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ARTICLE

Using detention to talk about the elephant in the room: the Global Compact for Migration and the significance of its neglect of the UN Migrant Workers Convention

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Abstract
The paper discusses the (unsteady) evolution of multilateral processes on migration since the 1980s, with a focus on immigration detention as a growing response to migratory movements. It identifies distinct periods leading up to the Global Compact for Migration (GCM). The paper exposes double standards in the treatment of migration at the UN and beyond, connected with states' view of migration as a toxic topic. While the GCM put the issue of migration back on the global agenda, the paper argues against the claim that the GCM is the first-ever inter-governmentally negotiated agreement covering all dimensions of international migration. This description better fits the 1990 Migrant Workers Convention. Furthermore, the paper illustrates how the GCM poses a threat to human rights protection in the area of migration: given its focus on co-operation and a state-led non-binding approach, it may overshadow existing international norms and widely endorsed standards monitored by UN bodies.

Keywords: international human rights law; migration studies; immigration detention; multilateral processes; rights of migrants; monitoring

1 Introduction

According to the UN Secretariat, the Global Compact for Safe, Orderly and Regular Migration (GCM)[1] is 'the first, inter-governmentally negotiated agreement, prepared under the auspices of the United Nations, to cover all dimensions of international migration in a holistic and comprehensive manner' (UN, 2019a; OHCHR, 2018). This assertion was not challenged during the negotiations and the adoption of the GCM that elicited extensive media interest throughout 2017 and 2018. Rather, it was repeated by the International Organisation for Migration (IOM) (IOM, 2019), governments (Permanent Representatives of Mexico and Switzerland to the UN, 2018), civil society (Red Cross EU Office, 2018; Franciscans International, 2018) and media (McVeigh, 2018). Adopted by acclamation at the Marrakech inter-governmental conference and endorsed by the UN General Assembly (UNGA) with over 150 states voting in favour in December 2018, the Compact undeniably represents 'a milestone in the history of the global dialogue and international cooperation on migration' (GCM, para. 6). It is nevertheless not the first inter-governmentally negotiated agreement addressing migration. The UN/IOM statements disregard other global negotiations processes, in particular the drafting of the 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW).

The aim of this paper is to counter the mantra about the status of the GCM as the first global instrument covering international migration. It sheds light on the drafting context for the ICRMW, which is one of nine core UN human rights treaties and contains key elements undergirding the

[1]Global Compact for Safe, Orderly and Regular Migration, GA (11 January 2019) UN Doc A/RES/73/195 (2019).

GCM, notably co-operation on international migration, information exchange, orderly return, and collaboration to prevent clandestine movements (Grange, 2006, p. 21; Desmond, 2017b, p. 3). The Compact, however, generated a momentum for change and indeed brought migration discussions back onto the global agenda. The paper illustrates that migration, long seen as the 'last bastion of state sovereignty' (Dauvergne, 2004, p. 600) and a politically toxic subject for multilateral discussions, was left to smoulder at the UN for over a decade after many delegations at the International Conference on Population and Development (ICPD) in Cairo in 1994 called for an international conference on migration (UNFPA, 2014, p. 192). Mainstreaming migration in transparent and participatory multilateral processes under UN auspices has been a long haul from invisibility and omission to public negotiations and the adoption of concrete outcome documents at world conferences and other processes. As the paper demonstrates, obstacles to a transparent and integrated treatment of migration issues around the turn of the past century partly account for double standards in public policies and practices dealing with migrants, as opposed to other groups.

The GCM contains twenty-three objectives and related commitments for states and it triggered political debates and scholarly interest throughout 2017 and 2018. Yet, this intense attention may function as a double-edged sword. The GCM may overshadow existing human rights norms and standards for the protection of the rights of migrants, including the ICRMW. To substantiate this assertion, the paper looks at the issue of immigration detention, which is understood as the deprivation of liberty of non-citizens for reasons related to their immigration status (Grange and Majcher, 2017, p. 266). Detention of migrants, asylum seekers and even refugees is a fast-spreading practice around the world that calls for strong safeguards due to the vulnerability of migrants as non-citizens. The reason for taking detention as a case-study is twofold. First, while many issues covered in the GCM relate to non-mandatory co-operation commitments, some measures are already tightly regulated by international law (Spagnolo, 2019). Detention of migrants is one such measure. Second, Objective 13 of the GCM, which addresses immigration detention, appears to provide strong safeguards (Majcher, 2019a; Stefanelli, 2018) when compared to other objectives of the GCM dealing with irregular migration, for instance Objective 21 on return and reintegration (Majcher, 2018). In light of this, the risk of sidelining the binding human rights framework governing immigration detention is considerable.

The discussion unfolds as follows. Section 2 identifies distinct periods of multilateral processes and approaches to migration prior to the adoption of the GCM to demonstrate that the Compact is not the first inter-governmentally negotiated agreement dealing with migration in a holistic manner. To flesh out this assertion and shed light on threats posed by non-binding instruments to human rights norms, Section 3 discusses detention-related provisions of the GCM in comparison with relevant provisions of the ICRMW. As the way forward, Section 4 outlines monitoring arrangements. Finally, Section 5 presents some concluding thoughts.

2 Evolution of multilateral approaches: migration in and out of the limelight

2.1 Early visibility

The first substantive multilateral negotiation of an international instrument on the protection of migrants' human rights took place at the UN in New York throughout the 1980s and led to the adoption of the ICRMW by the UNGA on 18 December 1990. This became International Migrants' Day. The text was adopted without a vote, unlike the GCM, incidentally endorsed on *19* December 2018, as discussed later. Part VI of the ICRMW, entitled 'Promotion of Sound, Equitable, Humane and Lawful Conditions in Connection with International Migration', is not unlike the 'safe, orderly and regular' GCM motto. The ninety-three-article ICRMW also encompasses other GCM issues such as co-operation on international migration, information exchange, 'orderly return', consular protection, collaboration to prevent and eliminate irregular and clandestine movements, elimination of discrimination and safeguards in relation to detention.

2.1.1 ICRMW drafting context and process

Much as the GCM was prompted by the migration crisis in the Euro-Mediterranean region (Sookrajowa and Pécoud, 2019, p. 13), the process leading to the drafting of the ICRMW was partly triggered by an incident in the Franco-Italian Mont Blanc tunnel in 1972 when twenty-eight irregular migrants from Mali were found dead in a lorry (Battistella, 2009, p. 51). At the time, it became clear that restrictive immigration policies trigger irregular movements, trafficking and labour exploitation, and the UNGA expressed alarm at the discriminatory treatment of foreign workers, especially in Europe (Cholewinski, 1997, p. 138).

Whereas other core human rights treaties have mostly been generated by the Global North, the initiative for a convention to protect migrant workers was launched by the G-77. Although the protection of migrant workers is included in the International Labour Organisation (ILO) mandate and the ILO had already elaborated treaties to this effect, the UN was eventually chosen over its labour agency because of its broader human rights remit. Throughout the drafting decade, the main thrust for the drafts came from a group of Scandinavian and Mediterranean states known as MESCA. From the outset, MESCA provided the basis for negotiations on key issues and asked the ILO to play a leading advisory and legal role, bringing to the negotiation the clout of a standard-setting UN agency subject to direct oversight of the UNGA (Böhning, 1991, pp. 703–704; Lönnroth, 1991, pp. 727–728). Ultimately, the specificity and relevance of ILO expertise were recognised in Article 74(c) ICRMW, which foresees an advisory role for the ILO before the Committee on Migrant Workers (CMW), the monitoring mechanism for the ICRMW.

Over half of UN Member States were active in the UNGA Open-ended Working Group, tasked with drafting the convention, including the US (Lönnroth, 1991, p. 731), which would withdraw from the GCM process thirty years later (Wintour, 2017). Other states that pulled out of the GCM Summit in Morocco including Australia and Italy had also been active in the ICRMW drafting process. Delegations represented other countries in their region: the Economic Commission for Africa and the Organisation of African Unity circulated drafts to African Member States for input (UNGA, 1986, para. 258). The UN acted as secretariat for the entire drafting process. For the GCM, however, the IOM was charged with facilitating negotiations through the provision of 'technical and policy expertise' (NY Declaration, para. 12). Observers characterised this as unusual because negotiations under the auspices of the UN 'would ordinarily be facilitated by the UN Secretariat or one the UN's specialized agencies' (Cullen, 2019).

Similar to three other core human rights treaties on specific groups of persons (children, women and persons with disabilities), many ICRMW provisions come from other pivotal human rights instruments, in particular the two International Covenants on Economic Social and Cultural Rights (ICESCR) and on Civil and Political Rights (ICCPR). As with the other three person-specific instruments, adopted based on particular vulnerabilities (namely age, gender or condition), the rationale for adoption of the ICRMW was the protection needs of migrant workers owing to their presence in other countries as non-citizens. The ICRMW does not create new rights. However, Article 16 ICRMW is more substantive than related provisions in the ICCPR as it expands on the right to liberty and security of persons and safeguards against arbitrary detention (Nafziger and Bartel, 1991, p. 782), as illustrated below.

2.1.2 World summits

The Platform of Action of the ICPD held in Cairo in 1994 comprised a substantive chapter on international migration. Other world summits held throughout the 1990s on human rights (Vienna), social development (Copenhagen) and women (Beijing) also included recommendations for the protection of migrants' rights. In 2001, the World Conference against Racism (Durban) put a finishing touch to this round of high-level consultations and included two comprehensive sections on migrants and refugees. All outcome documents adopted at these world conferences addressed the issue of undocumented migrants (International Catholic Migration Commission, 18 December 2001). There was also focus on racism and xenophobia, root causes of migration, protection of human rights and

sanctions for trafficking (Cairo, Copenhagen and Durban) and co-operation around migration management and return (Copenhagen and Durban). Detention, however, rarely featured as its use as a response to migration had not reached the point that would trigger protection concerns among civil-society and human rights mechanisms in the early 2000s. One year before adoption of the ICRMW, the UNGA adopted the Convention on the Rights of the Child (CRC) and a world summit on children in New York in 1990 – described by the UN as the largest gathering of heads of states – produced a set of child-related human-development goals. A UN agency, UNICEF, thrust its full institutional weight behind the CRC while double standards resulted in the neglect of migrant workers, their families and migration for over a decade.

2.2 Invisibility

It took the UN six years to publish the text of the ICRMW adopted in 1990 (Grange and d'Auchamp, 2009, p. 76) in contrast to the rapid, wide dissemination of the CRC. The lack of publicity for the ICRMW has nurtured myths and ignorance among stakeholders, including diplomats and policy-makers, and 'contributed to misconceptions about the purpose of the instrument' (Cholewinski, 1997, p. 202). The call at the ICPD for a world conference on migration was ignored for over twenty years. Scores of recommendations from the high-level global consultations of the 1990s also appeared to fall off the radar screens of New York-based UN agencies, political organs and programmes. The Office of the High Commissioner for Human Rights (OHCHR) in Geneva (and to a certain extent UNESCO and the ILO) stood alone with civil society in advocating for a human rights-based approach to migration amidst what appeared to be passive resistance to issues of migration in other top UN agencies and political organs.

This organised silence was evidenced by flagship publications of the UN Development Programme (UNDP). The Human Development Report failed to feature the ICRMW among major international human rights instruments in its 2004 issue (UNDP, 2004, p. 240), one year after its entry into force. The convention appeared in a distorted manner in the 2009 Report in a table oddly entitled 'Selected conventions related to human rights and migration (by year of ratification)' that listed ratifications by Human Development Index (HDI) rank (UNDP, 2009, p. 163). This displayed the ICRMW at a disadvantage compared to other treaties and further contributed to the enduring perception that the ICRMW may be sidelined. We argue that this systematic editorial slant contravenes the overarching principle of non-discrimination that undergirds human rights norms and standards, and is in breach of the ethical approach expected of UN programmes and operations. Only in the 2016 Human Development Report was the ICRMW finally included among other core international human rights instruments, in a table on the 'Status of fundamental human rights treaties' (UNDP, 2016, p. 254). Omissions of reference to norms on the rights of migrants in flagship UN documents also appear to legitimise silence by other stakeholders. In a background publication for the GCM process, the IOM – freshly granted a 'related organisation' UN status – failed to list the ICRMW among 'main multilateral initiatives, processes, agreements and declarations devoted or relevant to migration' (IOM, 2017).

The UN maintains Historical Archives in its Audio Visual Library (AVL) described as 'a unique resource for the teaching, studying and researching significant legal instrument on international law' (AVL, 2020). The ICRMW is the only core human rights treaty with a blank 'forthcoming' page in the human rights section. The AVL is a recognised source of learning and training for students around the world. For instance, the JESSUP International Law Moot Court Competitions are advertised on the UN site (AVL, 2019). But how can law students participating in mooting competitions flag knowledge of a ghost treaty and seek to test its relevance?

2.3 Emerging visibility

Migration issues eventually gained visibility through Charter and treaty-based human rights mechanisms serviced by the OHCHR in Geneva, namely the Special Rapporteur on the Human Rights of

Migrants (SRHRM), the Working Group on Arbitrary Detention (WGAD) and the CMW. Meanwhile, over a dozen 'regional consultative processes' were created in various world regions outside of the UN, largely established and serviced by the IOM from 1993 to 2015 (IOM, 2017, pp. 3–5; Grange, 2004). In 2003, Kofi Annan and a Core Group of States established the Global Commission on International Migration (GCIM) tasked with providing a framework for a global response to the issue of international migration (GCIM, 2005, p. vii). The GCIM report signalled a slight shift from the omnipresent migration management discourse and called on states to 'establish coherent national migration policies that … are consistent with international treaty law, including human rights law' (GCIM, 2005, p. 67). This narrative shift also drew attention to the relationship between migration and development (McGregor, 2020).

The UNGA initiated the Global Forum on Migration and Development (GFMD) in 2007 – a state-led, informal and non-binding process of which the UN has no formal ownership. The term 'state-led', at times also used during the GCM drafting process, is interesting in and of itself, as the UN is made up of 193 states. States' decision to formally meet *outside* of the UN 'to analyse and discuss sensitive issues, create consensus, pose innovative solutions, and share policy and practices' (GFMD, 2019) indicates an aversion to discussions on migration in the multilateral institution where they have developed international human rights norms and standards and built verification mechanisms to monitor their own obligations. Contrary to refugees, for whom a single UN agency – the United Nations High Commissioner for Refugees (UNHCR) – covers protection, durable solutions, and social and economic issues, all derived from the convention related to the Status of Refugees, migration and migrants' rights issues have been scattered across different agencies. Broadly speaking, human rights are of concern to the OHCHR and the mechanisms it services, labour rights to the ILO, the development/migration nexus to the UNDP and IOM, mixed flows to the UNHCR and IOM, and trafficking and smuggling to the UN Office on Drugs and Crime in Vienna. As a result of this mosaic, agencies enter into competition over migration issues while states often prefer bilateral arrangements or opt for discussions outside of the UN.

Pieces of the UN and migration Rubik's Cube approach began to align again in 2006. Parallel to the launch of the GFMD process, the UN Secretary-General (UNSG) established the Global Migration Group (GMG) – a high-level inter-agency group – in response to a GCIM recommendation. The GMG pushed agencies to work jointly on migration and development. Bolstered by efforts from governments and civil-society organisations, the GMG was instrumental in getting migration into the SDGs of Agenda 2030 (Micinski and Weiss, 2018). The SDGs are a clear improvement over the Millennium Development Goals but the three pillars of UN action (human rights, peace and security, and development) do not receive equal treatment in Agenda 2030, which fails to include a clear goal on the implementation of human rights norms and standards and good governance.

Although irregular migration features prominently in international, regional and national debates on migration and triggers deportation measures and increased use of immigration detention, there are no references to irregular migration in Agenda 2030 other than succinct references to 'migratory status'. Hence, the scope and lawfulness of detention are not part of SDG-implementation monitoring. However, SDG Goal 10 to 'Reduce inequalities within and among countries' and Target 10.7 to 'Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies' appeared to announce a new phase for negotiations on migration: the GCM process. Indeed, as the UNSG noted in its report, *Making Migration Work for All*, the Compact will be key to achieving SDG Target 10.7 as part of a wider push to reduce inequality within and between states (UNSG, 2017, para. 20).

2.4 Global Compact for Safe, Orderly and Regular Migration

The adoption of the GCM, alongside the Global Compact on Refugees, was explicitly called for by the New York Declaration for Refugees and Migrants (NY Declaration, UNGA, 2016), issued at the September 2016 UN Summit for Refugees and Migrants. The summit was driven by the prevailing

perception that the world faced an unprecedented refugee crisis and that global action was needed. By framing it as an unparalleled crisis, the intention was to generate momentum for change. Even if 2016 did not witness an unprecedented refugee crisis, it was a year when displacement-related issues were high on the global agenda (Ferris, 2016, p. 5). Against the background of the Syrian refugee crisis and the human catastrophe in the Mediterranean, the UNGA decided on 22 December 2015 to convene a high-level plenary meeting on addressing large movements of refugees and migrants on 19 September 2016 (UNGA, 2015b).

The decision also requested the UNSG to prepare a comprehensive report setting out recommendations on ways to address large movement of refugees and migrants. The report, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants*, prepared by Karen AbuZayd (UN, 2016), called for strengthening the global governance of migration through the development of a global compact for safe, regular and orderly migration (UNSG, 2016, p. 1 and para. 87). This is the language found in SDG 10.7, as highlighted above. The report urged states to ensure the protection, dignity and human rights of refugees and migrants in line with their international obligations under the nine core international human rights treaties, including the ICRMW (UNSG, 2016, para. 100(a)). In preparing the report, AbuZayd undertook extensive consultation with states and other relevant stakeholders. It is impossible to track the very first initiative advocating for elaboration of the Compact, but it appears that Peter Sutherland (the UNSG's Special Representative on Migration until 2016), alongside the Bangladeshi Chair of the GFMD in 2016, was heavily involved (GFMD, 2016). The December 2015 UNGA decision gave the UNGA President responsibility for laying out organisational arrangements leading to a possible negotiated outcome for the high-level meeting through open, transparent and inclusive consultations. Ultimately, the 193 Member States of the UN unanimously adopted the NY Declaration (UN, 2016).

Most of the recommendations provided for in the UNSG's 2016 report, *In Safety and Dignity*, were included in the NY Declaration, albeit in a weaker formulation. Regarding detention, the UNSG called upon states to review detention policies to consider alternatives to the detention of refugees and migrants, and ensure that children, as a matter of principle, are never detained for purposes of immigration control (para. 101(ii)). In the NY Declaration, states committed to pursue alternatives to detention during administrative procedures. Recognising that detention for purposes of determining migration status is seldom, if ever, in the best interests of the child, states committed to use it only as a measure of last resort, in the least restrictive setting, for the shortest possible period of time, under conditions that respect human rights and in a manner that takes into account, as a primary consideration, the best interests of the child. Finally, they committed to work towards the ending of this practice (para. 33). This stops short of the UNSG's recommendation to prohibit the detention of children. In fact, this proved to be one of the most contentious issues of the negotiations, with some states seeking to prohibit this practice, while others were adamant to maintain their prerogatives. The statement that detention is 'seldom' in a child's best interest was put forward by the US, despite advocacy campaigns for its prohibition, including a letter addressed to President Obama by over thirty civil-society organisations (Sengupta, 2016; Americans for Immigrant Justice *et al*., 2016; Torpey and Reale, 2017).

The GCM was elaborated through a process of inter-governmental consultations and negotiations, serviced jointly by the office of the UNSG's Special Representative for International Migration, Louise Arbour and the IOM. Mexico and Switzerland acted as co-facilitators through the consultations, stocktaking and negotiations following the release of the zero draft of the Compact on 5 February 2018 (Permanent Representatives of Mexico and Switzerland to the United Nations, 2018). During the stocktaking phase, the UNSG presented the report entitled *Making Migration Work for All* as an input to the zero draft. The report contains several references to detention. According to the UNSG, detention is often applied without adequate guarantees and verification of the suitability of less coercive measures, and carried out under inadequate conditions. While detention for a brief period in the course of migration-control proceedings may be sometimes justified, it should only be undertaken when necessary and proportionate in light of individual circumstances. Hence, states

should focus on alternatives to detention in their national action plans. As regards children, the report stressed that even detention for short periods of time has grave and lasting effects on the child's mental health and development, and always contravenes the principle of the best interests of the child. Hence, this practice should end (UNSG, 2017, paras 43–47, 59).

While detention was not explicitly listed among issues that the GCM was supposed to address (Annex 2 of the NY Declaration, para. 3), it featured squarely in the zero draft, with a dedicated objective. Informed by the UNSG's report *Making Migration Work for All* and (likely) submissions by civil-society organisations, the zero draft appears to have been drafted by the office of the UNSG's Special Representative for International Migration. Unlike the NY Declaration (para. 48), the GCM does not call upon states to consider ratifying the ICRMW. It merely recalls the Universal Declaration of Human Rights (UDHR), ICCPR, ICESCR and the other core international human rights treaties, including the ICRMW (para. 2). The final text was adopted by acclamation on 10 December 2018 at the inter-governmental conference held in Marrakech. It was subsequently endorsed by the UNGA on 19 December 2018 (one day *after* International Migrants' Day), by 152 votes in favour, five against (Czech Republic, Hungary, Israel, Poland and the US) and twelve abstentions (Algeria, Australia, Austria, Bulgaria, Chile, Italy, Latvia, Libya, Liechtenstein, Romania, Singapore and Switzerland). Detention-related provisions of the GCM were cited by some states, for instance Australia, as a reason for rejecting the Compact (Karp, 2018). This two-year exercise was publicised by the UN, IOM and other stakeholders as the first inter-governmentally negotiated agreement on migration prepared under the auspices of the UN.

2.5 The ICRMW under the radar again

What explains world leaders' adoption of the GCM when there already existed an instrument addressing migrants' rights and migration governance (Desmond, 2017b, p. 3)? How did the successive landmark documents during the process of adoption of the GCM relate to the ICRMW? As highlighted above, these documents at best refer to the ICRMW among core human rights treaties (GCM and UNSG, 2016, para. 88) and call for its ratification (NY Declaration, para. 48). In no instance, however, do documents leading to the GCM inquire whether the existing framework under the ICRMW can be useful for tackling the perceived unprecedented challenges of 'large movements' of migrants and refugees. The UNSG report *Making Migration Work for All* does not mention the ICRMW at all. In addition, it notes that, in contrast to that for refugees, there is no centralised capacity in the UN to deal with migration and the UN's approach is fragmented. The report refers in that regard to the GMG, ignoring the existence of the CMW in operation since 2004 (UNSG, 2017, paras 70–71). The successive documents, including the GCM, perceive the beneficiaries of the ICRMW as a different category from those in 'large movements'. For instance, the UNSG's 2016 report, *In Safety and Dignity*, notes that the basis for the GCM is that all migrants are entitled to the respect, protection and full enjoyment of their human rights under the core international human rights treaties, regardless of their migration status. In addition to the basic human rights instruments, several international legal instruments grant specific protections to migrant workers, such as the ICRMW and relevant ILO conventions (UNSG, 2016, para. 88). While ignoring or only citing the ICRMW, the GCM and preceding documents are rich in references to multiple non-binding documents and processes, such as the GFMD and GMG, discussed in Section 2.3. The Compact is thus a continuation of these processes that run in parallel to the ICRMW. Given the publicity it received, the GCM risks overshadowing the existing human rights framework much more than its predecessors did.

We argue that the organised shortage of information on the ICRMW, as discussed in Section 2.2, has contributed to the 'collective amnesia' that obfuscates the fact that the ICRMW is the outcome of the first-ever multilateral negotiation on migration. Few people are familiar with the convention (Pécoud, 2017, p. 30; Sookrajowa and Pécoud, 2019, p. 9). Scholars have also pointed out that the very organisation that created it – the UN – failed to substantively support it when launching the GCM process (Sookrajowa and Pécoud, 2019, p. 13). IOM was equally aware of the existence of

the ICRMW: fifty of its (then) 166 Member States were bound by the convention at the adoption of the NY Declaration (Guild *et al.*, 2017, p. 6). This exercise in amnesia cum self-censorship extends to one of the two GCM co-chairs, Mexico, who had chaired the UN Open-ended Working Group drafting the ICRMW for a decade. Likewise, the fifty-five ICRMW states parties, also involved in the GCM process, bear a responsibility in this collective burial. It is quite inconceivable that world leaders would adopt a 'Compact for Children' ignoring the existence of the CRC.

States' treatment of the ICRMW is out of step with the provision in Article 1 UDHR that 'All human beings are born free and equal in dignity and rights' and raises the spectre of double standards when it comes to granting rights to migrants. Desmond observes the 'reluctance amongst states to confer legally enforceable rights on migrants through binding multilateral agreements in the realm of migration' and denounces the hypocrisy of EU institutions in relation to ratification of the ICRMW (Desmond, 2017a, p. 296). What distinguishes migrants from the three other categories of persons who are also the focus of dedicated human rights treaties, namely children, women and disabled persons, is their 'alien' nature. The records of the UN Human Rights Index (UHRI) Database indicate that UN human rights mechanisms have issued 483 recommendations addressing issues of racism and xenophobia in relation to migrants since 2007 (UHRI, 2020). This is a high number: the hostility of some states, UN institutions and inter-governmental agencies towards the ICRMW might be usefully analysed through the prism of racism and xenophobia. In contrast to the GCM's near silence on the ICRMW, after eighteen months of extensive consultations with UN Member States, the UNHCR asserted that the Global Compact on Refugees was 'grounded in the international refugee protection regime, centred on the cardinal principle of non-refoulement, and at the core of which is the 1951 Convention and its 1967 Protocol' (UNHCR, 2018, para. 5).

Pivotal to the protection of the rights of migrants is protection against arbitrary detention. The discussion turns now to standards on detention to inquire to what extent the GCM includes existing norms and standards, in particular as they are laid down in the ICRMW.

3 The right to liberty under the ICRMW and GCM

The ICRMW's immigration-detention provisions build upon and expand the provisions of the ICCPR. Articles 16(1) and 16(4) reflect Article 9(1) of the ICCPR and provide that migrant workers and their families have the right to liberty and security of person, and should not be subjected to arbitrary arrest or detention. For its part, the GCM addresses immigration detention in Objective 13, in which states commit to use immigration detention only as a measure of last resort and to work towards alternatives to detention. To fulfil the commitments enshrined in Objective 13, states will draw from eight sets of actions enumerated in paragraph 29(a)–(h).

How do detention provisions under these two documents compare to each other?[2] Although there is no universally agreed definition of arbitrary detention, human rights bodies interpret the notion of arbitrariness with respect to immigration detention in a complementary manner. For the UN Human Rights Committee (HRC), immigration detention may be arbitrary under the ICCPR if it is not necessary in all the circumstances of the case and proportionate to the ends sought.[3] According to the UN WGAD, immigration detention may be arbitrary when non-citizens are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (WGAD, 2011, Annex, para. 8). The interpretation of the European Court of Human Rights (ECtHR), although binding on Council of Europe states only, is worth highlighting because it is more detailed. Accordingly, in order not to amount to arbitrary detention, immigration detention should be carried out in good faith and be closely connected to the ground of detention relied on

[2]For a detailed analysis of the detention provisions of the ICRMW, see Grange (2017), and of the GCM, see Majcher (2019a).

[3]HRC, *Danyal Shafiq v. Australia* (2006) 1324/2004, para. 7(2).

by the government; the place and conditions of the detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued.[4]

These lines of interpretation of arbitrary immigration detention imply three sets of requirements, which jointly constitute a framework regulating immigration detention, namely justification of detention, procedural safeguards and conditions of detention.[5] Based on this framework, the ensuing discussion compares provisions of Article 16 ICRMW and Objective 13 of the GCM.

3.1 Justification of detention

First and foremost, in order not to amount to arbitrary deprivation of liberty, immigration detention must be justified in law. This requires detention to be lawful, necessary and proportionate, and of the shortest possible length.

Regarding lawfulness, Article 16(4) ICRMW mirrors the language of Article 9(1) ICCPR and provides that migrant workers and members of their families should not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law. Accordingly, lawful detention must, at the very least, be based on grounds and imposed through a procedure that are set forth in domestic law. For its part, Objective 13 of the GCM provides that states will ensure that any immigration detention is based on law. Among the implementing actions, states must ensure that decisions to detain are based on law and have a legitimate purpose (GCM, para. 29(c)).

Under the ICCPR, in order to be justified in law, besides being lawful, immigration detention should also be necessary and proportionate. In its decisions concerning immigration detention, the HRC has established that the notion of 'arbitrariness' under Article 9(1) ICCPR is broader than the requirement of lawfulness. Immigration detention could be considered arbitrary if it is not necessary in all the circumstances of the case and proportionate to the ends sought, for example to prevent absconding.[6] The HRC found a violation of Article 9(1) ICCPR, for instance, where the state party had not demonstrated that, in light of the complainant's particular circumstances, there were no less invasive means of achieving the same ends, namely compliance with the state's immigration policies by, for example, the imposition of reporting obligations.[7] Given that Article 16(4) ICRMW uses the same language as Article 9(1) ICCPR, the interpretation of the notion of arbitrariness by the HRC should be valid for the ICRMW as well. Indeed, in its General Comment No. 2, the CMW underscored that the principle of proportionality requires that states detain migrant workers only as a last resort and favour less coercive measures, especially non-custodial measures, whenever such measures suffice to achieve the objective pursued. In all such cases, the least intrusive and restrictive measure possible in each individual case should be applied.[8]

GCM Objective 13 reaffirms the principle of proportionality and contains detailed provisions on alternatives to detention. It provides that states will ensure that detention complies with the requirements of necessity, proportionality and individual assessment. The implementing actions further spell out these requirements (GCM, para. 29(c), (f)) and add that immigration detention should be a measure of last resort only, based on an individual assessment (GCM, para. 29(a), (c)). They also provide that states will prioritise non-custodial alternatives to detention that are in line with international law. States should promote, implement and expand alternatives to detention, favouring non-custodial measures and community-based care arrangements, especially in the case of families and children (GCM, para. 29(a)). Further actions will facilitate the implementation of the alternatives to detention (GCM, para. 29(b)). Accordingly, states will consolidate a comprehensive repository to disseminate best

[4]ECtHR, *Mikolenko v. Estonia* (2009) 10664/05, para. 60.

[5]For detailed discussion on human rights obligations with respect to immigration detention, see Cornelisse (2010) and Chapters 8 and 10 in Majcher (2019a).

[6]HRC, *A v. Australia* (1997) 560/1993, para. 9(2); HRC, *Danyal Shafiq v. Australia* (2006) 1324/2004, para. 7(2).

[7]HRC, *C. v. Australia* (2002) 900/1999, para. 8(2); HRC, *Baban v. Australia* (2003) 1014/2001, para. 7(2).

[8]CMW, *General Comment No.2 on the Rights of Migrant Workers in an Irregular Situation and Members of Their Families* (2013) CMW/CG/2, para. 26.

practices of human rights-based alternatives to immigration detention, including by facilitating regular exchanges and the development of initiatives based on successful practices among states and between states and relevant stakeholders.

As regards children, initially, the approach in international human rights law relied on the last-resort principle. Under Article 37(b) CRC, children could be detained only exceptionally, as a last resort, and states had to strive to place them in alternatives to detention. The stance evolved, with increasing emphasis being placed on the principle of the best interests of the child under Article 3(1) CRC. This triggered the gradual emergence of a norm against the detention of immigrant children.[9] The 2017 Joint General Comment of the CMW and CRC Committee has been a milestone in the crystallisation of that principle. According to the Committees, the last-resort principle that applies to juvenile criminal justice is not applicable to immigration proceedings because it conflicts with the best interests of the child. Immigration detention is never in the child's best interests and hence should be forbidden. By implication, since the immigration detention of children is not lawful, alternatives to detention are not applicable. Unaccompanied children are entitled to special protection and assistance and, like citizen children deprived of their family environment, should be placed in alternative care and accommodation. Families with children should be afforded non-custodial, community-based solutions.[10] Other human rights mechanisms including the UN Special Rapporteur on Torture (2015, para. 80), the WGAD (2018, para. 40), as well as the UNHCR (2017) have also distanced themselves from the last-resort principle and call for the prohibition of the immigration detention of children.

The GCM does not fully reflect the current approach of the international community towards the prohibition of child immigration detention (Muntarbhorn, 2019). It emphasises alternatives to detention and advocates ending child detention in weak terms. More specifically, it commits states to ensure the availability and accessibility of a viable range of alternatives to detention in non-custodial contexts, favouring community-based care arrangements that guarantee access to education and health care, and to respect the right to family life and family unity and to work to end child immigration detention (GCM, para. 29(h)). This paragraph was watered down during the negotiations. The zero draft called for ending the practice of child detention and instead using alternatives to detention (which in itself is contradictory, as argued above).

Finally, the requirement that immigration detention be proportionate and necessary in a given case entails that it is maintained for the shortest possible duration. This is explicitly required by the WGAD (2018, paras 14, 25) and SRHRM (2012, para. 68). Although not explicitly provided in the ICRMW, the CMW held that there should be a maximum period of detention established by law, upon expiry of which the person should be automatically released and overall detention should be imposed for the shortest time possible.[11] Objective 13 reflects this principle as states commit to ensure that immigration detention is for the shortest possible period of time, in order to reduce its negative and potentially lasting effects on migrants (GCM, para. 29(f)).

3.2 Review of detention

Procedural safeguards constitute an integral component of the right to liberty. Unlike other rights enshrined in international conventions, the right to liberty contains an in-built, specific remedy of habeas corpus.

[9]For detailed discussion on the gradual emergence of the rule on non-detention, see Grange and Majcher (2017) and Chapter 8 in Majcher (2019b).

[10]CMW and CRC, *Joint General Comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 of the Committee on the Rights of the Child on State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return* (2017) CMW/C/GC/4-CRC/C/GC/23, paras 10–13.

[11]CMW, *General Comment No.2 on the Rights of Migrant Workers in an Irregular Situation and Members of Their Families* (2013) CMW/CG/2, para. 27.

Information on detention is both a precondition for seeking a review of one's detention and a self-standing right. Under Article 9(2) ICCPR, anyone who is arrested should be informed, at the time of arrest, of the reasons for arrest and of any charges against him. The ICRMW builds upon this provision. Pursuant to Article 16(5) ICRMW, this information should be provided, as far as possible, in a language that the person understands. This requirement is also enshrined in the GCM, which commits states to ensure that all immigration detainees are informed about the reasons for their detention in a language that they understand (GCM, para. 29(e)).

The ICRMW's provisions for habeas corpus reflect Article 9(4) ICCPR. Under Article 16(8) ICRMW, migrants should be entitled to take proceedings before a court for that court to decide without delay on the lawfulness of detention and order release if the detention is unlawful. For the remedy to be effective, the court should be able to offer adequate guarantees. Under Article 9(4) ICCPR, states should ensure that the scrutiny of immigration detention is not limited to an assessment of mere conformity of detention with domestic law governing the detention. Rather, the review should be 'real and not purely formal' and evaluate whether detention complies with the overall requirements under the ICCPR and, in particular, those under Article 9(1) ICCPR. On this basis, the HRC found that the review of immigration detention by Australian courts fell short of the country's obligations under Article 9(4) ICCPR. In fact, the scrutiny consisted of an assessment of whether the detainee lacked the entry permit to Australia, which warranted detention under the domestic immigration legislation.[12] Given similar language used in Article 16(8) ICRMW and Article 9(4) ICCPR, the interpretation of the HRC should hold true for the ICRMW framework. The GCM is less specific, as it provides that detainees should have access to justice and the right to regular review of detention (GCM, para. 29 (d)).

Compared to Article 9(4) ICCPR, Article 16(8) ICRMW includes a crucial guarantee for non-citizens, namely linguistic assistance. It provides that, when migrants attend review proceedings, they should have the assistance, if necessary without cost to them, of an interpreter if they cannot understand or speak the language used. This principle is upheld by international human rights mechanisms and soft law. According to the UN Body of Principles (UNGA, 1988, para. 14) and SRHRM (2012, para. 72(a)), immigration detainees who do not adequately understand the language used by the authorities are entitled to have the free assistance, if necessary, of an interpreter to participate in legal proceedings. The GCM is silent about linguistic assistance.

The ICRMW and ICCPR do not explicitly provide for legal aid in the context of administrative detention proceedings but the issue has been addressed by international human rights bodies. According to the WGAD (2018, para. 35) and the CMW,[13] detained migrants must have access to legal representation and advice to challenge the detention decision. If necessary, access to free and effective legal aid should be ensured. On this point, the GCM provides for stronger safeguards. Immigration detainees should have access to legal orientation and assistance and information. In addition, detainees are to have access to free or affordable legal advice and the assistance of a qualified and independent lawyer (GCM, para. 29(f), (d)).

Finally, Article 16(9) ICRMW, reflecting Article 9(5) ICCPR, provides that non-citizens who have been victims of unlawful arrest or detention should have an enforceable right to compensation. This is absent from the GCM.

3.3 Conditions of detention

The third set of human rights requirements applicable to immigration detention relates to conditions of detention. Immigration detainees should have access to protections afforded to all people deprived of their liberty and, in addition, to specific safeguards reflecting their status as administrative detainees.

[12]HRC, *A. v. Australia* (1997) 560/1993, para. 9(5); HRC, *Baban v. Australia* (2003) 1014/2001, para. 7(2).

[13]CMW, *General Comment No.2 on the Rights of Migrant Workers in an Irregular Situation and Members of Their Families* (2013) CMW/CG/2, para. 27.

Under Article 10(1) ICCPR, states should treat all people deprived of their liberty with respect for the inherent dignity of the human person. Article 17(1) ICRMW mirrors this provision and adds the element of 'cultural identity'. Since the wording of the ICRMW reflects the language of the ICCPR, the Standard Minimum Rules for the Treatment of Prisoners (SMR), which detail the ICCPR provisions, should be applicable in the framework of the ICRMW. By virtue of the SMR, every detainee should be provided with a separate bed and separate, sufficient and clean bedding. Sleeping accommodation should comply with all requirements of health, with a focus on minimum floor space, lighting, heating and ventilation. There should be available adequate sanitary facilities. Furthermore, every detainee should be provided with food of nutritional value adequate for health. Drinking water should be available at all times. Finally, detainees should have at least one hour of suitable outdoor exercise on a daily basis and access to adequate health care (UNGA, 2015c, Rules 13–16, 21–26, 31). The GCM also addresses these conditions, requiring that states guarantee detention safeguards that protect physical and mental integrity and ensure that, as a minimum, detainees have access to food, basic health care and adequate accommodation (GCM, para. 29(f)). The ICRMW contains a critical safeguard for immigration detainees. Under Article 17(3), any immigration detainee should be held, in so far as practicable, separately from convicted persons or persons detained pending trial. This separation requirement has been endorsed by the WGAD (2018, para. 44) and SRHRM (2002, para. 75(i), (n)). The GCM does not demand separation of immigration detainees from people detained under penal law, although it was provided in the zero draft.

The GCM delves into the management and monitoring of detention facilities. States must ensure that all governmental authorities and private entities charged with administering immigration detention do so in a way that is consistent with human rights, are trained in non-discrimination and the prevention of arbitrary detention in the context of migration, and are held accountable for violations of human rights (GCM, para. 29(g)). Indeed, under Article 7 ICCPR, states should appropriately train and instruct all the custodial personnel. States have also the procedural obligation to carry out effective investigation, prosecute wrongdoers and compensate victims or their relatives.[14] The GCM demands that states use existing relevant human rights mechanisms to improve the independent monitoring of immigration detention (GCM, para. 29(a)). Independent monitoring mechanisms constitute an essential safeguard against arbitrary detention. As detailed in the SMR, monitors should have the authority to access all information on the numbers of detainees and places of detention, and information relevant to the treatment of detainees. They should be allowed to make unannounced visits at their own initiative and conduct confidential interviews with detainees and personnel (UNGA, 2015c, Rule 84(1)).

All in all, compared to the ICRMW and other relevant norms and standards, GCM Objective 13 generally provides solid safeguards against arbitrary detention. It is thus hard to understand why the GCM does not clearly refer to these binding norms. This is a missed opportunity to remind states that the protection of immigration detainees is not optional.

4 The way forward: implementation and monitoring

The diverging drafting perspectives analysed above are reflected in the type of measures chosen for implementation and monitoring. Monitoring arrangements for the GCM reflect states' preference for state-led non-binding processes over independent monitoring in the area of migration. As regards immigration detention specifically, the implementation of Objective 13 carries both risks to and opportunities for upholding migrants' right to liberty. This section reviews mechanisms for oversight of implementation of the ICRMW and GCM, with a special focus on detention.

Like all other core human rights treaties, the ICRMW established an independent expert body to monitor its implementation, notably the CMW, composed of fourteen experts and serviced by the

[14]HRC, *General Comment No. 20: Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment* (1992) A/47/40 (SUPP), paras 10, 14.

secretariat of the OHCHR. Like most other treaty bodies, the CMW has two procedures at its disposal to monitor the implementation of the convention and interpret its provisions. First, regular monitoring is carried out through a reporting procedure. States must submit reports on their implementation of the convention every five years. These are assessed by the Committee, including via 'constructive dialogue' with state delegations. Each monitoring cycle ends with the adoption of recommendations in the form of 'Concluding Observations'. The UN human rights treaty-monitoring bodies have issued 462 recommendations to states about immigration detention since 2007, out of which 26 per cent were adopted by the Committee against Torture, 16 per cent by the HRC and 21 per cent by the CMW (UHRI, 2020; Grange, 2017). Second, all treaty-monitoring bodies may issue 'General Comments', which provide authoritative interpretation of specific provisions of the relevant treaties. Currently, the CMW is drafting a general comment on Migrants' Right to Liberty and Freedom from Arbitrary Detention. One of the underlying goals of this general comment will be to assist states in implementing relevant commitments contained in the GCM (CMW, 2018).

In contrast to the situation concerning the ICRMW, implementation and monitoring of the GCM are premised upon state-led approaches and voluntariness. Accordingly, states commit to fulfil the Objectives of the Compact through bilateral, regional and multilateral co-operation while respecting national policies and priorities (GCM, para. 41). To support states in GCM implementation, the UNSG has established the UN Migration Network, which replaced the GMG. The Network provides capacity-building to states and carries out follow-up and review of the GCM. The Network consists of thirty-eight members of the UN system for whom migration is relevant, eight of which form the Executive Committee (UN, 2019b). Given the Network's long list of objectives and large membership, it remains to be seen how effective it will be in practice. The IOM serves as co-ordinator and secretariat of the Network. Traditionally dependent on states' funding and implementing states' policies, the IOM has never been critical towards states and has been involved in questionable detention practices in Australia (Pécoud and Grange, 2018).[15] The IOM benefited considerably from the adoption of the GCM, as its role and influence (and hence funding) were strengthened. However, as noted by Goodwin-Gill, although 'banners and leaflets may suggest otherwise', the IOM is not a UN agency, and 'neither has it "entered" or "joined" the UN. It remains an intergovernmental organization, still outside the system, but in a "closer relationship" since the General Assembly's adoption of resolution 70/296 on 25 July 2016' (Goodwin-Gill, 2019). Hence, the risk is that funding and other support will be given to states without ensuring that they comply with international human rights law.

The Network has established nine working groups, of which six are thematic, addressing specific GCM objectives. Entitled 'Alternatives to detention are promoted and utilised', Working Group (WG) 2 is dedicated to Objective 13 and has several positive features. WG 2 has three co-leads, namely the UNHCR, UNICEF and the civil-society organisation International Detention Coalition. As of March 2020, the WG had ten members (UN bodies, civil society and IOM) and two observers. The key priority areas of work for 2020[16] were to support states' efforts to end the practice of child immigration detention by increasing the availability and accessibility of appropriate care arrangements for unaccompanied children and appropriate placement arrangements for children in families, and to prevent and reduce instances of arbitrary detention in the immigration context and promote human rights-based alternatives to detention. The WG aims to engage a set of key countries in peer learning and exchange exercises. States will have access to in-kind and financial support, and may request additional funding through the Multi-Partner Trust Fund (MPTF). It begs the question of why the CMW is not involved in the work of the WG as one of the co-leads or at least as an ordinary member. Given the similarities between Objective 13 and Article 16 ICRMW, these bodies could have complementary roles. The absence of the CMW from WG 2 contrasts with its role in monitoring the SDGs.

[15]It is striking that the IOM's 2018 Global Migration Indicators, which reports seventeen key trends in global migration, does not mention detention (or Objective 13) either in a separate dedicated section or in relation to return migration; see IOM (2018). Will there be a return to invisibility?

[16]This has changed due to the outbreak of the Covid-19 pandemic.

The monitoring of GCM implementation confirms the non-mandatory character of this instrument. The review will be based on a 'state-led approach' (GCM, para. 48), through the International Migration Review Forum (IMRF), which replaced High-level Dialogue on International Migration and Development. The IMRF is an 'intergovernmental global platform' open to states to discuss and share progress in the implementation of the GCM. The IMRF will take place every four years, starting in 2022, and will be convened under the auspices of the UNGA. The UN Network will play a significant role in the review. Upon the request of states, the Network can assist in the preparation and organisation of regional reviews of GCM implementation. It will also collect inputs received from local, national and global levels to make them available on a dedicated website of the global knowledge platform (UNGA, 2019). The Universal Periodic Review (UPR) procedure was not tasked with assessing implementation of the GCM. While it is also a state-driven process, the UPR is carried out under the auspices of the UN Human Rights Council and is based on the human rights framework.[17] There is no role foreseen for the CMW, whose periodic monitoring of states' implementation of the ICRMW would be a valuable input to the review process. CMW sessions taking place in Geneva might eventually be overshadowed by New York-based fora. There is a clear risk of duplication of work, diminution of the role of the CMW and adoption of inconsistent interpretations. ICRMW states parties might feel they can avoid their obligations under the convention through participation in the highly convoluted and loose GCM review mechanism.

5 Conclusion

This paper argues that the characterisation of the GCM as the first-ever inter-governmentally negotiated agreement on migration is a fabrication. We demonstrate that the ICRMW deserves this label. Migration has at times been considered a toxic topic by states unwilling to subject themselves to supranational norms in that field. This, in combination with racism surrounding the question of migration, can explain the fate of the ICRMW compared to other persons-focused international human rights treaties, such as the CRC, CEDAW and Convention on the Rights of Persons with Disabilities (CRPD). We unearth evidence that the organised shortage of information on the ICRMW for over a decade after its adoption led to a 'collective amnesia' that culminated in the adoption of a twenty-three-objective GCM with just a single footnoted reference to the ninety-three-article ICRMW that covers many of the issues included in the GCM. Given the scattering of migration issues over scores of processes and multiple agencies in the years preceding adoption of the Compact, the GCM does have an impact on the issue of the treatment – if not the rights – of migrants. Yet, in contrast to the ICRMW, it is a non-binding instrument, favouring interstate collaboration. Arguably, these are the features that have made states and some UN circles so favourably disposed to the GCM.

The paper looks closely at the question of immigration detention as a fast-spreading response to migratory movements in all regions. Interestingly, the GCM provides strong detention guarantees when compared to other matters concerning migrants in an irregular situation. Objective 13 reaffirms and lists a number of detention-related issues included in existing norms and standards. Hence, Objective 13 and Article 16 ICRMW are generally aligned. However, in view of the separate frameworks under these two instruments, the GCM risks overshadowing the ICRMW, and even other widely ratified conventions applicable to immigration detention. The GCM threatens to erode human rights protection given its co-operative approach and non-binding character and the huge resources devoted to it that enhance its visibility. This risk is exacerbated when it comes to implementation. The CMW is absent from the UN Network, most egregiously its WG 2 on alternatives to detention. Neither are other human rights mechanisms, such as the UPR, included in the IMRF, whereas their role could be critical.

[17]A recent scholarly initiative developed indicators based on which the implementation of the objectives of the GCM could be measured, in particular in the framework of the UPR; see Guild and Basaran (2019).

Following a systematic assessment of detention-related measures in both documents, this paper argues that the GCM and ICRMW are complementary and synergies should be used to advance the protection of immigration detainees. Objective 13 generally integrates the relevant international human rights framework governing immigration detention. Hence, the interpretation of Article 16 ICRMW could guide the understanding of the provisions of Objective 13. In fact, states commit in the GCM to implementing the Compact in a manner consistent with their obligations under international law (GCM, para. 41) and to ensuring effective respect for the human rights of all migrants (GCM, para. 15(f)). It would thus make sense for the CMW to be officially integrated into the work of the UN Migration Network WG 2. CMW recommendations to states should be used in dialogues with states and 'General Comments' could inform the WG on how specific detention provisions should be interpreted and implemented. Likewise, Objective 13 may also be useful for the SRHRM and WGAD to help to structure country visits and dialogue with states' authorities. Finally, the considerable interest of academia in the GCM may further advance the outreach of the Compact.

Conflicts of Interest. None. The views expressed in this paper are those of the authors and do not necessarily reflect the position of the Global Detention Project or the European Council on Refugees and Exiles (ECRE).

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