**NOTE on the Compact of Marrakech**

by

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1. The Global Compact for Safe, Orderly and Regular Migration, adopted in Marrakech on 11 December 2018, is not a treaty and thus not a legally binding text. As stated explicitly in the Global Compact, it presents (point 7) or it is (point 15, b) “a non-legally binding cooperative framework”. Consequently, that text was never destined to be signed and ratified, but simply to be adopted, either by a vote or, as happened in Marrakech, by consensus. It has been adopted at the Intergovernmental Conference in Marrakech “without a vote” by the 164 States present.
2. Even if one does not like the Compact as a whole or some or many of its provisions, the best approach was not to remain absent in Marrakech. This is certainly when this could not be part of a concerted attitude, as it could not prevent its adoption. Migration is a subject that deserves international dialogue and it is in the best interest of the Member States of the European Union to let their views on that issue better known to other States.
3. As already stated in 2016,[[2]](#footnote-2) “In a global world, migrant crises cannot be overcome without the cooperation of all concerned, be it countries of origin, transit or destination”. As a country of destination favoured by many asylum seekers, Belgium should express its views on migration in dialogue with countries of origin and countries of transit. The Global Compact itself is an important step in that dialogue.
4. It is without doubt a laudable objective to favour the occurrence of migration in a “safe, orderly and regular” manner. Since the Compact is “Global”, it does not only concern migration as it happens in our area of the world but also in other parts of the world, like e.g. the Gulf States where migration occurs in a very different context. Moreover, in the world, the approach of Western States is necessarily that of a minority.
5. The Global Compact contains, however, important points, which are relatively new in the framework of the United Nations and which reflect concerns common to many Western States, such as: Objective 4: “Ensure that all migrants have proof of legal identity and adequate documentation”; Objective 9: “Strengthen the transnational response to smuggling of migrants”; Objective 10: “Prevent, combat and eradicate trafficking in persons in the context of international migration”; Objective 21: “Cooperate in facilitating safe and dignified return and readmission as well as sustainable reintegration”, and in particular point 37: “the obligation of States to readmit their own nationals”.
6. It is also very important that it is stated that “States may distinguish between regular ad irregular migration status” (point 15, c), while it could be stressed more forcefully. It is also important that the Global Compact “reaffirms the sovereign rights of States to determine their national migration policy”.
7. It would have been welcome to state clearly that nothing in the Global Compact may restrict the sovereign right of States to combat irregular migration. Indeed, the Global Compact contains also points, albeit generally not new, which do not facilitate the fight against irregular migration.
8. It would have been welcome if the EU Member States had delivered a common interpretative declaration stating *inter alia* that the adoption of the Global Compact did not entail new legal obligations and should not be used by courts and tribunal to develop new case law. Precisely, because it is not a treaty, an interpretative declarations delivered at the moment of the adoption of the Global Compact would have made more sense than the absence of some States.
9. Such an interpretative declaration should not have been limited to stressing the non-binding character of the Global Compact. It should have clearly indicated which are the positive and which are the negative elements of the text. Any State may deliver its own declaration but it is obvious that declarations delivered on behalf of a group of States would have a greater impact.
10. In 2001 at the Durban World Conference against Racism, Belgium has – on behalf of the European Union and associated countries – insisted that “the Declaration and Programme of Action are political, not legal documents. These documents cannot impose obligations or liabilities or a right to compensation on anyone, nor are they intended do to so”.
11. In the United Nations, it is a constant objective of the EU foreign policy to avoid “*three split votes*” (in favour, against and abstention) by the EU Member States. It is regrettably that on such an important issue as migration, the EU did not succeed to avoid a three split vote. At the UN General Assembly in New York on 19 December 2018, the resolution endorsing the Global Compact was adopted by 152 votes in favour, against 5 and 12 abstaining. Besides the USA and Israel, three EU Member States (Hungary, the Czech Republic and Poland) voted against. There were also 12 abstentions: besides Algeria, Australia, Chili, Libya, Liechtenstein, Singapore and Switzerland, five EU Member States (Austria, Bulgaria, Italy, Latvia and Romania) abstained. This is a major failure of the EU foreign policy concerning an issue of the utmost importance.
12. Belgium has made a short interpretative declaration stating that the Global Compact was not legally binding and that the distinction between regular and irregular migration needed to be underscored. In meanwhile, the Belgian Government had collapsed because the political parties supporting the Government could not agree to abstain in the vote. Major difficulties could have been avoided in Belgium if the EU had been able to adopt a common position by rallying upon a meaningful declaration.

1. (Honorary) Commissioner General for Refugees and Stateless Persons (1987-1997), former Judge (1997-2007) and Emeritus President (2007-2014) of the Constitutional Court of Belgium, Member of the UN Committee on the Elimination of Racial Discrimination. [↑](#footnote-ref-1)
2. BOSSUYT, Marc, *International Human Rights Protection: Balanced, Critical, Realistic,* Antwerp, Intersentia, 2016, p. 161. [↑](#footnote-ref-2)