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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

Diagram:

- Migration and development
- Labour migration and mobility
- Migrant rights and non-discrimination
- Addressing irregular migration
- Migration governance
International law relating to migration
What is relevant?

- Human rights law
- Criminal law
- Humanitarian law
- Refugee law
- Maritime law
- Consular law

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, emphasizing informal cooperation and non-binding statements to the detriment of binding rules of law.” (p. 9)

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)
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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