sciendo DOI: 10.2478/eustu-2022-0032

The Global Compact for safe, orderly and regular Migration and the Global Compact on Refugees – origins and effects

Michael Griesbeck*

Summary: Tracing back the roots of the Global Compact for Migration and the Global Compact on Refugees, from the Sutherland Report, the New York Declaration, the Platform on Disaster Displacement and the Nansen Initiative, back to the Balkan wars, which led to the Temporary Protection Directive, one can identify two challenges, which combine, especially taking into account increasing mixed migration: One root is the wish to cope with situations of mass influx, when large numbers of people start to move across borders as refugees, displaced people or migrants. The other source is the climate change, which also could lead to migration and displacement of people. These two challenges were brought into a structure by the two compacts. This article describes the development, which led to the compacts, analyses, that the compacts do not create new obligations for the states and new individual rights, but give suggestions how to improve migration management, and shows, what the next steps could be.

Keywords: Global Compacts – New York Declaration – Sutherland Report – mixed migration – refugees – environmentally displaced persons – non-legally binding framework

1. Introduction

In 2019 there were 272 Mio migrants worldwide, 3.5 per cent of the global population and 51 Mio more than 2010[1]. Migration includes international as well as national migration processes. It includes labour migration, academic mobility, family migration and displacement by war and conflict. UNHCR registered almost 70.8 Mio people forcibly displaced at the end of 2018. 41.3 Mio were internally displaced people, 25.9 Mio were refugees and 3.5 Mio were asylum

* Lecturer in Law at the University of Regensburg for immigration law. Email: dr.michael.griesbeck@web.de

1 United Nations Department of Economic and Social Affairs, press release 17 September 2019.

seekers[2]. Furthermore mixed migration increases[3]. People want to escape from war and persecution, but they also look for a better economic perspective. Environmental changes and climate change can be drivers of migration, too. Both groups, refugees and those, who look for a better economic perspective start to move and apply for asylum in the countries of destination, not being informed that the asylum system grants a status only for those who fulfil the conditions, for example need of protection because of individual persecution.[4]Existing regulations can only insufficiently cope with that situation. Especially the Convention relating to the Status of Refugees adopted on 28 July 1951 together with the Protocol of 31 January 1967[5] does not capture the full scope of todays migration challenges. The attempts to create new instruments reach back to the Balkan wars in the nineties. One result was the Temporary Protection Directive of 2001[6]. A debate about possible solutions first requires a close look at the relevant groups. This is a prerequisite for the understanding, why we have two compacts and not only one[7].

2. Definitions and clarifications

2.1. Mass influx and large movements

The difference between migration and strong migration is not defined. But in many European or international law regulations there are definitions of mass influx or large movements.

The Temporary Protection Directive of 2001 presents the following definition: "mass influx" means arrival in the community of a large number of displaced persons, who come from a specific country or geographical area, whether

[2] UNHCR Global Trends, released 19 July 2019.

[3] HAILBRONNER, K., THYM, D. *EU Immigration and Asylum Law – A Commentary.* Baden-Baden, second edition, München: C. H. Beck/Hart/Nomos, 2016, Part D I MN 37 ff., p. 1041 f; ANGENENDT, St., KIPP, D., MEIER, A. Mixed Migration – Challenges and options for the ongoing project of German and European asylum and migration policy, German Institute for International and Security Affairs (SWP), Bertelsmann, Gütersloh, 2017, p. 10 ff.

[4] HAILBRONNER, K., THYM, D., (sub 3) Part A, MN 53, p. 26, Part B1, MN 36 f., p. 48 f.

[5] hereinafter: 1951 Geneva Convention.

[6] Council Directive 2001/55/ EC of 20 July 2001, OJ L 212, p. 12-23; HAILBRONNER, K, THYM, D., (sub 3), Part D II, MN 7 ff., p.1058 f.; INELI-CIGER, M. Time to activate the temporary protection Directive, *European Journal of Migration and Law*, 2016, vol. 18, pp. 1–33, 13.

[7] One of the points of criticism is indeed, that there are two compacts and that the compacts look at migrants and refugees as seperated groups, see FERRIS, E., MARTIN, S. The Global Compacts on Refugees and for Safe, Orderly and Regular Migration: Introduction to a Special Issue, *International Migration,* vol. 57, December 2019, p. 5, 14.

their arrival in the Community was spontaneous or aided, for example through an evacuation programme."[8]

The Conclusion on International Cooperation and Responsibility Sharing in Mass Influx Situations[9] of the UNHCR Executive Committee of 2004 defines mass influx as follows: "mass influx is a phenomenon that has not been defined, but that, for the purposes of this Conclusion, mass influx situations may, inter alia, have some or all of the following characteristics: (i) considerable numbers of people arriving over an international border; (ii) a rapid rate of arrival; (iii) inadequate absorption or response capacity in host States, particularly during the emergency; (iv) individual asylum procedures, where they exist, which are unable to deal with the assessment of such large numbers."[10]

The New York Declaration for Refugees and Migrants[11] uses the term "large movements" and defines it as follows: "Large movements" may be understood to reflect a number of considerations, including the number of arriving, the economic, social and geographical context, the capacity of a receiving State to respond and the impact of a movement that is sudden or prolonged. The term does not, for example, cover regular flows of migrants from one country to another. "Large movements" may involve mixed flows of people, whether refugees or migrants who move for different reasons but who may use similar routes."[12]

2.2. Refugees

The leading document of international refugee law is the Convention relating to the Status of Refugees adopted on 28 July 1951 together with the Protocol of 31 January 1967[13]. It is not only the centrepiece of international refugee law but also serves as a central point of reference for the EU asylum aquis[14]. According to the 1951 Geneva Convention a refugee is a person owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside

8 Council Directive 2001/55/EC of 20 July 2001, article 2 (d); HAILBRONNER, K., THYM, D., (sub 3) Part D II, MN 21 ff. p. 1067; PEERS, St., GUILD, E. et al. *EU Immigration and Asylum Law (Text and Commentary)*, *Volume 3: EU Asylum Law*, second revised edition, Nijhoff, Leiden, Bosten 2015, p. 571 ff., INELI-CIGER, M. (sub 6), p. 15.

9 No. 100 (LV) – 2004 of 08 October 2004, United Nations General Assembly document A/AC.96/1003

10 Lit (a).

11 Resolution adopted by the General Assembly on 19 September 2016, A/RES/71/1

12 Para 6.

13 1951 Geneva Convention, Article 78 TFEU is refering to the 1951 Geneva Convention.

14 HAILBRONNER, K., THYM, D. (sub 3), D I, MN 47, p. 1046.

the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."[15]

The 1951 Geneva Convention does not give a right to chose a country of destination. The 1951 Geneva Convention doesn`t even give an individual right for asylum, but only prohibits states from returning refugees to countries in which their lives and freedom may be threatened (prohibition of refoulement Art. 33).[16]

Above all the status according to the 1951 Geneva Convention always requires an individual examination. So it is not the adequate instrument for mass influx. We are facing more and more situations, that are not always covered bat he 1951 Geneva Convention[17].

Also subsidiary protection according to directive 2011/95/EU[18] , that gives protection to a "third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm"[19], requires an individual need of protection and an individual examination and interview. Rejected asylum seekers have to leave the country. The wish for a better economic future for oneself and one's family is no basis for a positive decision and a status according to the 1951 Geneva Convention or subsidiary protection, which only have to take into account the situation of persecution or danger in the country of origin.[20]

Crossing borders is a condition for protection under the regime of the 1951 Geneva Convention or subsidiary protection. If this is not the case, those migrated are internally displaced persons (IDPs). In 2018 there were – according to UNHCR – 41.3 Mio IDPs.[21]

---

[15] Article 1 A of the 1951 Geneva Convention.

[16] No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

[17] HAILBRONNER, K., THYM, D. (sub 3) Part D I, MN 19, p. 1033.

[18] Directive 2011/95/EU of 13 December 2011, OJ L 337, p. 9–26; HAILBRONNER, K., THYM, D. (sub 3) Part D III, p. 1108 ff: PEERS, St., GUILD, E. (sub 8) p.133 ff.

[19] Art. 2 (f); serious harm is defined in Article 15 and contains also protection for victims of internal armed conflicts.

[20] KOTZUR, M. in: GEIGER, R., KHAN, D., KOTZUR, M. (eds.). *European Union Treaties*, München: C. H. Beck/Hart, München 2015, Art. 78, MN 8.

[21] UNHCR Global Trends (released 19 July 2019); for the IDPs in 1998 the *Guidelines on internal displacement* were developed. The legally non binding guiding principles provide protection for those who have not (yet) crossed borders. As the refugee definition of the 1951 Geneva Convention is not valid, also environmentally displaced persons are protected. The guiding principles for example give the right to leave a camp or a right for education, the right to cross borders and to apply for asylum in another country.

2.3. Environmentally displaced persons

Both slow-onset processes, for example sea-level rise, salinization and land degradation, and sudden-onset events, for example flooding and intense storms, can cause cross-border movement of individuals looking for protection from climate-related harm. But environmentally displaced persons are not refugees according to the definition of the Geneva Convention. The main reason is that in most cases there is no persecution, because there is no individual that can be identified causing danger and harm.[22] Even the Temporary Protection Directive, which covers not only refugees, but also displaced persons in general, does not include environmentally displaced persons.[23] By the Global Compacts environmentally displaced persons are not seen as refugees, but as migrants[24], This not only reflects the reluctance of States to deal with that topic in the context of refugee law, but also suggests that the migration compact will play a leading role in the debate about disaster- and climate change-related mobility.[25]

3. The New York Declaration for Refugees and Migrants

The assignment for the Global Compact of Migration and the Global Compact on Refugees was created in the New York Declaration of 2016[26] which contained the aim, to present two contacts until the end of 2018, one on refugees and one for safe, orderly and regular migration[27]. Already in the first sentence of the Declaration the motive is formulated: "We, the Heads of State and Government and High Representatives, meeting … to address the question of large movements of refugees and migrants, have adopted the following political declaration". The

[22] See also Recital 29 of the Directive 2011/95/EU; Exeptions may be cases, where the state does not help specific groups in case of sudden-onset events or where the state itself persecutes by devastating the livelihood of a specific group; see also NÜMANN, B. Kein Flüchtlingsschutz für "Klimaflüchtlinge", *Zeitschrift für Ausländerrecht und Ausländerpolitik* – ZAR, 2015, p. 165; HENTSCHEL, Klimaflüchtlinge und das Völkerrecht, *Zeitschrift für Ausländerrecht und Ausländerpolitik* ZAR, 2017, pp. 1–7.

[23] HAILBRONNER, K., THYM, D. (sub 3) II Art 2. MN. 19, p. 1067.

[24] In the Global Compact for Migration there is a special chapter dealing with natural disasters, the adverse effects of climate change, and environmental degradation (para 18 h–i); this chapter was inserted as a symbolic recognition the particular importance oft he topic: KÄLIN, W. The Global Compact on Migration: A Ray of Hope for Disaster-Displaced Persons, *International Journal of Refugee Law*, 2018, vol 30, pp. 664–667, p. 665.

[25] KÄLIN, W. (sub 24), p. 667.

[26] Resolution adopted by the General Assembly on 19 September 2016, A/RES/71/1

[27] Para 21.

challenge is concretized in para 7 of the Introduction: "Large movements of refugees and migrants have political, economic, social, developmental, humanitarian and human rights ramifications, which cross all borders. These are global phenomena that call for global approaches and global solutions. No one State can manage such movements on its own (….) Greater international cooperation is needed to assist host countries and communities."

In the New York Declaration refugees and migrants are considered as separate groups and their treatment is governed by separate legal frameworks, but they have the same universal human rights and fundamental freedoms[28]. Following the introduction (I.) there is a part with commitments that apply to both refugees and migrants (II.), afterwards commitments only for migrants (III.) and commitments only for refugees (IV.). Annex I concerns the Comprehensive refugee response framework (CRRF), Annex II the global compact for safe, orderly and regular migration.

The New York Declaration doesn't create legally binding obligations. It only refers to commitments: "We have endorsed today a set of commitments that apply to both refugees and migrants, as well as separate sets of commitments for refugees and migrants. We do this taking into account different national realities, capacities and levels of development and respecting national policies and priorities. We reaffirm our commitment to international law and emphasize that the present declaration and its annexes are to be implemented in a manner that is consistent with the rights and obligations of states under international law."[29] The introduction also shows that the compact is more a description of reasons, situations, aims and standards[30]. In Annex II. aims and contents of the global compact for migration are lined out: "The global compact would set out a range of principles, commitments and understandings among Member States regarding international migrations in all its dimensions. It would make an important contribution to global governance and enhance coordination on international migration.[31].

In the "Modalities for the intergovernmental negotiations of the global compact for safe, orderly and regular migration" of 6 April 2017[32] it is recalled, that the compact "would set out a range of principles, commitments and understandings among Member States regarding international migration in all its dimensions…". The aim was a zero draft "on the basis of the views, summaries

[28] Para 6.

[29] Para 21.

[30] For example para 12: "We are determined to adress the root causes of large movements of refugees and migrants …", see also para 43.

[31] Annex II, I.2.

[32] A/Res/71/280.

and recommendations provided by Member States" (para 27). The zero draft plus was presented on 5 March 2018, the final draft on 11 July 2018.

4. New approaches since 2012

Being aware of the fact that more and more people start to migrate looking for a better future, some needing protection but unable to use the known legal instruments of protection, the international community and the United Nations tried even before the New York Declaration to find answers and solutions.

4.1. The Nansen Initiative

The Nansen Initiative was founded in October 2012 by Switzerland and Norway. It aimed at the improvement of the protection of people which migrate because of natural disasters and are on that way crossing borders. A global protection agenda was developed in 2015, that deals with "people displaced across international borders by natural hazards, including the effects of climate change."[33] For the implementation of the agenda 2016 the Platform on Disaster Displacement (PDD) was created.[34] The Global Compact for Migration refers to it in para 18 l).

4.2. Resolution A/RES/68/4

The "Declaration of the High-Level Dialog on International Migration and Development"[35] was adopted on 3 October 2013 by the General Assembly. In 34 paras a lot of commitments can be found, which were later repeated by the New York Declaration and the Global Compact of Migration. Examples are the analysis in para 1 referring to the interdependence of migration and development, the commitment to protect the human rights of migrant children (para 13), the need to promote international labour standards (para 14), the commitment to prevent and combat trafficking in persons (para 17) and the obligation of states, that their returning nationals are duly received (para 24).

[33] The Nansen Initiative, Agenda for the Protection of Cross-Border Displaced Persons in the Context of Desasters and Climate Change, Band 1, 2015. The protection agenda is not legally binding. It is more a sort of "toolbox": KÄLIN, W. Klimaflüchtlinge oder Katastrophenvertriebene? *German Review on the United Nations,* VN 2017, pp. 207–212, p. 210 f.

[34] KÄLIN, W. (sub 33), VN 2007, p. 210 f.

[35] Resolution A/Res/68/ 4 adopted on 3 October 2013.

4.3. The Sustainable Development Goals

Also the "Sustainable Development Goals" of 25 September 2015[36] dealt with migration management. Target 10.7 – which is part of target 10 (Reduce inequality within and among countries) states: "Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies." The New York Declaration explicitly refers to that in para 16, and the Global Compact of Migration in para 2. Researchers give the hint, that the wording of the heading of the Global Compact of Migration is almost the same as the wording of target 10.7.[37] The document aims at a better management of migration: "We also recognize that international migration is a multidimensional reality of major relevance for the development of countries of origin, transit and destination, which requires coherent and comprehensive responses."[38] In para 38 the Sustainable Development Goals underline the necessity of territorial integrity and political independence of the states. The Sustainable Development Goals are not legally binding.[39]

4.4. The Sutherland Report

The Sutherland Report plays an important role. Both the New York Declaration (in para 62) and the Global Compact of Migration (in para 6) refer to it.

Peter Sutherland (1946-2018) was since 2006 Special Representative on Migration of the United Nations. He is one of the architects of the New York Declaration.[40]

The Sutherland-Report[41] wants to improve the management of international migration by international cooperation. The Secretary-General of the United

[36] Sustainable Development Goals, A/RES/70/*, Resolution of the General Assemby, adopted 25 September 2015, see HUCK, W., KURKIN, C. Die UN-Sustainable Development Goals im transnationalen Mehrebenensystem, *Zeitschrift für ausländisches Recht und Völkerrecht* – ZaöRV, 2018, pp. 375–424.

[37] KOCH, A. Ein Jahr nach den New Yorker Gipfeln, *German Review on the United Nations*, VN 2007, 195, (198), GUILD, E., ASARAN, T. ALLISON, K. From Zero to Hero? An analysis of the human rights protections within the Global Compact for Safe, Orderly and Regular Migration (CGCM) *International Migration*, 2019, pp. 43–59, p. 45, KLEIN SALOMON, M., SHELDON, S. The Global Compact for Migration: From the Sustainable Development Goals to a Comprehensive Agreement on Safe, Orderly and Regular Migration, *International Journal of Refugee Law*, 2018, vol. 30, p. 584–590, p. 586.

[38] Para 29 of the SDGs.

[39] HUCK, W., KURKIN, C. (sub 36), ZaöRV 2018, pp. 375–424, p. 384 f.

[40] GUILD, E. et al. (sub 37), p. 45.

[41] A/71/728 v. 3. 2. 2017.

Nations writes in his introductory note, that the report is a "roadmap for improving the governance of international migration."[42]

The Sutherland-Report is divided into an introduction and a following agenda for action with three sets of *commitments* (Commitments of States towards migrants, Commitments between States and Commitments between States and other stakeholders). 16 recommendations are assigned to five sectors (Managing crisis-related movements and protecting migrants at risk; building opportunities for labour and skills mobility; ensuring orderly migration, including return; fostering migrants' inclusion and development; strengthening migration governance capacities).

The aim of the Sutherland-Report is "to show, that migration need not be a source of fear and conflict, within nations or between them" (para 88). Especially those in need of protection are in the focus: "The most urgent task is to clarify the responsibilities of States towards migrants who are in vulnerable situations and may not be able to return home, but do not qualify for protection under the 1951 Refugee Convention" (para 19). Also the Sutherland-Report stresses the sovereignty of states to decide their migration policy. This is stated in para 23 ("States have no obligation to open their borders to all migrants, but they do have an interest in seeing migration occur legally and safely, respecting the human rights of migrants. To achieve this, each government needs to work out, and articulate clearly, on what terms it will allow migrants to enter, stay and work or facilitate their departure and return – in other words, its migration policy") and in para 38:

"Return, readmission and reintegration are essential elements of a well-ordered migration system. When a migrant does not have a legal right to remain in a country of destination – whether they arrived or stayed irregularly, because their legal stay was on the temporary basis (e.g. as a seasonal worker) or because – after a fair hearing – their application for asylum has been denied, it is within a State's discretion to remove that person from its territory. When this happens, countries of origin have an obligation to recognize and admit their nationals, out of respect both for migrants' human rights and for the principle of reciprocity of obligations among States."

The Sutherland Report uses the term *"commitment"*, but also the term *"obligation"*. Para 18 shows beneath the headline "Commitments of states towards migrants" a clear distinction between obligations and commitments: "States have obligations towards migrants and refugees under existing international law that they must implement. In addition they have all signed politically binding commitments contained in the outcome documents of the second United Nations

[42] See Note by the Secretary-General.

High-Level Dialogue on International Migration and Development (2013) and the 2030 Agenda (2015), as well as in the New York Declaration (2016)." So obligations refer to still existing legally binding documents and commitments call for the creation of new regulations.

5. The Global Compact for Migration

The Global Compact for Safe, Orderly and Regular Migration is divided into five parts: It starts with an introduction ("Preamble") where also the difference between refugees and migrants is described[43]. The preamble is followed by a chapter "Our vision and guiding principles" (including international cooperation, national sovereignty, rule of law and due process, sustainable government and human rights) and a chapter with 23 objectives and commitments. These objectives are for example: enhance availability and flexibility of pathways for regular migration (objective 5), prevent, combat and eradicate trafficking in persons in the context of international migration (objective 10), manage borders in an integrated, secure and coordinated manner (objective 11), provide access to basic services for migrants (objective 15), empower migrants and societies to realize full inclusion and social cohesion (objective 16), cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration (objective 21), strengthen international cooperation and global partnerships for safe, orderly and regular migration (objective 23). The Global Compact closes with a chapter "implementation" and a chapter "Follow up and review".

The Global Compact for Migration was adopted on 19 December 2018 at the UN General Assembly. 194 states voted in favour, five voted against and seven abstained from voting[44].

In the discussion after the final draft and before the vote the most controversial question was whether new obligations were created by the Global Compact for Migration[45].

[43] Para 4.

[44] UN-GA Res. 73/185, 19 December 2018, GUILD, E. et al. (sub 37), p. 44; FERRIS, E., MARTIN, S. The Global Compacts on Refugees and for Safe, Orderly and Regular Migration: Introduction to a Special Issue, *International Migration*, vol. 57, December 2019, pp. 5–18, p. 8.

[45] DIAS, E., ESCARCENA, P. The European Union and the Background of the Global Compacts, *International Migration*, 2019, pp. 273–285, p. 275; GUILD, E. et alt. (sub 37), p. 44; FERRIS, E., MARTIN, S. (sub 44) p. 8, THYM, D. Viel Lärm um Nichts? – Das Potential des UN-Menschenrechtspakts zur dynamischen Fortentwicklung der Menschenrechte, *Zeitschrift für Ausländerrecht und Ausländerpolitik – ZAR, 2019*, pp. 131–135, pp. 132 ff.

In international law it is accepted, that states have the sovereignty to decide over the entry and stay of foreigners[46]. A right for immigration does not correspond with the right to emigrate.[47] Only the own citizens have the right to enter whenever they want. [48] Another exception is the right of entry based on Art. 45 EUCFR, Art. 21 TFEU[49]. The 1951 Geneva Convention only establishes the principle of non-refoulement[50].

The Global Compact for Migration does not change this rule. The New York Declaration already reaffirmed, "that everyone has the right to leave any country, including his or her own, and to return to his or her country. We recall at the same time that each State has a sovereign right to determine whom to admit to its territory, subject to that State's international obligations."[51]

The Global Compact for Migration distinguishes between regular and irregular migration and wants to reduce and prevent irregular migration and combat trafficking (for example para 9, 10, 11, 25c).

The Global Compact for Migration states in para 7 that the compact upholds the sovereignty of states and their obligations under international law. In para 15 a whole paragraph deals with national sovereignty: "The Global Compact reaffirms the sovereign right of States to determine their national migration policy and their prerogative to govern migration within their jurisdiction, in conformity with international law."[52] The only obligation to accept migrating people refers to own nationals (para 37). Especially concerning those, who have to return, because they have no right to stay in the country of destination, clear expectations are expressed towards the countries of origin.

The compact is a non-legally binding cooperative framework that recognizes that no state can address migration on its own.[53] It does not create new legal obligations for the signatories, but reinforces already existing ones.[54] and provides

[46] HAILBRONNER, K., THYM, D. (sub 3) Part B I, MN 32, p. 47; KOTZUR, M.,(sub 20), p. 295 ff., 300, 306 f.; KLUTH, Migrationsgerechtigkeit, *Zeitschrift für Ausländerrecht und Ausländerpolitik* – ZAR 2011, pp. 329–335, p. 331.

[47] KAU, M. Ein Recht auf Migration?, in: Uhle, A. *Migration und Integration*, *Die Migrationskrise als Herausforderung des Rechts,* 2017, p. 19–56, p. 28 ff.; UERPMANN_WITTZACK, R. Ordnung und Gestaltung von Migrationsbewegungen durch Völkerrecht, in: Berichte der Deutschen Gesellschaft für internationales Recht, Band 49, 2018, p. 215–246, p. 219; KOTZUR, M. Migrationsbewegungen als Herausforderungen für das Völkerrecht, ibidem, p. 295–324, p. 306.

[48] KAU, M. Ein Recht auf Migration? (sub 47), p. 31.

[49] KAU, M. Ein Recht auf Migration? (sub 47), p. 32.

[50] Art. 33 of the 1951 Geneva Convention; KAU, M. Ein Recht auf Migration? (sub 47) p. 31.

[51] Para 42.

[52] See also for sovereignty and the compacts DIAZ, E., ESCARCENA, J. (sub 45) p. 275 f.

[53] Para 15.

[54] MELIN, P. The Global Compact for Migration: Lessons for the Unity of EU Representation, *European Journal of Migration and Law,* 2019, vol. 21, pp. 194–214 p. 201.

evidence of a political commitment by states to uphold pre-existing human rights obligations[55]. It is no treaty, not legally binding and does not produce legal effects[56]. It also doesn't create customary international law.[57]

The aim of the Global Compact for Migration is cooperation and dialogue leading to better migration management: Para 15 shows, that international, regional and bilateral cooperation and dialogue is required. The chapters "Implementation" and "Follow-Up and Review" show, that the aim is a process, taking into account different national realities, capacities, and levels of development, and respecting national policies and priorities. The compact is to be implemented in a manner that is consistent with the rights and obligations under international law[58]. An important role plays the exchange of knowlege, statistics, best practices and innovative approaches.[59] So the Global Compact for Migration is an instrument for better communication between countries of origin and countries of destination.

6. The Global Compact on Refugees

The Global Compact on Refugees is also based on the New York Declaration. The situation here was easier because of the already existing rules of international law. It is grounded in the international refugee protection regime [60]. The Global Compact on Refugees refers to the 1951 Geneva Convention but does not intend to change it. Also the Global Compact on Refugees doesn't contain new obligations and is not legally binding[61].

The Global Compact on Refugees is divided into four parts: The first part is an introduction setting out the background, outlining the guiding principles and introducing the objectives of the global compact. The objectives of the Global Compact on Refugees according to para 7 are: ease the pressures on host countries; enhance refugee self-reliance; expand access to third-country solutions and support conditions in countries of origin for return in safety and dignity. Those four objectives are seen as interlinked and interdependent. In the last part of the introduction the compact underlines the importance of prevention and addressing root causes (para 8 and 9).

[55] GUILD, E. et alt (sub 37), p. 44.

[56] MELIN, P. (sub 54) p. 200; see also for Germany the constitutional court decision BVerfG 2 BvQ 105/18, 7 December 2018, Nr. 16, NVwZ 2019, 161.

[57] THYM, D. In: Legal Tribune Online 25 November 2018.

[58] Para 41.

[59] Para 51.

[60] Para 5.

[61] Para 4, for the norm-preserving role of the Refugee Compact and its role to preserve the status quo see GAMMELTOFT-HANSEN, Th. The normative Impact oft he Global Compact on Refugees, *International Journal of Refugee Law*, 2018, vol 30, pp. 605–610, pp. 609 f.

The second chapter is the comprehensive refugee response framework (CRRF) as adopted as Annex I of the New York Declaration. It is an integral part of the Global Compact[62].

The third part is a Programme of action establishing a Global Refugee Forum, national and regional arrangements for specific situations, and key tools for effective burden- and responsibility sharing. In the following chapter areas in need of support are identified, for example reception and admission or communities with their tasks in the fields of education and health. The part "Solutions" deals with support for countries of origin and voluntary repatriation, resettlement initiatives as a tool of protection as well as a mechanism of burden- and responsibility-sharing and a demonstration of solidarity, complementary pathways for admission to third countries like grant of scholarship and student visas, and local solutions. The compact closes with a chapter about follow up and review (for example by the Global Refugee Forum taking place every four years and the High Commissioner's annual Report to the General Assembly).

The Global Compact on Refugees is a framework for more responsibility-sharing, recognizing that a sustainable solution to refugee situations cannot be achieved without international cooperation. It provides a model for governments, international organizations, and other stakeholders to ensure that host communities get the support they need and that refugees can lead productive lives. It constitutes a unique opportunity to transform the way the world responds to refugee situations, benefiting both refugees and the communities that host them.

The General Assembly adopted the Global Compact on Refugees on 18 December 2018 with 181 votes in favour, two opposed, three abstentions and seven, who did not vote.[63]

7. Conclusion

Already the predecessor documents of the compacts have in common, that they do not create new legal obligations or new individual rights. New international norms and treaties may be a task for the future but are not implemented by the compacts themselves [64]. The intention is to point to a better migration management, to demand better coordination and to formulate clear objectives. Like

[62] Para 10.

[63] FERRIS, E., MARTIN, S. (sub 44), p. 8.

[64] For example the Sutherland-report para 87: "The global compact could … identify areas in which States seek to work towards the conclusion of new international norms and treaties", and para 52 of the New York Declaration: "We will consider developing non-binding guiding principles and voluntary guidelines, consistent with international law, on the treatment of migrants in vulnerable

the early documents also the Global Compact for Migration and the Global Compact on Refugees do not create new individual rights or new obligations for the signataries. They aim at the recognition of existing obligations and individual rights and are implementing objectives to be better prepared for large movements, to implement standards and to share information and concepts[65]. They don`t question the rule, that there is no right for a free choice of the country of destination without the consent of the concerned state. On the contrary they confirm the sovereignty of states and their freedom to chose their own migration policy[66].

The Global Compact for Migration and the Global Compact on Refugees contribute to an answer to the question how to manage migration and especially how to cope with large movements, how to combat the causes of flight and how to deal with refugees and legal and illegal migration. They point at the increasing migration and the increasing mixed migration. The solution of these questions will be a key issue for the future of our globalized world.

It could be expected, that the development of a new legally binding instrument of international law, that protects, where protection is needed – no matter whether in the country of origin, the transit state, the country of destination or the country of resettlement – and on the other side improves migration management for those who are not refugees, is accelerating. If the 1951 Geneva Convention and its definition of refugee shall continue to exist there must be a way to manage migration for those, who don't fulfil the criteria of the 1951 Geneva Convention or subsidiary protection without creating pull factors.

The compacts show how this could be done and give important ideas for better cooperation.

List of references

ANGENENDT, S., KIPP, D., MEIER, A. Mixed Migration – Challenges and options fort he ongoing project of German and European asylum and migration policy, German Institute for International and Security Affairs (SWP), Bertelsmann, Gütersloh, 2017.

BETTS, A. Erwartungen an den Weltgipfel für Flucht und Migration, *German Review on the United Nations* –VN 2016, pp. 158–162.

situations, especially unaccompanied and separated children who do not qualify for international protection as refugees and who may need assistance."

BETTS, A. Erwartungen an den Weltgipfel für Flucht und Migration. *German Review on the United Nations,* VN 2016, pp. 158–162, p. 162; KÄLIN, W., (sub 33). *German Review on the United Nations*, VN 2017, p. 212.

[65] For the Refugee Compact see GAMMELTOFT-HANSEN, Th. (sub 61) pp. 605–610, p. 610.

[66] Global Compact for Migration, para 15 c; DIAZ, E., ESCARCENA, J. (sub 45) p. 275 f.

DIAS, E., ESCARCENA, P. The European Union and the Background of the Global Compacts, *International Migration*, 2019, pp. 273–285.

FERRIS, E., MARTIN, S. The Global Compacts on Refugees and for Safe, Orderly and Regular Migration: Introduction to a Special Issue, *International Migration*, vol. 57 (6) 2019, pp. 5–18.

GAMMELTOFT-HANSEN, Th. The normative Impact of the Global Compact on Refugees, *International Journal of Refugee Law,* – IJRL, 2018, vol 30, pp. 605–610.

GEIGER, R., KHAN, D., KOTZUR, M. (eds.). *European Union Treaties.* München: C. H. Beck/Hart, München: 2015.

GUILD, E., ASARAN, T. ALLISON, K. From Zero to Hero? An analysis of the human rights protections within the Global Compact for Safe, Orderly and Regular Migration (GCM) *International Migration*, vol. 57 (6) 2019, pp. 43–59.

HAILBRONNER, K., THYM, D. *EU Immigration and Asylum Law – A Commentary*, Baden-Baden, second edition, C. H. Beck/Hart/Nomos, München: 2016.

HENTSCHEL, D. Klimaflüchtlinge und das Völkerrecht, *Zeitschrift für Ausländerrecht und Ausländerpolitik* ZAR, 2017, 1–7.

HUCK, W., KURKIN, C. Die Sustainable Development Goals im Transnationalen Mehrebenensystem, *Zeitschrift für ausländisches Recht und Völkerrecht* – ZaöRV 2018, pp. 375–424.

INELI-CIGER, Meltem Time to activate the Tempory Protection Directive, *European Journal of Migration and Law,* 2016, vol.18, pp. 1–13.

KÄLIN, W. Klimaflüchtlinge oder Katastrophenvertriebene? *German Review on the United Nations* – VN, 2017, pp. 207–212.

KÄLIN, W. The Global Compact on Migration A Ray of Hope for Disaster-Displaced Persons, *International Journal of Refugee Law,* IJRL, 2018, vol 30, p. 664–667.

KAU, M. Ein Recht auf Migration? In: UHLE, A. *Migration und Integration, Die Migrationskrise als Herausforderung des Rechts*, Berlin: Duncker/Humblot, 2017, pp. 19–56.

KOCH, A. Ein Jahr nach den New Yorker Gipfeln, *German Review on the United Nations* – VN, 2017, pp. 195– 200.

KLEIN SALOMON, M., SHELDON, S. The Global Compact for Migration: From the Sustainable Development Goals to a Comprehensive Agreement on Safe, Orderly and Regular Migration, *International Journal of Refugee Law,* IJRL, 2018, Vol.30, pp. 584–590.

KLUTH, W. Migrationsgerechtigkeit, *Zeitschrift für Ausländerrecht und Ausländerpolitik – ZAR,* 2011, pp. 329–335.

KOTZUR, M. Migrationsbewegungen als Herausforderung für das Völkerrecht, in: *Berichte der Deutschen Gesellschaft für internationales Recht.* Band 49, Heidelberg: C. F. Müller, 2018, pp. 295–324.

MELIN, P. The Global Compact for Migration: Lessons for the Unity of EU Representation, *European Journal of Migration and Law,* 2019, vol. 21, pp. 194–214.

NÜMANN, B. Kein Flüchtlingsschutz für „Klimaflüchtlinge", *Zeitschrift für Ausländerrecht und Ausländerpolitik – ZAR*, 2015, pp. 165–171.

PEERS, St., GUILD, E. et al. *EU Immigration and Asylum Law (Text and Commentary)*, *Volume 3: EU Asylum Law*, second revised edition. Nijhoff, Leiden, Bosten, 2015.

THYM, D. Viel Lärm um Nichts? – Das Potential des UN-Menschenrechtspakts zur dynamischen Fortentwicklung der Menschenrechte, *Zeitschrift für Ausländerrecht und Ausländerpolitik – ZAR, 2019*, pp. 131–136.

UERPMANN-WITTZACK, R. Ordnung und Gestaltung von Migrationsbewegungen durch Völkerrecht. In: *Berichte der Deutschen Gesellschaft für internationales Recht*. Band 49, Heidelberg: C. F. Müller, 2018, pp. 215–246.