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Implementing the Global Compact for Migration

The Role of States, UN Agencies, and Civil Society

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- The second draft of the Global Compact for Migration has five operational components: including regional and national action plans, research and information centers, a capacity building mechanism, the UN network on migration, and review forums. Getting these components right will be key to effective implementation of the compact.

- Member states remain the most important frontline actors, responsible for implementing their commitments to migrants. UN agencies, especially IOM, will play essential roles supporting states by increasing their capacity and expertise. Civil society is key to building trust with migrant communities, supporting integration, and sharing best practices.

- The GCM needs to address the challenges of coordination, operationalization, monitoring, and funding.

Following the 2016 New York Declaration for Refugees and Migrants, the United Nations began a two-year process of consultation and negotiation for the Global Compact for Safe, Orderly and Regular Migration (referred to as Global Compact for Migration, GCM). The NY Declaration was an important first step to consolidate the world's commitments to migrants and refugees in one document. The next phase included thematic and regional consultations. In February 2018, the co-facilitators released the GCM zero draft, followed by a first and second revised draft. These working documents are the basis for intergovernmental negotiations throughout the spring and summer of 2018 with the aim of adopting the GCM in Morocco in December 2018. While the first draft included general values, principles and commitments, key decisions on implementation, follow-up, and review remain undefined. Based on interviews conducted during March-May 2018, this paper aims to outline the operational components of the GCM and examine the role of the key stakeholders. The paper also examines challenges to implementing the GCM and concludes with recommendations to improve implementation.

Operational Components of the GCM

Other policy briefings summarize the main legal principles included in the GCM.[1] These legal principles, along with other UN conventions and international human rights law, will guide the implementation of the Compact. By contrast, this section focuses on the operational components of the GCM that accompany the legal commitments. The GCM outlines numerous ways to achieve implementation, including regional and national action, research and information centers, a capacity building mechanism, the UN network on migration, and review forums.

The main way that the 23 objectives in the GCM will be implemented is through regional and national action that could include detailed action plans for implementation, reviews of current legislation, and the next steps for each country and region. Action plans are key to implementation because they are state-led—one of the core principles of the GCM—and only states have the authority to pass national legislation that impacts the legal rights of migrants in each territory. The plans would take into account the reality on the ground, the specific types of migratory pressures, and the local political context. Following the adoption of the GCM, the UN would support member states to develop rigorous but realistic plans and provide the funding and tools to actually implement them. The GCM is clear that states are the main implementers of the compact's objectives.

A second component for implementing the GCM is the creation of centers around the world for research, information dissemination, and crisis analysis. The GCM outlines two distinct types of centers: first, research centers to centralize the collection and analysis of migration data and to analyze and monitor early warning signs for large migration influxes. Second, the Compact suggests new information points or »accessible service points at local level« that would provide support, counseling, and advice to people along migration routes. The new centers would include the creation of joint databases to share information like population movements, migrant deaths, and smuggling or trafficking networks—often consolidating information that is already collected elsewhere. The centers (both national and regional) would provide hubs for coordination, information dissemination, and the sharing of best practices.

The third component for implementation is the capacity building mechanism aimed at strengthening national migration agencies. A concept note circulated by the chairs in May 2018, and later incorporated into the second draft, proposed three parts: a connection hub, a start-up fund, and a global knowledge network. The proposed mechanism has the potential to comprehensively influence best practice, policy, and resources for border security and migration management—but it must have a significant mandate, adequate funding, and expert staff to achieve its goal. The connection hub would facilitate bilateral agreements and link up appropriate national or UN agencies to provide trainings and run projects, while the start-up fund would provide funding for national agencies

1. Elspeth Guild and Stephanie Grant, »Migration Governance in the UN: What is the Global Compact and What does it mean?« Legal Studies Research Paper No. 252/2017, Queen Mary University of London, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2895636 (last accessed on 01.06.2018); Elspeth Guild, Isobel Roele, Marion Panizzon, Thomas Gammeltoft-Hansen, and Violeta Moreno-Lax, »WHAT IS A COMPACT? Migrants' Rights and State Responsibilities Regarding the Design of the UN Global Compact for Safe, Orderly and Regular Migration,« *Raoul Wallenberg Institute of Human Rights and Humanitarian Law,* 2017, http://rwi.lu.se/publications/compact-migrants-rights-state-responsibilities-regarding-design-un-global-compact-safe-orderly-regular-migration (last accessed on 01.06.2018).

and partners to pilot projects, buy new technologies, or upgrade databases. The global knowledge network would collect best practices and evidence to share with countries and could build on existing networks like the GFMD Platform for Partnerships or the World Bank Global Knowledge Partnership on Migration and Development (KNOMAD). The concept note continues the practice of multi-agency implementation where UN agencies are responsible for projects related to their mandate and migration. Importantly, the GCM should ensure that the mechanism is bound by strict monitoring and reporting to ensure that the new funding and training are not used to roll back migrants' rights.

The fourth component for implementation is a new UN network on migration that aims to »ensure effective and coherent system-wide support to implementation.«[2] How the network will achieve coordination and coherence is not yet clear. The second draft appoints IOM as the coordinator of the network and the host of the secretariat. Presumably, the network will replace the Global Migration Group (GMG) that was previously tasked with coordination and coherence of migration policy within the UN system. In addition, the second draft suggests that the network (and by implication IOM) will be in charge of the capacity building mechanism and review forums.

The final component is the regular review at international and regional forums. The GCM proposes to host the International Migration Review Forum (IMRF) every four years starting in 2022 and to include migration objectives within other regional forums. Presumably, the IMRF will include a reporting and stocktaking exercise, including evaluations of the national plans and progress, new centers, and the capacity building mechanism. Unlike the Sustainable Development Goals (SDGs), the GCM does not include any indicators or milestones against which states could measure their progress. An important next step after the GCM could be to develop a set of indicators and milestones for application in each state.

Key Stakeholders

For the GCM to make an impact, it must be implemented by the key stakeholders, including the member states, UN agencies, and civil society. This section describes the role of these stakeholders and their interests in cooperation.

Member States

The GCM states in the vision and guiding principles that international cooperation is based on national sovereignty and that the compact's »authority rests on its consensual nature, credibility, collective ownership, joint implementation.«[3] Member states are essential to the implementation of the GCM because all actions or projects must be approved by the state and the GCM affirms that states have the sovereign right to set their own migration policy and decide which individuals can enter their territory. In particular, the regional and state actions are state-led and their impact will depend on the leadership and political will of national politicians. National legislatures, migration agencies, and local governments will in many cases be the frontline actors implementing the GCM commitments.

Another area of practical implementation is at the city or municipal level. Mayors are providing leadership on how to create inclusive international cities that support migrant communities. City governments provide key services for integration, including public health and education. In 2017, the Global Mayors Summit focused specifically on migration and refugee policy. The Global Compact details that local authorities can identify vulnerable migrants, help with family reunification, investigate human rights violations, facilitate intercultural dialogue, and combat xenophobia—but cities will need help fulfilling these roles. The international community can help support cities and mayors through the future capacity building mechanism or another program that shares best practices and funds pilot projects.

One early hiccup was when the United States pulled out of the negotiations, stating that it would not join a treaty that violated its sovereignty—despite the Compact being a non-binding treaty that includes no new rights. In fact,

2. »Global Compact for Safe, Orderly and Regular Migration – Draft REV 2,« 28 May 2018, section 44, p. 32.

3. »Global Compact for Safe, Orderly and Regular Migration – Draft REV 2,« 28 May 2018, section 14, p. 4.

many states see international cooperation on migration management as furthering their national interest—in part because greater cooperation can lead to more migration control to prevent irregular migration or more targeted labor migration policies to attract high-skilled migrants. While the Compact contains commitments to the rights of migrants, it also increases state power over migration—for example, by sharing information about smuggling networks, training and equipping border guards, and regulating remittances.

In addition, there are clear winners in the agreement, particularly states with low capacity and highly developed magnet countries. For low capacity states, the Compact provides support through technical assistance and equipment for migration management, and training from the most advanced border agencies in the world. Migrant sending states also benefit from parts of the Compact that encourage more legal pathways for migration because these pathways create larger diasporas who send back remittances. For magnet countries, the Compact provides a soft power tool for externalizing migration policies to their neighbors. For both groups, the Global Compact is in their interest and provides new tools for implementing policies they have long pursued.

There are also relative losers in the Global Compact, specifically states with low migration and those with a large diaspora and many migrant workers abroad. Those states with low external migration gain little from participating in the Compact. States like Russia have more internal migration than international migration; internal migrants can have similar impacts on their host communities and similar vulnerabilities but the Compact has nothing to say about internal migration or internally displaced people (IDPs). Second, states with a large diaspora or with many migrant workers abroad did not get many commitments in the Compact. There are references to including diasporas in development and decreasing the cost of remittances, but the Compact ignores key issues for diasporas, including investment and property rights for dual citizens. In addition, the rights of low skilled migrant workers are overlooked in favor of more mobility for highly skilled labor.

UN Agencies

Implementation of the GCM will rely on the technical expertise and capacity of UN agencies and the IOM is appointed as the lead agency for coordinating that effort through the UN network for migration. This is a significant increase of IOM's leadership and position within the UN system, which IOM officially joined less than two years ago.[4] Civil society actors are critical of appointing IOM without revising the organization's mandate to align with the normative principles of the UN. The challenges of relying on IOM are many: IOM's member states are not the same as the UN; IOM proudly implements »project-based« subcontracting for individual states or regions and is not used to building consensus around implementation; and IOM does not have a normative mandate to protect to the human rights of migrants. In addition, IOM would both lead the coordination and implementation of the GCM and lead the evaluation and review, creating a clear conflict of interest. Until IOM is significantly restructured, it would be more advantageous for a neutral party, such as the Special Representative for International Migration, to chair the UN network on migration.

In addition, many interviewees expressed that IOM's crucial role in implementing the GCM could be jeopardized by the Trump administration's nominee for director general. While IOM's top leader has traditionally been an American, Ken Isaac's controversial statements, alongside the Trump administration's withdrawal from the GCM negotiations and hardline migration policies, raise serious concern within the UN system and civil society. If elected, some interviewees said it is hard to imagine an IOM under Isaac's directorship providing much leadership. If another candidate is selected, there is still the question of US financial support, which makes up a third of IOM's budget. Either way, IOM needs a clear normative mandate that is committed to the human rights of migrants and UN principles to ensure its independence and accountability.

Regardless of IOM's position within the UN system, it will be a crucial implementing partner for the Global Compact. For example, IOM would be key for

4. Nicholas R. Micinski and Thomas G. Weiss, »International Organization for Migration and the UN System: A Missed Opportunity,« Future United Nations Development System Briefing 42, September 2016, https://www.futureun.org/media/archive1/briefings/FUNDS_Brief42_IOM_UN_Migraton_Sept2016.pdf (last accessed on 01.06.2018).

implementing many of the centers for research, analysis and dissemination. IOM established its Global Migration Data Analysis Centre (GMDAC) in 2015, and this could be expanded as one of the global centers for research and crisis analysis. IOM already plays an important role on the ground in many countries by providing information and humanitarian assistance to migrants, identifying victims of human trafficking, and facilitating assisted voluntary return and repatriation. IOM is one of the main UN agencies with expertise on migration management and currently provides some capacity building and trainings on immigration and border management. This area of work could be scaled up if IOM is selected as the host of the capacity building mechanism. Additionally, IOM could expand its current work supporting migration policy development to assist each country to develop their national action plans. To implement the review process, IOM could use benchmarks, drawing on IOM's previously developed Migration Governance Indicators and the SDGs to measure and report on different aspects of state capacity for migration management. The network could also submit reports to the Secretary-General on the progress toward follow-up and implementation in preparation to hosting the International Migration Review Forum every four years.

In the Compact's current format, IOM would lead interagency cooperation through the network for migration by either expanding or revising the role of the Global Migration Group (an interagency coordination group established in 2006 with 22 UN organizations). As part of more general UN reform, IOM might lead all working groups on migration and streamline coordination by liaising with national and regional coordination mechanisms. At the country level, coordination of migration governance should fit into UN country teams with IOM as lead agency for the migration cluster. IOM envisions itself as responsible for a future financing mechanism for the GCM, like the start-up fund. Importantly, if the GCM draws on IOM's previous infrastructure, it will need to formulate a strong mandate that both provides legitimacy for the process and prevents the GCM implementation from being coopted by an institution with its own history and baggage.

While UNHCR is busy with the negotiation process for the Global Compact for Refugees, the UN refugee agency is also a key stakeholder in the GCM. One of the most contentious debates in the negotiation has been on the differentiation between refugees and migrants. Civil society groups have argued that the lived reality of many migrants does not fit neatly into either one or the other of the two categories, but UNHCR argues that blending the categories undermines asylum law.[5] In March 2018, UNHCR submitted a guidance note on the refugee concept in international law that emphasizes that refugee status determination (RSD) and screening at reception are distinct processes.[6] Importantly, the screening that happens upon first reception should not preclude an individual's right to apply for asylum. UNHCR wants to preserve its role in monitoring or in some cases conducting RSD but cannot protect individuals who are screened out or designated a migrant before they have a chance to submit an asylum application. The second draft includes strengthened language in objective 12 that promotes »specialized human rights-based and trauma-informed trainings for first responders and government officials,« and gender-sensitive and child protection referral mechanisms.[7]

UNHCR and IOM already cooperate on numerous issues, but it will be essential for the implementation of the GCM that clear roles be defined in situations of mixed migration—i.e. when migration flows include both migrants and refugees. Regional taskforces on mixed migration are good models for sharing of information, coordinating emergency responses, and preventing duplication. The GCM should acknowledge the ambiguity of mixed migration flows but define how the UN system will approach these difficult situations on the ground. One way forward would be to include mixed migration taskforces in all emergency responses and appoint IOM or UNHCR as the lead agency.

Another UN agency with interests in the GCM is the International Labour Organization (ILO). The GCM has

5. Alianza Americas, »Global Compact for Migration Third Round of Negotiations April 2018,« https://www.alianzaamericas.org/wp-content/uploads/2018/04/Alianza-America-Position-round-3-final.pdf (last accessed on 01.06.2018); Mixed Migration Centre, »STATEMENT AHEAD OF THE 2ND ROUND OF NEGOTIATIONS ON THE GLOBAL COMPACT FOR SAFE, ORDERLY AND REGULAR MIGRATION,« March 2018, http://www.regionalmms.org/policy/MMC%20statement%20ahead%20of%202nd%20round%20of%20GCM%20negotiations.pdf (last accessed on 01.06.2018);

6. Office of the United Nations High Commissioner for Refugees, »The refugee concept under international law,« Global Compact for Safe, Orderly and Regular Migration, New York, 12–15 March 2018, http://www.unhcr.org/events/conferences/5aa290937/refugee-concept-under-international-law.html (last accessed on 01.06.2018).

7. »Global Compact for Safe, Orderly and Regular Migration – Draft REV 2,« 28 May 2018, section 27, p. 19.

important commitments to migrant workers' rights, to fair labor migration policies, and to prevent unscrupulous recruitment practices; and the SDG 8.8 aims to promote »safe and secure working environments for all workers, including migrant workers.« ILO will be expected to share its expertise through capacity building and advising national authorities on labor migration policies. ILO could take several actions to encourage implementation: for example, publishing detailed reports comparing countries' track records on migrant workers' rights (based on benchmarks in the Migration Governance Indicators) or a list of unethical recruiters and employers to name and shame both states and non-state actors. ILO and IOM will need to work together to promote the implementation of ILO General Principles and Operational Guidelines for Fair Recruitment and IOM's International Recruitment Integrity System.

The GCM recognizes the role of diasporas and remittances in sustainable development, calling for more inclusion through diaspora focal points, advisory boards, and deeper connections with consular missions. The UN Development Programme (UNDP) currently runs the Joint Migration & Development Initiative (with IOM, UNHCR, ILO, and the UN Population Fund) to fund projects that harness the power of diasporas for economic development; the GCM should expand on the initiative's structure and experience when designing how to fund implementation. Another contribution by UNDP, in partnership with other institutions like the World Bank, could be to establish new financial instruments to lower remittance costs and encourage diaspora investments, while also leveraging the knowledge and professional networks within diaspora communities. UNDP helped to develop the GMG Handbook on Mainstreaming Migration into Development Planning and piloted a dashboard of indicators on policy coherence on migration and development, making UNDP best placed to provide capacity building for states on migration and development planning.[8]

The United Nations Office on Drugs and Crime (UNODC) will also play a role in implementing the parts of the Global Compact related to anti-trafficking and smuggling. Some of the activities already organized by UNODC include the Smuggling of Migrants Knowledge Portal, the Global Action to Prevent and Address Trafficking in Persons and the Smuggling of Migrants, and the Voluntary Trust Fund for Victims of Human Trafficking. In March 2018, IOM and UNODC launched the Joint Platform on Countering Migrant Smuggling, which will conduct research and help reinforce state capacity to dismantle smuggling networks.[9] UNODC can contribute to the GCM by supporting states on anti-trafficking action plans, awareness-raising campaigns, and trainings for border guards on early identification of trafficking victims. In addition, the GCM should expand UNODC's leadership role within the Inter-Agency Coordination Group against Trafficking in Persons.

It is clear that UN agencies will be key to implementing many of the components of the Global Compact: by supporting states to develop action plans, by gathering data on new migration indicators, by training national migration agencies, by transferring technology and resources, and by coordinating state and IO actions. The next section will examine how civil society will impact implementation by supplementing and supporting these initiatives.

Civil Society

While the Global Compact is a state-led process, the negotiations have been commendably open to civil society, emphasizing the whole-of-society approach which will hopefully continue in the implementation phase – not just within the GFMD, but on all levels. Civil society groups—migrant and diaspora organizations, trade unions, private sector, foundations, faith groups and academia—are key partners with local and cultural knowledge to help make and implement bespoke policies for diverse communities.

Besides influencing how states implement their commitments to migrants, civil society can be key to achieving real integration, quality and fair work, and improved health and wellbeing of both migrant and host communities. Historically, trade unions are important organizations that work to improve working conditions

8. »GMG Handbook on Mainstreaming Migration into Development Planning,« 2010, http://www.globalmigrationgroup.org/system/files/uploads/UNCT_Corner/theme7/mainstreamingmigration.pdf (last accessed on 01.06.2018).

9. UNODC, »UNODC and IOM launch new initiative to counter migrant smuggling,« 28 March 2018, https://www.unodc.org/unodc/en/press/releases/2018/March/unodc-and-iom-launch-new-initiative-to-counter-migrant-smuggling.html (last accessed on 01.06.2018).

and achieve fair wages, especially for migrant workers. Implementing key parts of the GCM—like ethical recruiting and safe working conditions (objective 6)—will require partnerships between trade unions, employers, ILO, and states. Cooperation between unions and national labor inspectors could help implement the GCM by regularly monitoring safe working conditions, particularly in sectors with significant migrant labor forces like construction, agriculture, and domestic work. Trade unions are key partners in the GCM because they act as watchdogs for unscrupulous recruiters and employers. One example of a proactive trade union is the Mediterranean Sub-Saharan Migration Trade Union Network, which actively lobbies states and employers for migrants' rights and builds solidarity across sending, transit, and receiving countries. The GCM should build on the important role of trade unions by guaranteeing the right of migrants to unionize and for migrants to be included in collective bargaining agreements regardless of their legal status.

Finally, migrant and diaspora organizations will be key partners for achieving the commitments in the GCM. Many migrant organizations provide essential peer support to vulnerable members of their communities. Migrant organizations harbor a wealth of knowledge about what works on integration and are often at the frontline of support and advocacy. Diaspora groups are also key sources of philanthropy and investment in their new countries and back home. In addition, migrant and diaspora organizations should be encouraged to add their voices to global debates on migration policy. States and international organizations need to build trust with migrant communities by reaching out and supporting those organizations doing innovative work.

Challenges of Implementation

The Global Compact for Migration is an opportunity to reinvent and reinvigorate how the world supports migrants, but this opportunity comes with challenges—particularly coordination, operationalization, monitoring, and funding.

The first challenge with all implementation is coordination. It is too much to ask the Compact to assign to all actors their roles and responsibilities, as if subcontracting the objectives to specific agencies. Instead, the GCM should be viewed as building the institutional architecture of global migration governance and orchestrating the international community's responses. Political scientists use the metaphor of »orchestration« because we imagine the Compact as the conductor and the UN system, member states, and civil society as the orchestra. The Compact's goal is to »orchestrate« by providing leadership, joint objectives, training, timing, and resources. In theory, orchestration should lead to a coordinated performance with every actor playing in harmony but in practice turf wars emerge between UN agencies, and the geopolitics of the North-South divide are transposed to migration policy. The GCM should anticipate these conflicts by building institutions that link issues that both the north and south prioritize. For example, the capacity building mechanism should include training for border guards both on security screening and on human rights violations. Coordination also requires strong leadership, which is why the coordinator of the new UN network on migration is so important.

The second challenge is the operationalization of the GCM's objectives. The Compact's »actionable commitments« are good starting points for translating objectives into actions. The 23 objectives are often concrete and actionable with some actors specified—which is unusual for most international agreements. The second draft of the Compact weakened the wording from »promote the operationalization« to »take into consideration« and removes references to the Migrant Integration Policy Index (MIPEX).[10] But MIPEX and the Global Migration Group Principles and Guidelines are good starting points for operationalizing indicators. In addition, the Migration Governance Indicators could be a measuring stick by which states judge and develop their migration policies and institutions but there is no agreement about what types of policies—particularly detention and deportation—are most effective or fair. For example, will the indicators penalize states for the routine use of child detention? And crucially, will states be penalized via any future migration financial instrument if they do not meet a certain standard? The operationalization of each objective will include important behind-the-scenes disputes about the best kinds of migration policies. Another missing element from the GCM is a timeline or roadmap. When is the deadline for

10. »Global Compact for Safe, Orderly and Regular Migration – Draft REV 1,« 26 March 2018, section 30(a), p. 18.

these commitments? Obviously, some states will move more quickly but just as students save assignments for the night before the exam, states procrastinate on their commitments unless given deadlines.

The third challenge for the GCM is monitoring implementation. As the Compact currently stands, the monitoring mechanisms are lumped primarily in the International Migration Review Forum, which only meets every four years. Without rigorous monitoring, the IMRF will have little impact on state policies. In addition, the GCM should report on the human rights of migrants, not just achievements in migration policies or outcomes. Furthermore, the GCM does not strengthen the mandates of the Special Representative for International Migration or the Special Rapporteur on the Human Rights of Migrants, which have crucial roles in naming and shaming. Another area that needs further development in the Compact is how to support and promote networking among the national human rights institutes to prioritize migrants' rights.

The fourth challenge for implementing the GCM is how to pay for it. The concept note proposes a start-up fund to provide seed-funding for projects, but little details on scale and operations. Theoretically, a global fund for migration could do three things: incentivize national budget priorities, test pilot projects, and bridge capacities between states. While most funding will come from national budgets, a global fund should use its leverage to set funding priorities with matching funding that rewards states that move quickly on GCM commitments. The proposed start-up fund could rigorously measure the impact of pilot projects, and later scale up successful projects. The third area for a new global fund would be to fill gaps in capacity by having rich states help pay for implementation in less developed countries or investing in bilateral and multilateral technology transfers and capacity building that strengthen collaboration between stronger and weaker states. A global fund for migration should include multi-year funding that allows for long term planning and is not dependent on crises. Finally, a new vertical fund should incentivize coordination between UN agencies and be aligned with the UN reform agenda.

Conclusion

The Global Compact for Migration is an opportunity to help migrants around the world, but it is not a self-executing agreement. The Compact needs to develop more thoroughly how the commitments will be implemented and how actors will be held accountable. The GCM lays out five operational components—regional and state actions, research and information centers, a capacity building mechanism, the UN network on migration, and review forums—but implementation requires further actions by the key stakeholders, especially member states, UN agencies, and civil society. Implementation frequently faces problems of coordination, operationalization, monitoring, and funding. While it is expected that actors will continue to struggle with these challenges, below are key recommendations to improve the implementation. Together, states, the UN, and civil society can fulfill their commitments in the Global Compact to make migration more safe, fair, and beneficial to all.

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