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# The COVID-19 Crisis and the Global Compact on Migration: The Momentum and the Tool to Overcome “Immobility”

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Résumé de l'article

Après une quarantaine d’années de discours sécuritaires et de fermeture à l’égard des migrations internationales, associés à une gestion « de crise » en la matière, l’adoption du *Pacte mondial pour des migrations sûres, ordonnées et régulières* (*GCM*) en décembre 2018, même s’il est un instrument non juridiquement contraignant, semble pouvoir conduire à un dépassement de cette approche, visiblement contreproductive. Ainsi, les États s’engagent à « [f]aire en sorte que les filières de migration régulière soient accessibles et plus souples » (Objectif 5) ou à « [v]eiller à l’invariabilité et à la prévisibilité des procédures migratoires pour assurer des contrôles, des évaluations et une orientation appropriés » (Objectif 12). À travers l’idée d’une coopération mondiale, fondée sur le droit, l’ambition des États d’adopter une approche de plus long terme du phénomène migratoire émerge. Cependant, la crise de la COVID-19 a semblé diminuer grandement les perspectives de mise en oeuvre d’une telle approche. La volonté de limiter la propagation du virus a rapidement conduit à une stricte fermeture des frontières, réduisant drastiquement les flux migratoires. L’approche multilatérale de la problématique a paru rapidement balayée par les considérations nationales. Les réactions initiales des États membres de l’Union européenne en ont été un clair exemple. Toutefois, cette fermeture des frontières, portée à son paroxysme pour des raisons de santé, a souligné la dépendance des économies du « Nord global » à la migration de travail. Si la crise a frappé la migration et la mobilité internationale sur le court terme, il n’est pas certain qu’aux moyens et longs termes les conséquences de la crise sanitaire ne conduisent pas, au contraire, à une remise en cause de l’approche sécuritaire et de fermeture entrainée par l’approche de crise. En effet, la pénurie de travailleurs migrants, liée aux fermetures entrainées par la crise de la COVID-19, a conduit a de radicales réponses étatiques — de l’organisation de vol « charters » pour faciliter l’arrivée de travailleurs migrants à la régularisation des travailleurs illégaux ou des demandeurs d’asile déboutés — ou, en l’absence de réponse étatique convaincante, à la mise en place de réponses irrégulières — la Mafia ayant par exemple investi la gestion de la migration de travail en Italie. Ainsi, il parait nécessaire de se demander si, dans un sens, la crise de la COVID-19, à travers la fermeture des frontières paroxystique qu’elle a entrainée et les besoins que celle-ci a soulignés, ne pourrait pas constituer un moment clé pour la mise en oeuvre d’une nouvelle approche de la migration internationale, telle que défendue par le *GCM*.

# THE COVID-19 CRISIS AND THE GLOBAL COMPACT ON MIGRATION: THE MOMENTUM AND THE TOOL TO OVERCOME "IMMOBILITY"

*Olivier Delas* and Baptiste Jouzier***

After some forty years of security and closure discourse towards international migration, and of "crisis" management in the matter, the adoption of the *Global Compact for Safe, Orderly and Regular Migration* (*GCM*) in December 2018, although a non-legally binding instrument, seems to be able to lead to an overcoming of this approach, which is visibly counterproductive. Thus, states commit to "[e]nhance availability and flexibility of pathways for regular migration" (Objective 5) or "[s]trengthen certainty and predictability in migration procedures" (Objective 12). Through the idea of global cooperation, based on law, the ambition of states to adopt a more long-term approach to the migration phenomenon emerges. However, the COVID-19 crisis seemed to greatly diminish the prospects of implementing such an approach. The desire to limit the spread of the virus quickly led to a strict closure of borders, drastically reducing migration flows. The multilateral approach to this issue seemed to be quickly swept aside by national concerns: the initial reactions of the European Union Member States were a clear example. However, this borders closure, taken to its extreme for health reasons, has highlighted the migrant labour dependency of the economies of the "global North". If the crisis stroke migration and international mobility in the short term, it is not certain that in the mid to long term, the consequences of the health crisis will not, on the contrary, lead to a reconsideration of the security and closure approach implied by crisis management. Indeed, the shortage of migrant workers, linked to the closures brought about by the COVID-19 crisis, has led to radical state responses — from the organisation of "charter" flights to facilitate the arrival of migrant workers to the regularisation of illegal workers or rejected asylum seekers — or, where states failed, to "underground" responses — labour migration having been managed mainly by the Mafia in Italy, for example. Therefore, it seems necessary to wonder if, in a way, the COVID-19 crisis, through the paroxysm of border closure it has brought and the needs it has thus underlined, could not constitute a momentum for the implementation of a new approach to international migration, as advocated by the *GCM*.

Après une quarantaine d'années de discours sécuritaires et de fermeture à l'égard des migrations internationales, associés à une gestion « de crise » en la matière, l'adoption du *Pacte mondial pour des migrations sûres, ordonnées et régulières* (*GCM*) en décembre 2018, même s'il est un instrument non juridiquement contraignant, semble pouvoir conduire à un dépassement de cette approche, visiblement contreproductive. Ainsi, les États s'engagent à « [f]aire en sorte que les filières de migration régulière soient accessibles et plus souples » (Objectif 5) ou à « [v]eiller à l'invariabilité et à la prévisibilité des procédures migratoires pour assurer des contrôles, des évaluations et une orientation appropriés » (Objectif 12). À travers l'idée d'une coopération mondiale, fondée sur le droit, l'ambition des États d'adopter une approche de plus long terme du phénomène migratoire émerge. Cependant, la crise de la COVID-19 a semblé diminuer grandement les perspectives de mise en œuvre d'une telle approche. La volonté de limiter la propagation du virus a rapidement conduit à une stricte fermeture des frontières, réduisant drastiquement les flux migratoires. L'approche multilatérale de la problématique a paru rapidement balayée par les considérations nationales. Les réactions initiales des États membres de l'Union européenne en ont été un clair exemple. Toutefois, cette fermeture des frontières, portée à son paroxysme pour des raisons de santé, a souligné la dépendance des économies du « Nord global » à la migration de travail. Si la crise a frappé la migration et la mobilité internationale sur le court terme, il n'est pas certain qu'aux moyens et longs termes les conséquences de la

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crise sanitaire ne conduisent pas, au contraire, à une remise en cause de l'approche sécuritaire et de fermeture entrainée par l'approche de crise. En effet, la pénurie de travailleurs migrants, liée aux fermetures entrainées par la crise de la COVID-19, a conduit a de radicales réponses étatiques — de l'organisation de vol « charters » pour faciliter l'arrivée de travailleurs migrants à la régularisation des travailleurs illégaux ou des demandeurs d'asile déboutés — ou, en l'absence de réponse étatique convaincante, à la mise en place de réponses irrégulières — la Mafia ayant par exemple investi la gestion de la migration de travail en Italie. Ainsi, il parait nécessaire de se demander si, dans un sens, la crise de la COVID-19, à travers la fermeture des frontières paroxystique qu'elle a entrainée et les besoins que celle-ci a soulignés, ne pourrait pas constituer un moment clé pour la mise en œuvre d'une nouvelle approche de la migration internationale, telle que défendue par le *GCM*.

Después de unos cuarenta años de discurso de seguridad y cierre hacia la migración internacional, y de gestión de "crisis" en la materia, la adopción del *Pacto Mundial para una Migración Segura, Ordenada y Regular* (*GCM* por sus siglas en inglés) en diciembre de 2018, aunque es un instrumento jurídicamente no vinculante, parece conducir a la superación de este enfoque, que es visiblemente contraproducente. Así, los Estados se comprometen a "[a]umentar la disponibilidad y flexibilidad de las vías de migración regular" (Objetivo 5) o "[a]umentar la certidumbre y previsibilidad de los procedimientos migratorios" (Objetivo 12). A través de la idea de una cooperación global, basada en el derecho, surge la ambición de los Estados de adoptar un enfoque a más largo plazo ante el fenómeno migratorio. Sin embargo, la crisis de COVID-19 pareció disminuir en gran medida las perspectivas de implementar ese enfoque. El deseo de limitar la propagación del virus llevó rápidamente a un estricto cierre de fronteras, reduciendo drásticamente los flujos migratorios. El enfoque multilateral de este fenómeno pareció ser rápidamente dejado de lado por las preocupaciones nacionales: las reacciones iniciales de los Estados miembros de la Unión Europea fueron un claro ejemplo. Sin embargo, este cierre de fronteras, llevado al extremo por razones sanitarias, ha puesto de relieve la dependencia de la mano de obra migrante de las economías del "Norte global". Si la crisis afecta a la migración y a la movilidad internacional a corto plazo, no es seguro que a medio y largo plazo las consecuencias de la crisis sanitaria no lleven, por el contrario, a reconsiderar el enfoque de seguridad y cierre que implica gestión de crisis. De hecho, la escasez de trabajadores migrantes, asociada a los cierres provocados por la crisis de COVID-19, ha llevado a respuestas estatales radicales: desde la organización de vuelos "charter" para facilitar la llegada de trabajadores migrantes hasta la regularización de trabajadores ilegales o a los solicitantes de asilo rechazados – o, cuando los Estados fracasaron, a respuestas "clandestinas" –, ya que la migración laboral fue gestionada principalmente por la mafia en Italia, por ejemplo. Por tanto, parece necesario preguntarse si, en cierto modo, la crisis de COVID-19, a través del paroxismo del cierre de fronteras que ha provocado y de las necesidades que ha puesto de relieve, podría constituir un impulso para la implementación de un nuevo enfoque de la migración internacional, como propugna el *GCM*.

In a July 2021 statement entitled *Unlocking the Positive Impact of Migration on Sustainable Development to Recover Better, Faster and Stronger from COVID-19,* the United Nations Network on Migration (UNNM)[1] invited all states "to harness the contributions of migrants as enablers of sustainable development and enhance cooperation to ensure safe, orderly and regular migration", warning that "[n]o country will recover from COVID-19, nor achieve the [Sustainable Development Goals (SDGs)], without well-governed migratory movements and the effective inclusion and protection of migrants."[2] Thereby, immigration politics and international cooperation on migration can be a privileged way to assure an efficient response to the Covid-19 crisis. Starting from this observation, the hypothesis defended by this article is that the Covid-19 pandemic constitutes an incentive for states to enhance national and international approaches to migration management, in order to overcome a prevailing immobility in the field. The first objective of this research is to demonstrate that the Covid-19 crisis represents the momentum for states to engage more deeply in the global migration governance. Its second objective is to highlight that the *Global Compact for Safe, Orderly and Regular Migration*,[3] also known as the *GCM*, is the perfect tool to be mobilized for this realisation.

Global migration governance can be defined as

> [t]he combined frameworks of legal norms, laws and regulations, policies and traditions as well as organizational structures (subnational, national, regional and international) and the relevant processes that shape and regulate States' approaches with regard to migration in all its forms, addressing rights and responsibilities and promoting international cooperation.[4]

The notion of tool, material, refers to the idea of a legal and institutional instrument that can serve the advancement of the global governance of migration. The notion of momentum, temporal, refers to the idea of a particularly favourable moment for states to engage in the implementation of global governance, combining economic and political motivations. International cooperation in the management of international

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1 The UNNM has been created by the United Nations to support the implementation, monitoring and monitoring and review of the *Global Compact for Safe, Orderly and Regular Migration* (*GCM*). It is composed of 38 organisations interested in migration issues, nine of which are gathered in an Executive Committee. The International Organization for Migration (IOM) has a special role as the secretariat of the Network (UNNM, "About Us", online: *United Nations Network on Migration* <https://migrationnetwork.un.org/about>; Baptiste Jouzier, "Enjeux migratoires: L'inéluctable renforcement de l'approche multilatérale" in Olivier Delas et al, eds, *Quel multilatéralisme face aux enjeux globaux?* (Brussels: Bruylant, 2021) 185 [Jouzier, "Enjeux migratoires"]). The importance of the UNNM for the implementation of the *GCM* will be discussed in more detail later in the article.

2 UNNM, "Unlocking the Positive Impact of Migration on Sustainable Development to Recover Better, Faster and Stronger from COVID-19" (15 July 2021), online: *United Nations Network on Migration* <migrationnetwork.un.org/statements/unlocking-positive-impact-migration-sustainable-development-recover-better-faster-and> [UNNM, "Unlocking the Positive Impact of Migration"].

3 *Global Compact for Safe, Orderly, and Regular Migration*, GA Res 73/195, UNGAOR, 73rd Sess, UN Doc A/RES/73/195 (2018).

4 OIM, *Glossary on Migration* (Geneva: OIM, 2019) at 138; Nicholas R Micinski & Thomas G Weiss, "Global Migration Governance: Beyond Coordination and Crises" in Giuliana Ziccardi, ed, *The Global Community Yearbook of International Law and Jurisprudence* (New York: Oxford University Press, 2018) 175 at 176-79.

migration is currently marked by immobility. First, immobility takes the form of an attempt by states of the Global North to maintain a *status quo* that is favourable to them, and thus to slow down the legal and political progress of cooperation in this area.[5] Second, this immobility takes the form of an attempt by those states to impose material, political and legal limitations on the international movement of people. This immobility is notably embodied by two key approaches that dominate the field. There is the "security approach" to migration, which has led to the development of national, regional and international mechanisms aiming to deter irregular migration through militarization, repression and overall strict border control.[6] Associated with a reduction in legal pathways for migration, this approach severely complicates mobility.[7] There is also a "crisis approach" to migration, exemplified by the European Union's lack of anticipation of the 2015 "Migration Crisis".[8] The failure of the international system to manage international migration in a rational way has been described as a "creeping crisis", for which several "blinders" inhibit state responses[9]. The notion of creeping crisis can be defined as

> a threat to widely shared societal values or life-sustaining systems that evolves over time and space, is foreshadowed by precursor events, subject to varying degrees of political and/or societal attention, and impartially or insufficiently addressed by authorities.[10]

The crisis approach seems to impede long-term approaches to the migratory phenomenon and to slow international cooperation towards a more constructive approach to migration.

Against this background, the notion of mobility appears essential in the *GCM*[11]. Adopted in 2018 by the United Nations (UN) General Assembly, the *Compact* is the "the first international legal instrument to address the issue of international mobility of persons in its entirety, overcoming traditional fragmented approaches."[12] This legal instrument builds from a basis of 10 "cross-cutting and interdependent

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5 Jeanette Money & Sarah P Lockhart, *Migration crises and the structure of international cooperation* (Athens: University of Georgia Press, 2020).

6 Olivier Delas, "Approches nord-américaine et européenne de la politique migratoire" in Emmanuel Decaux, Mulry Mondélice & Jean du Bois de Gaudusson, eds, *Les migrations internationales. Enjeux et perspectives* (to be published); Didier Bigo, "L'immigration à la croisée des chemins sécuritaires" (1998) 14:1 R européenne migrations internationales 25; Salim Chena, "L'École de Copenhague en Relations Internationales et la notion de 'sécurité sociétale'. Une théorie à la manière d'Huntington" (2008) 4 Asylon.

7 John Reynolds, "Fortress Europe, Global Migration & the Global Pandemic" (2020) 114 AJIL 342 at 342-43.

8 Serge Slama, "La gestion européenne de la 'crise des réfugiés', un révélateur de la crise des droits fondamentaux en Europe" in Myriam Benlolo, ed, *Union européenne et migrations* (Brussels: Bruylant, 2020) 204 at 204-05.

9 Yrsa Landström & Magnus Ekengren, "Migration, Borders, and Society" in Arjen Boin, Magnus Ekengren & Mark Rhinard, eds, Understanding the Creeping Crisis (Cham: Palgrave Macmillan, 2021) 87 at 87.

10 Arjen Boin, Magnus Ekengren & Mark Rhinard, eds, *Understanding the Creeping Crisis* (Cham: Palgrave Macmillan, 2021) 1 at 3.

11 *Global Compact for Safe, Orderly and Regular Migration*, *supra* note 3.

12 Jouzier, "Enjeux migratoires", *supra* note 1 at 201.

guiding principles" to declare 23 objectives, which are translated into 187 "actions considered to be relevant policy instruments and best practices."[13] Taking the form of soft law, "[i]t aims, first and foremost, to create a comprehensive framework for cooperation in the area."[14] François Crépeau has rightly pointed out the importance of mobility facilitation in the *GCM*, defining it as a "central objective of the *Global Compact*"[15]. Indeed, in the English version of the *GCM*, the term facilitate appears 43 times[16]. The idea of facilitation irradiates the entire *Compact* and nearly every single one of its objectives. After some forty years of security and closure discourse and "crisis" management, the adoption of the *GCM* provides an interesting instrument to overcome and compensate for these troubled approaches to international migration. Through the adoption of the *GCM*, states commit to "[e]nhance availability and flexibility of pathways for regular migration"[17] and to "[s]trengthen certainty and predictability in migration procedures."[18] Furthermore, by adopting the *GCM*, states officially recognize that "a comprehensive approach is needed to optimize the overall benefits of migration."[19] The *GCM*'s flexibility could allow a gradual overcoming of states' reluctance. Through the idea of global cooperation based on law, the ambition of states to adopt a more long-term approach to the migration phenomenon emerges. Yet, commentators have warned against an overly optimistic reading of the *Compact* and its potential: the achievement of its objectives will depend on many factors, first and foremost on the will of states.[20] These warnings necessarily lead to the question of momentum. Which again calls forth the question of the Covid-19 crisis.

At first sight, the Covid-19 crisis seemed to diminish the prospect of implementing such an approach. The desire to limit the spread of the virus quickly led to a strict closure of borders, drastically reducing migration flows.[21] The multilateral approach to this issue seemed to be quickly swept aside to focus on national concerns;

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13 *Global Compact for Safe, Orderly and Regular Migration*, *supra* note 3.

14 Baptiste Jouzier, "Une analyse critique du Pacte mondial pour des migrations sûres, ordonnées et régulières" (2020) 17 R Droits Homme 1 at 87.

15 François Crépeau, "Towards a Mobile and Diverse World: 'Facilitating Mobility' as a Central Objective of the Global Compact on Migration" (2018) 30:4 Intl J Refugee L 650 [Crépeau, "Towards a Mobile and Diverse World"].

16 *Ibid.*

17 *Global Compact for Safe, Orderly and Regular Migration*, *supra* note 3 at 6, Objective 5.

18 *Ibid* at 7, Objective 12.

19 *Ibid* at para 11.

20 François Crépeau, "L'émergence d'une conversation globale sur les politiques migratoires. Retour sur un mandat de Rapporteur Spécial des Nations unies sur les droits de l'homme des migrants (2011-2017)" (2019) 17 Droits fondamentaux 1; Elspeth Guild, Tugba Basaran & 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) 57:6 Intl Migration 43; Kathleen Newland, "The Global Compact for Safe, Orderly and Regular Migration: An Unlikely Achievement" (2018) 30:4 Intl J Refugee L 657 at 660.

21 OECD, *International Migration Outlook* (Paris: OECD Publishing, 2020) [*OECD 2020*]; Mary A Shiraef, "Closed borders, travel bans and halted immigration: 5 ways COVID-19 changed how–and where–people move around the world", *The Conversation* (18 March 2018), online: <theconversation.com/closed-borders-travel-bans-and-halted-immigration-5-ways-covid-19-changed-how-and-where-people-move-around-the-world-157040>.

the initial reactions of the European Union Member States were a clear example.[22] However, this closure of borders, taken to its extreme for health reasons, has highlighted the migrant labour dependency of Global North economies.[23] While the crisis halted migration and international mobility in the short term, it is likely that in the mid to long term, the consequences of the health crisis can lead to a reconsideration of the security and closure approach implied by crisis management, as suggested by the UNNM. Indeed, the shortage of migrant workers, linked to the closures brought about by the Covid-19 crisis, has led to radical state responses—from the organization of "charter" flights to facilitate arrival of migrant workers[24] to the regularization of illegal workers or rejected asylum seekers[25]—or, where states failed, to "underground" responses, as in Italy where labour migration was largely taken over by the Mafia.[26]

Therefore, this article assumes that the Covid-19 crisis, through the paroxysm of border closures it has brought and the needs it has thus underlined, constitutes a momentum for the implementation of a new approach to international migration,[27] initiated by the adoption of the *GCM*, a relevant tool for the task.

# I. The Global Compact on Migration as Facilitating Agent: A Tool for Paradigmatic Change

## A. The Global Compact on Migration's Institutional Potential to Overcome Current Approaches

The first advantage of the *GCM* for the advancement of global migration governance is its form of soft law. The strong opposition existing between sending states and receiving states traditionally prevents legal and institutional progress on international migration.[28] The significant difference in power relations and interests

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22 Aude Bouveresse, "La libre circulation des personnes à l'épreuve de la Covid-19: extremis malis extrema remedia?" (2020) 3 RTD eur 509; Claire Bories, "Quand l'Union européenne reconsidère la question de ses frontières par temps de coronavirus" (2020) 638 R Union européenne 296.

23 OECD, *Economic Outlook*, issue 2 (Paris: OECD Publishing, 2021) [OECD, *Economic Outlook*].

24 Antoine Albertini, "Pour sauver la récolte de clémentines de Corse, rien de moins qu'un pont aérien", *Le Monde* (7 October 2020), online: <www.lemonde.fr/planete/article/2020/10/07/un-pont-aerien-pour-sauver-la-recolte-de-clementines-de-corse_6055101_3244.html?msclkid=71d59058a68d11ec802bab74a5b239e1>; Sarah Corker, "Eastern Europeans to be flown in to pick fruit and veg", *BBC News* (16 April 2020) online: <www.bbc.com/news/business-52293061>.

25 Romain Schué, "Le statut des 'anges gardiens' de la santé sera régularisé", *Radio Canada* (13 August 2020), online: <ici.radio-canada.ca/nouvelle/1726120/asile-immigration-covid-residence-permanente-trudeau-legault-canada-quebec-preposes>.

26 Roberto Angrisani, "Le coût de l'hésitation de l'UE à faire face au COVID-19: la perspective italienne" (14 May 2020), online (blog): *Le Club des juristes* <blog.leclubdesjuristes.com/le-cout-de-lhesitation-de-lue-a-faire-face-au-covid-19-la-perspective-italienne/>.

27 Ian M Kysel & Chantal Thomas, "The Contested Boundaries of Emerging International Migration Law in the Post-Pandemic" (2020) 114 AJIL 349.

28 Money & Lockhart, *supra* note 5 at 32-34.

leads the states of the Global North to consider legal obligations relating to migration as obligations primarily on them, and not in their interests.[29] The adoption of rigid, legally binding instruments has thus been criticized as ineffective and counterproductive in this area.[30] The use of soft law represents an interesting advantage, making it possible to bring states together around a common project and widely accepted general principles.[31] It makes it possible both to protect state sovereignty and to find compromise solutions.[32] The *GCM* has the potential to overcome national resistances to the progression of international cooperation on migration, by its particular flexibility. Non-binding,[33] it offers an important manoeuvring room in its implementation: the *Global Compact* contains a wide range of proposed actions for the concretization of many commitments, not conceived as obligations for states but as possible ways to move forward in the global governance of migration. The *GCM* affirms considerable autonomy for states in the implementation of the *Compact*, as stated in its 41st paragraph. In this sense, the *GCM* could be considered a "road map" for states, allowing for diverse national implementation.[34]

The *GCM* is also important because it creates a cooperative and institutional framework, inviting states to cooperate on migration on a level playing field, and in the principles of the UN and the *GCM*. First, it creates a regular and transparent international discussion framework. For the purpose of "follow-up and review", the *GCM* created a new international forum, the "International Migration Review Forum" (IMRF)[35]. This forum "shall serve as the primary intergovernmental global platform for Member States to discuss and share progress on the implementation of all aspects of the Global Compact."[36] Its first edition was held from 17–20 May 2022, and it will now take place every four years. The *GCM* also provides for regular regional meetings for the preparation of the IMRF,[37] and encourages states to propose national inputs on the implementation of Compact.[38] Second, it creates a cooperative framework through the creation of a new UNNM. The Network is constituted "of those members of the UN system who wish to be a part of it and for whom migration is of relevance to their

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29 Olivier de Frouville, "Les instruments universels de protection: Quelle effectivité?" in Habib Gherari & Rostane Mehdi, eds, *La société internationale face aux défis migratoires: Colloque des 13 et 14 janvier 2011* (Paris: Pedone, 2012) 93 at 105 and 111.

30 Bertrand Badie, *Pour un autre regard sur les migrations: construire une gouvernance mondiale* (Paris: La Découverte, 2008) at 80-82.

31 *Ibid* at 82.

32 Kenneth W Abbott & Duncan Snidal, "Hard and Soft Law in International Governance" (2000) 54:3 International Organization 421 at 436-48.

33 *Global Compact for Safe, Orderly and Regular Migration*, *supra* note 3 at para 7.

34 Michele Klein Solomon & Suzanne Sheldon, "The Global Compact for Migration: From the Sustainable Development Goals to a Comprehensive Agreement on Safe, Orderly and Regular Migration" (2018) 30:4 Intl J Refugee L 584 at 590; Nicholas R Mcinski, *Implementing the Global Compact for Migration: the Role of States, UN Agencies, and Civil Society* (Berlin: Friedrich-Ebert-Stifung, 2018) at 1-2.

35 *Global Compact for Safe, Orderly and Regular Migration*, *supra* note 3 at para 49a).

36 *Ibid* at para 49b).

37 UNNM, "Regional Reviews" (last visited 17 June 2023), online: *migrationnetwork.un.org* <migrationnetwork.un.org/regional-reviews>.

38 *Ibid.*

mandates."[39] Practically, it comprises an Executive Committee of nine members,[40] and 29 other members, international organizations, bodies or agencies.[41] Of these groups, the International Organization for Migration plays a special role as coordinator of the Network. The UNNM is intended to serve an important role in mobilizing states, gathering national and regional commitments and good practices, and initiating projects to achieve better migration management. The Network has already been active; thus, it is possible to offer a first examination of its orientation, notably through the examination of the new Multi-Partner Trust Fund for Safe, Orderly and Regular Migration.[42]

The Multi-Partner Trust Fund (MPTF) offers an innovative approach of international aid related to migration. Its governance mechanism is progressive compared to other existing funds in the field. The MPTF is guided by a steering committee reflecting a broad and inclusive approach. The steering committee is composed of "3 members of the UN Network on Migration; 3 donors; 3 countries of origin, transit and destination; and 3 stakeholders."[43] It offers a place for states with different perspectives on migration management, as well as to the civil society. Linked to a system of validation of proposed projects, the selection process allows considerable leeway for the establishment of projects, apparently overcoming North-South power relations in its conception of migration management. It also assigns importance to the principle of transparency, both regarding the projects financed and the selection process[44]. To date, seven projects have been funded, and these generally seem to move in the direction of greater mobility and stronger protection of migrants' rights.[45] This new model of governance is particularly important, proposing a certain break with the pre-existing asymmetrical models. For example, the EU Trust Fund for Africa (EUTF) is totally directed by European donator states, allowing for the imposition of a security-based approach on the African agenda. The Operational Committee of the EU Trust Fund for Africa is essentially composed of European Union (EU) institutions and EU member states, while also including "other donor states".[46] The relationship is essentially vertical and asymmetrical, allowing for the imposition of the EU security

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39 UNNM, "About Us" (last visited 17 June 2023), online: *migrationnetwork.un.org* <migrationnetwork.un.org/about> [UNNM, "About Us"].

40 The Department of Economic and Social Affairs (DESA), the International Labour Organization (ILO), the IOM, the Office of the High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Office on Drugs and Crime (UNODC) and the World Health Organization (WHO).

41 UNNM, "About Us", *supra* note 39; Jouzier, "Enjeux migratoires", *supra* note 1 at 203.

42 UNNM, "Migration Multi-Partner Trust Fund in 70 seconds" (last visited 17 June 2023), online: *United Nations Network on Migration* <migrationnetwork.un.org/mptf> [UNNM, "MMPTF"].

43 Migration Multi-Partner Trust Fund, *Annual Report: January-December 2020* (Geneva: UN Network on Migration Secretariat, 2021) at 12, online (pdf): *United Nations Network on Migration* <migrationnetwork.un.org/system/files/docs/mmptf_annual_report_2020.pdf>.

44 *Ibid.*

45 UNNM, "MMPTF", *supra* note 42.

46 European Commission, "EU Emergency Trust Fund for Africa", online: <https://ec.europa.eu/trustfundforafrica/content/about_en>.

agenda.[47] The discussion space and cooperation tools created by the *GCM* can be directly mobilized to provide responses to the migratory shocks created by the Covid-19 crisis. By proposing a cooperative and egalitarian model, they will allow for an overcoming of the traditional security approach of Global North states, constituting a privileged path for a collective response to the migratory challenges raised by the pandemic. For example, the MPTF could be directly mobilized to implement projects aiming at strengthening the international response to labour shortages created by border closures due to the Covid-19 crisis.

### B. The Global Compact on Migration's Material Potential to Overcome Current Approaches

The *GCM* also contains many elements in the body of its text that could be advantageously mobilized to overcome traditional approaches, particularly in the context of the Covid-19 crisis. First, it frontally addresses the electoral risk of proposing a more constructive approach to migration in most countries of the Global North,[48] directly linked to an unappeased public debate based on a misunderstanding of the realities of migration. The *GCM* offers a number of avenues to tackle this issue and to build healthier and more rational public debate, which could be perfectly mobilized in the context of the Covid-19 crisis. The *GCM* contains several objectives and commitments related to the improvement of perceptions of migration. Objective 17, for example, directly aims to "[e]liminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration."[49] The *GCM* also notably includes a commitment to "promote an open and evidence-based public discourse on migration and migrants in partnership with all parts of society, that generates a more realistic, humane and constructive perception in this regard."[50] Objective 16 aims to "[e]mpower migrants and societies to realize full inclusion and social cohesion" as well as containing the interesting commitment to "increas[e] public confidence in policies and institutions related to migration," for example by "[p]romot[ing] mutual respect for the cultures, traditions and customs of communities of destination and of migrants."[51] The *GCM* also sets a goal of rationalizing public policies and discourses. For example, Objective 19 contains the action of "[p]romot[ing] migration policies that optimize the benefits of diasporas for countries of origin and destination and their communities."[52] In addition, it proposes an interesting avenue of action with the promotion of "mutual respect, including in the

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47 Christophe Bertossi, Amal El Ouassif & Mathieu Tardis, "L'agenda de l'Union africaine sur les migrations : une alternative aux priorités européennes en Afrique ?" (26 February 2021) at 20-22, online (pdf): *IFRI* <www.ifri.org/fr/publications/notes-de-lifri/lagenda-de-lunion-africaine-migrations-une-alternative-aux-priorites>; Tuuli Raty & Raphael Shilhav, *The EU Trust Fund for Africa: Trapped between aid policy and migration politics* (Oxford: Oxfam, 2020) at 4.

48 François Crépeau, "Towards a Mobile and Diverse World", *supra* note 15.

49 *Global Compact for Safe, Orderly and Regular Migration*, *supra* note 3 at para 33.

50 *Ibid.*

51 *Ibid* at para 32a).

52 *Ibid* at para 35h).

context of electoral campaigns,"[53] pointing to the risk of the fallacious instrumentalization of the migratory subject during tense electoral periods. These actions could be advantageously to bring about a national debate on the working conditions of migrant workers, and the need for international cooperation to achieve more resilient migration systems.

Secondly, the *GCM* offers direct propositions to engage in a more mobile, data-based international approach to migration. In this regard, Kathleen Newland estimated that the *GCM* constitutes "a broad set of consensual guidelines for international cooperation on migration,"[54] and Jane McAdam went as far as to declare that "the Migration Compact is in many ways the beginning for the global regulation of migration."[55] What elements could be considered to advance this "global regulation of migration?" Objective 5 lays out the engagements and means of action to "[e]nhance availability and flexibility of pathways for regular migration."[56] Notably, states commit themselves

> 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.[57]

While taking into account the needs of migrants, through the notion of vulnerability and the right to family life, this objective is clearly aimed toward a rationalization of migration policies through better consideration of "demographic and labour market realities." This commitment is specifically broken down into two propositions. First, the *GCM* invites states to

> [r]eview and revise existing options and pathways for regular migration, with a view to optimizing skills-matching in labour markets and addressing demographic realities and development challenges and opportunities, in accordance with local and national labour market demands and skill supply.[58]

Second, it proposes that states "[d]evelop flexible, rights-based and gender-responsive labour mobility schemes for migrants, in accordance with local and national labour market needs and skills supply at all skill levels."[59] These two actions underline the need for states to adopt more coordinated and rational migration policies, in line with the concrete needs of origin and destination states. These elements can be directly mobilized in the context of the Covid-19 pandemic, which has revealed the need to build a stronger international migration system more adapted to real state needs. Furthermore, Objective 5 proposes the action of

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53 *Ibid* at para 33g).
54 Newland, *supra* note 20 at 660.
55 Jane McAdam, "The Global Compacts on Refugees and Migration: A New Era for International Protection?" (2019) 30:4 Intl J Refugee L 571 at 573.
56 *Global Compact for Safe, Orderly and Regular Migration*, *supra* note 3 at para 21.
57 *Ibid* [emphasis added].
58 *Ibid* at para 21c).
59 *Ibid* at para 21d).

> [f]acilitat[ing] regional and cross-regional labour mobility through international and bilateral cooperation arrangements, such as free movement regimes, visa liberalization or multiple-country visas, and labour mobility cooperation frameworks.[60]

This action clearly entrenches Objective 5 in the realm of international cooperation, including, for the first time in an instrument of such importance, a clear commitment to international cooperation in setting national immigration patterns. In a more technical way, Objective 12 is also significant for facilitation of mobility processes, through its commitment to facilitation of migratory procedures. More generally, Objectives 6, 15, 18, 20 and 22 aim to, respectively, "[f]acilitate fair and ethical recruitment and safeguard conditions that ensure decent work,"[61] "[p]rovide access to basic services for migrants,"[62] "[i]nvest in skills development and facilitate mutual recognition of skills, qualifications and competences,"[63] "[p]romote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants,"[64] and "[e]stablish mechanisms for the portability of social security entitlements and earned benefits."[65] As these objectives cannot be presented in detail here, it should be noted that they reveal the importance of the facilitation of the mobility objective in the *GCM*, and the potentiality of this instrument for advancement of a more predictable, cooperative and open approach to management of international migration.

Thirdly, the *Compact* holds as an objective the establishment of a more cooperative and resilient international framework structuring national, regional, and international responses to migration crises, which is needed to answer effectively to the Covid-19 crisis. Objective 2, on "[m]inimiz[ing] the adverse drivers and structural factors that compel people to leave their country of origin," while generally centred on climate-change-related crises, contains interesting propositions focused on crisis responses, such as "[a]ccount[ing] for migrants in national emergency preparedness and response,"[66] and "[s]trengthen[ing] joint analysis and sharing of information to better map, understand, predict and address migration movements."[67] More specifically, Objective 7 advances an action dedicated to situations of crisis, proposing

> [a]ppl[ication] of specific support measures to ensure that migrants caught up in situations of crisis in countries of transit and destination have access to consular protection and humanitarian assistance, including by facilitating cross-border and broader international cooperation, as well as by taking migrant populations into account in crisis.[68]

This commitment toward a more programmatic, long-term and cooperative framework to address the needs of migrants in situations of crisis is of particular interest

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60 *Ibid* at para 21b).
61 *Ibid* at para 22.
62 *Ibid* at para 31.
63 *Ibid* at para 34.
64 *Ibid* at para 36.
65 *Ibid* at para 38.
66 *Ibid* at para 18g).
67 *Ibid* at para 18h).
68 *Ibid* at para 23j).

for overcoming the "creeping crisis" approach, and as such the *GCM* could be a valuable instrument to build from in the wake of the Covid-19 crisis, to assure a more rational approach in the management of migration flows and the protection of migrant rights in crisis contexts.

Lastly, the *Compact* contains a commitment, transcending all other objectives, toward strengthening international cooperation on migration management. Indeed, the final, transversal objective is to "[s]trengthen international cooperation and global partnerships for safe, orderly and regular migration."[69] States commit

> to support each other in the realization of the objectives and commitments laid out in [the] Global Compact through *enhanced international cooperation, a revitalized global partnership* and, in the spirit of solidarity, reaffirming the *centrality of a comprehensive and integrated approach* to facilitate safe, orderly and regular migration.[70]

Notably, they must consider the possibility of

> [c]onclud[ing] bilateral, regional or multilateral mutually beneficial, tailored and transparent partnerships, in line with international law, that develop targeted solutions to migration policy issues of common interest and address opportunities and challenges of migration in accordance with the *Global Compact*.[71]

This commitment toward international cooperation should be mobilized to move out of the prevailing immobility and advance overcoming the *status quo* in international cooperation.[72] The *GCM* provides an interesting instrument for the realization of the global migration of governance, providing a comprehensive and equal framework for cooperation, and clear objectives to be achieved through the implementation of concrete actions. Now, the Covid-19 crisis could constitute the momentum for an effective implementation of the *GCM*.

## II. The Covid-19 Crisis as a Revealing Agent: Momentum for a Paradigmatic Change

### A. The Paroxysm of the Security and Crisis Approaches

While there is an emerging awareness of the need for a paradigmatic shift in the national approach to migration in the wake of the 2016 *New York Declaration for Refugees and Migrants*[73] and the 2018 *GCM*, the Covid-19 pandemic brought the

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69 *Ibid* at para 39.
70 *Ibid* [emphasis added].
71 *Ibid* at para 39e).
72 Money and Lockhart, *supra* note 5 at 33–34.
73 *New York Declaration for Refugees and Migrants*, GA Res 71/1, UNGAOR, 71st Sess, UN Doc A/RES/71/1 (2016).

security and crisis approaches to immigration to a fever pitch, raising fears of an abrupt halt to progress on mobility initiated by the *Compact*. In its 2020 *International Migration Outlook* report, the Organisation for Economic Cooperation and Development (OECD) underlined an unprecedented shock to migration from COVID-19 related restrictions.[74] The restrictions brought by the Covid-19 crisis led to a significant drop in migration flows and closure of most legal migration pathways, calling into question the feasibility of *GCM* Objectives 5 and 12. Going beyond the sheer numbers, national responses to Covid-19 concerning management and control of migration flows are fully in line with the criticized security and crisis approaches. In this regard, the European Union response is a particularly illuminating example.

The re-establishment of internal borders at the beginning of the Covid-19 crisis was carried out in a haphazard and rushed manner. This closure corresponded to a "crisis reflex."[75] Like the 2015 "migration crisis," the 2020 Covid-19 crisis did not occur in the absence of European legal frameworks. In response to the 2015 event, there was in particular the possibility of activating the temporary protection mechanism provided for in Council *Directive 2001/55/EC* of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.[76] This mechanism, apparently suited to respond to a significant influx of Syrian refugees, was not mobilized at that time. Concerning the 2020 COVID-19 border closures, *Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC*[77] specifically provided a framework for responding to such a health crisis. Nevertheless, the coordination mechanism provided by the 2013 Decision failed to ensure a coordinated response by the involved states.[78] The European Commission recognized the failure of the European legal framework and submitted a proposal for a new European regulation to strengthen the existing legal framework, now under discussion in the European Parliament.[79] As

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74 *OECD 2020*, *supra* note 21 at 18.

75 Eric Maurice, Thibault Besnier & Marianne Lazarovici, "Restoring free movement in the Union" (2020) 562 European Issues & Interviews, online: *Fondation Robert Schuman* <www.robert-schuman.eu/en/european-issues/0562-restoring-free-movement-in-the-union>; Bouveresse, *supra* note 22.

76 Council of Europe, CA, *Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*, [2001] OJ, L 212/12.

77 EC, *Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC Text with EEA relevance*, [2013] OJ, L 293/1.

78 Vincent Geisser, "L'hygiéno-nationalisme, remède miracle à la pandémie? Populismes, racismes et complotismes autour du Covid-19" (2020) 180 Migrations Société 3; Bouveresse, *supra* note 22; Bories, *supra* note 22; Maurice, Besnier & Lazarovici, *supra* note 75.

79 EC, *Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on serious cross-border threats to health and repealing Decision No 1082/2013/EU*, COM/2020/727 final (2020); EC, *Amendments adopted by the European Parliament on 14 September 2021 on the proposal for a regulation of the European Parliament and of the Council on serious cross-border threats to health*

usual, the creeping crisis reflex led to an initial disorganized response that exceeded the legal frameworks provided, followed by a legal reaction to provide a new, more appropriate framework. Indeed, in addition to overlooking the 2013 Decision, European Member States hardly complied with the strict procedures of the Schengen Borders Code (SBC) for derogating the principle of free movement.[80]

The crisis reflex took the classic form of securitization: European states alternated the simple resumption of border controls with outright border closures for foreigners,[81] even though the influence of foreigners on the spread of the virus seems to have been largely overestimated.[82] This uncoordinated security response has often led to a significant disregard for the interests of foreign states and individuals, but also for the European member states' own interests, directly calling into question the benefits of maintaining such approaches.

### B. The Revealed Limitations of the Security and Crisis Approaches

As security and crisis approaches reached a boiling point in response to the Covid-19 pandemic, the unprecedented level of extensive and disorderly closures of national borders highlighted the limitations of these approaches. Indeed, the disorderly, unilateral closure of national borders has led to a drastic reduction in labour migration. National labour markets then experienced shortfalls that could not be filled through traditional channels, underscoring the dependence of states in the global North on a functioning international migration system, and the significant risks of traditional immobility approaches. While this phenomenon was not unknown to specialists,[83] mass border closures brought it to the forefront, making it possible to more incisively outline the issue and place it at the heart of political debate. This was exemplified in Quebec by the pronounced rise of debate concerning the regularization of "guardian angels"—health sector workers.[84] Indeed, the indispensable assistance provided by "front-line" migrant workers in the healthcare sector, although in an irregular situation, has led to a real provincial debate on the need for Quebec to give them access to a regular status.

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*repealing Decision No 1082/2013/EU (COM(2020)0727–C9-0367/2020–2020/0322(COD))*, [2022] OJ, C 117/255.

80 Bouveresse, *supra* note 22.

81 Bories, *supra* note 22.

82 Romain Lecler et al, "Un virus de la mondialisation contemporaine. Ce que nous dit la COVID-19 des mobilités transnationales" (2021) Hors-série (Transformations) R interventions économiques 1; "Updated WHO recommendations for international traffic in relation to COVID-19 outbreak", *World Health Organization* (29 February 2020), online: <https://www.who.int/news-room/articles-detail/updated-who-recommendations-for-international-traffic-in-relation-to-covid-19-outbreak>.

83 OECD and European Union, *Matching Economic Migration with Labour Market Needs* (Paris: OECD Publishing, 2014).

84 Lise-Marie Gervais & Adil Boukind, "En photos | Portraits d'anges gardiens qui n'ont pas droit au programme de régularisation", *Le Devoir* (13 February 2021), online: <www.ledevoir.com/societe/595189/portraits-d-anges-gardiens-exclus-du-programme-de-regularisation?utm_source=recirculation&utm_medium=hyperlien&utm_campaign=boite_extra>; Schué, *supra* note 25.

Firstly, the drastic reduction in migratory flows has led to the identification of essential needs for foreign labour in certain key sectors, notably in agriculture and healthcare. In this regard, Francesco Fasani and Jacopo Mazza's important research on what "immigrant key workers" have contributed to Europe's Covid-19 response is telling.[85] These authors noted that

> even if the majority of *key workers* are Native [to the EU], Extra-EU migrants and EU mobile citizens are essential in filling vital roles, keeping European economies functioning: On average 13% of *key workers* are immigrants in the EU.[86]

Moreover, "[i]n some occupations—e.g., cleaners and helpers and labourers in mining and construction—up to a third of key workers are foreign born."[87] In a more global assessment, the 2021 OECD *Economic Outlook* report pointed out that "[s]hortages have […] emerged in sectors and countries normally reliant on sizeable cross-border inflows into the labour force."[88] While the shortage of healthcare workers has received considerable media and governmental attention, notably in Quebec,[89] the demand for agricultural workers is also particularly telling. While entire countries were under lockdown, with borders almost completely closed, several states have had to resort to exceptional measures to ensure the arrival of foreign seasonal workers. This was, for example, the case in Canada, France, Germany and the United Kingdom.[90] In fact, in an assessment of Covid-19's influence on migration flows in 2020, the 2021 OECD *International Migration Outlook* report pointed out that, despite border closures, "[e]ntries of seasonal agricultural workers declined by only 10 % overall, and even slightly increased in the main destination countries (e.g. United States and Poland)."[91] This illustrates the compelling need for labour migration in given sectors, a need that has clearly led to the circumvention of general border closure rules, often through adoption of *ad hoc* and uncoordinated solutions. Following a disorderly closure of migratory flows, one-off and unilateral responses

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85 Francesco Fasani & Jacopo Mazza "Immigrant Key Workers: Their Contribution to Europe's COVID-19 Response" (2020) 155 IZA Institute of Labor and Economics 1.

86 *Ibid* at 1.

87 *Ibid.*

88 OECD, *Economic Outlook*, *supra* note 23 at 20.

89 Lise-Marie Gervais, "Le programme de régularisation des anges gardiens et ses exclus", *Le Devoir* (13 February 2021), online: <www.ledevoir.com/societe/595168/un-programme-et-des-exclus?msclkid=8d345d2fa69311ec86db5ec2b9a60dde>; Gervais & Boukind, *supra* note 84; Minister of Health and Social Services, Press Release, "Pénurie de main-d'œuvre en contexte de COVID-19 - Nouvelles mesures incitatives pour le personnel du réseau de la santé et des services sociaux et de certains partenaires" (13 January 2022), online: *Minister of Health and Social Services* <www.msss.gouv.qc.ca/ministere/salle-de-presse/communique-3382/?msclkid=4f478725a5ff11ec8fdf347fa842dc84>.

90 Raluca Bejan, "COVID-19 and Disposable Migrant Workers" (16 April 2020), online (blog): *Verfassungsblog* <verfassungsblog.de/covid-19-and-disposable-migrant-workers/?msclkid=d36a6e09b0d011eca3238b7f5b0cd245>; Albertini, *supra* note 24; Corker, *supra* note 24; Hanna Ziady, "Farmers are chartering planes to bring in workers and save their crops", *CNN Business* (16 April 2020), online: *CNN Business* <edition.cnn.com/2020/04/16/business/farmers-fly-in-workers-to-beat-coronavirus/index.html?msclkid=d36ac3d7b0d011ec8c1b568203b6793d>.

91 OECD, *International Migration Outlook* (Paris: OECD Publishing, 2021) at 18.

have been implemented by states to meet their urgent needs, perfectly illustrating the precariousness and risks of the crisis approach toward migration.

After the lockdown period, as borders are reopening, the labour shortage remains significant in many sectors of the economy, slowing down the recovery of production.[92] Julia Horowitz, having conducted extensive research targeting numerous OECD countries, perfectly illustrated the importance of migration responses to labour shortages, demonstrating their key role in supporting "the recovery."[93] Businesses reacted to foreign labour shortages by putting pressure on governments—for example, six major employers' organizations in Quebec urged the Government to "accelerate the immigration process."[94] Thus, scientific projections of "reversal of a decades-long trend", anticipating an "economy less dependent overall on immigrant workers to fill seasonal and skill shortages in the labour force,"[95] should be strongly qualified. Indeed, increased attention to labour shortages has highlighted the fact that there were already labour shortages in many sectors before the Covid-19 crisis, and a strong dependence on migratory labour forces for many states of the Global North. Due to an aging population and a declining population growth rate, it has long been stated that to maintain social schemes, recourse to a foreign workforce will soon be inescapable.[96] As an illustrating example, one can refer to the important research on the North American context led by Silvia E Giorguli-Saucedo, Víctor M García-Guerrero and Claudia Masferrer.[97] Examining the demographic dynamics in Canada, Mexico and the United States, they demonstrated that "[t]he rapid aging process within the region, specially in North America, will drive the need for care-work and other services, creating incentives for certain types of migration."[98] Thus, the Covid-19 crisis may provide the economical momentum to focus on a long-known issue that has been difficult to address: the dependence of Global North states towards labour migration and the necessity to build a stronger international migratory system has been dramatically revealed.

Going beyond the purely economic and demographic aspects, Covid-19 has also put the spotlight on human rights issues related to the exploitation of precarious

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92 OECD, *Economic Outlook*, *supra* note 23 at 22.

93 *Ibid.*

94 Pierre Saint-Arnaud, "Pénurie de main-d'œuvre. Des employeurs lancent un appel à l'aide", *La Presse* (12 November 2021), online: <www.lapresse.ca/affaires/entreprises/2021-11-12/penurie-de-main-d-oeuvre/des-employeurs-lancent-un-appel-a-l-aide.php?msclkid=4f46cb4da5ff11ec81cd6d83e0c7b829>.

95 Alan Gamlen, "Migration and mobility after the 2020 pandemic: The end of an age?" (2020) OIM Publications Platform 1 at 3.

96 OECD and European Union, *supra* note 83; Philippe Fargues, "Les migrations internationales en mal de gouvernance mondiale" in Habib Gherari & Rostane Mehdi, eds, *La société internationale face aux défis migratoires: Colloque des 13 et 14 janvier 2011* (Paris: Pedone, 2012) 7 at 12-13..

97 Silvia E Giorguli-Saucedo, Victor M García-Guerrero & Claudia Masferrer, *A migration system in the making: Demographic dynamics and migration policies in North America and the Northern Triangle of Central-America* (Mexico: Center for Demographic, Urban and Environmental Studies, 2016), online (pdf): *hoover.org* <www.hoover.org/sites/default/files/research/docs/naf_2017_na-ntcamigrationsystem.pdf>.

98 *Ibid.*

and sometimes irregular foreign workers in essential sectors.[99] The precarious living conditions of foreign workers, revealed by the pandemic, led to a certain mediatic and scientific echo,[100] attracting the attention of the general public to the difficult situation of "essential workers." Before the Covid-19 crisis, François Crépeau, the former UN Special Rapporteur on the human rights of migrants, estimated that "[s]tates already know that the facilitation of mobility is the way of the future" and "the Migration Compact provides a remarkably strong and coherent—if incomplete—conceptual framework for facilitating mobility", but nonetheless, that "the development of a political discourse in favour of such facilitation, as well as of policies and practices to provide its effective implementation, may have to wait for another generation" due to the electoral risk of advancing such a discourse.[101] Therefore, the Covid-19 crisis, by putting the issue on the front stage, could constitute the right impetus for this crucial democratic debate, already postponed for too long.[102] At first, the Covid-19 crisis exacerbated nationalist reactions to immigration. It brought out many racist and nationalistic conceptions linking health risks and immigration, restricting debate around the need for migrant workers.[103] But soon, as previously discussed, border closures made apparent the essential roles of migrant workers in national "key sectors," and brought to the forefront the problem of immobility and the unacceptable working conditions they often endure. In fact, it has been noted that the "migration issue" is perceived by populations of Northwest Europe as far less salient since the Covid-19 crisis, the general attention now logically being focused on issues related to "health and social security."[104] James Dennison and Andrew Geddes then assume that "[r]ather than intensifying the focus on immigration, [they] would expect to see 'quieter' immigration politics."[105] This could constitute a perfect momentum to implement the objectives 16, 17 and 19 of the *GCM*. Notably, states will have the opportunity to mobilize the *GCM*'s invitation to "[p]romote independent, objective and quality reporting of media outlets, including Internet-based information"[106] or to

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99 Tesseltje de Lange, Sandra Mantu & Paul Minderhoud, "Into the Unknown: COVID-19 and the Global Mobility of Migrant Workers" (2020) 114 AJIL Unbound 332 at 336.

100 Sandrine Morel, "En Espagne, le Covid-19 révèle les conditions de vie inhumaines des travailleurs migrants", *Le Monde* (13 August 2020), online: <www.lemonde.fr/international/article/2020/08/13/en-espagne-le-covid-19-met-en-lumiere-les-conditions-de-vie-inhumaines-des-travailleurs-agricoles-migrants_6048835_3210.html?msclkid=066c0735a69b11eca86c72ccc5cc4da6>; Alison Reid, Elena Rhona-Perez & Marc B Schenker, "Migrant workers, essential work, and COVID-19" (2021) 64:2 American J Industrial Medicine 73.

101 Crépeau, "Towards a Mobile and Diverse World", *supra* note 15 at 652-56.

102 Catherine Xhardez, "Can COVID-19 positively change perceptions on migration?", *Open Democracy* (8 May 2020), online: <www.opendemocracy.net/en/pandemic-border/can-covid-19-positively-change-perceptions-migration/?msclkid=3233b585a69411ec83ab53808307a60c>; Marta Foresti, "Less gratitude, please. How COVID-19 reveals the need for migration reform" *Brookings* (22 May 2020), online: <www.brookings.edu/blog/future-development/2020/05/22/less-gratitude-please-how-COVID-19-reveals-the-need-for-migration-reform/>.

103 Geisser, *supra* note 78.

104 James Dennison & Andrew Geddes, "Why COVID-19 does not necessarily mean that attitudes towards immigration will become more negative" (2020) IOM Publications Platform 1 at 7.

105 *Ibid.*

106 *Global Compact for Safe, Orderly and Regular Migration*, *supra* note 3 at para 33c).

> [p]romote awareness-raising campaigns targeted at communities of origin, transit and destination in order to inform public perceptions regarding the positive contributions of safe, orderly and regular migration.[107]

Could also be implemented the objective of more rational public policies and discourses. Despite the dormant risk of nationalist and xenophobic tensions the context could be particularly favourable for a breakthrough on international migration management, the Covid-19 pandemic also constituting a political momentum for the advancement of the global migration governance through the implementation of the *GCM*.

### C. The Urgent Need for Cooperation on Migration: Toward the Implementation of the *GCM* to Deal with the "Covid-19 migration crisis"

The crisis and security approaches to migration, brought to a head by the Covid-19 crisis, revealed their limitations. The extreme closure of borders underlined the significant dependence of many OECD countries on labour migration, and in particular on temporary and seasonal labour migrations. The uncoordinated and chaotic measures demonstrated the limits of unilateral and non-programmatic actions in the management of migratory flows, pointing out the risks of maintaining a "creeping crisis" approach toward the migratory phenomenon and the need to move toward a more coherent and programmatic approach.[108] Logically, international and regional organizations called for the end of these disordered measures and the adoption of a cooperative management in line with the importance of the migration issue.[109] Therefore, the Covid-19 pandemic underlined the need to implement the *GCM* and to move toward the realisation of the global migration governance.

As Luisa Feline Freier rightly underlined, "[t]he COVID-19 crisis has highlighted the importance of enabling safe, orderly and regular migration, both for migrants themselves and for receiving societies."[110] The dependence of states in key working sectors such as healthcare and agriculture, and their related vulnerability in instances of closure of migratory flows, invites states to rethink their approach to migration and to build a more thorough and programmatic cooperation. This was notably the observation made for Canada by the experts of the RSC Task Force on COVID-19.[111] Acknowledging the reality of a "continuing dependence on seasonal

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[107] *Ibid* at para 33f).

[108] Elodie Hut et al, "Covid-19, Climate Change and Migration: Constructing Crises, Reinforcing Borders" (6 March 2021), online (pdf): *IOM Environmental Migration Portal* <environmentalmigration.iom.int/blogs/covid-19-climate-change-and-migration-constructing-crises-reinforcing-borders?msclkid=76ae890fa90611ecbdcddf449beccddf>.

[109] WHO, 2020; Council of Europe, PA, 2022 Ordinary Sess (First Part), *Beating Covid-19 with public health measures*, Texts Adopted, Resolution 2424 (2022).

[110] Luisa Feline Freier, "COVID-19 and rethinking the need for legal pathways to mobility: Taking human security seriously" (2020) IOM Publications Platform 1 at 1.

[111] The RSC Task Force on COVID-19 was mandated by the President of the RSC in April 2020 "to provide evidence-informed perspectives on major societal challenges in response to and recovery from COVID-19": RSC, "Supporting Canada's COVID-19 Resilience and Recovery Through Robust Immigration

agricultural workers and other temporary foreign workers to fill essential, ongoing jobs,"[112] the RSC experts urged the Canadian Government to "[c]ontinue to display leadership on the Global Compacts on Refugees and Migration, promoting creative pathways for increasing global resettlement numbers."[113] The need for a more long-term and cooperative approach, as projected by the *GCM*, has been illustrated by Bridget Anderson, Friedrich Poeschel and Martin Ruhs.[114] Mentioning the numerous *ad hoc* measures adopted by states to meet pressing labour needs in certain sectors, the authors propose to go beyond the one-off observation of an urgent need to offer a more systemic analysis, exploring "whether, why and to what extent migrant workers are really 'needed' to provide essential services and to help ensure their resilience in the longer term."[115] The authors notably recommended a shift toward a more system-oriented and long-term approach.[116] To build a stronger international migratory system, states should not focus migration policies on individual sectoral needs assessments, but on a more comprehensive examination of the systemic needs of the national labour market and economy. The authors call directly for a change in temporal framing, a shift "[f]rom short run to long run", estimating that

> [t]o value resilience is necessarily to think in the medium to long term, and its attainment may mean trading off short-term gains including profit margins (for employers) and electability (for politicians).[117]

The Covid-19 crisis has highlighted the urgent need to rethink national approaches to migration and national migratory policies to build a stronger and more resilient international migratory system. This incentive can be mobilized to implement effectively the Objectives 2 and 7 of the *GCM*, allowing to create a genuine international framework for handling migratory flows and protecting the rights of migrants in the event of a crisis. The needs of origin, transit and destination states should be discussed through the regional and global processes created by the *GCM*, allowing for coordinated and balanced responses to migration challenges created by Covid-19 crisis.

Catherine Wihtol de Wenden described the distance between the migration needs of societies in the Global North and their stated migration policies, underlining their hypocrisy. She criticized "migration policies, which dramatize the closing of the main door, often for electoral reasons, while opening the back door, for demographic

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Policy and Programs" (25 March 2021), online: *Royal Society of Canada* <rsc-src.ca/en/covid-19-policy-briefing/supporting-canada%E2%80%99s-covid-19-resilience-and-recovery-through-robust>. For further information on the Working Group on COVID-19 & Immigration, see Royal Society of Canada, "The Working Group on COVID-19 & Immigration" (last visited 17 June 2023), online: *Royal Society of Canada* <rsc-src.ca/en/themes/immigration>.

112 Victoria Esses et al, *Supporting Canada's COVID-19 Resilience and Recovery Through Robust Immigration Policy and Programs* (Ottawa: Royal Society of Canada, 2021) at 66.

113 *Ibid* at 68.

114 Bridget Anderson et al, "COVID-19 and systemic resilience: What role for migrant workers?" (2020) IOM Publications Platform 1.

115 *Ibid* at 2.

116 *Ibid* at 8-9.

117 *Ibid* at 8.

and labour needs reasons."[118] The Covid-19 crisis has illuminated the need for paradigmatic change. States must acknowledge their need for migration and the necessity of bringing migration flows "through the front door", if they wish to build a coherent, sustainable and resilient system. This is what the *GCM* called for in its Objective 5.[119] International cooperation, built upon the effective use of data and the motivation to balance the interests of the states of origin and destination, as well as the interests of the migrants themselves, will be unavoidable. The vulnerability of states and migrants under the current system urgently call for a change of approach, which can be initiated by the implementation of the Objective 5 of the *GCM*, especially by "facilitat[ing] labour mobility and decent work reflecting demographic and labour market realities."[120] States of the Global North should take the warning of the Covid-19 crisis all the more seriously or risk losing hold of their relatively strong position in the "game" of international cooperation on migration.[121] Indeed, the likelihood of future competition between Global North states for labour migration has been widely predicted.[122]

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The *GCM*'s potential to overcome the crisis and security approaches to migration is real. The Covid-19 pandemic has the capacity to constitute the necessary incentive for states to engage plainly in its implementation. However, it will take a certain time to assert the reality of the *GCM* implementation.[123] Many parameters should be taken into consideration to evaluate the possibilities of fruitful use of the *GCM*. As noted by several authors, the broadness of the *Compact* and the substantial manoeuvring room extended to states adopting the agreement could lead its implementation toward a more mobile or, inversely, immobile, conception of international migration management. Martin Geiger and Antoine Pécoud rightly warned against "the unclear futures of the *GCM* and *GCR*, and the prevailing interest of states to restrictively handle ('manage') migration", which could lead the implementation of the *GCM* toward "more restrictive activities and programmes that yet again aim to contest migration as a normal process in world society and have as their primary motivation curbing and limiting migratory movements."[124]

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118 Catherine Wihtol de Wenden, *Migrations: Une nouvelle donne* (Paris: Maison des sciences de l'Homme, 2016) at 13 [translated by authors].

119 *Global Compact for Safe, Orderly and Regular Migration*, *supra* note 3 at para 21.

120 *Ibid.*

121 Money and Lockhart, *supra* note 5 at 32-37; Gerasimos Tsourapas, "Labor Migrants as Political Leverage: Migration Interdependence and Coercion in the Mediterranean" (2018) 62:2 Intl Studies Q 383.

122 Wihtol de Wenden, *supra* note 118 at 24-25 [translated by authors].

123 McAdam, *supra* note 55 at 574.

124 Martin Geiger, "Possible Futures? The New 'UN Migration Agency' and the Shifting Global Order" in Martin Geiger & Antoine Pécoud, eds, *The International Organization for Migration: The New 'UN Migration Agency' in Critical Perspective* (Basingstoke: Palgrave Macmillan, 2020) 293 at 297.

It will be fundamental to analyse state doctrine to come, as related to the first IMRF. The IMRF will lead to adoption of a Progress Declaration, examining what has been done and what remains to be done for implementation of the *GCM*.[125] The Forum could also lead to the adoption of "possible *guidance* for the United Nations System to strengthen its efforts in improving the system-wide effectiveness and coherence and in supporting Member States in implementing the Global."[126] Thus, it will be crucial to examine in detail this official doctrine to come. These documents will indicate the global direction taken by states in implementation of the *GCM*; they will offer precious input on the balance of power within the involved states. It will be an interesting opportunity to validate the hypothesis of the existence of "the momentum and the tool" for effective implementation of the *GCM*, and to assess the first outcomes on relations between the Covid-19 crisis and the *GCM*. As recently stated by the UN Secretary-General,

> [t]he essential roles that so many migrants play as front-line service providers, pivotal actors in our supply chains and crucial sources of support for their families and communities have been rightly recognized and celebrated in many countries. As States responded to the pandemic and its impacts, many showed foresight in breaking down barriers, through policy or practice, to ensure non-discriminatory health-care and vaccine access and to ensure that migrant workers remained employed, for example, by adapting regular pathways. […] *Building on those examples will be an important component of the International Migration Review Forum and its outcome*.[127]

It will be crucial to assess whether "those examples" are to be integrated into the IMRF as well as in the official doctrine surrounding implementation of the *Compact*. The Covid-19 crisis has created political and economic momentum for a real commitment to the implementation of the *GCM*. The *GCM* has many institutional and material provisions that can be mobilized to address the migration challenges created by the Covid-19 pandemic. The first IMRF will therefore be an important moment for the global governance of migration, as it will allow, or not, to link the momentum of the Covid-19 pandemic to the *GCM* tool in order to advance a true international cooperation on migration. It is thus necessary to underline the importance of this moment, as well as the interest of cross-studies of the *GCM* and the migration response to the Covid-19 crisis.

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125 *Format and organizational aspects of the international migration review forums*, UNGAOR, 73rd Sess, UN Doc A/73/L.99 (2019) at 5.

126 *Ibid* [emphasis added].

127 UNNM, "Unlocking the Positive Impact of Migration", *supra* note 2 at 2 [emphasis added].