The Global Compact for Safe, Orderly and Regular Migration: An Unlikely Achievement

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The most remarkable thing about the Global Compact for Safe, Orderly and Regular Migration (Migration Compact) is that it exists at all. Two years ago, when the Compact process began, many observers doubted that negotiations among all 193 members of the United Nations (UN) would produce anything other than a bland, least-common-denominator document. Although the United States dropped out of the negotiation process in December 2017, the other 192 UN Member States agreed on a substantive and fairly comprehensive text. It was adopted in December 2018 (although several other countries announced after negotiations were concluded that they would not endorse the Compact). That the Compact is not legally binding undoubtedly helped to reach this degree of consensus, but it is still a notable achievement. What characteristics of the negotiations and the final text made this outcome possible?

Part of the explanation lies in the process itself. Although the negotiations were among all 193 UN Member States (until the US dropped out), the two co-facilitators of the process, the ambassadors to the UN in New York of Mexico and Switzerland, kept a tight grip on the text. During a year of wide-ranging consultations culminating in a stocktaking meeting in December 2017, no drafts were circulated publicly. When the first draft appeared, many States complained that their views on particular issues had not been taken into account. But the draft demonstrated an understanding of the ‘red lines’ that could not be crossed without losing additional States. European States, for example, required a strong statement about the obligation of States to take back their nationals who had no legal right to remain in another country, while countries of origin insisted on a more robust commitment to reintegration assistance. Both appeared in the Compact’s Objective 21. Late in the negotiations, the African bloc demanded a commitment to increased international cooperation, which was added as Objective 23. Such trade-offs and compromises characterize the Compact as a whole. All participating States got something they wanted; none got everything.

The Compact’s 23 objectives can be thought of as falling into three baskets:

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- Specific and relatively uncontroversial measures, such as improving migration data (Objective 1), ensuring that migrants have proof of their legal identity (Objective 4), enhancing consular services for migrants (Objective 14), and facilitating remittance transfers (Objective 20)
- Specific but controversial issues, such as opening wider legal pathways for migrants
- Very broad and aspirational goals, such as reducing the negative drivers of migration (Objective 2), addressing and reducing vulnerabilities in migration (Objective 7), empowering migrants and societies for full social inclusion and cohesion (Objective 16), and eliminating all forms of discrimination and promoting evidence-based public discourse (Objective 17).

Some of the objectives laid out in the Compact are subject to immediate implementation – indeed, on some, implementation has already begun, including on data collection, ethical recruitment (Objective 6), and remittances, among others. Others, such as enhanced legal pathways for migration (Objective 5), cooperation on return and reintegration (Objective 21), and better border management and migration procedures (Objectives 11 and 12), will require further negotiation, commitment of resources, and summoning of political will. Others, like those in the third category above, are very long-term propositions.

The agreement on the 23 objectives of the Migration Compact is its signal achievement. The preamble acknowledges the human rights instruments and other international agreements that have a bearing on migration, as well as the contributions of previous international discussions on migration. A section on vision and guiding principles repeats many earlier aspirations and generalities about the rights of migrants, the need for international cooperation, and the general guidelines for most UN agreements, such as respect for national sovereignty, rule of law, orientation towards gender equality, the rights of the child, and so forth.

Although the Compact is not legally binding, it contains political and moral commitments by participating States to pursue its aims. The stakes are high – and the payoffs could be high as well. The Compact is built on the assumption that States have common interests in managing migration effectively, even when they disagree on priorities. For example, one of the issues on which countries of origin and destination have had the most difficulty finding common ground is the involuntary return of migrants who have no legal authorization to remain in the destination country. European States have signed numerous readmission agreements with countries of origin but complain that they are implemented half-heartedly or not at all. Countries of origin allege that migrants’ human rights and dignity are violated in return proceedings, and that the real difficulties of reintegrating migrants into weak economies are underestimated. Reintegration assistance is far less than what is needed.

Objective 21 of the Migration Compact commits States to ‘[c]ooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration’. This objective commits both sides to complementary actions: assurances of due process, individual assessments, and respect for the rights and dignity of returnees, on the one hand, matched with cooperation in identifying the nationality of migrants, providing them with travel documents, and helping them to prepare for return, on the other hand.
These are routine pledges, but the Compact embeds them in a framework of partnerships for reintegration, cooperation, and assistance, taking into account the needs of the communities of return as well as those of individual returnees. More countries may get more of what they want— but not everything— by collaborating in this framework.

Some provisions of the Compact have disappointed stakeholders. For example, a number of States, as well as civil society, human rights, faith-based organizations, and migrant organizations hoped to see a clear call to end the detention of children for immigration offences. In Objective 13 of the Compact, States commit themselves to ‘[u]se immigration detention only as a measure of last resort and work toward alternatives.’ But the associated actions only go so far as ‘working to end the practice of child detention in the context of international migration’ (para 29(h)) rather than abolishing it outright. Similarly, many non-State stakeholders hoped to see a commitment to regularize the status of long-staying unauthorized migrants, but States did not arrive at a consensus on that issue. Another aspiration was a strong objective relating to the effects of climate change on migration—in both the Migration Compact and the Global Compact on Refugees (Refugee Compact). States resisted any extension of the refugee regime into this area, which is why the Refugee Compact barely mentions it. The compromise was a sub-objective within the Migration Compact (paras 18(h)–(l)) included under Objective 2: ‘Minimize the adverse drivers and structural factors that compel people to leave their countries of origin.’ Perhaps most disappointingly, neither the Migration Compact nor the Refugee Compact answered the question of how to deal with mixed flows of migrants and refugees—the most common pattern in contemporary humanitarian crises.

UN Member States crafted the Migration Compact with an eye to the long term, but it already has one accomplishment to its credit: it has brought one of the last outstanding global issues into the UN. For decades, the international system has had standards and institutions to facilitate cooperation and the maintenance of order on issues of finance and trade, arms control, transnational organized crime, and many others. More recently, it has developed a framework for dealing with climate change. But international migration remained a patchwork of unilateral, bilateral, and regional policies, long considered too divisive for general debate within the UN. With the Migration Compact, a framework of common expectations and obligations has at long last emerged. The UN is the most universal international institution, and its formal equality among Member States gives it credibility with the poorer and weaker countries that are the source of much of the world’s unauthorized migration—countries whose participation is essential for any new framework of cooperation to work in practice.

The Migration Compact was two years in the making, the product of intense formal and informal negotiations at the UN and in national capitals. It sprang from the multiple global migration crises of 2015 and 2016, which convinced most destination countries that they could not handle the chaos and danger of unplanned, large-scale migration on their own. The agreement of the Compact is a milestone, but not an endpoint. Once it is formally adopted, the hard work of implementation will begin.

The development of the Global Compact has run parallel to an institutional shift in the UN system. The same special session of the General Assembly in 2016 that set in motion the negotiation of the Compact also brought the International Organization for
Migration (IOM) into the UN system as a related organization, giving the UN unprecedented capacity to help its members address migration issues. The UN Secretary-General has put the IOM at the helm in coordinating the migration-related work of UN agencies, with the aim of offering coherent and comprehensive support to States as they set about implementing their commitments to safe, orderly and regular migration. The move to create a more coherent ‘migration network’ within the UN system was recognized and welcomed in the Migration Compact.

Whether the Migration Compact represents a sea change in the global architecture for international cooperation on migration will depend on how much States are willing to invest in its implementation. The implementation section of the Compact itself makes clear that States are the main actors in implementation and urges them to develop robust national plans around the Compact. The UN system has positioned itself to respond more effectively to their needs for assistance in implementation. But otherwise, the plans for implementation, particularly in the design and funding of the ‘capacity-building mechanism’ mentioned in the implementation section, are vague.

The Migration Compact presents, for the first time, a broad set of consensual guidelines for international cooperation on migration. It is, at best, the softest of soft law, enjoying the same status as the 2030 Agenda for Sustainable Development and its Sustainable Development Goals. As with the SDGs, the stakes are high in bringing the Migration Compact to life, but so are the potential rewards.