

AUSTRALIA AND THE GLOBAL COMPACT ON MIGRATION: OPPORTUNITIES FOR A NEW AGENDA



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INTRODUCTION

This report is a summary of a public seminar on 'Australia and the Global Compact on Migration: Opportunities for a New Agenda' held on 12 November 2018 at the offices of Baker McKenzie, Sydney. The seminar was hosted by Western Sydney University's Humanitarian and Development Research Initiative (HADRI), Jesuit Refugee Service Australia (JRS), and the Asia Pacific Refugee Rights Network (APRRN). The event was facilitated by Dr Melissa Phillips, Adjunct Fellow at HADRI. Guest speakers at the seminar were:

- Ms Carolina Gottardo, Director JRS, Member of UN Women's Expert Group on Gender and the GCM and GCM Focal point for APRRN.
- Mr Par Liljert, Head of Mission International Organization for Migration (IOM) Australia and the Pacific.
- Professor Peter Shergold, Chancellor Western Sydney University and Coordinator General for Refugee Settlement in NSW.
- Ms Tamara Domicelj, Regional Refugee Protection Advocacy Lead, Act for Peace & Global Compact on Refugees (GCR) Focal point for APRRN.

This report sets out a background to the Global Compact for Safe, Orderly and Regular Migration (GCM);¹ it summarises the main points from each speaker and then highlights future opportunities for Australia and the wider region.²

Although the Global Compact on Refugees (GCR) led by UNHCR is being negotiated at the same time as the GCM, this report and the public seminar on which it was based focuses solely on the GCM.³



Panellists (l-r): Ms Carolina Gottardo, Professor Peter Shergold, Dr Melissa Phillips, Ms Tamara Domicelj and Mr Par Liljert

¹ The final draft of the full GCM text, including objectives with commentary, can be found here: https://refugeesmigrants.un.org/sites/default/files/180711_final_draft_0.pdf

² The Global Compact for Safe Orderly and Regularly Migration is variously referred to in discussions and media as the Global Compact for Migration, GCM, or along with the Global Compact for Refugees is known as the Global Compacts.

³ For more on the GCR see: <https://refugeesmigrants.un.org/refugees-compact>

RESPONDING TO MIGRATION

We are now witnessing the highest levels of human migration in history, with more than 258 million migrants internationally — that is, one in every thirty people living outside of their country of birth in 2017. The McKinsey Global Institute found that in 2015 the world's 247 million migrants contributed 9.4 percent of global GDP, or roughly US\$6.7 trillion worldwide — some \$3 trillion more than they would have produced in their countries of origin.⁴ Migration thus brings immense opportunities and benefits to migrants, host communities and communities of origin.⁵ This includes through the transfer of remittances, social and cultural ties maintained by transnational communities and diasporas.

At the same time, large scale flows of migrants moving through irregular channels from North Africa to Europe have captured the world's attention in recent years, in particular large numbers of people from Syria, Afghanistan and Iraq travelling to Europe via Turkey along what is known as the 'Eastern Mediterranean Route', as well as from many countries of Africa through Libya to Europe along the 'Central Mediterranean Route'. However, this movement is only a tiny slice of the migration picture globally with most people moving regularly as permanent and temporary migrants; while on the refugee side, UNHCR reports that the top eight countries hosting refugees and asylum seekers are all in Africa and Asia, rather than Europe.⁶

The category of 'migrant' includes both regular and irregular migrants, international students, refugees and asylum seekers, labour migrants, trafficked people, and those seeking to unite with family members. The number of people living outside their country of birth is only expected to grow in the coming years, due to population growth, rising inequality, demographic imbalances, climate change, trade and increasing connectivity on a global scale.⁷ It has become starkly evident in recent years that poorly regulated migration can pose serious protection risks to people on the move undertaking dangerous journeys, as well as overwhelming institutions and infrastructures in transit and hosting countries.⁸ Recent migratory movements have also been met with fierce anti-migration rhetoric in many countries, with some governments seeking to implement more punitive approaches to people moving irregularly such as immigration detention, border surveillance and funding actions in third countries to stop onward movement of migrants and refugees.⁹ This attention on migration has led to a global level commitment to establish principles for safe, orderly and regular migration that has resulted in the Global Compact.

⁴ <http://www.undp.org/content/undp/en/home/blog/2018/A-turning-point-on-migration.html>

⁵ <https://refugeesmigrants.un.org/migration-compact>

⁶ <https://www.unhcr.org/news/latest/2017/2/58b001ab4/poorer-countries-host-forcibly-displaced-report-shows.html>

⁷ <https://refugeesmigrants.un.org/migration-compact>

⁸ <https://refugeesmigrants.un.org/migration-compact>

⁹ For a wide ranging discussion on anti-migration sentiment in public, externalisation of the border, and criminalisation of solidarity, and the use of surveillance and detention, see: <https://openmigration.org/en/>

BACKGROUND TO THE GLOBAL COMPACT ON MIGRATION

The road to the Global Compact for Safe, Orderly and Regular Migration (GCM) has a long history which began with the International Conference on Population and Development held in Cairo in 1994. Since then, there have been a number of significant inter-governmental dialogues on the issue including the International Dialogue on Migration (2001), the International Agenda for Migration Management — Bern Initiative (2003), Geneva Migration Group/Global Migration Group (2003), Global Forum on Migration and Development (2007), and the UNGA High Level Dialogues on International Migration and Development (2007 and 2013). This journey has been accompanied by Regional Consultative Processes which have been ongoing since 1986.

More recently, in response to mass movements of people moving irregularly on a global scale, Heads of States came together with the UN General Assembly to discuss issues related to migration and refugees in the UN High Level Meeting on Refugees and Migrants held on 19 September 2016. The discussions in this meeting led to a commitment by States to develop a Global Compact on Refugees and a Global Compact on Migration. These two collective commitments were known as the *New York Declaration for Refugees and Migrants*.

Following the New York Declaration, an extensive consultation phase was undertaken throughout 2017 with a number of thematic sessions and regional consultations held, followed by preparatory stocktaking, and intergovernmental meetings in New York throughout early 2018. Importantly, consultation feeding into the GCM has included consultation with civil society.

The stocktaking meeting held in December 2017 in Mexico reaffirmed political commitment to the process, and an overall agreement that the GCM must place migration in a positive context, one in which the benefits of migration are clearly stated. An intergovernmental meeting held on 16 July 2018 saw the agreement on the final text.

The Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration will be held on 10-11 December 2018 in Marrakesh, Morocco. It is expected that governments come to Marrakesh with a series of commitments and pledges to this historical international agreement. Through the extensive consultation and development process, the GCM has been able to achieve widespread agreement on adoption. More than 180 countries are likely to adopt the GCM in December 2018; including all UN member states in the Asia Pacific region, with the exception of Australia.

Genesis of the GCM

19 September 2016	UN High Level Meeting on Refugees and Migrants, New York
April – November 2017	Consultations phase, including thematic meetings
November 2017 – February 2018	Preparatory stocktaking
February – July 2018	Intergovernmental negotiations, New York
10-11 December 2018	Adoption of the GCM at an intergovernmental conference, Marrakesh

THE GLOBAL COMPACT ON MIGRATION

The GCM is a pioneering instrument which has been inter-governmentally negotiated and aspires to enhance international cooperation on migration. Notably, it is the first ever global instrument to coordinate the governance of international migration. While the GCM is a non-binding agreement, it has significant normative potential and covers all people on the move. The GCM aims to be people-centred and human-rights based, and is in line with target 10.7 of the Sustainable Development Goals (SDGs). The GCM offers a strong rights based approach that strikes a balance between sovereignty and migrant wellbeing. According to the UN, the Compact:¹⁰

- Aims to mitigate the adverse drivers and structural factors that hinder people from building and maintaining sustainable livelihoods in their countries of origin;
- Intends to reduce the risks and vulnerabilities migrants face at different stages of migration by respecting, protecting and fulfilling their human rights and providing them with care and assistance;
- Seeks to address the legitimate concerns of states and communities, while recognizing that societies are undergoing demographic, economic, social and environmental changes at different scales that may have implications for and result from migration; and
- Strives to create conducive conditions that enable all migrants to enrich our societies through their human, economic and social capacities, and thus facilitate their contributions to sustainable development at the local, national, regional and global levels.

The GCM contains 23 objectives and many associated commitments, that address the local, national, regional and global levels in order to:¹¹

1. Collect and utilize accurate and disaggregated data as a basis for evidence-based policies.
2. Minimise the adverse drivers and structural factors that compel people to leave their country of origin.
3. Provide accurate and timely information at all stages of migration.
4. Ensure that all migrants have proof of legal identity and adequate documentation.
5. Enhance availability and flexibility of pathways for regular migration.
6. Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work.
7. Address and reduce vulnerabilities in migration.
8. Save lives and establish coordinated international efforts on missing migrants.
9. Strengthen the transnational response to smuggling of migrants.
10. Prevent, combat and eradicate trafficking in persons in the context of international migration.
11. Manage borders in an integrated, secure and coordinated manner.
12. Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral.
13. Use migration detention only as a measure of last resort and work towards alternatives.
14. Enhance consular protection, assistance and cooperation throughout the migration cycle.
15. Provide access to basic services for migrants.
16. Empower migrants and societies to realize full inclusion and social cohesion.
17. Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of 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.
20. Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants.
21. Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration.
22. Establish mechanisms for the portability of social security entitlements and earned benefits.
23. Strengthen international cooperation and global partnerships for safe, orderly and regular migration.

¹⁰ <https://refugeesmigrants.un.org/migration-compact>

¹¹ For commentary on each specific agenda see: <https://rli.blogs.sas.ac.uk/2018/09/17/gcm-commentary-editors-introduction/>

RESPONSES TO THE GCM

The GCM offers a baseline that can allow all interested parties – governments, international organisations and civil society actors – to positively impact on migrants' lives.¹² This will be achieved through the collectively negotiated and agreed shared goals, objectives and priorities under the GCM. There are a number of significant protection-related achievements embedded in the GCM. In addition the Compact has been praised for being gender responsive and focusing on women's leadership, rather than exclusively on gendered vulnerability. There is also a focus on safeguarding children's rights and upholding the best interest of the child as well as setting out a commitment to finding alternatives to detention. The GCM also seeks to establish pathways for regularisation of migrants in irregular situations. The GCM aims to provide protection to vulnerable migrants, such as those in transit and those displaced by climate induced factors. The GCM also promotes labour rights and decent work.

Some of the gaps and limitations in the GCM that have been identified by civil society actors include its lack of complementarity with the Global Compact on Refugees (GCR), which is being negotiated in parallel. The two independent compacts need to work together to address the overall issue of migration and displacement, particularly considering large movements of mixed migratory flows.¹³

The 'voluntary return' of migrants to their countries of origin is highlighted across the GCM and the GCR, but it is important to recognise that some people cannot be returned to places where they may be subject to persecution.

The GCM does not mention non-refoulement directly, despite including the meaning of the concept, which is a core principle of 1951 Convention Relating to the Status of Refugees. The GCM also fails to condemn the criminalization of migrants and those who seek to support them, and the barriers faced by undocumented migrants and those in irregular situations in accessing services. There is also no mention of sexual and reproductive health rights of migrants.

Despite these identified shortcomings, as a globally-agreed statement, the GCM ultimately seeks to place migration in a positive context and specifically seeks to enhance the availability and flexibility of pathways for regular migration, which acknowledges that freedom of movement is a fundamental human right. It is critical in this current moment of anti-migration sentiments worldwide, and targeted suspicion and hostility towards migrants, that the positive and beneficial nature of migration is emphasised in key global governance architecture such as the GCM.

As the date of the intergovernmental conference for adoption draws near, several more countries have announced that they will be withdrawing from the compact. Louise Arbour, the UN Special Representative for International Migration, has said that the stated intention of several countries (including Hungary, Poland, the Czech Republic and Austria) to pull out of the GCM has seriously affected the spirit of multilateralism.¹⁴ However, the vast majority of States remain poised to commit to the initiative, which is the result of almost two years of intense negotiations.



¹² At the time of the seminar the Governments of Austria, Hungary, Poland, Czech Republic, Croatia and the US have stated that they will not sign the Compact although they may adopt the GCM at a later stage.

¹³ <https://www.newsdeeply.com/refugees/community/2018/03/21/its-time-to-stop-compartmentalizing-refugees-and-migrants>

¹⁴ https://news.un.org/en/story/2018/11/1026791?utm_source=Refugees+Deeply&utm_campaign=e65ab93a2d-EMAIL_CAMPAIGN_2018_11_30_11_01&utm_medium=email&utm_term=0_8b056c90e2-e65ab93a2d-117609317

AUSTRALIA AND THE GCM

Australia has been active throughout the negotiation process of the GCM and sent a large delegation to participate. Australia was a vocal influencer and was able to achieve some of its objectives in the final text of the GCM. Australia has demonstrated positive engagement in this key global governance process. However, Australia remained ambivalent throughout the process as to whether or not it would adopt the GCM, fearing the Compact undermines state sovereignty and border control. Throughout the consultation process, Australia has sought to emphasise states' right to control borders, return migrants, and determine migrants' access to fundamental rights and services in the host country. Australia's position has contrasted to that of other member states who have argued for a rights-based approach.

On 21 November – nine days after the public seminar – Australia confirmed that it would not adopt the GCM. The government claimed that Australia is already achieving the policy goals of the GCM – that is, safe, orderly and regular migration – and is in fact is the 'most successful immigration nation on earth'.¹⁵ Civil society actors, Jesuit Refugee Services (JRS) Australia and the Asia Pacific Refugee Rights Network (APRRN), who have been actively involved in multi-stakeholder consultations around the GCM, have urged Australia to reconsider its decision not to adopt the Compact. They argue that rather than posing a threat to national sovereignty, the Compact upholds the rights of signatories to manage their borders. For example, Objective 11 highlights that states 'commit to manage our national borders in a coordinated manner, promoting bilateral and regional cooperation, ensuring security for states, communities and migrants, and facilitating safe and regular cross-border movements of people while preventing irregular migration. We further commit to implement border management policies that respect national sovereignty, the rule of law, obligations under international law, human rights of all migrants ...'.

As a nation benefitting from migration of various types – international students, workers, family members, and refugees – there is a strong ethical and policy imperative for the Australian government to ensure a safety net for migrants and asylum seekers in the country.¹⁶

Australian civil society delegates strongly argue that the Australian government should recognise the practical benefits that this historical framework can bring to millions of migrants in decades to come. The GCM offers a normative and practical agenda that can benefit not only people on the move, but also serve Australia's national interest in a number of ways. As a nation of migrants and one that benefits enormously from the in-flow of international students, temporary employment visa holders, and refugees, it is both an ethical and a policy imperative that current and future Australian governments consider an underlying safety net for anyone in need, including temporary migrants in situations of vulnerability and people seeking asylum.

By choosing not to sign the Compact, Australia is out of step with the vast majority of countries in the world, and all of the countries in the Asia Pacific region. The opportunity remains to sign the Compact at a later stage and thus Australia's current decision should not be seen as an irreversible withdrawal from the Compact itself, its aim and objectives.

¹⁵ <https://www.pm.gov.au/media/global-compact-migration>

¹⁶ For a full discussion see: <https://www.eurekastreet.com.au/article/migration-compact-will-benefit-australia>

NEXT STEPS: IMPLEMENTATION, FOLLOW UP AND REVIEW

Regarding implementation, follow up and review there is a need for national action and implementation plans which connects the local, national, regional and global.¹⁷ Implementation is to be state-led, with support from the United Nations Network on Migration, which was established to provide systematic and coordinated support to States in implementation and replaces the Global Migration Group. The International Organization for Migration (IOM) is to be the coordinator and secretariat for this group. There is also an important role for non-state stakeholders in implementation of the compact. It is expected that each signatory state will review its national legislation and develop a National Implementation Plan. These plans can include specific initiatives, for example Mexico is already working on a roadmap to end child detention and UN Women is developing a gender responsive toolkit for implementation. Plans may also include strategies for addressing migration issues at the level of cities,¹⁸ and linkages with the Sustainable Development Goals.¹⁹

The High Level Dialogue on International Migration and Development will be re-purposed as the International Migration Review Forum, to be held every four years from 2022 to monitor progress on the Compact. Each Review Forum will produce an inter-governmentally agreed Progress Declaration.

The GCM holds a great deal of potential to change the lives of people on the move, and the implementation will be critical to achieving these impacts. UN Deputy Secretary-General Amina Mohammed said on the occasion of the fifth round of negotiations on 7 June 2018, 'implementation will be the ultimate proof of the Compact's success'.²⁰ The implementation requires horizontal coordination between governments, civil society, and migrants; as well as vertical coordination at the location, national, regional and global levels.

In an era of unprecedented human movement, the only option is for countries to develop a range of policies that maximise the benefits of migration, and minimise the risks and challenges.²¹ Despite the limitations of the GCM, its importance cannot be underestimated. The GCM has the potential to bring real change to the way the world approaches migration.²² In a moment of widespread xenophobia and populism globally, reaching near global consensus on this sort of commitment is a significant achievement. Political leadership is being called upon to design forward-looking, strong policies, which address the economic and demographic concerns of the general public, while delivering the best possible results for migrants and host communities. Despite the Australian government's current misgivings towards the Compact, there is still the possibility of signing onto the Compact, even after the intergovernmental meeting in Marrakesh in December 2018. It is therefore critical to maintain momentum and pressure from civil society and the general public towards joining the majority of countries in signing on to a more coordinated and humane response to global migration.

¹⁷ <http://blogs.worldbank.org/peoplemove/proposed-systematic-review-framework-global-compact-migration>

¹⁸ See for example: <https://www.brookings.edu/research/implementing-the-global-compact-for-migration-ideas-for-engagement/>

¹⁹ <https://www.odi.org/publications/10913-migration-and-2030-agenda-sustainable-development>

²⁰ <https://rli.blogs.sas.ac.uk/2018/10/25/gcm-commentary-implementation-follow-up-and-review/>

²¹ https://www.newsdeeply.com/refugees/community/2018/03/30/what-political-leadership-on-migration-looks-like?utm_source=Refugees+Deeply&utm_campaign=e65ab93a2d-EMAIL_CAMPAIGN_2018_11_30_11_01&utm_medium=email&utm_term=0_8b056c90e2-e65ab93a2d-117609317

²² For commentary on the political significance of the compact, see: https://www.newsdeeply.com/refugees/community/2018/07/19/long-live-multilateralism-why-the-global-compact-for-migration-matters?utm_source=Refugees+Deeply&utm_campaign=e65ab93a2d-EMAIL_CAMPAIGN_2018_11_30_11_01&utm_medium=email&utm_term=0_8b056c90e2-e65ab93a2d-117609317



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