

## *ZOOM IN*

### *The Question:*

#### **The Global Compact for Safe, Orderly and Regular Migration: What legal impact will it have on International and Italian Law?**

*Introduced by Francesca De Vittor*

On September 19, 2016, the United Nations General Assembly unanimously adopted the New York Declaration for Refugees and Migrants,<sup>1</sup> as the outcome document of the first UN high-level summit addressing large movements of refugees and migrants. The Declaration recognised that ‘refugees and migrants have the same universal human rights and fundamental freedoms’, and that they ‘face many common challenges and have similar vulnerabilities, including in the context of large movements’.<sup>2</sup> On this basis Member States acknowledged ‘a shared responsibility to manage large movements of refugees and migrants in a humane, sensitive, compassionate and people-centred manner’<sup>3</sup> and endorsed several commitments that apply to both refugees and migrants.<sup>4</sup> Nevertheless, the Declaration also admitted that the treatment of refugees and migrants was governed by separate legal frameworks.<sup>5</sup> This therefore justified two separate sets of commitments,<sup>6</sup> and paved the way for the negotiation and adoption of two Global Compacts, applicable in quite different contexts. Indeed, the Global Compact for Refugees (GCR) was developed by the Office of the United Nations High Commissioner for Refugees (UNHCR),<sup>7</sup> and then affirmed by the

<sup>1</sup> UN Doc A/RES/71/1 (19 September 2016) ‘New York Declaration for Refugees and Migrants’.

<sup>2</sup> *ibid* para 3.

<sup>3</sup> *ibid* para 11.

<sup>4</sup> *ibid* paras 22-40.

<sup>5</sup> *ibid* para 21.

<sup>6</sup> See *ibid* paras 41-63 for commitments concerning migrants, and paras 64-87 for commitments concerning refugees.

<sup>7</sup> UNHCR was mandated to work in close coordination with States, and to involve all relevant stakeholders, including national and local authorities, international

General Assembly as part of the resolution approving the annual report of this Office.<sup>8</sup> Conversely, the Global Compact for Safe, Orderly and Regular Migration (GCM) was developed through a process of intergovernmental negotiation,<sup>9</sup> and was subsequently adopted at the Intergovernmental Conference held in Marrakech on 10 and 11 December 2018, and finally endorsed by the UN General Assembly on 19 December 2018.<sup>10</sup>

Whereas CGR received a relatively large consensus (despite important exceptions),<sup>11</sup> the approval of GCM raised heated and controversial political debate at both the national and international level. Yet in the run-up to the Marrakech Conference, several states abandoned negotiations, deserted the conference or did not sign the Compact.<sup>12</sup> This debate was particularly animated in Italy, where the Government chose not to participate in the Marrakech Conference in order to submit the debate to the Parliament before it would consider becoming a signatory. Indeed, on 27 February 2019, the Chamber approved a motion asking the Government not to subscribe to the GCM.<sup>13</sup>

Both at the national and international, public concern focused on the risk that the CGM affects states' sovereignty in relation to migration control. This concern does not seem to find any basis in the text. Indeed,

organizations and institutions, civil society and the refugees themselves (A/RES/71/1, Annex I, para 2).

<sup>8</sup> UN Doc A/RES/73/151 (17 December 2019) 'Office of the United Nations High Commissioner for Refugees' para 23.

<sup>9</sup> Civil society, the private sector, diaspora communities and migrant organizations were invited to contribute to the process (UN Doc A/RES/71/1, Annex II, para 15), they eventually participate in several inclusive preparatory talks hosted by UN in New York.

<sup>10</sup> UN Doc A/RES/73/195 (19 December 2018) Annex: Global Compact for Safe, Orderly and Regular Migration.

<sup>11</sup> GA Resolution 73/151 was adopted with 181 votes in favour, two against (United States and Hungary) and three abstentions (Eritrea, Liberia and Libya).

<sup>12</sup> United States had made the decision not to join since 2017. Despite the fact that negotiations were undertaken by the European Union, several EU Members also deserted the conference (Austria, Hungary, the Czech Republic, finally Italy). GA Resolution 73/195 endorsing GCM was approved with 154 votes in favour, five against (Czech Republic, Hungary, Israel, Poland, United States) and 12 abstentions (including Italy). See F Ferri, 'I patti globali su migrazioni e rifugiati tra vecchie e nuove dinamiche multilivello: alcune considerazioni di natura giuridica' (1 April 2019) <[www.questionegiustizia.it](http://www.questionegiustizia.it)>. P Mellin, 'The Global Compact for Migration: cracks in unity of EU representation' (11 December 2018) <<http://eulawanalysis.blogspot.com>>.

<sup>13</sup> See Camera dei Deputati, Motion no 1-00113 available at <<https://aic.camera.it>>.



both GCR and GCM were explicitly adopted as non-binding instruments.<sup>14</sup> Furthermore, GCM formally affirms states sovereignty and does not contain any commitment obliging participating states to admit migrants. On this point, the justification for withdrawal provided by some states seems to be a pretext.<sup>15</sup>

However, it cannot be excluded that both Global Compacts, as with any soft-law instrument, may have, under certain conditions, some normative effects capable of having an impact on international law and at the national level. This is all the more probable where, as is the case of GCM, the soft-law instrument is largely based and refers to existing international law obligations.

On this premise, we asked to an international law scholar, Alessandro Bufalini, to further investigate the soft-law nature of GCM and the legal impact of its provision at the international law level, both concerning existing human rights obligations and future possible developments.

With particular reference to the Italian legal system we asked an administrative law scholar, Fulvio Cortese, to address if there is any possibility that the GCM will impact upon national law or influence the judiciary when deciding matters related to the rights of migrants and border controls.

<sup>14</sup> GCR para 4; GCM para 7.

<sup>15</sup> A Peters, 'The Global Compact for Migration: to sign or not to sign?' EJILTalk! (21 November 2018).

