

## CONCLUSIONS OF THE 4<sup>TH</sup> STUDY COMMISSION

### MARRAKECH

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#### Preamble

At the 60th Annual Meeting of IAJ, in Santiago, we chose to study the topic: *Rights and Obligations of Refugees: Risks of Modern Slavery?*

Twenty seven countries sent responses to the questionnaire.

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The theme chosen by the 4th Commission at the 60th International Meeting of the U.I.M. aimed to examine:

On the one hand:

- 1) The different possible ways of regularization open to foreigners in an irregular situation.
- 2) Rights recognized abroad in an irregular situation:
  - a) during the period of the regularization procedure following the application for asylum;
  - b) a successful outcome of the asylum application after the rejection of the asylum;
  - c) after the rejection of the asylum application.

On the other hand, the risks of human trafficking to which these same migrants may be exposed because of their precarious situation, be it sexually, economically or even because they are victims of "sleep merchants".

In practice, we organized the work by starting with two presentations.

First, Josh WILSON, an Australian Federal Judge specializing in immigration matters, spoke to us about the situation of foreigners seeking refugee status by explaining the causes of immigration, the procedure applicable to refugee applicants, the remedies available to them and the consequences of having refugee status denied.

Following this presentation, Virginia KENDALL, a US District Court judge, who has worked in that field for many years in 30 countries around the world and written a

book on sex trafficking, talked about human trafficking, its causes, its consequences and how to try to fight it, namely:-

- in general, by financial sanctions of large companies for the sale of products made by victims of human trafficking;
- in particular, for each of the consumers, by refusing to buy products whose components cannot be ignored made by victims of T.E.H. (This information is currently available on the website knowthechain.org).

Each of the presentations was followed by a particularly lively and fruitful debate.

From this work, the following conclusions emerged.

## CONCLUSIONS

### I. Rights and obligations of immigrants, future applicants for "refugee" status

#### At the World level

The 1951 *Geneva Convention Relating to the Status of Refugees* and / or its 1967 Protocol to which 148 States had ratified in 2014, defines the term "refugee" as a person:

*owing to the social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.*

Protection (which is granted only if the asylum seeker does not fall under the specific criteria of the Geneva Convention of 1951) can be recognized if the asylum seeker is exposed to serious harm.

Serious harm includes "the death penalty, torture or inhuman and degrading treatment, the consequences of armed conflict for civilians".

In this context (Extract from the 2016 UN Refugee Agency Global Report), the United Nations High Commissioner for Refugees is mandated by the United Nations (Articles 6 and 7 of its Statute) to lead and coordinate international action for the protection of refugees around the world and the search for solutions to their problems [.....]

UNHCR's primary mission is to guarantee the rights and well-being of refugees. In pursuit of this goal, the organization strives to ensure that everyone has the right to asylum and find safe refuge in another state and return voluntarily to their country of origin. By assisting refugees to return home or to settle permanently in another country, UNHCR seeks durable solutions to their situations [.....]

The organization works with many partners, including governments and regional, international and non-governmental organizations. Most of the countries that have answered the questionnaire (except Taiwan, which is proposing to supply them shortly) are supposed to apply the above-mentioned international standards.

As far as country-specific refugee arrangements are concerned, the study group refers you to the reports of the 27 countries that sent a written report.

### **At the European level**

The vast majority of European Union countries have ratified or acceded to international refugee protection legislation.

The European Union has supplemented this protection with a number of regulations and directives intended, in principle, to regulate immigration within it.

Despite the existence of these common statutes (regulations / directives), there are still differences in Europe regarding the recognition of refugee status and subsidiary protection.

Thus, the rate of recognition of refugee status and those of subsidiary protection is highly variable between the Member States, which illustrates, on the one hand, the lack of solidarity between European States and, on the other hand, the lack of a genuine Community asylum policy.

The reason for this is that the Common European Asylum System (CEAS) is based on the adoption of directives and regulations, leaving considerable room for maneuver to the Member States.

This margin of maneuver thus left to the States to transpose these directives led to a very great disparity as well in terms of access to the request for asylum as in term of treatment of the same demand. This only encourages asylum seekers to look for a country where they will apply for asylum without being registered in the first host country ("asylum shopping").

For a uniform application of immigration law within the European Union, the Commission has advocated a reform of the Common European Asylum System (CEAS), which is to transform the above-mentioned directives into regulations, which would make them directly applicable in member countries.

However, the situation has worsened between member countries of the EU since the influx of refugees in the world during the recent period, especially in Europe by

the multiple shipwrecks of migrants in the Mediterranean, victims of their smugglers.

Europe is currently talking about a "refugee crisis", declaring itself a victim of a situation resulting from conflicts taking place outside its territory. This "crisis", which allows Europe to be released from its obligations in light not only of international law but also of European asylum law, actually comes from a lack of unity of the Member States which are unable to come together to propose equitable protection solutions, both among the member States in the name of the "principle of solidarity" which unites the Member States and with regard to the persons who are candidates for asylum.

Lastly, it should be noted that the motives for migration are no longer confined to applicants seeking asylum on the basis of the Geneva Convention and its subsidiary protection. It is now necessary to add new grounds for exile not provided for by international law, namely forced economic migration and those linked to climate change and natural disasters.

2. The cause of the discord between member States is essentially the result of the application of the DUBLIN III regulation.

Under the DUBLIN III Regulation (2013) which is directly applicable to all member States, the European State responsible for processing the asylum application is, in principle, the first country through which the asylum seeker has transited or the issued the residence permit.

This organizational and financial burden soon appeared excessive for the countries most exposed to migration and located at the gateway to the European Union (Greece, Italy, etc ...).

Financial compensation and an equitable distribution of asylum seekers between the different member countries has therefore been put in place by the commission, with often very mixed results.

Thus, it is envisaged to establish a DUBLIN IV regulation whose philosophy would be sharing [1] standards, [2] responsibilities and [3] costs.

As it stands, it is clear that the DUBLIN III Regulation is both the cause and the consequence of the division of member states on the question of reception.

3. Finally, it should be noted that the coincidence of migratory flows and the series of terrorist attacks on European soil have not failed to fuel major security concerns.

The political debate has, moreover, maintained the confusion between migratory flows and this series of attacks by surfing on nationalist tendencies and xenophobia.

To these causes of concern, it is necessary to add the uncertainty of the current European economic climate with regard to the labor market.

In terms of security:

1. Member States took measures, as early as 2004, through the creation of the European Border and Coast Guard Agency: FRONTEX.

This agency, which constitutes an instrument of control of the external borders of the European Union as well as countries associated with the SHENGEN Space, has the function of fighting against irregular immigration; however, the creation of FRONTEX has had the adverse effect that asylum seekers have sought other irregular routes to Europe, new routes that are more dangerous and for which smugglers claim from the migrants applicants a much higher price. .

2. Europe has also outsourced its borders through security agencies and agreements in partnership with neighboring countries from which migrants originate.

These State partners (in particular Turkey and Libya) are, in principle, responsible for ensuring a dignified welcome for these migrants, which frees the European States from their responsibility of reception in the matter of asylum policy.

It is thus clear that, in the current state of the law applicable in the different member States of the EU, the European migration policies are moving towards a closing of the borders and a "criminalization" of the migratory act.

Finally, it is noteworthy that the recent terrorist attacks in Europe have reinforced this process of confinement and made migrants appear more and more of a threat to the European Union, whereas their contribution should at the same time constitute for Europe a resource in demographic, economic and cultural terms.

## **II. Are these refugee candidates at risk of modern slavery?**

The "United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons" defines trafficking in human beings as hiring, transporting, moving, accommodating or receiving by threat, force or other forms of coercion, fraud, deception or abuse of power for the purpose of the exploitation of persons. In this respect, the term "trafficking in human beings" should not be confused with illegally charging money to a migrant to cross a border, which is often referred to as smuggling foreigners.

"Trafficking in human beings" ("THB") is the exploitation of individuals for profit.

There is exploitation of people in conditions contrary to human dignity. These people may be both lawfully staying in the host country and being in an irregular situation, while having to provide for their daily subsistence (food, housing, medical assistance, etc ...).

Exploitation of the precarious situation in which these migrant workers find themselves is a form of modern slavery.

It can be of a sexual nature (prostitution for example) but also economic (the exploitation of the person as part of the accomplishment of his work).

This exploitation may also have to do with the "sleep merchants" who abuse the particularly vulnerable position in which a person finds himself (because of his illegal or precarious administrative situation or his precarious social situation).

The intention of these sleep merchants is to make an abnormal profit at the expense of these people in a state of precariousness by selling them, renting or providing a house, a dwelling, a caravan or a single room in conditions incompatible with the human dignity, without these people having any other real and acceptable choice than to submit to this abuse.

THB, often referred to as "modern slavery" has become a concern both internationally and nationally. At the global level, it is very difficult to know the exact extent of the phenomenon since a large proportion of cases of THB are not discovered. Some estimates, however, potential number of victims at 2.5 million.

According to the United Nations and the Council of Europe, trafficking in human beings is the third most common form of trafficking in the world after drug trafficking and arms trafficking. It generates no less than 32 billion euros of annual "turnover", including three billion euros in Europe alone (these figures are however purely indicative because they differ according to the sources consulted).

THB includes sexual exploitation, begging, economic exploitation in conditions contrary to human dignity, exploitation for the purpose of organ removal, exploitation for the purpose of forced delinquency, debt bondage.

Women and men are not victims of the same type of exploitation. In the context of sexual exploitation, it is almost exclusively women who are identified as victims, whereas in terms of economic exploitation, the majority are men.

According to the United Nations Office on Drugs and Crime (UNODC), human trafficking in all its aspects affects almost every country in the world as a country of origin, transit or destination. Victims from at least 127 countries are believed to be exploited in 137 States.

The influx of migrants as a result of the ongoing armed conflicts around the world also raises new questions, going far beyond the classic question of defining the appropriate migration policy since the risk of trafficking in human beings to particularly vulnerable new migrants has become evident.

All the elements seem to be reunited to encourage the expansion of trafficking networks in their regard, namely:

- Generally young people, poor, extremely vulnerable, often hidden to flee the administrative or police services that could stop their difficult journey to the country where they hope to find a refuge and work.

However, contrary to popular belief, trafficking in human beings does not concern only migrant foreigners but also indigenous perpetrators and victims, and sometimes foreigners who are migrants taking advantage of other migrant foreigners. In Belgium, for example, 70% of known perpetrators and victims are Europeans, a trend that seems to be increasing over the years.

Finally, the most difficult problem to solve, despite some legislative attempts to protect victims of trafficking, seems to lie in the fact that victims ultimately have little chance of leaving trafficking networks because of their isolation, of the moral constraint exerted on them, and of the fear or the physical threats to which they are subjected.

In this regard, urgent consideration should be given to ensuring the effective protection of victims of THB if States want to be able, one day, to identify with their collaboration the perpetrators of THB by proving the facts of trafficking and hoping to dismantle their networks particularly remunerative.

This protection could also be achieved in the case of asylum-seeking migrants by providing them with faster access to the world of work, which many states refuse before the expiry of a significant number of months, abandoning these immigrants at the potential mercy of THB perpetrators.

Many states still believe that the gains generated by this trade benefit the maintenance and development of global terrorist movements at the root of current migration flows.

One can then wonder about whether "the loop would not be buckled"?

As we can see, the problem of trafficking in human beings is not ready to find a solution, especially because the trafficking suffered by persons in a regular situation but in a precarious state, is now coupled with trafficking in persons who are in an irregular situation, whether or not they are candidates for refugee status or subsidiary protection.

The topic chosen for the 62th Annual Meeting of IAJ which will be held in Kazakhstan is *Harassment, in a broad sense--moral and sexual-- and its consequences on labor relations.*