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Normative Political Theory and Global Migration Governance: An Assessment of the Global Compacts on Refugees and Migration

*Teoria Política Normativa e
Governança Global Migratória:
uma avaliação dos pactos globais
sobre refugiados e migração*

*Teoría política normativa y
governanza de la migración mundial:
una evaluación de los pactos mundiales
sobre refugiados y migración*

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Abstract

Based on the main contributions of normative political theory on global justice and migration ethics, this article assesses the global Compacts on refugees and migration, approved by the United Nations General Assembly in December 2018. The set of conclusions indicates that the Compacts constitute an important advance in global moral and political projects and commitments. However, the application of their predicted terms can bring about problems, distortions, and impasses in the sharing of responsibilities.

Keywords: Global Migration Governance; Global Justice; The Global Compact on Refugees; Global Compact for Safe, Orderly and Regular Migration.

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Resumo

Com base nas principais contribuições da teoria política normativa sobre justiça global e ética da migração, o presente artigo avalia os pactos globais sobre refugiados e migração, aprovados pela Assembleia Geral das Nações Unidas em dezembro de 2018. O conjunto de conclusões indica que os pactos constituem um avanço importante em projetos e compromissos morais e políticos globais, porém a operação dos seus termos previstos pode trazer e manter problemas, distorções e impasses no compartilhamento de responsabilidades.

Palavras-chave: Governança Global Migratória; Justiça Global; Pacto Global sobre Refugiados; Pacto Global para uma Migração Segura, Ordenada e Regular.

Resumen

Con base en los principales aportes de la teoría política normativa sobre justicia global y ética migratoria, este artículo evalúa los Pactos globales sobre refugiados y migración, aprobados por la Asamblea General de las Naciones Unidas en diciembre de 2018. El conjunto de conclusiones indica que los Pactos constituyen un importante avance en los proyectos y compromisos morales y políticos globales. Sin embargo, la aplicación de los términos previstos puede generar problemas, distorsiones y estancamientos en el reparto de responsabilidades.

Palabras clave: Gobernanza de la Migración Global; Justicia Global; El Pacto Mundial sobre Refugiados; Pacto Mundial para una Migración Segura, Ordenada y Regular.

Introduction

Historically, although there is a consolidated legal framework with regard to refugees, the general governance framework regarding international migration has always been one of little consensus, cooperation, and commitments by the international community. The divergent concerns between countries of origin, transit, and destination led to unilateral, bilateral or regional treatment of the issue, constituting fragmented management without a multilateral institutional framework defined through the UN. In the recent situation of mass migration and the global migratory crises of 2015 and 2016, with their repercussions concentrated in the developed countries of the north, many States and other involved actors realized there was a need to expand multilateral cooperation, highlighting the global dimension of the issue and the difficulty of dealing with it





in isolation, on a national scale. This framework accelerated the process that led to the formulation of the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration, approved by the United Nations General Assembly in December 2018.

As a permanently dynamic phenomenon, migration, especially its international management, raises important normative theoretical questions arising from the empirical claims of the various involved actors, including origin, transit, and destination countries, developed or developing, as well as refugees, asylum seekers, and immigrants. In other words, the multiple actors involved in this phenomenon constantly formulate and reformulate a broad set of strategies, practices, and policy designs that, from the perspective of normative political theory, reflect fundamentals, bases, and principles, often competing and contradictory, about political values like freedom, equality, equity, justice, security, sovereignty, and democracy.

There has been a lengthy debate in the normative political theory and political philosophy about global justice and the ethics of migration, but even though part of this theoretical discussion is based on the empirical claims of the involved actors, the assessment of international migration regimes has been scarce. It is possible to raise some factors that may explain this gap. Firstly, the dynamics of international migration regimes have historically been marked by institutional weakness, informality, and a lack of global agreement through the UN. Secondly, global migratory management has not been dealt with directly as an issue of ethics and justice. And finally, divergent ethical and justice positions on migration have not followed the same standards of international cooperation.

With the formulation of the two Compacts under the auspices of the UN, albeit not binding, the international community has expanded the institutional frameworks for migratory governance. Against this background, the prospect of addressing that gap has become more viable. To this end, this article retrieves the main contributions of normative political theory on global justice and migration ethics to assess the new international agreements on migration.

The normative theoretical debate

Liberal theorists with statist and communitarian approaches tend to prioritize the right of nation states to control their borders and access to their citizenship,





and, in this sense, present restrictions on governance proposals supported in the defence of free international migration. This argumentation is based on parameters of state sovereignty, self-determination, cultural identity, democratic governance, and economic resources. The idea is that these parameters are fundamental for maintaining the political community, which must guarantee individual freedom and promote distributive justice (equality). In this sense, the loss of these parameters can mean the disintegration of the political community and the impossibility of a stable and well-ordered society.

Michael Walzer's argument (1983) is not exactly to open or close borders, but focuses on the right for political communities to freely decide on their own affiliation rules, according to their own identity. Walzer (1983: 61-62) places self-determination as the foundation of community independence, i.e. a community has the basic right to establish its criteria for the admission and refusal of immigrants. In Walzer's (1983: 62) view of communitarianism, the political space is the same as the ethical and cultural space. Without self-determination, communities of character, historically stable, with some sense of association and common life, would not exist. However, for Walzer (1983: 39) the right to restrict entry does not imply the right to restrict exit, since emigration control implies coercion over people who no longer wish to be members of a particular community. Based on the principle of mutual aid, Walzer (1983: 47-50) recognizes the moral obligation to admit refugees, but this obligation is limited by the importance of maintaining the self-determination of communities of character. In this sense, the admission of refugees cannot threaten the cultural and political community, which has the autonomy to decide how many and which refugees to accept. In the case of economic migrants, Walzer (1983: 45) suggests that wealthy societies should promote positive assistance, providing economic aid to foreigners in their own countries, provided that such a measure is urgent and their risks and costs are relatively low.

In the wake of the self-determination argument, Christopher Heath Wellman (2008; 2011) resorts to the right to freedom of association to argue that legitimate states have the right to formulate the immigration regime they want and are entitled to close their borders. Wellman (2011: 13) supports this position on three main premises: 1) legitimate states are entitled to political self-determination; 2) freedom of association is an essential component of political self-determination; 3) freedom of association does not imply an obligation to associate with outsiders. For Wellman (2008: 129), relational egalitarian duties require that richer states





promote material and military aid to the poorest, but this does not imply opening their borders. In the case of refugees, Wellman (2008: 129) recognizes that States have must offer assistance (“export of justice”), but this does not include an obligation to admit them, as this decision is a determination arising from the freedom of association, which allows for the non-association with others.

David Miller also defends immigration restrictions based on the right to national self-determination. In Miller’s perspective (2016), the nature of the relationship between compatriots is multidimensional, since it involves a system of economic cooperation, a shared political and legal system, and a similar set of cultural and belonging values. Miller (2016: 161) argues that a shared national culture is essential to guarantee citizens’ commitments to democracy and more egalitarian forms of social justice. This fact, according to him (2016: 160), has implications for the issue of immigration, since a huge flow of immigrants could overcome the capacity of the receiving country to incorporate them into the dominant public culture. While recognizing that national communities change over time, Miller (2016: 64-65) argues that a certain level of immigration can put an unsustainable tension on the shared public culture and threaten its integrity.

Therefore, Miller suggests that the use of quotas to limit the flow of immigration is legitimate. As well as the use of social, civic and cultural integration mechanisms for potential permanent residents, without violating their reasonable preferences or offending their identities, traditions, and beliefs. Miller (2016: 204) rejects racial and ethnic exclusions. According to him (2016: 27), national identity does not mean affirming national superiority or inferiority, but rather providing essential solidarity in addition to economic and political relations. With regard to refugees, Miller (2007: 202) emphasizes that States have an obligation to admit them at least temporarily, guaranteeing immediate security. Nonetheless, this does not imply a right to the permanent residency or citizenship.

Different from the statist or communitarian assumptions presented until here, when the migration issue involves costs and benefits for all involved, some theorists allege that international migration can be harmless to alleviate global poverty. For Gillian Brock (2009: 193), an increase in the admission of immigrants by developed countries alone does not constitute a comprehensive solution to global justice problems, given that the latter must be accompanied by other measures such as fairer trade rules and other initiatives. It also suggests a series of global institutional reforms towards responsive democracy in the global system (Brock 2009: 310). In Brock’s perspective (2009), migration policies





should be better managed in order to benefit all parties involved. For her, there is evidence that immigration benefits immigrants and host countries more than the countries of origin. According to Brock (2009: 211), it is not clear that, even with remittances, immigration favours those who stay in their country of origin. In addition to the brain drain, the financial flows that immigrants send to their country of origin are not very effective in terms of justice. Remittances can have negative indirect effects, such as decreasing demand for fundamental economic reforms in developing countries and failing to resolve structural poverty issues (Brock 2009: 208).

Contrary to liberal statist and communitarian arguments, liberal and non-liberal cosmopolitan theorists, global egalitarians, and global libertarians defend international migration management projects with more open borders. Together, in a deontological perspective, much of the argument around more open borders is based on the principles of international freedom of movement and universal equality (opportunities) and, in a consequentialist perspective, as a way of dealing with global poverty. In accordance with these views, although states have a duty to maintain their borders, they do not have the right to close them to immigrants, since this would violate the right of individuals to freedom of movement and equal moral consideration for all human beings. In addition, even though they often claim that the measure is not enough to guarantee greater global equality, some of these theorists believe that more open borders for immigrants can be a way to reduce global poverty.

Joseph Carens (1987; 1992; 2013) has developed a normative justification for open borders based on the value of freedom of movement for individual autonomy, equal opportunities, and substantive economic, social and political equality at the global level. For Carens (1987; 1992; 2013), the freedom of movement is one of the fundamental freedoms and a basic human right that contributes to the exercise of individual autonomy and other forms of freedom. This right is not restricted to the national space but constitutes freedom of international movement. Carens (1987: 261) reinforces his defense of international freedom of movement with the argument of lucky egalitarianism, which in this case means that immigration restrictions should not be justified based on birthplace and kinship, which are arbitrary and irrelevant contingencies from a moral point of view. In Carens' (1992: 26) argument, equal opportunities are associated with the equal moral value of human beings, who should not have access to social positions limited by arbitrary native characteristics (such as class, race,





sex, or birth). In this sense, freedom of movement is a precondition for equal opportunities, as it enables people to seek opportunities anywhere, including across borders. Thus, according to Carens (2013: 226-228), by maintaining borders and discretionary control over immigration, democratic states violate their commitments to individual freedom and equality. In addition, for Carens (2013: 226-228), free movement can contribute to the alleviation of substantial global inequalities.

Aiming to reform the global refugee regime, Carens (2013: 198) treats resettlement as a strong and extensive moral duty of States, which must also find a more just way of distributing refugee resettlement. For a fairer allocation of refugees, Carens (2013) highlights some factors, such as: absorptive capacity of the receiving States; population density; economic capacity; cultural similarity, religion and ethnicity, and history of immigrant admission.

Kieran Oberman (2016: 36) also bases his theses on immigration in the defence of international freedom of movement as a human right, with no moral distinction between the freedom of movement within borders. While recognizing that the human right to migrate is not absolute and that there may be some restriction in situations with severe costs, Oberman (2016: 37) stresses that immigration restrictions are unfair, as they violate people's basic freedoms. For Oberman (2017: 104), the argument for the right to migrate is related to people's interests to choose freely about basic issues such as where they live, with whom they live, with whom they associate, which religions they practice, etc. According to Oberman (2017: 104), this is all recognized by international law in the Universal Declaration of Human Rights.

Phillip Cole (2011) agrees with Carens and Oberman in defending more open borders for human rights reasons related to freedom of movement. Cole's position (2011 : 178) is also supported by the idea of moral equality for all people, regardless of the place of birth, advocating equal access to territories. Immigration controls are unethical, considering that they violate the fundamental moral principle of equality between people. For him, a liberal universalist and egalitarian ethic does not end at the national frontier. Thus, for Cole (2011 : 306), the right to cross borders can only be restricted in extreme circumstances, something that threatens the life of the nation, such as wars or natural disasters, for example. Other than that, there are no "common sense" arguments to restrict immigration. He proposes a global migration regime based on a liberal order of universal mobility in which states do not enjoy a unilateral authority to exclude





others. Cole (2000: 56) argues that without the right to international freedom of movement, which involves the right to enter, the right to leave is worthless. For him, the right to leave and the right to enter must be symmetrical. In this sense, he defends that immigration falls within the same international legal framework as emigration.

Finally, in this long theoretical debate, there is a set of positions that, in different aspects, seek to reconcile the demands of universalism and particularism. In general, these analyses try to find terms of reconciliation between the territorial rights of States, democratic sovereignty, and the rights of immigrants. Seyla Benhabib (2004) argues that an ideal of equality can be pursued with a reconciliation between redistribution and “regulated” migration, which does not imply a complete opening of borders and fully free movement of people. For Benhabib (2004: 21), migration is a complex global phenomenon and sovereignty is a relational concept, not a self-referential one. In this sense, policies related to access to citizenship should not be seen as unilateral acts of self-determination, but as an act of democratic negotiation that involves national and international constitutional norms, given that in the case of migration there are multilateral consequences in the world community. In this way, Benhabib (2004) tries to establish a moral basis for admitting foreigners to democratic states that balances the will for democracy with moral obligations arising from our global interdependence. In Benhabib’s (2004: 138-139) terms, this equalization would occur in guaranteeing the exercise of communicative freedom, which would avoid acceptance criteria based on characteristics not chosen by people, such as race, religion, gender, etc. Consequently, States could only deny the entry of foreigners for reasons that do not deny the freedom of communication, like qualifications, marketable skills, material resources, length of stay, language skills, etc. This would result, according to Benhabib (2004: 146), in a model of fragmented citizenship, in which foreigners receive rights, but not necessarily the rights of national citizens.

Also to point out difficulties in analyses focused strictly on justifications to restrict or allow international migration, Serena Parekh (2017) calls attention to the need for normative elaboration that considers the dynamics of migration policies, their effects, and current political conditions. Addressing the issue of refugees, Parekh (2017: 3) presents the fact that 65.3 million people worldwide are displaced from their countries of origin and have not yet found legal refuge in another country. Of that multitude, only 1% will be resettled in another country





of refuge. This means that the rest live in a situation of temporary solutions, such as refugee camps, where people stay on average for seventeen years. In this sense, for Parekh (2017), both analyses that tend to minimize and analyses that increase the responsibility for refugees fail to provide robust responses to certain situations created by the refugee regime, notably refugee camps. In Parekh's (2017) argument, the concentration of political theorization in the debate on admission and permanent and non-temporary solutions for refugees leads to a lack of adequate responses to these facts. For her (2017: 18), in the current political conditions, camps for refugees and stateless persons have become permanent fixtures, because, in addition to the official solutions of repatriation, integration, and resettlement, there is another: containment in camps. The camps constitute a space distinct from common political communities, with widespread violations of human rights (Parekh 2017: 32). Against this background, Parekh (2017: 52) has developed a normative argument called "Temporary Ethics", which stipulates that in refugee camps human rights and political participation for refugees must be guaranteed.

International Migration Governance

The phenomenon of international migration affects all regions and peoples on the planet, involving various social, political, economic, cultural, and security dimensions. According to the International Migration Report 2017 (UN 2017: 4), around 258 million migrants live outside their country of birth, constituting 3.4% of the world population. As a permanent and long-lasting phenomenon, it can be said that most migration processes occur through legal channels. However, in the last decades, with the limitations of the regimes on international migration, an increase of restrictive control policies in the northern countries, and the intensification of displacements forced by conflicts, violence, insecurity, economic crises, environmental changes, and others, the flow of irregular migration has increased. This situation has impacted States and populations of origin, transit, and destination, requiring international governance and cooperation mechanisms.

Historically, especially after World Wars I and II, there has been a significant increase in the formulation of international laws, procedures, and institutions related to international migration. Despite the existence of a consolidated legal framework concerning refugees, the general governance framework around the





theme has always been very fragmented, uncoordinated, ad-hoc, and imprecise in various spheres that involve the phenomenon. In addition, as highlighted by Nicholas R. Micinski and Thomas G. Weiss (2017: 179), global migration management has rarely resulted in binding, normative or applicable agreements. According to Alexander Betts (2011: 7), although the phenomenon of international migration has always demanded it, a coherent multilateral and formal global governance structure has not yet developed within the scope of the UN. On the contrary, the treatment of the phenomenon has remained largely under the control of sovereign states.

Taken together, the institutional fragility and ineffectiveness of migration regimes are related to the historical predominance of the approach and treatment of the international migratory theme on a state, national and sovereign level. Based on parameters of equity and global justice, it can be said that the predominance of the state approach, in addition to hindering multilateral, formal, and UN-sponsored referrals, has also revealed the disparity of power between developed and developing countries. There has been a clear predominance of the approaches and interests of developed countries, which is also reflected in an unbalanced distribution in the sharing of the burden and responsibilities when facing different aspects of the migratory phenomenon.

In recent decades unprecedented levels of global migration, situations of increased vulnerability of migrants, and great challenges in managing the migration phenomenon have made it evident that international migration could no longer be effectively managed or controlled by national migration policies, requiring greater international cooperation to achieve national goals in international migration (Koser 2010: 302-303). In this context, albeit different perspectives on the role of global migration governance, mainly with regard to political and normative demands between countries of origin in the South and receiving countries in the North, from the beginning of the 2000s countries recognized the need for some kind of multilateral governance architecture to manage migration (Betts and Kainz 2017: 4). This fact can be evidenced in the actions of the UN, which placed the issue as one of its central topics of discussion, mainly due to the efforts of Kofi Annan as Secretary-General of the UN (1997-2006). The creation of the Global Commission on International Migration (CGMI) in 2003, with the prospect of greater UN involvement in addressing the various dimensions of the international migration phenomenon, can be considered a milestone in the UN's attempt at greater participation in global management of international migration.





Following this fact, in 2006, in response to a recommendation from the Global Commission on International Migration, the UN Secretary-General established the Global Migration Group. It is a high-level inter-agency group involved in migration-related activities, with the role of promoting the broader application of all relevant international and regional instruments and standards related to migration, encouraging the adoption of more coherent, comprehensive, and better-coordinated approaches. Two events that should also be noted in this process of greater UN involvement in migration governance were the High-Level Dialogues on Migration and Development held in 2006 and 2013. Although they had a limited deliberative format and produced little expressive results, the two Dialogues were important steps in attempting to deal with the international migration phenomenon on an integrated, global, and non-fragmented basis.

In the wake of these events, in July 2016, the UN General Assembly unanimously adopted a resolution that approved the agreement to incorporate the International Organization for Migration (IOM) into the UN (UN 2016a). Initially created to resettle refugees from Europe, the IOM has long been an important player in the field of human mobility, acting for the protection of migrants and displaced persons, and in the resettlement of refugees and voluntary returns. However, many scholars have noted that over time, the IOM has had a controversial and ambivalent performance, oscillating between cooperation and non-cooperation with UN agencies, depending on the political interests in question (Pécoud 2018). By linking the IOM to the UN, the UN General Assembly took an important step in aligning the IOM with multilateral demands and the multiple actors involved.

This scenario of broadening the discussion on global migratory governance was accelerated by an increase in the movement of large numbers of refugees and migrants, mainly the refugee crisis in Europe 2015 and 2016. This fact also made it more evident that the discussion on migration management has ceased to be a political issue for the exclusive treatment of national states. The emergence of demands from civil society to be included in discussions about the topic and the involvement of all stakeholders has given governance dynamics multiple levels, as well as formal and informal spheres. For Marion Panizzon and Micheline Van Riemsdijk (2019 : 1225), the large flows of migrants and the refugee crisis have changed the capacities of States to govern international migration. According to Marion Panizzon and Micheline Van Riemsdijk (2019 : 1225), actors from civil society, regions, and cities working in crisis management have assumed roles traditionally played by national governments and international organizations.





Even if the degrees of interaction between the proposals formulated at these scales and levels remain fragmented, and considering that the participation by multiple actors is subject to hierarchies, it is already possible to verify an emerging framework of a multilevel global migratory governance.

Together, the processes described above culminated in the New York Declaration. Unanimously adopted by the United Nations General Assembly Resolution on September 19, 2016, the New York Declaration for Refugees and Migrants laid the groundwork and commitments for two intergovernmental consultation processes for negotiations about the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration. An important fact highlighted by the Declaration was the call for the formulation of the two agreements “through an open, transparent and inclusive process of consultations and negotiations, and the effective participation of all interested parties”. (UN 2016b).

The New York Declaration outlined three phases for the drafting of Global Compacts. First, a consultation phase, carried out between April and December 2017, involving contributions and recommendations not only from different government actors but also from civil society stakeholders and affected communities, who participated in five thematic discussions in Geneva. For Stefan Rother and Elias Steinhilper (2019: 244), an established framework for “migration governance from below” has allowed civil society and migrant organizations, in particular, to significantly impact the process and outcome of the Global Compact for Orderly and Regular Migration while, in the case of the Global Compact on Refugees, international refugee networks used the negotiation process to be recognized as actors in the international system.

Next, a survey phase took place where the information collected during the consultations was processed. This resulted in a “Zero Draft” prepared by Mexico and Switzerland, co-facilitators of the process. Between February and July 2018 intergovernmental negotiations were conducted, which resulted in the texts of the two Compacts. In December 2018, at the UN Conference in Morocco, the vast majority of the General Assembly approved the “Global Compact on Refugees” and the “Global Compact for Safe, Orderly and Regular Migration”.

The Global Compact on Refugees

The Global Compact on Refugees is based on the 1951 Convention on the Status of Refugees and its 1967 Protocol, centred on the fundamental principle





of non-refoulement and governed by international human rights instruments, international humanitarian law, and other international instruments on the subject (UNHCR 2018a: paragraph 5). The Compact establishes four objectives: 1) relieve pressure on host countries; 2) increase refugee self-sufficiency; 3) expand access to third-country solutions; 4) and helping to create conditions in countries of origin for citizens to return in security and dignity (paragraph 7).

The Compact seeks to address the root causes of refugee movements to facilitate access to long-term solutions. To this end, recognizes voluntary repatriation under safe and dignified conditions as the preferred solution in most refugee situations (paragraph 87). The Compact's preferred long-term solution is not new, since voluntary repatriation is already the predominant practice of the international refugee regime. In the normative theoretical terms presented in this case, it can be said that the justifications of the statist-communitarian (Walzer 1983; Wellman 2008; Miller 2016) basis for the admission of refugees remain in the Compact, such as the sovereignty of States to decide on the entry of refugees into their territories, the cultural integrity of receiving countries, limited economic resources for receiving a large contingent of refugees and defending refugees' human rights in their communities of origin. In fact, voluntary repatriation in a safe and dignified way remains the ideal solution. It turns out that, in recent decades, mass repatriation movements have been carried out under very adverse conditions for refugees. Developing countries often lack the resources to sustain a large refugee population for a long time in their territories. Developed countries, on the other hand, may provide insufficient funding for long-term assistance programs. Furthermore, countries of origin might support repatriation measures as a way of demonstrating internal stability to the international community, even if this situation does not exist. All these factors have contributed to situations of extreme vulnerability of refugees, a problem the Compact seeks to address. Success, however, will depend on significantly improving the above-mentioned issues.

Paragraph 3 establishes a bold commitment to providing a basis for a predictable and equitable sharing of responsibilities among all Member States of the UN. In this perspective, the Compact provides for the periodic convening of the World Forum on Global Refugees, so that all Member States and interested parties can announce pledges to contribute to concrete measures aimed at achieving the objectives and improving the distribution of burdens and responsibilities; assess progress in achieving the objectives; and exchange good practices and experiences (paragraphs 17; 103). The Compact is not legally binding (paragraph





4). In this sense, contributions will be voluntary, determined by each State and each stakeholder, considering the realities, capacities, and levels of development of each country and respecting its national policies and priorities (paragraph 4). The articulation of a more equitable, predictable and sustainable distribution of burdens and responsibilities will be under the coordination of UNHCR, States, and stakeholders (paragraph 48). The use of indicators by the international community to assess the achievement of objectives in the planned World Refugee Forums is the tool for examining the mechanisms for the distribution of burdens and responsibilities (paragraphs 102; 103; 104).

Seen from a perspective of global justice and migration ethics, it can be said that the Compact addresses one of the most important issues of the international refugee regime, which is the sharing of burdens and responsibilities, a field notably marked by tensions, inequalities, and little commitment of States. Although there is an institutionalized normativity around asylum, with States recognizing they have certain obligations towards refugees present in their territory, the same is not true concerning refugees outside their territory. Since the origin of the international refugee regime, States have been reluctant to make mandatory and continuous financial and resettlement commitments to refugee crises distant from their territories. In general, the sharing of responsibilities is uneven, with most of the burden assumed by States in the vicinity of where refugee generating crises occur.

As a rule, supported by the rules governing the international refugee regime, developed countries grant asylum to refugees who are in their territories and cannot return to their countries of origin for security reasons. However, by complying with the principle of non-refoulement, these countries work with the prospect of preventing potential refugees from reaching their territories, which would imply granting asylum (Gibney 2005; Parekh 2017). According to Matthew Gibney (2005: 4), to avoid the commitment of non-refoulement, developed countries apply “non-arrival measures”, such as the use of visa regimes, carrier sanctions, immigration pre-inspection, and interdiction at sea. Such strategies and deterrence practices in migration management have generated informal or institutionalized “transit spaces”, which include transit points and temporary or semi-permanent residences for the containment and retreat of people who seek refuge (De Vries & Guild 2019). By characterizing the reality of these spaces as a combination of fractured mobility, daily violence, and fundamental uncertainty, Leonie Ansems de Vries and Elspeth Guild (2019: 2157) have recovered the term “exhaustion policy”; a deliberate strategy of mobility governance aimed at demotivating people from





attempting to cross borders. Such migration governance practices in developed countries demonstrate the low level of commitment of these countries to refugees outside their territory.

According to the Global Trends Forced Displacement study of 2018 (UNHCR 2019: 13) the refugee population under UNHCR's mandate at that point stood at 20.4 million, having almost doubled since 2012 when it was 10.5 million, with two thirds from just five countries (Syria, Afghanistan, South Sudan, Myanmar, and Somalia). According to the study, the total global refugee population is at the highest level ever recorded — 25.9 million at the end of 2018, including 5.5 million Palestinian refugees under UNRWA's mandate. As has been the case since 2014, the main country of origin of refugees in 2018 was Syria, with 6.7 million. These refugees were received by 127 countries on six continents, but the vast majority (85%) remained in countries in the region (UNHCR 2019: 14). Turkey continued to host the largest population of Syrian refugees, with 3.7 million at the end of the year. More than 98% of the refugees in Turkey were from Syria, totalling 3.6 million (UNHCR 2019: 14). These data show that the majority of refugees flee to a neighbouring country.

As can be seen, there is an imbalance in the sharing of burdens and responsibilities, since the countries closest to the situations of conflict and violence receive the bulk of the refugees. Note that these countries are low and middle income, belonging to the Global South. According to the report Global Trends Forced Displacement in 2017 (UNHCR 2018b: 15), low and middle-income countries are home to around 85% of the world's refugees. Although the largest UNHCR financiers are developed countries, with emphasis on the USA, the European Union, and Germany, respectively, in 2018, the UNHCR budget fell short, presenting a deficit of 43% (UNCHR 2018c: 10). Therefore, there is a need for more countries to release resources. In high-income countries, there are on average only 2.7 refugees per thousand inhabitants, but that number is more than double in middle and low-income countries, with 5.8 refugees per thousand (UNHCR 2019: 21). There is also a need for a better distribution of resettlement among countries, especially those with higher incomes. The Compact does not establish State quotas for refugee resettlement, mainly from the north, as humanitarian groups and associations wanted. Nor does it establish a mandatory resettlement duty, according to the principle of humanitarianism argued in theories like those of Carens (2013) and Benhabib (2004). In this respect, in normative theoretical terms,





it can be said that the right of self-determination of the statist-communitarian approaches prevails.

Additionally, there is the issue of long-term refugees. Paragraph 14 of the Compact recognizes that countries that receive and accommodate refugees for long periods must obtain support from the international community, as they make an immense contribution to humanity. According to UNHCR (UNHCR 2019: 22), in 2018 78% of all refugees were in prolonged situations, equivalent to 15.9 million refugees. UNHCR defines a protracted refugee situation as one in which 25,000 or more refugees of the same nationality have been in exile for five consecutive years or more in a given host country. In fact, the protracted refugee situation in camps is the main picture of the refugee phenomenon in our time. With no return conditions, no resettlement or integration in other countries, refugees remain in the camps. As Parekh (2017: 3) pointed out, the average stay in refugee camps is seventeen years. There is no obligation in the Compact for temporary admission or the expansion of political rights for refugees in long-term camps.

As pointed out, the Compact establishes mechanisms for solidarity, cooperation, and sharing responsibilities. However, as it is not legally binding, the Compact does not create mandatory normative commitments for financing, resettlement, and sharing responsibilities. In this sense, the predictable and equitable burden and the sharing of responsibilities can be compromised. The suggested mechanisms will depend on voluntary contributions and consider the absorption capacity, the level of development, and the demographic situation of different countries. UNHCR's track record in ensuring responsibility-sharing is not very encouraging. In general, commitments are not long-lasting and are more present in critical situations. The nationalist, identitarian, and anti-immigration sentiments present in some countries do not help, nor does the reduction of resettlement programs, which are already small given the number of refugees. In societies with a high degree of polarization around the issue, it is difficult for States to make lasting commitments and obligations to provide financial support and receive refugees. The voluntary character, subject to national priorities, may reinforce this, and contributions can fluctuate as needed.

The Global Compact for Safe, Orderly and Regular Migration

The Global Compact for Safe, Orderly and Regular Migration was, above all, the adoption of the first comprehensive framework of principles and objectives to





supply international migration governance with a single framework. In addition, although always emphasizing state sovereignty, it recognizes the challenges of coordinating, operating, monitoring, and financing a system of multilateral and multilevel global governance. According to paragraph 1, the Compact is based on the purposes and principles of the United Nations Charter (UN 2018). Its format comprises 4 parts: “Vision and Guiding Principles”; 23 “Objectives” with respective “Commitments”; “Implementation”; and “Follow-up and Review” mechanisms. Its application provides for local, regional, and global cooperation under the UN system, and in association with migrants and civil society (paragraphs 40; 43; 44; 45).

Adopted with a greater number of abstentions and votes against than the Refugee Compact, the Global Compact on Migration reiterated the distinction between refugees and migrants, who have the same universal human rights and fundamental freedoms that must be respected, protected, and fulfilled, but which constitute separate groups that are governed by separate legal frameworks (paragraph 4). In this case, the concern of many States, mainly from the developed north, has prevailed in preventing economic migrants from being governed by the same legal frameworks as refugees. On the issue of human rights, the Compact adopts the principle of non-regression (paragraph 15f), which means that once a human right is recognized, it cannot be removed or restricted. Note that the Compact does not establish the right to migration as a human right, nor does it create new human rights, as advocated by cosmopolitan normative theories.

Recognized as a harmful problem for all agents involved in the migratory process, irregular migration highlights one of the central mismatches between migration regimes and migratory social dynamics. In Objective 5, paragraph 21, States commit to improving the availability and flexibility of routes for regular migration. It is not a matter of regularizing all migrants in an irregular situation, nor of creating an international standard that provides for State obligations or individual rights to regularization. But, as provided for in objective 7, item (i), ensures an individual assessment that allows individuals to regularize their situation, per case with clear and transparent criteria. Non-state stakeholders demanded commitments to regularize irregular long-term migrants, but there was no agreement between States on this issue. In objective 5, item (i), the Compact provides for facilitating access to family reunification procedures for migrants, at all skill levels. Family reunification has always been a demand from countries in the Global South and civil society actors. The expression “at all skill levels” is





in line with the demands of scholars and human rights groups that often point to a selective procedure in the policies of developed countries, which offer the possibility of family reunification to highly qualified workers whilst denying it for less qualified workers.

The adoption of more inclusive, cooperative, and comprehensive perspectives can be a way to mitigate the problem. Nevertheless, putting these perspectives into practice is not easy. On the one hand, it is not possible to reach a situation where all people can satisfy their basic needs for life in their place of birth in the near future. On the other hand, despite the efforts of some political and societal leaders to establish and enforce the Compact, the current global political scenario has experienced an increase in protectionism, isolationism, and xenophobic nationalism, all of which have reduced the willingness of governments and societies to assume and share the responsibilities for migration.

With regard to labour migration, historically, the prevalence of global governance based on the domestic policies of sovereign states has created a situation in which northern destination countries have adopted selective immigration policies, facilitating the entry of highly skilled workers and wealthy individuals, whilst tightly controlling the entry of low-skilled workers. Such facts represent an unequal cost distribution among States, with poorer countries bearing the cost of losing qualified labour. Objective two aims to minimize the adverse and structural factors that compel people to leave their country of origin. In item (e) of this objective, the Compact deals with brain drain and investment in the development of human capital, and the creation of productive jobs in cooperation with the private sector and unions to reduce youth unemployment. In this way, a contribution can be made to alleviate the brain drain in poorer countries and take advantage of the demographic dividend. The emphasis here is on the realization of the 2030 Agenda for Sustainable Development (objective 2, item a), which would eliminate the adverse factors and structural factors that compel people to leave their country of origin. In the theoretical debate presented here, the diagnosis of the Compact seems to follow the line of authors like Gillian Brock (2015), who pointed to evidence that the “brain drain” presents losses to the poor countries of origin.

Another controversial issue in terms of global justice and migration ethics is related to the remittances that immigrants send to their countries of origin. In the Compact, some objectives address the demands of countries of origin, such as Objective 20, which provides for the promotion of faster, safer, and more





economical remittance transfers and fosters the financial inclusion of migrants, recognizing the transformative effect that remittances have on the well-being of migrant workers and their families, as well as on the sustainable development of countries. In paragraph 36, the Compact stresses that remittances are an important source of private capital and cannot be equated with other currents of international financing like foreign direct investment, official development assistance and other public sources of financing for development. Accordingly, according to the Compact, in line with the proposals of developing countries, remittances cannot replace other forms of development assistance. There is no recognition in the Compact that remittances are an inadvertent cause of irregular migration and family separation. According to a report by the World Bank and KNOMAD (2018: 4), migrants worldwide sent US \$ 613 billion in remittances in 2017. This number is much higher than all international assistance for development abroad in 2017, which according to OECD (2018: 267) data totalled \$ 146.6 billion.

The involuntary return of migrants has always been a subject of disagreements and controversies between countries of origin in the South and destination countries in the North. The latter often claim that there is little effort from countries of origin to guarantee return migration. In turn, countries of origin argue that human rights and the dignity of migrants are often violated in return actions. Additionally, they complain about the difficulties of reintegration in poor countries and a lack of assistance and international financial aid for this reintegration. In this matter, both sides make commitments, as is the case of Objective 21, paragraph 37, which provides for collaboration to facilitate the return and readmission in safe and dignified conditions, as well as sustainable reintegration in the country of origin to ensure that their nationals are properly received and readmitted. Note that Objective 21, paragraph 37, also endorses fundamental principles of protection, providing for the prohibition of collective expulsion and the return of migrants when there is a real and foreseeable risk of death, torture, and other cruel, inhuman treatment such as punishment or humiliation, or other irreparable damage. Thus, while recognizing that States have a sovereign right to return migrants who are not authorized to stay in their territories, the Compact establishes a dignified return, due process of law, and a ban on collective expulsions or returns in situations where there is a serious risk of damage or death.

The Compact presents itself as a framework of non-legally binding cooperation, whose purpose is to foster international, regional, and bilateral cooperation





and dialogue on migration, recognizing that no State can approach migration in isolation, and respecting the sovereignty of States and their obligations under international law (paragraphs 7; 15b). In paragraph 15c, the Compact reaffirms the sovereign right of States to determine their migration policy and the prerogative to regulate migration within their jurisdiction in accordance with international law, being able to distinguish between regular and irregular migration status. Even though it did not impose new obligations on the signatory countries, the Compact was rejected by some countries on the grounds that its adoption implies an infringement on their sovereignty. Evidently, taking into account the different positions of the negotiating governments, the Compact has simultaneously adopted both the principles of international cooperation and national sovereignty. The great challenge lies in the coordination and integration of these principles that may collide. In certain cases, the exercise of national sovereignty can preclude international cooperation.

Conclusion

After a long history of fragmentation in global migration management, despite not being binding, the two multilateral global Compacts within the UN system constitute a significant advance in global moral and political projects and commitments. Notably marked by a predominance of sovereign national policies in developed countries and by informal processes, which have always hampered more equitable terms of cooperation and responsibility between States and other actors involved, international migration regimes have demonstrated their inefficiencies in the face of the challenges presented in recent decades. This has made it possible to expand the treatment of migratory governance in multilateral and multilevel terms, under the coordination of the UN. It does not mean, however, that this process and consequently the Compacts, are free of contradictions, objections, and non-adhesions.

Altogether, from a normative theoretical perspective on global justice and migration ethics, it can be said that the Compacts are based on positions more in tune with statist-communitarian positions on sovereignty and self-determination, which provide for a conditioned admission of refugees and restrictions on economic migration. The emphasis is on development aid to ensure the self-sufficiency of countries of origin, thus preventing the departure of their inhabitants and resulting





in “brain drain”. Furthermore, in cases where a considerable outflow does occur, the emphasis is on promoting and facilitating safe return and repatriation. In relation to the integration of immigrants, besides rejecting all forms of discrimination, the goal is social, civic, and cultural integration in the destination countries. As a deal between countries with different positions and powers in the international system, an agreement was reached because the coordination, accountability, monitoring, and financing of the terms and objectives of the Compacts are not binding, even though they do contain mechanisms for assessment and review. Seen in this way, the Compacts are an expression of the views and standards of international migration governance generally upheld by more developed transit and destination countries.

For this reason, operationalization of the terms provided for in the Compacts can bring about problems, distortions, and impasses in the sharing responsibilities, despite the focus on multilateral, multilevel perspectives of solidarity and cooperation, and considering the specific interests of countries of origin, transit and destination. In the case of refugees, the unfair distribution of responsibilities between developed and developing countries is likely to remain, as well as the prevalence of non-entry and selective immigration policies in developed countries.

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