

Negotiations Session 2
Regular/Irregular, Refugee/Migrant
Notes, Lisa Simeone for the CSOs group
3-12-18

COMOROS – on behalf of African Group – Recall the NYD – people-centered approach, focus on the individual migrant and his well-being – any differentiation between regular-irregular should be aimed at addressing vulnerabilities – all the core HR and ILO instruments are applicable to all, “irrespective of their status,” without discrimination – ESCR – no distinctions on the basis of nationality and legal status – no distinction should be made in applying basic rights and services – life-saving assistance only, because regular migrants don’t need the same level of attention – identify measures for just and favorable conditions of work, social protection, standard of living, standard of health, no discrimination on basis of nationality or legal status - firewalls in Objective 15 is of utmost importance – regular pathway may lead to irregular status, including by change in policies, confiscation of identity documents – firewalls in Objectives 6 and 7 should be strengthened – sustainable solutions to discourage irregular migration should include regularization programs – all migrants should be given to participation fully in the social and economic activities in their host countries – pathways to rights of residency and establishment – support Paragraph 31(g) – Addis Ababa agreement – technical assistance should be reflected in Objective 2 – will not recognize criminalization of those who have become irregular – combatting trafficking in persons, need to be cautious about transit centers becoming detention centers – common understanding principle, submitted paragraph listing instruments that protect migrants regardless of status - entitled to international cooperation and assistance, regardless of status

LUXEMBOURG – unique opportunity to make a positive difference in the lives of millions of children – we are here because we have collectively adopted NYD to care for all children, regardless of status – education within a few months of arrival, nurturing environment for full realization of their capabilities – vulnerable children, especially irregular, without access to international universal health coverage and access to quality health care – we must prevent all forms of violence against children – every child in, not just of our countries – registered at birth, data shared for the purpose of protecting children only – protecting health not undermined because of lack of documentation – emergency health care, alternatives to child detention – close protection gaps - expanding protection for all children is possible without causing pull factors for irregular migration – each and child who receives education is an investment in our common future

BRAZIL – on behalf of Canada and Latin America group (Argentina, Canada, Chile, Colombia, Dominican Republic, El Salvador, Ecuador, Costa Rica, Guatemala, Honduras, Mexico, Panama, Paraguay, Uruguay, Brazil) – general view on how to better frame discussion to reach common ground – overreaching instrument for all migrants, dealing to aspects of both regular and irregular migration – a strict standpoint of migratory status would leave behind millions of vulnerable migrants, betraying the objectives of the NYD – an exchange of views on differentiation is critical to help us better understand the realities and positions of one another – more precise language may be necessary in some areas – but false dichotomies or establishment of different categories of human beings – promotion and protection of human rights should be

defended at every stage of the journey – since states have the obligation to ensure the HR of all individuals within their jurisdiction – states should develop policies in order to allow all migrants to access basic public services – education, access to justice, given that all members states have agreed to the 2030 agenda – we are open to the experience of other regions for a truly global compact – refugee and migrant may be different processes, but we firmly agree that these two documents should complement each other – differentiation of refugees and migrants should recognize that all human beings should be entitled to the enjoyment of human rights, including during the process of status determination – implementation follow up and review should preserve this state-led process, initiated in 2016, as well as the needs to put into place an appropriate structure of international migration that puts into place all the necessary elements of the compact – reaffirm commitments to constructive engage in this process – maintaining good practices we have already established in our countries – put people at the center of our efforts

AUSTRIA – on behalf of European Group (Belgium, Bulgaria, Croatia, Cyprus, Czechoslovakia, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom, and Austria) – a clear distinction between regular/irregular is paramount if we want a global compact to ensure a safe, regular orderly migration - irregular migration undermines public confidence and puts irregular migrants in danger of exploitation – address drivers and highlight risks – stop trafficking in human beings and the business model of smuggling – regional free movement regimes to ensure equal employment conditions, successful reintegration – principle of national sovereignty – compact must recognize that determination of migration status is the responsibility of the state – human rights, regardless of migrants – access to some basic services, like health care, but only legally staying migrants would be entitled to a wider range of rights, including employment (!) – empower migrant to include full inclusion, skills development, recognition of skills, portability – but all individuals who are crossing or seeking to cross borders are entitled to determination

HUNGARY – we’re following this issue with great interest – migration is our top priority – how we have progressed to the second round – still imbalanced as a “pro-migration” document – a serious debate with the basic principle that migration is good and unstoppable – we totally disagree -we think it is bad and dangerous, and must be stopped – rather than focusing on managing and encouraging migration, we need to stop it – last 2 and a half years, as a consequence of massive illegal migration, parallel societies have been established, and we have experienced the most serious threat of terror – our national experience is that yes, migration is stoppable – we had a huge influx, hundreds of thousands of migrants marched through our country, and we spent a million euros on border protection and we were able to stop it – according to our national efforts, the aim of the international community to strengthen and respect the security, identity and sovereignty of member states – no international documents must put pressure on any country to change its social structure – preserve cultural, religious, social heritage – we have a serious problem with the idea that the violation of border should be an administrative issue and not be considered a crime – it should be punished in a strict and proper way – a tough debate in the HRC regarding whether migration should be considered a fundamental human right – no right to pick a country where you want to live – another fundamental debate is about multiculturalism is a value of its own or not – we think that the exclusive right of making value judgments of this kind is up to a given society – Hungary has

been a Christian country for a millennium, and we want to preserve that – we have submitted our detailed position in 12 points – until this position is not fully reflected in the document, Hungary will keep objecting throughout the process – I want to underline that we have a problem with the general presupposition of this debate

TUVALU – committed to international human rights law – recognition of all migrants, regardless of migration status – we are pleased that zero plus draft addresses climate change and related events, such as sea level rise – it is no longer possible to ignore the realities of climate change and translate it into international action – a driver of migration and forced displacement – differentiation between regular and irregular should not be done only for the purpose of appropriate migration policies to protect all migrants – not for the purpose for deciding what type of migrants the compact can address and exclude – this is necessary to address the discrimination against migrants – last week the UNHCR released a concept note on forced displacement – climate change is now a basis for refugee status – we do not doubt that IOM will play a role in the global compact, but there must be mention of migrant voices, we don't want to leave them out of the process, this is a significant gap, inconsistent with the principle of the NYD – migrants are best placed to express whether policies are or are not working – bringing forward the human story of migration policy impact

PHILIPPINES – we have joined together on an exhaustive preparatory process – 6th thematic session in which delegations expressed their views on irregular migration, decent work, recognitions of skills and abilities – in Making Migration Work for All, Gutierrez cautioned against making a binary distinction between regular and irregular migrant – a range of reasons why someone may be out of status - there is no one single answer or one single problem to solve – we welcome the nuanced approach of the zero draft – people at the center – we find that the structure of discussions about regular/irregular creates a dangerous dichotomy that the SG has warned us against – all migrants must be treated with dignity, regardless of their migration status – principle of non-discrimination – we need to move forward not back, provide stronger protection, not roll back what the international community has done – protecting humanity, rather than authorizing states to abuse strangers as much as strangers fear being abused – equal rights of men and women, and nations large and small – this is fundamental to all human rights treaties – ensuring access to basic social services, every person is entitled to eat, and the global community must provide to them – seek not to organize misery but relieve it – address vulnerabilities of migrants in irregular situations by expanding regular pathways – this is one of our highest priorities – Phillipines is in a moment of policy reflection with respect to our labor migration - setting a moral standard for the world, not only on the goals we achieve, but also the dignity and sincerity with which we attain them

AUSTRALIA – appreciate fundamental HR in the compact – concerned about extending pathway to regular pathways for all irregular migrants – as a global leader in migration management, we have found that effective border management is key for avoiding xenophobia – the compact risks legitimizing and encouraging unsafe, disorderly migration – counterproductive – would not help us address the critical purpose of saving lives – steer the compact back into a practical space that recognizes the interest of states – recognizing state's legitimate need to manage migration and protect the interests of the public – we don't support entitlement to regularization, certain services, family reunification – where states provide lawful

pathways, they must be able to undertake enforcement actions against irregular migrants – we have listen so far to the comments by Austria that are channeling the documents back to a strong, pragmatic space for negotiating a compact that will benefit all states

TURKEY – we need to be aware that migration cannot be fully prevented by course of action – grim, demographic trends exist – our main goal should be to regularize movements and create safeguards for irregular migration rather than create impossible barriers – the GCM should avoid any language that could be interpreted as an incentive for irregular migration – this should help us counter smuggling and trafficking, exploitation of people – take into account the order of the whole cycle of migration – people-centered approach should be central, irrespective of status – First four objectives, 7, 13, 14, 16 should be irrespective of status – however, 6, 18, 19 and 20 should make clear that they only apply to regular migrants, in order to prevent pull factors – 8, 11, 12, 21 include element specific to irregular migrants, and should include particular references relative to irregular migration

HOLY SEE – migration should never be a desperate necessity, but free and voluntary – a positive contribution to sustainable development, promotes peace – missed migration flows are not black and white – many refugees are treated de facto as migrants – highlight the need for the global compact to maintain important legal distinctions between regular and irregular migrants – non-refoulement should be prominent throughout the draft – states have the sovereign right to manage their own borders, in accordance with international law and respect for HR, regardless of status – but states must be sure to implement their commitments – complementarity responsibilities addressing every stage of the migrant process – emphasis on shared sense of responsibility for addressing migration collectively – basic services should include primary health care, legal counsel, and adequate (if temporary) shelter – while irregular migrants, may not be entitled to the same services, more vulnerable migrants should be protected by firewalls and similar mechanisms – poverty eradication and increase of regular pathways are key to prevention of irregular migration – this two-way commitment should be stronger – strong emphasis on the need for complementary commitment regarding returns – reintegrate into society – non-refoulement – we should be able to agree that irregular migration should not always be criminalized, per se – detention should always be a method of last resort – this encourages states to find better ways of processing migration cases – ensuring family unity is always the right policy, ensuring both social integration and protection

BANGLADESH – migrant-centered, people-centered, gender and child sensitive, development oriented, 2030 agenda – must address needs of regular and irregular migrants – a compact that strictly excludes irregular migrants will not meet NYD commitments – HR protection at every stage of journey regardless of status because migrants are human beings – minimum or basic public services, but a basic package should be agreed to, with country-specific limitations should be taken into account – in the spirit of global solidarity – modalities resolution states that the two compacts should reinforce each other – a twin initiative to tackle the same phenomena of human mobility – both compacts must be applied to mixed movements beyond national borders – target-based, action-oriented, with a robust mechanism for review – capacity-building of member states to efficiently support member states – better system-wide coherence will be necessary – IOM role needs to be more spelled out

CHINA – differentiation between regular and irregular will show full respect for state sovereignty – they are different in their HR, legal identity, service provision – protect rights of lawful migrants, providing identity documents, social security, full access – irregular migrants should get necessary social services for basic needs out of humanitarian consideration, only partial HR – we should not treat legal migrants as equal to citizens, they remain foreigners, and have not been granted citizenship – no political or full human rights – equating citizenship with HR entitlement

ERITREA – fully aligned with Comoros and African Group – GCM should keep the issue of migration in its broader sense, and avoid compartmentalization – should there be any differentiation, it should only be aimed at addressing their vulnerabilities in order to establish better response – addressing protection needs during transit, strengthening efforts against smuggling and trafficking – irregular migration should not be seen through the lens of security and border controls, but as a way of legitimizing their passage – access to identity cards and work permits – recognizing increased vulnerabilities of irregular migrants, fast and adequate health services and protection from continued exploitation in destination countries

CUBA – support Africa Group – migrants should be considered rights-holders – rights of states should not permit xenophobia or discrimination against migrants, be they regular or migration – IOM definitions are important – irregular migration applies to individuals who move through transit countries to destination countries, which means that they do not have necessary documents to work in or reside in the destination country – for Cuba, there are challenge to surmount for regular migration, but they are minimal compared with those of irregular migrants, who are forced to use illegal channels in order to migrate – traumas will persist, and increase as obstacles are increasingly erected to discourage migration – they will not be able to stop the flow – we are concerned with growing xenophobia and religious intolerance

LICHTENSTEIN – on differentiation, we committed in the NYD to protect all migrants, regardless of status – we need to strengthen the use of regular migration channels in order to reduce risks to trafficking and modern slavery – reducing root causes by strengthening SDG implementation – we distinguish between regular and irregular migrants for family reunification, housing and social services – we hope the compact will take into consideration national practices

JAMAICA – we are reminded by guiding principle of respect for human rights, regardless of status – Charter, UDHR, other treaties, without discrimination – the compact should highlight the many dimensions of migration, including risks, drivers, push-and-pull factors, magnets, with a view towards arresting their impact

JAPAN – importance of regular/irregular distinction – supports Austria and Australia – this must be addressed – irregular migration is a challenge for the international community, and must be addressed appropriately – current draft includes proposals that member states should consider with respect to national sovereignty – this means we will not establish any framework that will force states to change national rules - we can provide regular migrants basic social services in Objective 15 – we assume that Objective 16 applies to legal migrants – many member states share certain issues – we are concerned that the GCM will not be implemented properly unless their concerns are reflected

INDIA – we should not overlook the goal of “safe, orderly, regular migration” – any measures to encourage irregular migration would challenge this – we are not suggesting that irregular migrants should be stripped of their HR, but they cannot be treated on a par with regular migrants – without clear definitions of “migrant”, “irregular”, “refugee” the compact is incoherent - GCM should not only avoid specific references, but also implicit references to refugee protection - we are surprised that states that wanted the compacts to be binding now want the compact to exceed national law, this is contradictory – clear definitions and linkages to the 2030 agenda are necessary – consult with ILO for assessing skills and employability of migrants

PARAGUAY – the difference between regular and irregular is linked to whether one has a legal permit to reside and/or work in a state, which in turn is contingent on state policy – the distinction runs against the purpose of HR law that recognizes only the human condition – more comprehensive ways to guarantee rights – the state must develop consistent, objective, inclusive criteria for establishing regular channels – the establishment of rigorous migration systems is part and parcel of a state’s attempts to exercise its national sovereignty, but it actually creates the situations that it aims to avoid, by creating the conditions for overstays, smuggling, trafficking, etc. – we must never forget that our goal is to address this complexity – we must enhance state capacity to deal with this phenomenon that is a feature of our times

INDONESIA – we need to draw clear lines between regular/regular, as well as clarity regarding what will be covered in the GCM – many aspects of migration deserve international attention, like human trafficking and labor migration – clarity will enhance the capacity of states to implement the compact – enhanced cooperation among states is critical to ensure irregular migrants receive necessary assistance – the GC is applicable to regular and irregular migration, with the exception of refugees

MEXICO – aligned with Brazil – as Brazil indicated, we must avoid false dichotomies, in particular with differentiation between regular and irregular migrants – at a national level, of course it is important to prevent the invisibility to irregular migrants to tackle the phenomenon and protect them adequately – identify pathways of regularization to avoid vulnerabilities – not monolithic concepts, they change over time – in many cases, migrants change status due to policy change – keep the GCMs people-centered oriented – reflect the reality of migrants in their lives

GUYANA – we believe precise distinctions are necessary to identify a migrant who has entered a state in order to pursue illegal activities, and avoid detection – many calls to legalize status – it would be beneficial in states with large populations of irregular migration to outline preferred pathways – examine the root causes of large movements through both regular and irregular pathways – developing projects in origin countries to address high employment, poverty, and climate change – discussion must place great focus in expanding opportunities for irregular migrants, legal pathways to facilitate less difficult and burdensome means, decreasing vulnerabilities and exploitation during transit

NEPAL– all migrants will be treated with dignity and their HR should be respected, regardless of status – should not be confined to a binary division – people who have entered legally might

become irregular, due to no fault on their part, perhaps because they have lost employment – the compact should focus on broader perspective without distinction of regular and irregular – identify regular pathways – but distinction between migrant and refugee is key, not all migrants should be treated as refugees

Gomez-Camacho: many elements are in the air, so I open the floor for reactions and more open discussion

EQUATORIAL GUINEA – aligns itself with Comoros, African Group – the text should specify what regular and irregular migration means – exactly what cases are being referred to when these terms are being used? This will facilitate implementation, but should never undermine HR recognition and protection – all migrants must have access to medical assistance and basic social services, including legal counsel and social security – social cohesion, eliminating all forms of discrimination – we should focus on migrants here, and leave refugee issues for the GCR – implementation, capacity-building, follow-up and review begs the following questions: 1) what measures will be taken to implement the development mechanisms foreseen? 2) would we be creating a special agency to monitor implementation? 3) how would the funding of this and future mechanisms be ensured?

COSTA RICA – aligns itself with Brazil statement – we need to recall regular/irregular differentiation only in order to bridge gaps and recognizing risks and vulnerabilities – regular migration can be carried out in more affordable and safe contexts – irregular migration always implies the violation of rights, and vulnerability to organized crime networks – for regular migrants: regularization processes, dignified work with SS, inclusion into society, family unity – irregular migrants require different considerations – this is the only way we can leave no one behind – also ensure the public has trust

NEW ZEALAND – preserving the HR of migrants of every stage, regardless of status, is key – a clear distinction is necessary towards this aim – otherwise the compact risks undermining entitlements and services for regular migrants – New Zealand provides basic rights and services for every migrant, but there are differences – not welfare and housing, though children can go to school, and all irregular migrants receive emergency and basic services – we support Japan’s proposal to include this clarification in the guiding principles, and in Objectives 15 and 16

SWITZERLAND – dignity is the starting point – the distinction between regular/irregular migration must not be construed as departing from that principle – sovereignty principle is not simply to define who enters the country, but also the responsibility to respect the rights of all persons within the territory – we have to recognize the realities that irregular migration is an unfortunate reality that we must address – which is not the same thing as encouraging irregular migration – supporting Mexico’s point about status change following entry – moving forward, the question becomes what rights should be applied in what situations – Switzerland does not grant access to work for irregular migrants, but we do know that they work, so we have a dichotomy between our aspiration and the reality – basic education, health, law enforcement remains important to guarantee the human rights of migrants, irrespective of status – agencies, teachers, facilities must be able to do their jobs – if a crime victim doesn’t feel safe to report crime, police officers will not be able to do their job – human trafficking cannot be addressed if

victims are afraid to report – responsibility of government to define who is irregular and what services they are entitled to does not mean that the compact shouldn't move beyond the sovereignty principle to bridge the gaps – children's vulnerabilities, migrants in situations of precariousness – these situations are being created, and we must address these conditions – supports Luxemburg statement on this point

THAILAND – a common understanding for the regular/irregular distinction is necessary for the compact – the difference has much to do with national law – irregular and illegal aren't exactly the same – the whole cycle of migration must be treated, because status can change over the journey – promote implementation of actionable commitments consistent with national law – GCM and GCR are separate but should be complementary, so that no one is left behind

MALAYSIA – support Australia, Japan, etc. especially New Zealand – we have been accepting migrants for ages – but it should be through legal pathways – distinction is important to extend appropriate treatment to migrants – illegal migration should be discouraged, but that doesn't mean their HR should be ignored – the needs of victims of trafficking are addressed, but those who violate our border laws will be deported – countries of origin should take responsibility for preventing illegal emigration – effective management of borders are easier said than done for countries with porous borders like Malaysia – we need assistance with neighboring countries and the international community to combat irregular migration and trafficking – no single country can address migration issues – responsibility-sharing, widen support base in a number of areas

Gomez-Camacho: let's try to avoid "illegal" terminology

BELARUS - a more radical approach – a distinction between regular and irregular migrant in these global compact is not enough – in the absence of relevant international treaties that distinguish between migrants and refugees, this can be addressed from a doctrinal approach – labor v forced migration, which includes refugees and displaced persons – forced migration may violate laws in transit and destination countries, but needs a particular approach in international law – regular flows can be only applied to labor migration, while forced migration can be approached through preventative measures, keeping in mind that HR protection is applicable to all persons, regardless of status – GCM can address these issues in general, but should focus on labor migration, while forced migration must be part of the GCR – clear categorization will allow states to implement the compact, and further complementarity between compacts

SINGAPORE – migrants should have the right to travel safely through legal pathways without exploitation – irregular migration should be combatted – this has served us well - states must protect the rights of regular migrants, while upholding the rule of law – this doesn't mean the rights of irregular migrants are not addressed – language interpretation and access to embassies and other forms of assistance – the GCM should not conflate irregular and regular migration because it confuses distinct forms of migration management – delete “regardless of status” and establishment of firewalls, non-criminalization of irregular entry, access to regularization options – to decrease attractiveness of irregular migration

GUATEMALA – migration is a natural social process that should be seen as an opportunity and not a harmful reality – the rights of all migrants should be recognized – we have obligations to ensure migration is an option not a necessity – regular pathways when possible, so that migrants are not threaten or fall victim to trafficking and smuggling – integrated response, comprehensive and not just security-based approach – we want to avoid criminalizing migrants – a person’s right to choose where to reside – improve living conditions and listen to people’s needs – for Guatemala, safe migration means we recognize all rights, without discrimination – all statuses, at all stages of migration – access to education, health care, basic services, legal counseling – particularly vulnerable people focusing particularly on elderly and unaccompanied children – work to reduce detention, especially of boys and girls – child migrants should not be detained and provided adequate attention, consistent with the best interests of the child – facilitate family unification – unite efforts to have objectives in the compact to ensure the HR of migrants are fully protected, with appropriate recognition of their needs

VENEZUELA – the NYD is clear: all states must respect the rights of migrants, regardless of condition – principles must not allow for discrimination – the GCM must not discriminate by status – we need to bolster regional cooperation – uphold social rights

AZERBAIJAN – non-legally binding, implementable, pragmatic, in line with state sovereignty – root causes, especially poverty – clear distinction between regular and irregular migration should be made - no language should encourage irregular migration

LIBYA – the compact must serve the interests of all – migration is expanding, so we must achieve the positive aspects of migration – times are different from the past, when people could move without obstacles – there is clearly a difference between regular migration, which participates in the cultural and civilized work among states – but how can we deal with irregular migration? We know that these migrants have economic motivations, seeking a better life – they sacrifice their lives, violate the rules of transit and destination countries, yet these are human beings who deserve respect – but when these flows are huge and continuous, the expectation of providing rights represents an exaggeration, especially in unstable countries – we must recognize migrants through different pathways – some should be returned to their countries rather than confront certain dangers – migration should be dealt with according to the needs of national governments – the compact should deal with the main reason why people move – very poor countries have not received adequate solidarity, despite all the programs calling for their support – the term “development” is not translated on the ground – we must increase the benefits of regular migration, and increase international solidarity to put an end to irregular migration by making it regular

IRAN – necessity of clear distinction between regular/irregular – national sovereignty in determination while recognizing basic HR of all migrants – promotion of regular migration should be emphasized and clear

COMOROS (AFRICAN GROUP) – reiterate three points based on what has been shared so far:
1) Core HR treaties and ILO fundamental principles – rights at work for all migrants, regardless of status – states have the obligation to full comply, without discrimination – also access to social services – we as member states should be able to take measures to reduce vulnerabilities of

migrants; 2) reduction of irregular migration means addressing structural causes in countries of origin, redoubling our efforts to implement SDGs and Addis Ababa, finance and transfer of technologies – once people cross borders and find themselves in irregular status, we must find pathways to regularization; 3) steps to address each actionable commitment should be left to each member states – we concur with Switzerland that when irregular migrants don't have the right to work legally, they go underground – ensure regularization of irregular migrants and social service will address this problem

VIETNAM – IOM defines “irregular migrant” as “when a person cross national boundaries without valid passport” – in Vietnam, labor migration is a pathway to regularization – striving to enhance close cooperation with destination countries, skills matching with labor market needs, ASEAN Consensus on rights of migrant workers – refugees are defined and protected by international law – we should be clear who should be considered refugees, because many move for economic purposes – we must clarify cause, purpose and lack of stay – confusion creates problems for both populations – GCM should be clearly separated from GCR – real value of implementation requires additional resources – strengthen existing framework through Abu Dhabi, Bali, Colombo, GFMD – IOM key role – should link up with 2030 agenda – helpful IOM governance framework and database – like the 4 year schedule

GERMANY - on behalf on the European Group – within the EU, more than 15 million Europeans are making use of their rights of free movement – citizens of all 28 member states – go to schools, universities, or work in another member state of the EU, which helps all Europeans – this is an excellent model that can be beneficial to all

LUNCH

CANADA - A gender-responsive GCM is key – states must respect the rights of all individuals, rather regular or irregular – migrants can best contribute to society when they are regular, employed, integrated – irregular migrants create political and challenges and are a challenge for any state – women and girls particularly vulnerable – expanding pathways – must be clear which objectives apply to regular, irregular, both – failure to do so may result in unintended consequences, as mentioned by Lichtenstein – committed to legal identity for all, more data for evidence-based policies – humanitarian policies must be needs-based – list of objectives that apply to all migrants – Canada provides basic services to all migrants, but specificities should be up to states – we would like to review and discuss Japan's proposals on guiding principles

MADAGASCAR – a national migratory policy that ensures the rights of migrants – the compact shouldn't encourage irregular migration but should facilitate regular migration – promote access to assistance for all migrants – highlight distinction between migrants and refugees, separate compacts and eliminate wording that would lead to confusion – a global fund for migration would research innovative solutions and capacity-building – low-income and developing countries must receive assistance – leadership for implementation lies on the shoulders of the IOM – a cross-cutting issue with harmonization by all agencies involved

EL SALVADOR – aligns with Brazil – have been listening this morning and appreciate that in most cases, there is a human rights focus – yet there must be a clear vision by states to work in

an integral way – there should be a strict distinction drawn between rights for regular and irregular migrants, but we don't want to contradict ourselves with respect to PCR and ESCR Covenant rights, without any discrimination by any social conditions – as Brazil was saying this morning, we must not categorize people – distinctions must be made in an objective way, with respect to migratory flows – the best way to deal with irregular migration is creating channels for regular migration – an important semantic distinction between those who enter irregularly, and those who fall out of status – when measures set up barriers, it has been shown that migration doesn't stop – 2030 Agenda commits to creating equalities within and between countries – in the NYD we committed to address unsafe or insecure displacement of irregular refugees or migrants – our discussions must not lose sight of this aspirational language – in El Salvador, we retain a protection of HR focus – we are talking about people who are waiting for a response from the UN

NORWAY – we've been listening this morning and concur that we have learned about the importance of the distinction between regular/irregular – it lies at the core of the compact – we must take this discussion now, and not later in the negotiations – it's worth investigating Japan's proposal of including the distinction in guiding principles – support Turkey's point about specificities of application, particularity with regard to Objectives 4, 6, 15, 16, 17, 18, 22 – EU emphasis on combatting trafficking and smuggling – agree with all nations that HR respect and people-centered approach – Norway doesn't discriminate between regular and irregular migrants with respect to basic services – all services for children, distinction for regular/irregular adults – regional sensitivities must also be taken into consideration

ZAMBIA – aligned with African Group/Comoros – implementation, capacity-building, follow-up and review are the weakest part of the zero draft plus – differentiation of term regular/irregular is discouraged by core treaties, which are all-inclusive in their application – we must remind ourselves of the spirit and purpose of the NY Declaration – GCM should have a people centered and HR approach, and does not support exclusivity in the application of rights to particular groups of migrants – we are not advocating for irregularity, but are aware that migrants who find themselves on foreign territories must follow the rules of sovereign states - trafficking and smuggling must be dealt with through global compact – states are obliged to protect individuals from harm when they know danger exists

BRAZIL – to build on this morning's statement – Brazil is multicultural, ethnic and religious country – only two million are native – also the largest catholic country in the world, a religion brought by immigrants – we host large diasporas second largest black population in the world 12 million Arabs largest Japanese diaspora many European descent and different parts of LA – migrants bring culture, religion, work skills, their view on the world – even football! – this only made us stronger, more open, more diverse, and above all, more Brazilian – in our country, all persons define themselves simply as Brazilians – we don't say we are an example to be followed, we realize that different countries have different realities – but we are an example that people from different backgrounds can live together and share a national identity – we should be able to recognize that as human beings, all migrants are entitled to HR, basic public services – a minimum basic standard for all persons on the move – we don't see this as something new – simply an application of universal rights to migrants, consistent with 2030 – there seems to be room to address a basic standard of protection; states diverge more over what it would

encompass than its desirability itself – rather than trying to establish an overreaching distinction, it would be more pragmatic to stress the floor – where exactly in the text would this differentiation be deemed necessary? What specific rights and services would be problematic for inclusion in the GCM?

SOUTH AFRICA – during the first round, her delegation has emphasized distinction between regular and irregular migration – NYD was necessitated by a recognition that migration is on the rise, and is too often unsafe, disorderly, and irregular – paragraph 21 “taking into account national realities” – granting access to basic services presents a challenge, especially with housing and social security – in SA health care is provided irrespective of migration status – expanding coverage would intensify xenophobic tensions in our country – Objective 4 applied to irregular migrants creates a challenge – the distinction becomes even more critical when addressing Objective 18 – our system in place to deal with skills development only applies to regular migrants – Objective 19 is positive but shouldn’t include language “all migrants” – mainstreaming of “irrespective of migratory status” must be revisited – we disagree with blanket approach to regularization – GCM should clearly differentiate between refugees and migrants – we find inclusion of non-refoulement disconcerting

KOREA – encourages the promotion of regular migration – irregular migration creates problems for the state and migrants, from the standpoint of national and individual security – we should not create incentives for irregular migration – the term “all migrants” should be modified to “all regular migrants”

Lauber – this is the end of the discussion on the regular/irregular distinction - themes heard today include agreement on: people-centered approach - recognition of many specific countries and contexts – overwhelming intention to reduce irregular migration as a movement – HR applied to everybody – basic services provided in a national context – take care of certain vulnerable groups, particularly children – we sense a common direction that will allow us to respond to your requests – with respect to the next session, we must recall that we agreed to address mixed flows – now we’ve got to figure out how to deal with the relation between the two compacts – happy that people really engaged in conversation, explaining their positions, rather than just reading position

Gomez-Camacho – it’s interesting to see that most of you agreed on a very factual thing, that if you compare benefits and rights between citizens, regular migrants, and irregular migrants, you can identify a floor – this is a very pragmatic recognition – with respect to refugee/migrant distinction

AUSTRIA – on behalf of European Group – NYD envisaged two parallel but distinct processes – three issues at stake: 1) migrants and refugees are entitled to different rights with different international rules – this helps the international community target those most in need – confusing the categories puts the refugee protection regime at risk – the principle of non-refoulement should not be contradicted; 2) define mixed flows; 3) no new legal categories – the text should clarify its scope – migrants need practical support, but should be prevented from receiving legal benefits to which they are not entitled – complementarity should identify common areas, like HR, gener mainstreaming, combatting trafficking, combatting drivers, social inclusion – adverse

effects of climate change and natural disasters – not a new category, but state discretion in providing protection even when they don't qualify under international law

COMOROS – on behalf of Africa Group – Migrants are persons who make a conscious choice to leave their countries due to poverty, unemployment, and inequality – development is the solution – refugees, on the other hand, are people that move due to the well-founded fear of persecution – race religion nationality membership political opinion – 1969 AU Conventions Art 1 includes any person who must seeks refuge – distinction between refugee, asylum seeker and migrant is essential to clarify this process – migrants and refugees face common challenges with similar vulnerabilities, yet they are distinct groups governed by different legal frameworks – structural causes under objective 2(d and e) should move to the GCR – refugees require a comprehensive durable solution under principle of burden-sharing of the obligation to protect – the AU Refugee Convention provides a model here – the GCM, Objective 2 should be limited to development – decent work, integrated economic development policies, expanding opportunities for family income and youth unemployment – reorganize the text to address protection gaps for persons displaced by natural disasters and climate change – ensure promotion of HR regardless of status – most migration today is linked directly or indirectly for the search for decent opportunities – this is not the case for refugees (?) – decent work for all migrants

TURKEY – regular/irregular distinction will help clarify the refugee/migrant distinction – refugee protection is an obligation under international law – 3.5 million Syrians and a million others, we are the largest refugee hosting country in the world, we also have migrants who have various needs – NYD made a clear distinction between these two groups of people – their close link requires synergies across processes – a strong IOM/UNHCR team is necessary – a large proportion of asylum seekers and forced migrants may fall through the cracks – 8, 11, 12, 21 under scope of irregular migration should make the differentiation, especially 12 – should explicitly reference GCR – object to Objective 5 reference of permanent protection for migrants

CUBA – the processes of the two compact share a mandate – a migrant can become a refugee and vice versa – there is no international definition of “migrant” but we must look at all case in which the decision to stay has been taken freely, for reasons of personal freedom, with a view to improving future prospects – in this case, protection is a matter of the state, not international obligation – the international community must addresses causes – refugees must qualify for universal protection – some speakers say it is not necessary to create a third category – we agree that protection mechanisms should be at the discretion of the state

AUSTRALIA – to be effective, we should be practical and make better use of existing ways and means – we can't proposals that would reduce state sovereignty – zero draft plus currently blurs obligations, using language of protection in a ways that appears to impose obligations on states – the compact is legally non-binding and should not create new quasi-legal categories – expanding the category of “refugee” risks compromising the integrity of the refugee protection regime, especially in states that lack the resources to support them – more flexibility through humanitarian programs like MICIC are preferable ways of addressing the need of forced migrants, addressing individual needs, on a case by case basis – the compacts should be mutually reinforcing without losing scope or definition

CHINA – clear definition between compacts – “migrants” does not include refugees and asylum seekers – conflict is a root cause of refugee, not migration movement – non-refoulement principle should not be applied to migrants – the word “international protection” should only apply to refugees, not migrants, nor those displaced as a result of climate change and environmental degradation – two processes should not interfere with each other – we are living in reality, and categorizing people is part of that reality – men, women, children, disabled persons, indigenous peoples, etc. – distinct HR conventions address categorical rights – lack of categorization is contradictory to our efforts in the UN – and the practices of the advocates themselves

HOLY SEE – not all refugees are recognized as refugees - de jure refugees are treated as de facto migrants – from a practical standpoint, the GCM should also address the needs of migrants in need of protection, especially while they are waiting for a status determination – the only way to ensure that irregular migrants are treated with dignity, even if their refugee status is never recognized – uphold the principle of non-discrimination – this includes migrants, regardless of their status – fundamental rights including basic services and humanitarian assistance – non-refoulement applies to every person, including migrants, regardless of status or how they entered the country – these principles are simply the reaffirmation of international law at the most basic level – crucial to addressing vulnerability and irregularity at every stage of the journey – statelessness should be avoided through identity documents – status determination should standardize identification, referral, and protection of victims of trafficking – coordinated efforts to deal with climate change displacement – lack of legal definition is no excuse – 2030 Agenda implies commitments that will enhance peace and security in origin countries – family unity protects the rights to family life, and social integration for migrants and refugees alike

MEXICO – the NYD gave us a step forward – differentiated legal frameworks and institutional structure allows most states to determine refugee status – nevertheless, all migrants should have visibility with the differentiation showing, so that governments should have elements on hand to identify vulnerabilities and ensure international protection for anyone needing it – we should look at this with vulnerabilities, non-discrimination first in mind – prioritize determination of status – the approach here shouldn’t be to redefine concepts, but to develop a global infrastructure of protection that differentiates needs – links across compacts are necessary to prevent gaps, especially for those waiting for their status determination – importance of a gender approach across the board – regular/irregular distinction is particularly relevant to women, highly represented in these mixed flows – also stress the need to protect migrant children

INDONESIA – no agreed legal definition for “migrant” – can apply to anyone moving across borders – a broad and open category that also includes refugees and asylum seekers – yet refugees need our attention and assistance the most – a caveat must be established that anything to do with refugees will be covered by GCR – seek further explanation regarding how those who are climate change displaced can be defined as refugees

JAPAN – many member states have urged delineation between migrant and refugee, and we agree – Austria and Australia – those with refugee status may enjoy “protection of refugees” as a legally-binding obligation – migrants comprise many different kinds of people with a range of backgrounds and reasons for moving, differences from case to case, legal status varying widely

(unlike refugees) – work, study, marriage, victims of human trafficking – we are not here to create a new legally-binding document that would place states under new obligations – some language in Objectives 5 and 21 require clear distinctions

PALESTINE – people-centered, fundamental freedoms, irrespective of status – clear distinction between migrants and refugees in principles and throughout the text – tendency to subsume refugees (and other victims of forced displacement) subjects individuals entitled to international protection to security measures of destination states – refoulement can be a grave consequence of misrecognition – the need for registration, identification of status, HR approach – require a common international response – saving lives is a humanitarian necessity – exploitation by smugglers and traffickers, sexual violence, children separated from families – all migrants should have access to labor markets where opportunities exist

LICHTENSTEIN – the principle of non-refoulement is well established in customary international law – a fundamental rule of refugee law and several HR instruments, making it applicable to refugees and migrants – important for us to apply protection principles to all migrants, especially children

COSTA RICA – for practical purposes, we recognize the condition for protection of refugees – this document shouldn't be exclusive in any area, but specific to the migration context – GCM should include people who have been forced to leave their homes due to natural disasters and climate effects

LEBANON – is both a source of migrants and host of refugees – we want to see a clear distinction – international legal framework are different – we are worried about pointing to conflict as a cause of migration – forced displacement should be addressed in the GCR – we are concerned about new categories without international consensus – blurring the lines underlines commitments and would serve the interests of neither

GUYANA – turn to the 51 Convention and 67 Protocol for the definition of refugee – migrants have the ability to seek information before leaving, and can return without fear of persecution – key determinants for rights and protections to which they are entitled – conflating the terms carries the risk of endangering guarantees for refugees and underlying their support

Lauber – several of you mention that you want to uphold the differentiation between categories, and there is no appetite in the room for new categories – but this means we have a dilemma, because we now have people on the move who are not recognized as refugees yet cannot go back to the country of origin – climate change, for example – we have a number of member countries that are about to disappear from the map – as member states we somehow have to address that, and not be prisoners of clear-cut categories that may not be working

BANGLADESH – I think you have already help us with this clarification – we fully agree – people in a refugees situation who cannot be defined as such – in vulnerable situations – Annex 1 of the NYD which clarifies that GCR applies to those in need of protection *as refugees* – GCM must be comprehensive – we must not back down from what we agreed in the NYD – complementarity issue came out of our experience in Libya – MICIC - we have seen developing

of both compacts, in isolation, which can tackle different aspects of human mobility – intersections between compacts in trends and protection needs – for example, both voluntary and forced migrants are going to be effected by push-backs in transit as part of mixed flows – this is a reality that we must work on – the NYD that we must address forced migrants who aren't defined as refugees due to conflict and climate change – combatting xenophobia and changing discourse about both groups can be another aspect of complementarity – we need to develop synergies between compacts

SINGAPORE – separate legal frameworks, separate compacts – remove references to refugees in the GCM – introduces ambiguities and distracts us from commitments relative to migration – Paragraph 15 should make this distinction clear – eliminate paragraphs on the right to seek asylum

VENEZUELA – must reaffirm everyone's right to move freely – UDHR – many reasons for movement, which requires a multidisciplinary approach – the states commitment differentiate between migrants and refugees – this is not a matter of favoritism, but a question of legal process - the NYD does not distinguish migrants and refugees, it requires respect for HR of all

SWITZERLAND – go back to the different contexts of protection – refugees and stateless persons come under “international protection” as enshrined in the mandate of UNHCR – this arises because people can't avail themselves of the protection of their own countries, it emerges from circumstances in country of origin – protection needs surrounding forced migration emerge from present moment, rather than circumstances in countries of origin – humanitarian principles take over here – Canada mentioned this, they apply regardless of status – protection emanates from the HR treaties – it might be helpful to make this clear distinction between international protection and protection as a broader concept – thank the Lichtenstein delegate referring non-refoulement as a matter of customary international law – derives from both refugee AND HR law – this is a bridge between compacts – a migrant may be in a country without refugee status, but when the situation changes in the country of origin, he or she may become an object of international protection – this is not blurring a line, it is acknowledging a changing reality on the ground – in the NYD there is a secondary commitment that applies to both migrants and refugees – we need to maintain the distinction but also assume a needs-based protection approach that depends on the situation the migrant is in – including rights of migrants at sea – statelessness derives from the same principle of international protection

Gomez-Camacho: non-refoulement is one of the issues that bridges the compacts – CRC, Torture, Enforced Disappearances explicitly protect people from return, so it is a broader right – but can you elaborate further with respect to changing status?

SWITZERLAND – “persons temporarily protected” – a particular legal status in Switzerland – a person who does not qualify as a refugee but is still entitled to international protection – we usually refer to them as refugees, but it is not strictly speaking the fact – these are persons who are, for various reasons, unable to be sent back to countries of origin – this may include natural disaster displacement – until their return is guaranteed – I do speak under supervision of UNHCR – they still fall under GCR, but it should be included in GCM not to blur the line, but build a bridge between them

EL SALVADOR – a whole international legislative framework exists to address refugees, but it was formed under different circumstances – as Mexico was saying, the NYD was quite clear in referring to commitments that refer to both migrants and refugees, because sometime the line is very fine – refugees and migrants do have the same human rights and fundamental freedoms – in mass movements, there can be both migrants and refugees converging, because they have similar roots – this compact address the whole migratory cycle, and at one or two points it is necessary to guarantee protection – a basic protection standard should be established, whether refugee or migrant – non-refoulement is covered in a number of many international instruments – either implicit or explicit in all of these cases – we must see them as a human being first, before we fit them into any category – this is what Brazil was saying this morning – this is the essence of complementarity between the two compact – it is very probably that a migrant will not be able to go back, which means the non-refoulement principle will have to be applied – it’s not about the person but about the circumstances – it’s a moral commitment that must address current realities – a refugee is an irregular migrant while taking irregular routes to access international protection under the 1951 Convention – our states were clear in taking on commitments that apply to both compacts

BRAZIL – on behalf of Latin American Group - we recognize that refugee is a specific legal status – nevertheless, we understand that all human beings are entitled to the promotion and protection of all human rights – the GCR and GCM must complement each other to address the needs of people that are left bare of any sort of protection – this is what we agreed in the NYD – we should not create a third category, but this objective can be achieved simply by recognizing the needs of vulnerable persons on the move – refugees may be entitled to more specific routes – but others will not be left behind – besides the provision of the 1951 Convention, non-refoulement is mentioned in Art 3 of the Convention against Torture – this should be considered in the context of non-voluntary returns – we strongly advocate the specific needs of vulnerable groups, but must recall that in every instance of categorization, this has only been to reinforce their rights, not to reduce their level of protection

INDIA – it’s been interesting to hear the opinions of member states – the counter arguments are more academic arguments than practical approach – vulnerabilities that risk lives should be dealt with seriously in the GCR – people leaving their countries because of extreme climate change should fit in the GCR – concepts will be interpreted differently within different countries, and even different agencies within a single country – moving beyond rhetorical statement

JAMAICA – people are not easily classified in a box, there’s a need for case-for-case determinations – to cover all dimensions, we should focus on how best to harness contributions and mitigate challenges

COMOROS – we agreed to have two global compacts, so the distinction is already established – but we also agree with colleagues that is concerned with mixed movements and life-saving assistance, those waiting for status determinations – we welcome Objective 12

LIBYA – Bangladesh mentioned my country – I would like to endorse what was said by Comoros and refer to the fact that many delegations here have mentioned fundamental reasons

that require distinction between migrant and refugee – the 1951 is quite clear – the NYD opened the road for a dialogue to strengthen the linkage between the two groups – in Libya, mostly we deal with migrants, linked by interest in a better standard of living – we have agreement with AU in dealing with the challenges the migrants are facing and we as member states are facing too – we haven't yet seen the benefits to transit countries – we need to distinguish between refugees and migrants, but must also consider how they intersect