



# GFMD: A Dialogue on the Global Migration Compact

UN HQ, New York

14 November 2016

## Legal Aspects of the Global Compact

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# Presentation outline

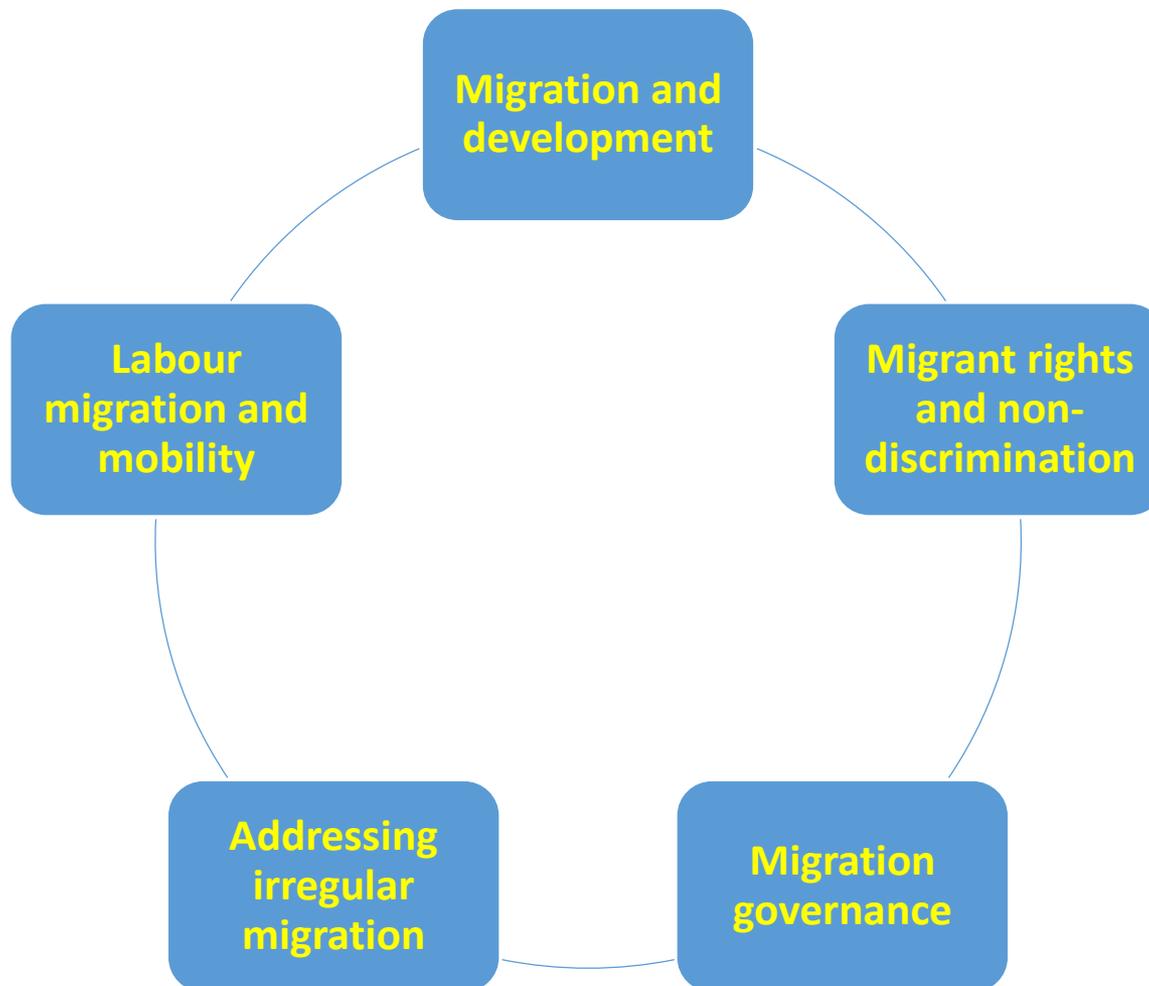
- What does the global compact set out to do?
- International law relating to migration
- The increasing role of “soft law”
  - Migration policy frameworks
- Some tough legal issues
- Conclusion

# What does the global compact set out to do?

- NY Declaration, Annex II, para. 2
  - GC would set out a range of **principles, commitments and understandings** among Member States regarding international migration in all its dimensions
  - Make an important contribution to global governance and enhance coordination on international migration
  - Present a framework for comprehensive international cooperation on migrants and human mobility
  - Deal with **all aspects of international migration, including the humanitarian, developmental, human rights-related and other aspects of migration**
  - Guided by 2030 Agenda and the Addis Ababa Action Agenda, and informed by HLD Declaration 2013

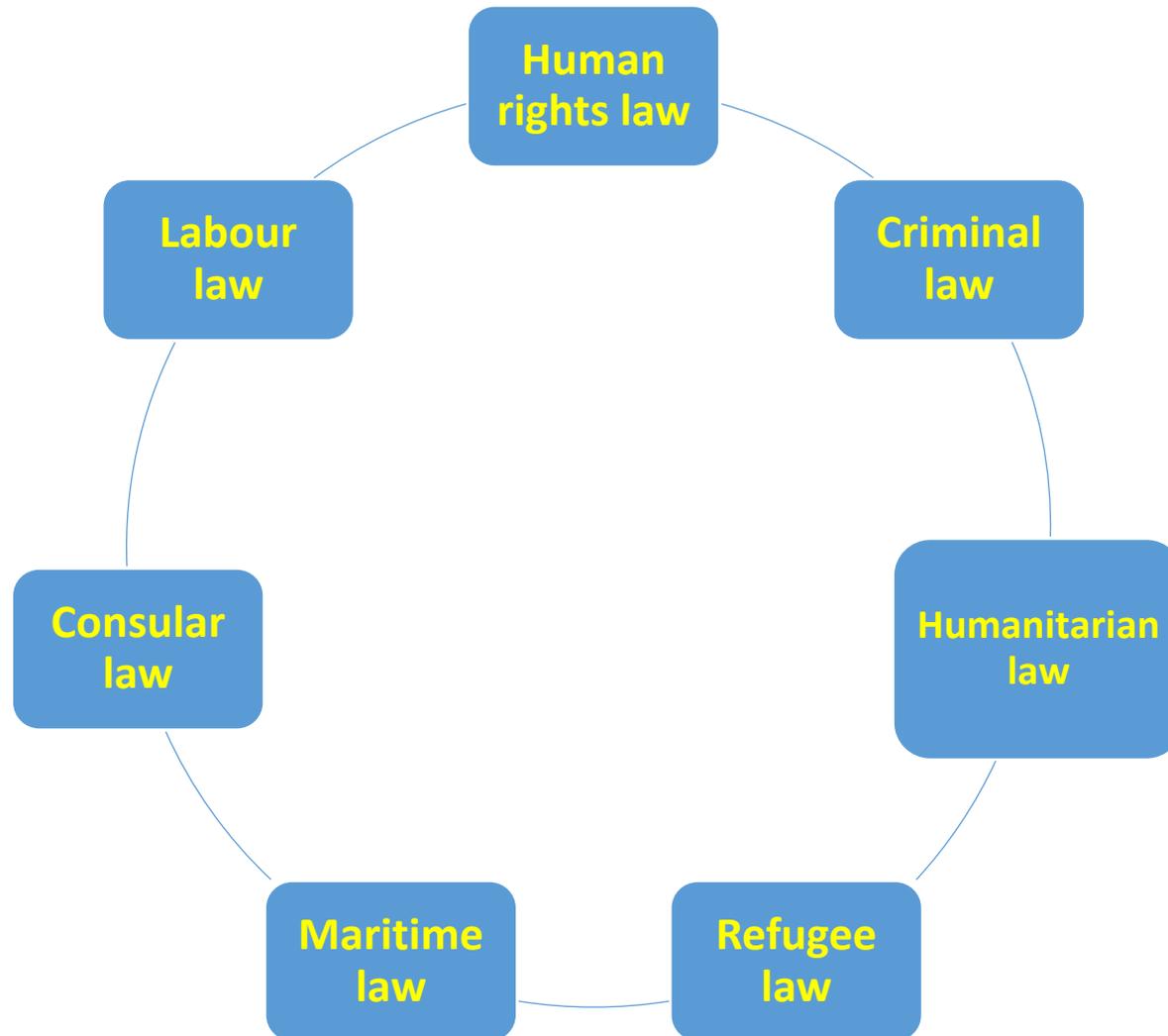
# Elements of the global compact

- Guidance on elements in NY Declaration, Annex II, para. 8



# International law relating to migration

## What is relevant?



International customary law

Views of UN and ILO supervisory mechanisms (e.g. human rights treaty bodies)

UN Special Rapporteurs, including on the human rights of migrants

Regional human rights instruments and other treaties

# “Soft law” is playing an increasing role

- No universally agreed definition of “soft law”
  - Shelton (2000)
    - “Normative provisions contained in non-binding texts”
  - Farjado (2014) – “soft law”
    - Should appear in written form
    - Includes “soft rules” in treaties (i.e. weak provisions in international agreements not entailing obligations)
    - Includes non-binding or voluntary resolutions, recommendations, and codes of conduct
  
- Is there a hierarchy of “soft law”?

# Migration “policy frameworks”

Some select relevant frameworks:

**IOM Migration  
Governance  
Framework**

**ILO Multilateral  
Framework on  
Labour Migration**

**OHCHR Principles  
and Guidelines on  
Human Rights at  
International Borders**

**UNHCR Refugee  
Protection and Mixed  
Migration: A 10-point  
Plan of Action**

**Nansen Initiative  
Protection Agenda**

**International Agenda  
for Migration  
Management**

# “Soft law” and migration: A critique

## ➤ Chetail (2014)\*

- “Besides treaty law, soft law has become the privileged avenue for clarifying applicable norms and promoting inter-state cooperation on migration.” (p. 7)
- “Nevertheless its effective impact on migration law and policy should not be overestimated. The proliferation of non-binding standards and consultative processes among a plethora of actors with different – and sometime conflicting – agendas can obfuscate the role of international migration law by aggravating the fragmentation and dispersion of its norms. This could even weaken international migration law, emphasising informal cooperation and non-binding statements to the detriment of binding rules of law.” (p. 9)

\* V. Chetail & C. Bauloz, *Research Handbook on International Law and Migration* (2014)

# Some tough legal issues

- Should these commitments in the NY Declaration be included in the Global Compact?
  - **Immigration detention**: reviewing policies that criminalize cross-border movements; pursuing alternatives to detention; working towards ending detention of migrant children (para. 33)
  - **Non-binding principles and voluntary guidelines, consistent with international law, on the treatment of migrants in vulnerable situations** (para. 52)
- But see commitment in 2030 Agenda that “no one will be left behind” and “to reach furthest behind first” (2030 Agenda Declaration, para. 4)

# Some tough legal issues (2)

- Protection of migrants regardless of migratory status
  - “Firewalls” between immigration enforcement and labour rights, and social rights (particularly rights to health and education)
  - Regularization
- Access to social protection
- Reducing migration costs
  - Fair and ethical recruitment
  - Recognition of skills/ qualifications/ diplomas
  - Coordination, including portability, of social security benefits
- Rules re. coordination, cooperation and participation?
  - “Whole of government” approaches
  - Bilateral and regional cooperation
  - Social partners (workers’ and employers’ organizations)
  - Labour recruiters
  - NGOs, diaspora organizations

# Thank you for your attention

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