

Summary Report of

# **The International Roundtable on Global Migration Law in the European Union**

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Friday 24 November 2023

Vrije Universiteit Amsterdam

By Younous Arbaoui

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By **Dr. Younous Arbaoui**, Assistant professor, ACMRL, VU University Amsterdam



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## Introduction

Held as part of the joint activities of the Amsterdam Centre for Migration and Refugee Law (ACMRL) of the Vrije Universiteit Amsterdam and the United Nations' Committee on Migrant Workers (CMW), the Roundtable on 'Global Migration Law in the European Union' provided a forum for various stakeholders to (a) discuss the relationship between the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Convention; UN 1990)<sup>[1]</sup> and the Global Compact for Safe, Orderly and Regular Migration (Compact; UN 2018)<sup>[2]</sup> and (b) explore the added value of both instruments for migration law and policies in the European Union (EU).

The Roundtable gathered over 30 participants, among them representatives from the following organizations and groups: the UN Committee on Migrant Workers (CMW); the UN Network on Migration (UNNM); the International Organization for Migration (IOM) Headquarters in Geneva; the IOM Regional Office at The Hague; the European Economic and Social Committee; the Governments of Portugal and the Netherlands; civil society organizations from the Netherlands and Belgium; Dutch lawyers; academics from the Netherlands, Switzerland, and the United Kingdom; and students of the Vrije Universiteit Amsterdam. Initially, participants also included representatives from the European Commission, the European Parliament, the Dutch Advisory Council, and the Municipalities of Amsterdam and Utrecht. Due to unforeseen circumstances, these key participants were unable to join the Roundtable. In particular, the absence of representatives from the European Commission and the European Parliament hindered the achievement of the Roundtable's second aim, exploring the added value of the Compact and the Convention for EU migration law and policies.

Hemme Battjes (Professor of European Asylum Law and Dean of the Law Faculty at the Vrije Universiteit Amsterdam) opened the roundtable before Hein de Haas (Professor of Sociology at the University of Amsterdam) delivered the keynote address. Hereafter, four successive sessions were held focusing on one of the four following themes: access to basic services for migrants, decent work, regular pathways for migration, and reasons for (non) endorsement of the Compact and for (non) ratification of the Convention by EU Member States. The insights generated from this multi-stakeholder meeting should be understood as a small but significant starting point in informing ongoing debates on the importance of the Compact and the Convention for migration law and policies in the EU.

The present summary report contains (1) the Dean's opening speech, brief summaries of (2) the keynote address and (3) the roundtable sessions, as well as (4) an overview of key takeaways. The report ends with (5) words of thanks.

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[1] UN General Assembly, resolution 45/158.

[2] UN General Assembly, resolution 73/195.

## 1. Opening speech

By **Hemme Battjes**, *Professor of European Asylum Law and Dean of the Law Faculty at the Vrije Universiteit Amsterdam*

“Ladies and gentlemen, it is an honour and a pleasure to welcome you all at this international roundtable on global migration in the EU. My name is Hemme Battjes. I am dean of the faculty of law here at the VU Amsterdam, and I happen to be also a member of the Amsterdam Centre for Migration and Refugee Law, which organized this round table together with the UN Committee on migrant workers.

On behalf of the VU, I must say that we are most happy to host this roundtable. For this university strongly believes that it should contribute to society including policy making to further the global development goals, and, vice versa, that its research and education benefits from what we can learn from society, public debate, and practitioners. This round table, on the important topic of what the global compact on migration and UN migrant workers convention could and should mean in the context of the EU and the member states, fits in what that aim perfectly.

I think the organisers – not me – managed to bring together a most suitable congregation of people representing various involved parties – members of the UN Committee on the Rights of Migrant Workers including the chair, Mr. Corzo Soza, from other UN organisations, from EU organs, from various departments and organs of the Netherlands and Portugal, from the municipalities Amsterdam and Utrecht, from civil society, and of course the colleagues from various universities. And I want to express our gratitude to the municipality of Amsterdam for contributing to this event and hence making it possible.

Finally, I want to express the hope that this will not be a one-time event but rather the first in a whole series of events and activities. The ACMRL and the UN Committee on Migrant Workers have mutually expressed the wish to cooperate in a regular kind of way, to promote academic research and education on the convention and the Compact, and to increase knowledge about these instruments and the work of the Committee among a wider public. I think that the election campaigns here in the Netherlands over the past few weeks where the issue of migrant workers was very much at the centre of attention emphasize the importance to take rights of migrant workers seriously, and the importance of better knowledge of those rights. I just spoke about aspirations and contributions by the ACMRL, but in fact the driving force behind this cooperation with the UN Committee is one person, my dear and esteemed colleague Younous Arbaoui.

It is a great honour and pleasure to announce the keynote speaker in this event, Hein de Haas. He is Professor of Sociology at our sister university in this city, the UvA, and Professor of Migration and Development at the University of Maastricht. Previously he has worked in Morocco and the UK, at Oxford University, where he co-founded the International Migration Institute which he still co-directs. He is the lead author of the widely acclaimed seminal work *The Age of Migration*. And this month he published *How Migration Really Works: The Facts About the Most Divisive Issue in Politics*. Such a guide is helpful as, according to De Haas (I quote), “much conventional thinking about migration is based on myths rather than facts.” Professor de Haas, the floor is yours.”

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## 2. Keynote address

The keynote by Professor Hein de Haas was based on his recent book, *How Migration Really Works*, in which he demystifies twenty-two migration myths with facts, figures, and data.<sup>[3]</sup> In his talk, De Haas pointed out that policy makers use migration-related data that fit their political agendas and often ignore facts that do not suit them. Trends, causes and consequences of immigration are frequently ignored by policy makers, business lobbies, trade unions and international organizations, each with their own motivations. In his view, it is a misunderstanding that we live in times of unprecedented mass migration. Policy makers should not give the impression that migration is a new problem insofar as migration is as old as humanity. He emphasized that it is fallacious to speak of a 'global migration crisis' given that it is a normal process and part of our global society. He added that immigration is a consequence of conscious choices of governments and companies to recruit migrant workers. The main reason for immigration is the demand for labour in industrialized countries, such as those in Europe, which are continuously in need of migrant workers. European societies that are wealthy, aging, and highly educated have developed a structural demand for migrant workers. If their economies continue to grow, this trend of continuous demand for migrant workers will not be reversed. Seen in this light, if European countries want to reduce immigration, they will have to also stop the growth of their economies. Finally, Hein de Haas stressed that debates over migration should not be separated from broader debates concerning equality, labour, and social justice.<sup>[4]</sup>

## 3. Roundtable sessions

The Roundtable sessions focused on four themes: (1) access to basic services for migrants; (2) decent work; (3) regular pathways for migration; and (4) reasons for (non) endorsement of the Compact and for (non) ratification of the Convention by EU Member States. Each session began with two introductory presentations addressing the relevant theme and were followed by a discussion. Edgar Corzo Sosa (Chair of the CMW) and Fatima Diallo (Vice Chair of the CMW) discussed these issues from the perspective of the Convention whereas Monami Pisky Maulik (Civil Society Liaison Officer of the UNNM) and Maria Eulalia Figueras (International Migration Law Specialist within the IOM Headquarters in Geneva) placed these issues in the context of the Compact. The video recordings and slides of their presentations are available on the webpage of the ACMRL's Global Migration Law Hub.<sup>[5]</sup> Hereafter follows a summary of the presentations and discussions.

### Session 1: Access to basic services for migrants

Moderated by **Lieneke Slingenberg** (*Professor of Migrants & the Rule of Law, VU University Amsterdam*)

The Convention establishes minimum standards for the protection of economic and social rights of migrant workers, regardless of their status. It rests on the principle of non-discrimination and aims to eliminate

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[3] Haas, H.d. (2023) *How migration really works: a factual guide to the most divisive issue in politics*. [London]: Viking.

[4] Due to technical reasons, the keynote was not recorded. For a video recording of Hein de Haas's book presentation, see for example: <https://youtu.be/RHIUTqyamtY>

[5] <https://vu.nl/en/about-vu/more-about/global-migration-law-hub>

the exploitation of migrant workers, including undocumented migrants. Reference was made to Article 27 (social security) stating that documented and undocumented migrant workers shall enjoy the same treatment granted to nationals as long as they fulfil the requirements delineated by national legislation. Paraguay's policy regarding access to social security was mentioned as an example of positive practices. Regarding the right to health care, links were drawn between the Convention and the International Covenant on Economic, Social, and Cultural Rights (ICESCR); Bolivian policy was cited as good practice. As for access to education, reference was made to Article 30 of the Convention according to which children of documented and undocumented migrant workers are entitled to the same access to education as nationals.

As for the Compact, discussants noted that it rests on pre-existing international human rights instruments and that it upholds the principles of non-regression and non-discrimination. While states may distinguish between documented and undocumented migrants, international human rights norms should be considered. Reference was made to Objective 15 (provide access to basic services for migrants) of the Compact according to which states committed to ensure that all migrants, regardless of their migration status, can exercise their human rights through safe access to basic services, and committed to strengthen migrant-inclusive service delivery systems. Also highlighted were the actions states need to take to implement Objective 15, particularly: enacting laws to ensure that service delivery does not amount to discrimination against migrants; ensuring that cooperation between service providers and immigration authorities does not exacerbate vulnerabilities of irregular migrants; and establishing national independent institutions to monitor complaints about migrants' access to basic services. In terms of good practices, the establishment of national support centres for migrants in Portugal was mentioned as well as the development of a mobile application facilitating access to services in Azerbaijan.

Participants acknowledged that while the Compact and the Convention share the common goal of improving the living conditions of migrants, they both have limitations, and they diverge to a certain extent along the axis of healthcare. Indeed, participants highlighted the difference in wording between the Convention and the Compact with respect to healthcare policy. They observed that the Compact takes a broader approach than the Convention. While the Convention initially focused on urgent care, the Compact offers more extensive protection. Participants suggested that complementary implementation of both instruments has the potential to increase effective access to basic services for undocumented migrants. Participants also proposed assessing how both instruments might be converted into one practical framework. In this sense, reference was made to the usefulness of the upcoming CMW's General Comment no. 6 on the convergence between the Compact and the Convention. In terms of practices within the EU, it was noted that while most EU Member States guarantee access to health care, this access is limited to emergency care. Comprehensive healthcare practices for undocumented migrants vary depending on the goodwill of doctors and local authorities. Notably, some EU Member States have implemented innovative approaches. For instance, Sweden and Finland have introduced legislation aiming to expand healthcare services for undocumented migrants. However, the EU still has a dubious system which hinders the development of health protections for undocumented migrant workers: the Compact is not yet endorsed by all EU Member States<sup>[6]</sup> and the Convention has not been signed or ratified by any of them.

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[6] Seventeen out of 27 EU Member States did endorse the GCM. Member States voting against were: Hungary, Poland, the Czech Republic. Those abstaining were: Austria, Bulgaria, Italy, Latvia, Liechtenstein, Romania, and Switzerland.

## Session 2: Regular pathways for migration

Moderated by **Tesseltje de Lange** (*Professor of European Migration Law, Radboud University Nijmegen*)

From the Compact's perspective, regular pathways for admission and stay are effective tools to ensure the protection of migrants. The key aim of these pathways is to reduce the risk of exploitation and exclusion. This session highlighted the need to capitalize on existing regular pathways and build upon them to address the changing needs of migrants and receiving countries. Also stressed was that the Compact has brought attention to the ways in which regular migration pathways can be an effective human rights tool. Reference was made to Objective 5 (enhance availability and flexibility of pathways for regular migration) under which states have committed to adapt options for regular migration in a manner that facilitates labour mobility, education opportunities, and family reunification, among others, with a view to expanding and diversifying the availability of pathways for regular migration.

As for the Convention, this session highlighted Article 8: the right to leave one's country of origin. Reference was made to the CMW's General Comment 2 on the rights of irregular migrant workers. This General Comment promotes the use of the phrase 'migrant workers in irregular situations' or 'undocumented migrant workers' rather than the terminology of "illegal migrants." Reference was then made to Article 69 of the Convention regarding regularization. Article 69 asserts that while states have no obligation to regularize the situation of undocumented migrant workers or members of their families, they shall take appropriate measures, whenever migrant workers or members of their families are in an irregular situation, to ensure that such a situation does not persist.

Participants emphasized that only a small group of migrants is unable to use regular pathways. The need for other regular pathways which allow this small group to move safely and regularly was stressed. As for regularization, it was highlighted that while regularization is explicitly mentioned in the Convention, the Compact is not explicit about it, although its importance is mentioned under Compact Objective 7 (i).

It was observed that while the Compact focuses on regular migration, the Convention also addresses irregular migration. Given this discrepancy, participants recalled the need for complementary implementation of the Convention and the Compact. In terms of national practices regarding regular pathways in the EU, two examples were mentioned. Portugal has created a resident permit for migrants originating from countries where Portuguese is an official language; Spain adopted circular migration policies allowing seasonal workers to temporarily stay and work in Spain.

## Session 3: Decent work

Moderated by **Klara Boonstra** (*Professor of Social Law, VU University Amsterdam*)

From the perspective of the Compact, it was emphasized that labour mobility and decent work are two of its key elements. For instance, reference was made to Objective 6 (facilitate fair and ethical recruitment and safeguard conditions that ensure decent work) which aims to ensure decent work for all migrants. Decent work involves opportunities for work that deliver a fair income, security in the workplace and social protection, prospects for personal development and social integration, freedom to express concerns, and equality of opportunity and treatment. Decent work requires actions to protect migrants against all forms of exploitation and improve recruitment mechanisms and admission systems to guarantee they are fair and ethical.



Unlike the Compact, the Convention does not use the phrase ‘decent work,’ but rather refers to equal treatment. The Compact bases the notion of decent work on recruitment and working conditions, aspects which the Convention regulates in detail. The Convention and the Compact refer to increasing the role of labour inspectors as a means of preventing all forms of exploitation by better controlling recruiters, employers, and service providers in all sectors.

Participants also discussed the right of migrant workers to change their employer. In this context, reference was made to negotiations at the EU Parliament on the single-permit directive. The issue concerned how long an employee could be required to work for a given employer. The fear was that if employees were given the freedom to choose, they would exercise it; the employer would then recruit abroad to fill the vacancy thus resulting in an ‘open migration’ situation. In addition, if employers, who made investments in their employee, were not assured of a certain period of employment sufficient to allow a return on their investments, they would be less willing to make those investments (which actually contribute to the goal of decent work). The EU had proposed a 1-year limit on employment. This might be an improvement: in the Netherlands, the current limit is 5 years.

In addition to comparing and identifying convergences between the definitions of decent work and equal treatment in the Compact and Convention, participants stressed the need to look at all other instruments, including the ICESCR and the multiple conventions and recommendations of the International Labor Organization (ILO). Participants suggested making use of the similarities between the various standards established by international human rights treaties and instruments and building upon those links. Also noted was that if the supervisory mechanisms, in particular UN Treaty Bodies but also international organizations such as the IOM, were to identify the connections between the different international frameworks, this might nudge national and regional courts to follow suit. In addition, participants pointed to the potential of regional human rights bodies to raise regional labour standards by referencing international instruments.

## **Session 4: Endorsement of the Compact and ratification of the Convention by EU Member States**

Moderated by **Janna Wessels** (*Associate Professor Migration Law, VU University Amsterdam*).

The UN General Assembly endorsed the Compact by 152 votes in favour, including 17 EU Member States.<sup>[7]</sup> Over ninety states submitted voluntary reports at the first International Migration Review Forum (IMRF 2022), including EU Member States. In contrast to the wide acceptance of the Compact, only 59 states ratified the Convention, none of which were EU Member States. Participants noted that the main reason for this is that EU Member States do not want to appear as if they are ratifying an instrument in favour of migrants.

Participants then discussed three specific reasons at the heart of the non-ratification of the Migrant Workers Convention as mentioned in a 2010 survey of the European Commission.<sup>[8]</sup> First, some EU Member States believed that the Convention provided undocumented migrants with too many rights which would potentially create a ‘pull factor’ for irregular migration. Participants observed that this position stands in stark contrast with the fact that the Compact, which in turn has been endorsed by a majority of states as

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[7] States which voted against were: Czech Republic, Hungary, Israel, Poland, and the U.S.A. Abstentions were from: Algeria, Australia, Austria, Bulgaria, Chile, Italy, Latvia, Libya, Liechtenstein, Romania, Singapore, and Switzerland.

[8] European Commission (2010), ‘Ratification of the UN Migrant Workers Convention in the European Union: Survey on the Positions of Governments and Civil Society Actors’: [https://ec.europa.eu/migrant-integration/library-document/ratification-un-migrant-workers-convention-european-union-survey-positions\\_en](https://ec.europa.eu/migrant-integration/library-document/ratification-un-migrant-workers-convention-european-union-survey-positions_en)

well as other international human rights instruments, also protects undocumented migrants. Participants also observed that some EU Member States adopted progressive policies, for example regarding health care for undocumented migrants, without realising that these policies were in line with the Migrant Workers Convention. This would suggest that those EU Member States already complied, and therefore would not have 'lost' anything by ratifying the Migrant Workers Convention

Second, some EU Member States argue that the Convention is unnecessary because the norms it provides for are already set out in other human rights conventions. Participants were of the view that instead, overlap between the Convention and other instruments suggests the need for complementary implementation rather than exclusion. The third reason advanced by some EU Member States against ratification relates to the capacity of ratifying the Convention. On one hand, EU Member States view the ratification as a Union capacity and argue that the EU can sign the Convention. Conversely, the European Commission views it as a national capacity. Unfortunately, the European Commission and the European Parliament were not represented during the Roundtable to shed light on this particular question of whose capacity it is to ratify the Convention.

Participants stressed that since EU Member States belong to the international community, and since there is an international consensus to ratify all international human rights instruments, EU Member States should act accordingly. It was emphasized that the best protection for migrant rights is adherence to specialized international instruments such as the Convention and the Compact. Although all human rights treaties delineate various specific human rights, the particularities of a specialized approach can only be achieved through the ratification of a special human rights treaty, in this case the Convention.

An additional decisive point that was put forward is the non-inclusion of the Committee on Migrant Workers (CMW) in the UN Network on Migration (UNNM) that was established to ensure effective implementation of the Compact. This Network consists of thirty-nine entities of the UN system and has an Executive Committee comprising ten entities, namely: UNDESA, ILO, IOM, OHCHR, UNDP, UNHCR, UNICEF, UNODC, WHO, and the World Bank. Participants found it striking that the CMW is not part of this Executive Committee, while the Compact rests, *inter alia*, on the Convention. Participants stressed the need to change this situation and believe that the IOM, which serves as the Coordinator and Secretariat of the UNNM, needs to work towards the integration of the CMW into the UNNM Executive Committee and its Thematic Groups.

## 4. Key takeaways

The keynote address, presentations, and discussions during the Roundtable sessions suggest the following key takeaways:

1. The debate on migration should not be separated from the broader debates on equality, labour, economic growth, and social justice.
2. Complementary implementation of the Compact and the Convention needs to be promoted. UN treaty bodies and international organizations such as the IOM and ILO can stimulate this cross-fertilization by consistently and explicitly relying on the Compact *and* the Convention (along with other international human rights instruments). Regional human rights bodies might also play a role in these processes.
3. The Committee on Migrant Workers needs to be integrated into the UNNM's Executive Committee and

Thematic Groups. The IOM needs to work towards this integration and take initiative in promoting the Convention *along with* the Compact.

4. Academic and policy-oriented studies into how the Convention and the Compact add value to the creation of national and EU migration law are needed. These studies would increase awareness about both instruments and inform the debate regarding endorsement and ratification.

5. EU and national legislators and policy makers need to avoid legislative initiatives that potentially weaken migrant rights enshrined in the Convention and the Compact.

## 5. Words of thanks

Special credits go to colleagues who helped with the organization and volunteered to take notes during the four roundtable sessions: Natalia Robledo Contreras and Romy Babtist (student-assistants, VU University Amsterdam), Jordan Dez (PhD Researcher, VU University Amsterdam), and Amy Locklear (PhD Researcher, Tilburg University). Also, many thanks to Shobena Biharie (Office Assistant, VU University Amsterdam) for her assistance before and during the Roundtable.

This roundtable was co-funded by the Faculty of Law of the Vrije Universiteit Amsterdam, VU Interdisciplinary Centre for European Studies (VICES), and the Municipality of Amsterdam. The Amsterdam Centre for Migration and Refugee Law (ACMRL) would like to thank them for their support and collaboration.





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