

# Global Governance Spotlight

3 | 2017

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## The Global Compact for Safe, Orderly and Regular Migration Addressing unresolved issues, looking ahead

Steffen Angenendt

In response to the global rise in refugee and migration movements, fragmented international cooperation on migration policy and the threatened erosion of refugee protection worldwide, the United Nations General Assembly hosted a Summit for Refugees and Migrants on 19 September 2016 – its first high-level meeting on this issue. In the outcome document (New York Declaration for Refugees and Migrants), Heads of State and Government unanimously endorsed a commitment to achieve two global compacts, prospectively by September 2018: a Global Compact on Refugees and a Global Compact for Safe, Orderly and Regular Migration. While the Compact on Refugees is intended to provide a clear roadmap for improved global burden-sharing in major refugee crises, the purpose of the Compact for Migration is to establish a conceptual framework for future global cooperation on migration governance. It will address all the key dimensions of international cooperation in this policy field and link in with the 2030 Agenda for Sustainable Development. Expectations of the Compact are correspondingly high.

It is still unclear, however, which direction the Compact for Migration will ultimately take: will it succeed in establishing the basis for sustainable international cooperation that protects the fundamental rights of migrants and refugees? And will it enable a fair reconciliation of interests between countries of origin, transit and destination, thus improving the prospects for migration that is conducive to development? Or will it mainly include restrictive elements, strengthening host countries' capacities to steer migration by imposing border controls and implement-

ing repatriation? Both of these directions appear to be possible at present. The deciding factor will be the extent to which migrants' interests are a focus of the negotiations. The conditions seem favourable: although this is a state-driven process, there is provision for systematic involvement of international organisations, civil society and the private sector.

### Background

In 2015/2016, cooperation on global refugee and migration governance took a major step forward, with a significant increase in the number of processes and forums working on this issue. Agenda 2030 and its Sustainable Development Goals (SDGs), adopted by the United Nations General Assembly in September 2015, are of particular relevance in this context. They make several direct references to the link between migration and development, notably in Target 10.7, which urges the international community to facilitate orderly, safe, and responsible migration. Target 8.8 focuses on protecting labour rights and promoting safe and secure working environments for all workers, including migrant workers, while Target 10.c calls for the transaction costs of migrant remittances to be reduced to less than 3 per cent. What many of the targets are lacking, however, are indicators to measure progress.

The sharp global rise in refugee movements in 2015 brought the numerous inadequacies of cooperation on global migration governance into sharp focus and

led to the convening of the UN Summit for Refugees and Migrants in September 2016. The outcome document – the New York Declaration – is already regarded as a milestone in international migration policy.

In the Declaration, the international community commits to ensure full respect and protection for the human rights of all migrants and refugees, irrespective of their legal status. With regard to refugees, the Declaration also pledges more support for the main countries of destination and commits to global sharing of responsibilities in major refugee crises. With regard to migrants, the international community also underscores its commitment to uphold the rights of those who do not meet the Geneva Refugee Convention criteria but who, nonetheless, have left their home country involuntarily or find themselves in need of protection while voluntarily on the move.

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## The process

In accordance with the resolution on the modalities for the intergovernmental negotiations of the Global Compact for Safe, Orderly and Regular Migration, adopted by the General Assembly in April 2017, the preparatory process is structured in three phases and is led by Louise Arbour, the Secretary-General's Special Representative for International Migration, with the Permanent Representatives of Mexico and Switzerland as co-facilitators.

The preparatory process commenced with a consultations phase (Phase I), comprising several thematic sessions between April and October 2017 and involving the UN member states, regional advisory forums, international organisations, civil society and the private sector and focusing on the main elements of the Compact. In total, six thematic sessions were held in New York, Geneva and Vienna on the following topics: rights of all migrants; drivers of migration; international cooperation; contributions of migrants and diasporas to development; smuggling of migrants and trafficking of persons; and irregular migration and regular pathways.

Phase II will consist of a three-month stocktaking, commencing with a preparatory meeting to be held in Puerto Vallarta, Mexico, from 4-6 December 2017, which will discuss and analyse inputs from all the various stakeholders involved in the consultations, including the Global Forum on Migration and Development (GFMD). Drawing on the outcomes, a zero draft of the Compact will be produced by February 2018 and will form the basis for the further negotiations. It will clarify terminology, establish the fundamental principles governing cooperation, take stock of existing agreements on migration governance and include viable statements of intent by the UN member states. The text will also set out proposals

for national, regional and global action and identify relevant institutions, accompanied by recommendations on review and follow-up to ensure the institutional, procedural and financial implementation of the Compact.

Based on the zero draft, Phase III – the intergovernmental negotiations – will commence in February 2018 and continue until July 2018. In all, 26 days of talks in New York have been scheduled for this phase of the process, with details yet to be determined by the co-facilitators. These negotiations will conclude with an intergovernmental conference, likely to take place on 23-24 September 2018, whose venue and agenda are also still being negotiated. The plan is to agree both Compacts at this summit meeting.

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## Open questions

If the Compact for Migration is to fulfil governments' and civil society's expectations, a number of challenging issues will need to be satisfactorily addressed during the further negotiations.

### Objectives

A key factor which will determine whether the Compact has real impact is whether national representatives are able to agree on a set of general objectives. Given the divergent interests and major power imbalance between countries of origin, transit and destination, reaching this agreement is likely to be a difficult task. It would require countries to identify the main problems, challenges and tasks facing them and then attempt to reconcile their respective interests. This is a big ask, but governments do not have to start from zero: the existing international agreements and statements of intent (primarily Agenda 2030 and the New York Declaration) potentially offer good starting points as they already define overarching goals.

### Timetable

If the Compact is to be more than just a vague statement of intent, the national representatives must agree targets, along with deadlines for achieving them. It is important to consider, in this context, that earlier processes such as the High-level Dialogue on International Migration and Development (2013) led to the formulation of a multitude of goals which have not yet been implemented. The Compact should therefore begin by addressing these unfinished tasks before any new timetable is set. In view of the participating states' highly divergent interests, reaching agreement on specific deadlines is likely to be difficult. Nonetheless, it may at least be possible to define short-, medium and long-term goals and determine the extent to which achieving them should be mandatory.

### Binding nature of the agreements

Very few governments are prepared to undertake binding commitments in the “toxic political field” (Peter Sutherland) of refugee and migration policy. Many governments continue to regard this policy area as a “domaine réservé” of core national sovereignty. They are very reluctant or unwilling to relinquish powers – even though they are well aware that they must cooperate in order to master the challenges ahead and also recognise that international cooperation always entails some restriction of national decision-making power. Financial commitments are another sensitive issue. It may be possible to “outsource” some aspects of fund-raising for the Compact’s implementation to (voluntary) financing conferences. Nonetheless, a binding agreement on core funding is essential in relation to certain tasks, such as supporting implementation.

### Review and follow-up

For an ambitious Compact for Migration which includes specific targets, a review process with clear timeframes, responsibilities and cost allocations is essential. One possible approach is to combine multiannual reviews – perhaps within the framework of an ongoing General Assembly High-Level Dialogue – with a process of continuous support and monitoring of member states’ progress on implementation of the Compact. Here, various solutions are conceivable, ranging from a role for the International Organization for Migration (IOM) or the UN Secretariat to a new remit for the GFMD. This latter body has grown into the most important multilateral forum for migration and development issues, enabling participating states to informally exchange experience on best practices and capacity-building and to find much-needed inspiration for migration policy cooperation. All the various options have specific advantages and disadvantages which must be discussed as the negotiations on the Migration Compact unfold. What is clear, however, is that these institutions’ existing mandates and organisational and financial capacities will not be sufficient to deal with regular reviews of the Compact’s implementation. The international community must therefore make appropriate resources available for this purpose. On the issue of funding, the proposals presented by the UN Secretary-General in July 2017 (Repositioning the UN Development System) for improved implementation and financing of the SDGs may be helpful.

### Data and knowledge

Any review of progress on the Compact’s implementation must be based on reliable data and information; however, this is not always available within the UN system. Indeed, on certain key aspects, such as reintegration of returnees, no data are available

at all; on others (e.g. arrivals and departures), data quality is poor. In many instances, data are collected by UN organisations but not shared with other agencies. Here, some improvement can already be discerned, notably as a result of the establishment in 2013 of the Global Knowledge Partnership on Migration and Development (KNOMAD), a global hub of knowledge and policy expertise on migration and development coordinated by the World Bank. More recently, the IOM established the Global Migration Data Analysis Centre (GMDAC) in Berlin, and the UN Refugee Agency (UNHCR) and the World Bank set up a joint data centre which from mid 2018 will collect and analyse demographic and socioeconomic information on refugees and migration and share the findings as open access data. These are promising approaches but fall short of what is required for systematic monitoring of the Compact’s implementation. The Compact itself may well offer scope for further improvements in data-gathering and knowledge sharing. One option is to require the institution tasked with monitoring the Compact to provide information about data-gathering and knowledge generation within the UN system, identify weaknesses and recommend improvements. Again, this would depend on the institution being adequate resourced in terms of both personnel and funding.

### The interface between the Migration and Refugee Compacts

There are thematic overlaps between the two Compacts, so common challenges and potential synergies should be identified during their respective negotiations. Issues of joint concern include, at the very least, the rights of migrants and refugees and the response to those in need of special protection, such as children and teenagers. The overlaps arise mainly because the current movements of people can, to a large extent, be described as mixed flows of refugees and migrants. Governments, however, must differentiate between the two groups, not least because they have undertaken to protect refugees as part of their commitments under the Geneva Refugee Convention. The question of taking in migrants and admitting them to the labour market, on the other hand, is generally a decision for the country of destination alone. In reality, the motivations of refugees and migrants are becoming harder to differentiate and the line between forced and voluntary migration is becoming increasingly blurred. Many people leave their home countries involuntarily because they find themselves forced to migrate after losing their livelihoods through political and economic upheavals, climate change or environmental problems. In addition, refugees and migrants tend to face similar dangers during their often irregular journeys. These linkages and overlaps must be considered if effective, sustainable and human rights-based migration governance is to be achieved.

### Multi-stakeholder governance

A key factor determining the future direction and formulation of global migration governance will be the manner in which civil society, the private sector and local and regional stakeholders are involved in the intergovernmental negotiations. In the global consultation processes to date – especially in the GFMD framework – these stakeholders have generated significant momentum in at least five areas: they have (1) pushed for a fair reconciliation of interests between countries of origin, transit and destination; (2) called for rights-based policies that protect the fundamental rights of migrants and refugees, prevent discrimination against them, and permit their economic and social participation; (3) demanded minimum standards for migration and integration, for example in the areas of recruitment and family unification; (4) advocated for safe pathways for refugees and migrants to reduce irregular movements; and (5) offered a framework for local integration and reintegration. This momentum is essential for the further progression of the negotiations. The UN member states should facilitate systematic participation of these stakeholders in the negotiations and also involve them in the review and follow-up process.

### Outlook and recommendations

Overall, international cooperation on migration policy is still highly fragmented; it remains a patchwork of regional and bilateral agreements and coordinating mechanisms. Although the IOM was officially admitted into the UN family in 2016, the current institutional structures for migration governance lack a normative framework, are unsuited for cooperative partnership between states, and fail to adequately protect the rights of migrants. Against this background, it is obvious that cooperation based on binding norms, responsibilities and institutions would secure these rights, define minimum standards for refugees, migrants and integration, and enable a fair reconciliation of interests between countries of origin, transit and destination. Such cooperation could help to mitigate the causes of mixed flows, convert more irregular movements into regular ones, and offer a framework for local integration, return and reintegration. In that sense, the Compact for Migration

has the potential to provide a roadmap for improved cooperation and coordination among international migration policy stakeholders and, in particular, to strengthen the UN organisations' cooperation with the International Labour Organization (ILO) and regional entities (OECD, European Union). The German Government should champion this approach, especially in view of the substantially enhanced international profile and recognition of Germany's role in shaping global migration governance.

#### Author

**Dr Steffen Angenendt** | Head of Global Issues Division, German Institute for International and Security Affairs (SWP), Berlin

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### Imprint

The Development and Peace Foundation (sef:) was founded in 1986 on the initiative of Willy Brandt. As a cross-party and non-profit-making organisation, the sef: provides an international high-level forum for shared thinking on urgent peace and development issues.

Global Governance Spotlight is a policy-oriented series whose purpose is to critique international negotiation processes from a global governance perspective.

**Published by**  
Development and Peace Foundation (sef:)/  
Stiftung Entwicklung und Frieden (sef:)  
Dechenstr. 2 : 53115 Bonn : Germany  
Phone +49 (0)228 959 25-0 : Fax -99  
sef@sef-bonn.org : [www.sef-bonn.org](https://www.sef-bonn.org) : [@sefbonn](https://www.sef-bonn.org)

**Editor**  
Dr Michèle Roth  
**Translation**  
Hillary Crowe

**Design Basic Concept**  
Pitch Black Graphic Design  
Berlin/Rotterdam  
**Layout**  
Gerhard Süß-Jung

Contents do not necessarily reflect the views of the publisher.  
ISSN 2566-624X  
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