The Global Compacts on Refugees and Migration: A New Era for International Protection?

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2018 will go down in history as a significant year for the protection of refugees and migrants – at least on paper. The adoption of two new instruments on people movement – the Global Compact on Refugees (Refugee Compact) and the Global Compact for Safe, Orderly and Regular Migration (Migration Compact) – signals new moral and political undertakings by the world’s governments. They promise to respect the human rights of people on the move, to provide the conditions for them to live in safety and with dignity, and to empower them to enrich the societies in which they live. Such undertakings reaffirm the essence of the Universal Declaration of Human Rights, adopted 70 years ago.

However, in the current global political environment, such commitments could not be taken for granted. Indeed, this was also the year that saw the ongoing but escalating exodus of Venezuelans, fleeing for a combination of economic, social, political, and humanitarian reasons. Algeria deported thousands of migrants to inhuman conditions, often without examining their legal status or individual circumstances. Over 700,000 Rohingya refugees who fled violence in Myanmar remained in precarious conditions in Bangladesh, in dire need of humanitarian assistance and durable protection. Hungary enacted unprecedented legislation allowing the imprisonment of anyone assisting undocumented migrants, refugees, or asylum seekers. In traumatic scenes, the United States separated more than 2,300 children from their parents as they sought to enter from Mexico. Later, the United States confronted asylum seekers at the border with

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1 Global Compact on Refugees, UN doc A/73/12 (Part II) (2 August 2018); Global Compact for Safe, Orderly and Regular Migration, UN doc A/RES/73/195 (19 December 2018).
more troops than it had deployed to fight ISIS in Syria. Meanwhile, Italy closed its ports to boats rescuing asylum seekers and migrants in the Mediterranean, while some refugees clocked up more than five years on Manus Island and Nauru, stuck in limbo as part of Australia’s offshore processing policy. As the Assistant High Commissioner for Protection told the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR) this year: ‘We are facing a watershed moment where two sets of values have emerged in two distinct modes of discourse. It is difficult to reconcile how the positive developments of the past year have occurred alongside the seemingly endless volley of assaults on refugees’.

This backdrop makes it all the more remarkable that any agreements were reached at all, let alone ones that reinforce the importance of existing international legal principles and recognize the positive contributions of refugees and migrants to our societies. It of course also accounts for some of the restrained language and notable omissions from the texts. It is most unfortunate that a number of countries decided not to endorse the Migration Compact, including two countries built on immigration – the United States and Australia. This myopic and inward-looking response panders to xenophobia rather than the obvious need to manage migration in a more cooperative, orderly, and humane manner.

Both Global Compacts were intended to build consensus on principles and practices to improve international cooperation on and management of human mobility, albeit within a framework that expressly recognizes ‘the primary responsibility and sovereignty of States’ (Refugee Compact, para 33; Migration Compact, paras 7, 15). They grew out of the 2016 New York Declaration for Refugees and Migrants in which States:

- expressed profound solidarity with those who are forced to flee;
- reaffirmed their obligations to fully respect the human rights of refugees and migrants;
- pledged their robust support to those countries affected by large movements of refugees and migrants;
- underlined the centrality of international cooperation to the refugee protection regime;
- recognized the burdens that large movements of refugees place on national resources, especially in the case of developing countries; and
- agreed to work towards the adoption of a Global Compact on Refugees and a Global Compact for Safe, Orderly and Regular Migration.

The Refugee Compact is focused on enhancing more predictable and equitable responsibility sharing when it comes to large-scale refugee movements and protracted displacement. It seeks to prevent displacement where possible, respond more effectively when people are displaced, and find solutions for those who need protection (including by supporting conditions for return, and expanding access to resettlement and other protection pathways). In doing so, it seeks to: ‘(i) ease pressures on host countries; (ii) enhance refugee self-reliance; (iii) expand access to third country solutions; and (iv) support conditions in countries of origin for return in safety and dignity’ (para 7). Its emphasis is on large-scale refugee movements and protracted displacement. As a meaningful set of common undertakings, representing ‘the political will and ambition of the
international community’ (para 4), UNHCR believes that the Refugee Compact has the potential to make a real difference in the lives of refugees and their host communities, marking ‘an evolution in governance’ of refugee protection. If it can fulfil these objectives, it will be a game changer.

Whereas the Migration Compact was drafted by States, the drafting of the Refugee Compact was led by UNHCR. However, it was still constrained by what States would agree to. UNHCR was therefore involved in a very delicate balancing act in discerning where it could push, and where it could not. As the Assistant High Commissioner for Protection explained, it was ‘a question of strategy … [and] a conscious decision not to put up for discussion what is already international law and policy, which is why you see a fairly cautious approach on that’. In that sense, the Refugee Compact was building on a longstanding body of international law, not starting from scratch.

By contrast, the Migration Compact is in many ways the beginning for the global regulation of migration, ‘offering a 360-degree vision’ (para 11). While it also draws on existing human rights norms and other legal principles, it is the first time that the world has adopted a comprehensive agreement on migration generally. It is therefore framed as ‘a milestone in the history of the global dialogue and international cooperation on migration’ (preambular para 6). It aims to foster ‘international cooperation among all relevant actors on migration, acknowledging that no State can address migration alone’ (para 8), and seeks to build consensus on principles and practices to improve migration management and the rights of migrants. It calls for migration policies based on data and evidence, and points to the need to minimize the adverse drivers and structural factors that force people to leave their homes in the first place. The Migration Compact affirms the importance of saving lives and establishing coordinated international efforts on missing migrants, and the need to strengthen the transnational response to people smuggling and trafficking. It underscores the need to manage borders in an integrated, secure, and coordinated manner, ensuring that migrants have proof of legal identity and adequate documentation, and that there are appropriate screening mechanisms in place. It addresses the importance of cooperation in the return and readmission of those who do not need international protection, or who do not have any other legal basis to enter and remain. It affirms that migrants should not be discriminated against, and that they should be able to access basic services and have decent work conditions. It encourages the use of flexible pathways for regular migration and recommends the mutual recognition of skills and qualifications.

Importantly, both Compacts contain concrete frameworks for action to which States can be held to account, at least politically, through new formal review mechanisms. In the case of the Refugee Compact, there will be a Global Refugee Forum every four years (from 2019) at the Ministerial level, to announce concrete pledges and contributions towards the Refugee Compact’s objectives and to consider opportunities for enhancing responsibility sharing (paras 17, 103). There will also be an interim high-level officials’

meeting every two years (from 2021), and new indicators to measure success towards the achievement of the Refugee Compact’s four objectives (paras 19, 102, 104).

Progress on the implementation of the Migration Compact will be discussed in a four-yearly International Migration Review Forum (from 2022). A United Nations network on migration will work to ensure effective and coherent system-wide support to implementation, follow-up, and review (paras 45, 49).

On paper, these are all positive steps. Their practical effect will take much longer to ascertain. Neither Compact is a treaty nor creates any new legal obligations. The big question, therefore, is whether States will give effect to them so that they are able to create real change on the ground. As the Migration Compact acknowledges, ‘[o]ur success rests on the mutual trust, determination and solidarity of States to fulfil the objectives and commitments contained in this Global Compact. … It is with this sense of common purpose that we take this historic step, fully aware that the Global Compact … is a milestone, but not the end to our efforts’ (para 14).

This special issue of the *International Journal of Refugee Law* has been created to mark the adoption of the two Global Compacts. In contrast to our regular issues, it is comprised of shorter, commentary-style pieces rather than longer, peer-reviewed academic articles. We have sought to incorporate a wide range of views from different regions and disciplines, including institutional perspectives from UNHCR and the International Organization for Migration (IOM). The aim is to capture experts’ impressions of, concerns about, and aspirations for the Global Compacts at the moment when they are adopted, signalling an historic point of inflection – or at least reflection – for the international protection regime.