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Hard borders and soft agreements: evaluating governance within the Global Compact for Migration

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ABSTRACT

Welcomed as a milestone in the governance of transnational migration, the adoption of the Global Compact for Safe, Orderly, and Regular Migration marked a significant step forward in international cooperation on migration governance. Through a critical evaluation of its normative and structural features, this paper evaluates the strengths, weaknesses, tensions and contradictions within the compact. It finds that the compact is marked by innovative and ambitious objectives and gives recognition to the diversity and complexity of migration practices. However, its amplification of state sovereignty, its perpetuation of classical liberal statist ideals, and its ambiguity concerning the social-structural and institutional conditions necessary to protect migrants' rights and interests risk undermining its implementation and effectiveness. The paper argues that this framework is best understood as a progressive neoliberal model that relies on the virtue of states over legal and justice-based institutional mechanisms for its authority and implementation. This model risks reinforcing status quo power relations and is insufficient to achieve its stated objectives.

Introduction

The agreement and adoption of the Global Compact for Safe, Orderly, and Regular Migration (United Nations (UN) General Assembly (GA) Resolution 73/195) in 2018 marked a ground-breaking development in the area of global migration governance. This resolution established the first international governance framework for general migration. Although there is nothing new or extraordinary about human beings moving from place to place for economic, social, cultural, ecological or political reasons, this aspect of human practice has never before been subject to global governance. Following the International Institute of Administrative Sciences, governance here is defined as the 'process whereby elements of society wield power and authority and influence and enact policies and decisions concerning public life, and economic and social development. Governance is a broader notion than government' (Weiss 2000, 7).

Although the right to leave one's country of origin is enshrined in the Universal Declaration of Human Rights (UDHR) Article 13, there is no corresponding obligation for states to permit

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access to any person from another territory. The current international order, based on the mid-seventeenth-century Westphalian system of independent and sovereign nation-states, grants states the right to manage their borders, permitting access to those they choose and those that are recognised to be particularly deserving of admission. Within this international order, refugees and asylum seekers are recognised as holding special protections under international humanitarian law and the i951 Convention Relating to the Status of Refugees. The year 2018 also witnessed the agreement and adoption of the Global Compact for Refugees (UNGA Resolution 73/151). The distinct legal status and human rights protections of refugees were further recognised and reinforced in this resolution. It focused on estab-lishing a more equitable distribution of responsibilities for hosting refugees across nation states. In contrast, the Global Compact for Migration (GCM) holds a distinctly different form and structure to the legal and institutional architecture underpinning protections for refu-gees. Although the GCM is similarly concerned with human rights and states' obligations, it is a voluntary, non-binding international compact that does not provide for standalone dedicated legal instruments or institutions. Given the long-standing legal and institutional distinctions between refugees and other migrants, and the rich body of scholarship exam-ining this area, the following paper limits the scope of its examination to the remit and reach of the GCM as the first internationally agreed and adopted governance framework for all other forms of migration.

In 2020, approximately 281 million people migrated across international borders for dif-ferent reasons and durations – that is, approximately 3.6% of the global population (McAuliffe and Triandafyllidou 2021). It is widely expected that this practice will continue and is likely to increase as the effects of climate change continue to unfold (IPCC 2022; Flavell and Chazalnoël 2014) and global economic development processes continue to be so uneven (OECD 2021; UN Economic and Social Council 2021; UNDP 2020). The core objective of the GCM is to establish a governance framework to facilitate this flow and ensure the protection of the rights of migrants and states engaged in this practice. In light of the nascent stage of this international architecture, this paper asks whether the GCM is normatively and politically sufficient to achieve the vision and objectives outlined in the agreement. This entails a nor-mative analysis to test the theoretical and logical coherence of the text using a human-rights evaluative framework. It also requires the examination of the structural features of the agree-ment to consider whether these are sufficiently robust to achieve the specific objectives set out in the text.

Although widely welcomed by many as an important step forward, offering a pragmatic framework for governing general international migration within the current international order (Guild 2019; Höflinger 2020), some have concluded that the GCM is best understood as an idealised, depoliticised narrative that 'hides the dilemmas raised by migration politics' (Pécoud 2021b, 16). This paper advances these debates through a critical evaluation of the GCM framework. The following begins with a brief review of the current state-of-the-art research on global migration governance. It then utilises methods of qualitative document analysis (Bowen 2009) to analyse the text and examine the form and functionality of the GCM as an emerging governance framework. This analysis is informed by a human-rights based approach. It extracts and examines the list of rights specified in the text to explore the degree to which fundamental civil, political, social, economic and cultural rights are recognised and protected, and could be fulfilled. The text is then analysed to search for key correlative obligations related to these rights and to whom or to what parties these are

allocated. This is necessary to understand whether and how rights can be realised at different stages of a migration process and in different spaces – in host and origin sites and during transit. Further, the text is examined to establish how power is distributed amongst host, destination and transit sites, migrating populations, and private institutions and actors. Importantly, in recognising the complexity of the migration industry, the text is analysed to understand the specific roles, responsibilities, rights and obligations of both public and private actors and agencies. Finally, the political theoretical assumptions are examined to test the normative coherence of the framework, and structural features are scrutinised to assess the sufficiency of the framework to support its objectives.

The paper then examines some of the strengths and weaknesses of the GCM. In examining the core claims and assumptions of this framework, inherent tensions are found within the architecture between high levels of ambition and idealism and deeply rooted political pragmatism. Finally, the paper reflects on the theoretical implications of this analysis and the conceptualisation of global migration governance entailed in the GCM. It finds that rather than constructing a distinctly new episteme, this framework relies on existing knowledge, understanding, agreements and institutions for its authority and implementation. Thus, although ambitious in its objectives, it relies on pre-existing institutions embedded in old and established power structures for its operation. The progressive and conservative characteristics of the framework and core principles are found to be incompatible, contradictory and fundamentally politically unstable. As a form of progressive neoliberalism, resting on goodwill and virtuous actors and actions rather than formal justice-based institutional mechanisms for its authority and enforcement, urgent revisions to the structure and content of the GCM are required if the core objective of ensuring safe, orderly and regular migration is to be achieved.

The emerging global migration governance framework

It is widely recognised that the core drivers of migration are complex, overlapping and multi-faceted. They include globalisation and uneven development (Harvey 2018a; Hickel 2017); poverty and inequality (OECD 2021; UNDP 2020); discrimination and persecution; changing climates and environments that can no longer sustain human lives and livelihoods; and the search for economic opportunities and cultural experiences (Castles 2000; Black et al. 2011; Flavell and Chazalnoël 2014; De Hass et al. 2019; Ferris and Martin 2019; Ehrkamp 2019, 2020; Collins 2020; McAuliffe et al. 2019; McAuliffe and Triandafyllidou 2021; van Riemsdijk, Marchand, and Heins 2021). The transnational phenomenon of migration is recognised and noted in governance models across a number of multilateral domains including human rights (UNGA Resolution 45/158 1990), sustainable development (UNGA Resolution 70/1 2015) and climate change (UNFCCC 2015).

Within this paradigm, the category of migrant is a distinctly political construct. As people move, they interact with new places and spaces, with the land and the landscape, economies, polities and societies, transforming the spaces through which they pass and into which they settle. This political construct is unavoidably and necessarily characterised by spatial dynamics, influenced by the transnational spatialities of state power (Ehrkamp 2020, 1205) and marked by informal governance systems and practices (Collins 2021). In stark contrast to the movement of goods, services, finance and most elements necessary to support global capitalism, international migration had not traditionally been subject

to a coordinated international governance framework and shared rules (Betts 2010; Sassen 2015).

Unsuccessful attempts to introduce formal governance processes and structures span several decades (Gammeltoft-Hansen et al. 2017). Guild, Basaran, and Allinson (2019) point to the role of the International Labour Organization (ILO) as a key driver of early international negotiations to establish a governance regime for labour migration. Despite the importance of migrant labour to global production processes, international political support for the human rights convention on the rights of migrant workers and their families (1990) was weak, with only 33 states ratifying the convention by 2005 (UN OHCHR 2005). As migration trends continued, the UN hosted a series of high-level dialogues on international migration and development in 2006 and 2013 and established the Global Forum on Migration and Development (GFMD) in 2007. Although consensus on a global governance framework was not achieved during this period, it is widely accepted that these efforts laid the foundations for the adoption of the United Nations General Assembly (2016) and the United Nations General Assembly (2018), as acknowledged in both documents. The historical evolution of a global governance framework, and the forms of powerful state-based resistance and contestation to which this gave rise, are well documented (Gammeltoft-Hansen et al. 2017; Guild, Basaran, and Allinson 2019; Bufalini 2019; Badell 2020) and will not be repeated here. However, this literature provides important insights into the political dynamics of international migration negotiation and points to some of the reasons that might explain why the GCM emerged as a voluntary compact rather than a legally binding agreement.

Within the literature reviewed, at least three factors emerged over the last decade to explain the political momentum behind the GCM. Firstly, although long-term trends point to stability in the relative numbers of migrants over time, the absolute number has increased as global population levels have continued to increase. Further, the trend points upward, from around 2.7% of the global population in 1950 (De Hass et al. 2019) to 3.6% in 2020 (McAuliffe and Triandafyllidou 2021). According to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, this number is very likely to continue to increase in the coming years as a coping and adaptation mechanism in response to changing climates (IPCC 2022). Secondly, a shift can be observed in the direction and destination of migrating populations. This shift corresponds with a rise in anti-migrant sentiment in high-income states. Research from the Determinants of International Migration (DEMIG) project found that Europeans accounted for 70% of all long-distance and intercontinental migration in 1960, but this had decreased to 22% by 2017. Over the same period, emigration from the Asia-Pacific region to Europe and North America increased from 8% in 1960 to 58% by 2017 (De Hass et al. 2019). The shifts and changes in migration flow correspond with new political, racial and spatial dynamics informing the politics of migration (Kuusisto-Arponen and Gilmartin 2015; De Genova 2018; Ehrkamp 2019; Owen 2020), and an amplification of calls for greater international cooperation to 'manage' these flows (United Nations General Assembly 2015; Badell 2020).

Thirdly, the political climate was shifted by short-term sudden events prompted by geopolitical, geoeconomic and environmental disruptions resulting in large unplanned population movements over the last decade into high-income powerful states including the United States of America (US), European countries, the United Kingdom (UK) and Australia. They exposed a deep division within the political discourse of liberal states, with the amplification of anti-migrant sentiment and increasing levels of violence against migrant

communities (Dempsey 2020). These large movements put swift and significant pressure on bilateral and regional governance regimes and agreements, such as the Dublin III Regulation of the European Union, resulting in their temporary collapse and the closure of borders (van Riemsdijk, Marchand, and Heins 2021). According to many researchers, they contributed to the conditions of possibility for international agreement (van Riemsdijk, Marchand, and Heins 2021; Badell 2020; Pécoud 2021a).

Political commitment to establish a global governance framework was specified in the UN Agenda 2030 and the Sustainable Development Goals (SDGs), with Goal 10.7 explicitly committing signatory states to 'facilitate orderly, safe, regular and responsible migration and mobility of people' (United Nations General Assembly 2015). Following the agreement and acceptance of Agenda 2030, one of the co-chairs, Irish diplomat David Donoghue, went on to chair negotiations on international migration and was one of the chief architects of the New York Declaration on Refugees and Migrants (NYD) that emerged in 2016.

From the NYD to the GCM

The UNGA unanimously adopted Resolution 70/1, the New York Declaration for Refugees and Migrants (2016), with the core objectives of addressing the growing phenomenon of large movements of people; managing and control of state borders; addressing the security needs of transit and destination states; respecting and protecting the fundamental human rights of migrants; and recognising the rights and obligations of states. As a declaration, the NYD is a non-legally binding statement of intent, pointing to appropriate standards and expectations, rather than a convention or treaty.

The introduction of the NYD marked a significant moment in international affairs for at least three reasons. Firstly, it secured the recognition on the part of all states of migration as a regular practice in which human beings have always engaged, directly countering the political rhetoric of xenophobia, anti-immigration and extreme nationalist sentiment evident in the US, UK and parts of Europe in particular (Badell 2020; Ferris and Martin 2019). Its introduction begins by historicising and complicating migration. It notes,

> since earliest times, humanity has been on the move. Some people move in search of new economic opportunities and horizons. Others move to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations and abuses. Still others do so in response to the adverse effects of climate change, natural disasters … or other environmental factors. Many move, indeed, for a combination of these reasons. (UNGA Resolution 70/1 2016, 1)

Secondly, it recognised the challenges entailed by attempting to distinguish between different categories of migrants. As such, it incorporated all forms of migration in its scope, including refugee and non-refugee migrants. It notes, 'though their treatment is governed by separate legal frameworks, refugees and migrants have the same universal human rights and fundamental freedoms. They also face many common challenges and have similar vulnerabilities … (UNGA Resolution 70/1 2016, 2). Thirdly, it committed UN member states to a roadmap of deeper multilateral engagement which culminated in the emergence of the two global compacts two years later.

In December 2018, UNGA Resolution 73/195 – the GCM – was adopted by 164 member states, marking the first international compact on the coordination of migration across borders.

Like the NYD, the GCM is not a legally binding, institutionally enforceable set of rules to govern international mobility and guarantee the protection of migrants. As a non-binding cooperative framework, it is intended to 'manage safe, orderly and regular migration' (United Nations General Assembly 2018). It seeks to 'encourage' state and non-state actors engaged in migration practices to recognise, respect and protect the fundamental human rights of migrants, whilst recognising the internationally protected rights of states to manage their borders. As a non-legally binding cooperative framework, it is a soft law instrument (Bufalini 2019). The likely effect of this instrument is the source of much debate in the literature, with some arguing that it is likely to fill a gap in hard law and may act as a prompt to the development of more binding agreements (Höflinger 2020). Others argue that this is unlikely given the contestation surrounding the development of the compact and evidence of declining political commitment in some of the most powerful states to international legal instruments and multilateral institutions (Bufalini 2019; Gammeltoft-Hansen 2019).

The GCM is a 'collective commitment to improving cooperation on international migration' (United Nations General Assembly 2018, 3). It is based upon a set of 10 guiding principles (United Nations General Assembly 2018, 5) that include state sovereignty (United Nations General Assembly 2018, 3); the recognition of the human rights of migrants (United Nations General Assembly 2018, 5); gender responsiveness (United Nations General Assembly 2018, 5); and commitments to sustainable development (United Nations General Assembly 2018, 5). The principles are used to inform the 23 objectives and 171 actions that outline the rights, obligations and responsibilities of those engaged in migration processes. At its core, it is a voluntary agreement in which states can select to participate, or not, without sanction. Accordingly, 'its authority rests on its consensual nature, credibility, collective ownership, joint implementation, follow-up and review' (United Nations General Assembly 2018, 5). Although voluntary, signatories to the compact commit to implementing all elements of the agreement. Paragraph 41 states: 'we commit to fulfil the objectives and commitments outlined in the Global Compact, in line with our vision and guiding principles, by taking effective steps at all levels to facilitate safe, orderly and regular migration at all stages' (United Nations General Assembly 2018, 33). Follow-up and review of the performance of states in implementing their commitments is to be managed through a UN state-based peer review process (United Nations General Assembly 2018, 35).

Despite its non-legally binding nature, it was rejected by five states (Czech Republic, Hungary, Israel, Poland and the US), while 12 states abstained and 24 states did not take part in the vote (Bufalini 2019). The final vote and negotiations were marked by contestation and resistance, attributed to the US Mission to the UN who argued that the GCM represented 'an effort by the UN to advance global governance at the expense of the sovereign right of states to manage their immigration systems in accordance with national laws, policies, and interests' (US mission to the UN cited in Guild, Basaran, and Allinson 2019, 44). The US withdrew from the negotiation process in 2017, but of those states that remained involved, strong reservations were noted throughout the negotiation process, by European states in particular (Badell 2020), on any element of the compact that might seek to set requirements on national policies and legislation (Bufalini 2019).

Strengths and innovations within the GCM and Tensions

The following points to three core strengths of the GCM that offer hope of an emerging governance architecture that could facilitate and support the core objective of safe, orderly,

and regular migration over the coming decades: firstly, its rights-based approach; secondly, recognition of the spatialites, temporalities and complexities of migration processes; and, finally, its efforts to regularise and legitimise migration practices.

Rights-based framework giving recognition to core rights

Marking a distinct departure from other cooperative frameworks such as the SDGs, the GCM moves beyond a general commitment to human rights in its preamble to a detailed speci- fication of the core rights of international migrants, including rights relevant to the public and production spheres. The GCM is underpinned by the principle of non-discrimination (United Nations General Assembly 2018, 9, 13–14) and commits states to

> provide migrant workers engaged in remunerated and contractual labour with the same labour rights and protections extended to all workers in the respective sector, such as the rights to just and favourable conditions of work, to equal pay for work of equal value, to freedom of peaceful assembly and association, and to the highest attainable standard of physical and mental health, including through wage protection mechanisms, social dialogue and membership in trade unions. (United Nations General Assembly 2018, 14)

It also specifies rights relevant to socio-reproductive needs and interests including the 'right to a family life' (United Nations General Assembly 2018, 12, 13, 22), 'access to basic services' (United Nations General Assembly 2018, 23) including health care (United Nations General Assembly 2018, 15, 16, 22), education (United Nations General Assembly 2018, 13, 16, 22, 24, 25), cultural rights (United Nations General Assembly 2018, 1) and intercultural exchange (United Nations General Assembly 2018, 25). In recognising this range of civil, social, economic and cultural rights, the GCM points to the range of pre-existing conventions, agreements and institutional arrangements within the human rights regime. As such, it does not introduce any 'new' rights or propose any new institutional structures; rather, it calls on states to recognise the existing obligations to which they have already committed.

One critical area of divergence is political rights. Here, the GCM calls for the political rights of migrants to be protected in their country of origin but says nothing about the political rights of migrants in destination countries (United Nations General Assembly 2018, 29). This is an interesting omission given the productive role migrants play in destination countries. It marks an important separation between economy and polity, whereby migrants are pro- ductive actors in destination states' economies without a right to engage in the politics of this state.

Spatialities, temporalities and complexities of migration processes

The GCM explicitly recognises that migration is not a simple linear process, from one location to another, that is necessarily time bound. Rather, it is multi-directional, involving return migration, onward migration and circular migration for a multitude of reasons and durations. It also recognises the rights and interests of migrants in different spaces – countries of origin during both departure and return, transit states and destination states. In recognising the rights of migrants across these spaces the compact also gives recognition to the relationship that many migrants maintain with their countries of origin. It explicitly promotes an ideal of transnationalism and the development of transnational identities, recognising the economic contribution of migrants in both countries of origin and destination (Hossain 2022; Khanal

and Todorova 2019). The GCM, for example, focuses on the role of remittances in the economic development of countries of origin, calling for greater efficiency in remittance transfers (United Nations General Assembly 2018, 6, 7, 29), and the retention of social and economic rights in these countries.

Finally, the complexity and heterogeneity of migration practices are exposed within the GCM as it recognises the range of state, non-state and private stakeholders and interests involved in the migration industry. It examines the roles of agencies, brokers, recruiters and traffickers. It points to social networks, non-governmental organisations (NGOs), civil society, and private sector actors and agencies, all of whom require consideration within this governance framework (United Nations General Assembly 2018, 3, 10, 14, 19, 22). Additionally, it points to the heterogeneity of migrant needs and interests, recognising the challenges experienced by women and girls during the practice of migration and arrival, and the requirement to protect the needs and interests of children (United Nations General Assembly 2018, 1, 5, 9, 12, 14, 15, 17–19, 25–27, 20, 32). Although gender sensitive to the extent that it acknowledges the differential needs of and risks to female migrants, the language of the GCM is firmly binary and heteronormative, failing to recognise the specific and additional needs and risks of LGBTQ + migrants. Further, it leaves hidden and unchallenged the core systems of race, class and other forms of discrimination that directly affect the experiences of migrant populations. Such discrimination influences who can travel, to whom access to a state is granted, for what purpose and for what duration. Thus, although infused with fundamental liberal values, and explicitly claiming to rest on a human-rights based framework, the underlying power systems and structures that undermine the recognition and realisation of human rights for many communities remain hidden, naturalised and unchallenged.

Normalising and legitimising migration

The third key strength of the GCM is that it acknowledges the practice of migration as a typical human response to push and pull factors. Push factors include changing climates, the search for enhanced livelihood and educational opportunities, and cultural factors. Pull factors focus on the instrumental benefit of migration to higher-income economies to support labour market needs and to fill labour market gaps in lower-paid sectors such as agriculture, care and hospitality, and skills gaps in sectors such as healthcare and technology. In focusing on what it describes as 'win–win cooperation' (United Nations General Assembly 2018, 4–5), the language used within the text frames migration as a beneficial cosmopolitan practice that brings maximum benefit to all affected. In this light, it notes, 'migration has been part of the human experience throughout history, and we recognize that it is a source of prosperity, innovation, and sustainable development in our globalised world and that these positive impacts can be optimised by improving migration governance' (United Nations General Assembly 2018, 3).

Corresponding with the language of normalisation and legitimation of the common practice of migration within the text, the GCM does not propose any new institutional structures or arrangements for its implementation. Rather, it rests upon the existing institutions and policies of the human rights, development, climate change and humanitarian governance regimes. Although a significant risk to its implementation and effectiveness, the challenge of fragmentation for which UN systems have long been criticised (see for example Warner 2010; Betts 2010; Bufalini 2019) is not considered.

Tensions within the GCM

As may be evident from the points above, there are multiple tensions inherent within this framework. On the one hand, the GCM articulates a highly ambitious set of objectives to guide actors involved in international migration; on the other hand, it is deeply rooted in political pragmatism that avoids disrupting the status quo power structures through rule-setting. Although grounded in a human-rights-based approach that would require justice-based institutions for its enforcement, it instead appeals to the virtue and goodwill of member states to recognise their 'shared responsibilities' (United Nations General Assembly 2018, 4), 'common understanding' (United Nations General Assembly 2018, 3) and 'unity of purpose' (United Nations General Assembly 2018, 4–5). The following explores two structural points of tension within the framework that act as destabilising forces and point to the political insufficiency of the framework: the problem of cognitive lock-in, and the problem of state sovereignty and shared responsibilities. It is acknowledged in the GCM that this framework marks a 'milestone' (United Nations General Assembly 2018, 4–5) rather than an endpoint in the pathway to establishing a migration governance regime. Thus, understanding the nature of these tensions may contribute over time to enhancements and improvements in the global migration governance framework.

The political problem of cognitive lock-in

In their assessment of the GCM, Pécoud laments the depoliticised and idealised nature of the document. In its search for consensus across diverging worldviews and interests, 'this … leads to a depoliticization of migration: the GCM cannot eliminate the controversies and disputes over migration but can reach – on paper at least – a certain level of discursive coherence in which they are neutralised' (Pécoud 2021b, 17). The concept 'depoliticised' here refers to the way in which the GCM avoids engaging in political debate or confrontation and presents a consensus framework that is identified as 'the only way forward for migration policy' (Pécoud 2021b, 17). However, rather than depoliticised and idealised, in the following I argue that the core assumptions of the GCM point to deeply entrenched classical liberal-statist political views and values. As such, the GCM displays a form of cognitive lock-in (Murray and Häubl 2007), where classical liberal statist assumptions have become so internalised that they do not require explicit examination, justification or challenge.

At least three normative assumptions have been identified by Fine and Ypi (2016) that inform classical liberal-statist theorising on migration, and which are reinforced through the GCM. The first is that states have specifiable and protected rights to control the movement of people across their borders and to settle people within their territories. As the foundational institutional structure for social cooperation and coordination, this is a first-order duty of government at the nation-state level. Secondly, based on their obligations to their existing citizenry, governments privilege the interests of their citizens over those of non-citizens. There is an extensive body of research spanning several decades exploring the tension between the rights of citizens (as special rights) and the human rights of non-citizens (as general and universal rights) within liberal accounts of international political theory (Fine and Ypi 2016; Miller 2016; Murphy 2011) and the implications for transnational migration governance (Guild 2019). Thirdly, states are permitted to determine the criteria for selecting whom they will accept into their territories, for what duration, under what conditions, and with what legal status. As Ypi has argued, 'borders have always been (and will continue to

be) open for some and closed for others' (Ypi 2018, 142). Thus, in reinforcing the sovereignty of nation-states to manage their borders as they see fit, the GCM leaves unchallenged underlying racist and classist systems of oppression that influence who can migrate, to where, for what purpose and duration, and under which legal conditions. These classical liberal-statist assumptions are reinforced within the GCM, which states that 'the Global Compact reaffirms the sovereign right of states to determine their national migration policy and their prerogative to govern migration within their jurisdiction … taking into account different national realities, policies, priorities, and requirements for entry, residence and work …' (United Nations General Assembly 2018, 5).

Within mainstream classical liberal statist accounts, migration is typically taken to be an indicator of failing or weak political, economic, social and environmental systems at the domestic level (Owen 2021; Rawls 2003, 8–9). For example, John Rawls notes in his discussion of boundaries and borders:

> An important role of a people's government … is to be the representative and effective agent of a people as they take responsibility for their territory and its environmental integrity, as well as the size of their population …. the point of the institution of property is that, unless a definite agent is given responsibility for maintaining an asset and bears the loss for not doing so, that asset tends to deteriorate. In this case the asset is the people's territory and its capacity to support them *in perpetuity*; and the agent is the people themselves as politically organised …. they are to recognise that they cannot make up for their irresponsibility in caring for their land and its natural resources by conquest in war or by migrating into other people's territory without their consent. (Rawls 2003, 38–39)

Similar sentiments are evident in several passages throughout the GCM. For example, it states that 'this Global Compact aims to mitigate the adverse drivers and structural factors that hinder people from building and maintaining sustainable livelihoods in their countries of origin, and so compel them to seek a future elsewhere' (United Nations General Assembly 2018, 4).

However, there are contested and problematic ethical, empirical and ecological assumptions informing this understanding of the special status of states, borders and the institution of property (Murphy 2016, 2020). From an ethical perspective, such liberal statist assumptions construct a citizen–migrant/insider–outsider binary that essentially reduces the status of human rights to that of private privileges of citizenship and citizens' rights (Agamben 1998, 2008). Within this account, the state has no obligations to positively secure rights transnationally, thus reinforcing the precarity and liminality of the migrant experience. Such assumptions are more likely to produce illiberal consequences, thus pointing to a deep-rooted ethical deficiency.

Indications in the current political context point to states asserting their rights to protect their borders over the unallocated and under-specified obligation to recognise, respect and protect the human rights of migrants – often by ensuring that migrants do not arrive at their borders (see, for example, European efforts to establish detention centres and controls in North Africa and Turkey). However, as these problematic assumptions remain embedded, locked into the GCM, and not subject to ethical or empirical evaluation, the corresponding political insufficiencies and ethical deficiencies are also locked in. Constructive critique could inform future iterations of this governance framework to support its core objectives of facilitating safe, orderly and regular migration and where the rights of migrating populations can be recognised and protected.

For post-liberal critical theorists such as Agamben and Saunders, drawing on the critical continental philosophical traditions of Arendt and Foucault, efforts to develop systems of international migration governance may be better understood as techniques in state-craft that

> serve the important function of keeping the international system of sovereign states intact by responding to the crises this same system produces in ways which not only fail to challenge but themselves reproduce the underlying principles and practices by which it functions. (Saunders 2018, 6)

From an ecological and empirical perspective, the notion that a single state can secure environmental and territorial integrity 'in perpetuity', without the cooperation of other states, is firmly and clearly no longer a tenable assumption. Greenhouse gas emissions do not carry a national flag or label and do not remain within the confines of a defined political space. Understandings of climate science and climate change synthesised and published through six IPCC assessment reports since 1992 point to a deep scientific consensus concerning the interconnections, interdependencies and interactions between humans and nature. Migration is used as an adaptation strategy in climate-stressed locations (IPCC 2022), and it is an indication of failed climate mitigation measures at multiple scales across multiple states over many decades (Masson-Delmotte et al. 2018; Abubakar 2020; Kaczan and Orgill-Meyer 2020). For human beings required to migrate, but not permitted access to alternative spaces and places, classical liberal statism presents a clear existential threat.

State sovereignty and shared responsibilities – appealing to the virtue of states over institutions of justice

As noted above, it is possible to argue that a core strength of the GCM framework is that it stands on the shoulders of existing human rights institutions and agreements and applies these in a clear and explicit manner to the case of migration. However, it does not provide a similar account of the correlative obligations of these rights, nor explicitly allocate these obligations. Rather, the text emphasises the primacy of state sovereignty (United Nations General Assembly 2018, 3, 15, 20), and the non-legally binding consensus-based nature of the framework (United Nations General Assembly 2018, 3, 5). The structure of the framework leaves key questions unanswered and potentially unanswerable. For example, if ought implies can, and the institutional architecture cannot enforce the allocation of obligations across state actors, then do these obligations still hold? The structure of the compact appeals to the virtue of states through a form of normative encouragement. It does not carry nor-mative force to require the establishment of justice-based institutions that can secure legal protection. Sadly, as noted by O'Neill (2005) and well documented through empirical research, states regularly violate rather than respect human rights. Indeed, O'Neill argued that in placing the primary obligation to fulfil human rights on the shoulders of states, the current human rights regime essentially puts 'the foxes in charge of the henhouse' (2005, 435). If obligations cannot be assigned, activated and fulfilled with any degree of certainty, then the idea of shared responsibilities remains ambiguous and the obligations required to respect, protect and fulfil the fundamental human rights of migrants remain aspirational. Human rights are the ingredients of law to be guaranteed by institutions of justice rather than virtue, goodwill and the character of states.

Examining these issues through Agamben's post-liberal theory of sovereignty gives rise to a very different interpretation of the contemporary turn towards state virtue over systems of justice. Agamben explains how sovereignty is constituted and practised by the body politic deciding whom to exclude from it (Agamben 1998). Drawing on Aristotle's distinction between forms of life and the differentiation between *zoe*, or 'bare life', and *bios*, or politically qualified life, Agamben develops a theory of sovereignty and the nation state whereby it is the sovereign who decides which individuals (or groups) count as politically qualified life and are thus recognised within and subject to the law, and which individuals (or groups) will be excluded and rendered bare life. All politics since the time of Aristotle is *biopolitics* within this account (Agamben 1998). To be excluded is to be condemned to live in a 'state of exception' – in which the law is suspended. Thus, individuals are inclusively excluded, assumed by the law, and yet excluded from the law. It is, according to Agamben, 'the no-man's land between public law and political fact and between judicial order and life' (2008, 1) in which many migrants find themselves within the contemporary international order. This is reinforced rather than reduced within the GCM, which entrenches state sovereignty whilst paying lip service to the rights of migrants and transnational spatialities. Further, in calling for the protection of social and economic rights of migrants in host states, but excluding political rights, the GCM recognises migrants as important economic resources, but not political beings. They are bare life with economic value, but no political recognition outside of their country of origin. This idea of inclusive exclusion highlights the reductionist assumption inherent within classical liberal-statists account that reduce human rights to the legal rights of citizens. There seems to be 'no autonomous space in the political order of the nation-state for something like the pure human itself' (Agamben 2008, 92), the ecologically embedded and socio-economically interdependent pure human being.

Although ambitious in its objectives, the GCM reinforces existing power asymmetries between destination states and countries of origin, between state and non-state actors, and between states and individual migrants. In seeking to amplify the rights of migrants, without any institutional augmentation to ensure the enforcement of correlative obligations and the fair distribution of responsibilities, the GCM is unlikely to achieve its core objectives. In resting its authority on 'its consensual nature' (United Nations General Assembly 2018, 5), this non-legally binding framework may be necessary to garner consensus among states, but in so doing seems to prioritise the maintenance and protection of the state system over the recognition and protection of fundamental human rights of migrants. When viewed through the critical post-liberal lens, this framework represents an instrumentally valuable tool for statecraft and entrenching the power of states but does little for the individual human being moving between spaces.

Evaluating the GCM

The critical analysis above points to fundamental tensions within the GCM. On the one hand, although the first of its kind, the GCM is representative of continuity in international deliberations on migration rather than change. In reinforcing state sovereignty, it leaves unresolved the long-standing tensions and conflict between the human rights of migrants and the rights of states to protect borders. Although resting on pre-existing human rights architecture, it does not provide any new or explicit methods of enforcement and sanction, thus remaining subject to the pre-existing weaknesses within the international human rights

regime. It is fundamentally rooted in western-centric liberal statist understandings of sovereignty. Although claiming to be 'people centred' (United Nations General Assembly 2018, 5), the state remains the primary actor as implementing agent and obligation holder. The interests of states and the primacy of state sovereignty are explicitly entrenched. Thus, the long-standing tension identified by Bufalini between the universality of human rights and 'states' interests to maintain a differentiation based on citizenship in the protection of fundamental rights, especially as regards social rights' (Bufalini 2019, 7) remains largely untouched by the GCM. In this sense, it seems to be another case of 'soft law in defence of the status quo' (Gammeltoft-Hansen et al. 2017).

On the other hand, it is also marked by a high degree of ambition and appeal for change. In drawing across existing agreements within the humanitarian–development–peace–climate change siloes, it seeks to bring some coherence to these fragmented structures as they apply to international migration. Through the promotion of transnational identities and its recognition of individual social, economic and cultural rights, its ambitions reach beyond the traditional liberal-statist paradigm.

In spite of its promise, the following explains why the GCM is perhaps most appropriately conceptualised as a progressive neoliberal model, rooted in classical liberal statist values, softened by a political language of rights and recognition. The progressive and conservative dimensions of the framework are found to be incompatible, contradictory and fundamentally unstable. Three reasons are offered in defence of this account: firstly, its basis of authority; secondly, its à la carte approach to rights and obligations; and, thirdly, its silence on the structural features of the global political economy that drive international migration.

Firstly, in anchoring the authority of the framework in the agreement between state actors, the position and function of non-state actors remain oblique and underdetermined. A wide range of non-state actors and stakeholders are acknowledged in the text. However, the specific responsibilities and accountabilities of these groups are not outlined. Authority rests entirely on the consensus of participating states with all others deemed to be subject to the rules of these states. As many within the migration industry operate in the transnational space (Ehrkamp 2020), it is not clear how this governance framework includes them in its reach. This is not new, but it is unstable.

Secondly, in focusing on a set of human rights that are taken to be relevant to migration without specifying the obligations to which these give rise and allocating these obligations to specific state or non-state actors, it uses the rhetoric of human rights to great effect but leaves the reality untouched. By focusing on the interests of states and the differentiated benefits to their economic development ambitions, it could be argued that the human rights of migrants are instrumentalised within the framework. They are operationalised and used as a means to pursue the interests and ends of states.

Thirdly, the silence of the GCM on matters related to the governance of the global economy and its role in driving practices of and needs for migration is problematic. It misses any opportunity to interrogate current systems and structures related to distribution, redistribution and predistribution. In so doing, it takes the systems and structures of the global political economy as given. Again, this is not new, but it is destabilising in that it fails to tackle the nature of uneven distribution within the current global economic order. This economic order is unavoidably interconnected with the core drivers of migration, including poverty and inequality, changing climates and environments that can no longer sustain human lives and livelihoods, and the search for economic opportunities (Murphy 2022).

Thus, the GCM projects the image of progressiveness whilst remaining firmly rooted in conservative structures. It is progressive in its recognition of a wide range of basic social, economic, and cultural human rights of migrants and reiterates the call to states to recognise their obligations to protect these; however, it remains largely silent on the drivers and pull factors of migration and the civil and political rights of migrants in host countries, and remains firmly embedded in fundamental neoliberal assumptions concerning distribution of the benefits and burdens of social and economic cooperation within the contemporary global political economy. These progressive and conservative dimensions of the framework are incompatible, contradictory and fundamentally politically unstable.

Although a significant advancement in the recognition of global migration as a common human practice, this analysis suggests that significant structural changes would be necessary for the attainment of the core objectives of the compact. The rights-based structure and commitments of the GCM require a robust transnational justice-based institutional mechanism to oversee and enforce the allocation of obligations, responsibilities and accountability, and cannot rely on the goodwill of states in their interactions with migrant communities and other non-state actors within the migration industry.

Implications and concluding remarks

The paper explored the strengths, tensions and contradictions inherent within the Global Compact for Migration to understand whether and how this framework represents an advancement in global migration governance. As the first global compact on migration governance, it marks a milestone in the recognition of migration as a common practice that has been a feature of human experience throughout history. Grounded in a human-rights based approach, it explicitly attempts to reframe contemporary discourse on migration as a beneficial activity that supports sustainable development within and between states. However, rather than representing an innovative governance framework, this analysis suggests that the progressive neoliberal model that has emerged is designed to maintain the status quo. In outlining an ambitious set of objectives, but embedding these in old and established power structures, the normative dimensions of the framework are incoherent and inconsistent, and the structural underpinnings cannot support the advancement of its objectives. Further, in its amplification of state sovereignty and the special position of states, it fails to give sufficient recognition and agency to transnational actors, the distinct transnational spatialities that are formed within the migration industry, and power dynamics and asymmetries within these spaces. The arguments presented here suggest, at a minimum, that a transnational justice-based institutional architecture to govern the interactions of all actors affected by and involved in migration processes, including state and non-state, is required. Such justice-based mechanisms and institutions could seek to balance claims to state sovereignty with the rights, interests and needs of migrating populations. Further, they could oversee and monitor the specific allocation of obligations to fulfil these rights across the wide and diverse range of state and non-state actors within this vast industry.

The possibility of a rules-based framework is demonstrated through the coordinated movement of goods, services, finance and other elements necessary to support global trade and economic activity. Thus, arguments that a rules-based approach is not possible in the case of human migration lack credibility. If rights are the ingredients of law and the GCM is

grounded in a rights-based framework, then this would suggest that a rules-based order is necessary to achieve its objective of facilitating safe, orderly and regular migration. Appeals to goodwill and the virtue of states are neither sufficient nor coherent and are likely to fail to realise the ambitious vision outlined in this global agreement.

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Disclosure statement

Notes on contributor

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