
Migration in International Relations: Towards a Rights-Based Approach with Global Compact?

O. Can ÜNVER*

Abstract

International migration has climbed up to the top of the global political agenda recently. Globalization and the changing international political climate have given rise to increased migration movements in almost every part of the world. The new migration and refugee patterns now urge all nation-states - sending, transit and receiving countries - to get more involved in global migration management processes. Yet, their primary concern has always been preserving national sovereignty in controlling migration movements to their territories. Although the ratification process is progressing slowly, the International Convention for the Protection of the Rights of All Migrant Workers and the Members of their Families from 1990 (IRCMW) is the most comprehensive and rights-based legal instrument that relaunched norms and standards for safeguarding the human rights of all migrant workers, both regular and undocumented. The recently launched process of the Global Compact for Safe, Orderly and Regular Migration could enhance global concerted action for a rights-based resolution for current problems of international migration.

* Assoc. Prof. Dr., İstanbul Ayvansaray University, Vice-Chair of the UN Committee on Migrant Workers (CMW). His opinions in this article do not necessarily reflect the Committee's standpoints.
E-mail: canunver54@gmail.com

Key Words

International Migration, ICRMW, Global Compact, Migration Management, Rights-Based Approach.

International Migration- A Pivotal Issue

Until recently, the literature in International Relations ignored the current increase and dynamics of migratory movements in almost every part of the world. These movements have significant consequences on the foreign policies of the participating states, whether they are receiving, transit and sending countries. The foreign policies of nation-states are increasingly being influenced by the current dynamics of migration and they have to reconsider their political positions in line with international developments.

Moving individuals and groups of human beings, who are often perceived as plights for nation-states, is now, more than ever, of concern to governments. Currently, almost all states tend to

adopt conservative policies regarding the free circulation of people, and use almost every means to keep migrants away from their territories. This type of old-fashioned but extensively practised political behaviour forces the governments of migrant receiving and transit countries to use constraint in legal and administrative policies towards migrants.¹ In this respect, the fundamental human rights of migrants are insufficiently taken into consideration. In fact, they are even deliberately ignored.

Currently, almost all states tend to adopt conservative policies regarding the free circulation of people.

Although international migration is considered as one of the pivotal issues in contemporary international relations, nation-states still act as if concerns related with migration issues are solely matters of domestic politics and security.² Regardless of perspective, discussions on international migration developments have a growing influence on nation-states' policy determinations. The mass influx of migrants and asylum-seekers; the economic impacts of such influxes; security matters and recently also the humanitarian aspects of migration; all play a significant role in the architecture of international

relations in migration-affected countries. Irregular or clandestine migration is arguably the most problematic issue in this regard. It is now widely accepted that cross-border migration has turned into a global problem over the past decades that cannot be adequately addressed only by national policies. From the perspective of the destination countries, especially those with aging populations, labour migration is recognized as necessary, but in many cases, it is still rejected and often made difficult, at least for semi-skilled and unskilled migrants.

Nation-states still act as if concerns related with migration issues are solely matters of domestic politics and security.

However, nation-states' tendency is still to make decisions regarding migration affairs in their own capacity; to try and tackle by themselves the various types of migration and migrant-related problems, including inclusion and integration. This attitude is nonetheless understandable, since nation-states are ardent on the sustainability of their territorial and societal integrity. Foreigners are generally perceived as a danger to the material and moral assets of the receiving countries. In order to come up with a global approach in

migration management, international legal instruments by international organizations are being formulated and even ratified. However, the ego-centric behaviour of the states with regard to migration management still prevails in the world. On one hand, states do not want to abandon their sovereignty in this area, like in many other areas of state affairs. On the other hand, they depend today more than ever on the global decision-making criteria in migration affairs. One of the current fundamental problems seems to be the reduced capacity and willpower of the states to sustain their traditional style of migration policies without the recognition and wide acceptance of the global governance instruments.

Foreigners are generally perceived as a danger to the material and moral assets of the receiving countries.

In this article, the main issues of migration with a view to multilateral relations are discussed. Furthermore, global patterns of migration governance and how their future attributes could contribute to the solution of migration problems will be explored. International organizations are becoming increasingly active actors with regard to global migration governance. However, their capacity and

assertive power in achieving solutions is quite limited. One of the crucial international legal instruments of the United Nations is the “International Convention for the Protection of the Rights of Migrants Workers and the Members of their Families” (ICRMW) from 1990.³ This UN Convention addressing the rights of migrant workers and their families was the most comprehensive migration-related treaty in international human rights law, but no major Western immigration state has ratified it yet. In this article, the reasons behind states’ reluctance towards ratification of the Convention are also reflected. Obviously, nation-states are sensitive about preserving their legitimacy to stay as the determining body regarding human flows into their national territories. As Stephen Castles justifiably states, this competence is indisputable and it is considered as the profound power of national sovereignty.⁴ The changing environment, both in global affairs and the inter-state parameters in sending, transit and receiving countries, would anyway influence nation-states’ political positions in the medium term. Observers hope that the Global Compact on Safe, Orderly and Regular Migration, the global migration management process since 2016, will be the key element on the way to a resolution of world migration problems.⁵

Observers hope that the Global Compact on Safe, Orderly and Regular Migration, the global migration management process since 2016, will be the key element on the way to a resolution of world migration problems.

The perspectives for a universally applicable migration management strategy are still far from realization. Nevertheless, the international community realizes the fact that such a binding strategy is today more than necessary, because population movements, be they regular or irregular, voluntary or forced, will exist as a pressing subject similarly in the future as they do today. In the following pages, what part the ICRMW could play in this context, is discussed at length. Finally, the perspectives of the Global Compact on Safe, Orderly and Regular Migration will be presented as a new approach to find viable solutions to tackle global migration problems.

Current Issues of International Migration

As mentioned earlier, the consequences of developments in the size and structure of international migration

have increasingly made this issue a major concern to governments everywhere. The perception of sovereignty is the most significant factor within the context of international migration of the nation-states. State borders serve as hindrances to stop 'illegitimate' foreigners from entering state territories and enjoying the same rights as citizens. Non-citizens are excluded from certain liberties and even human rights, which are ingrained in the national laws. Moreover, although one can argue that once relatively tight border controls have been eroded due to human smuggling and trafficking networks, the new wave of terrorism has forced immigration countries to apply even more restrictive measures than ever before. This *state-centric* standpoint is in most cases the main obstacle to global governance in common issues of the international community.⁶ Climate matters, environmental issues and international migration all belong to the realm of global concerns, which need concerted action at the international level. Among these subjects, international migration has taken an important place. The globalization process that has in fact neglected human circulation by and large might well represent the needs and demands towards a new migration governance strategy that should incorporate all types of international migration.

Climate matters, environmental issues and international migration all belong to the realm of global concerns, which need concerted action at the international level.

With the progress of globalization, despite restriction policies in the field of migration, the world is experiencing a blurring in the distinction between external and internal security matters. Terrorist attacks in various countries receiving migrants has raised the sensitivity against almost all foreigners, mainly new-comers, who are suspected as potential dangers to security. This intensifies consequently the securitization of migration and prevents a plausible approach to global management of migration, especially with the limited legal instruments that are used with abundant experience and expertise by international organizations. Another subject within the context of international migration is the increase in xenophobic sentiments and racist violence against the members of the immigrant communities of the receiving countries. Economic crisis as well as the changing neo-liberal structures of production foster social rivalries and hostilities between the existing working population and migrants, making the latter scapegoats

in an increasingly tense social climate.⁷ Mainstream political parties in the involved democratic countries are primarily interested in gaining more votes in elections to consolidate their political positions and they even resort to the populist political discourses. This, in return, lead to failure in the struggle against populism and racism in those countries. Consequently, the governments show generally little willpower to combat racist attitudes on their territories.⁸ This fact definitely embodies the security matters in the receiving countries: It is not only a matter of threat or security against the society and state in the destination countries, but also a big concern for the interests of all migrants and members of transnational communities residing there, and has an immediate impact on their everyday lives. For the source countries, their citizens abroad are also a matter of concern, and such practices may have negative impacts on their bilateral relations with the receiving countries.

The permanent settlement of transnational communities in the immigration countries generates new grounds for policies and administrative measures.

Apart from these facts, the permanent settlement of transnational communities in the immigration countries generates new grounds for policies and administrative measures, and diasporas in the immigration countries have opened up new perspectives in international relations. Diaspora or transnational community policies of both sending and receiving countries are of concern to governments today in their relations with each other, and transnationalism presents new and complex connections between the actors within the migration phenomenon.⁹ These connections are mainly of a social, cultural and economic nature with a strong influence on the inter-state relations between the sending and receiving countries.

Undocumented or irregular migration has become the common issue for all receiving countries in recent decades.

Integration and naturalization of the immigrants is another matter of discussion that is highly debated in the receiving countries. Integration is widely understood as a cultural process, which presupposes the immigrant to partly relinquish his own cultural identity and accept the imposed

cultural and social lifestyle, values and norms of the host society.¹⁰ To be integrated, the migrant however should enjoy equal opportunities and chances that are presented to every individual in the society.¹¹ In most cases, this requirement is either ignored or placed not at the top of the social agenda. This approach makes the immigration societies rather vulnerable, because social cohesion is an unreasonable objective without having granted equal rights, and when the sending and receiving countries may be pursuing conflictual trajectories in their relations. Controversial positions in the perceptions of the migration phenomenon in both groups of countries and among the migrants and host societies make the situation complex and almost unmanageable. In this respect, establishing common and widely accepted standards could be the best way to create a climate for enhancing integration. These standards should be treated and implemented within the global criteria of human rights.¹²

Undocumented or irregular migration has become the common issue for all receiving countries in recent decades. The climate of restriction or closed-door policies to regular migration, especially of the unskilled, encourages migratory flows of undocumented migrants to some countries, where they hope for better living conditions for

themselves and their family members. Internal disputes, safety concerns, climate change and especially economic problems are the push factors for the unskilled to move from their home countries. The world witnesses almost every day victims of human trafficking in the Mediterranean Sea, overfilled boats and drowned people from Sub-Saharan Africa and the Middle East.

The increasing influx of asylum-seekers and difficulties or unwillingness to tackle with the regional crisis that generate new migratory flows, have become major concerns.

On the economic side, in the age of globalization, the markets dictate migration policies and state behaviours to a great extent. The host countries are obviously interested in the economic benefits that immigrants can bring. Labour migrants, especially skilled ones, are most welcome whereas asylum seekers are generally seen as a burden regardless of their skills. Today, the differentiation of migrants, the global increase in the number of asylum seekers, the new group of professional managers from various countries in the global companies, and the new group of trans-migrants, have

all had a major impact on migration policies. As the migration structures are changing rapidly, the responses to these complicated problems need global attention more than before, since volatility and diversification in migration patterns are the major realities today.

The increasing influx of asylum-seekers and difficulties or unwillingness to tackle with the regional crisis that generate new migratory flows, have become major concerns. Generally, receiving countries feel threatened by the asylum-seekers' influx because of the high burdens associated with them and due to security concerns. Current terror acts in almost every part of the world, in which migrant involvement is often presumed, add fuel to the flames. In particular, the ongoing debate on the refugee influx from Africa and the Middle East to Europe has not only raised the question of critical concerns in the asylum and refugee policies in the European Union, it has also highlighted the foreign policy dimension of migration. The conflictual content of the political interrelations between the countries that are inevitably affected by the movement of thousands of refugees do not facilitate any easy solution that is in conformity with the human rights of the migrants. The receiving countries are highly concerned about the burden that the asylum-seekers may cause but concerns about the migrants' human

rights are not prominent on their list of priorities.

The main actors on migration issues are primarily states, and the migrants or refugees themselves do not play a decisive part even in their own personal destiny.

We see the same attitude in the language used on migration affairs, which is generally conflict oriented. States' security concerns generally dictate migration policies and these policies very seldom aim at solidary cooperation between the actors. The governments of sending and receiving countries have different standpoints in this respect. The sending countries, i.e. the migrant source countries, are profoundly interested in economic gains from the migration phenomenon. Migrants' remittances play a significant role for most of these developing countries and are seen as an opportunity for economic progress, if not a factor in meeting their ever-problematic balance of payments.

The main actors on migration issues are primarily states, and the migrants or refugees themselves do not play a decisive part even in their own personal destiny. As a result, the migrants'

human rights are often neglected and instead, biased national interests such as security, cultural homogeneity and market priorities in the destination countries take precedence in migration policies. Consequently, the long-term desired and propagated idea of a global governance of migration seems to be a distant goal. The Migrant Workers Convention is heavily impacted by this political and almost sacred position. The relatively low number of ratifications of the Convention (51 as of 2017) confirms this state. However, a binding multilateral legal instrument has always proved to be the most appropriate means by which to establish common norms and standards for the protection of migrant populations throughout the whole process of migration. This approach urgently requires, beyond all objections by the state-focused political decision-makers, the global establishment of a migration framework. One such tool is the ICRMW and the other is Global Compact, which will be analysed in the following sections.

The Influence of International Legal Instruments on Migration: The Case of the ICRMW

While migration has always been perceived as a global issue, the

diligence of nation-states to protect their sovereignty in discussing and implementing responses to global migration issues has usually prevented them from engaging dynamically in international concerted action. Nevertheless, international and intergovernmental organizations (United Nations, United Nations High Commissioner for Refugees, International Organization for Migration, Council of Europe, and others) have managed to realize a series of legal instruments that have achieved in one way or another a positive international response. The “Universal Declaration of Human Rights” (1948), the International Labour Organization Conventions No. 97 concerning “Migration for Employment” (1949) and No 143, concerning “Migration in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers” are among the international efforts to create global migration governance tools. Furthermore, the “International Covenant on Economic, Social and Cultural Rights”, the “International Covenant on Civil and Political Rights”, the “International Convention on the Elimination of All Forms of Racial Discrimination”, the “Convention on the Elimination of All Forms of Discrimination against Women” and the “Convention on the Rights of the Child” all deal with human rights,

including migrants’ rights. Nevertheless, these legal instruments, beyond their unchallenged moral power, present limited competence and applicability since the sanctions in case of violating the rules herein are very limited. State sovereignty as a power parameter remains largely inviolable. Therefore, despite the quality of international legal instruments, the state parties may make reservations or even abstain from consistent implementation of the conventions that they have already ratified.

Relevant treaties accomplished by the United Nations and International Labour Office on migration are indeed appropriate tools to tackle with migration problems globally. However, their appliance cannot be imposed by compulsory means. Sovereignty rights, which influence the politics and societies in the host countries, do not pave the path for a global management of migration, by which national interests could suffer. This is the unaffected political position of the developed receiving countries of migrants today, notwithstanding the fact that, with globalization, many contrary achievements have been already realized. International legal instruments, treaties, conventions, recommendations and protocols as well as the judiciary options and political relations worldwide have had some positive impacts on the route to global

management of migration and asylum. The difficulty at this point is the inception of a rights-based approach instead of the market and nationalistic policies that are dictating (negative)-responses to the existing problems.¹³

Relevant treaties accomplished by the United Nations and International Labour Office on migration are indeed appropriate tools to tackle with migration problems globally.

The 1990 UN “Convention for the Protection of the Rights of All Migrant Workers and the Members of Their Families (ICRMW)”, which ultimately came into force in 2000, is the most comprehensive international legal instrument for migrant workers of both regular or irregular status. This treaty created a worldwide standard in terms of access to fundamental human rights for migrant workers.¹⁴ The *Raison d'être* of the ICRMW is fundamentally to protect the human rights of all migrant workers, whether they are regular or irregular. It reflects, however, the migration perceptions of the 1990s and its most critical provision is the coverage of all migrant workers and their families, i.e. including the irregular migrants. This provision might be, among others, the reason

for the low number of ratifications and especially the reluctance of the important receiving countries to ratify. The Convention consists of nine parts.¹⁵ The introductory part (Part I, Scope and Definitions) is followed by Part II, a general non-discrimination clause; Part III, a catalogue of all rights; Part IV, rights for regular migrant workers; and Part V, specific categories of rights are depicted. In Parts VII, VIII and IX the provisions of application of the Convention (see the Preamble of the Convention in the appendix) are contained. The specified human rights in Part III of the Convention are the following:

The right to life (Article 9);

The right to not be subjected to inhuman or degrading treatment such as torture (Article 10);

The right to freedom of thought, conscience and religion, as well as the right to freedom of opinion and expression (Articles 12–13)

The right to not be deprived of property (Article 15)

The right to equality with nationals before the courts and tribunals, which implies, among other things, that migrant workers are subject to correct judicial procedures, have access to interpreting services and to the assistance of their consulate, and have the right to not be sentenced to

disproportionate penalties (Articles 16–20, 23–24)

The prohibition of the confiscation of identity documents (Article 21)

The right to not be subject to collective expulsion and for any individual expulsions to be subject to lawful and correct procedures (Article 22)

The right to equality with nationals with respect to remunerations, working conditions and social security (Articles 25, 27)

The right to take part in trade unions (Article 26)

The right to emergency medical care (Article 28)

The right to education for migrants' children (Article 30)

The right to be respected for cultural identity (Article 31)

The right to transfer earnings (Article 32)

The right to have access to information on their rights (Article 33).

In Part IV further and more fundamental rights for the documented migrants are stipulated. These rights are in terms of access to information (Article 37), membership in trade unions (Article 40, equality of treatment (Articles 43, 45–54–55) the transfer of remittances to home country (Article 47) and expulsion procedures (Article 56).

Migrant workers may be temporarily absent from the country of employment (Article 38), they enjoy the right of freedom of movement, residence and access to employment (Articles 39, 51–53) and shall be enabled to take part at the public life in the country of employment (Article 41). The right to family reunification is also covered in the Article 44 of the Convention. However, this right is highly contradictory like the entitlement of human rights as described in the Convention to the irregular migrant workers. These points, in particular, seem to be the main obstacles to ratification by traditional receiving countries. As of November 2017, 51 state parties have ratified the Convention and 15 states are signatories to the Convention.¹⁶

Articles 76 and 77 require the constitution of a Committee of 14 independent international experts: “*The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), is the body of independent experts that monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by its State parties.*”¹⁷ CMW as a treaty body functions under the auspices of the Office of the High Commissioner for Human Rights (OHCHR of the UN) and meets twice a year to review the reports of the state parties to the Convention.

The obstacles for ratification, as already mentioned above, mainly the inclusion of the irregular migrant workers under the umbrella of human rights, originate from the fact that the drafting epoch of the Convention (1985-1990) was the pre-globalization period. Migration patterns and dynamics have, over the course of the last decades, undergone some essential changes, mostly as a result of neo-liberal globalisation. The rights-based approach was bound to lose grounds to two main parameters: i) the market-based political positions; ii) the escalation in the number of asylum seekers and refugees.¹⁸ However, the global standards of human rights for migrants, as already underlined in the said Convention cannot be ignored and they constitute the main objectives to fulfil the requirements of a global human rights regime for all migrants.¹⁹ Notwithstanding the fact that the migration perceptions and worldwide applications have other priorities, human rights should not be discussed in a manner as if they were *a necessary evil*. The quality of the norms and standards that are set in the Convention need to be assumed today as more future-oriented than a perspective of yesterday. The rights-based political position is and will remain a current issue for all migrants, including their family members, asylum-seekers and all other relevant groups of international migrants worldwide.

Migration patterns and dynamics have, over the course of the last decades, undergone some essential changes, mostly as a result of neo-liberal globalisation.

The Future of Migration Governance: *Global Compact on Safe, Orderly and Regular Migration*

On 19 September 2017 a high level meeting was organized with the Heads of States and Governments at the United Nations Headquarters in New York. The world leaders showed their awareness of the urgent measures that needed to be taken for an appropriate migration management regime. The emerging problems, especially with the presence of asylum-seekers in almost every part of the world, as well as the increasing international mobility of persons due to climate change and economic crisis, were the main starting points to launch an international high level meeting to discuss the problems.

In the declaration made after the meeting, modalities for the intergovernmental negotiations of the global compact for safe, orderly and

regular migration were formulated. In the “New York Declaration for Refugees and Migrants”, the General Assembly of the United Nations requested to launch “a process of intergovernmental negotiations leading to the adoption of a global compact for safe, orderly and regular migration at an intergovernmental conference to be held in 2018, as well as its decision to work towards the adoption in 2018 of a global compact on refugees, and noting that the two processes are separate, distinct and independent”. Furthermore, the General Assembly stated that “the global compact would set out a range of principles, commitments and understandings among Member States regarding international migration in all its dimensions; make an important contribution to global governance and enhance coordination on international migration; present a framework for comprehensive international cooperation on migrants and human mobility; deal with all aspects of international migration, including humanitarian, developmental, human rights-related and other aspects of migration, (...)”. As a result, a Special Representative of the Secretary-General for International Migration was suggested to be established. The Resolution was adopted by the General Assembly on 19 September 2016.²⁰

The unprecedented level of human mobility with all its positive and negative aspects will only be mastered by a concerted action with the involvement of all member states.

As a matter of fact, the attempt by the United Nations was able to present new hopes for a global governance of international migration with all its dimensions and aspects. The adoption of the Declaration by 193 member states is a positive indication of support for the obligation to back a human rights-based governance program for migrants and refugees. Again, it is necessary to emphasize that the unprecedented level of human mobility with all its positive and negative aspects will only be mastered by a concerted action with the involvement of all member states.

Conclusion

The IRCMW, the Migrant Workers Convention, which is the most comprehensive rights-based legal instrument until now, can reinforce the global governance of migration together with the wide-reaching concept of the Global Compact. As a more binding treaty, there is a higher chance that the latter could be ratified

The IRCMW, the Migrant Workers Convention, which is the most comprehensive rights-based legal instrument until now.

by more State parties. We could positively estimate that the Global Compact, when it is accomplished in 2018, could enhance the ratifications of the IRCMW. Migration has always been subsistent since humankind has arisen. We tend to forget most of the time that human civilization owes its economic, cultural and social development to this mobility. Migrants throughout history have contributed to the building of nations, their cultures, and economic development. Ironically, nation-states do not appreciate enough the overwhelming positive impacts of migration and migrants. Their human rights are neglected; even their lives are endangered and they are viewed as unwanted foreigners in many countries. The United Nations, the ILO and, as a UN-related agency, the International Organization for Migration (IOM), are trying to establish appropriate conceptions for migration governance. It is now likely that the Global Compact on Safe, Orderly and Regular Migration will presumably contribute, together with all stakeholders, to a better management of migration, and guide nation-states for a concerted action on a rights-based approach in international migration.

Appendix: International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Adopted by General Assembly resolution 45/158 of 18 December 1990

Preamble

The States Parties to the present Convention,

Taking into account the principles embodied in the basic instruments of the United Nations concerning human rights, in particular the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child,

Taking into account also the principles and standards set forth in the relevant instruments elaborated within the framework of the International Labour Organisation, especially the Convention concerning Migration for Employment (No. 97), the Convention concerning Migrations in Abusive Conditions and the Promotion of

Equality of Opportunity and Treatment of Migrant Workers (No.143), the Recommendation concerning Migration for Employment (No. 86), the Recommendation concerning Migrant Workers (No.151), the Convention concerning Forced or Compulsory Labour (No. 29) and the Convention concerning Abolition of Forced Labour (No. 105), Reaffirming the importance of the principles contained in the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization,

Recalling the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Declaration of the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Code of Conduct for Law Enforcement Officials, and the Slavery Conventions,

Recalling that one of the objectives of the International Labour Organisation, as stated in its Constitution, is the protection of the interests of workers when employed in countries other than their own, and bearing in mind the expertise and experience of that organization in matters related to migrant workers and members of their families,

Recognizing the importance of the work done in connection with migrant

workers and members of their families in various organs of the United Nations, in particular in the Commission on Human Rights and the Commission for Social Development, and in the Food and Agriculture Organization of the United Nations, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization, as well as in other international organizations,

Recognizing also the progress made by certain States on a regional or bilateral basis towards the protection of the rights of migrant workers and members of their families, as well as the importance and usefulness of bilateral and multilateral agreements in this field,

Realizing the importance and extent of the migration phenomenon, which involves millions of people and affects a large number of States in the international community,

Aware of the impact of the flows of migrant workers on States and people concerned, and desiring to establish norms which may contribute to the harmonization of the attitudes of States through the acceptance of basic principles concerning the treatment of migrant workers and members of their families,

Considering the situation of vulnerability in which migrant

workers and members of their families frequently-find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment,

Convinced that the rights of migrant workers and members of their families have not been sufficiently recognized everywhere and therefore require appropriate international protection,

Taking into account the fact that migration is often the cause of serious problems for the members of the families of migrant workers as well as for the workers themselves, in particular because of the scattering of the family,

Bearing in mind that the human problems involved in migration are even more serious in the case of irregular migration and convinced therefore that appropriate action should be encouraged in order to prevent and eliminate clandestine movements and trafficking in migrant workers, while at the same time assuring the protection of their fundamental human rights,

Considering that workers who are non-documented or in an irregular situation

are frequently employed under less favourable conditions of work than other workers and that certain employers find this an inducement to seek such labour in order to reap the benefits of unfair competition,

Considering also that recourse to the employment of migrant workers who are in an irregular situation will be discouraged if the fundamental human rights of all migrant workers are more widely recognized and, moreover, that granting certain additional rights to migrant workers and members of their families in a regular situation will encourage all migrants and employers to respect and comply with the laws and procedures established by the States concerned,

Convinced, therefore, of the need to bring about the international protection of the rights of all migrant workers and members of their families, reaffirming and establishing basic norms in a comprehensive convention which could be applied universally,

Have agreed as follows: (...)

Source: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx> (last visited 15 May 2017).

Endnotes

- 1 Reginald Appleyard, "International Migration Policies: 1950-2000", *International Migration Quarterly Review*, Vol.39, No. 6 (2001), Special Issue: International Migration Policies, pp.7-20.
- 2 Rey Koslowski, "International Migration and the Globalization of Domestic Politics: A Conceptual Framework", in Rey Koslowski (ed.), *International Migration and the Globalization of Domestic Politics*, London and New York, Routledge, 2005, pp.5-32.
- 3 OHCHR Report, "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families", at <http://www.ohchr.org/Documents/ProfessionalInterest/cmw.pdf> (last visited 15 December 2017); Esen Akıntürk, "Birleşmiş Milletlerin Göçmen İşçilere İlişkin Sözleşmesi", *Dokuz Eylül Üniversitesi Sosyal Bilimler Enstitüsü Dergisi*, Vol. 9, No. 2 (2007), pp.1- 25.
- 4 Stephen Castles, "Foreword", *The Whitehead Journal of Diplomacy and International Relations*, Vol. 11, No. 1 (2010), p. 11; Andrew Geddes, "International Migration and State Sovereignty in an Integrating Europe", *International Migration Quarterly Review*, Vol. 39, No. 6 (2001), Special Issue: International Migration Policies, pp. 21-42.
- 5 UN Report, "Global Compact for Safe Orderly and Regular Migration", at <http://www.un.org/pga/71/wp-content/uploads/sites/40/2015/08/Global-compact-for-safe-orderly-and-regular-migration-1.pdf> (last visited 15 December 2017).
- 6 Antoine Pécoud, *Depoliticising Migration. Global Governance and International Migration Narratives*. London: Palgrave Pivot, 2015.
- 7 Jerome S. Legge, *Jews, Turks and Other Strangers. The Roots of Prejudice in Modern Germany*, Madison: The University of Wisconsin Press, 2003; O. Can Ünver, *Alman Kıstı: Neo-Liberal Çağın Almanya'sında Irkçılığın Hedefindeki Göçmenler*, Ankara, Nika, 2015.
- 8 Ünver, *Alman Kıstı*.
- 9 Martyna Tomiczek, "Diaspora Diplomacy - About a New Dimension of Diplomacy: The Example of a New Emigration Non-Governmental Organisation", *Journal of Education Culture and Society*, No. 2 (2011), pp.105-123.
- 10 Wolf-Dietrich Bukow, *Urbanes Zusammenleben. Zum Umgang mit Migration und Mobilität in europäischen Stadtgesellschaften*, Wiesbaden, VS Verlag für Sozialwissenschaften, 2010.
- 11 Upendra Baxi, "Afterword. The Struggle for sSans-Papier Human Rights", in Marie Bénédicte Dembour and Tobias Kelly (eds.), *Are Human Rights for Migrants? Critical Reflections on the Status of Irregular Migrants in Europe and the United States*, New York, Routledge, 2011, pp.222-232.
- 12 Isabelle Slinckx, "Migrants' Rights in UN Human Rights Conventions", in Richard Cholewinski, Paul de Guchteneire and Antoine Pecoud (eds.), *Migration and Human Rights. The United Nations Convention on Migrant Workers' Rights*, New York, Cambridge University Press, 2009, pp.122-149.
- 13 Ryszard Cholewinski, *Protection of the Human Rights of Migrant Workers and Members of their Families under the UN Migrant Workers Convention as a Tool to Enhance Development*

- in the Country of Employment*, at www2.ohchr.org/english/bodies/cmw/docs/cholewinski.doc (last visited 18 April 2017); Paul de Guchteneire and Antoine Pécoud, “Introduction: The UN Convention on Migrant Workers’ Rights”, in Cholewinski, de Guchteneire and Pécoud (eds.), *Migration and Human Rights*. pp.1- 46.
- 14 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx> (last visited 13 May 2017).
- 15 Ibid; OHCHR, at <http://www.ohchr.org/Documents/HRBodies/CMW/StatRatCMW.pdf>. (last visited 13 May 2017). The State-parties to the Convention are the following: Albania, Algeria, Argentina, Azerbaijan, Bangladesh, Belize, Bolivia, Bosnia-Herzegovina, Burkina Faso, Cabo Verde, Chile, Colombia, Congo, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Guyana, Honduras, Indonesia, Jamaica, Kyrgyzstan, Lesotho, Libya, Madagascar, Mali, Mauritania, Mexico, Morocco, Mozambique, Nicaragua, Niger, Nigeria, Paraguay, Peru, Philippines, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sri Lanka, St. Vincent and the Grenadines, Syrian Arab Republic, Tajikistan, Timor Leste, Turkey, Uganda, Uruguay, Venezuela. Some State parties declared reservations to various articles of the Convention. For example, Turkey’s declarations and reservations upon accession are the following:
- A) *The declaration regarding Article 15: The restrictions by the related Turkish laws regarding acquisition of immovable property by the foreigners are preserved.*
- B) *The reservation regarding Article 40: The Turkish Law on Trade Unions allows only the Turkish citizens to form trade unions in Turkey.”*
- C) *The declaration regarding Article 45: The stipulations of the paragraphs 2, 3 and 4 of the Article 45 will be implemented in accordance with the provisions of the Turkish Constitution and the related Laws.*
- D) *The declaration regarding Article 46: The implementation of the Article 46 will be made in accordance with the national laws.*
- E) *The declaration regarding Articles 76 and 77: Turkey will recognize the competence of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families at a later time.*
- 16 OHCHR, at <http://www.ohchr.org/EN/HRBodies/CMW/Pages/Membership.aspx> (last visited 13 May 2017)
- 17 Ibid.
- 18 Ryszard Cholewinski, *Protection of the Human Rights of Migrant Workers and Members of their Families under the UN Migrant Workers Convention as a Tool to Enhance Development in the Country of Employment*, at www2.ohchr.org/english/bodies/cmw/docs/cholewinski.doc. (last visited 18 April 2017); Patrick Taran, “The Need for a Rights-based Approach to Migration in the Age of Globalization”, in Cholewinski, de Guchteneire and Pécoud (eds.), *Migration and Human Rights*, pp.1-46.
- 19 United Nations General Assembly. Seventy-first session. A/res/71/1 Resolution adopted by the General Assembly on 19 September 2016. 71/1. New York Declaration for Refugees and Migrants.
- 20 Ibid.