Immobility and the containment of solutions

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Immobility and the containment of solutions: Reflections on the Global Compacts, Mixed Migration and the Transformation of Protection

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Abstract

Since negotiations began in 2015 on the two Global Compacts on Migration and Refugees, many within academia have felt uncomfortable engaging with the processes. This reflects a general weariness around new international co-operation agreements, the perceived control over the two processes by key international agencies, and an apparent lack of postcolonial voices in the drafting and consultation stages. However, with both Compacts now adopted, there has been a marked increase in engagement within academia and policy circles. This post-script to the special issue reflects on the discussions presented in the articles and the Compacts more broadly. The focus is on two main themes that emerge when reading this special issue: i) forms of protection; and ii) the concept of mixed migration. This article finds that within both these two themes, attention continues to focus on protection and movement between states, rather than between regions. As such, it remains uncertain how the Compacts will be able to shift the dominance of self-serving policies imposed by the Global North. Nevertheless, the article concludes by attempting to find some glimmers of optimism. Currently there exists the

political space (however slight) for various actors to try and utilise the Compacts to improve protection and opportunities for migrants who adopt mobility strategies – particularly for those who choose to move between global regions in this postcolonial era.

Keywords

Mixed migration; mobility; protection; containment; global south; Global Compacts

Introduction

Since negotiations began in 2015 on the two Global Compacts on Migration and Refugees,[1] academia has arguably been slow and reticent to engage with either the processes themselves, or with draft versions of the Compacts. This may reflect a general weariness around new international co-operation agreements, where despite a great deal of work put into their creation, there is often little to show at the end in terms of real measurable change on the ground for the lives of migrants. In addition, some within academia may have felt uncomfortable engaging at all with the processes. Concerns have included an apparently tight control of key international agencies over the two processes, and a perceived lack of diversity of voices expressing different positionalities in the discussions during the drafting and consultation stages.[2] Many of these concerns were realised as the processes of drafting the Compacts came to a close, as neither Compact appeared to fundamentally shift existing Northern narratives around refugees and migrants, which emphasise prevention, root causes, local and regional solutions and 'return with dignity' over anything that envisages continued mobility over longer distances. As such, on first read, it remains unclear exactly how the Compacts will improve protection and the safety of migrants who adopt mobility strategies – particularly for those who choose to move between global regions. By not attempting to engage with or dismantle this architecture of containment, the Compacts appear to maintain what Chimni (2009) refers to as the 'post colonial order' of keeping refugees and other migrants in the developing south.

Recently, however, with the Compacts now finalised and adopted, there has been a marked increase in engagement within academia and policy circles. Indeed, at the time of writing, the amount of work generated around the Compacts is substantial (Guild and Grant 2017; IJRL Special Issue 2018; RLI Special Collection 2018 – 2019). Against this backdrop, Christina Oelgemöller[3] and the Refugee Law Initiative[4] hosted the workshop '*Global Compacts, Mixed Migration and the Transformation of Protection*' (the 'GCMM Workshop') in the spring of

2019, with the diverse articles in this special edition being the product of the discussions held in the workshop. The aim of this post-script is to reflect on these essays and the Compacts more broadly, to see if they suggest possible ways forward or glimmers of optimism around the safe movement of refugees and other migrants between neighbouring countries and between regions in this postcolonial era.

The article is split into two parts, reflecting the two main themes that emerged within the GCMM Workshop and the articles in this special edition. First, we examine the concepts of protection and international protection[5] within the contexts of the two Compacts and how they relate to human mobility and mixed migration flows within the Global South. A number of the articles within this special issue focus on protection and human mobility, reflecting fundamental elements of both Compacts.[6] In particular, we highlight how protection (in its different forms) set out in the Compacts is essentially spatially localized and intellectually compartmentalized. Thus for the majority of refugees and forced migrants in developing countries, they are expected to find forms of protection and shelter in neighbouring states; even there, 'integration' is rarely on the agenda.

The second half of the article turns to engage with the concept of mixed migration. This refers to the range of migrants with varying protection needs who move within the same migratory routes and encounter the same migration controls. As noted by a number of authors in this special edition, there is a lack of emphasis in the Global Compacts on addressing the reality of the 'messier' context of mixed migration. This is perhaps not surprising, given that the process of negotiation was divided into separate Compacts on refugees and migrants from the outset. Nonetheless, by not addressing the issue fully, we argue that the Compacts are even less equipped to push back against the approach of Northern states to justifying stronger border controls and the increased securitization of all forms of migration.

Within both these two themes, attention in this special edition remains on protection and movement between states *within* the Global South. This is to be expected given the wording and conceptualisation of movement in both Compacts. Equally this approach is in line with the reality on the ground, with most migration globally occurring between developing countries (South–South, rather than South-North) (World Bank 2016). Yet, arriving in neighbouring countries (whether defined as first country of asylum or not) does not necessarily equate to mid to long-term protection or a solution to displacement (durable or *de facto*). Nor does it reflect the multi-directional and multi-spatial dynamics of contemporary movement within the Global South. In contrast, this localised focus in the Compacts conforms to the trend of migration governance and management of Northern States that centres on control, deterrence and containment. As such, it remains decidedly uncertain how these new soft law instruments will be able to shift the dominance of Northern State self-serving policies and make all forms of spatially diverse movement safer (Van Hear et al. 2012; Papageorgiou 2018).

1. The Global Compacts and protection of refugees and migrants

The first section of this article analyses to what extent the Global Compacts have the potential to improve international protection and protection. We start with an examination of how the concept of international protection has been included or inferred within the two Compacts. In particular, we highlight the potentially problematic localised approach the Compacts take to the concept. Indeed, the idea of international protection within both Compacts appears to be entirely focused on immediate protection in neighbouring states in the Global South. We then engage with the question of whether the Compacts can be utilised to shift the current status quo of Northern States paying their way out of providing protection and shelter for the majority of the world's refugees and forced migrants. As examined below, approaches to halting movement by states in the Global North have, if anything, become more sophisticated in recent

years with containment continually being masked behind development and self-resilience rhetoric.

In the final part of this section on protection, we turn to the local level in the Global South. If the Global Compacts do indeed accept the current status quo of neighbouring states in the developing world left to offer international protection and other forms of protection; then what relevance does the international level and international norms have for refugees and migrants on the ground in contemporary urban spaces, such as Johannesburg or Kampala? Throughout this section, concepts and arguments set out in the GCMM Workshop and the resulting articles within this special edition are foregrounded and explored.

1.1 The concept of protection in the Compacts

International protection is seen by McAdam and Wood (this issue) as essential in relation to cross-border movement as it limits state discretion in terms of denying entry and removing people. Yet in the past few decades these obligations have often been ignored or slowly watered down by host states (Frelick et al. 2016). Partly as a response to this absence of equitable and predictable responsibility-sharing between states to ensure the international protection of refugees, the GCR sets out new forms of protection architecture for supporting host countries. The aim of these mechanisms is to improve international protection and also the rights of those on the move (Garlick and Inder, this issue). It is evident from the relevant academic literature on the GCR that UNHCR continues to be politically restricted in how far it can push international norms or new global initiatives (Türk 2018; also see Garlick and Inder, this issue). As such, it is positive that the text of the GCR incorporates a new Global Refugee Forum, 'Support Platforms' and possible solidarity conferences. The Support Platform is a particularly notable example, with its purpose to offer 'context-specific support for refugees and concerned

host countries and communities' (GCR, para 23). Its focus is on large-scale or protracted situations, with host states, other interested states, multilateral organizations, and other 'stakeholders', conducting 'evidence-based assessment of what measures are needed to address the most important institutional, resource, technical or other gaps' (Garlick and Inder, this issue p19/20). As noted by Aleinikoff (2018), the Support Platforms provide at least the basis for creating a global system for responsibility sharing. Linked to annual meetings of the Global Refugee Forum, they replace what was previously an ad hoc system of generating international commitments to refugee assistance and protection and hold the prospect of significantly raising the profile of refugees within the UN system and across its wealthier member states.

In their contribution to this special edition, McAdam and Wood also note a further encouraging element of the GCR – the reference (albeit minor) to mixed migration flows within discussions of international protection (para 61, GCR). As such, there is potential within the Compact for states who are witnessing influxes of large mixed movements to use these various mechanisms of support (McAdam and Wood 2020, this issue). In addition, they make a compelling case that the GCR (taken as a whole) should not be interpreted as *excluding* migrants. For example, there is real value in the Compact reaffirming the principle of *non-refoulement* under international human rights law, and the notions of (temporary) refuge in customary international law and non-returnability. Having said that, as we discuss further below, these forms of international obligations surrounding international protection do already exist entirely independently of both Compacts. The trajectory then is one at best of evolution, rather than transformation.

Turning to the GCM, the existence of long-standing protection gaps for broader categories of migrants who are nonetheless insecure or vulnerable had created an urgent need to outline a number of important common understandings with respect to the treatment of migrants and the 'management' of migration (Gammeltoft-Hansen et al 2019; Ruhs and Martin 2019). The

GCM claims to be the first to attempt to do this in one international policy document, and although this might be claimed of some previous documents, such as the Migrant Workers Convention[7], the GCM does move things forward in that it has the support of a significant number of powerful states – something the Migrant Workers Convention never achieved. While not creating new obligations on host states, it does make continual reference to 'vulnerable' migrants - such as 'migrants in situations of vulnerability' and 'migrants in a situation of vulnerability', which at least suggests international protection needs for migrants (McAdam and Wood, this issue).[8] For example, as observed by Ribeiro C. Marques (2020, this issue) Objective 14 of the GCM calls for the improvement of consular capacities 'to identify, protect and assist nationals abroad who are in a situation of vulnerability.'[9] While other actions set out in the Objective deal with *existing* consular practices, this action stands as an exception or expansion. As such, the GCM appears to be pushing consular services to engage more with issues of protection in relation to migrants in situations of vulnerability (Ribeiro C. Marques, this issue). Nevertheless, reference to the concept of 'international protection' is far less explicit in the GCM than in the GCR (McAdam and Wood, this issue). This is despite the fact that a certain level of international protection is applicable already regardless of the existence of the Compacts, such as for example in some cases of cross-border movement associated with disasters, climate change and environmental degradation (McAdam and Wood, this issue).[10] In addition, instead of focussing on the reasons why a group is deemed vulnerable (or in need of protection), the continued reference to vulnerability in the GCM runs the risk of stigmatising specific groups of migrants (such as women, children or the elderly) further.[11]

In their contribution to this special edition, Garlick and Inder (this issue) argue that the Compacts are a step forward in the development of a more predictable, robust protection system for all forms of migration. Indeed the attempt to engage with the notion of international protection for mixed migration pathways is reason for some positivity. Certainly, the

Compacts are non-binding soft law instruments, with the GCR specifically not changing the legal understanding of international protection or directly adding new international obligations for host states. Yet Garlick and Inder (this issue) remain hopeful that in relation to the GCR, there is room in its application for improved refugee protection via the development of new policy norms in hosting countries. New soft law can often set the context for the development of hard law, even if it does not transform into it immediately.[12] Indeed, if we accept the conceptualization of the advancement of soft law as an evolutionary process rather than transformative or as a paradigm shift, then there is space for some optimism (Guzman and Meyer 2010).

There are nevertheless a number of issues surrounding these discussions on international protection, which warrant further reflection. Firstly, as noted by Garlick and Inder (this issue), the proposed architecture of support within the GCR is focused on neighbouring countries in the Global South who are currently hosting the majority of the world's refugees (such as Jordan, Turkey, Lebanon, Uganda and Kenya). As McAdam and Wood (this issue) highlight, additional assistance and protection in the first country of asylum is not, in of it itself, a solution to displacement. Yet this type of localised approach to the protection needs of refugees and migrants' remains a constant theme throughout the Compacts.

Secondly, as commented elsewhere, these new initiatives are entirely based on the political will of host states and financial support from the wider international community (Betts and Milner 2019; Betts 2009) – indeed the GCR is described in its preamble as 'entirely non-political in nature'.[13] As emphasised throughout the GCMM Workshop, you do not need to go too far back in history to see how international non-binding agreements relating to responsibility-sharing have not had a good track record (see also Betts 2009).[14] Similar to previous attempts to shift national policy and practice from the international level, it is hard to see why host states in the Global South would abruptly change dominant approaches to cross-

border movement and arrival. As a case in point, between 2009 and 2014 UNHCR created new policy documents aimed at altering how refugees were hosted, proposing the need to move from encampment policies to forms of urban reception (UNHCR 2009; UNHCR 2014). Yet, this did not bring about a fundamental change in how states received refugees in camps in sub-Saharan Africa. Indeed as foreseen by academics such as Kagan (2014) and Hovil (2014), without a commitment to long-term financial support from international donors and a more nuanced understanding of why states maintain camps, it remains unlikely that there will be a paradigm shift in how states receive refugees.[15]

Thirdly, as raised by McAdam and Wood (this issue), the question remains as to whether the Compacts will bring additional value in relation to the international protection of migrants and refugees. International human rights law has already widened the scope of norms within the global refugee regime – for example the groups of people who cannot be *refouled*. Indeed, it is unclear whether the Compacts have reaffirmed protection for these groups, widened the groups or just muddied the water (McAdam and Wood, this issue). As Ribeiro C. Marques (this issue) notes, this may in part depend on the nature of consular protection. More broadly though, it can be questioned whether migrants and refugees in the Global South need another top-down international initiative aimed at improving protection on the ground. Perhaps a more prudent approach would be to engage further with how international norms are already being developed and/or contested at the regional level or local level.

Fourthly, the Compacts in some respects fall short of existing binding provisions in international law. For example, they largely ignore the issues of internal displacement and statelessness. As such, the commitments within the Compacts do not match existing international law agreements on the protection of stateless persons (see Ribeiro C. Marques, this issue). The GCM does include an objective on access to citizenship and documentation; yet, target populations within the Global South (such as stateless persons) have largely been

absent from these governance discussions. Indeed, global migration governance mechanisms have long overlooked statelessness and stateless persons.

Overall, the articles within the special edition highlight a number of interesting aspects of the Compacts which, whether by design or via more stealthy political manoeuvrings in the future, may see improvements in the implementation and/or scope of international protection for migrants. Yet these approaches equally do not appear able to challenge the spatial focus of protection seen today. Of course, due to their relatively short span of existence, empirical work on how these compacts will be implemented on the ground is currently missing. At the time of writing this post-script, the first Global Refugee Forum had just taken place, and beyond that, more time will be needed to see how for example the Support Platforms will develop and possibly progress the norm of global responsibility-sharing. Yet, some implementation tools within the Compacts – such as the Comprehensive Refugee Response Framework (CRRF) – have been piloted already for a few years, with mixed results. Thus, some academics appear optimistic about the role of the CRRF, with countries like Kenya and Ethiopia showing positive early signs (Betts 2019). Nevertheless, with countries such as Tanzania having already pulled out of the CRRF, it is understandable to see why others are not so optimistic (Chimni 2019).

1.2 Alternative forms of protection and long-term 'solutions'

It remains uncertain how the Compacts will change the current status quo in relation to how protection is offered in cases of cross-border movement. As examined above, in many ways the situation remains the same, particularly in terms of the responsibility for hosting and responding to the protection needs of the majority of the world's refugees and forced migrants. As Oelgemöller (this issue) argues in her contribution to this volume, the Compacts may simply reflect existing hierarchies between the Global North and South. Indeed, the initial trigger for

at least one of the Compacts seems to have come from Europe, which was attempting to respond to its own refugee 'crisis' from late 2015 (Arbour, 2018). Thus, the catalyst for the Compacts was perhaps less of an attempt by Northern States to find ways to share responsibility and more as a way of preventing further South–North movement.

The two Compacts do contain positive elements relating to responsibility-sharing and third country solutions, as noted above. Yet, the Compacts currently lack the tools or apparatus to make these types of proposals concrete. As Hansen (2018) notes, the idea of third country solutions seems to create unrealistic expectations, particularly in the current political climate, with Northern States and large numbers of their voting populations seemingly hostile to the idea of hosting more refugees. Ultimately, like recent job-compact initiatives aimed at integrating refugees into the national work force of neighbouring counties, the number of refugees this will likely affect in a positive way is relatively small.[16]

The Compacts therefore appear ill-equipped to shift Northern States' focus away from containment and deterrence mechanisms. Instead, the current emphasis remains on assisting countries most affected by migration and forced migration in the Global South with financial and development assistance. As Oelgemöller (this issue) highlights, the aim is for forms of 'local integration' in neighbouring states, as a way of resolving displacement or on-going protection issues. This approach appears to be the goal, irrespective of whether local integration is the desired outcome for the individual migrant. Protection is therefore localised in the Global South and the role of Northern States is solely to assist or mediate this. This is of course important in terms of immediate humanitarian and protection concerns, yet this approach absolves Northern States of their responsibility by allowing them to pay their way out of hosting or providing shelter (Chimni 2002; Lee 2010). States in the Global South who host the largest numbers of refugees and forced migrants, do need sustained and substantial support. Yet what form this takes continues to be dictated to by the wider international community and

international global governance regimes. Essentially, the GCM reinforces the idea that the 'problem' of mixed migration flows amounts to a transaction between the North and South. In this one-way relationship, the Global South is the grateful recipient of 'financial and technical assistance' given by the generous benefactor, the Global North.[17]

By way of illustration, the Global Compact on Refugees (as well as Annex 1 of the New York Declarations: The Comprehensive Refugee Response Framework), by design or default, maintains a large focus on restricting movement, particularly international movement, through investment in development projects in hosting states. The emphasis is on localized solutions, which require no further movement beyond the country of first asylum, and indeed are backed up by 'sustainable' return. At one level, these approaches can be commended as they attempt to move beyond past reception policies based on encampment. Nevertheless, they serve to focus donors' attention on supporting these 'solutions', rather than third country options (such as resettlement) or acknowledging the role of agency and human mobility of migrants and refugees themselves.

For example, one of the key issues undermining *de facto* protection of refugees is the fact that they are often given limited or no access to labour markets of host countries. On this, whilst the GCR provides for the promotion of 'economic opportunities, decent work, job creation and entrepreneurship programmes'[18] including through labour market analysis, mapping and strengthening of skills and qualifications, closing the technology gap and providing 'affordable financial products', at no point does it encourage signatories to open labour markets to refugees. And whilst the GCM goes further, seeking to 'work towards inclusive labour markets and full participation of migrant workers in the formal economy by facilitating access to decent work and employment'[19], it also falls short of recommending an end to labour market barriers.

Equally, it remains unclear how these approaches will convince host states to allow freedom of movement to refugees and forced migrants, and in doing so actually end encampment or

closed-settlement policies. Ethiopia for example, is a country which agreed to pilot the CRRF, and in doing so will receive funds of around USD 350 million in order to help the state shift focus away from its encampment policy towards 'activities that promote refugees' welfare and inclusion in the country's socio-economic structures' (UNHCR 2018). Yet, the state still maintains a reception policy that relies on encampment in the short term for all, and this 'new' approach to inclusion only aims at assisting 10% of the overall refugee population move out of camps (UNHCR 2018). As such, the Compacts in many ways remain entrenched within deep-rooted maxims that development projects will work as a deterrence to stop mobility (Oelgemoller and Maple 2018).

As noted by Oelgemöller (this issue), this approach to humanitarianism and 'solutions' remains the double-edged sword of protection; protection comes with control. By doing this, it also reinforces the 'hierarchical global order, rather than challenging it' (p4). Indeed, these initiatives appear to mimic colonial approaches, where migrants are all viewed as a risk to natural resources (Banerjee and Samadar 2018). Via this form of 'containment development' Northern States are able to hand pick 'deserving' or highly skilled refugees or migrants from the South, while blocking the majority of the Global South from participating in globalization (Landau 2018a; see also Vanyoro 2019).

1.3 The international and the local

A focus on international human rights remains constant throughout both Compacts (Ansems de Vries and Weatherhead 2020, this issue) and is replicated within the articles in this special edition. Yet, as noted by participants in the workshop, this lens can often rely solely on conventional assumptions based on legal theory and/or international relations about the role and influence of the international at the local level. In contemporary urban spaces in the Global

South such as Johannesburg or Kampala, where migrant and refugee movement is multi-directional and multi-temporal, the role of international norms or international agreements can appear very minor. In addition, in Northern States – which often remain the driving force for such global initiatives such as the Compacts, ideals based on fundamental human rights for all come a distant second to new dominant ideologies of domestic security and stability.

International norms and global governance mechanisms do serve a vital role in the protection of refugees and migrants, not least as a way of informing and guiding humanitarian work (Landau 2018b). Indeed, Atak et al. (2018) argue that in many respects the Compacts should not be attempting to create new binding obligations around concepts such as vulnerability, but rather should try and find ways to ensure states meet their existing obligations set in domestic and international human rights instruments. Yet it remains evident that states in both the Global South and North are not meeting these requirements towards all forms of migrants. For example, there are continued restrictions on a fundamental norm, freedom of movement; whereby the popularity of hosting refugees in camps or settlements continues unabated (Maple 2016).

In the past decade, academics within the refugee and forced migration field have therefore started asking important questions relating to the relevance of these universal rights at the local level in the Global South (Landau 2018b). Indeed, is there sufficient evidence that that international law and policy trickles down from the international to the local level? This is particularly pertinent question for those who refuse to remain in confined humanitarian reception spaces, such as refugee camps and development style settlements. For example, does the use of rights-based language in an urban setting in sub-Saharan Africa improve the lived experience of refugees and other migrants in these spaces? (Harrell Bond and Verdirame 2005). Equally, do global governance regimes (such as the global refugee regime) or new soft law instruments (such as the Compacts) have a significant impact on forms of protection in urban

spaces such as Johannesburg, Kampala or Nairobi? There is some evidence to suggest that rights-based approaches often actually cause harm as labels – by separating out refugees and migrants from other urban poor or the local voting public (Fassin 2011; Landau 2018b). In addition, large numbers of migrants simply do not use or rely on these governance systems and instead find on alternative forms of hospitality or local citizenship (Fiddian-Qasmiyeh and Berg 2018; Landau 2018b).

Furthermore, Northern States – who are often the key driving force for these international humanitarian developments - have consistently shown signs of moving away from responding to refugee and migration movement in their own territory via an international human rights lens (Archick 2016). Fundamentally, the 'problem' of refugees, forced migrants and other low-skilled migrants can now be understood conceptually as *instability* – or the belief by states that instability will occur from cross-border movement of migrants (particularly in large numbers) (see Kotef 2015). In recent years, states in the Global North have responded to the concern around increased mobility by slowly replacing concepts such as universal human rights with a 'new ideological rival'– one of stability (Kagan 2014, see also Oelgemöller, Ansems de Vries and Groenendijk, 2020). States view more freedom for non-citizens (including movement) as creating chaos. As such, keeping the status quo (as set out in the previous section) is seen as the best response (also see Boucher and Gördemann, this issue).

This section has set out an alternative and critical interpretation of the present state of international instruments and their role in the protection of migrants in the Global South. This is not to say however that the Compacts cannot themselves be used to question and/or reconceptualise understandings of international governance norms and fundamental freedoms. For example, the GCM has some potentially innovative sections that acknowledge and promote the role of municipalities and local authorities in responding to migrant movement (see Objective 23, para 39 on 'whole of society approach'). As the Compacts are implemented over

the next few years, empirical research is needed in relation to: i) how the Compacts are translated into protection on the ground; ii) how the Compacts interact with regional, national, local and sub-local existing structures; and equally iii) what migrants and refugees understand as protection in the local setting. This may in turn require a re-examination of what (international) protection means, with focus potentially shifting away from the international level to the local authorities and/or local communities.

The second half of this articles now turns to the second major theme of the GCMM Workshop – mixed migration. The concept is profoundly inter-linked with issues of protection for refugees and migrants, which have been set out above. Therefore, many of the concerns raised surrounding the approach to protection re-emerge in relation to the Compacts' inability to substantially engage with the idea of mixed migration. A key theme is the power dynamics and disparities between states in the North and states in the South on the global stage, such that the Compacts arguably represent at best another missed opportunity to fully engage and understand the contemporary reality of human mobility today.

2. The Global Compacts and 'mixed migration'

An examination of the mixed migration literature prior to the 2016 New York Declaration and subsequent Global Compacts in 2018 can be read as presenting an expected trajectory and hope that future global agreements will reflect the full nature of human mobility through more realistic and nuanced policy (See Long and Crisp 2010; Van Hear et al. 2009). In light of the global power relations informing the negotiations however, the Compacts arguably made little progress in terms of mixed migration. In this sense, the Compacts do not necessarily make it easier or harder to deal with mixed migration, but represent a missed opportunity to progress or restructure the field in important ways. An opportunity that is unlikely to present itself again

for some time (see Sharpe 2018). This section explores the concept of 'mixed migration', the practical constraints around its implementation in the Compacts, and the barriers and opportunities for its future adoption.

2.1. Global Compacts – practical constraints

The concept of mixed migration has gained increased significance and has been the subject of much debate around human mobility (Van Hear et al 2009; Long and Crisp 2010). Yet it did not feature prominently in the discussions and formulations of the Compacts. Indeed, the mere fact of there being two separate compacts arguably signals a lack of intent to bridge this gap. As the Compacts do not 'speak to each other' in any substantive way, and rest on different priorities and evaluations, one plausible assumption is that mixed migration has fallen (and/or will fall in the future) through the cracks (see Oelgemöller, this issue).

Inder and Garlick in this special issue provide some insight into the deliberate decision behind the formulation of two separate compacts in relation to the issue of mixed migration. They suggest firstly that mixed migration is an issue largely concerning the countries of the Global North, and thus not reflective of the concerns of the states hosting the vast majority of the world's refugees. Secondly, they highlight the very different starting points of the two Compacts, in terms of laws and governance. Given the well-established architecture and technical nature of the refugee field (including refugee law), as well as the focus on burden-sharing in the GCR negotiations, it was unlikely that the process around the GCR was going to radically alter or expand the refugee definition in line with the nuance required when dealing with mixed migration. Therefore, the space to address mixed migration sat largely within the GCM, which could have provided a number of safeguards and increased protection for vulnerable migrants. However, as with many similar negotiations, the development of the

GCM was influenced heavily by the interests of dominant states responding to the fears and concerns of their population. The resulting compact thus reflects the broader power dynamics of the international community of the time. Indeed, the GCM negotiation process resulted in the watering down of many commitments, in spite of the fact that the Compact retains 23 separate objectives[20] and the final document remains weak in terms of securing actual and ongoing commitments.

Perhaps most significant though, is the lack of effort to connect the GCM to the GCR, to address the situation of those migrants who may have protection needs but not accounted for under the GCR (see Pijnenburg and Rijken, this issue). As Ansems de Vries and Weatherhead note in their contribution to this special issue,

> the GCM asserts and reproduces a problematic distinction between migrants and refugees. In its preamble, the GCM asserts that "migrants and refugees are distinct groups governed by separate legal frameworks" (UN General Assembly 2018: para 4). In this short assertion, the GCM brushes away the voluminous debates in academic and policy circles about the definitions and relationships of the terms migrant and refugee.

Thus, the decision to create two separate compacts is a further endorsement of maintaining 'refugee' and 'migrant' as very distinct categories. As such, read together, the two compacts fail to directly address the situation of mixed migration and in turn contribute to a number of flawed assumptions that continue to stall progress around developing sufficient responses to mixed movements.[21]

2.2 The barriers to understanding mixed migration

As noted, neither the GCM nor GCR addresses mixed migration directly, which maintains a key barrier to dealing with it effectively. The concept of mixed migration is defined by its

ambiguity and furthermore is determined and utilised by institutions in ways that reflect their mandate (Sharpe 2018: 119). This lack of common understanding and focus has arguably hindered progress in terms of policy and action. As Sharpe (2018: 117) writes, 'the notion is, however, heterogeneous, just like the situations it was developed to describe. 'Mixed migration' has thus contributed less to thinking around, and humanitarian action in relation to, migration than it might otherwise have.' She goes on to note that 'the concept is of limited value' as a result of this (2018: 135).

The lack of engagement with mixed migration may also be in part due to the term's proximity to politics, its development over time, and its variable uptake by major institutions. As Van Hear *et al.* (2009) noted a decade ago, the increased use of the concept of mixed migration was both linked to an appreciation of the nuance between the refugee and migrant categories and a state-centric understanding that asylum systems in the Global North were being used for immigration rather than purely asylum purposes. As such, they write that

> [t]he adoption of the notions of 'mixed migration' and the 'migration-asylum nexus' by the multilateral aid and relief agencies can then be seen as a liberal response to state concerns (indeed to try to take the steam out of them), as well as to the findings of researchers on refugees and forced migration.

These varied political aims have resulted in the inconsistent uptake of the term by major institutions. For example, UNHCR had gone from spearheading the concept of mixed migration in the early 2000s and developing key policy documents on the topic in 2006/2007, only to distance itself from the term notably in 2008. As Van Hear *et al.* (2009: 10) noted, UNHCR became concerned that the Migration-Asylum Nexus discourse had become too closely intertwined with the agenda of states in the Global North. Their concerns surrounding irregular migration, control of borders, unfounded asylum claims, where not compatible with UNHCR's mandate. This added new levels of complexity and confusion to the

conceptualization of mixed migration, which in turn stalls progress in responding to the situations it creates.

Furthermore, as Linde (2011: 95) notes, the varied understandings of mixed migration can be utilised to promote restrictive migration management measures, thus highlighting the need for nuance and flexibility in developing policies in this area. Indeed, as Oelgemöller (this issue, see also 2011) notes in her contribution to this volume, mixed migration has become a loaded term in the Global North, inextricably linked to the creation of the 'illegal migrant', deterrence measures and rising suspicion around migration and those who engage in it. In this sense, mixed migration provides a justification for ongoing practices of bordering, including processes of border externalisation such as pushbacks and carrier sanctions.

The ongoing difficulty in dealing with mixed migration is that there is no easy, quick-fix response. This is particularly the case in the context of how migration is framed in the present-day, as it requires a shift in how mobility is conceived and responded to. The reality of mixed migration reflects both the nature and complexity of human mobility today coming into contact with the range of sophisticated measures to control and contain such mobility. Therefore, it involves input from a wide range of fields, including security, development, economics, etc.

The lack of willingness to deal with mixed migration head-on, along with the subtler focus in the Compacts on restricting further avenues for migration, continues to reflect the interests and agendas of wealthy, Northern States. For example, deterrence and externalisation measures remain largely unchallenged by the Compacts. As such, a major barrier to understanding and responding to mixed migration is the lack of appreciation of power dynamics inherent in the way it is framed – and the motivations for doing so. Boucher and Gördemann (this issue) highlight this in terms of the EU's seemingly contradictory stance. Going into the GCM negotiations, the EU touted a *universal* human rights approach, but then actively undermined a number of measures that would protect vulnerable migrants (particularly in mixed migration

situations). This was achieved by insisting on strong distinctions between regular and irregular migration and the enforceability of return and readmission agreements.

Such dynamics are of course present in any international negotiation, but perhaps are starker in discussions around migration and mobility as they represent an intersection between different peoples and spaces of the world. As Mayblin (2017) notes, the development of the refugee regime itself and subsequent international negotiations around migration, were informed by the global power relations of the time and thus continue to perpetuate a colonial logic which rests on a hierarchical ordering of the world's peoples, and the exclusion of those deemed undesirable. This trend continues today in the processes around the Global Compacts. Furthermore, the formulation of future norms based on these foundations will do little to reform such power relations. As Chimni (2006: 3) argues of international law generally, '[it] is playing a crucial role in helping legitimize and sustain the unequal structures and processes that manifest themselves in the growing north-south divide.'

In terms of the GCM, as Ansems de Vries and Weatherhead (this issue) explore, the Compact is predicated on assumptions about 'safe, orderly and regular migration'; a process of knowledge production that delegitimises irregular migration. The authors focus on information provision to highlight that such knowledge production prioritises interests of the countries of the Global North and reinforces certain understandings about migration. It could be argued that this renders the GCM a discursive practice that produces a particular reality as universal.

To illustrate, the notion of 'safe, orderly and regular migration' raises the question of 'orderly to whom?' As highlighted by Vanyoro (2017), the notion of 'orderly' is an important concept to unpack, with the risk that states will utilise the term to further securitise borders. Indeed, only by categorising or labelling something as 'orderly' are we able then to define 'unorderly'.[22] In other words, if Northern States are permitted to establish what 'orderly' means, then other types of migration instantly become 'unorderly', irregular or even illegal.

This framing of irregular migration as criminal and delegitimate ('unorderly') is not new, of course, and has been a driving force behind the increasing securitisation of migration and bordering practices that fail to protect migrants' human rights. Yet, the GCM is following a dangerous discursive slope where persons crossing borders were once seen as asylum-seekers, have over time been reduced to 'irregular' or 'illegal' persons. As such, these measures equally impact upon refugees moving in these flows and reduce the safeguards and protections that should be guaranteed to them. For example, as noted by Van Der Klaauw (2010: 66), "European instruments on the reception of asylum-seekers and pre-removal detention of rejected cases have clearly been influenced by States' concerns to reduce irregular migration and have resulted in a lowering of protection standards".

2.3 Future significance of Compacts

As noted above, the Compacts (for a number of reasons) have been unable to deliver a significant breakthrough in reconfiguring the way in which mixed migration is conceptualised and responded to. Yet this inevitably has serious ramifications for many vulnerable people on the move. A shift towards increased mobility and reframing the way that migration is understood has been called for by a number of commentators and for many years. Van Hear *et al*. (2009) summarised the trajectory of mixed migration literature and policy nearly ten years go, and made a call for a move towards increased mobility and transnationalism as the way forward. Unfortunately, 10 years later, this understanding has yet to materialise or transform policy.

The Compacts thus largely fail to institutionalise steps to move away from the restrictive way in which migration is currently framed. Similarly we are no closer to a formal acknowledgement of the blurred lines between forced and voluntary migration (see Pijnenburg

and Rijken, this issue). Having said that, an alternative perspective, as advanced by Sharpe (2018) is that the nuance in understanding people's motivations to move has no bearing on how they are responded to in policy and practice. As such, she argues that focus should be directed to managing mixed flows of people (focusing on their fundamental human rights) rather than concentrating on their motivations for moving. Read in this way, the GCM may be of some use in highlighting state's obligations to all migrants based on their common humanity and human rights. Nevertheless, as examined in the first section, beyond permitting forced migrants to cross borders (and not returning them to harm), it is not always entirely evident on the ground how reminding host states of their responsibilities under international human rights law really makes a difference to the everyday lives of refugees and migrants in the Global South.

In conclusion, while there are a number of consolidations of current norms, and incremental gains in terms of the protection of refugees and vulnerable migrants, the Global Compacts have not fully engaged with the realties of mixed migration. By 'realities' we mean the overlaps and connections between: i) refugees and migrants; and ii) different types of movement from forced to voluntary. In contrast, perhaps a singular more progressive and innovative 'Global Compact on Human Mobility,' would have been better equipped to respond to these issues.[23] Instead, the Compacts largely just reflect the practical and political environment of their time. Yet nevertheless as noted by a participant in the GCMM Workshop, there are a number of 'hooks' built into the Compacts through which protection can be advanced over time. This may be true, yet for the reasons noted above, it will likely remain perpetually hindered by the lack of attention given directly to the issue of mixed migration.

3. Concluding remarks

This postscript, and indeed the contributions to the GCMM workshop and this special issue, can only possibly deal with a sub-set of the issues that emerge in documents as complex and wide-ranging as the GCR and GCM. Our focus has been on protection of refugees and migrants, and on the issue of 'mixed migration', two issues that the Compacts might be expected to address, but on which we argue their contribution is limited or 'contained'. Of course, the two Compacts seek to do many other things. On paper, the GCR is the more 'conventional' document, restating principles that have long been enshrined in UNHCR's mission and practice; as such it perhaps is best interpreted not as an attempt to improve protection or address protection gaps, but to garner public and government support for refugees within the framework of existing agreements. Whether it will succeed in this more limited aim remains to be seen, and depends very much on the discursive power of mechanisms such as the Global Refugee Forum and Support Platforms.

By contrast, the GCM is a more ambitious document: it intervenes in a policy space where there are few existing instruments, and fewer still that are legally binding on states. In this context, its 23 objectives are ambitious in scope, yet limited by their failure to hold states fully to account on implementation, and indeed sometimes limited even in relation to existing instruments. Meanwhile, what both Compacts share is a geographical containment that speaks volumes to contemporary power dynamics. For the GCM, this reflects the historical trajectory of its genesis, from the UN's High Level Dialogue on Migration *and Development*, and the Global Forum on Migration *and Development*, both processes firmly focused on the Global South. For the GCR, it seems clear that the expected purpose of Support Platforms is to ensure that the Global South can deal with its refugee problems without exporting them to the Global North.

A final reflection, then, is on what should come next, both for the implementation of the Compacts, but also for scholarship. On this, all is not gloom and doom. The Compacts do call

for global solidarity; moreover, they call on a wider range of actors to engage with this solidarity – not just states and international organisations, but a range of national and local actors. This chimes with the observation of Foresti (2017) that while the framework and aspirations are global, actions need to be locally led and rooted in specific contexts, countries, regions and markets where particular development opportunities and challenges exist. Even if the Compacts represent a missed opportunity, ongoing debate over their implementation at a variety of level holds the potential for different perspectives to emerge, and in this context, the fact that they are not legally-binding could even be helpful, as it opens up space for debate and reinterpretation.

Academic research is a crucial future contributor to such debate and reinterpretation, and hopefully the GCMM workshop represents a first step in this regard. Key issues highlighted above that need future empirical research include how the Compacts will interact with national and local and sub-local existing structures. Equally, further work is urgently needed on what migrants and refugees understand as protection in the local setting. This may ultimately require a reconsideration of what protection means, with focus shifting from the international level to the local level. Further research on the realities of mixed migration and work that highlights the impact of restrictive understandings on peoples' lived experience also have renewed importance.

The stakes are high. For example, the retreat from democracy towards authoritarianism, in which migrants and refugees are securitised, blamed and demonised, is the preserve of neither the Global North or South – it is plainly visible in both, and on the rise. Perhaps this is the most important point to end on though: that the Compacts could be agreed at all in such inauspicious global political circumstances is testament to the fact that the door to a more open and collaborative future remains ajar.

Acknowledgments

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Ribeiro C. Marques, R. The Right to Access Consular Assistance and Protection and its Relevance to the Architecture of a Safe, Orderly and Regular Migration

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[1] These are the Global Compact for Safe, Orderly and Regular Migration (GCM) and the Global Compact on Refugees (GCR).

[2] By and large human rights activists, peace activists, political parties, governments, regional actors have been left out.

[3] Loughborough University and RLI.

[4] The Refuge Law Initiative (RLI) is the only academic centre in the UK to concentrate specifically on international refugee law. As a national focal point for leading and promoting research in this field, (RLI) works to integrate the shared interests of refugee law scholars and practitioners, stimulate collaboration between academics and non-academics, and achieve policy impact at the national and international level.

[5] For an explanation of the distinction between international protection and protection, see article by Garlick and Inder (2019) in this special edition.

[6] Even if mobility is not articulated in clear terms in the GCR.

[7] See General Assembly (1990).

[8] GCM, paras 13, 23(l), 27(a), 28(b). It also refers to 'migrants in a situation of vulnerability' (paras 21, 23(b), 23(k)) and 'migrants who face situations of vulnerability' (para 23).

[9] GCM, Objective 14.

[10] GCM, paras 18, 20.

[11] See Flegar and Iedema (2019) for a discussion on the use of the term vunerable in international agreements..

[12] For an example of this in relation to international human rights law and Internally Displaced Persons (IDPs) see Cantor (2018).

[13] GCR, para 5.

[14] As Betts (2009) highlights, previous attempts such as the International Conferences on Assistance to Refugees in Africa (ICARA) of 1981 and 1984, where deemed as failures, with little lasting legacy. In the specific case of ICARA, he suggests the ultimate failure of the initiative was down to restricted cooperation and limited financial contributions in relation to refugees in the Horn of Africa and Southern Africa by states in the Global North.

[15] Many states in the Global South are no longer convinced commitments at the international level will translate into actual support long-term. For example, Zambia has already expressed frustration at a lack of international support to their new Mantapala settlement, which was set up after Zambia commitment to the CRRF (UNHCR 2019).

[16] Such as initiatives in Ethiopia and Jordan. See Bardelli (2019).

[17] As it is set out in Objective 23 of the GCM (Oelgemöller and Maple 2018). The financial support for refugee hosting countries is planned to be mainly the loans that these countries borrow from the World Bank in order to support greater opportunities for refugees (Kivilcim 2018).

[18] GCR, para 70.

[19] GCM, para 32(d)

[20] See the RLI blog series for an analysis of the negotiation process of each Objective: https://rli.blogs.sas.ac.uk/themed-content/global-compact-for-migration/.

[21] See Costello (2018) and Hovil and Phillips (2018) for additional discussions on issues that have emerged due to the creation of two separate Compacts.

[22] Vanyoro (2017), adopting the work of Mary Douglas (1970).

[23] As suggested by Jeff Crisp, former head of UNHCR's Policy Development and Analysis Unit as quoted in Hovil and Phillips (2018).