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EDUCATIONAL (?) FUNCTION OF INTERNATIONAL  
LAW. A FEW NOTES BASED ON *GLOBAL COMPACT  
FOR SAFE, ORDERLY AND REGULAR MIGRATION  
AND GLOBAL COMPACT ON REFUGEES*

WYCHOWAWCZA (?) FUNKCJA PRAWA  
MIĘDZYNARODOWEGO. KILKA UWAG NA KANWIE  
*GLOBAL COMPACT FOR SAFE, ORDERLY  
AND REGULAR MIGRATION ORAZ GLOBAL  
COMPACT ON REFUGEES*

**Summary:** The article is devoted to the role that public international law can play in confronting the global problem of the migration and refugee crisis. The purpose of the paper is to bring closer the genesis, procedure of adoption and material substrate of the *Global Compact for Safe, Orderly and Regular Migration* and the *Global Compact on Refugees*, approved at the UN forum in 2018, and then to try to answer the question whether it is possible to discuss the educational function of the public international law taking into consideration the specificity of the order. And if so, what exactly would it consist of in the case of international migration law? For the purposes of the above, the issue of the functions of law was also presented (although only in an outline) from the theoretical perspective, with the emphasis on the specificity of the educational function of law in comparison with the others.

**Keywords:** global compacts, migration, refugees, educational function of international law

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**Streszczenie:** Artykuł poświęcony został roli, jaką odegrać może prawo międzynarodowe publiczne w zmierzeniu się z globalnym problemem kryzysu migracyjno-uchodźczego. Celem artykułu jest przybliżenie genezy, procedury przyjęcia oraz materialnego substratu zatwierdzonych w 2018 roku na forum ONZ *Global Compact for Safe, Orderly and Regular Migration* oraz *Global Compact on Refugees*, by następnie na tej podstawie spróbować udzielić odpowiedzi na pytanie: czy w przypadku tak specyficznego w swej istocie porządku, jakim jest prawo międzynarodowe publiczne, można w ogóle mówić o jego wychowawczej funkcji? A jeśli tak, to na czym konkretnie w międzynarodowym prawie migracyjnym miałyby ona polegać? Na potrzeby powyższego wywodu ukazano również (choć jedynie w zarysie) zagadnienie funkcji prawa z perspektywy teoretycznej ze szczególnym uwzględnieniem specyfiki funkcji wychowawczej na tle pozostałych.

**Słowa kluczowe:** global compacts, migracja, uchodźcy, wychowawcza funkcja prawa międzynarodowego

*We must stand together with the millions of men, women and children  
who flee their homes each year,  
to ensure that their rights and dignity are protected wherever they are,  
and that solidarity and compassion are at the heart of our collective response.*

Ban Ki-moon, UN Secretary General<sup>1</sup>

## INTRODUCTION

In September 2016 at the UN General Assembly for the first time in the organisation's history a Summit on Refugees and Migrants was held, attended by heads of state and government, as well as leaders of civil society<sup>2</sup>. Given the extraordinary scale of human mobility<sup>3</sup> this event was an unprecedented opportunity for the international community to agree on a common approach to mass migration of people around the world<sup>4</sup>. The Summit's follow-up was (finally signed by 193 UN member states) the *New York Declaration on Refugees and Migrants* (hereinafter: Declaration or DN). The document in which both the problem of the migration and refugee

<sup>1</sup> From the statement of the then Secretary General of the United Nations - Ban Ki-moon on the occasion of World Refugee Day, 20 June 2016, <https://www.un.org/sg/en/content/sg/statement/2016-06-20/secretary-generals-message-world-refugee-day-scroll-down-french> [access: 30.12.2019].

<sup>2</sup> *UN Summit for Refugees and Migrants* 2016, 19 September 2016, UN Headquarters, <https://refugeesmigrants.un.org/summit> [access: 30.12.2019].

<sup>3</sup> According to the UNHCR data since 2019, the number of forced displaced persons has exceeded 70 million. Based on: <https://www.unhcr.org/figures-at-a-glance.html> [access: 30.12.2019].

<sup>4</sup> This need was already signalled in April 2016 by the UN Secretary General in point 8 of the report: *In safety and dignity: addressing large movements of refugees and migrants: report of the Secretary-General*, 21 April 2016, A/70/59.

crisis, as well as an attempt to respond to it – were very clearly identified<sup>5</sup>. Attention was drawn here to, among others, the historical size of forced migration and disproportionately higher “costs” the crisis has caused to be borne by so-called frontline countries, solidarity with those forced to flee was declared, and it was recalled that compliance with the commitments regarding respect for the human rights of refugees and migrants is a shared responsibility of the international community as well. However, what is particularly significant (and above all “innovative”) – the Declaration *explicitly* promised financial, organizational and program support for the countries disproportionately affected by the refugee and migration pressure, thus referring to the sustainable development goals resulting from the 2030 Agenda<sup>6</sup> and arguing that ordered and regular migration not only fits in clearly, but also seems to be a *sine qua non* condition for their implementation.

The Declaration was to be an important, but only a kind of “prelude” for two more documents to be adopted by the international community in 2018: the *Global Compact for Safe, Orderly and Regular Migration* (hereinafter: GCM) and the *Global Compact on Refugees* (hereinafter: GCR) and this assumption – despite the accompanying ambivalence – was in principle successful. Therefore, the purpose of this article is to present the substantive content of both agreements in order to try to answer the question on this basis: is it possible to talk about educational function in the case of such a specific order as public international law? And if so, what *in concreto* in the international migration law would it consist of? At the same time it is also worth noting that – due to the “freshness” of both agreements – the literature concerning them is still very limited<sup>7</sup>. Therefore, the main source of the research here will be primarily the documents of international organisations (with particular emphasis put on the UN and its agencies).

## GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION

The efforts to adopt both *Global Compacts* in 2018 were supposed to be parallel, which – taking into account the time needed to reach the agreement in the case of

<sup>5</sup> More: M. Półtorak, *Deklaracja nowojorska jako (kolejny) krok ku Global Compacts? Prawo międzynarodowe wobec kryzysu migracyjno-uchodźczego*, [in:] *Prawo międzynarodowe: idee a rzeczywistość*, Warszawa 2018, pp. 567-585.

<sup>6</sup> More on the (17) Sustainable Development Goals on: <https://www.un.org/sustainabledevelopment/> [access: 30.12.2019].

<sup>7</sup> At this point, first of all, publications issued abroad, should be listed i.e.: J. McAdam, *The Global Compacts on Refugees and Migration. A New Era for International Protection?*, “International Journal of Refugee Law”, December 2018, Vol. 30, Issue 4, pp. 571-574; T. Bloom, *When Migration Policy Isn't about Migration: Considerations for Implementation of the Global Compact for Migration*, “Ethics & International Affairs” 2019, 33, No. 4, pp. 481-497, or E.G. Ferris, K. M. Donato, *Refugees, Migration and Global Governance: Negotiating the Global Compacts*, Routledge 2020.

international law – has been achieved to some extent. Nevertheless, works on the arrangement for safe, orderly and legal migration proceeded more efficiently and with a greater involvement of states, which most probably should be explained primarily by the fact that migration *per se* does not automatically have negative connotations (i.e. as a problem), as well as the fact that this area in the proposed approach (taking into account the issue of legal regulation) was a kind of *terra nullius*<sup>8</sup>.

In March 2017, UN Secretary General Antonio Guterres<sup>9</sup> appointed Canadian Louise Arbor the Special Representative of the United Nations SG for International Migration<sup>10</sup>, while works on the arrangement regarding the phenomenon were to take place in several phases. And so: the first phase (“consultations”) lasted from April to November 2017<sup>11</sup>. It was divided into six thematic sessions: human rights, migration drivers, international cooperation, migrants’ input, smuggling and trafficking, and employee mobility<sup>12</sup>. Besides the above five regional consultations were carried out<sup>13</sup> and consultations with the stakeholders<sup>14</sup>. In December 2017 phase II (“stocktaking”) began. Its main purpose was to sum up the consultations held, gather the positions of the UN member states and other interested parties<sup>15</sup>, and then – correlate them with the report of the UN Secretary-General<sup>16</sup>. In this context, a preparatory meeting was held in Mexico, during which Antonio Guterres presented his contribution to the GCM, from which, above all, the vision and need for constructive international cooperation resulted so that migration “could work for all”<sup>17</sup>. The third phase (intergovernmental negotiations on the GCM project) began in February 2018 and included six negotiation rounds<sup>18</sup>. As a consequence, the *final draft* of the project was announced in July 2018<sup>19</sup>, which was the version prepared for the Marrakesh Summit scheduled for December 2018. Finally, on 11th December 2018, the first ever *Global Compact for*

<sup>8</sup> It is hard to talk about the effectiveness of *The UN Convention on the Protection of the Rights of Migrant Workers and Members of Their Families of 1990*. Only 55 countries (Poland – not) are its parties, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq\\_no=IV-13&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsq_no=IV-13&chapter=4&clang=_en) [access: 30.12.2019].

<sup>9</sup> At this point, it is worth emphasizing that the issue discussed is particularly close to Antonio Guterres, because before he took up the function of the UN SG for 10 years (2005-2015) he had been the UN High Commissioner for Refugees (UNHCR). Hence, his special role and clear commitment to works on the arrangements.

<sup>10</sup> More: <https://refugeesmigrants.un.org/Special-Representative> [access: 30.12.2019].

<sup>11</sup> More: [https://refugeesmigrants.un.org/sites/default/files/general\\_concept\\_note\\_gcm\\_13042017.pdf](https://refugeesmigrants.un.org/sites/default/files/general_concept_note_gcm_13042017.pdf) [access: 30.12.2019].

<sup>12</sup> Compare <https://refugeesmigrants.un.org/thematic-sessions> [access: 30.12.2019].

<sup>13</sup> Compare [https://refugeesmigrants.un.org/sites/default/files/regionalconsultation\\_mapping\\_of\\_events\\_0.pdf](https://refugeesmigrants.un.org/sites/default/files/regionalconsultation_mapping_of_events_0.pdf) [access: 30.12.2019].

<sup>14</sup> Compare <https://refugeesmigrants.un.org/stakeholder-consultations> [access: 30.12.2019].

<sup>15</sup> More: <https://refugeesmigrants.un.org/general-contributions> [access: 30.12.2019].

<sup>16</sup> More: <https://refugeesmigrants.un.org/stocktaking-phase> [access: 30.12.2019].

<sup>17</sup> *Making migration work for all*, Report of the Secretary-General, 12 December 2017, A/72/643. [https://refugeesmigrants.un.org/sites/default/files/sg\\_report\\_en.pdf](https://refugeesmigrants.un.org/sites/default/files/sg_report_en.pdf) [access: 30.12.2019].

<sup>18</sup> More: <https://refugeesmigrants.un.org/intergovernmental-negotiations> [access: 30.12.2019].

<sup>19</sup> Initial document available on: <https://undocs.org/A/CONF.231/3> [access: 30.12.2019].

*Safe, Orderly and Regular Migration* was adopted by 164 UN member states, while on 19th December 2018 - was officially approved by the UN General Assembly<sup>20</sup>.

However, contrary to appearances, GCM is not an international agreement and – which has been clearly emphasized – is not legally binding<sup>21</sup>. It is a document whose adoption, as L. Arbour pointed out, “is a reaffirmation of the values and principles embodied in the UN Charter and in international law, and a demonstration that national and regional specificities can always be accommodated in the pursuit of a global common good”<sup>22</sup>. The “structure” of the arrangement includes elements such as: preamble (par. 1-7), vision and guiding principles: common understanding, shared responsibilities, unity of purpose (par. 8-15), cooperative framework (point 16), objectives and commitments (par. 17-39), implementation (par. 40-47) and the *follow-up* procedure and review (par. 48-54). There is no doubt, however, that very clearly formulated 23 objectives for safe, orderly and legal migration (see Table 1) together with proposals for specific actions to achieve them, are the *clou* of the pact.

Table 1. GCM objectives

Collect and utilize accurate and disaggregated data as a basis for evidence-based policy	Strengthen the transitional response to smuggling of migrants	Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration
Minimize the adverse drivers and structural factors that compel people to leave their country of origin	Prevent, combat and eradicate trafficking in persons in the context of international migration	Invest in skills development and facilitate mutual recognition of skills, qualifications and competences
Provide accurate and timely information at all stages of migration	Manage borders in an integrated, secure and coordinated manner	Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries
Ensure that all migrants have proof of legal identity and adequate documentation	Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral	Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants

<sup>20</sup> 152 countries voted “for”, 12 countries abstained (Algeria, Australia, Austria, Bulgaria, Chile, Italy, Latvia, Libya, Liechtenstein, Romania, Singapore, Switzerland), 5 countries were “against” (including the Czech Republic, Hungary, Israel, Poland and the US). However, representatives of 24 countries were absent during the vote. Based on: <https://news.un.org/en/story/2018/12/1028941> [access: 30.12.2019].

<sup>21</sup> [...] „*Though non-legally binding, the Compact is the outcome of a long negotiation process and provides a strong platform for cooperation on migration, drawing on best practice and international law.*” [...] More: <https://news.un.org/en/story/2018/12/1028941> [access: 30.12.2019].

<sup>22</sup> *Statement by Louise Arbour, Special Representative of the Secretary-General for International Migration, Closing remarks at GCM, 11 December 2018, Marrakesh.* Compare <https://www.un.org/en/conf/migration/assets/pdf/GCM-Statements/closingremarksarbour.pdf> [access: 30.12.2019].

Enhance availability and flexibility of pathways for regular migration	Use migration detention only as a measure of last resort and work towards alternatives	Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration
Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work	Enhance consular protection, assistance and cooperation throughout the migration cycle	Establish mechanisms for the portability of social security entitlements and earned benefits
Address and reduce vulnerabilities in migration	Provide access to basic services for migrants	Strengthen international cooperation and global partnerships for safe, orderly and regular migration
Save lives and establish coordinated international efforts on missing migrants	Empower migrants and societies to realize full inclusion and social cohesion	

Source: *Global Compact for Safe, Orderly and Regular Migration*, A/CONF.231/3, p. 5-6.

The analysis of the above leads to the conclusion that GCM has developed and specified the issues previously identified in the Declaration. The agreement also provides for the establishment of a special international migration network. Although, in the opinion of the author of this text, a lot pointed to the success of the initiative (primarily in terms of raising awareness of the problem and refuting the myths that still accompany the phenomenon of migration), the words by A. Guterres from December 2019 to “bring the global migration compact »to life«”, unfortunately suggest that the role of this document probably weakened even before the process of materialising its goals by the signatory states seriously began<sup>23</sup>.

## GLOBAL COMPACT ON REFUGEES

As mentioned, the works on the arrangement for refugees from the very beginning were accompanied by a slightly smaller “momentum”, the reasons for which should be seen on the one hand in the existence of universally recognized international guarantees regarding their protection (*the Geneva Convention* of 1951<sup>24</sup>), on the other hand, however, a certain “restraint” of states when it comes to formulating specific commitments in this respect<sup>25</sup> (which in the context of the duty of the entire

<sup>23</sup> *Bring global migration compact ‘to life’, urges UN chief*, 18 December 2019, UN News, Migrants and refugees. Based on: <https://news.un.org/en/story/2019/12/1053681> [access: 30.12.2019].

<sup>24</sup> *Convention relating to the Status of Refugees*, Geneva, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137. Journal of Laws of 1991 No. 119, item 515.

<sup>25</sup> It is hardly surprising, however, since similar problems were encountered when attempting to form (and then enforce) commitments regarding the relocation and resettlement of applicants for

international community, was presented in DN). Significantly, even on the *Global Compacts* official website, information on the GCR is given in a very general and laconic way. However, it can be concluded from the above that in 2017 thematic sessions and meetings were held<sup>26</sup>. It was planned to develop, in February 2018, the draft by the UNHCR together with states and other entities to present it at the UN General Assembly as part of the 2018 Annual Report<sup>27</sup>. Therefore, from February to July 2018, six formal consultations took place, and finally, on 17th December 2018, the *Global Compact on Refugees* was approved at the UN GA<sup>28</sup>.

The GCR, modelled on the migration agreement, also is not legally binding. As can be read in the guiding principles of the agreement, this document primarily “emanates from fundamental principles of humanity and international solidarity, and seeks to operationalize the principles of burden- and responsibility-sharing to better protect and assist refugees and support host countries and communities” (par. 5). It is also worth emphasizing that although the development of the GCR project was entrusted to the UNHCR (as opposed to the GCM, developed by states), the High Commissioner was bound by the will of states in this respect. As a consequence, in fact the UNHCR played a key role in the whole process, balancing where it can push, where it certainly cannot. As V. Türk illustratively explained, it was “a question of strategy (...) [and] conscious decision not to put up for discussion what is already international law and policy, which is why you see a fairly cautious approach on that”<sup>29</sup>.

This document is slightly shorter than GCM. It covers 21 pages grouped in four chapters: I (Introduction), II (Comprehensive refugee response framework), III (Programme of action), IV (*Follow-up* and review), that refers to the implementation of four main objectives for refugees, which, of course are consistent with those previously specified in the Declaration, but have been approached here much more synthetically (see Table 2).

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international protection in the EU. For example: *Relocation and resettlement - State of Play*, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20160518/factsheet\\_relocation\\_and\\_resettlement\\_-\\_state\\_of\\_play\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/20160518/factsheet_relocation_and_resettlement_-_state_of_play_en.pdf) [access: 30.12.2019].

<sup>26</sup> More: <https://www.unhcr.org/en-us/formal-consultations-on-the-global-compact-on-refugees.html?query=formal%20consultations> [access: 30.12.2019].

<sup>27</sup> *Report of the United Nations High Commissioner for Refugees, Part II, Global compact on refugees, A/73/12 (Part II)\**, New York 2018, [https://www.unhcr.org/gcr/GCR\\_English.pdf](https://www.unhcr.org/gcr/GCR_English.pdf) [access: 30.12.2019].

<sup>28</sup> 181 countries voted “for”, 2 countries “against” (USA, Hungary), 3 countries – abstained (Dominican Republic, Eritrea, Libya), while 7 did not vote at all – including Poland), <https://www.unhcr.org/the-global-compact-on-refugees.html> [access: 30.12.2019].

<sup>29</sup> Volker Türk in Charlotte Alfred, ‘UN Official: Refugee Compact Will Meet Fear and Ignorance with Facts’, *Refugees Deeply*, 1 March 2018, <https://www.newsdeeply.com/refugees/community/2018/03/01/u-n-official-refugee-compact-will-meet-fear-and-ignorance-with-facts> [access: 30.12.2019].

Table 2. GCR objectives

Ease pressures on host countries	Expand access to third country solutions
Enhance refugee self-reliance	Support conditions in countries of origin for return in safety and dignity

Source: *Global Compact on Refugees*, A/73/12 (Part II)\*, p. 3.

Everything pointed to the fact that, despite some “enthusiasm” that accompanied the adoption of the Declaration, the conservative attitude of states towards the GCR and the assignment, in practice, of the main burden of preparing a document to the UNHCR will determine its failure as being the so-called *law in action*. Meanwhile, today it seems that hope should be seen first of all in a clear encouragement of states to apply temporary protection (par. 63)<sup>30</sup> and – what can be surprising – in the *Global Refugee Forum*<sup>31</sup> and a digital platform for the exchange of good practices, which have so far proved to be “living instruments”<sup>32</sup>. Their task is to bring together a growing community of refugees from signatory states, NGOs, organizations within the UN, enterprises, religious groups, scientists, charity and social organizations around joint work on finding the best and long-term solutions for refugees, internally displaced persons and stateless persons. On the other hand it should be emphasized that the involvement of non-governmental entities in helping refugees should not be particularly surprising, and the platform is just another proof of this regularity.

## EDUCATIONAL FUNCTION OF LAW – AN OUTLINE OF THE ASSUMPTION

This article refers to the potential educational function of the international migration law, although – in this case – a “soft law”<sup>33</sup>. However, before the *Global Compacts* provisions are analysed in this respect, it is worth briefly introducing the concept of the functions of law in general<sup>34</sup>.

<sup>30</sup> Deficiencies in this respect were pointed out, among others, by M. Kowalski in his critical analysis of the UN Secretary-General’s Report of 2016, as an example giving the not yet activated mechanism outlined in Council Directive 2001/55 / EC, which – in his opinion – could be definitely more acceptable for countries (as a temporary solution), while discouraging people who are not in need of international protection from actually abusing protective procedures in crisis situations. More: M. Kowalski, *Bezpiecznie i godnie – uwagi dotyczące raportu Sekretarza Generalnego ONZ z 2016 r. na temat kryzysu migracyjno-uchodźczego*, [in:] B. Krzan (ed.), *Ubi ius, ibi remedium. Księga dedykowana pamięci profesora Jana Kolasy*, Warszawa 2016, pp. 276-278.

<sup>31</sup> *Global Refugee Forum ends with hundreds of pledges*, UN News, 18 December 2019, Migrants and Refugees. <https://news.un.org/en/story/2019/12/1053881> [access: 30.12.2019].

<sup>32</sup> Compare: <https://globalcompactrefugees.org> [access: 30.12.2019].

<sup>33</sup> More on *soft law* as a source of international law, among others, in: H. Thirlways, *The Sources of International Law*, Oxford 2014, pp. 163 et seq.

<sup>34</sup> A broader reflection on this subject, among others in: I. Bogucka, *Funkcje prawa. Analiza pojęcia*, Kraków 2000. At the same time, the author of this text is aware of the complexity and ambiguity of the concept of “function”, which I. Bogucka writes about and in relation to the analyses conducted here, she would like to refer this term primarily to the function understood as an action (role).

As A. Kalisz<sup>35</sup> notices the function means the relationship between two qualities or phenomena, in that a change in one factor entails a change in the other. The function in the case of law can be considered both for the purpose and for the effect. The law – apart from several different roles – is also a factor shaping the *quasi*-cause-effect connections in social life. In other words, it is a kind of “instrument” of social impact. However, the law is effective only when the results of its application overlap with the objectives of its creation assumed by the legislator. Law theorists agree in principle that the functions of law can be analysed taking into account various aspects: the direction, type or manner of its impact. In the first case (direction), the law may perform a stabilizing or innovative function (also referred to as dynamizing). The second aspect (type) should be identified with the organizational function or protective functions. As far as the way the law influences is concerned, it can on the one hand (again) fulfil protective functions, on the other hand – educational ones<sup>36</sup>.

Against this background, it is also worth emphasizing the concept of M. Borucka-Arctowa, who, by classifying the functions of law distinguished, above all, its supreme function (the so-called metafunction), consisting, on the one hand, in stabilizing, and on the other hand – in dynamizing the social order. However, she also indicated (mentioned previously) three main functions of law: protective, organisational and educational functions<sup>37</sup>.

The educational function of law, which is crucial for this argument, according to L. Petrażycki, on the other hand, is – generally speaking – shaping positive attitudes towards the law, developing the habit of behaving in accordance with the law<sup>38</sup>. At the same time, it should be emphasized that the law is both a value *per se*, as well as a system of individual norms, which are the “carrier” of specific values. Therefore, the implementation of the educational function takes place primarily with the help of a protective and organizational function, associated with the process of socialization of the individual and (precisely) upbringing “by law” in the spirit of a specific set of values and assessments.

Therefore, A. Korybski and L. Grzonka rightly point out that “fulfilling the educational function by law requires the legislator to formulate a certain desired vision of individual psyche and social awareness. Such a vision can be called a policy of law”<sup>39</sup>. They mainly mean the preventive function (as reducing the frequency of given behaviours by threatening them with sanctions) and social rehabilitation (typical

<sup>35</sup> M. Półtorak, A. Kalisz, *Kwoty w europejskich systemach wyborczych jako wyraz zasady równości a funkcje prawa*, „De Doctrina Europea. Roczniki Instytutu Europeistyki” 2010, Vol. VIII, p. 48.

<sup>36</sup> See, among others: A. Kalisz, E. Prokop-Perzyńska, *Podstawy prawoznawstwa w schematach i tabelach*, Sosnowiec 2009, passim and A. Korybski, L. Leszczyński, A. Piąteczek, *Wstęp do prawoznawstwa*, Lublin 2007, p. 50.

<sup>37</sup> M. Borucka-Arctowa, *Spoleczne poglądy na funkcje prawa*, Wrocław 1981, passim.

<sup>38</sup> L. Petrażycki, *O nauce, prawie i moralności: pisma wybrane*, Warszawa 1985.

<sup>39</sup> A. Korybski, L. Grzonka, *Wiedza o państwie i prawie. Zarys wykładu*, Warszawa 2014, p. 96.

of criminal law), i.e. educational activities aimed at replacing selfish and anti-social behaviour motives – with prosocial ones<sup>40</sup>.

There is no doubt that the law is a kind of “tool” of social control. Nevertheless, as such it ceases to be needed when the educational function comes to the fore (this is not so much about the educational function of the law itself, but rather of a “self-controlling society”). However, will the same mechanism also apply to the international law order and the international community being its author?

## “SYMPTOMS” OF THE EDUCATIONAL FUNCTION OF THE GLOBAL COMPACTS

Reflection on the agreements adopted in 2018 at the UN forum shows that:

1. The problem of migration, both voluntary<sup>41</sup>, and forced<sup>42</sup> (mainly due to the scale of the phenomenon), was clearly identified in both documents and it has been given the status of an issue which is a commitment of the international community and which should be reasonably managed. A distinction was made between the needs of migrants and refugees and the challenges that result from the above-mentioned circumstances for host countries. At the same time, their “common denominator”, possibilities and areas of cooperation in this field were noticed.

2. The focus was on data, evidence and facts about migration, not the opinions and myths that usually accompany it and often “distort” its perception.

3. The need for cooperation in the broad sense has been recognised and emphasized, with reference not only to the cooperation of (specialised) entities of international law (i.e. IOM), but also to other stakeholders (*inter alia* universities, NGOs, private entities). This cooperation should take place on a financial, organisational and programme level. Therefore, the proposed solutions for safe, orderly and legal migration and protection of refugee rights are undoubtedly comprehensive and – as such – assume the result of synergy.

4. The need to respect fundamental rights and humanitarian law standards was reminded (!) again (both in the context of eliminating the causes of migration in the event of non-compliance, as well as – treatment in accordance with existing standards of persons experiencing migration). Moreover, the need to protect the rights of *vulnerable persons* was identified, and the role of education of children and women was highlighted<sup>43</sup> in building social structures and effective integration in host countries.

<sup>40</sup> However, the author of this text understands the educational function of law a little more broadly and will take this perspective for the purposes of the analysis of the educational function of international migration law in the form of the *Global Compacts*.

<sup>41</sup> The author means migration mainly of an economic nature, caused by other factors than the ongoing conflict and the resulting persecution.

<sup>42</sup> Seen as such through the prism of the premises contained in the 1951 Geneva Convention.

<sup>43</sup> More on the role of women in both agreements: J.L. Hennebry, A.J. Petrozziello, *Closing the Gap?*

5. The possibility of using temporary protection and the role of an effective return policy have been suggested (albeit rather restrainedly).

6. The previous obligations of states and standards resulting from key acts of international law were recalled, with the emphasis on acts creating guarantees for granting international protection (including regional obligations).

7. Finally – which is important considering the effectiveness of international law – a “substitute” for monitoring mechanisms of the application of both agreements was created, with which the signatory states (at least in political way) have undertaken to comply, however (as GCs are not international agreements) a typical control procedure cannot be taken into account here<sup>44</sup>. Progress in the implementation of GCM will be discussed at the *International Migration Review Forum*, which will take place every four years (from 2020 onwards), while the United Nations Migration Network will operate to provide effective and consistent system support (paragraphs 45, 49). On the other hand, in the case of the GCR, every four years (starting from 2019) at the ministerial level a World Refugee Forum will be organized, whose goal is on the one hand to announce specific commitments and their contribution to the objectives of the agreement, and on the other hand – to discuss on the possibility of increasing the division of responsibilities (paragraphs 17, 103). Last but not least, every two years (from 2021 onwards), high-level officials will meet, and indicators will be developed to measure progress in achieving the GCR objectives (paragraphs 19, 102, 104).

It can be concluded from the above that the agreements refer to both values common to the international law and desirable (primarily from the perspective of coping with the migration and refugee crisis) individual attitudes. However, several allegations were also made against both documents. Mention should be made here first on naming the actions taken (only) simulated movements, “powdering” the problem or “political declarations without coverage”. At the same time, it should be clearly emphasized that until the adoption of the Declaration in 2016, absolutely no action was taken at the global forum. Moreover, a document mentions a very comprehensive approach, reminding of existing obligations, while pointing to sovereignty of states and taking the most appropriate actions, and above all to the best of their own abilities. Hence, is it really “nihil novi”?

There is no doubt that both the Declaration and the *Global Compacts* built on the basis of it perform the function of “raising awareness”, gathering in each of the documents key issues for the problem, ordering them and weighing their obligations accordingly. Nevertheless, the specificity of the public international law itself should be taken into account as well. Thus, such factors as: the time needed from idealization to internationalization of a given issue, the path from the *soft* to the

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*Gender and the Global Compacts for Migration and Refugee*, “International Migration”, IOM, Vol. 57, Issue 6, December 2019, pp. 115-138.

<sup>44</sup> As it is for example in the case of ECtHR, UN treaty committees or the Human Rights Council.

*hard law*, the political will of the rulers as a condition for the effectiveness of the obligations of individual states, and finally – the interpretation of subsequent norms of the international law “in the spirit” of those previously adopted, are considered here. The *Global Compacts* (precisely because of the more political than legal nature of the obligations), due to the matter they concern and the specificity of the order, whose effectiveness is, after all, determined in practice by nothing more than good will and willingness to cooperate, appear to be a “tailor-made” tool. They give each state, especially in such sensitive issues as the protection of human rights of migrant or a refugee - the opportunity to act to the best of their abilities while focusing on a common goal.

There is also a question on the material “substrate” of the agreements. Are such documents (substantively) necessary at all? On the one hand, it is obviously difficult to deny the existence of the 1951 Geneva Convention, the 1990 Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, numerous ILO Conventions (especially the 2011 Domestic Workers Convention), the CoE ‘anti-violence’ Convention, or the ECHR. On the other hand, in none of these agreements, although they are legally binding, has there been any mention of “managing” migration to date<sup>45</sup> or burden sharing, but of the obligations of states towards individual’s rights, arising from the above. The migration and refugee crisis is global, which is why a universal vision of its solution appears to be needed. It refers to the words of M. Kowalski about “the need for states to take joint actions on the international stage with the widest possible use of instruments of international law as the best way to deal with global problems”. At the same time, he also emphasizes the need for “thorough and critical analysis of the proposed solutions”<sup>46</sup>. In view of the above, the conclusion is that global thinking should be followed primarily by “local” actions<sup>47</sup>, which – by fulfilling a common obligation – can then bring a synergistic result.

Finally, is it possible, in the case of the Global Compacts, where in practice the political will is the only key condition for respecting them, to talk about the educational function of law, since they are not binding? In other words, can “soft” law “educate” as well?

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<sup>45</sup> T. Bloom notes, however, that “The fluid use of the terminology associated with ‘migration governance’ can obscure its intention and implications”. The different meanings of basic terminology pose the risk of legitimizing disturbing policies that do not really relate to migration, when people are identified as outsiders and immigrants – regardless of whether they have moved – it often becomes an administrative matter, e.g. to displace them from labour markets, public services and even detain and try to expel. In other words, he has shown, on the basis of several *case studies*, that often what looks like “migration management” is not neutral and does not necessarily apply to it. More: T. Bloom, *When Migration Policy Isn’t about Migration...* op. cit.

<sup>46</sup> M. Kowalski, *Bezpiecznie i godnie...*, p. 269.

<sup>47</sup> An example of which can be the functioning of the *EU Common European Asylum System*, which - although certainly imperfect and in connection with the ongoing migration and refugee crisis in Europe undergoing reform - is a “tailor-made” solution in this respect.

Well, in the case of such unique order as public international law – according to the author – yes. In addition to the traditionally assigned role (regulating relations between states, organisations and other subjects of international law), it can also fulfil the role of *raising awareness*<sup>48</sup>, ordering and reminding. Therefore, referring again to M. Borucka-Arctowa's concept of the metafunction (as the main function of the law, organising the society), this one understood in a dynamical aspect is after all aimed at introducing specific changes in the existing system of social relations and shaping new ones<sup>49</sup>. Observing the works on the adoption of both agreements, one can risk the statement that the perception of the phenomena such as migration and refugee has already changed somewhat, but they themselves are trying to shape specific attitudes, referring directly to the axiology of international law (we are talking here about values such as: protection of human rights including vulnerable groups, taking into account the special needs of women / children, sovereignty, a slightly forgotten (?) common good, security, the rule of law, or sustainable development). Perhaps, therefore, the adoption of both documents will result in “universal”, “involuntary” and even “unintentional conformism”, that G. Skąpska wrote about<sup>50</sup>, which then will contribute - in accordance with the assumptions of the educational function – to the implementation by legal norms contained therein (although legally non-binding) of certain values and shaping permanent motives of certain behaviours, desired from the perspective of the international community's interests? Or at least the society, made aware of the discourse accompanying, among others, the adoption of both agreements, will be able to mobilize ‘from the bottom up’ the leaders of individual states to undertake specific actions?

## CONCLUSION

The analysis of the *Global Compacts* in terms of their educational role shows that there is undoubtedly some potential in these documents. However, weighing the “wishful thinking” and realities of international relations presented by the author, she would like to emphasize that perhaps the condition for the effectiveness of the above-mentioned documents will be (also) other functions that these compacts may provide. The agreements can perform an organizational function – they regulate collective behaviour,

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<sup>48</sup> At this point, it is also worth emphasizing the role of the “naming and shaming” mechanism as a psychological sanction in the public international law. More broadly in relation to the (also the global one) problem, which is climate change, among others: B. Taebi, A. Safari, *On Effectiveness and Legitimacy of ‘Shaming’ as a Strategy for Combatting Climate Change*, *Sci Eng Ethics* 23, 1289-1306 (2017), doi: 10.1007/s11948-017-9909-z and in relation to the enforcement of human rights: E.M. Hafner-Burton, *Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem*, “International Organization”, Vol. 62, No. 4 (Fall, 2008), pp. 689-716.

<sup>49</sup> It should be emphasized, however, that this does not apply to radical changes, but only to those that, although to some extent, are socially approved, because without support the assumed results will not be achieved.

<sup>50</sup> G. Skąpska, *Spoleczne podłoże postaw wobec prawa*, Zakład Narodowy im. Ossolińskich, 1981, passim.

create structures of mutual interactions, and can also contribute to regulating conflicts arising – especially from involuntary migration (in this case, we are talking primarily about countries bearing the main burdens of the crisis and others). The Global Compacts can undoubtedly also have a protective function, seeking to eliminate threats of violating internationally accepted values. This includes both the distribution function (primarily in the context of a fair distribution of the burdens of migration), the guarantee function (understood as protection of the individual goods of migrants and refugees), and finally – the protective function (since the agreements shape the guarantees of the protection for the above groups as entities with “weaker” *ex definitione* social position).

In conclusion, the author would like to significantly underline her opinion that the adoption of *Global Compacts* is a significant step towards increasing the protection of the rights of refugees and migrants, despite the fact that many countries (including even those “built on migration” like the US or Canada) did not decide to support them. Nevertheless, there is no doubt that something more is needed so that it would not be just a step “on paper”, as J. Mc Adam writes<sup>51</sup>. Probably something that L. Petrażycki named once – rather pathetically – the “ideal of love”: “It is about gradual eradication of egoistic, malicious emotional dispositions, and thus - the mere possibility of appropriate conduct, killing others, even with justifying epithets of “enemies”, malicious inflicting of wounds and causing harm at all, to instil, develop and strengthen caritive emotional dispositions, including by creating a mental necessity for good, merciful, compassionate conduct etc.”<sup>52</sup>. It should be remembered that in the current global political environment, commitments such as *Global Compacts* cannot be taken for granted. Therefore, since they were accepted, absolutely everything should have been done so as not to waste them, and so that universal learning from them translated into specific actions. To make the migration, which became a fact – as A. Guterres postulated – really “works for all”.

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<sup>51</sup> J. McAdam, *The Global Compacts on Refugees and Migration...*, op. cit.

<sup>52</sup> L. Petrażycki, *O nauce, prawie...*, pp. 159-160.

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