

## Article

# Enhancing the Rights of Protection-Seeking Migrants through the Global Compact for Migration: The Case of EU Asylum Policy

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### ABSTRACT

This article argues that the Global Compact for Safe, Orderly and Regular Migration (GCM) is not only a breakthrough for a rights-based approach in international migration governance but also an asset to the international protection system. By way of example, three key issues of the European Union's (EU) Common European Asylum System are discussed: access to protection, reception conditions, and detention. These examples illustrate that faithfully implementing the *Migration Compact* would require the EU and its Member States to make significant changes in their *asylum* policy.

The parallel emergence of the Global Compact on Refugees (GCR) may suggest otherwise – namely, that the GCM is not relevant for refugees and other protection-seeking migrants. However, the legal construction that best serves the object and purpose of both documents is the assumption that the two Compacts have an overlapping scope of application. The GCM addresses specific protection needs of protection-seeking migrants who are not covered by the 1951 Refugee Convention, and it serves as an umbrella, strengthening the core human rights of migrants regardless of their status, including protection-seeking migrants. Hence, the GCM improves the international protection system as a whole and should be acknowledged as such.

### 1. INTRODUCTION

Against all the odds, the Global Compact for Safe, Orderly and Regular Migration (GCM)<sup>1</sup> is still around, more than six years after the New York Declaration of the United Nations (UN)

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<sup>1</sup> Global Compact for Safe, Orderly and Regular Migration, UNGA res 73/195 (19 December 2018) (GCM).

General Assembly paved the way for its adoption.<sup>2</sup> Given the current Russian aggression against Ukraine, which constitutes a fundamental challenge to the UN and the international legal order, the first International Migration Review Forum, held in May 2022, was a remarkable achievement. The Progress Declaration, adopted as planned, confirms that the GCM will continue to be the reference text around which the legal and political debate on migration revolves in the framework of the UN.<sup>3</sup> In terms of substance, the Progress Declaration reaffirms the commitment of UN members ‘to respect, protect and fulfil the human rights and fundamental freedoms of all migrants, regardless of their migration status, without any kind of discrimination.’<sup>4</sup>

This article argues that the GCM is not only a breakthrough for a rights-based approach in international migration governance<sup>5</sup> but also an asset to the international protection system – that is, the legal and political regime concerning refugees and other persons seeking international protection. Much of the discussion concerning the GCM has focused on the relevance of the GCM with a view to the human rights of migrants in general, with critical voices raising concerns that the GCM’s fuzzy positioning vis-à-vis legally binding obligations risks ‘watering down’ the contemporary human rights *acquis*.<sup>6</sup> The respective legal debate, however, is mostly based on the assumption that the potential beneficiaries are ‘ordinary’ migrants, be they documented or undocumented. The legal position of refugees, as migrants seeking international protection, has received less attention in the context of the GCM.

The parallel emergence of the Global Compact on Refugees (GCR),<sup>7</sup> situated in the pre-existing international protection system with the 1951 Refugee Convention at its core,<sup>8</sup> may indeed suggest that the GCM is not relevant for refugees and other protection-seeking migrants. The present article challenges that assumption. It argues that the GCM can enhance the rights of persons in need of international protection, both within and outside the scope of the refugee definition provided in the Refugee Convention. While a systematic comparison of the two Compacts and the respective institutional dynamics is not the aim of this article, according to the understanding submitted here, the GCM complements the instruments provided for in the GCR and has added value in terms of international protection.

To make this point, the article uses the European Union (EU) as a test case.<sup>9</sup> It demonstrates that the GCM has major policy implications in European *asylum* policy if the commitments laid down in the *Migration Compact* are taken seriously. By way of example, three key issues of the Common European Asylum System (CEAS) are discussed: access to protection, reception conditions, and detention. Viewing current EU policies on these matters through the lens

2 New York Declaration for Refugees and Migrants, UNGA res 71/1 (3 October 2016).

3 ‘Progress Declaration of the International Migration Review Forum’, UNGA res 76/266 (14 June 2022) para 2.

4 *ibid* para 5; cf GCM, preamble recitals 2, 11, 12, 15, Guiding Principle (f); Objective 2, para 18(h). For a more detailed account of the GCM’s references to human rights, see Jürgen Bast and Janna Wessels, with Anusheh Farahat, ‘The Dynamic Relationship between the Global Compact for Migration and Human Rights Law’ (PROTECT Research Paper, 1 March 2023) <<https://doi.org/10.5281/zenodo.7688290>> accessed 6 December 2023.

5 For an extensive treatment, see Vincent Chetail, *International Migration Law* (Oxford University Press 2019) 293–339; on the drafting history and the new role of the International Organization for Migration, see Elizabeth G Ferris and Katherine M Donato, *Refugees, Migration and Global Governance* (Routledge 2019); Nicholas R Micinski, *UN Global Compacts: Governing Migrants and Refugees* (Routledge 2021).

6 See eg Mariette Grange and Izabella Majcher, ‘Using Detention to Talk about the Elephant in the Room: The Global Compact for Migration and the Significance of Its Neglect of the UN Migrant Workers Convention’ (2020) 16 *International Journal of Law in Context* 287; Alan Desmond, ‘From Complementarity to Convergence: The UN Global Compact for Migration and the UN Migrant Workers Convention’ (2022) 55 *World Comparative Law* 83; for a more positive assessment, see Michele Klein Solomon and Suzanne Sheldon, ‘The Global Compact for Migration: From the Sustainable Development Goals to a Comprehensive Agreement on Safe, Orderly and Regular Migration’ (2018) 30 *International Journal of Refugee Law* 584.

7 Global Compact on Refugees, UN doc A/73/12 (Part II) (2018) (GCR).

8 Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

9 On the ambivalent role of the EU in first spearheading the negotiations and then deferring to its (discordant) Member States, see Pauline Melin, ‘The Global Compact for Migration: Lessons for the Unity of EU Representation’ (2019) 21 *European Journal of Migration and Law* 194.

of the pertinent GCM objectives, the relevance of the GCM's contents for protection-seeking migrants can readily be identified.<sup>10</sup> States have undertaken, according to the GCM, to broaden the scope of alternative pathways to protection, to secure the economic and social rights of all migrants regardless of their protection status, and to work towards ending the use of detention as an element of asylum policy. Against this backdrop, faithfully implementing the GCM would require the EU and its Member States to make significant policy changes. Since their current policies are hardly exotic in the global North, it seems safe to conclude that the GCM more generally has the potential to enhance the rights of protection-seeking migrants and to strengthen the international protection system.

The article begins by developing the main argument and explaining the conceptual and legal premises on which it relies, including the concept of 'protection-seeking migrant' (part 2). Next, this argument is tested in the three areas of European asylum policy mentioned above (part 3). The article concludes that the GCM has the potential to strengthen the rights of protection-seeking migrants, in the EU and beyond, regardless of the causes of their forced displacement or their protection status (part 4).

## 2. THE GCM AS PART OF THE INTERNATIONAL PROTECTION SYSTEM: LEGAL AND CONCEPTUAL PREMISES

The argument that the adoption of the GCM, and the ensuing processes of implementing and reviewing this document, would potentially enhance the international protection system builds on several legal and conceptual assumptions.

First, previous research conducted by members of the PROTECT project<sup>11</sup> and other scholars of international law<sup>12</sup> shows that the 'soft law' nature of the GCM does not prevent it from becoming an effective tool of international governance that strengthens the rights of migrants. Soft law documents may inform the construction of binding rules of international law on which they are based, and they provide an independent yardstick for reviewing compliance with specific commitments voluntarily assumed.<sup>13</sup> For the non-legally binding GCM to actually impact migration policy and legal discourse, it is crucial to further develop and improve its implementation and review mechanisms.<sup>14</sup>

Secondly, being a State-negotiated legal instrument, the GCM reflects the realities of migration politics in the 21st century, including restrictionist tendencies among States. As a result, the GCM is of a 'mixed' character in terms of substance, reflected in three intersecting 'axes' of migration management, development policy, and individual rights.<sup>15</sup> Still, its rights dimension

10 See also Elspeth Guild, Kathryn Allinson, and Nicolette Busuttill, 'The UN Global Compacts and the Common European Asylum System: Coherence or Friction?' (2022) 11 *Laws* 35.

11 Elspeth Guild, Tugba Basaran, and Kathryn Allinson, 'From Zero to Hero? An Analysis of the Human Rights Protections within the Global Compact for Safe, Orderly and Regular Migration (GCM)' (2019) 57 *International Migration* 43; Anusheh Farahat and Jürgen Bast, 'A Global View on the Global Compact for Migration: Introduction' (2022) 55 *World Comparative Law* 3; Idil Atak and others, 'Reviewing the Reviews: The Global Compacts' Added Value in Access to Asylum Procedures and Immigration Detention' (2023) 5 *Frontiers in Human Dynamics*. Section: Migration and Society, 22 November 2023 <<https://www.frontiersin.org/articles/10.3389/fhumd.2023.1264942>> accessed 22 January 2024.

12 For an intriguing collection of articles, see the Special Issue 'Rule of Law and Human Mobility in the Age of the Global Compacts' (2022) 11 *Laws*; see the summary by Marion Panizzon, Daniela Vitiello, and Tamás Molnár, 'The Rule of Law and Human Mobility in the Age of Global Compacts: Relativizing the Risks and Gains of Soft Normativity?' (2022) 11 *Laws* 89.

13 Matthias Goldmann, 'We Need to Cut Off the Head of the King: Past, Present, and Future Approaches to International Soft Law' (2012) 25 *Leiden Journal of International Law* 335.

14 See Bast and Wessels (with Farahat) (n 4) section 2; Atak and others (n 11) section 4.

15 See Mustafa Aksakal and María Gabriela Trompetero, 'De lo Global a lo Local? El Rol del Pacto Mundial en las Políticas Colombianas hacia la Migración Venezolana' [From Global to Local? The Role of the Global Compact in Colombian Policies regarding Venezuelan Migration] in Lucila Nejankis, Luisa Conti, and Mustafa Aksakal (eds), *(Re)pensando el Vínculo entre Migración y Crisis: Perspectivas desde América Latina y Europa* [Rethinking the Link between Migration and Crisis: Perspectives from Latin America and Europe] (CLASCO Latin American Council of Social Sciences 2022) 83, 89.

is remarkably strong and its references to human rights law are sufficiently comprehensive to consider it a human rights document.<sup>16</sup>

The third premise deserves a more thorough elaboration. The point at issue is whether the terms ‘(international) migration’ and ‘migrants’ used in the GCM may also pertain to refugees and other persons seeking international protection. The concurrent adoption of the GCM and the GCR by the UN General Assembly in 2018 suggests the opposite conclusion. The duality of the two Compacts seems to build on a clear dichotomy between refugees and migrants as distinct classes. This view finds support in recital 4 of the GCM preamble, which states that ‘migrants and refugees are distinct groups governed by separate legal frameworks. Only refugees are entitled to the specific international protection defined by international refugee law’. Against this background, the GCM and the GCR have been criticized for ‘assum[ing] certain categorical distinctions between refugees and migrants, which are more fluid than they imagine.’<sup>17</sup>

Notably, however, the GCM refrains from providing a precise definition of ‘migrant’/‘migration’, leaving ample room for interpretation.<sup>18</sup> According to the understanding applied here, the main purpose of recital 4 of the GCM preamble is to shield the well-developed legal regime of international refugee law from undue interference by way of discretionary migration governance. The legal and conceptual distinction between refugees and (other) migrants is *not* meant to preclude other legal instruments from providing additional sources of protection, including for refugees. While the GCM clarifies that the existing legal framework offers a specific spectrum of rights exclusively with a view to refugees, it does not entirely remove the latter from the scope of its own objectives.

The legal construction that best serves the object and purpose of both documents is the assumption that the two Compacts have an overlapping scope of application. The GCR aims at promoting more equitable responsibility sharing for international refugee protection,<sup>19</sup> while the GCM aims at improving the governance of migration at the international level more generally.<sup>20</sup> Both Compacts have the aim of fostering international cooperation and strengthening the rights of people on the move. A strict distinction between migrants (allegedly not in need of protection), on the one hand, and refugees (as individuals in need of protection, as defined in the Refugee Convention), on the other, actually runs the risk of creating a protection gap. While the specific protection framework of the international protection system is a necessary tool to address the particular situation of refugees, it does not address other forms of forced displacement, such as that due to disasters or climate change, which are not covered by the refugee definition under article 1A(2) of the Refugee Convention. As McAdam and Wood point out, both the GCR and the GCM ‘recognize the importance of international protection and that States’ international protection obligations extend beyond any specific definition of a “refugee”.’<sup>21</sup> The

16 Bast and Wessels (with Farahat) (n 4) section 1, with further references to the scholarly argument. Guild, Allinson, and Busuttill (n 10) have come to similar conclusions. On the influence of non-State actors in shaping the GCM, see Jenna Hennebery and Nicola Piper, ‘Global Migration Governance and Migrant Rights Advocacy: The Flexibilization of Multi-Stakeholder Negotiations’ in Catherine Dauvergne (ed), *Research Handbook on the Law and Politics of Migration* (Edward Elgar Publishing 2021) 369.

17 Cathryn Costello, ‘Refugees and (Other) Migrants: Will the Global Compacts Ensure Safe Flight and Onward Mobility for Refugees?’ (2018) 30 *International Journal of Refugee Law* 643, 644.

18 On the perils of such indeterminacy, see Tendayi Bloom, ‘When Migration Policy Isn’t about Migration: Considerations for Implementation of the Global Compact for Migration’ (2019) 33 *Ethics & International Affairs* 481.

19 T Alexander Aleinikoff and Susan Martin, ‘Making the Global Compacts Work: What Future for Refugees and Migrants?’, Policy Brief 6, Andrew & Renata Kaldor Centre for International Refugee Law (2018) <<https://www.unsw.edu.au/content/dam/pdfs/unsw-adobe-websites/kaldor-centre/2023-09-policies/2023-09-policy-brief-6.pdf>> accessed 22 January 2024.

20 UN Network on Migration, *Implementing the Global Compact for Safe, Orderly and Regular Migration: Guidance for Governments and All Relevant Stakeholders* (2022) <[https://migrationnetwork.un.org/system/files/docs/Guide\\_Implementing%20the%20GCM.pdf](https://migrationnetwork.un.org/system/files/docs/Guide_Implementing%20the%20GCM.pdf)> accessed 22 January 2024.

21 Jane McAdam and Tamara Wood, ‘The Concept of “International Protection” in the Global Compacts on Refugees and Migration’ (2021) 23 *Interventions: International Journal of Postcolonial Studies* 191, 191.

principle of *non-refoulement* must thereby 'remain at the forefront of efforts to implement both Global Compacts', unobscured by nomenclature or neat categorizations.<sup>22</sup>

Building on this reading, the present article argues that the two Compacts are not mutually exclusive as regards their personal scope of application. Rather, they must be read together to unfold their full potential. The resulting understanding of the legal interplay between the two documents consists of two elements. First, *all refugees are migrants seeking protection*. Accordingly, all GCM objectives that pertain to migrants regardless of a particular status are also applicable to refugees and other persons seeking international protection. In this regard, the GCM forms the umbrella (*lex generalis*), while the GCR is part of the special regime specifically addressing the protection of refugees (*lex specialis*). Secondly, *not all protection seekers are refugees*. Refugees as defined in the Refugee Convention are a qualified part of those migrants who seek and potentially enjoy international protection. While the GCR addresses the protection needs of refugees, the GCM may contain elements that specifically relate to the similar needs of protection-seeking migrants other than refugees. In that regard, both the GCM and the GCR are complementary components of the special regime governing international protection.<sup>23</sup>

This understanding is reflected in the terminology used in this article. The notion of 'protection-seeking migrants' refers to persons facing persecution as defined in the Refugee Convention (that is, refugees in the narrow sense), but also pertains to other grounds of international protection, including *non-refoulement* obligations derived from human rights law and other forms of complementary protection, such as for people fleeing from war or disasters.

### 3. THE RIGHTS-ENHANCING POTENTIAL OF THE GCM FOR THE COMMON EUROPEAN ASYLUM SYSTEM

This part draws on key issues of the CEAS to illustrate the potential of the GCM to progressively expand the rights of protection-seeking migrants and help remedy existing protection gaps. It analyses three areas of EU asylum policy: first, how protection seekers may safely arrive in the EU, and hence the issue of access to protection (section 3.1); secondly, the legal condition of protection seekers after arrival, specifically with a view to their socio-economic subsistence (section 3.2); and thirdly, the issue of detention as a crucial area in which the rights of protection-seeking migrants are restricted (section 3.3). To demonstrate the rights-enhancing potential of the GCM, this part identifies the GCM objective most relevant for each issue and uses it as the yardstick against which the EU's policies are measured.

#### 3.1 The GCM's potential to expand safe pathways to protection

The issue of access to protection serves as the first illustration. This section briefly summarizes how the lack of safe pathways to protection and the deterrent effects of EU border and migration policies constitute critical human rights issues of the CEAS (section 3.1.1). In contrast, Objective 5 of the GCM reflects a commitment of States to extend safe pathways to protection to migrants beyond the refugee definition (section 3.1.2).

##### 3.1.1 *The lack of safe access to protection in the EU*

The question of how a person may safely reach a State to seek protection is left open by international and EU law.<sup>24</sup> While international human rights law provides for a right 'to leave any

22 *ibid* 194.

23 On the distinction between the notions of 'international protection' and 'protection', see Madeline Garlick and Claire Inder, 'Protection of Refugees and Migrants in the Era of the Global Compacts' (2021) 23 *Interventions: International Journal of Postcolonial Studies* 207, 214–15.

24 On the shortcomings of the Refugee Convention regarding access to protection, see James C Hathaway, *The Rights of Refugees under International Law* (2nd edn, Cambridge University Press 2021) 337ff.



country’,<sup>25</sup> there is no corresponding right ‘to enter any country’ in order to seek protection. Accordingly, the concept of asylum, as the act of granting protection, is territorially bound in the context of the CEAS: article 3(1) of the EU Asylum Procedures Directive (APD)<sup>26</sup> provides that an asylum application can only be made ‘on the territory – including at the border, in territorial waters or in transit zones – of the Member States.’<sup>27</sup> As confirmed by the Court of Justice of the European Union (CJEU) in the *X and X* case concerning the visa applications of Syrian nationals seeking asylum in Belgium, there is no provision in current EU law that provides protection seekers with the right to seek asylum outside the territory of the EU.<sup>28</sup> In a case with a similar factual background, the European Court of Human Rights (ECtHR) denied extraterritorial jurisdiction regarding the granting of an asylum visa.<sup>29</sup> To claim a right to protection under the European Convention on Human Rights (ECHR),<sup>30</sup> a person has to physically reach the territorial borders of a State bound by the ECHR, save for exceptional circumstances.

At the same time, the EU engages in a range of measures shifting border and migration control further away from its territory.<sup>31</sup> While ‘pushbacks’ and ‘pullbacks’ effectively prevent access to EU territory,<sup>32</sup> visa restrictions and ‘safe third country’ concepts<sup>33</sup> facilitate the rejection of protection seekers. Together, these measures create a multi-layered system of access prevention.<sup>34</sup> Protection seekers therefore largely travel on dangerous irregular routes, governed by smugglers<sup>35</sup> and susceptible to human trafficking.<sup>36</sup>

In view of this access dilemma, the need for safe pathways to protection in the EU, in the form of humanitarian visas, private sponsorship programmes, or resettlement, has been recognized by policymakers.<sup>37</sup> Any of these possible pathways represents visa schemes operating on different eligibility criteria and procedures. While generally all visa options providing safe entry can benefit refugees and other protection-seeking migrants alike, ‘qualification-based’ pathways, such as work or student visas, might not be accessible for protection seekers in precarious situations or with special vulnerabilities. In contrast, pathways with a humanitarian scope, such as resettlement, humanitarian visas, or private sponsorship programmes, are particularly relevant

25 See Universal Declaration of Human Rights (adopted 10 December 1948) UNGA res 217 A(III) art 13(2); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 12(2); Protocol No 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 16 September 1963, entered into force 2 May 1968) ETS No 46, art 2(2).

26 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) [2013] OJ L180/60 (APD).

27 *ibid* art 3(2): the APD ‘shall not apply to requests for diplomatic or territorial asylum submitted to representations of Member States’.

28 Case C-638/16 PPU *X and X v État belge* EU:C:2017:173, para 49.

29 *MN v Belgium* App No 3599/18 (ECtHR, 5 May 2020).

30 Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5 (European Convention on Human Rights) (ECHR).

31 See, *inter alia*, Bernard Ryan and Valsamis Mitsilegas, *Extraterritorial Immigration Control: Legal Challenges* (Martinus Nijhoff Publishers 2010); Thomas Gammeltoft-Hansen and Nikolas F Tan, ‘Extraterritorial Migration Control and Deterrence’ in Cathryn Costello, Michelle Foster, and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021) 502.

32 On pushbacks and pullbacks, see Nora Markard, ‘The Right to Leave by Sea: Legal Limits on EU Migration Control by Third Countries’ (2016) 27 *European Journal of International Law* 591; Jürgen Bast, Frederik von Harbou, and Janna Wessels, *Human Rights Challenges to European Migration Policy: The REMAP Study* (Nomos 2022) 29–37.

33 See Luisa F Freier, Eleni Karageorgiou, and Kate Ogg, ‘The Evolution of Safe Third Country Law and Practice’ in Costello, Foster, and McAdam (eds) (n 31) 518.

34 On access prevention in the context of the COVID-19 pandemic, see Daniel Ghezalbash and Nikolas F Tan, ‘The End of the Right to Seek Asylum? COVID-19 and the Future of Refugee Protection’ (2020) 32 *International Journal of Refugee Law* 668.

35 See Andreas Schloenhardt, ‘Smuggling of Migrants and Refugees’ in Costello, Foster, and McAdam (eds) (n 31) 535.

36 See Catherine Bridgick and Vladislava Stoyanova, ‘Human Trafficking and Refugees’ in Costello, Foster, and McAdam (eds) (n 31) 553.

37 See eg Commission Recommendation (EU) 2020/1364 of 23 September 2020 on legal pathways to protecting in the EU: promoting resettlement, humanitarian admission and other complementary pathways [2020] OJ L317/13.

for individuals seeking protection. These so-called ‘needs-based’ pathways focus on specific protection needs and provide a humanitarian status upon arrival.<sup>38</sup> The existence of humanitarian pathways is, therefore, crucial for gaining safe access to protection in the EU.

Recent legal developments regarding humanitarian pathways at the EU level focus on resettlement – that is, the pathway traditionally designed by the United Nations High Commissioner for Refugees (UNHCR) to offer a long-term solution to individuals who have been recognized as refugees and have been granted preliminary protection in a first State of refuge.<sup>39</sup> The reform proposals of the New Pact on Migration and Asylum, tabled by the European Commission in 2020 and still under negotiation at the time of writing,<sup>40</sup> include a draft for an EU Regulation on resettlement.<sup>41</sup> In turn, the 2018 initiative report by the European Parliament to adopt a Regulation on humanitarian visas, which emerged after the CJEU decision in the *X and X* case, has not been followed up by the European Commission.<sup>42</sup> The Parliament’s proposal was to provide protection seekers with the option of individually applying for a visa on humanitarian grounds, independent of existing resettlement or ad hoc humanitarian admission programmes at the national level. To date, therefore, the access dilemma for protection-seeking migrants remains unresolved at the EU level.

### 3.1.2 Access to protection beyond refugee status: Objective 5 of the GCM

As might be expected, the Refugee Compact comprises important recommendations by UNHCR for States to expand safe access to protection – not only resettlement but also so-called ‘complementary pathways’, such as private sponsorship, family reunification, or other regular pathways.<sup>43</sup> In line with the GCR’s restricted scope of application, the recommendations focus on refugees under the Refugee Convention. Perhaps surprisingly, however, the GCM also deals with the issue of access to protection. Objective 5 of the GCM recognizes the need to provide safe pathways for protection seekers who are forced to flee due to, *inter alia*, disasters or climate change.

Objective 5 expresses the commitment to ‘enhance availability and flexibility of pathways for regular migration’, further stating:

We commit to adapt options and pathways for regular migration in a manner that facilitates labour mobility and decent work reflecting demographic and labour market realities, optimizes education opportunities, upholds the right to family life, and responds to the needs of migrants in a situation of vulnerability, with a view to expanding and diversifying availability of pathways for safe, orderly and regular migration.

While it is not obvious that protection seekers could benefit directly from these pathways, the GCM specifies the following actions, which are worth quoting in detail:

38 On the distinction between ‘needs-based’ and ‘qualification-based’ pathways, see Tamara Wood, ‘The Role of “Complementary Pathways” in Refugee Protection’, Reference paper for 70th anniversary of 1951 Refugee Convention (UNHCR, November 2020) 3 <[https://www.unhcr.org/people-forced-to-flee-book/wp-content/uploads/sites/137/2021/10/Tamara-Wood\\_The-role-of-complementary-pathways-in-refugee-protection.pdf](https://www.unhcr.org/people-forced-to-flee-book/wp-content/uploads/sites/137/2021/10/Tamara-Wood_The-role-of-complementary-pathways-in-refugee-protection.pdf)> accessed 22 January 2024.

39 UNHCR, *Resettlement Handbook* (2011) 3.

40 European Commission, ‘Communication on a New Pact on Migration and Asylum’ COM(2020) 609 final.

41 See European Commission, ‘Proposal for a Regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council’ COM(2016) 468 final.

42 European Parliament, ‘Resolution of 11 December 2018 with recommendations to the Commission on Humanitarian Visas’ (2018/2271(INL)); European Parliament, ‘Humanitarian Visas: European Added Value Assessment accompanying the European Parliament’s Legislative Own-Initiative Report (Rapporteur: Juan Fernando López Aguilar)’ Study (October 2018).

43 GCR (n 7) paras 90ff.

g) Develop or build on existing national and regional practices for admission and stay of appropriate duration based on *compassionate, humanitarian or other considerations* for migrants compelled to leave their countries of origin, *owing to sudden-onset natural disasters and other precarious situations*, such as by providing *humanitarian visas, private sponsorships ...*

h) Cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin *owing to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation*, such as desertification, land degradation, drought and sea level rise, including by devising planned relocation and visa options ...<sup>44</sup>

The potential impact of these provisions on protection seekers is twofold. On the one hand, the GCM envisages qualification-based pathways, such as labour mobility schemes. On the other hand, it also envisages needs-based pathways with a humanitarian scope. It should be emphasized that opportunities for labour mobility can be an important route to safety for refugees and other protection-seeking migrants.<sup>45</sup> Such pathways allow legal entry by matching individual skills with labour market needs, thus enhancing the agency and self-reliance of beneficiaries. Objective 5 of the GCM implies an investment in respective immigration administrations to effectively handle visa application or other travel authorization processes, such as the European visa facilitation and liberalization programmes.<sup>46</sup> With a view to the legal conditions upon arrival, the EU Blue Card Directive is particularly promising, as it provides the strongest status for migrant workers.<sup>47</sup> Overall, the commitments States made in the GCM provide a strong argumentative basis to further develop and expand legal pathways for high-skilled labour as well as other qualification-based pathways.

However, qualification-based pathways do not take specific vulnerabilities into account and are not designed to provide a protection status upon arrival. Individuals who enter the EU on the basis of a qualification-based pathway may encounter difficulties in applying for protection status once they have been admitted to a labour mobility scheme. They also run the risk of blurring the lines between humanitarian and non-humanitarian pathways, for instance by taking up capacity in traditional resettlement schemes.

It is therefore all the more important that the GCM foresees not only qualification-based pathways but also needs-based pathways, just as the GCR does. In contrast to the GCR, however, the GCM contains a commitment to enhance humanitarian pathways with a focus on protection seekers who do not qualify for refugee status. These actions relate to the GCM's objective of responding to 'the needs of migrants in a situation of vulnerability', as quoted above. A particularly promising pathway is the humanitarian visa, permitting entry to a State territory to either seek asylum or be granted a humanitarian status upon arrival.<sup>48</sup> This pathway allows a pre-assessment of the claim by the respective embassy or consulate. It relies on a robust structure of visa procedures, governmental institutions, and existing practices in different Member States.<sup>49</sup> Therefore, Objective 5 of the GCM provides a strong argument for resuming efforts to adopt an EU Regulation on humanitarian visas, as requested by the European Parliament in 2018.

44 GCM (n 1) Objective 5, para 21 (emphasis added).

45 See Zvezda Vankova, 'Refugees as Migrant Workers after the Global Compacts? Can Labour Migration Serve as a Complementary Pathway for People in Need of Protection into Sweden and Germany?' (2022) 11 *Laws* 88.

46 François Crépeau, 'Towards a Mobile and Diverse World: "Facilitating Mobility" as a Central Objective of the Global Compact on Migration' (2018) 30 *International Journal of Refugee Law* 650, 652.

47 See Tesseltje de Lange and Zvezda Vankova, 'The Recast EU Blue Card Directive: Towards a Level Playing Field to Attract Highly Qualified Migrant Talent to Work in the EU?' (2022) 24 *European Journal of Migration and Law* 489.

48 Bast, von Harbou, and Wessels (n 32) 63.

49 Outi Lepola, *Humanitarian Visa as Counterbalancing Externalized Border Control for International Protection Needs* (University of Birmingham 2011).



Complying with these expectations of Objective 5 would be an appropriate means of fulfilling the positive obligation, derived from human rights law, to facilitate access to protection as set out in the case law of the ECtHR (that is, to ensure ‘genuine and effective access to means of legal entry’).<sup>50</sup> Moreover, the GCM expands the notion of ‘humanitarian reasons’ for opening up regular pathways to other causes of forced migration, including disasters and climate change. The GCM is the first UN document approved by the large majority of its members to acknowledge the need to address these causes.<sup>51</sup> Some protection seekers who neither fall under the narrow definition of the Refugee Convention nor qualify for subsidiary protection under EU law would thus benefit from the implementation of these commitments.<sup>52</sup> The GCM adapts its scope to highly relevant causes of displacement in the 21st century, making its call for humanitarian pathways much broader than the GCRs. Accordingly, a complementary reading of both Compacts significantly enlarges the scope of potential pathways to protection.

Overall, the GCM reflects a commitment of States to progressively expand reasons for protection and to rely on safe pathways to protection to secure the human rights of protection-seeking migrants. In the legal context of the EU, the GCM therefore has the potential to enhance safe pathways to protection, not only by expanding qualification-based pathways to all migrants but also by specifically naming needs-based pathways. The latter expands the focus of protection to encompass humanitarian grounds well beyond the limitations of current policy discourse in the EU. Obviously, given the almost complete absence of safe humanitarian pathways at present, living up to these commitments would require substantial policy changes on the part of the EU and its Member States.

### 3.2 The GCM’s significance for the economic and social rights of protection-seeking migrants

Another area in which the GCM can unfold its rights-enhancing potential is the situation of protection seekers who have accessed the territory of the EU but face restrictions on access to basic services. The EU increasingly uses social and economic exclusion as a policy tool with a view to managing groups of ‘undesirable’ migrants (section 3.2.1). However, this section argues that Objective 15 of the GCM has the potential to strengthen the social and economic rights of protection-seeking migrants independent of protection status (section 3.2.2).

#### 3.2.1 *Social and economic exclusion as deterrence policy in the EU*

Social and economic exclusion of migrants can occur through policies of ‘planned destitution’.<sup>53</sup> ‘Planned destitution’ refers to situations where social and economic exclusion is used as a policy tool to control migration, especially as a deterrent against ‘unwanted’ migration, including protection-seeking migrants. Measures of planned destitution may respond to various intersecting policy aims, ranging from pushing those present on territory to leave, deterring future arrivals, and creating exploitable people serving the needs of certain sectors of the economy.

50 cf *ND and NT v Spain* App Nos 8675/15 and 8697/15 (ECtHR, 13 February 2020) paras 201, 209.

51 Ferris and Donato (n 5) 116; see also Micinski (n 5) 108, pointing out how the GCM ‘fills the gap in global governance on climate migration’.

52 In the legal context of the EU, the term ‘international protection’ refers to the protection granted on the basis of refugee status or subsidiary protection status. See Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) [2011] OJ L337/9 (Qualification Directive). On this expanded European notion of refugees, see Jürgen Bast, ‘Vom subsidiären Schutz zum Europäischen Flüchtlingsbegriff’ [From Subsidiary Protection to the European Refugee Concept] [2018] *Zeitschrift für Ausländerrecht und Ausländerpolitik* 41.

53 The term was coined by Eve Lester in *Making Migration Law* (Cambridge University Press 2018) 235.

As a result, the use of destitution as a tool for managing migration generates acute tensions within host States between migration policies and human rights obligations.

In the EU, while planned destitution for protection-seeking migrants already occurs under the current legislative framework,<sup>54</sup> reform proposals tabled by the European Commission appear to tighten such policies even further. Two areas in which such policies are used stand out: policies to prevent the onward movement of asylum seekers within the EU, and measures to enforce returns to third countries, that is, countries outside the EU. In both constellations, the migrant does not leave the country of residence when the EU (and/or the Member State) expects them to. The latter focuses on migrants without a right to stay, including rejected asylum seekers who have been served with a return decision and are no longer regarded as protection seekers. This section therefore focuses on the prevention of onward movements of asylum seekers to develop the main argument.

In the EU, the Dublin Regulation assigns responsibility for the processing of each asylum claim to a particular Member State.<sup>55</sup> Some asylum seekers move on to other Member States regardless. Such movements are commonly referred to as ‘secondary movements.’<sup>56</sup> One response by Member States consists of sanctioning secondary movements by curtailing material reception conditions, such as housing, food, or clothing. These services are usually granted to asylum seekers in accordance with the Reception Conditions Directive (RCD).<sup>57</sup> In the context of planned destitution, such services are provided on the condition that the asylum seeker stays in (or moves to) the assigned Member State. However, in a series of judgments the CJEU has held such policies to be illegal because the EU legislative framework does not foresee sanctions for onward movement.<sup>58</sup> In its reasoning, the court also referred to the right to human dignity laid down in the EU Charter of Fundamental Rights.<sup>59</sup>

In response to this situation, the CEAS reform proposals tabled by the European Commission, rather than ensuring that such measures can no longer take place, seeks to establish a legal basis for such denial of basic services, and thereby enable policies of planned destitution to sanction secondary movements.<sup>60</sup> The proposed article 17a of the recast RCD provides for the withdrawal of reception conditions in paragraph 1, followed by a requirement to ‘ensure a dignified standard of living for all applicants’ in paragraph 2. This is a rather contradictory formulation: reading the notion of ‘dignity’ in light of human rights law would actually prevent Member States from taking the sanctions apparently signed off by the EU legislature. This deliberate lack of clarity invites results that actually fall below the core minimum required by human rights law.<sup>61</sup>

54 Bast, von Harbou, and Wessels (n 32) 210–12.

55 Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) [2013] OJ L180/31 (Dublin III Regulation).

56 For discussion, see Sergio Carrera and others, ‘When Mobility Is Not a Choice: Problematising Asylum Seekers’ Secondary Movements and Their Criminalisation in the EU’, CEPS Paper in Liberty and Security in Europe No 2019-11 (December 2019) 8–11 <<https://www.ceps.eu/wp-content/uploads/2019/12/LSE2019-11-RESOMA-Policing-secondary-movements-in-the-EU.pdf>> accessed 6 December 2023.

57 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast) [2013] OJ L180/96 (RCD).

58 Case C-179/11 *Cimade and GISTI* EU:C:2012:594; Case C-233/18 *Zubair Haqbin* EU:C:2019:956.

59 Charter of Fundamental Rights of the European Union [2012] OJ C326/391 (EU Charter).

60 European Commission, ‘Proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast)’ COM(2016) 465 final, art 17a.

61 See Janna Wessels, ‘Planned Destitution as a Policy Tool to Control Migration in the EU: Socio-Economic Deprivation and International Human Rights Law’ (*Odyssey EU Migration Law Blog*, 17 March 2023) <<https://emigrationlawblog.eu/planned-destitution-as-a-policy-tool-to-control-migration-in-the-eu-socio-economic-deprivation-and-international-human-rights-law/#more-8649>> accessed 6 December 2023.

### 3.2.2 Social and economic inclusion regardless of migration status: Objective 15 of the GCM

Objective 15 of the GCM clearly stands against policies of planned destitution. It reflects the commitment of States to provide migrants with access to basic services independent of their status. Specifically, the objective reads:

We commit to ensure that all migrants, regardless of their migration status, can exercise their human rights through safe access to basic services. We further commit to strengthen migrant-inclusive service delivery systems, notwithstanding that nationals and regular migrants may be entitled to more comprehensive service provision, while ensuring that any differential treatment must be based on law, be proportionate and pursue a legitimate aim, in accordance with international human rights law.

This objective crystallizes a doctrine developed under international human rights law. Several binding human rights treaties stipulate socio-economic rights, including the International Covenant on Economic, Social and Cultural Rights (ICESCR) at the universal level,<sup>62</sup> and the revised European Social Charter (revised ESC) at the regional European level.<sup>63</sup> The supervisory bodies of these treaties have held in their quasi-judicial practice that a minimum core of socio-economic rights must be granted to all persons within the jurisdiction of a State party. The Committee on Economic, Social and Cultural Rights (CESCR) has established that, as regards the ICESCR, 'a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party.'<sup>64</sup> Likewise, the European Committee of Social Rights has held that the enjoyment of the 'minimum core' of the rights set out in the revised ESC as essential to maintain human dignity must be ensured for foreign nationals within the territory of a State party, 'even if they are there illegally.'<sup>65</sup> Specifically, the European Committee of Social Rights held that emergency social assistance must be granted without any conditions and, in particular, cannot be made conditional upon the willingness of the persons concerned to cooperate in the organization of their own expulsion.<sup>66</sup> It appears that the CJEU in its relevant judgments also endorses this standard as part of EU law.<sup>67</sup>

In line with this human rights doctrine developed in various fora, Objective 15 acknowledges an individual entitlement to the basic rights of migrants, as well as the commitment of States to provide access to the corresponding basic services. This commitment reflects the positive obligations laid down in international human rights law. Accordingly, policies of planned destitution that rely on conditionality requirements for access to basic services as a means of asylum policy stand in harsh contrast to this objective. Complying with GCM commitments in this context would significantly enhance the legal condition of protection-seeking migrants in the EU. In this regard, the GCM functions as an 'umbrella', shielding protection-seeking and other migrants alike.

62 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

63 Council of Europe, European Social Charter (Revised) (3 May 1996, entered into force 1 July 1999) ETS No 163 (revised ESC).

64 CESCR, 'General Comment No 3: The Nature of States Parties' Obligations', UN doc E/1991/23 (14 December 1990) para 10.

65 European Committee of Social Rights, *Conclusions XVII-1*, vol 1 (2004) General Introduction, para 5.

66 European Committee of Social Rights, *CEC v Netherlands*, Complaint No 90/2013 (1 July 2014) para 117.

67 *Cimade and GISTI* (n 58) para 56; Joined Cases C-322/19 and C-385/19 *KS* EU:C:2021:11, para 69; see also *Zubair Haqbin* (n 58) paras 45–47, and more recently Case C-422/21 *TO* EU:C:2022:616.

### 3.3 The GCM's potential to limit the detention of protection-seeking migrants

The third example of the GCM's rights-enhancing potential for protection-seeking migrants relates to immigration detention – that is, the deprivation of liberty or confinement to a particular place in the context of migration control. The EU increasingly uses immigration detention as a policy of deterrence towards unwanted asylum seekers (section 3.3.1), creating tensions with Objective 13 of the GCM, which aims at limiting the use of detention as a means of asylum policy (section 3.3.2).

#### 3.3.1 Immigration detention as deterrence policy in the EU

The increased use of detention is one of the major trends in terms of 'hostile' policy measures vis-à-vis protection seekers in the EU.<sup>68</sup> Detention can be used as a deterrence policy to manage the numbers of 'undesirable' migrants by seeking to push those present to leave and to deter future arrivals.<sup>69</sup> Detention policies have become emblematic in an attempt to show control and respond to the threat of terrorism, as well as to political pressures regarding border security.<sup>70</sup>

One of the ways in which this plays out is a more frequent and systematic use of border procedures in assessing asylum claims.<sup>71</sup> Border procedures are already an optional element of the EU asylum *acquis*. The European Commission proposal for an Asylum Procedures Regulation, as amended in September 2020, proposes to expand and mandate their use in order to make return policies more effective.<sup>72</sup> The rationale is that 'keeping' certain asylum seekers at the borders or in transit zones will make returning rejected applicants more effective, which in turn deters others from applying for asylum in the first place. Although the proposal does not prescribe closed asylum centres, it is clear that these border procedures would have to rely on restrictions of movement of asylum seekers at border or transit zones, which may in some – and maybe most – cases amount to situations of *de facto* or *de jure* detention.

The legal basis for such detention is constructed around article 5(1)(f) of the ECHR and the relevant jurisprudence of the ECtHR.<sup>73</sup> This article permits the detention of a person to 'prevent his effecting an unauthorised entry' as well as with a view to deportation. In a controversial line of case law since the judgment in *Saadi v Italy*, the ECtHR has interpreted this provision to mean that an assessment of necessity in the individual case is not required if an asylum seeker is detained in order to prevent their unauthorized entry.<sup>74</sup> The ECtHR only reluctantly applies the principles of necessity and proportionality to cases of immigration detention. While the ECtHR has recognized in non-migration contexts that 'it does not suffice that the deprivation of liberty is executed in conformity with national law but it must also be necessary in the

68 Bast, von Harbou, and Wessels (n 32) 271ff.

69 See eg Julia Suarez-Krabbe, Annika Lindberg, and José Arce-Bayona, *Stop Killing Us Slowly: A Research Report on the Motivation Enhancement Measures and Criminalization of Rejected Asylum Seekers in Denmark* (The Freedom of Movements Research Collective 2018) <[http://refugees.dk/media/1757/stop-killing-us\\_uk.pdf](http://refugees.dk/media/1757/stop-killing-us_uk.pdf)> accessed 6 December 2023.

70 Robyn Sampson and Grant Mitchell, 'Global Trends in Immigration Detention and Alternatives to Detention: Practical, Political and Symbolic Rationales' (2013) 1 *Journal on Migration and Human Security* 97; see also Arjen Leerken and Dennis Broeders, 'A Case of Mixed Motives? Formal and Informal Functions of Administrative Immigration Detention' (2010) 50 *British Journal of Criminology* 830, 842–44; Philippe De Bruycker and others, *Alternatives to Immigration and Asylum Detention in the EU: Time for Implementation* (Odysseus Network 2015) 19.

71 cf European Parliament LIBE Committee, 'Report on the implementation of Article 43 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection' 2020/2047(INI), A9-0005/2021 (20 January 2021).

72 European Commission, 'Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU' COM(2020) 611 final.

73 The wording of the legislative provisions that would serve as grounds for detention for both the *asylum* border procedure (COM(2016) 465 final (n 60) art 8(3)(d)) and the *return* border procedure (COM(2020) 611 final (n 72) art 41a(5)) reflect the wording of art 5(1)(f) of the ECHR with regard to preventing entry. It appears that the proposal is modelled against that standard.

74 *Saadi v Italy* App No 37201/06 (ECtHR, 28 February 2008) paras 72–74.

circumstances,<sup>75</sup> the court has accepted the practice of detention for bureaucratic convenience in the migration context.<sup>76</sup> In its *Saadi* judgment, the Grand Chamber of the court explicitly held that necessity is not a requirement under article 5(1)(f) of the ECHR for the lawfulness of immigration detention upon entry.<sup>77</sup> In its more recent case law, the Strasbourg court has been cautiously resiling from its previous position and increasingly incorporating elements of a full proportionality test.<sup>78</sup> Nonetheless, EU policies on border procedures still endorse the rationale of the *Saadi* jurisprudence, providing for detention for the purpose of preventing illegal entry. As discussed in the following section, this trend of using detention as a deterrence measure stands in conflict with the commitment States agreed to in Objective 13 of the GCM.

### 3.3.2 Limiting the use of detention as deterrence: Objective 13 of the GCM

The current detention practices in the context of border procedures for asylum seekers in the EU, including the pending legislative proposals to expand detention in the context of border procedures, are not consistent with Objective 13 of the GCM, in which States commit to use detention only as a measure of last resort and to work towards alternatives:

We commit to ensure that any detention in the context of international migration follows due process, is non-arbitrary, is based on law, necessity, proportionality and individual assessments, is carried out by authorized officials and is for the shortest possible period of time, irrespective of whether detention occurs at the moment of entry, in transit or in proceedings of return, and regardless of the type of place where the detention occurs. We further commit to prioritize non-custodial alternatives to detention that are in line with international law, and to take a human rights-based approach to any detention of migrants, using detention as a measure of last resort only.

Again, this objective is consonant with standards established elsewhere in human rights law.<sup>79</sup> The prohibition of arbitrary detention is codified in a broad range of treaties, such as article 9 of the International Covenant on Civil and Political Rights.<sup>80</sup> In both its jurisprudence on immigration detention<sup>81</sup> and its General Comments,<sup>82</sup> the Human Rights Committee has clarified that detention of asylum seekers is permissible only for a brief initial period in order to document their entry, record their claims, and determine their identity if it is in doubt. To detain asylum seekers further while their claims are being processed would be arbitrary if there are no particular reasons specific to the individual, such as a likelihood of absconding or a risk of acts against national security. Thus, illegal entry by migrants does not in itself justify their detention.

Accordingly, the GCM has embraced the jurisprudence developed at the universal level, rather than the questionable *Saadi* case law of the ECtHR.<sup>83</sup> In Objective 13 of the GCM, States

75 *Witold Litwa v Poland* App No 26629/95 (ECtHR, 4 April 2000) para 78.

76 *Chahal v UK* App No 22414/93 (ECtHR, 15 November 1996).

77 *Saadi* (n 74) paras 72–74.

78 *Suso Musa v Malta* App No 42337/12 (ECtHR, 23 July 2013); *Yoh-Ekale Mwanje v Belgium* App No 10486/10 (ECtHR, 20 December 2011) para 124.

79 See Izabella Majcher, 'GCM Objective 13: In Search of Synergies with the UN Human Rights Regime to Foster the Rule of Law in the Area of Immigration Detention' (2022) 11 *Laws* 52.

80 International Covenant on Civil and Political Rights (n 25).

81 *Jalloh v Netherlands*, UN doc CCPR/C/74/D/794/1998 (26 March 2002) para 8.2; *FKAG and others v Australia*, UN doc CCPR/C/108/D/2094/2011 (26 July 2013) paras 9.3–9.4; *C v Australia*, UN doc CCPR/C/76/D/900/1999 (28 October 2002) para 8.2.

82 Human Rights Committee, 'General Comment No 35: Liberty and Security of Person', UN doc CCPR/C/107/R.3, para 18.

83 For further discussion, see Janna Wessels, 'Gaps in Human Rights Law? Detention and Area-Based Restrictions in the Proposed Border Procedures in the EU' (2023) 25 *European Journal of Migration and Law* 275.



have committed to ensure that their laws and policies comply with the former standard. If the commitment reflected by the GCM were to be acknowledged and guide the EU legislature, the freedom of movement of protection-seeking migrants could not be restricted on a systematic basis during border procedures in the context of the European asylum system.<sup>84</sup>

#### 4. CONCLUSION

This article has argued that the GCM has the potential to strengthen the international protection system, due to its rights-based approach and broad scope of application. It addresses the specific protection needs of protection-seeking migrants who are not covered by the Refugee Convention, and it serves as an umbrella, strengthening the core human rights of migrants, regardless of their status, including protection-seeking migrants.

By way of example, the article has addressed three key issues of EU asylum policy to explore the impact of the GCM if its commitments were taken seriously. First, regarding access to protection, Objective 5 of the GCM complements the GCR by broadening the call for humanitarian pathways for forcibly displaced persons who do not qualify as refugees under the Refugee Convention. Beneficiaries of such routes to protection could be, *inter alia*, individuals forced to flee owing to disasters or climate change. Secondly, with a view to the reception conditions of asylum seekers, Objective 15 of the GCM provides basic socio-economic rights for all migrants, regardless of their migration status. Making such provision conditional on compliance with certain policy goals conflicts with this objective. This has been illustrated by reference to the withdrawal of reception conditions in the context of the onward movement of asylum seekers under the EU Dublin system. Thirdly, Objective 13 of the GCM commits States to work towards ending immigration detention and using detention only as a measure of last resort. Accordingly, immigration detention cannot be used as a deterrence measure in asylum policy. For the EU, this means that border procedures cannot rely on systematically imposing detention on certain classes of asylum seekers. Taken together, these examples illustrate that faithfully implementing the *Migration Compact* would require the EU and its Member States to make significant changes in their *asylum* policy.

These findings are of significance beyond the EU. While there may be differences in the details, the EU's policies of avoiding asylum jurisdiction, of planned destitution, and of using large-scale detention as a means of asylum policy are certainly not unique. Moreover, assuming that these policies exemplify a broader trend in EU asylum policy, the GCM is arguably also relevant to other aspects of international protection. Hence, implementing the GCM could improve the international protection system as a whole and should be acknowledged as such. Its rights-enhancing potential for protection-seeking migrants calls for a common reading of the objectives of the GCM and the goals set out in the GCR, to overcome the dichotomy between refugees and other forms of international protection. To address today's global protection needs, the objectives of the GCM should guide law-making processes at national, EU, and international levels. Overall, the GCM presents opportunities for States to engage in a multilateral process of strengthening the rights of all protection-seeking migrants, independent of the causes of their forced displacement or their status.

84 See also Galina Cornelisse and Marcelle Reneman, 'Border Procedures in the European Union: How the Pact Ignored the Compacts' (2022) 11 *Laws* 38.