



# International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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## Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families Thirty-fifth session

### Summary record of the 506th meeting\*

Held at the Palais des Nations, Geneva, on Tuesday, 27 September 2022, at 3 p.m.

Chair: Mr. Corzo Sosa

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\* No summary records were issued for the 504th and 505th meetings.

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*The meeting was called to order at 3 p.m.*

### **Promotion of the Convention**

*Half day of general discussion on a new general comment on the convergence of the Convention and the Global Compact for Safe, Orderly and Regular Migration*

1. **The Chair**, declaring open the half day of general discussion on a new general comment on the convergence of the Convention and the Global Compact for Safe, Orderly and Regular Migration, said that the law often failed to protect the human rights of migrants. Moreover, migrants' vulnerability, which stemmed from discrimination and inequality rather than a lack of resilience, was exacerbated by a range of intersecting factors, such as age and disability. Each migrant's situation must be assessed individually to afford them appropriate protection. More than 15,000 migrants had died since the adoption of the Global Compact for Migration, and an immediate, meaningful response to the ongoing human tragedy was therefore imperative.
2. The general comment would facilitate analysis of the legal and human rights-based approach of the Global Compact for Migration. The Global Compact could complement the Convention in several significant areas, including trafficking in persons and the smuggling of migrants; two matters that, although not mentioned explicitly in the Convention, were always included in the Committee's recommendations to States parties. Moreover, the Global Compact for Migration could inform the general comment in relation to alternatives to detention, and it contained key objectives relating to migrants' access to justice. He wished to call on all Member States to ratify the Convention.
3. **Mr. Salama** (Office of the United Nations High Commissioner for Human Rights (OHCHR)) said that the general comment would act as a bridge between different instruments and different approaches to migration. While the Global Compact for Migration assisted States in developing strategies to protect vulnerable migrants, the Convention provided a comprehensive international legal framework to promote the human rights of migrant workers and their families, prevented abuse and addressed vulnerability. The minimum standards set out in the Convention were legally binding, while the Global Compact for Migration was not, although it was rooted in the Universal Declaration of Human Rights and the nine core international human rights instruments. In addition, the Compact constituted a guiding principle on human rights and a commitment to non-regression regarding existing legal obligations. Its non-binding nature afforded it flexibility, and it was the most comprehensive instrument on migration governance to take a human rights-based approach. The two instruments were complementary and mutually reinforcing, and they should be implemented in synergy.
4. The relevance of the Committee's work, even to non-States parties, was demonstrated by its joint general comments with the Committee on the Rights of the Child. States and other stakeholders should enhance their cooperation to address the increasingly alarming phenomenon of enforced disappearance in the context of migration, in compliance with objective 8 of the Global Compact for Migration and with the General Assembly resolution on the protection of migrants. Although the Convention did not confer new rights on migrants, instead consolidating existing rights to which States had already subscribed by ratifying other instruments, it had the lowest ratification rate of the core treaties. Non-States parties, particularly countries of destination in the global North, should ratify the Convention, a step that would also benefit their own citizens who migrated.
5. **Ms. Hernández Paramo** (OHCHR) said that the Convention and the Global Compact for Migration were complementary and mutually reinforcing. The Global Compact for Migration reinforced the importance of human rights and international law while drawing on the Convention and other international human rights instruments. For their part, the objectives of the Compact reinforced the commitments assumed by States when they ratified those instruments, including on decent work and social protection. At the same time, the human rights system, and in particular the Convention and the Committee, could reinforce the importance of the Global Compact for Migration, including through the new general comment.

6. The successful implementation of the Global Compact for Migration relied on full respect for obligations under international law, and the human rights system provided authoritative guidance on implementing the commitments made under the Global Compact, in line with human rights obligations. Indeed, the general comment would allow the Committee to employ its own guidance and jurisprudence, as well as those of other treaty bodies, to provide comprehensive direction on such implementation. For instance, guidance could be provided on the implementation of objective 21, which was related to return, readmission and reintegration, in the light of article 22 of the Convention.

7. **Mr. González Morales** (Special Rapporteur on the human rights of migrants), speaking via video link, said that the general comment would strengthen the application of both the Convention and the Global Compact for Migration. The high rate of adherence to the Global Compact should be harnessed to enhance the role of the Committee and the Convention, which had been ratified by only one in four Member States. The grounding of the Global Compact for Migration in human rights treaties rendered some of its provisions legally binding. While the Convention focused on human rights, the scope of the Global Compact for Migration was broader, and incorporating it into the human rights sphere therefore posed a challenge. There were differences in the instruments' structures, in that the Convention constituted a bill of rights, while the Global Compact for Migration contained a raft of migration policies, standards and measures. Their implementation also differed: it was the Committee that oversaw the application of the Convention, while numerous bodies, including the General Assembly and the United Nations Network on Migration, monitored the application of the Global Compact for Migration.

8. The challenges linked to the convergence of the two instruments included highlighting the human rights elements of the Global Compact for Migration and enhancing the connections between it and the human rights treaties on which it was based. The Global Compact needed to be interpreted from a human rights perspective, including a gender perspective, drawing on the experience of the Committee and the special procedures of the Human Rights Council. For their part, the Committee and the special procedures must call for the implementation of the human rights provisions of the Global Compact, monitor migration policies and migrants' human rights, ensure States' accountability and view the Global Compact as complementary to the Convention. Lastly, the two instruments must be used in synergy. To that end, he drew attention to the links between them in all his communications with States, as well as in country and thematic reports.

9. **The Chair** said that in recent years the Committee had made numerous references to the Global Compact for Migration in its concluding observations.

10. **Mr. Charef** said that the complex matter of migration was the subject of great debate in countries of origin, transit and destination. In several States, the tone of the debate on foreigners and the emergence of hate speech engendered discrimination, racism, xenophobia and intolerance. It was often forgotten that immigration was not limited to movement from the global South to the global North, and that most migration occurred in a regular manner. While it was true that migration brought challenges and that States had a legitimate right to protect their citizens and interests, and to control their borders, they also had a duty to respect the human rights of all persons, regardless of migration status. The rapid response to the migration crisis caused by the war in Ukraine had demonstrated what was possible, while also highlighting a deplorable disparity between the treatment of migrants from Ukraine and of migrants from elsewhere. He hoped that crisis would set a precedent for the future.

11. Migrants' vulnerability had long been recognized by the international community, although their rights had remained neglected during the process of globalization. The Global Compact for Migration had emerged from the need for an international migration governance framework that took a collective, responsible approach. It united all stakeholders in a commitment to cooperate in order to render migration safe, orderly and regular, although work remained to be done to translate its objectives into concrete action. The general comment would restate the will of the international community to harness synergies between the Global Compact for Migration and the Convention with a view to activating the management and monitoring structures required under the Global Compact. Effective cooperation must be developed to adapt to new migration challenges while encouraging States to ratify the Convention.

12. **Mr. Ben Khalifa** (University of Tunis), speaking via video link, said that the Government of Tunisia had come under pressure from the European Union to police the latter's borders. Negotiations on the terms of a protocol on partnership in mobility between the European Union and the Government had stalled owing to pressure from civil society. The Tunisian Government did not accept the expulsion to its territory of stateless persons or third-party nationals who had entered the European Union irregularly, and it had also rejected the establishment of disembarkation platforms and reception camps within its borders by the European Union. Effort must be made, with the involvement of civil society, to encourage the European Union to identify alternative policies. The recommendations of civil society should also be incorporated into a review of the agreements signed with the Governments of France, Germany, Italy and Switzerland. The root of the problem lay not in immigration itself, but in the populist, racist and xenophobic political movements seen in Europe.

13. Although the right to asylum was guaranteed in the Tunisian Constitution, asylum legislation had yet to be adopted. The Government needed to strengthen its commitment to human rights by taking that step, while also ensuring that the European Union did not seize upon the adoption of such legislation as an opportunity to expel third-country nationals to Tunisia. The Government's adherence to the Global Compact for Migration should prompt it to redouble its efforts to assist the families of migrants who had died or disappeared, an ongoing phenomenon caused by increased irregular migration, which in turn was due to restrictions on regular entry into Europe, economic difficulties in Tunisia and regional instability. Civil society had persistently called on the Government to ratify the Convention so as to guarantee several of the rights set out in the Global Compact for Migration.

14. **Mr. Prentice** (United Nations Network on Migration) said that the Global Compact for Migration was more than a policy instrument; its guiding principles highlighted its grounding in human rights, advocated for a whole-of-society approach and envisaged follow-up and review mechanisms. It was intended to create an inclusive forum for a broad range of partners to discuss all aspects of migration. Its implementation had recently been evaluated at the first International Migration Review Forum, and the resulting Progress Declaration, obtained by consensus, outlined the significant progress made in a number of areas, including the universality of human rights regardless of migration status.

15. The draft work plan of the United Nations Network on Migration included, *inter alia*, the development of a system of country and regional networks, the roll-out of the United Nations multi-partner trust fund to support the Global Compact for Safe, Orderly and Regular Migration and guidance and tools on bilateral labour migration agreements. The General Assembly had given the Secretary-General and, by extension, the Network, a mandate to develop a set of indicators for discussion by the States that had adhered to the Global Compact; the Committee should engage in those discussions, which would be held at different levels and in different sectors, and in the regional reviews of the Global Compact for Migration scheduled for 2024.

16. **Ms. Méndez Escobar** (Mexico) said that the general comment would identify synergies through which commitment to both the Convention and the Global Compact for Migration could be enhanced, as well as facilitating a re-evaluation of the Convention based on its similarities with the Global Compact in order to promote the former's ratification. Nevertheless, the general comment must consider the two instruments' differing legal nature and the very different historical contexts in which they had been adopted. The Global Compact for Migration was not legally binding and had been adopted more recently; it therefore reflected the current realities of migration. Its scope was broader than that of the Convention, encompassing matters such as access to decent work and family reunification. The general comment should therefore examine the opportunity afforded by the Global Compact to broaden the interpretation of the Convention's provisions on some of those matters, leading to greater protection for migrant workers and more comprehensive migration policies.

17. **The Chair** said that champion countries for the implementation of the Global Compact for Migration could act as a bridge between it and the Convention.

18. **Mr. Desmond** (University of Leicester), speaking via video link, said that the general comment presented an opportunity to identify the potential risks and synergies created by the

adoption of the Global Compact for Migration. There was a risk that the Global Compact would reduce, or even reverse, migrants' rights owing to its non-binding nature and the fact that it fell short of several standards set out in international human rights and labour instruments, including the Convention. For example, its omission of the right to leave any country could be used by States to justify the restriction of that right, while its failure to prohibit the detention of immigrant children represented a missed opportunity to firm up the emerging consensus on such a prohibition and risked perpetuating the fragmentation of international protection standards for that group.

19. The Committee must remain alert to any attempts by States parties to the Convention to use the implementation of the Global Compact for Migration to dilute the force of the Convention. The Committee's concluding observations should include a standard recommendation that encouraged States parties to implement the Global Compact for Migration in a manner consistent with their obligations under the Convention, and States parties and civil society should be asked to include information on that point in their reports to the Committee. Where there was evidence that the Convention was not being upheld in the implementation of the Global Compact for Migration, the Committee should use its concluding observations to refer to the Global Compact's non-regression clause. It should also recommend that States parties should promote wider ratification of the Convention during the Global Compact for Migration implementation review process.

20. The general comment should highlight that the Convention and the work of the Committee constituted points of reference for the implementation of the Global Compact for Migration, including for non-States parties to the Convention. For instance, regularization had been widely promoted by the Committee but was absent from the Global Compact for Migration. Nevertheless, the Global Compact's ultimate aim could not be achieved without regularization, and the text clearly encouraged recourse thereto. The implementation of the relevant provisions could be informed by the applicable guidance offered by the Committee in its general comments and concluding observations.

21. **Mr. Arbaoui** (Amsterdam Centre for Migration and Refugee Law) said that, while the Convention and the Global Compact for Migration could be mutually reinforcing, there was a risk that the Global Compact would weaken the authority of the Convention because some States that had adhered to the Global Compact were using it selectively to justify restrictive policies. However, the Committee could minimize that risk, and thus enhance the protection of human rights, by dedicating a section of its general comment to the overlap between the two instruments as a way of encouraging States parties to the Convention to ratify the Global Compact and vice versa and by highlighting the added value of both instruments through their complementarities. The general comment could also be used to identify synergies between the two instruments at the national level. For instance, there should be more coordination between the two implementation mechanisms, and voluntary reporting under the Global Compact should include a section on how a State's implementation of the Compact was in line with the Convention.

22. In terms of promoting the Convention, the Committee should invite more of the States that were highly successful in implementing the Global Compact but had yet to ratify the Convention to take part in its deliberations. States, meanwhile, should organize training sessions for civil society on the synergies between the two instruments, and those that were also members of the African Migration Observatory should incorporate the Convention into the work of the Observatory. Both the Committee and States should increase their collaboration with academia.

23. **Mr. Flynn** (Global Detention Project) said that, in the United States of America, alternatives to detention referred to technology and other tools to manage undocumented individuals' compliance with release conditions. However, a shockingly high number of non-citizens were being placed under various forms of surveillance without any appreciable impact on the number being placed in detention. Indeed, thus far in 2022, 97,000 people had been subject to alternatives to detention for an average of 834 days, while 298,000 people had been placed in detention. Although it was an outlier in that domain, the United States was not the only country to use alternatives to detention in a manner inconsistent with human rights; Mexico, for instance, detained the second largest number of children in the world.

24. Part of the reason for those outcomes was the way in which alternatives to detention were characterized in the Global Compact and by the United Nations Network on Migration. While the Network had asserted that electronic forms of surveillance should not be used as alternatives to detention, it had so far neglected to characterize them as alternatives for individuals in lawful detention procedures. The Global Detention Project was concerned that the failure to encourage more States to use alternatives to detention would spur them to use such measures in the same way as the United States did. Accordingly, it urged the Committee to use the general comment to reframe the issue by, for example, repeating its understanding of the nature and purpose of alternatives to detention, as laid down in paragraph 48 of general comment No. 5.

25. Secondly, the Global Compact did not reflect the growing international consensus that the best interest of the child precluded the detention of children for immigration reasons. Instead, by focusing on alternatives to detention, it implied that children could still be detained and that their needs could be superseded by migration policy objectives. Therefore, the Global Detention Project would encourage the Committee to use the general comment to articulate for States that had adhered to the Global Compact the full significance of best interest norms.

26. Thirdly, the Global Compact failed to explicitly call for the decriminalization of irregular migration. That shortcoming, in addition to going against international norms and authoritative opinions, reflected internal tensions within the Global Compact. That was particularly true of provisions that called on States to take a human-rights-based approach to the detention of migrants even though applying criminal penalties to immigration-related offences was incompatible with human rights. Moreover, if a State's national law established criminal penalties for such offences, there was a risk that deprivation of liberty could be applied other than as a last resort, which ran counter to article 10 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, not to mention the Committee's repeated calls for States to decriminalize irregular entry and stay.

27. The Committee should address that gap by framing the recommendations in the general comment as authoritative clarifications of the relevant provisions of the Global Compact. It could also emphasize the fact that the Global Compact's advice to States to align their border screening procedures with international human rights law required States to refrain from criminally prosecuting irregular border-crossers, given the consensus that such prosecution exceeded any legitimate purpose of the State. Likewise, the Committee should affirm that laws criminalizing irregular entry or presence were contrary to fundamental human rights norms and refugee law and that paragraph 27 (f) of the Global Compact inherently implied that States should amend such laws.

28. **Ms. Kalush** (Migrant-Rights.org) said that, although migrants constituted 60 to 90 per cent of the population of the countries of the Cooperation Council for the Arab States of the Gulf, those countries often claimed to have no migrants, only so-called temporary contract labourers, a term used to bypass obligations to migrants under international law. None of those countries had ratified the Convention, but they were signatories to the Global Compact for Migration and active participants in related projects and forums, where use of the term "temporary contract labourers" was increasingly normalized, reflecting a worrying trend in the global discourse away from a rights-based approach to migration towards the management of migration with only loose references to human rights standards.

29. Although objective 13 of the Global Compact was more or less aligned with international norms on arbitrary detention, the absence of a clear reference to the binding standards on immigration detention was worrying. Attempts by States at the International Migration Review Forum to soften commitments to end child detention concretized a primary concern of migrant rights advocates that the Global Compact might undercut binding mechanisms by recasting international legal standards as optional and negotiable.

30. Furthermore, the language of the Global Compact around safeguards against regression must be reinforced through the introduction of a stronger review process that involved closer collaboration within the United Nations system and more meaningful participation from other stakeholders, including civil society. That could be achieved by integrating assessments under the Global Compact into the universal periodic review and

reviews by human rights treaty bodies. Such integration would, *inter alia*, avoid parallel reporting systems that diluted the advocacy capacity of civil society organizations, whose time and resources were limited. The opportunity that the Global Compact provided to reduce fragmentation of human rights instruments could only be leveraged if State reports were assessed for their full human rights impact. Such an assessment must include the development of a human rights index to ensure progress on objectives consistent with human rights principles, as well as a greater role for the treaty bodies in the review and implementation process.

31. **Ms. LeVoy** (Platform for International Cooperation on Undocumented Migrants), speaking via video link, said that the recent rise of far-right governments in Europe was raising concerns about further pressure on the European Union to take an even stronger security-driven approach to migration than that signalled by the proposed reforms to the Union Code on the rules governing the movement of persons across borders. Those reforms would likely legalize systematic border controls, which targeted people based on racial, ethnic, national or religious characteristics. There was also a concern that, like the early response to the coronavirus disease (COVID-19) pandemic, most of the measures taken to help businesses and households cope with the cost-of-living crisis would not include undocumented migrants.

32. Both the Global Compact for Migration and the Convention recognized that migrants, regardless of status, should have access to health care. While a number of countries in Europe had had laws ensuring that undocumented migrants enjoyed entitlements to health care for nearly 30 years, there were many implementation challenges. Although some advances had been seen during the COVID-19 pandemic, especially with regard to access to the vaccine, including in some countries with usually restrictive health-care policies towards undocumented persons, legislative change was a long and difficult process. One recent example of success, however, was Germany, where medical practitioners who provided services to undocumented individuals were no longer required to report their patients' status. Firewalls of that nature were just as important as legislative reforms.

33. Access to justice was another area of concern, as immigration enforcement typically took priority over labour rights and victim protection. Labour inspectors, who could play an essential role in that regard, reported feeling stuck in the face of the exploitation of undocumented workers because they were required to report such workers, sometimes to immigration authorities. There were, nonetheless, hopeful developments in access to justice as well, such as a government instruction to immigration officers in Spain to protect migrant women who experienced domestic violence and whose residence status depended on that of their aggressor. Her organization recommended that the response to harm caused to undocumented persons should focus on providing access to comprehensive services rather than solely on strengthening models of justice grounded in criminal law.

34. Regularization was a key policy tool. For example, there had been very few rejections during a recent regularization process in Ireland, probably due to the very clear criteria established between the Government and civil society and other partners and to a progressive view of what constituted family. In addition, under a bilateral agreement between Greece and Bangladesh, up to 4,000 Bangladeshis per year would be granted seasonal worker visas and the situation of some 15,000 undocumented Bangladeshi agricultural workers would be regularized. However, civil society had voiced the concern that the requirement to present an employment certificate left migrants vulnerable to exploitation by employers and that the regularization was for a finite amount of time, thus undermining stability and integration.

35. Lastly, in terms of the implementation of the Global Compact and the Convention, two vital stakeholders not to be neglected in the general comment were civil society actors – who, despite being instrumental in the realization of the human rights of migrants irrespective of status, were criminalized for their work in some European countries – and municipal authorities, which had shown themselves to be eager to exchange information and practices with regard to undocumented migrants.

36. **Ms. Townhead** (Quaker United Nations Office) said that the general comment could provide clarity on how the convergence between the Global Compact for Migration and the Convention could benefit migrants. First, the instruments should be used to offset each

other's shortcomings. For example, the language of the Global Compact was much stronger than that of the Convention with regard to saving lives and ending lethal disregard. Similarly, the Progress Declaration of the International Migration Review Forum contained more specific language on meaningful participation by migrants than either of the other two instruments. Where the language of an instrument, or its interpretation by States, dropped below international law and standards, the Committee must hold the line, and where the language of the Global Compact and the Progress Declaration went beyond the Convention, the Committee should reinforce it through engagement with States parties and other activities.

37. Secondly, it was important to consider the complementarity of the follow-up processes since they were less static than the text of the instruments. The follow-up and accountability mechanism under the Convention was stronger by virtue of the treaty's binding nature, but follow-up under the Global Compact offered the possibility of greater scale and reach. It should be borne in mind, however, that both processes had much more limited reach into States that saw themselves primarily as countries of destination for migrants.

38. Nevertheless, those differences could be a strength if used in combination. For example, since comprehensive and coherent cross-sectoral migration policy, as promoted through the provision of the Global Compact on national implementation plans, was key to properly implementing the Convention, the Committee could incorporate that topic in its questions and guidance to States parties. Conversely, its State-specific concluding observations and general comments should be incorporated into the analysis and technical assistance provided by the United Nations Network on Migration to support implementation of the Global Compact. The follow-up processes could also be mutually reinforcing on thematic work, for instance the interplay between the right to liberty enshrined in the Convention and alternatives to immigration detention promoted in the Global Compact; non-discrimination; or the inclusivity of emergency health measures.

39. Lastly, while the Global Compact constituted soft law, the considerable political buy-in it had garnered, as illustrated by the consensus adoption of the Progress Declaration, should be leveraged to achieve migration justice.

40. **Ms. Afrin** (Global Alliance Against Traffic in Women), speaking via video link, said that among the difficulties encountered in countries of destination, migrant women reported being obliged to accept jobs below the level of their education and experience due to racism and discrimination based on their nationality, ethnicity or race and to the non-recognition of their qualifications. Language was another barrier preventing migrant women from obtaining decent jobs and from participating in social life. The situation resulted in migrant women facing exploitative working conditions, inadequate social security and unfair dismissal. Upon return to their countries of origin, women often encountered the same difficult conditions that had driven them to migrate in the first place and faced added social challenges, such as stigma, rejection and discrimination. Reintegration measures were merely short-term services, mostly provided by non-State actors.

41. In terms of dismantling the types of barrier to socioeconomic inclusion in countries of destination highlighted in her organization's research, the Convention and the Global Compact for Migration appeared to lack coherence and a comprehensive perspective. For example, both instruments explicitly prohibited discrimination against migrants, yet the real-life discriminatory impact of policies, including on skills recognition, was not addressed. In addition, the Convention simultaneously protected the right of migrant workers to free choice of employment and restricted that right by stipulating that States could restrict free choice of remunerated activity in accordance with their legislation concerning recognition of occupational qualifications acquired outside their territory. Similarly, provisions of the Global Compact on shaping perceptions of migration were oddly divorced from reality, while those on skills development and mutual recognition of qualifications were in effect inoperable due to the lack of timelines.

42. Accordingly, it would be helpful if the Committee used the general comment to push for the mainstreaming of the anti-discrimination language contained in both instruments and to boost the impact of that language by calling for the application of an anti-discrimination

lens to the implementation of all the provisions of the instruments, with the active involvement of migrants, particularly women migrant workers.

43. The sustainable return and reintegration of migrants was an issue that the Convention and the Compact treated unevenly. While objective 21 of the Compact included a commitment for States to facilitate reintegration by providing returning migrants with equal access to comprehensive services, research had shown that female migrants continued to face structural hurdles that impeded their access to those services. Furthermore, many programmes delivered by Governments and international agencies were ineffective because they failed to address those same hurdles. When considering the provisions of the Compact in the context of socioeconomic inclusion, the Committee should give due weight to objective 2: “Minimize the adverse drivers and structural factors that compel people to leave their country of origin”, which included the commitment for States to promote gender equality and to empower women and girls.

44. Article 67 of the Convention envisaged State cooperation regarding the return of migrant workers and members of their families. However, the provision requiring cooperation with a view to promoting “adequate economic conditions for their resettlement” seemed outdated in the current migration context and was less comprehensive than objective 21 of the Compact. The Convention’s value lay first and foremost in strengthening rights-based approaches in the design and implementation of migration policies.

45. In addition to underlining the importance of human rights in general and decent work in particular, the new general comment should address gender discrimination and structural inequalities in the area of socioeconomic inclusion. For as long as States continued to ignore those problems, no policy would improve the situation of female migrant workers.

46. **Mr. Yuzhanin** (International Organization for Migration) said that the Compact, which was non-binding and holistic in its approach to international cooperation on migration, encompassed 10 guiding principles and 23 objectives. Convergence between the Compact and the Convention held the potential to advance both agendas. Although the two instruments focused on the same themes, the Convention established human rights standards and legal frameworks whereas the Compact targeted a broader spectrum of migration issues and proposed to improve migration policies and governance. The Compact’s preamble established a clear link with the Convention and with the Sustainable Development Goals, which themselves were deeply rooted in international human rights law and proposed human rights-based approaches for the management of migration, and labour migration in particular.

47. Several of the Compact’s objectives referred to labour migration and decent work. Objectives 5, 6, 14, 18, 19 and 22 all contained relevant language that might be embedded in the general comment with a view to strengthening implementation of the Convention. The Compact also proposed practical measures, consistent with the provisions of the Convention, that States could take in order to achieve the objectives. In simple terms, any State that fulfilled the objectives of the Compact would simultaneously be implementing the Convention.

48. The Compact addressed many important issues that might be taken up in the general comment. For example, it contained language on pathways for regular migration, which contributed to combating transnational crime. The Committee might also consider strengthening the language on alternatives to detention contained in objective 13 and take into account issues such as fair and ethical recruitment; access to health and other services; and inter-State cooperation on labour migration.

49. The International Organization for Migration (IOM) had submitted comments to the Committee on several issues, including the use of terminology, the application of the Compact to migrant workers and linkages with the Sustainable Development Goals. One suggestion was that the general comment might refer to tools developed within the framework of the Compact, such as the Guidance on Bilateral Labour Migration Agreements of the United Nations Network on Migration.

50. **Mr. Taran** (Global Migration Policy Associates) said that historical experience had shown that, without carefully designed rules and regulations, exploitation and abuse abounded in employment relations and in societies as a whole. The Convention not only

contained a detailed and unambiguous set of standards to uphold the rule of law and promote good governance, but also made clear that universal, inalienable and indivisible human rights, including labour rights, extended to migrants. For that reason, the Convention had been much maligned by those who sought to relativize human rights or dismiss them as antiquated or optional.

51. The Convention and two other binding international instruments – the International Labour Organization (ILO) Migration for Employment Convention (Revised), 1949 (No. 97) and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) – set forth complementary standards on the protection of migrant workers' rights and migration governance. Those standards were relatively widely accepted, as 93 States had ratified at least one of the three instruments. It should also be noted that conventions could be influential without being ratified.

52. The Compact, as an instrument specifically conceived for the management of migration, diminished the participation of the legislative branch in formal governance and truncated the review and supervisory role of the judiciary, framing migration primarily as a policy matter for the executive branch. Furthermore, the Compact incorporated language and notions of repressive control of mobility; effectively confused human rights, administrative and civil law with criminal and crime-suppression law; endorsed measures that criminalized or tended towards the criminalization of irregular migration; and legitimized measures of deportation and involuntary return that in practice had led to the restriction or violation of the rights of migrants and refugees.

53. The Committee thus faced a challenge in that not all provisions of the Convention and the Compact were complementary: some were divergent. It was therefore appropriate that the Committee should seek to articulate its position on the Compact. The general comment should reiterate the universality, inalienability and indivisibility of human rights, including labour standards, and should remind States of their obligation to respect and apply the universal standards set forth in the core international human rights treaties and the ILO fundamental conventions.

54. **Mr. Pime** (Burkina Faso) said that, although the Convention and the Compact did not have the same legal status, the two instruments were complementary and mutually reinforcing, since they provided for a human rights-based approach to international migration. His Government welcomed the drafting of the new general comment, which would help to strengthen protection of the human rights of migrants by providing States with authoritative guidance on how they should fulfil their obligations under the Convention and their commitments under the Compact.

55. In the current climate of increased hate speech against migrants, his Government considered it crucial that the general comment should focus on the relevant provisions of the Convention and the Compact, specifically objective 17, “Eliminate all forms of discrimination and promote evidence-based public discourse to shape perceptions of migration”. The Committee should also prioritize the rights of migrant workers in emergency situations, in the context of efforts to build back better after the COVID-19 pandemic. The general comment might also underscore the importance of international and regional cooperation on migration-related issues, in accordance with article 64 of the Convention and objective 23 of the Compact.

56. **Ms. Huseynova** (Azerbaijan) said that her country had acceded to the Convention and adopted the Compact. Unless otherwise specified in law, foreigners and stateless persons in Azerbaijan enjoyed the same rights as citizens, including the rights to education, health care and social security, and were equal before the law and the courts. The Government had introduced innovative solutions to facilitate access to migration-related information for foreigners and stateless persons, including a 24-hour call centre and an official application linked to an e-government platform. Recently, with the support of IOM, it had established a regional training centre on migration, which aimed to enhance migration management. Her Government supported the Committee's work and considered that the role of Azerbaijan as a champion country for implementation of the Compact would create positive value and serve as a model of migration management for other countries from the Eastern Europe and Central Asia region.

57. **Mr. Pérez Bello** (International Disability Alliance) said that his organization welcomed the initiative to draft a general comment on convergence between the Convention and the Compact, considering that a concordant interpretation of the two instruments would provide additional guidance and promote Convention standards among States that had adopted the Compact but were not party to the Convention. He encouraged the Committee to include a robust disability-rights perspective in its general comment, in order to ensure the rights of migrant workers with disabilities and family members with disabilities.

58. Migrant workers with disabilities faced specific legal and practical barriers and multiple and intersecting forms of discrimination. Unfortunately, the negative impact of migration laws, policies and practices was not entirely clear, as data on migration disaggregated by disability was scarce – an issue that States should be called upon to tackle. Discriminatory provisions in immigration laws and policies were based on the prejudiced notion that persons with disabilities would become a financial burden for health and social protection systems and failed to recognize and support them as contributors to development and equal members of society. Such provisions, which typically imposed health-related requirements for immigration, had in many cases been criticized by the Committee on the Rights of Persons with Disabilities. They had a negative impact not only on persons with disabilities who wished to migrate, but on the members of their families, including children, as whole families might be denied visas because one applicant had a disability. As a result, persons with disabilities, and family members who cared for them, might be left behind in vulnerable situations. The Committee should highlight that such discriminatory provisions ought to have no place in immigration laws.

59. Lack of accessible infrastructure, services and information presented a further obstacle for persons with disabilities to request and obtain visas and residence permits on an equal basis with others. In particular, persons with disabilities lacked access to administrative and justice systems, which prevented them from challenging administrative decisions, such as the rejection of visa and residence applications, and from defending their interests in judicial proceedings.

60. Lastly, in connection with article 45 of the Convention, migrants with disabilities and family members with disabilities faced restrictions in accessing education, health care and social protection. By excluding them from disability-related support and social protection schemes on the basis of their migration status, nationality or duration of residence, States denied them their rights and deprived them of the opportunity to develop to their full potential.

61. **Ms. Fritz** (Border Violence Monitoring Network) said that the proposal to draft a general comment was a welcome development. Many human rights organizations had documented the routine misuse of detention by States members of the European Union as part of their strategies for managing immigration. Human rights organizations had collected evidence that States were concealing the whereabouts of detained migrants, including by holding them secretly in informal and improvised detention sites; destroying their telephones; denying them contact with the outside world; and failing to register their admission to detention centres. The abusive and punitive use of arbitrary and incommunicado detention should therefore be explicitly referenced in the general comment, particularly in the light of objective 13 of the Compact, which affirmed that detention should not be arbitrary and should only be used as a last resort.

62. Under objective 7 of the Compact, States committed to assisting migrants and protecting their human rights. Yet, in transit countries and when crossing international borders, migrants were increasingly at risk of serious human rights violations, including pushbacks, torture and enforced disappearance. The systematic recourse to such violations, as part of unofficial policies for managing migration, had heightened migrants' vulnerability. She recommended that the general comment should include robust language clarifying States' obligation not to carry out pushbacks.

63. **The Chair** said that he was grateful to the panellists and other speakers for their enlightening contributions to the discussion. The Committee looked forward to continuing its cooperation with all stakeholders.

*The meeting rose at 5.55 p.m.*