

OVERPRINCIPLED AND UNDERPERFORMING

Why we need a practice-based Global Compact on Migration

Gibril Faal

Visiting Professor in Practice, Institute of Global Affairs
London School of Economics and Political Science (LSE)
Director of GK Partners & Founding Director of ADEPT



ISBN: 978-0-9928913-1-2 © Gibril Faal (2017)
GK Partners, 111 Buckingham Palace Road, Victoria, London SW1W 0SR, United Kingdom
Tel: +44 (0)20 3004 6172 Email: info@gkpartners.co.uk www.gkpartners.co.uk

Overprincipled and underperforming: Why we need a practice-based Global Compact on Migration

At the UN Summit on 19 September, I had the privilege to speak on 'International Action and Cooperation: The Way Ahead'¹. Given that we had the Agenda 2030 on Sustainable Development Goals, the New York Declaration (NYD) itself, I thought it was an obvious point that the Global Compact on Migration should predominantly be about practice, performance and actual impacts, not aspirations. This simple and seemingly unsophisticated view is held by many of the organisations and entities – large and small – that work directly with migrants, and operate on the frontline of policy implementation.

There is significant impatience and weariness amongst migrant and diaspora organisations, civil society, and the private sector in particular. There seem to be endless discussions of global or normative principles which are elegant and highbrow in their attestations of commitment to rights, values and human development, yet everywhere, we see flagrant inaction and lack of implementation. Since the adoption of NYD, I have participated in several policy, practitioner and expert consultation sessions across the world. Be it with governments, regional networks, multilateral development institutions, civil society, private sector, migrant and diaspora groups, or academia, the message is consistent – GCM must facilitate effective implementation of agreed principles and commitments. I was taken aback in the pre-UN Summit period in 2016 that some delegations did not think that a UN agreement can be based on practical operational points. I am pleased that in the past year, there is emergent consensus on the primacy of operations and effectiveness.

1. To do, or not to do, that is the only question

In June 2017, at the Global Forum on Migration and Development (GFMD), the Special Representative of the Secretary General (SRSG) Louise Arbour stated that, *"we should all aim for the highest common denominator.....leading to the global compact, we must resist the temptation to reinvent the wheel."*² What may have been deemed a chorus of dissatisfaction amongst fringe practitioners is now a veritable lament amongst stakeholders. Already, we have seen apathy and cynicism amongst some stakeholders about the GCM process. Other practitioners and change-makers who also suffer consultation fatigue are engaged not necessarily out of optimism and hope of what GCM can deliver, but out of genuine fear that non-engagement will lead to a GCM marked by retrogression, obfuscation and ascendency of bad will regarding certain aspects of migration and development. If an excuse or additional rationale is needed, a practice-based GCM can be seen and pursued within the spirit of UN reform. The demand for practical purposefulness and effectiveness echoes in the chambers of New York and Geneva. The UN Secretary General António Guterres stated that: *"Someone out to undermine the UN could not have come up with a better way to do it than by imposing some of the rules we have created ourselves. I even sometimes ask myself whether there was a conspiracy to make our rules exactly what they need to be for us not to be effective.....Our shared objective is a 21st century UN focused more on people and less on process.....more on delivery and less on bureaucracy."*³

¹ <http://www.un.org/pga/71/wp-content/uploads/sites/40/2015/08/List-of-speakers-Round-Tables-HLM-on-Refugees-and-Migrants-15-September-2016.pdf>

² https://refugeesmigrants.un.org/sites/default/files/statement_by_the_special_representative_of_the_secretary-general_for_international_migration_louise_arbour_at_the_opening_of_the_10th_global_forum_on_migration_and_development_summit_meeting.pdf

³ <https://www.un.org/sq/en/content/sq/speeches/2017-09-18/secretary-generals-reform-remarks>

The factors that affect migration are complex, but the choices to be made about the Global Compact on Migration are not complicated: focus on effective action, or persist in highfalutin rhetoric and diplomatic double-talk. To do, or not to do, that is the only question.

2. From 'Coalition of the Willing' to 'Hyperactivity of the Devoted'

Many of the people who are involved in international negotiations on migration struggle to find any new principles or proposals which singularly further knowledge and understanding of what we should do to address the known problems. Extraordinarily, we seem to know what should be done to protect rights of refugees and migrants, and facilitate and optimise their contribution to the development of countries of origin, heritage, transit and destination. The central challenge we face is that not all UN member states are keen to implement the known best practices. A few member states are in fact inclined to adopt counterproductive actions. Indeed, the principle of equitable responsibility sharing gives us an example of why GCM should concentrate on practice, not reiteration of principles. Within the European Union, spectacular disputes have erupted and enormous resources and time are spent trying to convince member states to implement the principle by taking in few thousand refugees. The countries that are willing end up taking more than their quota, with little fuss. Other countries raise disingenuous legal arguments or dubious referenda to avoid taking their modest quota.

As I observed at the 2016 UN Summit⁴, we face a moral hazard: Do we persist in negotiations for the lowest common denominator, subject to being dragged down by the unwilling and the obstructionists? Do we spend much of our inadequate resources and time declaring and reaffirming the basic things we already agree on? Do we indulge in negotiations and gamesmanship whilst existing conventions, agreements and best practices remain inert for want of implementation? I argue that for the Global Compacts, we need to provide a practical framework to move from the 'Coalition of the Willing' to the 'Hyperactivity of the Devoted'. Positive impact will come from action and practice, not repetition of agreed commitments or re-wording of diluted principles.

Amidst the doom and gloom of ineffectiveness, we often forget to notice the glimpses of hope and inspiration. For every progressive and enlightened idea and proposal about migration, mobility, human rights and development, there are UN member states who currently implement them to the benefit of society, economy, polity and humanity. Very often, even those implementing countries shun publicity for fear of attracting reactionary backlash. The UN should vehemently bolster progressive actions. UN agreements should be obsessive about actions and impacts. The UN Global Compact on Migration is a test in hand.

3. Principles, policies and practices – the last mile matters

As a community of nations, we witness failure – in too many places and for too many scenarios – regarding facilitation of safe, orderly and regular migration. Are we reckless, incompetent or indifferent? I ask, because in the 21st century, humanity is at the zenith of her innovative capacity, her technological capability, and her operational prowess. As member states and non-state actors, I propose that in this Agenda 2030 SDG era, we make a major practical, emotional and principled shift, such that operational implementation and tactical means of implementation are given the highest priority. This is the practical game-changer we need in order to enhance and optimise the achievement of our cherished aspirations,

⁴ <http://statements.unmeetings.org/media2/7660808/statement-by-afford.pdf>

strategic goals and global commitments. In many ways, we are overprincipled and underperforming. GCM and other global agreements should focus on, facilitate, and enhance performance and impact.

Sometimes I sense that there is an intellectual snobbery about practice-based approaches; that the vulgarity of middle management functionaries must not sully the refined principles of multilateral agreement-making. The argument for practice-based agreements is not to deny the importance of broad-based principles and policies. On the contrary, it is to affirm and bring them to life. It is also an acknowledgement that policies in the real world are intrinsically prone to being inert⁵. In the field of migration and human mobility, we have a surfeit of broad-based policies, and a dearth of practice-based agreements and frameworks. Practice represents that difficult 'last mile'. The GCM can be the conduit for that proverbial mile.

In many cases, practice is ahead of policy. Can we ever imagine agreeing a global compact whereby a handful of countries, chosen at random, would receive and welcome millions of refugees, whilst another random handful will build walls to stop the entry of refugees? Yet through practical circumstances, humanitarian considerations, generosity of spirit, and enlightened self-interest, several countries have in practice done much more than policy expects of them. A practice-based GCM need to validate, facilitate and normalise the actuation of good practice.

As SRSG Arbour said, focusing on the highest denominator and not re-inventing the wheel, the GCM need to be an example of practice-based global agreement in this era of SDG implementation. It should easily incorporate and bring to life existing and new ideas in the SDGs⁶, NYD and the 24 points in Section III of Annexe II⁷, the 16 recommendations of the Sutherland Report⁸, the 8 goals of the Crepeau Report⁹, the civil society 5-year 8-point plan¹⁰, the 10 recommendations of GFMD CSD 2017¹¹, and many others. For each impactful idea and practice, there are member states who can credibly champion them.

⁵ *"In every jurisdiction, there are lists of adopted policies and even assented laws that gather dust on shelves; neglected, unimplemented, ineffectual and inert. There are several reasons why governments and institutions adopt policies and then fail to implement them....The reasons why inert policies arise include the following: Lack of political will; Lack of appropriate resources; Emergence of superseding policies or laws; Change of personnel, with new principals considering it low priority; Significant changes in prevalent internal and external conditions and circumstances."*

[http://gkpartners.co.uk/Understanding and Influencing Policy - Gibril Faal \(2014\).pdf](http://gkpartners.co.uk/Understanding_and_Influencing_Policy_-_Gibril_Faal_(2014).pdf)

⁶ http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

⁷ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1

⁸ http://www.un.org/en/development/desa/population/migration/events/coordination/15/documents/Report%20of%20SRSG%20on%20Migration%20-%20A.71.728_ADVANCE.pdf

⁹ <http://www.refworld.org/docid/593a6f504.html>

¹⁰ <http://gfmddcivilsociety.org/wp-content/uploads/2014/01/The-5-year-Action-Plan-EN.pdf>

¹¹ http://madenetwork.org/sites/default/files/5-page%20GFMD%20CSD%20Recommendations%202017_final.pdf

4. Agreement-Implementation Matrix

There are several challenges that need to be addressed. Some of the countries that lead best practice in one field are less progressive or perhaps even obstructionist in others. Some actions can be implemented immediately, others require a longer timescale. Some practices are politically unpopular or sensitive in different countries. These and other obstacles are common features of migration and other policy discourses. The tacit formula for multilateral agreements has been to attempt to cancel out contested options and settle on a lowest common denominator. In some instances a reasonable compromise emerges, in many instances we end up with compromised agreements with little or no practical impact. With this approach, we have normalised mediocrity and by default entrenched ineffectiveness and inefficiency. It need not be this way.

Whether a member state implements an agreement is not dependent on whether they have signed up or not. There are member states that agree to protocols in New York and fail to ratify them in their capitals. There are those who ratify agreements and blatantly act contrary to them. Even for binding global instruments, non-implementation abounds. On the other hand, no member state is an exemplar implementer on all matters regarding multilateral agreements, and the nirvana of absolute policy coherence is elusive¹².

The known challenges are not extraordinary, they are in the scale of normalcy in most domains in life. The challenges are also not insurmountable, they need new types of solutions, perhaps with approaches, tools and techniques borrowed from the private sector, civil society, cyber-technology and other disciplines. We therefore need to embrace policy plurality, driven not by how many member states sign up to agreements, but how many are likely to implement the agreement. The new approach of practice-based agreements requires appreciation of Agreement-Implementation dynamics, and some restructuring of the very design of multilateral agreements themselves. These proposed changes to approach are neither radical, nor revolutionary; arguably, they are basic and obvious. They may appear bold and contentious simply because we are stuck with traditions that institutionalised the primacy of superficial appearances (e.g. number of agreement ratifications), rather than substance (i.e. level of implementation).

A simplified way of understanding Agreement-Implementation dynamics is to use an illustrative matrix of scenarios that represent the status of member states that sign multilateral agreements. As regards 'agreement', there are no absolutes whereby member states agree or disagree with everything in the documents they sign – it is about degrees of agreement. This is also the case with 'implementation'. Some member states would even sign up to documents which they generally disagree with. Oddly, signing a multilateral agreement is not totally driven by agreement with the content. Political, financial and other factors have varying degrees of importance in determining signature. However, the simple, but fundamental point of this paper is that signing of a multilateral agreement is not necessarily the determinant of implementation or action. Member states can and often do take actions included in an agreement, even when they are not signatories. Of the different categories of signatories, it is other factors that determine the extent to which they implement the agreements. For a practice-based agreement, the most important factor is the extent to which member states are actual or potential implementers. The degree to which they declare their agreement with the contents is of marginal

¹² "Despite the sophistication and thoroughness of policy making systems, in the real world, one encounters imperfect, uncertain and other inchoate policies. These policies tend to be contentious and subject to challenge and disputation. Inchoate policies take many forms including the following examples: Irreconcilable policies which conflict significantly against other existing policies; Incomplete policies which lack substantive relevant information and or contain significant gaps; Inconsistent policies with provisions which are internally conflicting and contradictory; Informal policies emerging from customary practice without comprehensive written stipulations; Impractical policies which, although theoretically sound, are difficult or impossible to implement."
[http://gkxpartners.co.uk/Understanding_and_Influencing_Policy_-_Gibril_Faal_\(2014\).pdf](http://gkxpartners.co.uk/Understanding_and_Influencing_Policy_-_Gibril_Faal_(2014).pdf)

importance. Action speaks louder than words; if a member state implements an agreement, it either agrees to it, or is not too troubled by the sections it does not agree with.

	Full Agreement	Part Agreement	Minimal Agreement
Full Implementation	A1	A1	A1
Part Implementation	B1	B1	B1
Minimal Implementation	C1	C2	C3

Fig. 1: Agreement-Implementation Matrix

If we are interested in implementation, then the very structure of the agreements must imbue such purposefulness. We must not be seeking superficial consensus or watered-down provisions. We need to structure agreements such as to motivate and optimise the actions of the first and second tier implementers (A1 and B1). For each of the three categories of non-implementers (C1, C2 and C3), different strategies are needed. For C1 and C2 countries, it may be that they need motivation, resources, mentorship or other forms of support. For C3 countries, it may be that it is not worthwhile spending time and effort trying to engage them.

5. Practice-based compact, focussed on operational excellence

UN SG António Guterres declared that: *“reform will not be measured in words in New York or world capitals. It will be measured through tangible results in the lives of the people we serve – and the trust of those who support our work through their hard-earned resources.”*¹³

The GCM issues and processes to some extent reflect the constraints that bedevil multilateral agreements. The benefits to humanity of rapid and effective implementation of a decent GCM are immeasurable. The case cannot be overstated. As such, there is every reason to bring in small but important changes to the very form, format and structure of the compact document, in order to minimise the known traits of entrenched ineffectiveness, and harness the practical benefits of operational excellence. Change means exactly that – doing different things or doing things differently. We cannot be serious and credible about ushering in change for greater effectiveness by doing things in the same way that have failed in the past. Aristotle stated that: *“virtues are formed in man by his doing the actions”*, from which Will Durant elaborated, stating that: *“Excellence is an art won by.....habituation. We do not act rightly because we have virtue or excellence, but we rather have those because we have acted rightly. We are what we repeatedly do. Excellence, then, is not an act but a habit.”*¹⁴

The New York Declaration requires that the Global Compact *“set out a range of principles, commitments and understandings”*. The Modalities Resolution anticipates that the GCM will include *“actionable commitments, means of implementation and a framework for the follow-up and review of*

¹³ <https://www.un.org/sg/en/content/sg/speeches/2017-09-18/secretary-generals-reform-remarks>

¹⁴ <http://blogs.umb.edu/quoteunquote/2012/05/08/its-a-much-more-effective-quotation-to-attribute-it-to-aristotle-rather-than-to-will-durant/>

*implementation*¹⁵. In line with these guidelines and the imperative for greater effectiveness, I make the following proposals on form, format and structure:

- I. **Preamble:** That the preamble declares, amongst other things: that the overall purpose of GCM is to facilitate practical action by member states and other stakeholders; that in the era of Agenda 2030 SDG implementation, there is an imperative for operational excellence; that the GCM will introduce new global principles regarding the evolving nature and circumstances of migration.
- II. **GCM Vision:** That a simple and clear vision be set, regarding human mobility, migration and development in the 21st century; that the vision encompasses long term aspirations as well as immediate actions; that it reflect the existing consensus that 'migration as driver of development, should be a choice, not a necessity'.
- III. **Reaffirmation of Existing Agreements:** That in line with purposefulness and effectiveness, it is a virtue not to re-debate or needlessly repeat what has already been agreed; that it suffices to use a single paragraph to reaffirm existing principles, agreements and commitments; that the relevant existing conventions, frameworks and other agreements may be referred to by name in an annexe or appendix.
- IV. **New and Updated Principles:** That where genuinely new principles about facilitating safe, orderly and regular migration have arisen, they should be given great prominence; that existing human rights obligations, SDG commitments and enlightened new aspirations may give rise to new migration-related principles; that a small number of existing principles which require updating, emphasis or prioritisation be re-drafted.
- V. **Commit to Omit:** That for the purposes of effectiveness, there need to be a formal and clear acknowledgement that implementation comprises both acts and omissions; that there is distinct identification of things that will not be done, if safe, orderly and regular migration is to be achieved; that the acts to be omitted are likely to be contradictory, counteractive and repugnant to human rights and Agenda 2030; that the acts to be omitted are likely to have a binary characteristic in that they are on or off, done or not done; that this section is likely to comprise a short list of items; that the clarity, transparency, and openness to admit weaknesses and failures is a virtue that will practically help member states improve their implementation and performance.
- VI. **Actionable Commitments:** That actionable commitments focus on new commitments; that existing commitments without clear actionable points be re-drafted accordingly; that actionable commitments should to be expressed as Goals, Targets and Key Performance Indicators; that for each GCM actionable commitment, examples of 'Actionable Programme Options' be given in an annexe or appendix; that the examples of 'Actionable Programme Options' be identified as evidence of feasibility and viability, means of encouraging the relevant member states and stakeholders to champion implementation and support other actors, and a tool for expanded and enhanced implementation; that this section be divided into sub-sections (perhaps up to 10), informed by the current six NYD thematic areas and other relevant categorisations; that as an annexe, options be given for supplementary agreements on Standards and Guidelines on specific actionable commitments; that as an annexe, options be given for collateral voluntary and binding agreements on selected actionable commitments.

¹⁵ http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_280.pdf

- VII. Principle on Implementation:** That in order to make a conceptual shift by focusing on effective practical actions, not number of signatories, a standalone section or paragraph be created, declaring that optimal implementation and operational excellence are matters of principle; that implementation is not about perfection, but requires purposeful, diligent and ongoing improvement; that the primacy and imperative for effective implementation is a veritable virtue, beneficial to all stakeholders; that member states disavow and reject as a moral peril, the current norm of non-implementation of agreements.
- VIII. Means of Implementation:** That in order to demonstrate purposefulness, resources, effort and time needed for practical implementation be integrated in the compact; that an estimate and budget be prepared on the funds needed for the first five years of implementation; that member states pledge funds to ensure implementation of the compact; that a Migration and Development Financing Facility (MDFF) be created; that proactive acts are undertaken to facilitate plurality in the types of programmes pursued, and diversity in the entities that undertake implementation; that significant and substantial resources are devoted specifically to migrant, diaspora, civil society organisations and social enterprises.
- IX. Review, Monitoring and Improvement:** That a format be set for periodic (e.g. 3-yearly) national reporting on implementation and performance; that review should focus on adherence to principles and omissions, and performance on actionable commitments; that the review mechanism is promoted as a positive tool for ongoing performance improvement, not to name, shame or blame; that openness be promoted for member states to be able to admit performance weaknesses, and seek support and partnerships; that peer support and cross-sectoral collaboration for performance improvement be promoted; that the review mechanism should also be used as a tool by Non-State Actors; that GFMD and HLD Summits be used in part, as forums for review, monitoring and improvement.
- X. Usage of Format:** That the suggestions, recommendations and proposals arising from the GCM consultations and negotiations, be assessed and analysed in relation to the above 9 points, which reflect the thoughts of many practitioners and policymakers from all sectors.