The Global Compact on Refugees: Towards a Theory of Change?

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The Global Compact on Refugees (Refugee Compact) addresses one of the most significant gaps in the international refugee regime. Since the creation of the modern refugee system, there has been a disjuncture between a strongly institutionalized norm of ‘asylum’ and a weakly institutionalized norm of ‘responsibility sharing’. While States’ obligations towards refugees who are within their territory or jurisdiction are relatively clearly defined, States’ obligations to support refugees who are on the territory of another State are much weaker. Consequently, while law has shaped asylum, politics has defined responsibility sharing. This has long led to a major power asymmetry within the refugee system in which geography and proximity to crisis de facto define State responsibility. Distant donor countries’ commitments to provide money or resettlement have been viewed as largely discretionary. Historically, the United Nations High Commissioner for Refugees (UNHCR) has therefore needed to rely upon ad hoc conferences or discretionary, often earmarked, and usually annual commitments to elicit responsibility sharing. In displacement crises in which donor and resettlement commitments have been low, protection and access to solutions have inevitably been limited.

The Syrian and European refugee ‘crises’ brought into sharp relief the inadequacy of responsibility sharing and its consequences for refugees and host communities. A sense of crisis in the rich world created an unprecedented degree of political and media attention around refugees. It offered a window for change. Just as the international financial system used the 1973 global financial crisis to update key aspects of the Bretton Woods system, so too 2015 represented a catalyst to potential reform. Initially, the trajectory of that reform effort was uncertain. Ideas were floated about how the United Nations (UN)-led conference in September 2016 should tackle it. How far should it focus on one specific crisis situation? To what extent should it engage in more far-reaching reform? The language of a Global Compact was floated early in Filippo Grandi’s term as High Commissioner for Refugees, and gradually acquired a focus around responsibility sharing. Its aim was to secure ‘more predictable burden- and responsibility-sharing’.

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The New York Declaration provided the mandate and the pathway, and it is remarkable, given the divergent interests of States relating to responsibility sharing, that the text of the Refugee Compact emerged, backed by broad intergovernmental consensus.

UNHCR’s past is replete with attempts to create norms relating to responsibility sharing. Its greatest successes have been regional and situation-specific, building upon ad hoc conferences like the Indochinese Comprehensive Plan of Action (CPA) and the International Conference on Central American Refugees (CIREFCA), both of 1989.¹ UNHCR’s efforts to create more abstract norms have often struggled, amid States’ desires to retain sovereignty and discretion relating to resettlement and financial contributions. The annual theme of the 1998 UNHCR Executive Committee (ExCom) meeting was ‘solidarity and burden-sharing in all its aspects’, and in 2004, ExCom passed a ‘Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations’. Arguably, the most significant precedent of norm-creation around responsibility sharing relates to the 2003–05 Convention Plus initiative, which set the goal of building intergovernmental consensus on three key dimensions of responsibility sharing: targeted development assistance, resettlement, and secondary movements. It sought to create ‘generic agreements’ in these areas and then apply them to ‘situation-specific contexts’, such as for Somali and Afghan refugees, an approach echoed in the relationship between the ‘generic’ Refugee Compact and the ‘situation-specific’ Comprehensive Refugee Response Framework (CRRF).

Within historical context, the Refugee Compact therefore identifies and seeks to address the right problem. The past tells us that it is not an easy challenge to solve. States like to retain discretion on responsibility sharing, and effective institutional design for responsibility sharing in the real world requires a precarious iteration between generic commitments and situation-specific application, gradually building soft normative consensus (through ‘generic agreements’) while building State confidence that practical application leads to mutually beneficial outcomes (through ‘situation-specific’ commitments).

Today’s world presents a different set of challenges and opportunities compared to the early 2000s. On the one hand, there are new actors in play, and so potential new mechanisms for responsibility sharing. In the past, responsibility sharing was a strictly intergovernmental practice. A central recognition of the Refugee Compact is its ‘whole-of-society’ approach, opening the possibility that new actors like business and the World Bank, and new processes like innovative financial mechanisms, can play a role. On the other hand, though, the Refugee Compact emerges in a context of major political constraint, with growing populist nationalism, often accompanied by anti-immigration politics that is taking hold around the world.

UNHCR was compelled to lead the Refugee Compact process under conditions of significant constraint. Endemic non-compliance with the 1951 Refugee Convention, the Trump administration’s threatened budget cuts to UNHCR, and potential mandate competition from the International Organization for Migration as it became a related organization of the UN all make the contemporary world a challenging one for UNHCR’s ability to fulfil its mandate. These constraints are reflected in the scope

¹ For an overview of past precedents, see Alexander Betts, Protection by Persuasion: International Cooperation in the Refugee Regime (Cornell University Press 2009).
of ambition of the Refugee Compact. UNHCR understandably excluded many key issues from the negotiations: notably debate relating to the 1951 Refugee Convention or to UNHCR’s own mandate. In the words of the Assistant High Commissioner for Protection, Volker Türk, ‘it was a conscious decision not to put up for discussion what is already international law and policy.’ Indeed, a key part of the strategy had to be organizational self-preservation. The precarious balancing act was to ‘duck and cover’ through the worst parts of the political storm, while still being able to update the regime for a permanently changed world – and it is a permanently changed world.

Partly as a result of these constraints, the Refugee Compact itself is relatively modest in scope and ambition. It is, of course, non-binding, but that, by itself, does not necessarily mean it cannot have normative impact on State behaviour. Its basic aim, though, is to get more resources into the system rather than to change the system. As a document, the Compact essentially does three things. First, it offers a summary of the actors (governments, business, development and humanitarian actors, and faith-based groups, for example) who can contribute to responsibility sharing. Secondly, it identifies the areas in which they can contribute and some of the mechanisms for financial or in-kind contributions, some of which are genuinely innovative. Thirdly, it envisages some new structures in order to elicit such contributions, notably a ‘Global Refugee Forum’ and ‘Support Platforms’ for specific contexts, which will include ‘Solidarity Conferences’.

In the current political context, it is an achievement to have created an intergovernmental consensus around even a non-binding set of principles and practices relating to responsibility sharing. However, it would be misguided to regard this as the endpoint. The basis on which we should judge the Refugee Compact must be the difference it makes in practice to the lives of refugees and other displaced persons. Will it lead to increased commitments by States and other actors? And against what benchmarks and counterfactual measures should this be judged?

What the Refugee Compact needs is an explicit theory of change. How will the document lead to change in the behaviour of States over time? As it stands, the Compact broadly envisages two sets of mechanisms for change.

The first of these is the CRRF, currently being rolled out in a number of refugee-hosting countries. It represents a new way of working, adapted to different contexts. It places the focus exactly where it is needed: on self-reliance, economic inclusion, the creation of enabling environments, support for both refugees and host communities, and engagement with development actors. In some ways, it takes what has been effective about Uganda’s self-reliance model and tries to adapt this to other contexts. And in some cases, it is already working. In the Kakuma context in Kenya, the Governor of Turkana has recognized the development opportunities available to the host community through participation in the CRRF. The new Kalobeyei settlement represents a potentially exciting ‘third way’ beyond camps and urban integration, creating a new integrated settlement for both hosts and refugees. In Ethiopia, the CRRF has created a framework within which the government’s ‘nine pledges’ – including to give refugees the right to work and freedom of movement – are becoming a reality. In other cases,


such as Tanzania, the roll-out has been stymied by idiosyncratic national politics and the terms of concessionary finance. But overall, the direction of travel is impressive and the World Bank’s engagement is bringing change.

Secondly, political facilitation will be necessary for more profound transformation in terms of donor and resettlement commitments. New structures, like the Global Refugee Forum and Support Platforms, are a necessary but insufficient condition for achieving this. Everything we know about the history of responsibility sharing teaches us that UNHCR’s capacity for political leadership is the key ingredient. The CPA and CIRFCA were successful because UNHCR created principled but pragmatic agreements, based on reciprocal State commitments. In contexts in which solidarity conferences have simply requested resources, like the International Conferences on Refugees in Africa (ICARA I and II) of 1981 and 1984 or the Uganda Solidarity Summit on Refugees of 2017, they have largely failed. In a 2018 interview with Refugees Deeply, Volker Türk suggested that ‘[t]he idea [of solidarity conferences] is based on various experiences, including in Central America and for Indo-Chinese refugees. Uganda is one example, but it wasn’t really the one that we thought about so much’.3

What will be important is that UNHCR fully understands what made the difference between the Indochinese CPA and the Uganda Summit. Partly it was historical context and States’ strategic interests. But if the CPA is to be the template, the key lesson is not about the role of a generic document; it is about organizational capacity for political leadership, and the ability to identify and understand States’ political interests and to propose principled yet pragmatic agreements, based on reciprocity. This is a capacity that is not predetermined but can be nurtured through ensuring that refugee diplomacy, political analysis, and visionary leadership are key organizational priorities. Of course, in the past, individuals like Sérgio Vieira de Mello and Leonardo Franco made a difference, but so, too, did an organizational culture of strategic thinking and political entrepreneurship. Indeed, there is some indication that UNHCR is doing some things to improve this: special envoys, CRRF champions, and appointments from government are offering greater capacity in this regard. But the key will be to place political facilitation at the core of the new Global Refugee Forum and Support Platform approaches.

The Refugee Compact has been criticized for what it left off the agenda, and it does postpone major challenges of law and policy. However, it could not realistically have addressed all aspects of the refugee system; certainly not at the current historical juncture. It inevitably had to make choices in order to have focus. New drivers of displacement are an inevitable future challenge. Amid climate change, survival migration from Venezuela, and the role of State fragility in displacement, the international community will, at some stage, have to confront major normative and legal questions left aside by the Refugee Compact. Early in the process, I was critical that UNHCR’s approach to the Compact was too conservative and risked missing an opportunity for more profound change. And while I think the jury is still out on whether the Compact itself will make a fundamental difference to practice, there are some positive signs that it can galvanize change. The Refugee Compact has the potential to make a difference. To do so, though, it must have a clear-sighted theory of change on how to translate text into practice. It needs to be the first stage of a long-term strategic vision.

3 ibid.