The Global Compact for Migration: From the Sustainable Development Goals to a Comprehensive Agreement on Safe, Orderly and Regular Migration

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In 2015, governments adopted the 2030 Agenda for Sustainable Development, with 17 goals and 169 targets, designed to shape action over the next 15 years to realize the human rights of all and to balance economic, social, and environmental development. For the first time, the global development agenda contained explicit commitments on migration.

In paragraph 29 of the declaration accompanying the adoption of the Sustainable Development Goals (SDGs), States recognize the positive contribution of migrants for ‘inclusive growth and sustainable development’. They acknowledge that ‘international migration is a multi-dimensional reality of major relevance for the development of countries of origin, transit and destination which requires coherent and comprehensive responses’. Amongst other responses, they commit to ‘cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants regardless of migration status’. Most notably, in Target 10.7 of Goal 10 – on reducing inequality within and among countries – States commit to ‘[f]acilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies’. Several other targets address aspects of migration, such as Target 8.7 on taking measures to eradicate forced labour and end modern slavery and human trafficking, and 8.8 on protecting labour rights and promoting safe and secure working environments for all workers, including migrant workers, and women in particular. But Target 10.7 is the cornerstone of the migration component of the 2030 Agenda and is both the most comprehensive, and in many respects, the most opaque, call for action on migration.

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What is, and how do States ensure, ‘safe, orderly and regular migration’? What are ‘planned and well-managed migration policies’? While aspects of migration are addressed under existing international law, such as the Palermo protocols on trafficking in persons and migrant smuggling to the Convention against Transnational Organized Crime, international labour standards in relevant International Labour Organization conventions, and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (which is not widely ratified or implemented), there is no comprehensive international framework addressing migration in its totality.

At the same time that States were negotiating the new global development agenda in 2015, refugee and migration crises in Syria and around the globe were in the headlines on a daily basis. While the situation in the Mediterranean was receiving the lion’s share of the developed world’s attention, senior United Nations (UN) officials were careful to point out that the international community must not forget other crises with equally dire consequences in Africa, South-East Asia, and elsewhere. They noted that the previous two years had seen unprecedented numbers of people in all parts of the world fleeing protracted conflict, brutal human rights abuses, severe disasters, and extreme poverty. In Europe alone, more than a million refugees and migrants arrived in 2015, and thousands continued to come. In transit, they faced human trafficking, physical and sexual abuse, labour exploitation, acts of torture, arbitrary detention, kidnapping, extortion, and drownings at sea. All this triggered enormous international attention and stirred a new sense of shared responsibility among States. It also led to the recognition that many of those risking their lives on perilous journeys were not ‘refugees’ as defined by the 1951 Refugee Convention and its 1967 Protocol. They were migrants.

Many governments had taken critically important steps. Italy, for example, had undertaken its ‘Mare Nostrum’ search and rescue operation in the Mediterranean that was credited with saving many thousands of lives. However, efforts like this were unsustainable for any one country over time due to their enormous costs, both in funding and human resources. Coastal States receiving vast numbers of people arriving by sea — such as Italy, Malta, and Greece — were disproportionately affected, as were the States neighbouring Syria. By early 2016, Turkey, Lebanon, and Jordan together had received at least 4.5 million Syrian refugees.

Clearly, the situation called for action. Thus, in October 2015, just after the adoption of the 2030 Agenda for Sustainable Development in September, the then Special Representative of the Secretary-General for International Migration, Peter Sutherland, floated the idea of convening a major international conference to galvanize the international community to provide more donor funding, accept more refugees for resettlement, and tackle the issue of migrants in vulnerable situations who were not eligible for refugee status. The idea was for a conference, perhaps akin to that in 1989 which adopted the Comprehensive Plan of Action (CPA) following the Indochinese conflict, which would reflect one of the CPA’s key goals — that of shared global responsibility for the world’s most vulnerable people. Syria would be an important catalyst (as the situation in the headlines each day), but the conference would address both refugees and migrants in vulnerable situations everywhere.

Sutherland’s efforts ultimately led to the convening of the 19 September 2016 UN General Assembly High-Level Meeting on Large Movements of Refugees and Migrants.
This was the first meeting of Heads of State in the General Assembly to address migration and refugee issues. It resulted in the negotiation and adoption of the 2016 New York Declaration for Refugees and Migrants and laid the foundation for the development of two global compacts: one on refugees and the other on safe, orderly and regular migration.

The following observations focus on what was envisioned in 2015–16, and the extent to which the Global Compact for Safe, Orderly and Regular Migration (Migration Compact) has the potential to realize that vision.

The idea for a Refugee Compact arose first. However, as mentioned, States had become increasingly aware that many current situations involved migration broadly, but not necessarily refugees specifically. Thus, they also expressed a desire for a compact addressing migration in its totality, as identified in the SDGs. States agreed that the UN High Commissioner for Refugees would lead development of the Global Compact on Refugees, while the Migration Compact would be negotiated through an intergovernmental process. The New York Declaration laid out broad commitments on migration and the process for negotiation, noting that by 2018, States would agree on a ‘global compact for safe, orderly and regular migration’ (thereby picking up and giving content to the language from Target 10.7 of the SDGs). Negotiations on the Migration Compact took place between February and July 2018, following intensive and inclusive thematic, regional, and stocktaking consultations and discussions in 2017.

Despite lacklustre progress at the global level during the 1990s, the two decades preceding the adoption of the SDGs and the New York Declaration did see the emergence of multiple, informal State-led dialogues focused on migration, at both the regional and (eventually) global levels, to build better understanding, trust, and cooperation on migration. Regional dialogues on migration emerged in every region. In the Americas, there was the Regional Conference on Migration in Central America, Mexico, and North America, and the South American Conference on Migration; in Africa, there were the Migration Dialogues for West Africa, Southern Africa, and Central Africa, the Intergovernmental Authority on Development (IGAD), the inter-regional dialogues of the Rabat and Khartoum Processes, and more; in Eastern Europe and Central Asia, there were the Budapest and Almaty Processes respectively; in Asia, there was the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime and the Colombo Process on labour migration; while in the Middle East, there was the Abu Dhabi Dialogue between the Asian labour origin States and Gulf Cooperation Council destination States, among others. The 2001–04 Berne Initiative and the 2003–05 Global Commission on International Migration paved the way at the global level for the 2006 UN General Assembly High-Level Dialogue on International Migration and Development, which, in turn, led to the creation of the State-led Global Forum on Migration and Development with annual summits hosted alternately by developed and developing country governments. These dedicated, State-led, informal dialogues – coupled with the urgency generated by the 2015–16 crises – can fairly be credited with creating the conditions necessary for the progress at the global level that led to the SDGs, the New York Declaration, and the Migration Compact.

The foregoing summarizes where we were two years ago, and how we got there. It is fair to say that while States did not have all the answers on the migration front in 2016, they certainly had the right questions, and it was clear that the time had come to
tackle them. Two years later, after months of open consultations and intensive intergovernamental negotiations on the Migration Compact, where are we? Does the Compact reflect the concerns that gave rise to it? Can, or will, States and the UN system deliver?

While a series of global humanitarian crises brought migration issues to the forefront of debates, once on the table, the cross-cutting nature of migration came into stark relief. It was therefore not surprising that the New York Declaration’s commitments on migration were framed much more broadly than just on large movements of people, or even on crisis situations. Unlike refugee situations, which by definition involve a failure of national protection requiring international protection and assistance, migration is multifaceted – neither inherently good nor bad, with both positive and negative effects, depending on the circumstances. All States agreed that migration should be safe, orderly and regular, and that the opposite was equally true – that unsafe, disorderly and irregular migration should be reduced, if not eliminated altogether. All States agreed that no one should be compelled to leave their home country, and that when migration occurs it should take place through safe and lawful means. But the key question was: how? What policies are needed – both at the national level and in terms of international cooperation – to have planned and well-managed migration?

As the consultations for the Migration Compact developed, several key considerations emerged. First, it is incontrovertible that States have the sovereign right to determine which non-nationals may enter and stay in their territories, and under what conditions. While most States nevertheless want (and need) to cooperate on migration challenges, they do not necessarily welcome limitations to this bedrock principle of national sovereignty, other than those contained in international instruments to which they have already agreed, as in the international refugee protection regime and international human rights law. Secondly, the great majority of international migration today is safe and regular – people with appropriate documentation moving for jobs, for tourism, for educational opportunities, or to join family members. And this migration provides great benefits not only to the migrants themselves and their families, but also to their host and home countries, whether in the form of bringing much-needed skills and labour to their new communities, or in the form of the transfer of remittances, knowledge, and other social capital to their families and communities back home, among other things. Thirdly, even the issues relating to irregular migration and migrants in vulnerable situations – some of which at first blush might appear to be ‘refugee-like’ situations – are inextricably interlinked with issues equally relevant to the regular migration context, such as the need for countries to augment their labour force with skills that migrants might bring and to improve the functioning of migration processes, from recruitment to border management.

In short, the circumstances of migration and the patterns in different countries and regions vary so widely that States recognized that it would be extremely challenging to develop a binding, normative international framework for migrants and migration like the one that exists for refugees. But they also knew that the existing patchwork of efforts had to be reconciled to some degree, and that international cooperation needed to be strengthened. Most efforts to date concerned national policies, such as temporary protection in emergency situations, humanitarian visas, enhanced work visas for certain industries, and the like. There were also a few at the global level, such as State-led initiatives like the United States/Philippines-led Migrants in Countries in Crisis Initiative.
(supported by the International Organization for Migration (IOM) as Secretariat) and the Nansen Initiative on Disaster-Induced Cross-Border Displacement led by Norway and Switzerland (now the Platform on Disaster Displacement) and its resulting Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change.

While the Migration Compact, as with all intergovernmentally negotiated agreements, probably does not include each and every element of the original vision, in other ways it has gone far beyond it.

First, the very fact of an intergovernmentally negotiated agreement on such a wide range of migration issues – the first of its kind – is enormously significant. This alone reflects a sincere and laudable desire on the part of States to cooperate better – reflecting agreement that while the conditions of immigration into a territory are always sovereign decisions, international migration, by its very nature as a cross-border phenomenon, requires cooperation. States recognize that they need to work together to address both the drivers of unsafe and irregular migration and its effects – not only for migrants, but also for the countries through which they transit and to which they go. These issues are likely to remain high on the agenda, not least with the impacts of climate change exacerbating environmental degradation and disasters, which is likely to result in increasing people movement in the decades to come.

Secondly, it is noteworthy that despite vigorous debate on many elements of the Migration Compact, there was far more consensus than not on most issues. As in all international negotiations, it is likely that no one State or group of States was entirely pleased with every part of the final text. However, the text reflects broad agreement that States must cooperate with one another on the management of migration; that the human rights of all migrants everywhere must be respected, regardless of their migration status; that migrants are entitled to basic services regardless of their migration status and without discrimination; that migrants are key contributors to development; and that migration policies should be based on accurate data and evidence. Further, there are strong commitments to save lives, address and reduce vulnerabilities in the migration context, and facilitate fair and ethical recruitment of, and decent work for, migrant workers.

Some of the most spirited debate during the negotiations was on the question of distinctions between regular and irregular migrants, and whether some of the Compact provisions applied to all migrants or only to those with a regular migration status. Even here, however, there was ultimately more consensus than divergence of views. For example, in keeping with the repeated caution of the Special Representative of the Secretary-General for International Migration, Louise Arbour, that migration is not always an entirely ‘rosy’ story and that States should honestly acknowledge its challenges, the Migration Compact reflects the notion that irregular migration can have negative consequences for both migrants and host communities. Yet, States universally agreed that all migrants should have access to basic services, regardless of their migration status. In fact, many – probably most – States noted that they already extend to migrants many rights and services beyond the ‘basic’ services such as access to health care and education.

The question of migrant returns was also debated at some length. While all States acknowledged that, in principle, they have the sovereign right to return migrants who are not (or no longer) authorized to stay in their territories, subject to international
law, some preferred to focus on the human rights dimensions of returns, with a preference for voluntary returns. Others, while not disagreeing that voluntary returns are preferred, sought language providing that, once individual assessments were conducted in compliance with international law, States had the right to return migrants with no legal basis to stay. The final text balances these considerations, emphasizing returns with dignity, due process of law, and the prohibition of collective expulsions or returns to situations where there are grave risks of harm or death. In addition, it reflects a commitment for countries of origin to provide identity and travel documents to their nationals and to otherwise cooperate on returns. Emphasis is also placed on measures to facilitate sustainable reintegration of returning migrants.

A thorough analysis of all the Migration Compact objectives is beyond the scope of this article, but one additional issue that received a great deal of attention is worthy of note – an issue that was, in fact, a key impetus for the 19 September 2016 summit, namely the question of the distinctions between refugees and migrants. The discussion did not focus so much on the differences between the legal category of ‘refugee’ and what is understood by the term ‘migrant’, but rather on how best to deal with mixed migration and migrants in vulnerable situations who may not be refugees, without creating new categories or legal obligations (which States uniformly opposed). Over the course of the negotiations, a growing common understanding emerged that addressing these protection gaps in mixed migration situations is more of an operational issue than a legal or definitional one. The Migration Compact encourages States to address vulnerabilities arising during the migration process, but which are not necessarily linked or limited to the situation in the country of origin (in contrast to the international refugee protection regime). The Migration Compact recognizes that vulnerabilities can arise as a result of conditions in countries of origin (beyond those recognized under international refugee law), as a result of conditions en route, including abuses perpetrated by smugglers or traffickers, as well as vulnerabilities that arise at the destination, including in the form of exploitative work or living conditions. These vulnerabilities can be present for migrants with a regular or irregular status; the latter are often particularly vulnerable to discrimination, exploitation, and abuse as well.

Finally, States welcomed the Secretary-General’s decision to establish a groundbreaking new UN network on migration to ensure effective and coherent system-wide support to States’ implementation of the Migration Compact, including through a capacity-building mechanism and processes for regional and global follow-ups and review. The network will be comprised of the many UN entities with expertise and capacity on migration, with a smaller group serving as its executive committee and IOM as the coordinator and secretariat. The network will also partner more broadly with non-UN stakeholders to draw on their deep expertise. It will align its work with existing UN coordination mechanisms (for example, on humanitarian response) and development system reforms, including those at the country level, to avoid duplication and provide more effective and joined-up UN country-level support to States. It will have to be flexible and nimble, and to this end its working groups will be task-and results-oriented, and time-bound. Planning for the network is well underway, with agreed terms of reference finalized, and a work plan under development, including to set up the three components of the capacity-building mechanism called for in the Migration Compact: an online, open source knowledge platform; a connection hub
to link requests for information and support to those with the needed capacity and expertise; and a multi-partner fund to provide seed-funding for projects and initiatives designed to enable States to achieve the Compact’s objectives.

It remains to be seen how States will specifically address the many challenges that led them to develop the Migration Compact. The Compact is really just the beginning, not the end, of a renewed effort by the international community to come together to address one of the great issues of the day. It provides a road map and menu of options for each of its objectives, from which States can choose the most appropriate elements for their particular situations. What is clear is that the hard work and commitment of States to see the Compact through is itself a remarkable achievement. To give life to that achievement in a meaningful way, both States and the UN system will need to build on this excellent foundation, and they have demonstrated every good intention to do so.