The Unfinished Work of the Global Compact on Refugees

T Alexander Aleinikoff*

As a result of a mass flow of Syrian refugees and African migrants across the Mediterranean, which peaked in 2015, European States wanted something done at the international level. The United Nations (UN) General Assembly responded by convening a ‘high-level plenary meeting on addressing large movements of refugees and migrants’ the following year.

In ways not fully anticipated by those who pressed for the high-level meeting, the General Assembly’s New York Declaration for Refugees and Migrants addressed issues considerably broader than the Mediterranean question. It affirmed fundamental international and human rights norms relating to the movement of people across borders (while recognizing the sovereign right of States to control their borders), noted the positive contribution migrants make to the social and economic development of host States, pledged to combat xenophobia and discrimination, and committed to addressing the root causes of mass migration. The Global Compact on Refugees (Refugee Compact) and the Global Compact for Safe, Orderly and Regular Migration (Migration Compact) were envisioned to embody and promote these and other commitments.

The co-facilitators of the Migration Compact have stated that its 23 objectives are intended to establish an ‘ecosystem’ for international cooperation on migration – a purpose decidedly more capacious than the circumstances that gave rise to the New York Declaration. The Refugee Compact makes no real effort to address the large flow of refugees arriving in the global North; there is no commitment to permit those who arrive to apply for asylum, no rules established for where interdicted and rescued forced migrants should be taken, and nothing to prevent the walls going (or staying) up in Europe.

Instead, the Refugee Compact pursues two overarching goals. First, it affirms a comprehensive, multi-stakeholder approach to refugee situations. The big idea here is that development actors have a vital role to play in responding to refugee emergencies and protracted situations. Secondly, the Refugee Compact urges greater assistance to front-line countries hosting refugees. In provision after provision, ‘States and relevant stakeholders’ are asked to contribute ‘resources and expertise’ to host States – to their

* University Professor, and Director of the Zolberg Institute on Migration and Mobility, The New School, New York.
These two goals are obviously important, but they are hardly new. Over the past several years, the United Nations High Commissioner for Refugees (UNHCR) and the World Bank have developed a close working relationship, and major donor States have put forced displacement on the agendas of their development agencies. Indeed, the proposed Comprehensive Refugee Response Framework, which forms part of the Refugee Compact, is weaker than it could have been; while calling for a coordinated ‘multi-stakeholder approach’, it establishes no formal structure for joint operations or for accountability.

Nor is there much new in a Compact that calls for greater assistance to host States. Every year, UNHCR’s ‘needs-based budget’ is nearly twice its actual expenditure – just one indication of how far short the international community falls in assisting refugees in the States in which they reside. What is significant, and troubling, is that the (non-binding) commitment in the Refugee Compact for additional funding did not come with conditions that host States guarantee refugee rights (for example, the right to work and freedom of movement in asylum States). Furthermore, the call for more resources for host States is part of a general theme in the Refugee Compact that promotes ‘national ownership’ of the refugee response. UNHCR may come to regret that shift, particularly if accountability structures for how States spend new refugee dollars are not robust.

All this being said, it is worth pausing to consider the context in which the Refugee Compact was written. In a time of unprecedented numbers of forcibly displaced persons, the global North has responded primarily with pushbacks, interdiction, detention, and other strategies of deterrence. Even the call for additional resources for host States must be understood as part of a broader strategy of stopping onward movement of refugees and migrants. Against this background, the fact that the New York Declaration and the Refugee Compact reaffirm fundamental norms of refugee protection and human rights is worth celebrating.

**UNADDRESSSED CHALLENGES**

Perhaps it would be best to think of the Refugee Compact as a ratchet – preventing backward slippage and creating opportunities for forward movement. This then calls for attention to central challenges facing the international protection regime unaddressed by the Compact. I will identify two: (1) the lack of a global responsibility-sharing strategy and structure; and (2) the need to protect forced migrants who do not come within the definition of ‘refugee’ in the 1951 Refugee Convention.

1. **Responsibility for responsibility sharing**

The overriding challenge to refugee protection is the fact that most refugees have little or no prospect of a solution to their displacement. None of the major refugee-producing conflicts appears to be on the way to resolution, so repatriation is unlikely. At the same time, resettlement opportunities are declining (led by the deeply troubling cut to the resettlement programme in the United States), and host States are generally resistant to policies of local integration. The result is that more than two-thirds of the world’s refugees reside in protracted situations.
The number of refugees is large, but not so large that a comprehensive responsibility-sharing strategy would impose significant costs on any resettlement country (22 million refugees are less than 0.5 per cent of the world’s population). Calls for a better ‘sharing out’ of the world’s refugees date back to the drafting of the 1951 Refugee Convention and have been repeated regularly thereafter. There is a true tragedy of the commons here. As a conceptual matter, all States recognize that some form of global burden sharing would advance the interests of refugees, host States, and also receiving States (which now face unwanted flows of refugees unable to move through legal channels). But the States that now benefit from a system that essentially locks refugees into host States have recognized that they can better protect their own interests by doubling down on deterrence measures than by joining a plan for responsible distribution of the world’s displaced.

If this is the primary problem facing the international system of protection, then one might have supposed that the Refugee Compact would tackle it head-on. But the Compact does not do so. The closest it comes – and this is significant – is to put in place a number of new modalities for international cooperation. First, a Global Refugee Forum will be held every four years at which States can make pledges of financial, material, and technical assistance; additional resettlement numbers; and other ‘complementary pathways for admission’ (para 18). Secondly, the Compact calls for the establishment of ‘Support Platforms’ related to specific large-scale or protracted refugee situations. Platforms would be constituted by the host State, interested States, multilateral organizations, and other ‘stakeholders’, and as paragraph 23 indicates, would serve the purpose of:

- galvanizing political commitment and advocacy for prevention, protection, response, and solutions;
- mobilizing financial, material, and technical assistance, as well as resettlement and complementary pathways for admission to third countries, in support of the comprehensive plan (para 21), where applicable, drawing on Global Refugee Forum pledges;
- facilitating coherent humanitarian and development responses, including through the early and sustained engagement of development actors in support of host communities and refugees; and
- supporting comprehensive policy initiatives to ease pressure on host countries, build resilience and self-reliance, and find solutions. [fns omitted]

As discussed below, Support Platforms provide a foundation for moving towards a global system for responsibility sharing.

(2) International protection beyond the ‘refugee’ definition in the 1951 Refugee Convention

As is well understood, the definition of ‘refugee’ in the 1951 Refugee Convention does not include all forced migrants in need of international protection. Through General

---

Assembly resolutions, regional instruments, and international practice, the definition of ‘refugee’ – and UNHCR’s mandate to provide international protection – has evolved. It now includes persons who have fled conflict and violence in their home States and many who flee gang violence and domestic abuse where the home State is unwilling or unable to protect them.

Despite this expansion of protected persons and groups, there remain displaced persons – numbering in the tens of millions – who fall outside the Convention definition and who are in need of international protection. They include those displaced by the impacts of disasters and climate change, and those displaced within their home States (internally displaced persons, or IDPs).

There was no likelihood that the Refugee Compact would seek to amend the refugee definition in the 1951 Convention. But the Compact could have given recognition to categories of displaced persons in need of international protection who are not understood as coming within the Convention definition. Indeed, UNHCR attempted various formulations in pre-final drafts of the Refugee Compact. (Because the Refugee Compact declares itself as establishing only non-binding commitments, such recognition would not have imposed any new obligations on States.)

The first draft took a bold approach, with the declarative statement in paragraph 52 that ‘[t]he need for international protection arises when persons are outside their own country and unable to return home because they would be at risk there, and their country is unable or unwilling to protect them.’ However, opposition from States resulted in this language being rewritten. The second draft stated: ‘The need for international protection arises when persons are outside their own country and unable to return home because of risks recognized under relevant international and regional law or instruments, as applicable in a specific context’ (para 65, emphasis added). The italicized language essentially restricted the ‘need for international protection’ to persons already protected by the 1951 Refugee Convention and regional instruments (primary among them, the 1969 OAU Convention). This is plainly inadequate, as it is precisely the recognition that there are groups outside existing law that warrant international protection that needs to be affirmed.

Adverse comment on this provision led to a different approach in the final adopted text. Paragraph 61 provided:

Mechanisms for the fair and efficient determination of individual international protection claims provide an opportunity for States to duly determine the status of those on their territory in accordance with their applicable international and regional obligations (A/RES/72/150, para 51), in a way which avoids protection gaps and enables all those in need of international protection to find and enjoy it. [fn omitted]

The language here does not attempt to offer a definition of those in need of international protection. Rather, it urges States to close protection gaps in a way consistent with, but not constricted by, existing international and regional norms. The statement is problematic to the extent that it leaves such decisions to State discretion under State law (the explicit statement of the first draft is plainly preferable), but it does provide a ‘hook’ for advocacy on behalf of all those in need of international protection’.
The yawning gap that remains, under any of the formulations of the various drafts, is the failure to include IDPs. They receive the barest mention in the Refugee Compact (paras 12, 89) and none in the Migration Compact.

Persons forced to move because of the adverse impacts of disasters and climate change receive a little more attention than IDPs in the Refugee Compact. In a provision addressed to ‘root causes’, paragraph 8 of the Refugee Compact states: ‘While not in themselves causes of refugee movements, climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements’. It goes on to suggest that addressing the causes of flight is, in the first instance, the responsibility of the home State, although it also notes the role of the international community in ‘averting and resolving large refugee situations’ through ‘early efforts to address their drivers and triggers’.

In paragraph 63, in language couched in qualifiers, the Refugee Compact recognizes that international organizations may have a role in assisting States attempting to cope with forced migration due to disasters (note that climate change does not appear in the provision):

where appropriate, stakeholders with relevant mandates and expertise will provide guidance and support for measures to address other protection and humanitarian challenges. This could include measures to assist those forcibly displaced by natural disasters, taking into account national laws and regional instruments as applicable, as well as practices such as temporary protection and humanitarian stay arrangements, where appropriate. [fn omitted]

Because of UNHCR’s hesitancy to address forced migration linked to the impacts of climate change more directly, interested parties turned their attention to the Migration Compact. There they were more successful. The final text of the Migration Compact expressly calls for ‘joint analysis and sharing of information to better map, understand, predict and address migration movements, such as those that may result from sudden-onset and slow-onset natural disasters, the adverse effects of climate change, environmental degradation’ (para 18(h)). It also commits States to ‘[c]ooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin due to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, such as desertification, land degradation, drought and sea level rise … in cases where adaptation in or return to their country of origin is not possible’ (para 21(h)).

It might have been more coherent to locate all issues relating to forced migration in the Refugee Compact and to make the primary focus of the Migration Compact the world’s 250 million ‘voluntary’ migrants. But forced migration linked to climate change ended up in the Migration Compact due to State pressure on UNHCR to keep the Refugee Compact limited to Convention refugees. (The concern here goes beyond ‘mandate creep’ of an international organization: refugee norms are understood as binding; thus the inclusion of climate change-related migration in the Refugee Compact threatened to impose new obligations on States in a way that their inclusion in the Migration Compact does not.)
The results here on internal displacement and on climate change are unfortunate. More than two-thirds of the world’s displaced are IDPs and, in the future, it is highly likely that far more persons will be forced from their homes due to the impacts of climate change than to conflict. Indeed, there are already many more people displaced internally each year by disasters than by conflict. In saying almost nothing about the future, the Refugee Compact runs the risk of becoming a document about a present that will soon be the past.

CONCLUSION

Few expected that the Refugee Compact would solve the many profound challenges facing the international system of refugee protection. The international and domestic political contexts preordained a compact that could, at best, prevent backtracking, affirm reform efforts already underway, and perhaps plant some seeds that could grow in better times. In this, UNHCR has been largely successful.

But the big problems have gone largely unaddressed. Even though States generally permit those forced to flee to find safety elsewhere, tens of millions of forcibly displaced persons remain in situations of legal, social, and economic limbo. The system established in the 1950s is no longer able to respond effectively to and resolve refugee situations of the 21st century.

Despite the limited reach and scope of the Refugee Compact, it can, I believe, serve as a springboard for meaningful action on a range of issues. UNHCR needs to ensure that Support Platforms are in fact convened and that they adopt appropriate, robust solutions programmes. The Refugee Compact does not restrict States to the ‘traditional three’ solutions of repatriation, resettlement, and local integration. The Support Platforms should be able to experiment with other modalities, such as enhanced regional mobility for refugees seeking to move to locations where they can best pursue self-sufficiency.

If several situation-specific Platforms are formed – with many of the same stakeholders participating in each – it would be advisable to establish a global platform that could provide overall direction, develop ways of working that could be applied in a variety of settings, and expand the number of participating States and organizations.

The Refugee Compact and the Migration Compact will need to be read together to develop approaches for climate change-related migration. Sudden-onset disasters produce forced migrants for whom legal norms and institutions will need to be established. They would come within the language of the Refugee Compact that calls on

---


3 The New York Declaration takes a comprehensive view of the causes of migration: ‘Since earliest times, humanity has been on the move. Some people move in search of new economic opportunities and horizons. Others move to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations and abuses. Still others do so in response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change), or other environmental factors. Many move, indeed, for a combination of these reasons’ (para 1, emphasis added). As the Declaration is the source of the Compacts, it can serve as an interpretive guide to the overall project that the Compacts are pursuing.
States to enable ‘all those in need of international protection to find and enjoy it’ (para 61). Movement triggered by the impacts of climate change should be understood as a migration issue, with States opening up paths of managed legal immigration as an adaptation strategy.

The absence of commitments regarding IDPs remains the most troubling gap in the Global Compacts. But here, the New York Declaration can be mobilized for action. It notes ‘the need for reflection on effective strategies to ensure adequate protection and assistance for internally displaced persons and to prevent and reduce such displacement’ (para 20). Whether or not the Refugee Compact and the Migration Compact include specific language on IDPs, the Declaration states the duly registered will of the UN General Assembly. Consistent with that would be the establishment of a UN process for consideration of the plight and needs of more than 40 million displaced persons.