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**CONTEMPORARY REFUGEE AND FORCED MIGRANTS ISSUES:  
AN ANALYSIS IN THE CONTEXT OF LEGAL FRAMEWORK**

Global mobility has become one of the important and revealing trends in the current international relations and law. Forced migrants' and refugees' issues come from the past, but their solution is urgently needed now. This issue acquires particular significance and multidimensionality in the modern context of globalization and the intensification of conflicts in all regions of the world. Other factors, such as natural disasters and economic crises, are also sources of forced mobility. The volumes of forced migration and the flow of refugees have acquired immense proportions and consequences in the current context. The main contribution to the solution of the problem was made by the United Nations Organization and UNHCR, its specialized agency. Key documents were also developed and adopted within and with the support of this structure. Presently there is a robust set of legal instruments for the coordination and advocacy of migration processes, but new approaches are urgently in need because of changing patterns in migrant movements. Moreover, the insufficiency in the definition of persecution, which excludes many categories of contemporary migrants, has only increased the need for the adoption of new Global Compacts within the framework of the UN. Hence, this paper looks into the urgent need for rethinking on theoretical approaches, including conceptual apparatus, legal aspects and some practical approaches to the participation of the entire international community.

**Key words:** Migration Issues and International Law, Refugees, Forced Migration, UNHCR.

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**Қазіргі босқындар мен мәжбүрлі мигранттардың мәселесі:  
құқықтық шеңбер контексіндегі талдау**

Жаһандық көші-қон халықаралық қатынастар мен халықаралық құқықтың басты және анықтаушы тенденциясына айналды. Мәжбүрлі мигранттар мен босқындардың мәселесі ерте замандардан бастау алса да, оны шешу қазіргі кезеңде маңызды болып табылады. Жаһандандудың заманауи контексінде, қақтығыстардың жиіленуі мен әлемнің бүкіл аймақтарындағы өзге де күрделі процестердің негізінде бұл мәселе ерекше маңыздылық пен өлшемділікке ие болады. Табиғи апаттар мен экономикалық дағдарыстар тәрізді өзге да факторлар мүжбүрлі көші-қонның қайнар көздері болып табылады. Қазіргі контекстінде мәжбүрлі миграция мен босқындар ағынының көлемі зор және ауқымды зардаптарға ие. Мәселенің шешілуіне Біріккен Ұлттар Ұйымы (БҰҰ) мен оның арнайы мекемесі, БҰҰ Босқындар істері жөніндегі Жоғарғы Комиссары Басқармасы үлкен үлесін қосады. Басты құжаттар осы құрылымның аясында және соның қолдауымен дайындалып қабылданған. Қазіргі кезде көші-қон процестерін координациялау мен қорғау үшін

бірқатар сенімді құқықтық құралдар бар, алайда мигранттардың көшіп қонуының модельдері мен қабылдауының өзгергендігінен жаңа тәсілдер қажет. Одан басқа, заманауи мигранттардың көптеген санаттарын жоятын «қудалау» анықтамасындағы ақаулар БҰҰ шеңберінде жаңа жаһандық келісімдердің қабылдау қажеттілігін күшейтті. Осылайша, бұл зерттеуде мәселенің қазіргі жағдайы мен теориялық тәсілдерді қайта қараудың маңыздылығы, соның ішінде, концептуалды аппараты, құқықтық аспектілері мен бүкіл халықаралық қауымдастықтың қатысуының кейбір практикалық тәсілдері қарастырылады.

**Түйін сөздер:** көші-қон мәселелері және халықаралық құқық, босқындар, мәжбүрлі көші-қон, БҰҰ БЖКБ.

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### **Современные проблемы беженцев и вынужденных мигрантов: анализ в контексте правовых рамок**

Глобальная мобильность стала одной из важных и определяющих тенденций в современных международных отношениях и в международном праве. Проблемы вынужденных мигрантов и беженцев происходят из прошлого, но их решение становится неотложным именно на современном этапе. Этот вопрос приобретает особую значимость и многомерность в современном контексте глобализации и интенсификации конфликтов и других сложных процессов во всех регионах мира. Другие факторы, такие как стихийные бедствия и экономические кризисы, также являются источниками вынужденной мобильности. Объемы вынужденной миграции и поток беженцев приобрели огромные масштабы и последствия в нынешнем контексте. Основной вклад в решение проблемы вносят Организация Объединенных Наций (ООН) и Управление Верховного Комиссара ООН по делам Беженцев (УВКБ ООН), ее специализированное учреждение. Ключевые документы были также разработаны и приняты в рамках этой структуры и при ее поддержке. В настоящее время уже существует надежный набор правовых инструментов для координации и обеспечения безопасности миграционных процессов, но необходимы новые подходы из-за изменения моделей и восприятия перемещения мигрантов. Более того, недостатки в определении «преследования», которые исключают многие категории современных мигрантов, лишь усилили необходимость принятия новых глобальных соглашений в рамках ООН. Таким образом, в настоящем исследовании рассматривается текущее состояние проблемы и необходимость переосмысления теоретических подходов, в том числе концептуального аппарата, правовых аспектов и некоторых практических подходов к участию всего международного сообщества.

**Ключевые слова:** проблемы миграции и международное право, беженцы, вынужденная миграция, УВКБ ООН.

## **Introduction**

Modern International Relations face various severe influence from the current migration processes. Global mobility of the population has become an essential part of the processes taking place in modern international relations and is no longer regarded only as a consequence of various events, conflicts and natural phenomena. Migration processes have become a trend, often defining certain serious political and economic decisions at the regional level and having projections at the global level.

Forced migration and displacement continue affecting people, reaching 65.6 million individuals

by the end of the 2016 (UNHCR, 2017). According to the recent data, global displacement is still at a record high, with the number of internally displaced at over 40 million and the number of refugees more than 22 million (IOM, 2017). Key trends of the global mobility including globalization and urbanization of migration, feminization, the growth of illegal migration, increase in the volume and value of labour migration, forced migration and refugees (UN, Population facts, 2015) became closely connected and are mutually perceptible.

At the beginning of the 21-century globalisation and its various effects opened the borders, labour markets and intensified global mobility. Thereafter the emergence of new centres of instability

worldwide and actualization of the frozen conflicts became the factor of serious changes. This, in turn, pushed the forced migration and created substantial refugee flow all over the world. Nowadays, the issue of refugees combines various trends covering social, economic, cultural and political aspects worldwide. It makes significant impacts in the countries of origin and host countries. However, the most critical issue on both sides is the status and the fate of these migrants and displaced persons themselves. The migration crisis erupted in Europe since 2015 once again very clearly demonstrated the complexity of global mobility phenomenon and the importance of the development of stronger international law by involving the entire world community. The scale of the crisis and an understanding of its effects was one of the reasons for the inclusion of key aspects of migration in the «Agenda 2030». The historical agenda includes 17 sustainable development goals that cover 169 tasks. The Agenda was approved by heads of states and governments at the UN Summit on Sustainable Development at the 70th jubilee session of the United Nations General Assembly in New York on September 25, 2015 (UN, 2015). Various aspects of mobility are traced in all 17 (Sustainable development goals, UN, 2015). More than 40 targets have been identified across 15 of the 17 SDGs – including SDG 11 – with direct implications regarding migrants, refugees, and situations compelling migration (UNESCO, 2016).

This, in turn, calls for increased cooperation at the national, regional and global levels. It shows that the most critical point remains the effective legal norms relating to forced migrants including refugees and international cooperation. The current international situations point out refugees' studies as one of the vital issues and require new and effective approaches to advocacy and global coordination.

### Literature review

Global mobility and refugees' issues are subjected to studies in several disciplines covering different regions. However, within this study, we have to note just some of them try to focus on the documents providing the legal basis of forced migration regulation. Some critical issues of global and regional mobility including theoretical aspects are assigned by American and European researchers who have developed fundamental approaches to migration issues in the context of globalization. Thus, it is necessary to acknowledge the works of S. Castles (Castles, 2000), S. Castles, J.M. Miller (Castles, Miller, 2009), E. Meyers (Meyers, 2000),

D. Massey (Massey, 1998) and Sh. Glick (Glick, 2000). Very important law aspects on refugees are covered by Guy S. Goodwin Gill, some of his works should be specially mentioned (Guy S. Goodwin Gill, 2015), (Guy S. Goodwin Gill, 2014 (a)), (Guy S. Goodwin Gill, 2014 (b)). Some of the recent studies devoted to the role and place of refugees in the International Relations should be also mentioned (Haddad, 2008), (Betts, 2011). Modern comprehensive studies covering refugee norms under international law and other fields are also presented by Sanoj Rajan (Rajan, 2018).

Russian studies also reflect current trends in forced migration and here some scholars' works should be noted like V. Malakhov (Malakhov, 2016), P. Kokoshin (Kokoshin, 2016), L. Kapitza (Kapitza, 2015), S. Ryazantzev (Ryazantzev, 2013).

In Kazakhstan law aspect represented by the work of M. Sarsembayev (Sarsembayev, 2002) which covers key aspects refugee law of Kazakhstan. Some other aspects of the problem are developing and becoming increasingly important. In this context, we can mention G. Movkebaeva (Movkebaeva, Malanchenko, 2016), L. Delovarova (Delovarova, Starkova, 2016) Zh. Sairambaeva (Sairambaeva, 2017).

### Methodology

Forced migration including displaced and refugees as a part of global mobility is a very complex phenomenon. The authors will apply to the analysis of the existing international law documents as a system and «pull-push» factors theory offered by E. Lee (Lee, 1966). These two approaches will allow analyzing the problem of recent forced migration as on the comprehensive and multipronged process.

It is essential to point out that the vital understanding and vision to solve the issues should be based on the Human Rights' approach which leads to a study covering international cooperation. Moreover, analysis of some current dynamics of discussion and building mechanism in the framework of UN will enrich the vision of the problem and seek new remedies.

### Results

#### *Referring definitions*

It is a widely accepted fact that the present refugee crisis is global in its nature and has multilateral dimensions. Accordingly, approaches to its analysis and prescription of the solution should also take into account of the diverse reasons

for such mass exodus in order to address multiple situations. These include preventive measures such as providing emergency assistance and sufficient means to facilitate repatriation and integration of refugees.

Considering the gravity of the problems faced by of refugees in the context of contemporary migration situation, it is necessary to mention that the conflicts are not the only reason why thousands of people are leaving their countries. Natural causes like extreme weather, earthquakes, diseases, and many other similar disasters also displace people in vast numbers. The increasing contribution of human activities, in particular, urbanisation, rapid economic growth and population increase contribute vehemently towards the significant movement of people.

Determination of definitions is essential for proper understanding of the situation and selection of a right approach to solve the problem. The reality is that the present migration crisis in Europe goes far beyond the region and requires joint efforts of the entire international community to mitigate it. Most important is the precise definition and differentiation of the concepts of «migrant» and «refugee». We have already raised the problem of definitions in one of the previous studies (Delovarova, Starkova, 2016: 56) but we have to refer to the generally accepted notions once again as it is important in terms of legal approaches and legal aspects of implementation.

International Organisation for Migration (IOM) defines ‘a migrant’ as ‘any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is. IOM concerns itself with migrants and migration-related issues and, in agreement with relevant States, with migrants who are in need of international migration services’ (IOM, Key migration terms, 2016).

The 1951 Convention defines ‘a refugee’ as ‘a person who is outside his or her country of nationality or habitual residence; has a well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail him – or herself of the protection of that country, or to return there, for fear of persecution’ (*see Article 1A(2)*) (The refugee convention, 1951 and its Protocol relating to the Status of Refugees, 1967).

It is necessary to mention one more definition to correlate both concepts and understand it better.

Refugees and asylum seekers are forced migrants who flee their homes to escape persecution or conflicts, rather than voluntary migrants who move for economic or other benefits. Popular usage tends to refer to all kinds of forced migrants flee for all reasons to be recognised as ‘refugee’ as defined under international refugee law. However, they often remain outside of their country of origin (Castles S., Miller J., 2009: 188). These terms have distinct and different meanings, and sometimes create confusion thereby leading to issues for both categories. At the same time, it is challenging to differentiate these terms completely. A more profound analysis can help to shed light on this vital aspect. The UNHCR is also working on this issue to make the concepts more clear and provide more protection for each category (UNHCR viewpoint, 2016). According to UNHCR, the refugees are persons fleeing persecution. Their situation is often so perilous and intolerable that they cross international borders to seek safety in nearby countries, and thus become internationally recognised as ‘refugees’ with access to assistance from States, UNHCR, and other relief organisations. They are so recognised because it is too dangerous for them to return home, and they need sanctuary elsewhere. For these people, denial of asylum can have fatal consequences.

The problem of refugees’ protection is multidimensional. These include safety from being returned to the dangers they have fled (the principle of *non-refoulement*); access to asylum procedures that are fair and efficient; and measures to ensure that their fundamental human rights are respected to allow them to live in dignity and safety while helping them to find a longer-term solution. States bear the primary responsibility for this protection. UNHCR, therefore, works closely with governments, advising and supporting them as needed to implement their obligations.

Misinterpretation of refugees and migrants’ definitions can have severe consequences for the lives and safety of refugees. Blurring the two terms takes attention away from the specific legal protections each group requires. **Migrants** choose to move not because of a direct threat of persecution or death, but mainly to improve their lives by finding work, or in some cases for education, family reunion, or other similar socio-economic reasons. Unlike refugees who cannot safely return home, migrants face no such impediment to return. If they choose to return home, they will continue to receive the protection of their government. Usually, countries deal with migrants under their immigration laws and but the refugees are dealt with norms of refugee protection

that are defined in both national legislation and international law (UNHCR viewpoint, 2016).

The explanations aforementioned clearly differentiate both concepts and clarify that the refugees, unlike other migrants, are forced to migrate and seek refuge because of fear of persecution, and for the most part, they are not protected until they obtain their status as refugees. Further, it is still challenging to define and limit all of the distinctiveness of the massive flows of people in the definition of refugees for various reasons. Moreover, the mixed and transitional character of the movement adds more complexity and uncertainty to the process, and thus requires new and more effective available approaches.

#### *Legal framework addressing refugee issues*

The present-day international law framework provides refugee protection under two systems: international refugee law and international human rights law. The main international legal instruments, securing refugee protection standards, procedures and criteria for determining refugee status are the Convention relating to the Status of Refugees, 1951 and its Protocol relating to the Status of Refugees, 1967. There are also other universal and regional human rights documents adopted in connection with the need to give legal refugee status determination which are discussed in brief detail below<sup>1</sup>.

#### *I. The principle of non-refoulement*

The refugee protection under both the systems is framed around an international customary law principle known as *non-refoulement*. *Non-refoulement* refers to the norm that states cannot return non-nationals to territories where they might be subjected to torture, inhumane or degrading treatment, or where their lives and freedoms might be at risk (Chan, 2006). The link of *non-refoulement* with the customary international law makes refugee protection a global obligation to some extent, especially when there are still some fifty States that are not parties to the 1951 Convention and the 1967 Protocol (UNHCR Report, 2018). Such a universal commitment emanating from the principle of *non-refoulement* amounting to a rule of *jus cogens* was suggested as early as 1982 by the Executive Committee of UNHCR (Executive Committee of UNHCR, 1982, 1996). Regional initiatives like the Cartagena Declaration of 1984 (UNHCR, 2013) and the views of some countries like the Swiss Government support the view (FFE/BBI,

1994:1486-7). It is accepted here that still debates are going on globally whether treaties and treaty practices can be a source of customary international law, as the primary source of *non-refoulement* as customary international law principle is derived from treaties and treaty practices (Jurisdiction and Admissibility, Judgment, ICJ Reports, 1984: 392), (Merits, Judgment, ICJ Reports 1986: 14), North Sea Continental Shelf, Judgment, ICJ Reports 1969: 3). In these decisions, it was accepted that the prohibition on the threat or use of force in Article 2(4) of the UN Charter also applied as a principle of customary international law and that identical rules of customary law and treaty law on the delimitation of the continental shelf could exist side-by-side respectively. However, examples from the International Court of Justice's decisions in *Nicaragua* and the *North Sea Continental Shelf* support the *non-refoulement* claim as customary international law principle. It's inclusion in some of the most important international treaties and documents like the Convention relating to the Status of Refugees of 1951 and its Protocol of 1967, the Convention against the Torture, the International Covenant on Civil and Political Rights etc., and the regional conventions like European Convention on Human Rights, the OAU Refugee Convention, the American Convention on Human Rights, and the African Charter on Human and Peoples' Rights strengthen its near-universal acceptance.

#### *II. International treaty obligations*

Though quite a few international treaties do mention the principle of *non-refoulement* and refugee rights, the foundation for refugee protection may be found in the UN Convention on Refugees 1951 (UN Convention Relating to the Status of Refugees, 1951: 137) and the Optional Protocol of 1967 (Protocol Relating to the Status of Refugees, 1967: 267). While the scope of the 1951 Convention is limited solely to those Europeans who became significant refugees as a result of events occurring before January 1951, the 1967 Protocol required signatories to apply the substantive provisions of the 1951 Convention to all refugees falling under the definition of the latter but without any limitation of date, making the 1951 Refugee Convention applicable globally (Rubio-Marín, 2014). The three key elements set out by these documents are: First the definition of who a refugee is, secondly, it makes the signatories respect the principle of *non-refoulement*, and thirdly it lays down the standards of refugee treatment by the states parties. Thus, the provisions in the Refugee Conventions make it mandatory for the state parties not to return a refugee to the borders of a country

<sup>1</sup> This part of the article is adopted from the book, Sanoj Rajan, (ed.), *Global Refugee Crisis: A Contemporary Reflection* (Thomson Reuters, 2018)

where he or she fears persecution, even if they want to expel them, the state party must consider and assess an application for refugee status and protection and finally to treat the refugees with minimum standards set out in the Refugee Conventions during their stay. Further, the Refugee Conventions also provide for the exclusion when a refugee concerned has committed serious crimes like crime against peace, war crime, or crime against humanity, or has committed serious non-political crime outside the country of refuge or is guilty of acts contrary to the principles of United Nations Convention Relating to the Status of Refugees, 1951:( n 12) Article 2 (F)). Another significant contribution of the Refugee Conventions is the establishment of the United Nations High Commissioner for Refugees (the UNHCR), whose primary responsibility is to protect refugees by assisting the governments. The state parties are under obligation to cooperate with the UNHCR under Article 35 of the Refugee Convention and Article II of the 1967 Protocol in the exercise of its functions and, in particular, to help UNHCR supervise the implementation of the provisions found in these treaties. Even the Refugee Conventions provide with a supranational dispute resolution mechanism prescribed under Article 38, which unfortunately has never been used. Thus the refugee conventions provide a universal framework and standard for refugee protection, acknowledged and accepted by 140 signatories.

Other than refugee conventions, there are few other international human rights conventions which provide for the rights of refugee populations in need. The prominent among them is the Universal Declaration of Human Rights which under Article 14(1) provides that '[e]veryone has the right to seek and to enjoy in other countries asylum from persecution' (Universal Declaration of Human Rights, 1948). This gives all people fearful of persecution in one country the right to asylum in another. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention) through Article 3 prohibits the expulsion, return or extradition of a person to another State where there exist substantial grounds for believing that he would be in danger of being subject to torture (Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984: 85). The Article 3 thus re-emphasise the principle of *non-refoulement*, which is the basic pillar of refugees protection. Article 13 of the International Covenant on Civil and Political Rights (ICCPR) states that anyone who is lawfully within the territory of a state shall not be expelled

from that state without due process (International Covenant on Civil and Political Rights, 1966: 171). Further, the Human Rights Committee, the treaty body responsible for the supervision of ICCPR, has interpreted Article 7 of ICCPR as a prohibition on sending anyone to a country where there is a substantial risk that he or she would be subjected to torture or cruel, inhuman or degrading treatment or punishment (Meron, 1995).

Other international sources for the refugee framework include the UN General Assembly Declaration on Territorial Asylum 1967 (Declaration on Territorial Asylum, 1967) and UNHCR's Executive Committee conclusions. Though soft laws, these documents have great influence in framing the refugee policies globally. The 1967 Declaration reiterates that granting asylum is a peaceful and humanitarian act that cannot be regarded as unfriendly by any other State, and notes that it is the responsibility of the country of asylum to evaluate a person's claim for asylum. The annual Conclusions adopted by Executive Committee of UNHCR at the instance of more than 50 countries that have great interest and experience in refugee protection also form part of the framework of the international refugee protection regime.

Protection of refugees during armed conflict situations are covered explicitly under International Humanitarian Law (IHL) through the Fourth Geneva Convention Relating to the Protection of Civilian Persons in Time of War of 1949 (Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949) and the first Additional Protocol of 1977 (Protocol Additional to the Geneva Conventions, 1949; Protection of Victims of International Armed Conflicts (Protocol I), 1977). IHL provides general protection to refugees as civilian victims of armed conflict and specific protection as refugees and displaced persons. The protection of refugees and displaced persons under IHL is specifically dealt with in Article 44 of the Fourth Geneva Convention. The Additional Protocol I further provides that refugees and stateless persons are to be protected under the provisions of Parts I and III of the Fourth Geneva Convention. Nevertheless, it is to be noted that the refugee protection under IHL is available only during an armed conflict and if the refugee flees armed conflict, and finds asylum in a country that is not involved in armed conflict, the protection under IHL ceases to apply.

Another emerging refugee issue is climate migrants or climate refugees. The term climate refugees, unfortunately, does not fit within the Refugee Convention definition of the refugee. This

category of refugees falls into two categories: First, people fleeing because of the slow onset of climate effects like drought and secondly, unforeseen immediate disasters like flood and earthquakes. The only available international document in this category is the UN Framework Convention on Climate Change of 1992 (UNFCCC) (United Nations Framework Convention on Climate Change: resolution, 1994). The framework categorises climate changes on the basis which the migration happens, and parties to the UNFCCC acknowledge the need for action on such asylum seekers (UNHCR Engagement in the United Nations Framework Convention on Climate Change, 2017).

### *III. Regional refugee protection framework*

Due to the need for the region-specific amelioration of refugee problems and also because of the lacunas in the international refugee law framework, there has been a proliferation of regional human rights instruments which include provisions of international refugee protection. Article 12 (3) of the African Charter of Human and People's Rights 1981 provides that every individual shall have the right, when persecuted, to seek and obtain asylum in other countries (African Charter on Human and Peoples' Rights, 1981). The African Union (formerly the Organisation of African Unity) Convention Governing the Specific Aspects of Refugee Problems in Africa 1969 strives to solve the problem of refugees in Africa («OAU Convention», 1969). The Article 2 (3) of the Convention requires that no person shall be rejected by a Member State at the frontier, return or expulsion which would compel him to return to or to remain in a territory where his life, physical integrity or liberty would be threatened. African Commission on Human and People's Rights and the African Court on Human and Peoples' Rights provide remedies for violations and reinforces these rights.

Article 22(8) of the American Convention on Human Rights 1969 (*American Convention on Human Rights*, «*Pact of San Jose*», 1969) provides that in no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions. The Inter-American Commission on Human Rights receives petitions regarding violations and interprets the Convention.

The European Convention on Human Rights 1950 (ECHR, 1950) and the EU Charter of Fundamental Rights (Charter of Fundamental Rights of the European Union, 2012) take note of the

refugee rights in the European front. Article 3 ECHR prohibits torture, inhuman or degrading treatment or punishment and includes the concept of *non-refoulement* (Mole, Meredith, 2010). An article 4, 18 and 19 of the EU Charter of Fundamental Rights prohibit ill-treatment, provides right to asylum and contains a prohibition on return to a country where there is a substantial risk of the death penalty, torture, inhuman or degrading treatment or punishment respectively. The Court of Justice of the European Union bears the responsibility to ensure the correct interpretation and application of the EU Charter.

Unfortunately, the Asian regional arrangements for refugee protection are comparatively weaker, probably because a large number of Asian countries are not parties to the Refugee Conventions. Nevertheless, The ASEAN Human Rights Declaration (ASEAN Human Rights Declaration, 2012), through its principles 14 and 16 prohibit torture and provide the right to seek and receive asylum in accordance with national law and international agreements. The ASEAN Intergovernmental Commission on Human Rights is vested with the implementation of ASEAN instruments related to human rights including the right to receive asylum. Also, there are examples of refugee protection through national law in the region (Abrar, Malik, 2003).

### *Global prospects of international legal framework development*

One of the main obstacles to reach the consensus in unified refugee protection regime is due to different national approaches and their contradictions with each other. At the same time, the inclusion of migration issues into the UN «Agenda of 2030» in 2015 is a significant advancement towards a unified global solution. It means that migration is included in the global development system, recognizing the integral role of managed migration in all regions and the immense contribution of migrants to sustainable development.

In September 2016, the UN General Assembly held a summit at the level of heads of state and government for large movements of refugees and migrants (UN, Refugees and Migrants, 2016). This can be counted as significant progress towards the enlarging dialogue on migration problems including refugees and asylum seekers. The goal of the summit was to develop a plan to overcome challenges and strengthen international cooperation in the field of migration and mobility.

Potentially, it is a unique opportunity to create a more responsible and predictable response system for large movements of refugees and migrants. One of the outcomes of this summit was the decision

to strengthen the global management of migration by including the International Organization for Migration in the United Nations system. The main result of this historic event was the adoption of the New York Declaration (UNHCR, The New York Declaration for Refugees and Migrants, 2016). Despite the fact that Declaration is a recommendatory one, it is the first global level document that contains a concrete and substantive list of the necessary conditions and activities to improve the situation of migrants and refugees. It is also aimed at protecting their rights and freedoms, strengthening the positive attitude and effect of migration and integration of refugees in host countries. The Declaration specifically refers to the role of migrant children, including unaccompanied ones, about gender and sexual non-violence, condemning xenophobia against refugees and migrants, and strengthening the positive contribution of migrants to the economic and social development of host countries (UNHCR, The New York Declaration for Refugees and Migrants, 2016). The UN member states aligned to protect the rights of all refugees and migrants, regardless of their status. It should be noted that it concerns the improvement of the conditions in the countries of origin of refugees, in which the main causes are conflicts, unfavourable environmental factors and the economic situation. The Declaration is also aimed at reviewing the migration policies of host states mentioning the compulsory integration into the local community, access to necessary social services and education. In general, the implementation of the provisions of the Declaration will allow setting a comprehensive approach to the problems of global and regional displacements. The Declaration is an excellent basis for two Global Compacts scheduled for 2018: the Global Refugee Compact and a Global Compact for safe, orderly and regular Migration. The adoption of the Compacts will mean that migration, like other areas of international relations, will be regulated on the basis of a number of universal principles and approaches.

The Global Compacts will be an unprecedented stage in the solution and development of migration issues, first agreements reached as a result of intergovernmental negotiations and concluded under the auspices of the UN in this field. The adoption of these documents will provide a unique opportunity to improve the management of migration processes, respond to the challenges of modern global and regional mobility and to strengthen the contribution of migrants and refugees to sustainable development in the host countries and communities.

This optimistic approach is facing serious challenges coming from the current situation in all regions. The European Union is one of the obvious examples of it. Migration issues and continuing refugees' flows are becoming the subject of political speculations and split among the member states. The mechanisms of Dublin Convention (Dublin Convention, 1990) is not working properly in this regard. Along with this, it should be stated that ongoing dialogue and understanding of the migration component importance should lead to the search for the new legal mechanisms at the regional level within the EU and support the UN global initiative.

### Conclusion

Global mobility became an independent phenomenon in the current international relations requiring comprehensive and multidisciplinary approach.

Since the second half of the last century, the problem of refugees and forcibly displaced persons remain on the agenda constantly. However, the migration crisis that erupted in Europe 2015 clearly demonstrated the need to review the existing legal framework both at the regional and global levels.

At the end of the second decade of the 21st century, the international community already has a particular legal basis for coordinating the global mobility of the population, but its unprecedented scale requires some new legal mechanisms and norms at the regional level and support to the UN initiative on two Global Compacts on Migration and Refugees.

The accumulated legal framework covers different experiences and already allows us to make new and more effective approaches. At the same time, the difference in national approaches to legislation, conflicts and collisions of international law and political will remain the main obstacles to the solution. Continuous international dialogue and cooperation at all levels, including governmental, non-governmental and experts will allow to carry out new human rights' based approach allowing to take advantages for all sides – migrants, refugees, displaced and host countries and communities.

All this will become possible with the full consensus of governments that have already realized the importance and magnitude of the problem, but numerous obstacles are yet to be overcome. The lion's share of the work is to be done by the expert community, including international lawyers, political scientists and even economists as the problem is multi-dimensional and global in scope.

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