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The Global Compact for Migration: patterns of contestation and critical justice assessment

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## Ch. 4 The Global Compact for Migration: patterns of contestation and critical justice assessment

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### Abstract

The Global Compact for Safe, Orderly and Regular Migration, approved in December, 2018, undoubtedly represents a step forward in the international dialogue on migration. The aim of this chapter is to go deeper into the consultation phases of the process to consider which matters were brought to the table during the six thematic sessions. We examine the discrepancies which emerged in the discussions and up until the final document was approved. A consideration of the position of the European Union (which however did not sit formally at the negotiating table) is also provided to see which instances were advanced and which ones made it into the final text. Space is also dedicated to examining how the whole process has been differently received by non-state actors from its beginning, through its development and up to its final achievements with a focus on how critical voices have nurtured the broader debate over migration and justice.

**Keywords:** Global Compact for migration, migration, European Union, United Nations, contestation

### Introduction

Two years of consultations and negotiations since the adoption of the New York Declaration for Refugees and Migrants on 19 September 2016 in the framework of the United Nations (UN) General Assembly, led to the approval in December 2018 of the Global Compact for Safe, Orderly and Regular Migration (GCM). The document represents the first attempt to establish comprehensive international cooperation in a domain mostly left out of any joint treatment thus far. As Louise Arbour, United Nations (UN) Special Representative for International Migration, underlined in reference to states, even though the compact is not binding ‘you have decided to come together to address these complex issues in a positive way and in a collaborative spirit, for the benefit of all involved’ (Arbour, 2017a, 1). The evidence of a ‘positive narrative’ on migration informing the initial phases and the guiding principles and objectives of the Compact was also recognized by non-governmental organizations (NGOs) which closely scrutinized the process (Concord, 2018).

Indeed, few domains seem as ‘global’ as migration. Almost 3.5% of the world’s population is on the move, mostly towards other countries in their region of provenance. If global migration governance means ‘the norms and the organizational structures that regulate and facilitate states’ and other actors’ responses to migration’ (Betts and Kainz, 2017, 1) the intention of the GCM could in principle be a stepping stone to allowing states to better pursue aims not achievable unilaterally. Shared responsibilities with respect to the governance of the phenomenon were clearly acknowledged (Guild and Grant, 2017) and the rights of migrants were put upfront in discussions.

For a long time, Betts and Kainz report (2017, 1), cooperation on this issue has been associated with a reduction in state sovereignty, leading to a patchy and entangled set of provisions. The favourable set of

conditions feeding the whole process partly explains the initial enthusiasm, from the adoption of the 2030 Agenda for sustainable development, which firmly linked migration and development (UN, 2015), to the full support of the Obama administration, and the entrance of the International Organization for Migration (IOM) into the UN structure. According to Newland (2016), the inclusion of the IOM fills a vacuum in the institutional capacity of the UN system, by bringing to the table issues relating not only refugees but also to migrants, and creating the basis for responding to the phenomenon. Commenting on the UN 2030 Agenda on sustainable development, the same author maintains that ‘development’ has served as ‘the entry point’ for migration to be discussed jointly at the international level thanks to its specific declination as ‘human development’, beyond economic interpretations, and has paved the way for once ‘contentious issues’, such as those related to human rights’ protection or return practices, to be discussed ‘constructively’ (Newland 2017). As pointed out by Francois Crepeau (2017), Special Rapporteur for the Human Rights of Migrants, the connection between safeguarding the human rights of migrants and the appreciation of migration and mobility as crucial to sustainable development in the 2030 Agenda is widely acknowledged by states taking part in the GCM: the real issue is how to go about that. On the same note, inserting migration and mobility into the UN framework and linking it to development goals is recognized as a positive step by the UN Human Right Council (2017). Development and migration, according to civil society networks, seem to be finally united by the main objective of safe, orderly and regular migration (MADE et. al, 2017). Ensuring human mobility and migration that is safe, by choice, and invested with human and labour rights, explains the Migration and Development Civil Society Network MADE (2017a), is an opportunity for human development.

A first aim of this chapter is to provide a snapshot of how the GCM has been received by different actors, and their positions with respect to this effort. This work organizes these different positions, tracing the various phases of the process. Positions in the initial phase take into account the expectations (or lack thereof) as well as the main concerns to be addressed. Predictably, the hottest debate lingered over the balance between migrants’ and states’ concerns, in some cases a trade-off. However, this was not the only challenge discussed, as considerations over the likelihood of cooperation, its shape and its future were also debated. The final adoption of the Compact opens the floor for a set of reflections on the balance achieved.

The European Union’s (EU) position with respect to these critical voices is also explored. Notwithstanding its lack of formal participation, the EU has informally played an assertive role, trying to advance its own formulas for the governance of migration. To the extent that the final document mirrors the EU’s position, possible contestation of what was achieved somehow challenges the EU’s approach to the matter and its take on what ‘justice’ means and how it unfolds in this dossier.

### **International cooperation on migration: anything new under the sun?**

Reactions to the launch of the GCM have been varied and can be gathered around some key themes: the peculiarity of the process set in motion; its modality; its legal shape; and, indeed, its attention to human rights.

In its format, the Compact was recognized as appropriate for balancing the exigencies of origin, transit and destination countries and for involving multiple non-state actors at different levels (Newland 2017). According to Paolo Dieci of the NGO Link, the Global Compact concretely provides the basis for building safe, orderly and regular migration governance which simultaneously addresses the fears of societies and the human rights of migrants (Link 2007, 2018). The ‘whole of government’ approach assures looking at migration from multiples angles, taking into account economic, social, demographic, cultural, and rule-of law benefits and challenges (Human Rights Council 2017). Meanwhile, in accordance with the ‘whole of society’ approach, the other main feature of the process, participation had to be extensive and include organizations dealing with migration, diasporas, unions, academics, women’s organizations, NGOs, civil society and migrants’ organizations among others (MADE et al., 2017).<sup>1</sup>

As for the modality of the process, ‘multilateralism’ has occupied centre stage in the debate. One of the less contentious issues was the political will shown by world leaders to enable migration to be treated as ‘other areas of international relations’, and displaying shared principles and approaches (UN Press Release 2016). This could mean a sort of ‘paradigm shift’ from the national to the global dimension (Funk et al., 2016), in recognition of the need for an agreement based on shared principles (Stocchiero, 2018). The commitment of both northern and southern states to multilateralism made it possible to jointly discuss issues which for a long time had been kept separately, such as security and human rights, development and possible approaches to migration (Betts and Kainz, 2017), also avoiding the risk of bilateral securitized approaches to the matter. This new opportunity coincided with the progressive adoption of national policies on migration in various African states, conceived of to reap the benefits of migration (MADE Network, 2017b, 4) and to prevent destination countries from having the upper hand in setting the agenda (Mehari, 2018, 6). African states’ ‘political determination’ and full responsibility in the governance of migration was perceived and expressed with a single, coherent voice (African Union, 2017).

Legally speaking, the GCM is not binding. However, it can play the role of a ‘mutually reinforcing commitment’ aimed at a ‘shared vision’ (Newland, 2017). According to Mehari (2018) beginning with soft, non-binding principles, such initiatives (compacts) impose moral obligations that affect global norm-setting and the interpretation of the law (Mehari 2018). The 2030 Agenda was similarly not binding, but it has changed the way sustainable development is interpreted, and the Compact on migration could do the same (Sergi, 2018). States adopting the Compact and its principles would hence disregard or implement opposite policies only at their own risk. However, some also underscored the likelihood of selective adoption of the Compact provisions: counter-productive if it neglected states’ accountability with respect to the guiding principles of the Compact (Concord 2018) or inevitable, as the only way to go for cooperation on the matter (Newland, 2017). More critical was the position of some NGOs: those expressed in September at the UN were ‘leaders’ promises’ (Zandonini 2016). The African Group warned against over-emphasizing the non-binding nature of the process, for it sent ‘a negative signal to the outside world’ (African Group 2018). Enticing commitments and investing in monitoring and evaluation of states’ policies was underlined (Appelby and Kerwin 2018).

Finally, space dedicated to human rights' protection has been closely monitored. According to some, the Compact had the potential to represent a balanced set of security and human rights' provisions (Borraccetti and Carletti 2018). Putting human rights at the centre of international cooperation was soon recognized to be the precondition for a positive turn with respect to traditional cooperation schemes among states (Colin 2018). For the International Labour Organization (ILO) the Global Compact offered the opportunity to treat migration and mobility jointly with labour policies and workers' right. A marked 'human rights orientation' was already observed in the New York Declaration, where states' commitment to the main existing principles in the domain was underlined (Guild and Grant, 2017, 1). This orientation, according to the African Union, could ensure 'safety, dignity, human rights and fundamental freedoms' for all migrants, including irregular and undocumented ones (African Union, 2017; MADE Network 2017a; MADE Network 2017b; Kingdom of Morocco 2018). Notwithstanding the appreciation for the narrative employed in the GCM, some NGOs called for more specific attention to human rights' protection in the final document to be approved (Concord 2018). Less sympathetic was the position of those who expected a much more vigorous effort to extend the reach of certain laws and their implementation to make up for the existing 'protection gap' (MADE Network, 2017b). Markedly sceptical instead, was the position of the Civil Society platform, which with the document 'Act now' regretted the intention evidenced in the New York Declaration to 'back-slide or undercut existing fundamental human rights standards' (Civil Society, 2016). Thus a true human rights approach would have put the migrant and her rights at centre stage. Accordingly, irregular migration would only be an issue insofar as, in the same vein as forced migration, it could endanger the lives of migrants and their fundamental rights (Mehari, 2018, 7), preventing development opportunities (African Union 2017). Irregular immigration is instead often represented as a security issue in destination states rather than an impediment for effective development (African Union 2017, 3). Hence the final document of the Compact needed to overcome an excessive emphasis on reducing the causes of movement and instead focus on increasing opportunities in destination countries, through regularization policies for example (Concord 2018). A securitized approach to borders also had to be avoided in order not to legitimize mass expulsion, forced repatriations, detention centres and arbitrary return to third countries (African Union, 2017).<sup>2</sup> According to the UN Special Rapporteur for human rights, if states really want to gain control of their borders, safe, regular and orderly pathways have to be provided for migrants, thus passing from a 'zero-tolerance' to a 'harm reduction' approach: territorial sovereignty and human rights, it was specified, are not incompatible (Human Rights Council 2017).

As seen in this section, the GCM was differently received, from very sceptical positions to warm reactions welcoming the new tones and narration accompanying the first phases the process. The next section considers the issues discussed.

### **The issues on the table: between states' and migrants' concerns**

During the consultation phase which took place from April to November 2017, six informal thematic sessions on facilitating safe, orderly and regular migration were organized. Prearranged as expert panels, these sessions

were the occasion to deepen the discussion and uncover positions on the preferred governance of migration (United Nations, 2017).

The first thematic sessions on ‘the human rights of all migrants’ immediately outlined divergences between UN members. In Louise Arbour’s introduction to the session (Arbour, 2017b), based on an issue brief prepared as a common ground document for discussion (United Nations, 2017b), the need to respect, protect and promote the human rights of all migrants regardless of their status (and hence also of irregular immigrants) was underlined. Insisting on this point was not meant to be to the detriment of sovereign prerogatives, which had authority over irregulars’ return. But even in these cases, the international obligation to respect universal rights had to be observed to avoid possible abuses (United Nations, 2017b, 15). Arbour emphasized that neglecting the drivers of migration and opting for limited legal pathways and possibly increased irregular migration would likely increase social tensions. The emphasis, hence, had to be on increasing legal opportunities for migration to discourage irregularity.

The concluding report of the first thematic session, drafted by the Moroccan Ambassador to the UN (Hilale 2017), highlighted some *deep* divergences between positions on the human rights of all migrants. These differences mainly concerned issues of detention, non-accompanied minors’ detention, the ‘depenalization’ of irregular immigration, ‘securitarian governance’ as evidenced in some states, and the return and readmission of irregular migrants. The issue of integration was also divisive, with some delegations linking it exclusively to the legal status of migrants (Philippines 2017) and some others even questioning diversity and multiculturalism as assets for societies (Crépeau 2017). Some delegations underlined that only fundamental rights had to be applied to all statuses. The issue of establishing ‘firewalls’, i.e. providing social services with no obligation to report the irregular status of immigrants, was hotly debated. The restrictive position of some states which stated they were against firewalls, suggested the idea that sovereignty and the protection of rights are in a zero-sum relation, which according to Crépeau is not the case (2017). The idea of irregular immigrants as a challenge to states’ security, sovereignty and integrity was emphasized by some delegations, reiterating the necessity to protect borders. Resistance was expressed to the idea of opening more legal avenues of migration both as a way to curb irregularity and the smuggling phenomenon. Destination countries’ fallacies, especially regarding loopholes in labour market policies (allowing exploitation and precariousness) were instead omitted from the discussions (Crépeau, 2017).

The EU, whose position was reported by the Permanent EU Ambassador to the UN Peter Sørensen, emphasized the importance of mainstreaming the human rights of all migrants all throughout the Compact, with a special emphasis on education, health care, justice and language training (Sørensen, 2017, 3). But prominence was also given to the rights and responsibilities of states in controlling borders and obligations with respect to international law (with specific reference to the return of irregular immigrants). The EU underlined the importance of social and economic inclusion and integration as a prerequisite to enjoying rights, referring only to migrants *legally* residing in host states (ibid, 4).

Thematic session two lingered on the ‘drivers of migration’ including economic and demographic drivers, climate change, natural disasters, human-procured disasters, instability, insecurity and poverty. The

issue brief prepared for consultations (United Nations, 2017c) clarified that the logic behind the discussions was not aimed at stopping migration. Rather, its goal was to reduce those adverse factors motivating people to move ‘out of necessity’, in unsafe, often dire and dangerous conditions, that is, irregularly. While the non-arbitrariness of some migration choices seemed to blur lines between the Compact on migration and the one on refugees which were simultaneously being discussed by states, both moderators and panellists remarked on the importance of separating the two, as they are covered by different international norms and obligations (Khadria, 2017, 8-9). For countries of origin, promoting resilience with respect to economic, demographic and environmental factors, and social and political dynamics was key to reducing ‘forced’ movements. Migration as a ‘true free choice’, according to Arbour, could only occur by increasing legal paths, which would in turn decrease unsafe, desperate and disordered movements (Arbour 2017c).

The EU’s contribution to discussions in the thematic session was particularly calibrated on ‘resilience’, which in the EU Global Strategy is defined as ‘the ability of states and societies to reform, thus withstanding and recovering from internal and external crises’ (European Union, 2016). Measures such as the recently adopted European Investment Plan and the Emergency Trust Fund for Africa were mentioned as addressing the drivers of migration. At the same time, adopting an integrated approach to conflict and crises was considered key to addressing migration ‘out of necessity’. Regarding climate change-driven migration, the EU particularly insisted on the full implementation of the Paris Climate Agreement (European Union, 2017b). On the other hand, less space was devoted to the drivers of migration in destination countries.

Thematic Session 3 on ‘International cooperation and the governance of migration in all its dimensions’ posed a preliminary challenge in the consultation phase, focussed on agreeing on the meaning of ‘international migration governance’. International cooperation in this field, explained the UN preparatory document (United Nations, 2017d), is perceived by some as impacting national sovereignty, a form of ‘international control’ or ‘supranational imposition’ (United Nations, 2017e, 6). On the contrary, it was explained that the idea behind the GCM is that international cooperation is required in view of the fact that while total control over migration drivers is impossible, mastering the answers provided is feasible when these are coordinated among the actors engaged (United Nations, 2017d, 1). Rather than affecting national discretion, it was stressed that ‘better governance of migration is an exercise that should strengthen sovereignty and capacities’ (United Nations, 2017e, 2). The same fulfilment of human rights law and international obligations had to be intended as an exercise of sovereignty (United Nations, 2017e, 7). Given the multiple attempts at migration governance (also outside the UN framework), the Compact could contribute with ‘how’ to do things much more than ‘what’ to do (United Nations, 2017e). Well-defined and shared implementation mechanisms should ensure effective and fair migration governance, such as with the return, readmission and reintegration of third nationals (United Nations, 2017d, 6). All in all, the central issue was again how to find a balance between respecting human rights and governing migration, considering the two objectives as not mutually exclusive.

In spite of acknowledging the need for international cooperation, areas of divergence among delegations were not absent (Koser, 2017). The short and long-term impact of the Compact was discussed in



terms of implying different political constraints; the nature and the employment of funds to be disbursed was raised; the relationship between the Compacts on Migration and Refugees was again considered; and the issue of irregular immigration and its relation to broader global issues and trends such as poverty and climate change was brought to the table, just to name a few. Some delegations questioned the lack of clarity regarding the sequence of objectives informing the Compact (building capacities, finding sources of funding, overcoming political limitations) (Koser, 2017). As for the EU, the position expressed by Ambassador Sorensen (Sorensen, 2017b) emphasized solidarity and shared responsibility as key ingredients for holistic international cooperation, alluding to the Partnership Frameworks recently adopted by the EU with many African states (p.2). Regarding states' responsibilities, that of managing and controlling their own borders was broadly mentioned as a way to increase state security. Provision of technical and financial support to third states such as the training of the Libyan coastguard and the build-up of Libya's rescue capacities, civilian missions at the borders (in southern Libya and the Sahel), and support for fighting human smuggling were some of the examples of the EU's actions to support states (p. 3). Return and readmission as key obligations were reiterated; the EU's efforts at improving voluntary return and reintegration programmes in collaboration with the IOM were underlined (p.4). International cooperation as intended by the EU, hence, was meant to help increase third states' responsibilities with respect to the control of their own borders, if in compliance with migrants' and human rights.

Thematic Session four was aimed at discussing the 'economic and social impact' of migrants in origin and destination societies, looking at both the short and long term. With specific reference to destination countries two possible challenges were identified: first, the short-term impact of large movements of migrants or migrants' settlement in small communities or in communities experiencing economic hardship. Second, the effect of policies that, triggered out of security concerns, could limit the possible benefits of migration (also irregular) on development (United Nations, 2017f). With respect to both countries of destination and of origin, instead, main discussions focussed on how to get the maximum out of migrants' and diasporas' contribution to economic growth and development. Again, the UN preparatory document insisted on increasing legal pathways and on involving migrants in regulated and formal economies, ensuring proper inclusion. The need to respect labour rights was also underlined, along with that of improving remittances systems, proper reintegration and full benefits portability in the case of return to home countries. How to link migration and development while avoiding the traps of 'donors vs recipients' and 'origin vs. destination countries' stereotypes was mentioned as one of the greatest challenges to overcome (Foresti, 2017). The EU's stance was that it was ready to recognize the positive impact of orderly, safe and regular migration on development and the importance of integration measures for legally residing worker migrants, thus retaining a non-committal approach to the condition of irregular immigrant workers (European Union 2017d).

Thematic session five discussed a topic of particular interest for the EU, that of the 'smuggling and trafficking of migrants'. The UN Issue brief leading to consultations emphasized the differences between the two practices: facilitating irregular entry into another state represents a transnational crime against a state (that of destination) (United Nations, 2017g). Of note though, in regard to the argument supported by the EU, which

mainly insists on stopping migrants before they attempt the risky journey, the brief pointed directly at the factors driving smuggling, i.e. the lack of regular migration channels, high visa fees, often lengthy bureaucratic procedures of regular migration, increasingly restrictive entry requirements, and border patrol measures or dangerous interception practices at sea (Arbour, 2017e; United Nations, 2017g, 4). Also of relevance was the specification that the criminalization of smuggling could only be motivated by actions aimed at deriving financial or material benefits from facilitating entry into other states and not by actions triggered by humanitarian reasons (United Nations, 2017g, 6). The same criminalization of irregular immigration had to be avoided for its role in pushing migrants closer to smugglers' networks (Arbour, 2017d, 6). Trafficking and smuggling were recognized as increasing the vulnerability of migrants, hence reiterating the need to assist and protect affected migrants, irrespective of their status (Un 2017g, 7).

As expected, the EU's contribution to the thematic session focused on ways to tackle criminal networks engaged in smuggling activities (Lenoir, 2017) much more than on going deeper beneath the surface in terms of the need for smugglers' services. In this perspective, investigations, training for the purpose of capacity building in third countries, data collection, information sharing, prosecutions as well as civilian and military missions (such as Mission EUNAVFOR MED Sophia) were considered key components of international cooperation. The opening of legal channels of migration was never mentioned as a possible solution for coping with smuggling.

Finally, discussions revolved around 'irregular immigration and regular pathways'. The lack of legal opportunities for entry for work purposes unmatched by market needs had to be solved according to the UN preparatory document. Also, the adoption of restrictive policies aimed at preventing irregular immigration had to be rejected as ineffective (United Nations, 2017h). In a similar way, conditions perpetrating irregular situations, such as the presence of large informal markets, were said to have a great impact on both migrants' conditions and on host societies, with pressures on wages and effects on working conditions and were hence to be rebutted. In line with the position previously expressed, the EU's argument focussed on the challenges posed by irregular immigration (to the EU and to Member States) and hence on the need to prevent and limit flows, as well as to curb related smuggling and trafficking phenomena (Hallergard, 2017). Strong emphasis was put on countries' sovereign right and responsibility to control their own borders as a tool for security, and on states' responsibility with respect to return and readmission obligations under international law (p. 2). No clear argument was made linking irregular immigration to the absence of legal opportunities. On the contrary, for some European states the opening of legal pathways to cope with irregular immigrants may act as an incentive to resort to irregular immigration as a practice (Donoghue, 2018). Regularization processes (supported by the UN preparatory document) were not an issue for the EU. Also, if skills matching between origin and destination countries had to be actively promoted, the EU specified that 'this shall not necessarily lead to a responsibility of countries of destination to further extend legal pathways to enter their territory' (Hallergard, 2017).

### **From consultation to the agreed text: negotiations compromise**

The final draft of the Global Compact for safe, orderly and regular migration was approved on July 13, 2018 (United Nations, 2018) by 152 after five rounds of negotiations and on the basis of a zero-draft agreed on February 5, 2018. Five nations including the United States and Hungary voted against it, and twelve abstained. Compared to the February version the final one saw the approval of 23 objectives (22 in the initial draft), with the addition of ‘Strengthen international cooperation and global partnerships for safe, orderly and regular migration’ (United Nations, 2018). This final objective reiterated the commitment to addressing in solidarity (and with a specific focus on countries more in need) the objectives of the GCM, recognizing the new nature of states as simultaneously of origin, transit and destination and to fulfilling international obligations and agreed policy frameworks (such as the Sustainable Development Goals) (United Nations, 2018, 31). The text was divided into principles supporting the Global Compact, and objectives and actions proposed to reach these objectives.

The states that adopted the final text committed to addressing those conditions that compel migrants to move irregularly (out of necessity) with an emphasis in the final document on natural disasters, adverse effects of climate change and environmental degradation (United Nations, 2018, Obj. 2). The enhancement, facilitation and diversification of regular pathways for labour migration were underlined along with fair and ethical recruitment and protection against exploitation so as to improve migrants’ socio-economic contribution in countries of origin and destination (obj. 5-6). Specific mention was made of vulnerable situations, while particular care of child and gender issues was upheld (obj. 7). Objectives 8 and 9 were respectively dedicated to saving human lives (emphasized as a ‘collective responsibility’ in the final text) and addressing the smuggling of migrants through strengthened capacities and international cooperation. Objective 11 on the management of borders was more detailed with respect to the February version, with a marked emphasis on coordinated management and prevention of irregular immigration and on the respect for national sovereignty and other international obligations. Detention was reiterated as a last resort measure (obj 13) and access to *basic* services independent from the migration status ensured (obj 15). Objective 16 was particularly important due to its emphasis on fostering inclusive and cohesive societies, with immigrants empowered to become active members (also by respecting the national laws and customs of destination countries) and with reciprocal engagement between them and the hosting community. Minimization of disparities and polarization to ensure the full integration of migrants and hence to enhance development opportunities were further commitments. Engagement for a fact-based discourse on migration to shape perceptions of migration and elimination and condemnation of racism, discrimination and similar forms of intolerance were underlined in objective 17. Notably, objective 19 made clear the commitment to create the conditions for *migrants* (‘all migrants’ in the February version) and diaspora to fully contribute to sustainable development, reiterating the role of migration for countries of origin, transit and destination. The commitment to reap and improve the positive impact of remittances was underlined in objective 20, while access to social protection in destination countries and the portability of social security entitlements and earned benefits from origin countries was to be ensured and improved (obj. 22). The importance of cooperation for the fulfilment of safe, dignified, and individual return and reintegration was earmarked in objective 21. While erasing reference to the priority of voluntary return

over forced deportation, the July version added a line recalling non-refoulement obligations (United Nations, 2018b, 29). Specific reference to ‘non-refoulement’ was opposed by some delegations, on the basis that this was only applicable to refugees (Risse, 2018; Donoghue, 2018).

### **A watered-down compromise?**

Reactions to the final text of the GCM were quite diverse. Speaking for the African Group, the representative of Comoros conceded that many of the proposals advanced by the group were in fact inserted in the final text (UNECA, 2018). Reiteration of the respect for the international human rights of all migrants was positively received by commentators (Kuşkonmaz, 2018). For some, the document was quite balanced in terms of human rights and sovereign prerogatives, as well as the need for rules and flexibility (Newland, 2018). Many countries (Chile or Australia for example) did not sign the Compact because it recognized migration as a ‘human right’ or because it would force a softer position on migration governance than their own approach (Laessing and Rinke, 2018; Espinoza et al., 2018; Pastore, 2019). However, this factor suggests the positive effect of the process. Yet other positions were much harsher in their criticism, pointing either to a dilution of the initial ‘multilateral vision’ (Sergi, 2018), or to a downgrading of commitments as exemplified by sentences referring to national law or existing policies (Appleby and Kerwin, 2018). As for monitoring, some scholars regretted the absence of any roadmap with specific deadlines (Lavenex, 2018). Vagueness in terms of what may occur with non-compliant states with respect to human rights was also raised (Hall, 2018). On a more extensive critical tone, some accused the Compact of not addressing the real causes of inequality (which motivate migration) in a globalized capitalist world (Dağdelen, 2018). In the remainder of this section, some of these comments are taken up.

Some scholars have defined the set of agreed objectives as a collection of very different (and disordered) points, some of a more technical nature (such as the need for proper data collection), others not particularly controversial for states, while still others touch on the sensitivity of more sceptical positions (Livi Bacci, 2019). The latter include the issue of forced return and reintegration duties (Newland, 2018), the invitation to promote full social inclusion of migrants and the creation of conditions necessary for migrants to contribute to sustainable development. Moreover, the validity of the linkage between migration and sustainable development was politically problematic for some states (Livi Bacci, 2019).

According to some authors, the ‘autonomy and humanity’ of migration was somehow neglected in the final text because of the specific angle adopted. The ‘root causes’ approach, according to some, promoted the idea that all migration had to be reduced and this somehow spoiled the ‘positive’ narrative initially inaugurated by the process (Busuttil, 2018). ‘Adaptation in the country of origin’ as a strategy to cope with environmental disaster (a formula also encouraged by the EU) evolved from the zero-draft version of the Compact, reinforcing the idea of limiting the overall amount of outflows (Groenendijk, 2018). In contrast, there was no commitment to expand legal pathways, even though this was broadly encouraged (Appleby and Kerwin, 2018). Hence, the text inevitably insisted on the objective of preventing, deterring and protecting destination societies from

irregular immigration (ibid). According to some scholars, the text is so unbalanced in favour of the exercise of sovereign prerogatives that for some ‘more advanced’ regions the risk could exist of a downgrading of migrants’ rights (Groenenijk, 2018).

Indeed, in the domain of irregular immigration the text remained more vague and restrictive; as seen, this point has also been largely supported by the EU. In the field of smuggled migrants, despite some important measures to protect migrants’ rights, many issues remained undefined including explicit recognition of the causes of smuggling<sup>3</sup>; the protection of ‘humanitarian actors’ engaged in search and rescue activities; the definition of boundaries limiting cooperation with certain actors for reasons of probable violations of human rights; and the non-criminalization of irregular entry (Gauci and Partipilo, 2018; Bolton and Jervis, 2018). That is, the approach taken with respect to smuggling mirrored quite faithfully the EU’s ongoing approach to the phenomenon. Return, readmission and reintegration, as seen, were largely discussed during the Global Compact process. According to some however, readmission and reintegration tasks (to be undertaken by origin countries) were much more emphasized than obligations (mainly related to respect for human rights) attached to return (to be implemented by destination countries) (Majcker, 2018), a factor exacerbated by the lack of explicit reference to the non-refoulement principle. As seen above, the EU has particularly emphasized the issue of readmission and proper reintegration as a key responsibility in international cooperation. For some, a security-oriented approach has ended up informing irregular immigration and hence the final text adopted (Kuşkonmaz 2018).

The absence in the final text of ‘firewalls’ between public and immigration enforcement services as tools to protect the fundamental rights of irregular immigrants in a foreign country (Atak, 2018) was also notable. Indeed, the fear of being reported to the authorities might well keep irregular immigrants away from basic services, conceived of for all migrants (Hastie, 2018). The European Union has been among those contesting the insertion of firewalls on the basis of a supposed violation of the ‘whole of government’ approach. In the final version irregular immigrants also appear to be impaired by the lack of a specific provision on the protection of labour rights for all migrants (Farcy and Saroléa, 2018).

Despite the criticism some still consider the Global Compact a good starting point for the governance of migration, recommending a similar approach for the EU because it is humane, effective and pragmatic (ECRE 2018).

### **Concluding remarks: the GCM and Global Justice**

The GCM undoubtedly represents the first attempt to coordinate states’ positions at the global level on the sensitive issue of migration. The inclusiveness of the process, which lasted two years, the widespread participation of states and non-state actors, the attempt to agree on common principles and objectives and to introduce a new narrative, overcoming much of the stereotyped formula in the domain, all have to be greeted as positive steps forward. Initial reactions to the process were overall favourable: underlining the peculiar nature of the Compact, the emerging multilateral approach, the linkage between migration and human development, and the centrality of human rights. Adopting a ‘human rights approach’ would indeed contribute to changing much of the rhetoric and the lenses employed today in dealing with the phenomenon, by putting

migrants, their autonomy, their choices and indeed their rights at the centre of the governance process. It would likely re-calibrate the debate on justice and migration, focusing on migrants as the main referents, and weakening the arguments of sovereign states and legitimization of their restrictive policies.

However, many commentators have also noticed how the compromise text adopted in December 2018 fell short of its promise to keep a fair balance between sovereign prerogatives and human rights. To some scholars, the end result has been a re-assertion of traditional and securitarian approaches to the phenomenon, with human rights protection diluted and extended only to some categories of migrants (the regular ones). This has tilted the balance in favour of sovereign prerogatives: the persistence of forced returns, detention, the absence of firewalls, the lack of a clear assertion about the causes of irregular immigration or the smuggling phenomena, among others, are always likely to negatively impact the rights of migrants and to impinge on their subjectivity or on the autonomy of their choices.

Despite the emphasis on human rights, the EU has clearly contributed to the consolidation of this approach, using sovereign prerogatives to justify many of the ‘securitarian’ positions on the phenomenon. Many observers simply affirm the impossible coexistence of a balanced relation between states’ sovereign claims and human rights protection: there is a right to migrate which cannot be violated by any sovereign prerogative. For others, to function, the world organized in states requires absolute respect and exercise of sovereign prerogatives. These two visions are at the extremes of different conceptions of what justice means in the realm of migration. None of them would probably be happy with the end-result of the Compact on migration, reflecting the fact that it stands in a middle position, pragmatically informed by states’ claims on the one hand but trying to advance a new lexicon and a new grammar on the governance of the phenomenon.

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<sup>1</sup> Concord denounced the lack of migrants' voices throughout the process and advocated for more engagement of migrants' platforms on the way to the final version (Concord, 2018).

<sup>2</sup> On the contrary, the New York Declaration kept on insisting on borders as a key control device according to Sigona (2017).

<sup>3</sup> The failure to recognize the causes of migrants' vulnerabilities (often produced by states' closure policies) may well shift responsibilities away from states (Atak, 2018).