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The Promise and Potential of the Global Compact on Refugees

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It is my pleasure to open this special issue with some reflections on the Global Compact on Refugees¹ and its potential to shape our collective approaches to refugee situations around the world.

The Global Compact on Refugees was developed against the backdrop of growing numbers of people displaced by conflict, violence, human rights abuses, extremism, poor governance, environmental degradation, disasters, and the adverse impacts of climate change. Today, more than 68.5 million people are displaced, of whom 25.4 million are refugees.² The vast majority are displaced internally or flee to countries

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¹ In the New York Declaration for Refugees and Migrants, Annex I, para 19, the High Commissioner was requested to propose the text of the Global Compact on Refugees in his 2018 annual report to the UN General Assembly (New York Declaration for Refugees and Migrants, UNGA doc A/RES/71/1 (3 October 2016) <<http://www.refworld.org/docid/57ceb74a4.html>>. On 13 September 2018, the High Commissioner issued his report to the UN General Assembly, which contains the Global Compact on Refugees ('Report of the United Nations High Commissioner for Refugees', 73rd Session Supp No 12, UN doc A/73/12 (Part II) (13 September 2018)) <https://www.unhcr.org/gcr/GCR_English.pdf> for consideration by the UN General Assembly in conjunction with its annual resolution on the UNHCR (UN General Assembly, 73rd Session, Third Committee, Agenda item 65, 'Report of the United Nations High Commissioner for Refugees, questions relating to refugees, returnees and displaced persons and humanitarian questions' (8 November 2018) <<http://undocs.org/A/C.3/73/L.59>>. The resolution 'affirms' the Compact, underscores its importance as an expression of political will, and calls upon the international community as a whole to implement it. On 13 November 2018, the Social, Humanitarian and Cultural (Third) Committee of the UN General Assembly approved the resolution by an overwhelming majority (see note 10 below) and sent the text to the UN General Assembly plenary for adoption. The resolution was adopted by the UN General Assembly plenary on 17 December 2018 (UN doc A/RES/73/151 (17 December 2018)).

² UN High Commissioner for Refugees (UNHCR), 'Global Trends: Forced Displacement in 2017' (19 June 2017) <<http://www.refworld.org/docid/5b2d1a867.html>>.

neighbouring their own. Some, living in protracted situations, are driven by desperation to move further afield, taking harrowing journeys across seas and through deserts in search of solutions. Many countries, such as Bangladesh, Turkey, Ethiopia, Uganda, and in Latin America, have kept their borders open, saving countless lives. Yet others have acted unilaterally to stem the movement of people with physical or administrative barriers at borders or policies of deterrence, making safe harbour inaccessible to those in need of sanctuary. This has heightened the risks refugees face and only shifted the problem elsewhere.

Also, ideas of containment and externalization of asylum processing have surfaced in some political and academic circles in different regions of the world. Deflecting responsibility for the relatively small number of people who seek asylum in the global North bears a certain irony for countries in the global South which are already hosting 85 per cent of the world's refugees.³ One cannot expect these countries, by virtue of their proximity to situations of conflict and violence, to bear the burden and responsibility alone. It is unsurprising that such ideas have not found traction with them, particularly when not accompanied by any significant growth in the number of resettlement places globally or meaningful possibilities for safe and sustainable return. These proposals have only spurred resentment, scepticism, and reactionary measures at a time when multilateralism is already under threat. This comes at great cost to the lives of refugees foremost, and to the principle of solidarity underlying international cooperation.

All States need to ensure access to territory, reception arrangements, and asylum for those in need. This is the cornerstone of the international refugee protection regime upon which millions of people depend for their safety and security. The 1951 Convention relating to the Status of Refugees and its 1967 Protocol form the bedrock of this regime and must continue to guide our responses to current and emerging situations of displacement.⁴ UNHCR has been charged with a supervisory role in relation to the Refugee Convention and all other instruments relating to the protection of refugees and stateless persons. At the same time, we all have a responsibility to safeguard this regime and ensure its proper interpretation and use in light of the evolving realities in today's world.

The answer to the challenges posed by high numbers of refugees does not lie in draconian measures or revisiting the international refugee protection regime, which has proven to be good law and practice when the political will is there to implement it. Rather, the answer can be found in a more robust, comprehensive, and good-faith application of the tenets of protection. This requires that the international refugee protection system be better capacitated to absorb the growing pressures.⁵

³ *ibid.*

⁴ As has been the case for people fleeing violence and conflict, gang violence, or gender-based persecution.

⁵ See 'Statement by Volker Türk, Assistant High Commissioner for Protection' to the 66th Session of the Executive Committee of the High Commissioner's Programme, Agenda point 5(a) (8 October 2015) <<https://www.unhcr.org/admin/dipstatements/56150fb66/66th-session-executive-committee-high-commissioners-programme-agenda-point.html>>: 'This speaks to the most critical protection gap we are facing today – the need for a global compact on predictable and equitable burden and responsibility-sharing'.

The international community recognized this in September 2016 when all 193 Member States of the United Nations adopted the New York Declaration for Refugees and Migrants. The Declaration called for both an intergovernmental process of negotiations to develop a global compact for safe, orderly and regular migration, and a consultative process, led by UNHCR, to develop a global compact on refugees. It also set out a Comprehensive Refugee Response Framework for addressing large-scale refugee situations and tasked UNHCR with applying this Framework in the field, with a view to securing more predictable, sustained support for refugees and their host communities. The process of developing the Global Compact on Refugees drew upon lessons learned from the application of this Framework in 15 country and regional refugee situations.⁶ It also engaged States, partners, civil society, and refugees in five thematic discussions, which culminated in a stocktaking exercise in 2017, as well as six formal consultations on the text of the Compact in 2018.⁷

The Global Compact on Refugees builds upon a strong foundation of law, policy, and operational practice developed since the earliest days of the UN, and sets out a framework for greater responsibility sharing with countries hosting the largest numbers – often for the longest times. This is urgently needed, as these countries are providing a global public good on behalf of the international community, are disproportionately affected by the related challenges, and require more support. This is in keeping with the spirit of the Refugee Convention, in which States recognized ‘that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation’ (preamble). The Compact aims to ease the pressures on host countries by strengthening the resilience of refugees and their host communities, particularly through greater development cooperation. It further promotes responsibility sharing with host countries by focusing on solutions, both in expanding opportunities for resettlement and other solutions in third countries, and in fostering the necessary conditions for refugees to return to their home countries in safety and dignity.

The success of the Global Compact on Refugees depends upon the engagement of a wide range of actors. Currently, 63 per cent of the refugees under UNHCR’s responsibility reside in 10 countries, and 93 per cent of UNHCR’s funding is provided by 10 countries. This means that a very small proportion of the 193 UN Member States are shouldering the lion’s share of the responsibility. To achieve a broader reach, the Compact envisions both new and deeper working relationships with States, national and local authorities, international and regional organizations, international financial institutions, civil society, the private sector, academia, and – centrally – refugees

⁶ Afghanistan, Chad, Djibouti, Ethiopia, Kenya, Rwanda, Uganda, and Zambia have each agreed to apply the Comprehensive Refugee Response Framework. The Framework is further being applied to the Somalia situation, requiring the involvement of Somalia’s government and its neighbours in a regional approach. Countries in the north of Central America, namely Belize, Costa Rica, Guatemala, Honduras, Mexico, and Panama, are also applying a ‘comprehensive regional protection and solutions framework’ to address issues of forced displacement in the region.

⁷ See respectively <<http://www.unhcr.org/thematicdiscussions>>; <<http://www.unhcr.org/hc-dialogue2017>>; <<http://www.unhcr.org/formalconsultations>>.

and their host communities. Such partnerships are pivotal to facilitating more equitable responsibility sharing. For instance, complementing crucial humanitarian assistance, development actors can support local host communities to ensure that they are equipped to host refugees. Also, the private sector can introduce initiatives to stimulate job creation and economic growth benefiting refugees and their hosts.

The Global Compact on Refugees envisions a number of arrangements to facilitate its implementation. At the heart of the Compact lies the Comprehensive Refugee Response Framework, which was already set out in an annex to the New York Declaration. This Framework supports responses that move away from encampment and parallel systems for refugees, wherever possible. It focuses on strengthening national and local infrastructures to ensure that they can meet the needs of both refugees and their host communities. This enables them to live together in dignity, with access to education, health care, and livelihoods. The Framework also supports the economic and social inclusion of refugees, so that they can benefit from and contribute to the social and economic well-being of the communities where they are living. It achieves this through the leadership of the host country government and the mobilization of partners to invest in and initiate comprehensive planning. For refugees, this means less dependence on aid, being better equipped to return home when conditions allow, and, in the meantime, contributing to the communities that are hosting them. For host communities, this means that the generosity that they have shown to those in need can also facilitate and augment their own development.

In the spirit of partnership underlying such comprehensive responses, the arm of the World Bank dedicated to supporting low-income countries – the International Development Association (IDA) – is providing US\$2 billion in additional financing over a three-year period from 2017 to 2020, to support low-income countries hosting large numbers of refugees. The World Bank has also developed a global concessional financing facility for middle-income countries, already mobilizing US\$2.5 billion for Lebanon and Jordan. Other development banks are exploring similar measures. Combined, an estimated US\$6.5 billion has been contributed for development in refugee-hosting areas over the past year, in addition to humanitarian funding. Additionally, private and community sponsorship programmes and other pathways for the admission of refugees to third countries are expanding, and the private sector is increasingly engaged in projects for livelihoods, infrastructure, connectivity, and energy.⁸

We are already seeing concrete changes on the ground in refugee situations where the Comprehensive Refugee Response Framework was rolled out in the lead-up to the adoption of the Global Compact on Refugees.⁹ For example, Djibouti, Ethiopia, and the African Union adopted new laws or policies for refugee inclusion. There are new initiatives to expand refugees' access to education, livelihoods, and national justice systems. Chad officially converted all refugee community schools into government public schools and enrolled refugee teachers in official teacher training colleges. The Ethiopia Economic Opportunities Program is creating opportunities for refugees

⁸ See UNHCR, 'From Commitment to Action: Highlights of Progress towards Comprehensive Refugee Responses Since the Adoption of the New York Declaration' (2018) <<http://www.unhcr.org/5b8d1ad34>>.

⁹ *ibid.*

alongside Ethiopian nationals, including in industrial parks. The Ethiopian government's Roadmap includes a target of 100,000 economic opportunities, of which 30 per cent will be for refugees. Ethiopia is also enacting a new refugee law to give refugees access to employment, education, and greater freedom of movement. It further revised its Vital Events and Registration proclamation to grant refugees full access to the national civil registration system. Djibouti enacted a new law reversing its previous encampment policy, strengthening the protection of refugees, and safeguarding their fundamental rights.

The Global Compact on Refugees further envisions that a Global Refugee Forum will be held every four years at the ministerial level starting in 2019, involving States, partners, and, importantly, refugees (Chapter III.A.1). This forum will provide States and other actors with the opportunity to make pledges of support to meet the goals of the Compact, as well as to update and report back on them. This will promote accountability for commitments made and ensure more sustained international attention to the refugee issue. Pledges will be concrete and mutually reinforcing, and could take the form of financial, material, and technical assistance; changes to national policies, laws, and practices; or the creation or expansion of resettlement and other programmes. Within the Compact, the section 'Areas in need of support' (Chapter III.B) details the kinds of contributions that could be made to support host States and refugees, such as support for early warning, preparedness, and contingency planning; reception arrangements; safety and security; registration and documentation; addressing specific needs; identifying international protection needs; access to education; voluntary repatriation; and resettlement places and other pathways for admission to third countries.

The Global Compact on Refugees also sets out arrangements to improve the international response to specific refugee situations, in support of government-led arrangements. These arrangements include Support Platforms, solidarity conferences, and regional and sub-regional approaches (Chapter III.A.2). They will involve States and other actors dedicated to mobilizing support for a host country or countries and the search for solutions. These arrangements will promote context-specific, predictable support for refugees and the host countries and communities. They will draw upon pledges made at the Global Refugee Forum as relevant, and will help to galvanize political commitment, facilitate support, and engage development and other actors.

The Global Compact on Refugees contains a number of initiatives that can also feed into these various arrangements. For example, it foresees an asylum capacity support group that can be engaged in the face of large-scale arrivals. It conceives of a three-year resettlement strategy to broaden the base of resettlement actors, increase resettlement opportunities, and identify further pathways for refugees to access solutions in third countries. It also anticipates the formation of a global academic network, supported by UNHCR and involving universities, academic alliances, and research institutions from the global North and South that could facilitate research, training, scholarship and fellowship opportunities, and other initiatives that will support the objectives of the Compact.

The Global Compact on Refugees also coheres with the Global Compact for Safe, Orderly and Regular Migration, particularly in operational responses to mixed situations of refugees and migrants. Each of these Compacts was developed through a

distinct process with different objectives, but we sought to ensure that they were aligned in any areas where they overlapped. While the Global Compact on Refugees applies primarily to refugee situations, it clearly acknowledges in paragraph 12 that some situations involve not only refugees, but also different categories of persons on the move. This paragraph allows space for States facing large mixed movements to draw upon the architecture of support set out in the Compact where appropriate.

The new arrangements in the Global Compact on Refugees have the potential to take us much further towards a more predictable response to refugee situations than where we are today. They are robust, practicable, and implementable, and provide a solid basis from which to move forward. They represent the best that can be achieved in a document that aims to articulate, in effect, commitments for everyone, but which is at the same time voluntary and legally non-binding. Over the course of the consultations on the Compact, we faced time and again the challenge of striking this difficult balance, and we are heartened that most of the contentious issues played out in favour of refugee protection. Nothing in the Compact as such creates new legal obligations, nor does it modify UNHCR's original mandate. Instead, it builds on past practices and charts the way forward.

In many ways, although the Global Compact on Refugees is non-binding, it is telling that the discussion reached the highest levels of government, and the resolution affirming the Compact was put to a vote in the Third Committee of the UN General Assembly.¹⁰ This was the first time that a resolution on the work of UNHCR had been put to a vote rather than being adopted by consensus in the Third Committee. The statement made by the US delegation, the only State to vote against the resolution, reiterated the understanding that 'none of the Compact's provisions create or affect rights or obligations' for States.¹¹ This suggested some concern as to whether the Compact could be interpreted in the future to have some legal effect, despite what is stated in its text. The fact that the resolution was put to a vote showed how seriously States take the responsibilities set out in the Compact and the import they attribute to it, as well as how such a non-binding text could nonetheless influence State behaviour.

The Global Compact on Refugees has also had a tremendous impact on the behaviour of other stakeholders in the process of its development. Its penumbral effects were evident in the wide range of actors who were mobilized in the lead-up to its adoption.¹²

¹⁰ 'Report of the United Nations High Commissioner for Refugees' (Agenda item 65) (n 1). When the omnibus resolution was considered in the Third Committee of the UN General Assembly on 13 November 2018, the United States of America called for a vote. There were 176 votes in favour, one against (US), three abstentions (Eritrea, Liberia, and Libya), and 13 countries which were absent.

¹¹ In explaining its vote, the US delegation noted that it supported much of the content of the Compact as providing the basis for improved burden and responsibility sharing. It also noted that it would continue to lead the world in providing humanitarian assistance, and it explicitly recognized the leadership and staff of UNHCR, but there was some wording in the omnibus resolution that it could not support. See US Ambassador Kelley Currie, 'Explanation of Vote in a Meeting of the Third Committee on a UNHCR Omnibus Resolution' (13 November 2018) <<https://usun.state.gov/remarks/8744>>.

¹² See Kishanthi Parella, 'Treaty Penumbras' (2017) 38 *University of Pennsylvania Journal of International Law* 275 <<https://scholarship.law.upenn.edu/jil/vol38/iss2/1>>.

Development actors and the private sector, for example, were galvanized to support the Compact and to update and develop their own programmes in accordance with its main tenets. The wide range of stakeholders that coalesced around different issues throughout the process of the Compact's development, and the constant attention focused on it, helped to increase the pressure not only on States, but also on other actors, to give substance to the content that it was envisioned to promote. This demonstrates how even a non-binding instrument agreed by States can have effects well beyond them. In this sense, the Compact's effectiveness will be measured not only by States' behaviour, but also by that of the many other actors who are positioning themselves to help realize its goals.

The development of the Global Compact on Refugees was not a negotiation of a new treaty or protocol, but rather an iterative and organic process, much like the development of the New York Declaration and the Sustainable Development Goals. The UN General Assembly entrusted UNHCR with the responsibility to develop the Compact in consultation with States. This was an unusual move, placing enormous trust in this institution. It helped to depoliticize the process, particularly as States relied upon UNHCR to act in good faith and listen to their feedback. The goodwill of States and partners in the process was built through UNHCR's engagement with them both in Geneva, where the Compact was being developed, and with their counterparts in New York to ensure that they were fully updated and aligned throughout.¹³ This approach helped to prevent the text of the Compact developed in Geneva from being reopened for negotiation in New York, and reinforced its character as a collective, State-owned product.

The best proof of the effectiveness of this approach is when one looks back at the zero draft of the Global Compact on Refugees which was shared at the beginning of 2018, and considers how far it came in less than a year. One can see the evidence of what multilateralism can produce. The Compact represents a reconciliation of different views expressed both throughout the consultations and through more than 500 written submissions.¹⁴ It was an intricate process and one of immense complexity – an exercise in listening and collective ownership. While the text does not meet all the ambitions of everyone, it does provide a means to achieve a more sustainable response to displacement and to improve the lives of refugees and their host countries and communities.

In many ways, the development of Global Compact on Refugees began a long time ago when the General Assembly, in one of its earliest resolutions in 1946, declared that the refugee issue is one of international scope, nature, and concern.¹⁵ The Compact represents a milestone in international refugee protection, and it is the first agreement of such significance since the adoption of the 1951 Refugee Convention. In this sense, it is part of a longer historic process, with all its shortcomings, of course, but also with all its aspirations and potential.

Once, any attempt to define cooperation among States to share responsibilities for refugees – which has been the perennial gap since the inception of the international

¹³ See 'Remarks by the Assistant High Commissioner for Protection' in Geneva and New York <<https://www.unhcr.org/towards-a-global-compact-on-refugees.html>>.

¹⁴ See <<http://www.unhcr.org/writtencontributions>>.

¹⁵ See UNGA res 45 (12 February 1946).

refugee law framework – would have been the subject of an additional protocol to the Refugee Convention. The progressive development of international law and standards has of late, however, taken different forms. The Global Compact on Refugees is an example of this evolving trend. Although it depends on the goodwill of States, its power lies in its expression of a common purpose with mutually reinforcing commitments. Its strength is that it draws upon, consolidates, and updates decades of practical experience and presents a vision that makes eminent sense in addressing the challenges we face today. It is not about having a new law as such, but about ensuring the collective buy-in to make its implementation effective. In the future, when reflecting on this time, we should all be proud of what we managed to achieve together for the betterment of the lives of refugees – against all the odds and in a difficult context. This hard work will pay off.

Some may talk about multilateralism in terms of an acceptable level of unhappiness, but the Global Compact on Refugees may also be viewed as an acceptable level of happiness, as it has broad and overwhelming support. In this sense, we must cherish what we have already gained and use the opportunities before us to build on it through the robust and serious implementation of the nascent framework that is emerging. The Compact is therefore not the end, but rather a beginning – the continuation of a much-needed dialogue and a practical frame for policy and operational responses of the future. It is a tool that creates the space for all of us to work towards stronger mechanisms for more equitable sharing of burdens and responsibilities. Within UNHCR, we are already considering how the Compact will change our own working methods, and how it will interlink with broader UN methodologies, reforms, development system reforms, and prevention. We aim to ensure a smooth transition between the ideas and concrete mechanisms generated by the Compact and these processes.

The development of the Global Compact on Refugees provides food for thought on how multilateralism can be achieved today and what it can do to address difficult and sensitive issues. It has taught us much about the future of multilateralism in what, to many, seems like an increasingly polarized political space. Multilateralism is about our collective survival. It is an incremental and organic process that moves from common understandings progressively onwards – to the aspirations, expectations, and hopes that shared efforts, undertaken in good faith, can deliver. It demands that everyone be heard and understood. It recognizes that some ‘give and take’ is needed to move towards a common purpose.

When the US Constitution was adopted in 1787, Benjamin Franklin noted that he was not satisfied with each and every part of the Constitution, but he entreated his compatriots nonetheless to accept it, invoking language that resonates with our own experience today. He said: ‘I hope ... that for our own sakes, as a part of the people, and for the sake of our posterity, we shall act heartily and unanimously in recommending this constitution, wherever our influence may extend, and turn our future thoughts and endeavours to the means of having it well administered.’¹⁶ I think this could not be a better way to capture the next steps for all of us in this current process.

¹⁶ ‘Final Speech of Dr Franklin in the Late Federal Convention’ in Benjamin Franklin, *The Works of Dr Benjamin Franklin; Consisting of Essays, Humorous, Moral and Literary: With His Life, Written by Himself* (Whittingham 1824) 286.

At UNHCR, we are committed to realizing the potential of the Global Compact on Refugees to strengthen the way the international community responds to large refugee situations. By creating an architecture of support for the countries most affected, we hope to see improvements in refugee protection and assistance, and a stronger focus on solutions from the start. As always, implementation will be key – including in the preparation for the first Global Refugee Forum in December 2019. We hope that all stakeholders, including the academic community and civil society, who engaged so actively in the development of the Compact, will continue to support its application in practice. We are counting on everyone to make this a meaningful reality in the lives of refugees and the communities that host them. With the support that we have from UN Member States, the political signal is very strong that this is indeed a new way of working – together – when it comes to addressing refugee issues in the future.