

The controversy surrounding the UN Global Compact for Migration - an evaluation

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1. Background

In 2015, the image of one million men, women and children walking on the roads of the Balkans towards Western Europe and arriving at the shores of Greek islands, rattled the nerves of EU politicians and the EU population. The stingy reaction of the international community – and of the EU Community as immediate neighbours - to calls by UNHCR and emergency relief organizations for financial assistance to Syrian refugees had led the Turkish Government to encourage the onward flow of Syrian refugees to Europe. The movement pulled in its wave irregular migrants from Afghanistan, Pakistan, Bangladesh, Middle East and African countries so that in the end less than 38% of arriving “refugees” that year originated from Syria. This raised fear of the beginning of a huge unchecked migration flow to Europe.

Western fear of uncontrolled migration is founded in demographic and economic imbalances which will not disappear in this century. Population growth in Africa, and in other migrant sending countries, e.g. Pakistan and Afghanistan, increases the number of people who see no economic future for themselves in their country. In the late 1990s, Europe and Africa had roughly the same population. By 2050, Africa’s forecast population of 2.4 billion people, equal to 25% of the world total, will be three-and-a-half times as large as Europe’s. With its population stagnating at its present 700 million (EU plus UK = 500 million), Europe’s historic 20% share of world population declines to 7%. And it will be an old population. In 2050, the African working age population will be six times as large as Europe’s working age population.

The humanitarian crisis led to a number of diplomatic initiatives, one of which was the November 2015 Summit meeting between the EU and the African Union in Valletta, Malta. The Communiqué established collaboration in five areas (i) create peace and stability in Africa to attack conditions leading to migration, (ii) better protection for refugees and migrants, (iii) fight human traffickers, (iv) better collaboration in returning rejected refugee applicants, (v) facilitate legal migration routes.

At UN level, the response was the “*New York Declaration for Refugees and Migrants*” of 2016, which proposed the adoption of two compacts: one for refugees, one for migrants. The United Nations High Commissioner for Refugees (UNHCR) estimates the global refugee population at close to 50 million and the migrant population at around 250 million people. The Compacts were presented and adopted in 2018.

The “*Global Compact on Refugees*”, prepared by UNHCR, aims to promote more efficient international burden sharing and responsibility when a refugees crisis occurs. Its endorsement by the UN General Assembly on 17 December 2018 received little media attention. Improving international crisis collaboration is a non-controversial objective. The Syrian refugee crisis had demonstrated to policy makers that provision of efficient aid to states that are neighbours to conflict areas is a win-win situation for all.

The “*Global Compact for Safe, Orderly and Regular Migration*” aims to strengthen inter-governmental collaboration on migration. Prepared under the auspices of the United Nations it was adopted by an Intergovernmental Conference at Marrakech on 11 December 2018. The “guiding principle” section of the Compact establishes the *principle of shared responsibility* upon immigration and emigration countries: “It is crucial that the challenges and opportunities of international migration unite us, rather than divide us. This

Global Compact sets out our common understanding, shared responsibilities and *unity of purpose* regarding migration, making it work for all.”

However, differences in its reception by immigration and emigration countries demonstrated that unity of purpose is not yet established. In the run-up to the Intergovernmental Conference in Marrakech, the Compact was welcomed by *Governments in developing countries*, who informed their population that the Compact would facilitate and increase outbound migration. Concern that this would be an outcome – even being the underlying objective of the Compact - turned the Compact into a controversial issue in *Western countries*, with some deciding not to sign. Most Western Governments who did, defended it, not in positive terms, but defensively claiming that signing the Compact has no implications: the Preamble states it is a “*non-legally binding, cooperative framework*”, and art 15 “reaffirms the sovereign right of States to determine their national migration policy”. Yet, although a compact, unlike a convention, establishes no legal obligations, only moral commitments, in practice it will have legal consequences by inspiring court decisions. Several Governments, therefore as a precautionary measure, expressed their interpretation of what the Compact means in footnotes to their signature.

Concern that the Global compact may lead to legal interpretations and obligations not wanted by Western Governments is triggered by the massive exploitation by irregular economic migrants of the legal rules and protection established by international conventions. The *refugee convention* is used by purely economic migrants to claim refugees status upon illegal entry (giving legal right to their stay in the country until the application has been processed and all appeal options are exhausted), the *children convention* by 20-year old refugee seekers claiming to be below 18 years and by criminal migrant street children claiming to be younger than 15 years, the *sea convention* by economic migrants entering boats incapable of crossing the Mediterranean in order to force their pick up in international waters and transport to an EU country, the *human rights convention* by convicted criminals and terrorists who fight against being expelled for reasons of right to family life, claims about potential risk of torture or unjust trial in their home country.

2. The migration challenge to be solved by international collaboration

Population stagnation on one side and population growth on the other side of the Mediterranean increases the scope for expanding mutually beneficial win-win regular economic migration, but also the risk of a large increase in unwanted irregular migration. It is inevitable that the percentage of the European population born in a developing country will be substantially higher in 2050 than in 2019. The only choice Europe has is between a managed and an unmanaged increase in the immigrant population from developing countries.

The migrant flow is composed of *regular economic migrants* (and their family members), who arrive with work entry visas and/or employment contracts; *political refugees* (defined by the international convention on refugees, including refugees fleeing from war); *irregular economic migrants* who, motivated by miserable economic prospects in their country and the prospects of higher personal income in a developed country, arrive without work permits, contracts and entry visas..

Regular economic migration, a South-North and West-West phenomenon is economically beneficial for all. In the migrant receiving countries, regular migrants coming for work alleviate labour shortages, including in jobs native workers have little interest in. Emigration countries suffer a brain drain. But the losses are more than compensated for by the remittances which migrants send back to their families. They finance

domestic investments and alleviate balance-of-payments imbalances. According to the World Bank's Migration and Development Brief of December 2018, annual remittances flows to low- and middle-income countries amounted to \$528 billion in 2018, of which Sub-Saharan Africa received close to 40 billion.

Interests differ when it comes to the South-North flow of *irregular economic migrants*, who do not fulfill the criteria of the international refugee convention but apply for refugee status as their only legal form for entry. Their chance of convincing the authorities of their right to asylum is limited. But they know that they can avoid return to their country of origin almost indefinitely by exploiting the many appeal options and, once the final appeal option is exhausted after several years, by refusing to collaborate on repatriation. The strategy starts with the destruction of identity papers before arrival as an efficient means to prolong their stay, as their home countries do not accept return of citizens without identity papers. The relative size of *de facto* refugees and irregular economic migrants claiming refugee status can therefore be estimated by looking at the percentage of refugees applicants arriving in the EU with personal identification papers (30%) and without (70%).

Because their skills composition does not correspond to the skills demand in the formal national labour markets, their unwanted arrival imposes an economic burden on the receiving countries and puts into question their sovereign right over their borders. Finding housing and integrating irregular migrants into the national labour market and local social fabric is a challenge. Many see their arrival as threats to internal social cohesion due to uncertainty about how migrants coming from different cultures will influence society's sense of a common purpose and due the risks of social unrest stemming from a correlation between ethnicity and poverty incidence (the "banlieu" problem).

Emigration countries, on the other hand, get remittances also from irregular migrants, which is why many encourage irregular migration directly¹ or indirectly by refusing to accept back emigrants whose refugee application is rejected. When asked by a migrant receiving Government to assist with the issue of new identity papers of a rejected asylum applicant, migrant originating countries are most unwilling to comply. Many flatly refuse to collaborate in the return of citizens not wishing to do so.

The irregular economic migrant flow has two negative impacts on the situation of *de facto refugees*². First, the extra work load, which the fake refugee applications impose on the immigration authorities and the national appeal systems expands the average time for the processing of a refugee application. Second, Governments engage in an unworthy race to make their country as unattractive as possible for irregular migrants. One aspect of the policy is that refugee applicants are kept from seeking employment until their case has been decided and that social welfare payments to refugee applicants are fixed at levels far below official poverty lines. The policy intends to discourage irregular economic migration by reducing the income, which the migrants can expect to gain. The unintended consequence for applicants who

¹ The Pakistan Government has since the mid-1980s provided advice to would-be emigrants, also on legal loopholes and on how collaboration with local human rights organizations can improve their chances of staying once they have arrived to a Western country of their choice.

² The term "de facto refugees" is often criticized and rejected as being too exclusive. That irregular economic migrants seeing no worthy future in their country are refugees also; that climate change creates climate change refugees, etc. But the fact is that a minority of refugee applicants are officially recognized in the end as refugees according to the strict criteria in the refugee convention, or the more flexible criterion of being in need of (temporary) protection. These persons are formally and legally *de facto* refugees.

eventually are recognized as refugees is that the uncertainty and deprivation of long pressing times imposes severe stress, social isolation, depression, lowered self-esteem and loss of economic opportunity. This makes their later integration as citizens in the national societies much less successful and much more costly for the immigration country. Another aspect of “stay away signalling policy” is that refugees with temporary stay permits, granted for reasons of insecurity in their home country, are forced to return home under claims of improved security situation although having been able to find a full-time job, they contribute positively to a country they expected to become citizens of.

It is clear from the huge pool of future underemployed labour in developing countries that the European labour market can absorb only a fraction of would-be-emigrants and that free immigration of lower-skilled labour would cause a collapse in the European social security systems. The migrant flow must be rationed. Rationing can be done effectively by adopting an immigration policy for increasing regular migration as is done in Canada and Australia. Or it can be done ineffectively as presently in *Europe, where no immigration policy* is adopted. The substitute policy is *internally* on making the life of refugee applicants as unpleasant as possible and *externally* on preventing irregular migrants from reaching EU borders. The latter policy includes technical assistance to and the financing of strengthened border control measures in neighbourhood countries, making boat migrant attracting search and rescue missions more difficult, and incentivizing African Governments to restrict emigration by tying economic development money to the adoption of measures of migration control and agreeing to take back unwanted citizens of theirs.

3. A “unity of purpose” response to maximize the benefits and minimize the costs of migration

The economic inefficiencies and social injustice of the present South-North migration system are obvious to all. The Compact has a strong case in stating a unity of purpose for improving the conditions for migration. The Valetta Summit declaration outlines the key aspect of it: that Europeans accept an increase in the number of regular working age economic migrants in return for collaboration by developing countries on measures to reduce the inflow of irregular economic migrants and their return to countries of origin.

It is feasible for EU Governments to get an increase in regular migration accepted by the EU population if the right conditions are presented. The aging of the population in Europe offers scope for an economically meaningful increase in the number of working age economic migrants from developing countries. Managed migration is relatively uncontroversial: racists, despite their noise, make up a minority of the European population; the majority of the population learns to live with new neighbours as long as they are seen to contribute positively to society. It is the inflow of irregular migrants, imposed on migrant receiving countries by external circumstances outside their national control, which makes the migration issue politically sensitive and blocks for the adoption of an immigration policy. Unless irregular migration is controlled, political attempts at adopting laws, regulations and measures to increase regular migration are at a dead end.³

The economic development potential of an immigration policy for EU countries and in particular for the migrant sending countries is maximised by a very flexible immigration regime covering seasonal labour, medium term labor (green card regime) and long-term immigrants. Rotation of the labour force spreads

³ The link is illustrated by the two sides of Australia’s immigration policy, which combines a brutal rejection policy towards boat migrants trying to reach the border of Australia without visas with a welcoming policy towards regular migrants leading to 29% of the national population being born outside the country, the highest share worldwide.

the income and capacity building from foreign work among a larger portion of the work age population in the developing countries.

4. Is the Migration Compact likely to be of assistance in unlocking the situation?

The value of the Compact must be judged by its likelihood in promoting international collaboration on the dual objective of reducing irregular and increasing regular migration.⁴

The Compact recognizes the trade-off between regular and irregular migration:

- The headline for the Compact's 23 objectives is "Objectives for Safe, Orderly and Regular Migration"; the "shared responsibility section" includes "reducing the incidence and negative impact of irregular migration through international cooperation and a combination of measures put forward in this Global Compact".
- Two objectives promote *regular migration*: "Obj 5 Enhance availability and flexibility of pathways for regular migration" and "Obj 27 Strengthen international cooperation and global partnerships for safe, orderly and regular migration". Two objectives combat *irregular migration*: "9. Strengthen the transnational response to smuggling of migrants" and "10. Prevent, combat and eradicate trafficking in persons in the context of international migration".

Yet, overall, the text of the Compact is biased towards promoting *migration of any kind*. One aspect is the way migration is framed. Instead of recognizing the existence of negative aspects of migration - the substantial costs, which unwanted economic migrants impose on the receiving countries and on the situation of refugees - migration is referred to in exclusively positive terms throughout the document - "as a source of prosperity, innovation and sustainable development in our globalized world".⁵ The other aspect is the list of commitments. The ambition to "reduce the risks and vulnerabilities migrants face at different stages of migration", turns the focus of commitments on migrant receiving countries, who are asked to "establish comprehensive policies and develop partnerships that provide migrants in a situation of vulnerability, *regardless of their migration status*". Commitments for immigration countries include:

- Under Objective 4: Ensure that all migrants have proof of legal identity, to "Review and revise requirements to prove nationality at service delivery centres to ensure that migrants without proof of nationality or legal identity are not precluded from accessing basic services nor denied their human rights"

⁴ The list of objectives includes other praiseworthy goals. Three concern the maximization of the economic benefits from migration: "18. Invest in skills development and facilitate mutual recognition of skills, qualifications and competences"; "19. Create conditions for migrants and diasporas to fully contribute to sustainable development in all countries"; and "20. Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants". The global average cost of sending remittances is 6.9 percent, more than double the Sustainable Development Goal of 3 percent. High recruitment costs, which sometimes can amount to more than 2 years of a migrant worker's income, lower the migrant workers net incomes and impose a drain on remittance flows. These are non-controversial, confirming the importance of activities which are ongoing already.

⁵ Jan Kenneth Eliasson, a Swedish diplomat, who as Deputy Secretary-General of the United Nations was a key initiator and driver of the compact, wanted the document to convey a positive message about the benefits of migration.

- Under Objective 8: Save lives and establish coordinated international efforts on missing migrants to “Review the impacts of migration-related policies and laws to ensure that these do not raise or create the risk of migrants going missing, including by identifying dangerous transit routes used by migrants”.
- Under Objective 9: Strengthen the transnational response to smuggling of migrants to “Develop gender-responsive and child-sensitive cooperation protocols along migration routes that outline step-by-step measures to adequately identify and assist smuggled migrants, in accordance with international law.
- Under Objective 13: to “Use immigration detention only as a measure of last resort and work towards alternatives”

EU governments justify their signature claiming that the Compact for the first time imposes an obligation on migrant exporting countries to take their citizens back. This statement refers to *Objective 21: Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration, which confirms “the obligation of States to readmit their own nationals”*. Proposed actions include “Cooperate on identification of nationals and issuance of travel documents for safe and dignified return and readmission in cases of persons that do not have the legal right to stay on another State’s territory.” Yet, a number of escape clauses included in the text of Obj 21 weaken the commitment. The Government of a migrant exporting country is to:

- “ensure that the return of migrants who do not have the legal right to stay on another State’s territory is safe and dignified, follows an individual assessment, is carried out by competent authorities through prompt and effective cooperation between countries of origin and destination, and allows all applicable legal remedies to be exhausted, in compliance with due process guarantees, and other obligations under international human rights law”;
- “ensure that return and readmission processes involving children are carried out only after a determination of the best interests of the child”.

5. Conclusion about the Compact’s potential solution facilitating impacts

Instead of reducing the formal obstacles to the return of fake refugees, the Compact reinforces the continued exploitation of legal loopholes. It will not change, but reinforce status quo. The untenable international migration situation will trigger initiatives leading to improved international cooperation. But it will happen despite of the Compact, not because of it.