objective 6 “Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work” is based on **the fundamental right of work**. The commitment of the Global compact is 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.

Objective 7 “**Address and reduce vulnerabilities in migration**” is also focused on the human rights of migrants. The 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. The Global compact will assist them and protect their human rights, in accordance with the obligations under international law. The GCM further commits 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.

Among the actions drawn is to be emphasized the following: 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;

Objective 8 “Save lives and establish coordinated international efforts on missing migrants” is based on the fundamental **right of life**. The commitment in the GCM is 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.

Objective 9 “Strengthen the transnational response to smuggling of migrants” and Objective 10 “Prevent, combat and eradicate trafficking in persons in the context of international migration” fall outside the scope of this analysis and are to be studied in depth separately.

Objective 11 “Manage borders in an integrated, secure and coordinated manner” has also a human rights dimension. The border management policies will respect national sovereignty, the rule of law, obligations under international law, and the human rights of all migrants, regardless of their migration status, and are non-discriminatory, gender-responsive and child-sensitive.

Objective 12 “Strengthen certainty and predictability in migration procedures” is aimed at appropriate screening, assessment and referral 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.

Objective 13 is crucial for the rights of the migrants in irregular situation. It stipulates the use of immigration detention only as a measure of last resort and work towards alternatives. It is aimed at to ensure that any detention in the context of international migration follows due process, is non-arbitrary, is based on law, necessity, proportionality and individual assessments, is carried out by authorized officials and is for the shortest possible period of time, irrespective of whether detention occurs at the moment of entry, in transit or in proceedings of return, and regardless of the type of place where the detention occurs. The further commitment is 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.

Objective 14 “Enhance consular protection, assistance and cooperation throughout the migration cycle” is aimed at strengthening consular protection of and assistance in order to better safeguard the rights and interests of all migrants at all times.

Objective 15 “Provide access to **basic services for migrants**” means that all migrants, regardless of their migration status, can exercise their human rights through safe access to basic services. The following actions are drawn, *inter alia*: 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;

Objective 16 “Empower migrants and societies to realize full **inclusion and social cohesion**” strives 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 [20].

Objective 17 is “Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration”. The purpose is 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. Among the actions drawn, it is to emphasize the following: 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.

A group of objectives are targeted to the economic and social rights of migrants. There can be listed: Objective 18 “Invest in skills development and facilitate mutual recognition of skills, qualifications and competences of migrant workers”; Objective 19 “Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries”; Objective 20 “Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants”; Objective 22 “Establish mechanisms for the portability of social security entitlements and earned benefits”.

Objective 21 “Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration” is the universal emanation of the **prohibition for collective expulsion of migrants** in the light of the non-refoulement clause [21]. The main aim is 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 the obligations under international human rights law.

CONCLUSION

The short presentation of the issues of human rights in the Global compact is a good basis to establish a catalogue of migrants human rights, universally recognized and accepted. Despite the non legally binding character of the GCM it is to summarize the following:

There are universal consensus that the states must cooperate on the management of migration.

The human rights of migrants everywhere must be respected, regardless of their migration status.

The migration policies should be based on accurate data and evidences.

The catalogue of the human rights of migrants in the GCM is the following:

- the fundamental right of all individuals to a legal identity;
- the fundamental right of work, especially facilitate fair and ethical recruitment and safeguard conditions that ensure decent work;
- the fundamental right of life;
- the rights of the migrants in irregular situation, especially stressing that the use of immigration detention only as a measure of last resort;
- the migrants are entitled to basic services regardless of their migration status and without discrimination;
- economic and social rights.

The analyze of the GCM does not give proof for the emergence of a new “right of migration”.

All these rights are to be respected and implemented in the larger context of addressing and reducing vulnerability in migration and of full inclusion and social cohesion. The GCM is based on the philosophy that migrants are key contributors to development.

The future will show if the last Objective 23 will be attained: strengthen international cooperation and global partnerships for safe, orderly and regular migration: that means 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.

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