Chapter 6

ECONOMIC MIGRANTS AND EXTRA-EUROPEAN PRACTICES: CONSIDERATIONS ABOUT THE MINIMUM GUARANTEES OF TREATMENT

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ABSTRACT: *The economic migrant does not see in his favour a system of protection that can be compared to that recognized for refugees and asylum seekers. This is not a superficial question given the current difficulty in drawing a clear separation between the reasons that push certain people to leave their land. The resulting classification of migrants in the group of refugees pushes to seek a legal regime with less specific regulations and bilateral reception agreements. While the European model shows a consolidated picture at a regional level, the situation in the rest of the world is quite different, also considering the position of the main immigration countries, such as the USA or Russia, and the Asian reception models. Two kinds of problems appear in the analysis of legal framework: the discretion of the country's legislation in deciding who has the right to enter and the immediate subsequent treatment of migrants once they have reached their destination. Often people find it difficult to provide essential services or suffer discrimination, in addition to situations at home that cannot consent to return, albeit requirements asked by international law for the return. The contribution aims to examine the existing rules of a minimum regime of international law for migrants.*

SUMMARY: 1. Introduction. – 2. Defining migrants, economic migrants and migrant worker. – 3 International human rights standards. – 4. The ILO Conventions on migrant workers. – 5. New York Declaration and the Global Compacts: the UN initiatives. – 6. Brief examples of bilateral agreements. – 7. Conclusions.

1. Introduction

The essay intends to deepen a particular aspect of the migratory phenomenon or what legally remains outside the refugee status, as defined

by international law. The reference is in general to the notion of "migrant" to those types of the same which, for various reasons, do not fall within the requirements established for the protection of refugees and asylum seekers. Compared to the refugee as framed by the relative Geneva Convention of 1951 (and its 1967 Protocol), the figure of the migrant, substantially lacks the "justified fear of being persecuted for his race, religion, citizenship, his membership of a particular social group or his political views".[1] This condition refers both to the citizen of a State which cannot guarantee adequate protection in the situations and to the stateless person about the State where he habitually lived.[2] In cases where a person cannot be recognized as a refugee but is still at risk of persecution or torture in the country of origin, he can access other types of protection in particular cases. The requirements established by Art. 1 of the Convention must all be present at the same time.[3] The condition of the migrant, on the other hand, does not have similar protections, starting from the *ius migrandi* itself, which does not find international or internal recognition,[4] unless you want to associate it with the freedom of movement of the EU. Instead, there is a right to emigrate, to leave one's State, without the specular right to a reception. Indeed, there are cases in which irregular entry or stay in the territory of another State is sanctioned in various forms, including detention and forced repatriation.[5] Indeed, even today, one does not leave one's country of birth, study, relationships and family only for fear of persecution, but also to seek a better job and economic opportunities or even for 'climatic' reasons, such as in cases of drought, extreme temperatures and natural disasters.[6] The multiplication of these figures therefore,

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[1] *Convention on the Status of Refugees*, Geneva, 28 July 1951. See Art. 1 lett. a).

[2] Italian Ministry of the Interior, *Guida pratica per i richiedenti protezione internazionale in Italia*, available online, 26-27.

[3] I. PAPANICOLOPULU, G. BAJ (2020), *Controllo delle frontiere statali e respingimenti nel diritto internazionale e nel diritto del mare*, in *Dir., Imm. e Cittad.*, 2020, 33.

[4] I. RUGGIU (2019), *Migrazioni per cause climatiche e impatti sulla sicurezza a livello locale*, in F. ASTONE, R. CAVALLO PERIN, A. ROMEO, S. MARIO (eds.), *Immigrazione e diritti fondamentali,* Turin, 401.

[5] I. RUGGIU (2019), *cit*., 401-402.

[6] According to reports by Legambiente, Italian NGO in environmental matters, the variability of environmental crises prevents a correct estimate of po-

from the economic migrant to the climate migrant, just to give an example, has raised the problem of their possible classification in international law, given the broad discretion of individual States on an issue whose conflictual aspects gradually increase that the burden of protecting the individual on the part of the State increases, and therefore the obligations to care for immigrants increase.

There is no shortage of efforts advocated by the UN aimed at underlining that, despite the conceptually existing difference between refugees and migrants and the specific protection system for the former, it is necessary to develop a protection regime that is shared as much as possible, and which preserves the well-being of seconds beyond human rights-based protection.[7] International law, in fact, in regulating the matter, finds a historical limit in the sovereign power of the States. In a nutshell, the norms of the international community recognize the right of a person to leave the country of origin but, at the same time, they 'stop' before entering the borders of the State, which is free to determine, as it deems best, the conditions for the entry, stay and expulsion of aliens on its territory.

To date, the legal distinction between migrations is between migrations for economic reasons and migrations for situations of vulnerability. Today this subdivision appears to be incomplete, as migrations are finding ever greater drives due to causes of an environmental nature, more and more often linked to climate change.[8] That new type of migration

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tential climate migrants by 2050 that could be even a billion. See LEGAMBIENTE (2021), *I migranti ambientali. L'altra faccia della crisi climatica*, available online, 19.

[7] The International Convention on the Protection of the Rights of Migrant Workers and Members of their Families, adopted on 18 December 1990, is in this category, albeit indirectly, the Additional Protocol to the United Nations Convention against Transnational Organised Crime to Combat Trafficking in Migrants by Land, Sea and Air, adopted in Palermo on 15 December 2000, and the Additional Protocol to the UN Convention against Transnational Organised Crime to Prevent, Suppress and Punish Trafficking in Persons of the Same Date; and the UNGA Resolution, Measures to ensure the human rights of all migrant workers, of 9 December 1975. More recently, the UNGA New York Declaration for Refugees and Migrants, UN Doc. A/RES/71/1 of 3 October 2016, followed by the Global compact on refugees of 26 June 2018 and Global Compact for Safe, Orderly And Regular Migration of 13 July 2018.

[8] I. RUGGIU (2019), *Migrazioni per cause climatiche*, cit., 401. See also E. PIGUET, A. PÉCOUD, P. DE GUCHTENEIRE (eds.) (2011), *Migration and Climate Change*, Cambridge.

forces to reflect on the *ius migrandi* as understood today, since it does not find any protection, leaving the treatment of those who are not among those who flee from violence and persecutions only to the State Law. [9]

2. Defining migrants, economic migrants and migrant worker

In essence, migrants can be divided into two broad categories: voluntary and forced. Among the most discussed and known cases of forced migration there are certainly the so-called "climatemigrants", that is people who emigrate to other territories fleeing environmental disasters, floods, droughts or other disasters related to climate change. Note that since there is no legal basis for this notion, the UNHCR itself states that this is an improper definition and that one should speak at most of "people displaced in the context of disasters and climate change". [10] UNHCR also stresses – and rightly so – that the areas of the world at the highest climate risk are those of the developing world, and that therefore the risk of wars based on racial or political persecution is greater. Factors such as political and economic instability, widespread poverty, marginalisation and scarcity of resources can exacerbate climate-sensitive geopolitical situations. Just think of the huge influx of people into another part of the State or the territory of a neighboring country: such human pressure can result in an open armed conflict. Therefore, the boundary between voluntarism and compulsion in extreme environmental situations is very thin. [11]

As the Word Migration Report 2022 points out, there is no universally accepted definition of migrant given the increasingly wide range of reasons that push people around the world to move from one place to another. [12] The United Nations Agency for Migrants (IOM), has been publishing a glossary on migration for years. The Glossary 2022 defines as migrant a person who leaves the place where he usually lives to move (within the same State or outside) temporarily or permanently for a "variety of reasons". [13] The glossary also notes that, due to the lack of

[9] I. RUGGIU (2019), *Migrazioni per cause climatiche*, cit., 401.

[10] A. LANNI (2019), *Esistono i "rifugiati climatici"?*, in *UNHCR Italia*, available online.

[11] A. LANNI (2019), *Esistono i "rifugiati climatici"?*, cit.

[12] IOM (2022), *World Migraton Report 2022*, cit., 22.

[13] See A. SIRONI, C. BAULOZ, M. EMMANUEL (2022), *Glossary on Migration*,

uniqueness of an "umbrella" term, there are different approaches to the issue: use migrant as a concept containing multiple forms of movement or reserve it for those who do not escape war and persecutions. [14]

The same IOM Glossary 2022 says that the term economic migrants is sometimes used to refer to any person who is moving or has moved across an international border or within a State, solely or primarily motivated by economic opportunities., but it is not a category in international law. The Glossary notes that the term economic migrants should be used with caution particularly when describing mixed migration flows. The term "migrant worker", as defined in the IOM 1990 International Convention on the Rights of all Migrant Workers and Members of Their Families, Art. 2.1, "is a more neutral term and should be preferred". [15] That Convention defines the Migrant Worker as "A person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national".

Other examples of proposed definitions are those developed in the context of the United Nations Department of Economic and Social Affairs Recommendations on International Migration Statistics, developed in 1998. [16] The current Recommendations, which are being updated, define "international migrant" as any person who leaves the place where they have habitually lived and makes a distinction between "short" and "long" term migrants depending on the duration of the distance (in the first case at least three months, but less than a year; in the second for at least a year). Of course, since this proposal is not binding, it is limited by the freedom of the States to use different and further criteria such as minimum durations of residence other than those just indicated. [17]

3. International human rights standards

The impact of international human rights norms on the condition of migrants has eroded the division between citizens and non-citizens, as

IOM Publication, 132: "At the international level, no universally accepted definition for "migrant" exists. The present definition was developed by IOM for its own purposes and it is not meant to imply or create any new legal category".

[14] *Ivi*, 133.

[15] *Ivi*, 61-62.

[16] IOM (2022), *World Migraton Report* 2022, cit., 22.

[17] *Ivi*, 23.

these are norms relating to human dignity, regardless of where it comes from. The principle of the protection of human dignity is then reinforced by the principle of non-discrimination, enshrined in all human rights agreements. [18]

When it comes to human rights, the State is very constrained since the migrant must be protected as a human and not based on his legal status. Protection belongs to the State which has jurisdiction over the territory in which the person is located, even if irregular. However, State law may provide for provisions which differentiate the treatment of the citizen from that of the migrant (e.g. security, public order, morals, etc.), but always within the limits of a concept of the legitimate purpose of the measure. Therefore, the author distinguishes between rights that do not admit limits or differences (fundamental human rights) between citizens and foreigners and others that instead can be subject to differentiation as long as they have all the necessary limits (reasonableness, proportionality, necessity, etc.). Some rights can then be reserved only for citizens (those of citizenship, in fact).

Despite all this, migrants often end up victims of abuse and do not claim their rights for fear of reprisals, even from the authorities. This creates a perennial climate of violence and poverty around irregular migrants, even in the private market. Even in the latter case, there is the responsibility of the State which fails to prepare adequate legislative and control measures to prevent it. [19]

The preamble to the Universal Declaration of Human Rights states that "the recognition of the inherent dignity of all members of the human family and of their equal and inalienable rights constitutes the foundation of freedom, justice and peace in the world". Again the American Convention on Human Rights states "essential human rights do not depend on the belonging of an individual to a certain State, but are based on the attributes of the human person, and that this justifies their protection at international level, to be achieved through a Convention that strengthens and is complementary to the protection provided by the internal laws of the American States". [20]

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[18] V. CHETAIL (2013), *Human Rights of Migrants in General International Law*, in *Georgetown Immigration Law Journal*, 28, 245.

[19] S. THARAKAN (2002) *Protecting Migrant Workers*, in *Economic and Political Weekly*, 37, 5081.

[20] Adopted in San José de Costa Rica 22 November 1969. Entered into force after nine years 18 July 1978.

This principle is validated by the principle of non-discrimination as stated in art. 2 c. 1 of the International Covenant on Civil and Political Rights "each of the States Parties to this Covenant undertakes to respect and guarantee to all individuals within its territory and subject to its jurisdiction the rights recognised in this Covenant, without distinction, whether based on race, color, sex, language, religion, political opinion or any other opinion, national or social origin, economic status, birth or any other condition", which especially supports migrant workers and their families.

The fundamental rights listed therein do not apply only to foreigners; in fact, most of them are generally considered part of customary international law. However, a limit to the safeguards afforded to the person enjoying the legal status of a migrant is the fact that legal guarantees are offered only in the case of a "legal" presence in the host territory, hence the need to legitimise and bring out the presence of migrants, in order to prevent abuse, violence and exploitation. Still in the International Covenant on economic, social and cultural rights art. 2 paragraph 2 reads that "the States Parties to this Covenant undertake to ensure that the rights set out therein will be exercised without any discrimination, whether based on race, colour, sex, language, religion, political opinion or any other opinion, national or social origin, economic status, birth or any other condition", indicating, however, a limit to the principle of non-discrimination in references to paragraph 3 of Art. 2 of the Covenant which states that "Developing countries, with due regard for human rights and their national economies, may determine to what extent they will grant to individuals who are not nationals the economic rights recognised in this Covenant".

4. The ILO Conventions on migrant workers

The minimum standards that have gradually emerged specifically with regard to migrant workers are mainly the result of the work of the International Labour Organization (ILO), work that has developed over time.[21] In principle, all international labour standards, unless otherwise

[21] See C. VITTIN-BALIMA (2012), *Migrant workers: The ILO standards,* in *Labour Education*, (4), 129, note 6. For the sake of completeness, it should be noted that in 1926 the Conference adopted the Inspection of Emigrants Convention (no. 21) and the Migration (Protection of Females at Sea) Recommen-

stated, are applicable to migrant workers.[22] The most relevant policies are laid down in the 1949[23] International Labour Convention and the Convention on Migrant Workers (supplementary provisions) of 1975[24] and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990,[25] and the most recent Convention concerning Decent Work for Domestic Workers of 2011, entered into force in 2013. The protection accorded to the above-mentioned Conventions was immediately seriously undermined by the failure of the high-income countries to ratify or implement these agreements.[26] The reasons for the latter deficit are many and range from the high concentration of foreign workers within many rich countries to the political and social impact that the presence of these people can have compared to national citizens. In addition to the low consideration of these countries towards the mentioned instruments there is the additional difficulty linked to the monitoring of the world of migrant work-

dation (no. 26); in 1939, the Migration for Employment Convention (no. 66) and Recommendation (no. 61), and the Migration for Employment (Co-operation between States) Recommendation (no. 62); and in 1947, the Social Policy (Non-Metropolitan Territories) Convention (no. 82). Convention No. 66 never entered into force due to lack of ratifications and it was accordingly decided to revise it in 1949, when the Migration for Employment Convention (Revised) (no. 97) and Recommendation (Revised) (no. 86) were adopted. In 1955, the Conference adopted the Protection of Migrant Workers (Underdeveloped Countries) Recommendation (no. 100); in 1958, the Plantations Convention (no. 110), and Recommendation (no. 110); and in 1962, the Social Policy (Basic Aims and Standards) Convention (no. 117). Finally, in 1975, the Conference supplemented the 1949 instruments by adopting the Migrant Workers (Supplementary Provisions) Convention (no. 143) and the Migrant Workers Recommendation (no. 151).

[22] ILO (2023), *International labour standards on labour migration*, available online.

[23] *Convention on Migrant Workers* (Revised), 1949 (no. 97).

[24] *Convention on illegal migration and the promotion of equal opportunities and treatment of migrant workers* (revised), 1975 (no. 143).

[25] For an overview of the international conventions on migrant workers from 1919 to 1975 see M. HASENAU (1991), *ILO Standards on Migrant Workers: The Fundamentals of the UN Convention and Their Genesis*, in *The International Migration Review*, 25, 687-697.

[26] See M. RUHS (2017), *Rethinking international legal standards for the protection of migrant workers: the case for a "core rights" approach*, in *AJIL Unbound*, 111, 175.

ers, many of whom do not 'emerge' in statistics (and the case especially of irregulars). To this aim, the continuous data collection and processing provided by both the IOM and the ILO is indispensable.

The ILO Convention on Migration and Employment of 1949, which has been very poorly ratified, includes at least a few high-income Western countries such as Belgium, Italy, Norway, Spain and the United Kingdom (the latter are not covered by Annexes I and III).[27] This draft represents a successful re-edition of the principles contained in a previous convention of 1939 that never entered into force since it was not ratified by any country.

Even fewer countries have taken part in the Migrant Workers (Supplementary Provisions) ILO Convention, 1975 (no. 143),[28] which also provides for a large catalogue of obligations.[29] This too begins by referring to fundamental rights and to international, multilateral and bilateral instruments or agreements, that is to say, to national legislation (Art. 2). One of the aims of the convention, as in the previous ones, is to combat illegal migration and illegal occupation. Art. Amendment No 8, for example, guarantees equal treatment with national citizens in the event of irregularities or illegality resulting from the loss of employment, provided that they have been legally resident in the territory until then.

The 1990 Convention refers to the Universal Declaration of Human Rights and other instruments on human rights, and to the two other conventions mentioned. To date, it has only 58 States among its members, mostly Latin American and Northwest Africa, countries more affected by emigration than by immigration. Moreover, among these members are many countries not particularly engaged in respect of human rights such as Egypt, Turkey and Venezuela.[30] It should be noted

[27] 53 ratifications to date.

[28] Only 29 ratifications. Here too, there are very few wealthy countries such as Italy, Portugal and Sweden.

[29] A particular burden might be thought of as art. 10 of Convention: "Each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory".

[30] Countries which, like many others, have made reservations about the Convention.

that it does not include any European Union country or any other European State, such as Switzerland or United Kingdom. The Convention is based on the principle of equal treatment between migrants and citizens, rather than on the notion of minimum standards,[31] and links the rights of migrant workers to the wider area of human rights.

An important principle in this text (Art. 2.1) is the definition of migrant worker as one who is a "person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national". It is important to emphasize that for two reasons: often the basis of the cracks in international law with regard to migrants is precisely the lack of general consensus even on the definition of the term "migrant"; the Convention also applies to more specific workers such as cross-border workers, seasonal workers, seafarers, itinerants and other similar cases (Art. 2). The Convention aims to protect not only migrant workers but also their families, recognising the importance of the dignity of work in a broader social and human sense. Art. 1 states that the principles of the text are applicable to all migrant workers and members of their families without any distinction of sex, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, nationality, age, economic status, property, marital status, birth or other legal status. The same Article protects the migrant and his family members throughout the migration process, from preparation, to transit, to stay in the State of destination and up to withdrawal of the land of origin or habitual residence. Perhaps the most daring datum of this convention is the recognition of the rights of irregular migrants (Art. 5.). The rationale of protection is that these workers are often the most vulnerable, invisible in the hands of exploiters or situations of extreme distress. Despite the difficulties of application on a large scale, this convention has the great worth to consider the migrant worker first of all as a human being.[32]

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[31] J. LONNROTH (1991), *The International Convention of the Rights of All Migrant Workers and Members of Their Families in the Context of International Migration Policies: An Analysis of Ten Years of Negotiation*, 25 *Int. Migr. Rev.* 710, cited in M. RUHS (2017), *Rethinking international legal standards*, cit., 173.

[32] A.R. COVELLA (2020), *Dopo trent'anni la "Convenzione internazionale sulla protezione dei diritti dei lavoratori migranti e dei membri delle loro famiglie" attende ancora di essere ratificata dai Paesi dell'UE*, in *diritto.it*, available online.

Finally, Part VII of the text provides for the establishment of a Committee for the Protection of the Rights of All Migrant Workers and Members of their Families, with the task of monitoring the application of the provisions contained therein. The Member States may grant the Committee competence for individual and interstate communication procedures. However, this mechanism has never entered into force, less than ten States have so far done so.

Latter is the Convention concerning Decent Work for Domestic Workers, setting labour standards for domestic workers. It is the 189th ILO convention and was adopted during the 100th session of the Organization in 16 June 2011. It entered into force on 5 September 2013. To date 36 states ratified the Convention.

The main rights given to domestic workers as decent work are daily and weekly (at least 24 h) rest hours, entitlement to minimum wage and to choose the place where they live and spend their leave. Ratifying States parties should also take protective measures against violence and should enforce a minimum age which is consistent with the minimum age at other types of employment. Workers furthermore have a right to a clear communication of employment conditions which should in case of international recruitment be communicated prior to immigration. They are furthermore not required to reside at the house where they work, or to stay at the house during their leave.

The lack of success of these conventions in high-income countries has been attributed in doctrine to the series of commitments which they would impose on them in terms of the protection of foreign workers and their social impact.[33] As described in many dossiers of the UN and specialised agencies, labour migration involves an enrichment of the destination country, but such a result must be supported by concrete actions. The rather limited global progress on labour mobility, despite the intense globalization of this millennium, shows that high-income countries prefer to put obstacles rather than build bridges.[34] There is the need for a different approach, based precisely on a catalogue of fundamental rights in the global governance of international labour migration, which should complement the provisions of the conventions

[33] Among these, the obligation to submit every five years a report on the situation in the country to the Commission on migrant workers. See A.R. COVELLA (2020), *Dopo trent'anni*, cit.

[34] P. WICKRAMASEKARA (2008), *Globalisation, International Labour Migration and the Rights of Migrant Workers*, in *TWQ*, 29, 1261.

(and not replace them). In this way, it is considered that a restricted list of fundamental rights, rather than a solemn text, is more acceptable even in these countries with high labour immigration. [35]

5. New York Declaration and the Global Compacts: the UN initiatives

In recent years, the proliferation of non-binding regulatory systems has been instrumental in creating a routine of interstate dialogue and in establishing the UN as a leading actor after a long period of marginalization, and the related global governance is now firmly anchored in the system of United Nations, including through its specialized agencies and linked organizations. [36] After a long process, migration is now recognized as a public issue requiring global solutions at the multilateral level, [37] the most decisive contribution of which is provided by the New York Declaration for Refugees and Migrants, [38] the Global Compact for Safe, Orderly and Regular Migration [39] and the Global Compact on Refugees. [40]

Through the New York Declaration on Migrants and Refugees, unanimously adopted by the UN General Assembly on 19 September 2016, all Member States agreed that, despite the legal vacuum regarding refugee status, it is necessary to protect people who are fleeing under compulsion and to help those countries that welcome them. Briefly, the Declaration recognizes the multiplicity of causes underlying the migratory phenomena and highlights the urgency of regulating migration also as a form of contrast to organized crime. Topics ranging from non-discrimination to the protection of women, children and the disabled are addressed. The emphasis several times is placed on equal human dignity between refugees and migrants while understanding that both

[35] See M. RUHS (2017), *Rethinking international legal standards*, cit., 173.

[36] V. CHETAIL (2019), *International Migration Law*, Oxford, 370.

[37] *Ivi*, 370-371.

[38] United Nations, General Assembly, *New York Declaration for Refugees and Migrants*, UNGA Res 71/1, 19.11.2016.

[39] Global Compact for Safe, Orderly and Regular Migration, adopted on 13 July 2018, available online.

[40] United Nations, *Global Compact on Refugees* (hereafter GCR) (Report of the United Nations High Commissioner for Refugees – Part II, Global Compact on Refugees), 2018 UN Doc A/73/12.

cannot be guaranteed the same regulatory protections. The text ruefully acknowledges that about the powers of the State in border management, only a check on respect for human rights, recognized as a key tool for dealing with protracted refugee crises, can be applied.[41] Important is the principle according to which the international legal order should not be based on the concept of State sovereignty as a "privilege", but as a "duty" to use one's powers to protect the inviolable rights of people and the collective interests of the International Community.[42]

Based on these initiatives, UNHCR proposed a blueprint for a Global Compact on Migrants as part of its 2018 Annual Report for submission to the UN General Assembly.[43] The principles examined, therefore, were largely reaffirmed and carried forward by the Resolution 73/195 of the General Assembly which adopted, in December 2018 in Marrakech, the Global Compact for Safe, Orderly and Regular Migration (GCM), aimed at providing guidelines and recommendations on a migration governance model in all its dimensions. Actually GCM is the most comprehensive intergovernmental framework for cooperation on international migration and aims to partially fill the gaps regarding regular migration and address irregular migration. Starting from the principle according to which no State can deal with migration alone, as a transnational phenomenon, the objective of the act is enshrined precisely in guaranteeing safe, orderly and regular migration.[44] The Global Compact does not have a binding nature, to underline the limit that international law encounters in this field[45] and is based on the commitments agreed by the States that signed the 2016 New York Declaration. The text provides for the respect of sovereign power States to determine

[41] *Ivi*, 24.

[42] *Ivi*, 83.

[43] UNHCR, *New York Declaration spurs reforms to help refugees and their hosts as new framework is rolled-out*, 15 September 2017, available online.

[44] IOM (2022), *World Migraton Report 2022*, cit., 178.

[45] United Nations, *GCR*, cit., 4: "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".

their entry policies, but the broad consensus that accompanied the adoption of this framework represents a relevant point of arrival and departure.

The Preamble of the GCM incorporates the main international charters as sources of inspiration including the UN Charter, the Universal Declaration of Human Rights, the Rio and Paris Agreements, the ILO Conventions, the International Covenant on Civil and Political Rights and the Principles of the 2030 Agenda, and others[46] The Preamble itself, however, makes it clear in point 7 that the GCM is non-legally binding in nature and is based directly on the commitments agreed by the States in the New York Declaration.

Furthermore, the Global Compact would respond to the aims pursued by SDG 10.7 of the 2030 Agenda, according to which the Member States undertake to cooperate to facilitate safe, orderly and regular migration.[47] Due to its largely transversal nature, migration is also the object of other objectives directly related to it, such as in the case of human trafficking, remittances, international student mobility, etc. The approach proposed by the Global Compact is multidimensional and holistic. Engagement should span across society through broad multi-stakeholder partnerships including migrants themselves, local communities, academia and civil society, including the private sector, trade unions, national human rights institutions, the media and other stakeholders in migration governance.[48]

The GCM contains a list of 23 well-defined objectives conceived as commitments of the parties, all necessary to implement actions and best practices useful to promote a safe, orderly and regular migration.[49] These objectives include: minimising the causes and adverse structural factors that force people to leave their country of origin; ensuring that all migrants have proof of legal identity and adequate documentation; addressing and reducing migration vulnerabilities; strengthening the transnational response to migrant trafficking; managing borders in an integrated, secure and coordinated way; cooperating to facilitate safe

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[46] The Global Compact also consistently responds to the aims pursued by SDG 10.7 of Agenda 2030, according to which Member States undertake to cooperate to facilitate safe, orderly and regular migration.

[47] UN-IOM-OECD Paper, *SDG INDICATOR 10.7.2 Number of countries with migration policies to facilitate orderly, safe, regular and responsible migration and mobility of people*, 4, available online.

[48] IOM, *Global Compact on Refugees*, 5.

[49] See IOM, GCM *final draft*, 5-6.

and dignified return and readmission, as well as sustainable reintegration, and to strengthen international cooperation and global partnerships for safe, orderly and regular migration. The fragmentation in this area, oscillating between the protection of human rights and State sovereignty,[50] in the logic of this Pact, it should stimulate a wide-ranging reflection on the causes of the phenomenon of migration[51] and on the difficulties encountered by both destination and origin and transit countries.

Migration is valued by the GCM. It recognizes the growth that the movement of people and therefore of cultures and knowledge can bring to the destination countries. At the same time, the different types of migration are also classified, from those working to those so-called climatic.[52]

The GCM indirectly asserts that the right to migrate would be a fundamental right that concerns every person, thus also economic or climatic migrants. The guiding principles are represented by the human dimension, respect for State sovereignty, but also international cooperation, sustainable development, human rights, and protection of women and children. The Global Compact on Safe, Orderly and Regular Migration envisages twenty-three objectives, to be achieved through specific actions, indicated therein, to obtain safe, orderly and regular migratory flows.[53]

The GCM provides numerous prescriptions specifically concerning migrant workers. The GCM calls on States to improve legislation on public and private recruitment agencies in order to align them with international guidelines, and to prohibit employers from charging for recruitment costs or the costs associated with migrant workers, in order to prevent debt slavery, exploitation and forced labour. All the provisions of Objective 6 of the GCM are dedicated to migrant workers, all aimed

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[50] "For nations, migration affects the most rudimentary pillar of sovereignty (national borders), the core of democratic political systems (human rights), and atavistic social needs (national identity)". See P. SASNAL (2018), *Domesticating the Giant: The Global Governance of Migration*, in *Council on Foreign Relations*, available online.

[51] J. MCADAM (2019), *Introductory note to global compact for safe, orderly and regular migration*, in *ILM*, 58, 160.

[52] K. BOZORGMEHR, L. BIDDLE (2018), *New UN Compact for Migration Falls Short on Health*, in *British Medical Journal*, 363.

[53] G. CATALDI, A. DEL GUERCIO (2019), *I Global Compact su migranti e rifugiati. Il Soft Law delle Nazioni Unite tra spinte sovraniste e potenziali sviluppi*, in *Dir., Imm. e Cittad.*, 2, 197.

at facilitating fair and ethical recruitment and safeguarding the conditions that guarantee decent work, as well as Objective 22, on the portability of benefits from social security benefits to be included in the social security framework of countries, with the idea of identifying focal points to facilitate the movement of benefits. Social security in both the countries of origin and transit and destination. Work together for an inclusive labour market, and the full participation of migrant workers in the formal economy by facilitating access to decent work and employment for which they are most qualified.

Other provisions are scattered in the text such as that of empowering migrant women by removing discriminatory restrictions based on gender formal employment, ensuring the right to freedom of association and facilitating access to relevant basic services, as measures to promote their leadership and ensure their full participation, free and fair participation in society and the economy.

Other GCM commitments include capitalising the cultural and linguistic skills of migrants and receiving communities by developing and promoting peer-training exchanges to-peer, gender-sensitive professional and civic integration courses and workshops. Objective 18 calls on States to invest in the development of skills and to facilitate the mutual recognition of skills, qualifications and knowledge.

The Global Compact has received a lot of criticism. The idea of a global forum and wider initiatives on a theme that has now become a general emergency was timely but highlighted limitations, that fully reflect both the necessary non-binding character of the Global Compact and the difficulty of the UNHCR in supervising the phenomenon on its own. [54]

An aspect is the potential weakening of the protection of human rights resulting from the priorities of the Global Compact hides long-term dangers. The aim of this weakening should be to ease the pressure on the host countries. According to some, the objective should be reversed, that is, the strengthening of the protection system, with a path of dismantling the current regime of control and restriction of entry from developed nations.

Even though they are non-binding acts, and the perplexities that result, some States have already withdrawn from the Global Compact,

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[54] B.S. CHIMNI (2018), *Global Compact on Refugees: One Step Forward, Two Steps Back*, in *Int. J. Refug. Law*, 30, 630-634. For an overview of the main negative positions towards the GCM see the UN press release on the adoption of the GCM, online.

such as the United States, Hungary, Austria, Australia and Poland. The main fear was both the questioning of the sovereign power over the management of immigration, and the passing of migration itself as a fundamental right, with all the consequences of the case. [55]

The GCM fails to distinguish between legal and illegal migration and it promotes a 'one size fits all' approach to migration, which could encourage more irregular migration. Seeking to promote international cooperation and coordination on migration policy, GCM may also lead to a control over States immigration policy. GCM focuses mainly on the management of migration symptoms rather than on the root causes of migration. GCM does not adequately address the economic, social and political factors driving migration. States could abuse the GCM to justify repressive migration policies, such as detaining migrants or limiting their rights.

In summary, while the GCM has been praised by some for its efforts to address global migration challenges, it has also faced criticism for its lack of binding obligations, failure to distinguish between legal and illegal migration, potential threat to national sovereignty, failure to address root causes, and potential for abuse.

6. Brief examples of bilateral agreements

According to what has been examined so far, the UN and related agencies are deploying all their soft power to sensitize governments on the migration issue, providing guidelines, studies, databases and other valuable tools. But the decision on how to enter the State is still up to the State. Therefore, a large part of international law in this area rests essentially on domestic legislation and bilateral (sometimes multilateral) agreements between States. Focusing only on the latter, these agreements almost always concern neighbouring countries or regulate the influx of large masses of people crossing the borders from one territory to another for the most varied reasons from work to education, the exercise of certain freedoms for strictly economic reasons. The vast number of cases in existence only allows the analysis of some such agreements chosen as examples of the

[55] Note from the Parliamentary Group of Fratelli d'Italia, currently Party of Government in Italy. The Note also reports the position of Fratelli d'Italia who explicitly asks for the withdrawal of Italy from the Declaration of New York.

ability of States to agree -precisely- on migration issues affecting several countries affected by the same phenomenon.

Starting from the most recent, the United States and Mexico have agreed on a plan to allow thousands of Venezuelan migrants to reach by air and in a regular manner the first of the two countries provided that the candidates comply with strict requirements. The measure was necessary to counter the increase in irregular immigrants and to establish a certain type of legal entry into the country. Only a small number of Venezuelans who are still at home and have not already attempted to cross the border between Mexico and the United States will be admitted to the procedure. Venezuelans who attempt to enter illegally are expected to be expelled immediately to Mexico and unable to access the procedure in question.[56] In addition, these people will need to have a person or organization on US soil that can provide financial support. The reasons for the flow are due to the serious economic and political crisis that Venezuela has been facing for several years.

In 2007, Uzbekistan and Russia signed a series of agreements to normalize migrants and Uzbek workers moving towards the Federation, the second largest country in the world (after the United States, by the number of immigrants hosted). Since 2014, diplomatic and economic relations between the two countries have intensified until the discussion of a draft agreement on improving the working conditions of Uzbek migrants, present in Russia in several million. The purpose of this agreement is to find a definitive agreement aimed at protecting Uzbek migrants under the protection of both host and home countries.[57]

An example of 'peace and friendship' between neighboring States, at least on paper, is that of migrations between India and Nepal, which are regulated by an agreement dated 31 July 1950. The text allows the respective citizens to receive (Arts. 6 and 7) equal treatment and privileges in certain matters if they move from one country to another. These include, on a reciprocal basis, privileges on residence, property, trade and movement. Citizens of these countries do not need a passport or visa to move from one to another. However, this agreement still in force has seen, from 1950 to today, many of those changes in relations be-

[56] U.S. Homeland Security Paper, *DHS Announces New Migration Enforcement Process for Venezuelans,* 12 October 2022, available online.

[57] Z. ZHANALTAY (2015), *Russia-Uzbekistan Migration Agreement*, in *Eurasian Research Institute*, available online.

tween India and Nepal to lead the second to define it as unequal, exceeded and fallen into disuse.[58] The Nepalese authorities have asked on several occasions to revise the treaty and update it[59] and in 2014 an agreement was reached with India in this regard.[60]

A similar agreement in 2004 concerned the hot front[61] between the government of the Arab Republic of Egypt and the government of the Republic of Sudan with the so-called "Four Freedoms Agreement" on freedom of movement, residence, work and property.[62] The text provides that a visa is not required for nationals of one country to travel to the other and that there is mutual freedom to seek and work as well as to own and profit from land, property and movable property. Interesting are the provisions according to which the Agreement does not affect neither the commitments of the two States due to other international acts, nor the rights acquired under the Agreement itself if it expires for any reason. The Agreement takes precedence over any other legislative text in force in the two countries whose provisions conflict. It should be noted that in 2018 Egypt asked for the amendment of some provisions arousing the reaction of the Sudanese authorities who accused the other side of wanting only to delay the implementation of the Agreement.[63]

In conclusion, two kinds of problems emerge from the agreements examined: the discretion of the host country's legislation in deciding who is entitled to enter and the subsequent treatment of migrants once they have reached their destination. Often these people find it difficult to access essential services or suffer discrimination, in addition to situations at home that do not allow them to return, although always outside the requirements for refugee status.

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[58] S.P. SUBEDI (1994). *India-Nepal Security Relations and the 1950 Treaty: Time for New Perspectives*, in *Asian Survey*, 34, 281-282.

[59] See N. NAYAK (2010), *India-Nepal Peace and Friendship Treaty (1950): Does it Require Revision?*, in *Strategic Analysis*, 34, 579-593.

[60] N. BASU, *What the India-Nepal Peace treaty is, and why Nepal has problems with it*, in *The Print*, 24 January 2021, available online.

[61] To deepen the issue of borders between the two countries see. S. MOHYELDEEN (2020). *The Egypt-Sudan Border: A Story of Unfulfilled Promise.* Washington.

[62] A non-official translation in English of the agreement is available online.

[63] *Egypt, Sudan continue to disagree on visa-free travel deal*, in *MEMO Middle East Monitor*, 11 January 2018, available online.

7. Conclusions

Migration is only partly regulated by international rules, although migration is mainly a transnational process. The extent to which migration is regulated at international or national level depends on the political and economic interests of reception or movement. On the basis of these interests and the recognition of specific protection needs, the different categories of economic migrants are subject to multilateral rules, bilateral agreements, national laws and regulations, and the discrepancy between those rules and their application.[64] The precise international definition of refugee status and the unequivocal definition of migrant correspond respectively to a strong and weak point of international law. This gap, as well as normative, is also cultural and with many repercussions. However, despite the critical points noted, the initiatives described in the United Nations and those of some States on these issues provides at least material for the first global coordinates to cover migrants of all kinds, even if these initiatives are somewhat "small": not binding on those of the United Nations, binding only on the contracting parties those resulting from agreements. As in the case of the Global Compact, the effectiveness of these initiatives lies not in whether they are binding or not but in their credibility and consensus.

The power of the State to control entry into its territory, with the consequent power to reject those who try to cross the border without having had permission, is also indirectly confirmed by modern international instruments to protect human rights, which do not provide for a general right of entry for foreigners.[65]

International law can continue to seek an ever-wider consensus on a subject that has always concerned much of the world. If such a consensus does not exist, as in the countries that have withdrawn from the commitments of the New York Declaration, it is possible to push for interventions directly related to human rights.

The UN can use its many ramifications to exert its influence by monitoring respect for migrants' fundamental rights in general and that policies are not openly discriminatory or humiliating. As suggested by the

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[64] M. HASENEAU (1995), *Changing Features of Economic Migration and International Law*, in *Germ. YB Int. Law*, 38, 214.

[65] I. PAPANICOLOPULU, G. BAJ (2020), *Controllo delle frontiere statali*, cit., 27.

texts examined, many aspects related to the protection of the migrant worker are directly discriminating against protection against abuse of the person, prevention of forms of slavery, trafficking in human beings, and other rules on the exploitation of the person, which, in rich countries, are often already implemented.

Exemplary are the actions carried out on Qatar, the first country in the world for immigrant inhabitants *ratio*, which was subjected to diplomatic, judicial and economic pressure during the preparation for the FIFA 2022 World Cup, to obtain the country's accession to the main instruments of protection of migrant workers adopted within the ILO. [66]

Economic, labour and climate crises are often unpredictable and can affect any country with increasing numbers. The Global Compact for Migration stresses the need to support legal migration pathways, which are particularly necessary for people living in countries affected by these crises and underdevelopment and who often find themselves in unsafe irregular journeys. The UN objective examined in the work is to try to create, in the international legal framework, at least a shared basis of values and commitments for long-term governance of migration, taking into account the nature of a phenomenon that will grow in the coming years, putting even more in crisis host governments. The solution in the future seems to be only the one that emerges from the previous lines: encouraging the development of migratory laws that, first of all, protect the human rights of migrants and that, as in the case examined by Venezuelans in the United States, create safe and legal corridors. [67]

In the Russian-Uzbek case, beyond the current situation with the war in Ukraine, supporting a community of migrant workers and preventing them from neighboring countries promotes integration into the social fabric of the host State, reduce the room for manoeuvre of criminal organisations. Treaties of good neighbourliness and friendship between neighbouring peoples should also be encouraged in other parts of the world, where materially possible. On these coordinates, taking up

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[66] See I. CARACCIOLO (2022), *La lunga strada per un effettivo rispetto degli standard internazionali di protezione dei lavoratori migranti: il caso del Qatar in occasione dei mondiali di calcio del 2022*, in I. CARACCIOLO, G. CELLAMARE, A. DI STASI, P. GARGIULO (eds.), *Migrazioni internazionali. Questioni giuridiche aperte*, Naples.

[67] L. THOMPSON (2013) *Protection of Migrants' Rights and State Sovereignty*, in *UN Chronicle*, no. 3, vol. L, *Migration*.

what has been said elsewhere, we can hope to make migration something constructive for those concerned. In conclusion, as the migrant is a figure of "compromise" with a thousand facets, but often the result of a single desperation, so in the institutional compromise there seems to be the only viable way. One that does not call into question the sovereignty of States, but that can guide them towards common solutions to a common problem.