

Towards a Practical Global Cooperation Framework for Temporary and Circular Migration

*Geçici ve Döngüsel Göç Hakkında
Küresel İşbirliği Çerçevesine Doğru*

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Introduction

Jean Monnet was a great European with a great vision. He famously said: *We do not bring States together, we unite people*. Such a people-centered vision is very much needed with regard to international migration. Migration policies tend to be framed in terms of “migration flows”. Yet, such flows consist of human beings, each with their “inherent dignity and ... equal and inalienable rights”¹. This view of the migrant person as a fellow rights holder is often obscured, however, by stereotyping, sometimes fed by populist ideas. Such representations, which are not based on facts, undervalue the overall positive contribution of migrants. This includes their significant contributions to the economies of both host and home countries².

Sustainable migration policies require international cooperation. Such cooperation is indispensable to establish a broadly accepted global normative framework for international migration. Important steps have recently been made to advance this goal. But further cooperation is needed to translate this agreed normativity into concrete binding engagements, to set up machinery at

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¹ *Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world* (UN Declaration of Human Rights, Preamble).

² For example, remittances sent home by migrants are a stable private source of capital that is over three times the amount of official development assistance and foreign direct investment combined, representing a lifeline to millions of households.

the global level to turn aspirations into reality. Today, such machinery is lacking.

I. The Emerging Global Normative Framework

The United Nations 2030 Agenda for Sustainable Development adopted in 2015 and effective 1 January 2016, for the first time includes migration among the United Nations policy Targets. Migration is specifically mentioned under SDG 10 *Reduce inequality within and among countries*. Target 10.7 is a call to: *Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies*³. Four Indicators help assess progress achieved on this Target⁴. It is telling for the current global situation that Indicator 10.7.3 states: *Number of people who died or disappeared in the process of migration towards an international destination*. As if these were normal statistics, to be expected in our twenty-first century! Yet, we know for sure that today many migrants pay for their migration project with their lives.

To offer better protection to migrants, the General Assembly of the United Nations on 19 September 2016 adopted the *New York Declaration for Refugees and Migrants*. This was followed in 2018 by the adoption by the General Assembly of two further non-binding but negotiated global instruments: the *Global Compact on Refugees*⁵, and the *Global Compact for Safe, Orderly and Regular Migration (GCM)*⁶.

³ In addition, there are several other migration-related targets, including target 3c (retention of health workers in developing countries), target 4b (provision of scholarships for study abroad), targets 5.2, 8.7 and 16.2 (combating human trafficking), target 8.8 (respecting labour standards for migrant workers), target 10c (lowering the costs of transmitting remittances) and target 17.18 (disaggregating data by migratory status).

⁴ Four Indicators assist in measuring progress on Target 10. 7: Indicator 10.7.1: Recruitment cost borne by employee as a proportion of monthly income earned in country of destination; 10.7.2: Number of countries with migration policies that facilitate orderly, safe, regular and responsible migration and mobility of people; 10.7.3: Number of people who died or disappeared in the process of migration towards an international destination (!) 10.7.4: Proportion of the population who are refugees, by country of origin.

⁵ Endorsed by UN General Assembly Resolution A/RES/73/151) on 17 December 2018.

⁶ Endorsed by UN General Assembly Resolution A/RES/73/195 on 19 December 2018.

International Migration Review Forum, has been established, but this Forum can only call for non-binding action⁹.

II. Some Figures on and Dynamics of International Migration

While in 2019 the world counted 20.45 million refugees and 4.15 million asylum seekers¹⁰, the number of international migrants in that year reached 272 million persons, of whom there were 169 million migrant workers¹¹. According to the ILO, these international migrant workers made up approximately 69 per cent of the world's international migrant population of working age (aged 15 and over) in 2019¹². As the *Global Migration Group* notes:

“One of the key motivations behind international migration is moving for jobs, with people migrating internationally due to economic inequality and/or in search of work. Combined with vulnerability to economic, political, and environmental crises and shifting demographics, these push and pull factors will continue to drive labor migration for decades to come. These contemporary realities have led to the following outcomes:

- *Increased numbers of women migrating, where women currently represent almost half of all migrants, an increasing number of whom are migrating on their own account (or independently) for the purpose of employment*
- *A significant young labor migrant population (between ages 15 and 24 years), representing one in eight migrant workers*
- *Greater intraregional movement, where more migrants seek work within their own developing region (South-South labor migration)*

⁹ Cf Draft resolution submitted by the President of the General Assembly on the Progress Declaration of the International Migration Review Forum, 26 May 2022, A/76/L.58.

¹⁰ <https://www.infomigrants.net/en/post/25431/refugee-numbers-hit-record-high-in-2019-un-report#:~:text=Nearly%2046%20million%20people%20were,4.2%20million%20were%20asylum%20seekers>.

¹¹ [https://www.migrationdataportal.org/themes/labour-migration#:~:text=In%202019%2C%20there%20were%20169,countries%20\(ILO%2C%202021\)](https://www.migrationdataportal.org/themes/labour-migration#:~:text=In%202019%2C%20there%20were%20169,countries%20(ILO%2C%202021)).

¹² https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/--publ/documents/publication/wcms_808935.pdf, p. 25.

- *A shift from simple origin-destination dichotomies to a situation where a country may be a simultaneous destination, transit, and origin country ...*”¹³

At the same time, in several countries of the Global North that are facing aging populations and lowering birth rates, the pressure is mounting to allow more immigrant workers to sustain their economies and indeed their societies. Canada is a telling example. In 2020, the Canadian government announced a plan to welcome 1.200.000 immigrants through permanent resident admissions during the next three years to give a boost to the economy to fill vacancies in the health sector, ICT and agriculture¹⁴. One must go back for over a century to find such numbers in Canada, 400.000 immigrants per year!

Canada may well be a forerunner. In the years ahead many if not most countries of the Global North are likely to see a growing perception that immigration is a necessary component of their overall economic policies. This will increase the need for countries of origin of working migrants and countries receiving them, to cooperate to ensure “orderly, safe, regular and responsible” migration as required by the GCM, and to coordinate their policies mutually so that migration movements between them will benefit both groups of countries.

Such coordination is needed, moreover, to avoid adverse competition among receiving countries, “fishing in the same pond” for foreign workers. For their part, countries of origin will need to coordinate their policies and join forces to make migration of their people sustainable, to protect themselves against being depleted of their “human capital”, and to benefit optimally from remittances sent home by their migrant workers and from the skills and experience of returning migrants.

At this point in time, however, such coordination and cooperation are still absent at the global level. The reluctance of countries of the Global North to join the UN Migrant Workers Convention reflects their current preoccupation

¹³ See Global Migration Group, *Handbook for Improving the Production and Use of Migration Data for Development*, Chapter 4 Work, prepared by the International Labour Organization, https://www.un.org/en/development/desa/population/migration/events/coordination/15/documents/Final%20Handbook%2030.06.16_AS4.pdf (emphasis added).

¹⁴ A new Immigration Levels Plan covering the years 2022-2024, increases the targets for these years to 1.300.000 (plus 750.000 family members).

with (perceived) sovereignty concerns. Arguably, the very broad scope of this instrument does not help: the Convention covers both regular and irregular, temporary and permanent, migration, and as it is focused on substantive rights of workers and their families and corresponding obligations of States, and not on practical cooperation, this gives it the appearance of a very ambitious instrument. This leaves a manifest global governance gap in respect of international migrant workers, which contrasts sharply with the global legal framework in place for refugees with its guardian organization the UN High Commission for Refugees (UNHCR).

III. A Possible Way Forward

It would seem, therefore, that a more incremental approach is needed. As a first step towards mutual engagement, a practical global legal framework could be established to facilitate orderly, safe, regular and responsible temporary migration of workers, as mutually agreed between countries of origin and receiving countries. Such a framework should focus on procedural guarantees, accompanied by some institutional devices to make such guarantees work. In this instrument the person of the migrant worker and her or his migration trajectory should take center stage.

Why this initial focus on temporary, including circular (repetitive temporary) migration? In its Report *Migration in an interconnected world: New directions for action* (2005), the Global Commission on Migration recommended that both “States and the private sector should consider the option of introducing carefully designed temporary migration programmes as a means of addressing the economic needs of both countries of origin and destination”¹⁵ One strong argument in favour of temporary migration they gave and developed, is that “countries in the developing world stand to make more gains from the temporary and circular migration of their citizens than from their permanent departure”.

The framework should build on the Global Migration Compact, and aim at realizing, in particular the following of its 23 objectives:

(3) Provide accurate and timely information at all stages of migration

(4) Ensure that all migrants have proof of legal identity and adequate documentation

¹⁵ (pp. 16/17).

- (5) Enhance availability and flexibility of pathways for regular migration
- (7) Address and reduce vulnerabilities in migration
- (11) Manage borders in an integrated, secure and coordinated manner
- (12) Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral
- (14) Enhance consular protection, assistance and cooperation throughout the migration cycle
- (18) Invest in skills development and facilitate mutual recognition of skills, qualifications and competences
- (20) Promote faster, safer and cheaper transfer of remittances and foster financial inclusion of migrants
- (21) Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration
- (22) Establish mechanisms for the portability of social security entitlements and earned benefits
- (23) Strengthen international cooperation and global partnerships for safe, orderly and regular migration

IV. A Global Legal Framework for Direct Cross-border Administrative Cooperation regarding Temporary Migration in support of the Global Compact for Migration

The Annex provides an outline of a possible global multilateral legal framework for direct cross-border administrative cooperation, on a permanent basis, in support of these objectives. It should be noted that in two respects the scope of this draft proposal is more limited than the GCM:

First, it is designed to deal with temporary migration only, i.e., the movement of migrants from their State of Origin to the Host State followed by their return to the State of Origin. It thus seeks primarily to regulate temporary, including circular, labour migration movements. It may also apply, however, to other forms of temporary migration, e.g., for education purposes.

Second, the proposal is a procedural one. It seeks to facilitate cross-border administrative coordination and cooperation to implement temporary migration programmes as may be mutually agreed between States party to the

framework. The content of those migration programmes, however – the criteria for the selection of migrants, conditions for their entering and leaving States, working conditions, etc. – is beyond the scope of the proposal, and left to the sovereign policies and decision-making of the participating States.

The proposal has four main aims:

1. Facilitate the implementation of temporary migration programmes as may be mutually agreed by States of Origin and Host States, by

a. Defining basic responsibilities of States of Origin and Host States that apply to any temporary migration, and

b. Each State designating a central migration body with – delegable – powers to facilitate both international networking and cooperation and internal coordination

2. Regulate the activities of intermediaries, by

a. Establishing minimum requirements as to their expertise, experience, financial structure, and objectives, and

b. Ensuring compliance with these requirements by a system of governmental supervision and licensing

3. Facilitate fast, safe, cheap and effective transfer of remittances, by

a. Taking measures to reduce transaction costs, and provide access to the remittance market and

b. Facilitating joint programmes to assist migrants, recipients, and communities in States of origin in making efficient use of remittances

4. Ensure networking, sharing of experiences and promoting efficient cooperation between the States party, by

a. Establishing a small scientific global secretariat that communicates directly with the central migration authorities, and in charge of

b. Convening at regular times meetings of the central migration bodies, with participation of other relevant stakeholders, to take stock of progress, identify challenges and recommend practical improvements

The proposal builds on the successful model of the global Conventions on direct cross-border administrative and judicial cooperation drawn up,

monitored, and regularly reviewed by the Hague Conference on Private International Law¹⁶.

The proposal is a first step. It could be the start for more extensive cooperation, e.g., for the return of migrants in other situations than temporary migration, or even to permanent forms of migration. Based on practical experience with the instrument, its scope might ultimately be reviewed and extended.

¹⁶ In particular the 1993 Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, <https://www.hcch.net/en/instruments/conventions/full-text/?cid=69>. Also relevant is the 2007 Convention on the International Recovery of Child Support and Other Forms of Family Maintenance <https://assets.hcch.net/docs/14e71887-0090-47a3-9c49-d438eb601b47.pdf>.

ANNEX

DRAFT LEGAL FRAMEWORK CONVENTION TO ENHANCE GLOBAL COOPERATION ON TEMPORARY AND CIRCULAR MIGRATION

The States Party to this Framework Convention

Having regard to the purposes and principles of the Charter of the United Nations; the Universal Declaration of Human Rights; the core United Nations Conventions on Human Rights; the International Labour Organization Conventions on promoting decent work and labour migration; the United Nations Convention against Transnational Organized Crime, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air; the Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Global Compact for Safe, Orderly and Regular Migration, as well as the 2030 Agenda for Sustainable Development;

Recognizing the need for a practical and effective framework instrument to enhance global cooperation on migration, focusing, as a first step, on temporary, migration for labour purposes and other temporary migration movements;

Wishing in particular to facilitate the implementation of temporary migration programmes, including circular (repetitive temporary) migration, as may be mutually agreed by States, to regulate intermediaries and their activities, to facilitate fast, safe, cheap, and effective transfer of remittances, and to ensure networking, sharing of experiences and promoting efficient cooperation between the States party.

Have agreed as follows:

Chapter I Object, scope and definitions

Article 1 Object

The object of this Framework Convention is to promote safe, orderly, and regular migration of persons between Contracting States on the basis of

migration agreements as may be mutually agreed between any two Contracting States (hereinafter: the State of Origin and the Host State).

Article 2 Scope

The Convention applies to temporary migration, whereby the migrant moves from the State of Origin to the Host State for a period mutually agreed by those States, followed by his or her return to the State of Origin.

Article 3 Definitions

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Chapter II Responsibilities of the State of Origin and of the Host State

Article 4 Responsibilities of the State of Origin

The State of Origin shall ensure that the migrant who is authorised to temporarily migrate to the Host State on the basis of the mutually agreed migration programme:

- a) shall be provided with all the required documents to enter and temporarily reside and work in the Host State.
- b) shall be free to leave the State of Origin and return to it any time, in particular after the expiry of the period of their agreed stay in the Host State.
- c) shall be assisted in keeping contact with their families in the State of Origin, and with their reintegration after their return.
- d) shall facilitate the recognition of academic and vocational qualifications and skills of the returning migrant.

Article 5 Responsibilities of the Host State

The Host State shall ensure that the migrant authorised to temporarily migrate to that State on the basis of the mutually agreed migration programme:

- a) shall prior to their departure from their State of Origin be provided with full information about their rights and duties and the conditions of their working relations.
- b) shall be provided with the necessary visas and work permits.

c) shall facilitate the recognition of academic and vocational qualifications and skills of the migrants.

d) shall have access to public services and to courts on the same footing as nationals.

Article 6 Joint responsibilities

The State of Origin and the Host States shall cooperate:

a) to ensure the safe movement of the migrant from the State of Origin to the Host State and his or her safe return after the expiry of their agreed stay in the Host State.

b) to facilitate the mutual recognition of skills, qualifications and competencies of the migrant, including by issuing and recognising documents to this effect.

c) to ensure the supervision of intermediaries and their activities.

d) to ensure the fast, safe, cheap, and effective transfer of remittances by the migrant from the Host State to the State of Origin.

e) to allow for the recovery of benefits and entitlements of the returning migrant.

Chapter III Central Migration Focal Point and Accredited Intermediaries

Article 7 Central Migration Focal Point

1. Each Contracting State shall designate a Central Migration Focal Point to discharge the duties which this Framework Convention imposes upon them.

2. Federal States and States with two or more systems of law may designate more than one such Focal Point, specifying their territorial or personal competences.

3. The Central Migration Focal Point may delegate its functions to other public or private bodies as permitted by the law of its State, while keeping ultimate responsibility for the discharge of those functions.

Article 8 Responsibilities of the Central Migration Focal Points

1. The Central Migration Focal Points shall cooperate with each other and promote cooperation amongst the competent authorities in their States to promote the object of this Convention.
2. They shall take directly all appropriate measures to –
 - a. provide information as to the laws of their State concerning temporary migration and related other general information.
 - b. keep one another informed about the operation of the Convention, reply to requests from their counterpart concerning a particular temporary migrant, and, as far as possible, eliminate any obstacles to the application of the Convention.
3. They shall take, directly or through public authorities, all appropriate measures to deter any practices contrary to the object of the Convention.

Chapter IV Intermediaries

Article 9 Intermediaries

1. Accreditation shall only be granted to and maintained by migration intermediaries demonstrating their competence to carry out properly the tasks with which they may be entrusted.
2. They shall only be acting according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation.
3. They shall be directed and staffed by persons qualified by their ethical standards and by training or experience to perform the tasks of the intermediary.
4. They shall be subject to supervision by competent authorities of that State as to their composition, operation, and financial situation.

Chapter V Remittances

Article 10 Fast, safe, cheap and effective transfer of remittances

1. States party shall take measures, in cooperation with the World Bank, reduce the average transaction cost of migrant remittances by 2030 to less than 3 per cent of the amount transferred.
2. They shall improve the remittance market, including by expanding the use of digital channels, and promoting financial services and mobile-enabled data, competition and transparency, and digital and financial inclusion.
3. They shall cooperate to ensure that remittances effectively reach the persons and communities for which they are intended by the migrant.

Chapter VI International Secretariat

Article 11 Institutional aspects

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Article 12 Duties of the International Secretariat

1. The Secretariat shall facilitate communication, sharing of information, and cooperation between the Central Migration Focal Points.
2. The Secretariat shall act as a depositary of any bilateral agreements on temporary migration that States party may conclude, or have concluded before this Convention. To that end States party shall inform the Secretariat of any such agreement and provide it of information on the practical operation of such agreement.
3. The Secretariat shall convene at regular intervals meetings of the Central Migration Focal Points with the participation of other relevant stakeholders, to review the operation of this Convention, take stock of progress, identify challenges, recommend practical improvements, and consider whether any amendments are desirable.

Chapter VII General Clauses

Article 13 Uniform Interpretation

In the interpretation of the Convention regard shall be had to its uniform interpretation and to the need to promote uniformity in its application.

Article 14 Optional extension of the application of the Convention to other forms of migration

1. Two or more Contracting States may agree to extend the scope and provisions of the Convention to other forms of migration, including permanent migration, and agree on any adaptations of its provisions for such purpose.

2. Such extensions shall only apply between the States agreeing on such an extension.

3. They shall inform the International Secretariat of any such extensions.

Article 15 Relationship with other international instruments

The Convention shall be interpreted so far as possible to be compatible with other treaties in force for Contracting States, whether included before or after the Convention.

Chapter VIII Final Clauses

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Article 16 Regional Economic Integration Organisations

1. A Regional Economic Integration Organisation which is constituted solely by Sovereign States and has competence over some or all of the matters governed by the Convention may join the Convention. It shall have the rights and obligations of a Contracting State to the extent that the Organisation has competence over the matters governed by the Convention.

2. Any reference to a "Contracting State" or "State" in the Convention shall apply equally, where appropriate, to a Regional Economic Integration Organisation.

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