

PREFACE

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The 2030 Agenda for Sustainable Development and the 17 Sustainable Development Goals (SDGs) were adopted unanimously by the world leaders during the United Nations (UN) Summit on 25-27 September 2015, and they officially came into force on 1st January 2016.

The Agenda clearly recognizes the positive contribution made by migrants for inclusive growth and sustainable development, and, for the first time, migration is included in the global development framework. Sustainable Development Goal 10 – Reduce inequality within and among countries – aims, inter alia, at facilitating “orderly, safe, regular and responsible migration and mobility of people, including through implementation of planned and well-managed migration policies”.

On 19 September 2016, at the UN Summit for Refugees and Migrants, the New York Declaration was adopted, a plan for addressing large movements of refugees and migrants. It is affirmed that “Since earliest times, humanity has been on the move. Some people move in search of new economic opportunities and horizons. Others move to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations and abuses. Still others do so in response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change), or other environmental factors. Many move, indeed, for a combination of these reasons” (para. 1)

On the link between migration and development, the UN Member States recognize that “Migrants can make positive and profound contributions to economical and social development in their host societies and to global wealth creation. They

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can help to respond to demographic trends, labour shortages and other challenges in host societies, and add fresh skills and dynamism to the latter's economy. We recognize the development benefits of migration to countries of origin, including though the development of diasporas in economic development and reconstruction" (para. 46). It goes on to affirm that all the aspects of migrations should be integrated into global, regional and national sustainable development plans, respecting the needs and the rights of the vulnerable people involved in migration flows.

When the call for papers for 'Migration and Development: some reflections on current legal issues' was published, we underlined that the attention of scholars, in the discussion concerning the increased migratory flows, focused more on the questions regarding admission and / or rejection of migrants on the territory of receiving countries than on the general topic of the contribution of migrants to the financial, social and cultural development of societies (of origin, transit, or destination).

The volume does not cover all the aspects of the multi-faceted, complex relation between migratory flows and development (of people, society, and countries). Our goal has been to open discussion among experts, scholars and policy-makers, on the problematic questions, outcomes, implications and achievements on this issue.

The first four contributions of the volume set the stage for the research by offering a general exposition on M&D-related legal issues. The volume opens, significantly enough, with a historical inquiry on the relation between migration, integration and development in the Mediterranean area. In her contribution ("Should Europe be Looking into Turkey's Byzantine Past to Discover its Own Future?"), Francesca Galgano, an expert of Roman Law, invites us to look at the Byzantine experience - where "the concepts of globalization and multiethnic society were reality" (p. 3) - to draw important lessons on the way the European Union (but the same is valid for other countries of destination) should cope with the manifold economic, cultural and social issues raised by migratory flows.

The contribution by Francesco Luigi Gatta ("The EU Development Policy and Its Impact on Migration") provides the reader with precious background by expounding on EU's M&D policies. As the author points out, the EU, not being "a military power", has to rely "on its diplomatic means, financial capacity and political influence in order to foster dialogue and cooperation with third countries" (p. 12). To this end, the EU set up a wide array of institutional and legal tools to promote development in

third countries. In the last decade, the EU's approach to development issues has been progressively widened so as to include also the M&D nexus. This has resulted in a number of practical actions and measures which are critically analysed by Gatta, who - while acknowledging the merits of recent reforms in EU policies - underscores the persisting preeminence of the "economic dimension" at the expense of "the human and social indicators of development, such as overall quality of life, primary education, health care, [and] employment" (p. 44).

The investigation by Stefano Montaldo ("Regular Migrants' Integration between European Law and National Legal Orders: a Key Condition for Individual and Social Development") supplements the previous contribution, by examining another crucial element in the M&D dynamics: integration. This is an area where EU and national policies "often lock swords and pursue different goals" (p. 49). Instead of promoting the positive attitude to integration fostered by EU institutions, in particular, Member States conceive of integration conditions as a "managerial" tool "for the selection of migrants deserving a chance" (ibid.) - a situation which may hinder the achievement of M&D objectives established at the EU level. On the basis of a careful analysis of EU legislation and case law, therefore, the author argues that national integration policies are to be deemed compatible with EU law "only if they facilitate integration", are proportionate and do not "undermine the effectiveness of relevant EU Directives" (p. 69).

In "Migration and Development: The Case of People Displaced by Development and States' Obligation to Respect Their Human Rights", Laura Messina casts a different light on the relation between migration and development. Here, in fact, migration is not seen - as is usual - as a driver for development, but as a negative consequence of development projects. On this assumption, Messina carries out a detailed examination of the protection afforded by international human rights law to development-displaced persons, having particular regard to "four core rights" (the right to property, the right to respect for private life and home, the right to adequate housing and the right to freedom of movement and choice of residence), as well as to the emerging "right not to be displaced" (p. 91).

Building on this background analysis, the ensuing papers are devoted to more specific legal issues. A first set of contributions is focused on migrant workers' rights. Notably, Fulvia Staiano ("The Undesirable Worker Fiction: Demand-Based Labour Migration Schemes and Migrant Workers' Socio-Economic Rights") offers a critical examination of labour migration schemes currently adopted in EU Mem-

ber States, by taking the Italian and Irish legal orders as case studies. As shown by the author, the inadequacy of these schemes ends up pushing migrant workers “into unregulated and informal employment” (p. 96), with inevitable repercussions on the enjoyment of the socio-economic rights protected at the international, EU, and domestic levels. Interestingly, her review of Italian and Irish case law highlights how domestic courts, while striving to afford adequate protection to irregular migrant workers, shy away from relying on supranational sources, and prefer to resort to “an extensive interpretation of [domestic] immigration law” (p. 116). This is caused by the overall lack, at the international and European levels, of hard-law sources - a gap that, Staiano concludes, needs to be filled.

While still lingering on workers’ rights, the piece by Beatrice Gornati (“Limits to the Implementation of International Law Instruments on Labour Migration: a Focus on ILO’s Praxis”) in some way zooms out, by providing a thorough description of the relevant standards laid down by the International Labour Organization, with particular regard to three core aspects, namely the protection of migrant workers, the employment of refugees, and the phenomenon of forced labour. This analysis leads the author to note that, although ILO’s has been particularly “prolific in recent years” (p. 144), the status of implementation of its (binding and non-binding) standards is far from satisfactory.

The second set of contributions concerns, on the other hand, the protection of asylum seekers. The adoption by the Danish Parliament of the much controversial “Jewellery Law” offers Salvatore Fabio Nicolosi the opportunity to reflect on domestic legislations envisaging the obligation of asylum seekers to contribute from their own assets and income to the cost of their reception (“Asylum Payers’: Questioning the Asylum Seekers’ Obligation to Contribute to the Costs of their Reception under International and European Law”). Nicolosi argues that this practice is not only highly problematic under international law (Refugee Convention, ECHR) and EU law (Reception Directive), but it is also questionable “from an economic perspective”, to the extent that it overlooks, first, “that refugees will more than likely use their own assets within the host State” and, second, that there is an unbridgeable gap between the economic value of asylum seekers’ assets and “the enormous costs that States face in order to maintain an efficient asylum system with adequate reception facilities” (p. 168).

Elena Gualco’s contribution focuses on the protection of a particular category of asylum seekers, namely unaccompanied minors (“Unaccompanied Minors Seek-

ing for Protection in the European Union: Will a Fair and Adequate Asylum System Ever See the Light?"). In Gualco's view, this choice is particularly suitable for an M&D analysis, since minors - unlike adult migrants - are expected to grow up, live and work in the country where they have found asylum, so contributing far more significantly to the latter's development (p. 177). Her research unveils the (many) shortcomings of the current Common European Asylum System and the overall inadequacy of the recent reform proposals set forth by the European Commission. According to the author, a real improvement could be achieved only through the adoption of a legal and institutional framework that ensures "the uniform accommodation of migrants" among Member States and common rules on the protection of asylum seekers' rights (p. 190).

The last two papers pinpoint two complementary, and equally worrisome, facets of EU policy on M&D, which appear to be paradigmatic of a general attitude of industrialized countries: on the one hand, the endeavour to attract highly qualified workers from less developed States, at the risk of further undermining the latter's economic growth; on the other hand, the "instrumentalization" of development cooperation to the control of migratory flows (mainly of unskilled workers) from non-industrialized countries.

In particular, Alessandro Rosanò provides an in-depth analysis of the Blue Card Directive, which affords a preferential treatment (e.g. in relation to family reunification) to non-EU highly skilled citizens wishing to work and live in the European Union ("Something Old, Something New, Something Balanced, Something Blue: the EU Blue Card Directive, Brain drain, and the Economic Development of the EU and the Sending Countries"). He brings to the limelight the fact that neither the Blue Card Directive nor the revision proposal put forth by the Juncker Commission contains sufficient safeguards against brain drain and suggests that a revised Directive should include a provision obliging Member States to reject an application for an EU Blue Card, whenever this is required to ensure ethical recruitment in sectors suffering from a lack of qualified workers in the countries of origin (p. 212).

Finally, Martina Guidi ("More Development of Third States and Less Migration towards the EU Member States: Is This a New Dual Aim of the EU Partnership and Cooperation Agreements?") describes how a broad notion of "development cooperation" (which encompasses also migration issues) has recently made its way in the practice of EU institutions, including the Court of Justice of the European Union. As the author points out, this shift in EU policy has been "leading to the devel-

opment aid serving migration control and readmission objectives” (p. 239) instead of pursuing the reduction and eradication of poverty in less developed countries. Against this trend, Guidi makes the case for avoiding “lane invasions” and keeping development cooperation and migration control separate (p. 241).

The present volume represents the first result of the scientific cooperation on the issue of Migration and Development between the Law Department of the University of Naples *Federico II* and the Institute for Research on Innovation and Services for Development (IRISS) of the National Research Council of Italy. We would therefore like to thank the Director of the Law Department, Prof. Lucio De Giovanni, and the Director of IRISS, Dr. Alfonso Morvillo, for setting up the institutional framework of this cooperation by signing a formal agreement between the two institutions.

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