



Australia's
Global
University

POLICY BRIEF 6

Making the Global Compacts work: What future for refugees and migrants?

T. Alexander Aleinikoff and Susan Martin
April 2018

THE
NEW
SCHOOL

ZOLBERG INSTITUTE ON
MIGRATION AND MOBILITY



Kaldor Centre for
International
Refugee Law

About the authors

T. Alexander Aleinikoff is University Professor and Director of the Zolberg Institute on Migration and Mobility at The New School. Prof. Aleinikoff has written widely in the areas of immigration and refugee law and policy, transnational law, citizenship, race, and constitutional law. He served as United Nations Deputy High Commissioner for Refugees (2010-15) and was a professor at Georgetown University Law Center, where he also served as Dean and Executive Vice President of Georgetown University. He was co-chair of the Immigration Task Force for President Barack Obama's transition team in 2008. From 1994 to 1997, he served as general counsel, and then executive associate commissioner for programs, at the Immigration and Naturalization Service. He taught at the University of Michigan Law School from 1981 to 1997. He received a JD from Yale Law School and a BA from Swarthmore College. He was inducted into the American Academy of Arts and Sciences in 2014.

Susan Martin is the Donald G. Herzberg Professor Emerita in the School of Foreign Service at Georgetown University. She is also the Blanche, Edith and Irving Laurie New Jersey Chair in Women's Studies at Douglass Residential College, Rutgers University. She previously served as the Director of Georgetown's Institute for the Study of International Migration. She currently chairs the Thematic Working Group on Environmental Change and Migration for the Knowledge Partnership in Migration and Development (KNOMAD) at the World Bank. Previously, Dr Martin served as the Executive Director of the US Commission on Immigration Reform; Director of Research and Policy Studies at the Refugee Policy Group; and Research Director at the US Select Commission on Immigration and Refugee Policy. She received her BA in History from Douglass College and her MA and PhD in the History of American Civilization from the University of Pennsylvania.

The Andrew & Renata Kaldor Centre for International Refugee Law

The Andrew & Renata Kaldor Centre for International Refugee Law is the world's first research centre dedicated to the study of international refugee law. Through high-quality research feeding into public policy debate and legislative reform, the Centre brings a principled, human rights-based approach to refugee law and forced migration in Australia, the Asia-Pacific region, and globally.

The Zolberg Institute on Migration and Mobility

The Zolberg Institute on Migration and Mobility at The New School supports critical and applied scholarship on issues of migration and mobility, and fosters opportunities for meaningful action. The Institute is a preeminent space for leading academics, practitioners and policymakers to reframe the discussion of migration and mobility, and the impact it has on human rights, economics, borders, and mobility.

The Policy Brief Series

The Policy Brief series showcases high quality, policy-relevant research on issues relating to forced migration and international refugee law. The views expressed in the Policy Brief represent those of the author and not the Andrew & Renata Kaldor Centre for International Refugee Law.

Policy Briefs are available online at www.kaldorcentre.unsw.edu.au/publications.

ISSN: 2205-9733 (Print)

ISSN: 2205-9741 (Online)

Contents

Executive summary	1
1 Background to the Global Compacts	4
2 Modalities for drafting the Global Compacts.....	5
2.1 Modalities for drafting the Global Compact on Refugees (GCR).....	5
2.2 Modalities for drafting the Global Compact on Safe, Orderly and Regular Migration (GCM).....	6
3 The Global Compact on Refugees	7
3.1 The draft GCR.....	7
3.1.1 The Comprehensive Refugee Response Framework (CRRF)	8
3.1.2 The Programme of Action	8
3.2 Recommendations for the GCR	11
4 Global Compact on Migration.....	14
4.1 The draft GCM	14
4.1.1 Vision and principles	14
4.1.2 Objectives and actionable commitments	15
4.1.3 Implementation and review processes	20
4.2 Recommendations for the GCM.....	21
5 Conclusions	24
Endnotes	29

Executive summary

In September 2016, a High-Level Meeting on Large Movements of Refugees and Migrants (HLM) in New York City yielded a commitment by States to develop and adopt two Global Compacts: the Global Compact on Refugees (GCR) and the Global Compact on Safe, Orderly and Regular Migration (GCM). Though both Compacts are intended to be non-legally binding, they each articulate States' common understandings and commitments to addressing challenges and the need for cooperation in the management of large-scale flows of refugees and migrants. At the time of writing, zero drafts of both Compacts have been revised following early discussions, but consultations and negotiations remain ongoing.

Key features of the draft Compacts

The aims of the GCR are: to improve burden- and responsibility-sharing for refugee protection among States; strengthen national protection systems and response capacities worldwide; enhance social and economic conditions for refugees and host communities; and resolve protracted situations of displacement through the achievement of durable solutions. To achieve these aims, the GCR proposes several new structures for international cooperation, including the convening of global refugee summits and the establishment of a Global Support Platform. It also endorses, albeit in a limited way, increasing the scope of international protection to include persons other than refugees who are without the protection of their own country. These would be welcome contributions to the international protection of refugees. However, other challenges remain. This policy brief provides a number of additional recommendations for how the GCR could further strengthen the rights of refugees and others in need of international protection. These relate to enhancing access to asylum, expanding opportunities for durable solutions, increasing funding and accountability, and ensuring the full participation of refugees in relevant processes.

The chief aim of the GCM is to express the collective commitment of States to improving cooperation on international migration. The current draft of the GCM expresses the intention that it be people-centred, build on human rights and sustainable development principles, and promote whole-of-society and whole-of-government approaches to migration. To achieve these goals, the GCM sets out 22 objectives, which could be usefully grouped into six main areas. These are: improvement of data and information; mechanisms to address the drivers of migration; measures to protect migrant rights; avenues of regular migration; steps to curtail irregular migration and provide border security; and options to encourage (re)integration of migrants and promotion of development. This policy brief provides our recommendations for how the GCM could be further improved. This includes through: better protection for persons fleeing life-threatening situations; expanding pathways to legal admission for migrants; defining more precisely the term 'vulnerable migrants'; and strengthening monitoring and accountability processes. This policy brief also identifies gaps and overlaps between the two Compacts, particularly with regard to internal movements of people and situations involving mixed migration flows.

We are cautiously optimistic about the future prospects of both the GCR and GCM. In their present forms, both Compacts have the potential to improve the lives of migrants and the

capacities of States. If States maintain the commitments already made, and strengthen the Compacts in the ways recommended herein, they will have beneficial consequences in practice. Political leadership will be needed, however, to ensure that States follow through on their commitments and continue moving forward in strengthening their own capacities and those of the UN system to protect and find solutions for refugees, while also ensuring effective pathways for safe, orderly and regular migration.

Summary of recommendations

The Global Compact on Refugees (GCR) should:

- expressly reference rights beyond those set out in the 1951 Refugee Convention, including rights accepted by States under the International Covenants on Civil and Political Rights (ICCPR) and Economic, Social and Cultural Rights (ICESCR), as well as those rights which are essential to refugees' well-being and their ability to achieve self-reliance;
- expressly recognise the right of every person to seek asylum, as prescribed in the Universal Declaration of Human Rights;
- include targets relating to health and education, work opportunities, inclusion of refugees, and achievement of durable solutions, as well as expressing the need for enhanced funding;
- expand its approach to accountability of all stakeholders to refugees, including that of States;
- recognise and take into account the broader macro-economic policies which may have an impact on the capacities of host-States and communities to promote refugee protection;
- adopt stronger language in favour of refugee inclusion and participation, particularly with respect to women and youth;
- recognise more fully the international protection needs of groups other than refugees, including by adopting relevant language from the draft GCM; and
- focus more specifically on protracted refugee situations, and call for concerted efforts to enhance refugee mobility as an alternative pathway to solutions.

The Global Compact on Migration (GCM) should:

- set out more clearly the purpose of the Compact and its foundational vision and principles;
- acknowledge the reality of migration to escape life-threatening situations, including natural disasters, climate change and various forms of violence;
- identify the drivers of migration more robustly, as well as the linkages between migration and development;

- acknowledge the relationship between international migration and internal migration and displacement, and make concrete recommendations on ways to improve protection and access to assistance and livelihood opportunities;
- recognise the importance of migration other than for employment, including for family reunification, education, trade and investment;
- define with more precision the class of ‘vulnerable migrants’, taking account of both socio-demographic and situational factors; and
- review and revise proposals for monitoring implementation, and make recommendations for oversight instruments and mechanisms that will ensure progress and implementation.

1 Background to the Global Compacts

In September 2016, a High-Level Meeting on Large Movements of Refugees and Migrants (HLM) was held in New York City to address the political, humanitarian, security and development challenges of large-scale flows of refugees and migrants. The result of the HLM was the *New York Declaration for Refugees and Migrants* (New York Declaration),¹ which was adopted by consensus at the HLM and promulgated in United Nations (UN) General Assembly Resolution 71/1, as a 'political declaration' and statement of purpose. A core feature of the New York Declaration was the commitment by States to develop two related Global Compacts: The Global Compact on Refugees (GCR) and the Global Compact on Safe, Orderly and Regular Migration (GCM).

The HLM was itself the result of numerous crises in 2014-15 that tested the capacity of governments to manage large-scale movements of people. The largest and most visible were the sea crossings of more than a million Syrian and other asylum seekers across the Mediterranean. Other large movements included the Rohingya crossing the Andaman Sea and the Straits of Malacca, and Central Americans transiting Mexico to enter the United States. At the same time, the world's displaced population – refugees and internally displaced persons – reached new heights, partly because of new crises but mostly because there were few solutions for the tens of millions who were in protracted displacement situations.

The HLM attempted to address a wide range of issues identified in both immediate crises and situations of long-term displacement. In preparation for the HLM, the UN Secretary-General issued a report, *In Safety and Dignity*, proposing that the HLM should adopt an already drafted Global Compact on Responsibility-Sharing for Refugees, and commence work towards negotiation of a Global Compact for Safe, Orderly and Regular Migration, to be adopted in 2018.² The existing draft of the Refugee Compact consisted of the Comprehensive Refugee Response Framework (CRRF), which was drafted by the UN High Commissioner for Refugees (UNHCR) and annexed to the Secretary-General's report. No such work had been done in relation to migrants, meaning that additional efforts would be required beyond the HLM itself. Some States expressed concern about the imbalance in treatment of the two groups, and the decision was made to defer the adoption of both Compacts to 2018.

The New York Declaration expresses the objectives of the two Compacts. It states that the objective of the GCR is 'to ease pressures on the host countries involved, to enhance refugee self-reliance, to expand access to third-country solutions and to support conditions in countries of origin for return in safety and dignity'.³ The GCM aims to 'set out a range of principles, commitments and understandings among Member States regarding international migration in all its dimensions'.⁴

While both Compacts are aimed at improving international cooperation in addressing the movements of migrants and refugees, the purposes of the Compacts differ in essential ways. The GCR is to promote responsibility-sharing for refugees and host countries in order to prevent where possible, respond more effectively, and find solutions for those who require international protection and assistance. It builds upon and is to be consistent with

existing international refugee law and broader human rights law. The GCM is part of a process, underway for several years, to build greater consensus around a set of principles and practices that will improve management of migration and protection of the rights of migrants. It is also meant to contribute to global governance ‘by presenting a framework for comprehensive international cooperation on migrants and human mobility’.⁵

2 Modalities for drafting the Global Compacts

The New York Declaration established two quite different processes for drafting the two Global Compacts. UNHCR was assigned responsibility for the GCR, in consultation with ‘all relevant stakeholders’. The GCM, in contrast, was to be developed through a state-led negotiated process. These contrasting strategies reflect the differing nature of the two Compacts. The GCR would incorporate the CRRF which, as noted above, had already been drafted by UNHCR. Since the CRRF was developed primarily as an operational plan for a more comprehensive and coordinated response to refugee situations, it made sense to ask UNHCR to continue with the drafting of the GCR. The GCM was aimed at a broader set of issues: its goal, in the words of one of the state co-facilitators, was to create a ‘migration ecosystem’ in the international sphere. Unlike refugees, for whom such an ecosystem had already been established (in the 1950s, with the adoption of the 1951 Refugee Convention and the creation of UNHCR), in the field of migration, the GCM would represent the first significant attempt at an overall international approach to migration. The GCM therefore called for a state-led process that would identify fundamental principles and specific areas for policy development, not improvement in operations.

As a technical matter, the GCR will be included in the High Commissioner’s report to the UN General Assembly in 2018, and considered in conjunction with the General Assembly’s annual resolution approving UNHCR’s program for the following year.⁶ Initially, the GCM was also to be adopted in conjunction with the annual meeting of the General Assembly, but instead, it will be adopted at a special summit meeting in Morocco, to be held in December 2018.

2.1 Modalities for drafting the Global Compact on Refugees (GCR)

As noted above, the central focus of the GCR, according to the New York Declaration, was to be the CRRF. The Declaration instructed UNHCR to establish pilot CRRF projects in a number of countries and then consult with stakeholders about lessons learned from the pilots in order to refine the approach over a two-year period.

Not long after the New York Declaration was issued, UNHCR announced a ‘roadmap’ for the drafting of the GCR.⁷ The stated goal of the roadmap was to provide a process for consultations with States and other interested parties on the content of the Compact. The roadmap also served the purpose of getting ahead of anticipated demands from States that the GCR be a negotiated document. From UNHCR’s perspective, the New York Declaration put the agency in the driver’s seat in drafting the GCR, which did not require a State-based negotiation (like the GCM). In 2017, UNHCR held thematic discussions and a ‘joint

stocktaking' exercise in which States and others participated. Six formal consultations in Geneva have been slated to take place from February to July 2018.⁸ The consultations provide significant room for input from all stakeholders, while leaving UNHCR with the primary responsibility for producing the GCR.

The 'zero draft' of the GCR was released on 31 January 2018,⁹ Following the first consultation with States (in February), draft one of the GCR was published on 9 March 2018. It will be followed by one or more additional drafts before a final draft is completed in mid-2018.

2.2 Modalities for drafting the Global Compact on Safe, Orderly and Regular Migration (GCM)

The modalities for negotiation of the GCM were agreed upon in Resolution 71/280, adopted by the UN General Assembly on 6 April 2017.¹⁰ The Resolution requested the President of the General Assembly to appoint two co-facilitators to lead the intergovernmental process; Mexico and Switzerland were subsequently appointed. Both countries had previously hosted the Global Forum on Migration and Development (GFMD). The Secretariat of the UN and the International Organization for Migration (IOM) were vested with joint responsibility for assisting the co-facilitators.

Resolution 71/280 also called on the UN Secretary-General to name a Secretary-General of the intergovernmental conference for the GCM's adoption, to be held in 2018. Louise Arbour, the Special Representative of the Secretary-General on International Migration, was appointed to this post.

The modalities for the GCM called for involvement of a broad range of stakeholders and experts in the deliberations. The negotiations themselves were to be open, transparent and inclusive in order to promote and strengthen the ownership of the Member States in the final product.

The modalities identified three phases for the development of the GCM. The first phase was preparatory. Actions taken during the first phase informed States' understandings of the issues to be addressed in the GCM, particularly through informal thematic sessions on specific issues, such as the rights of migrants, drivers of migration, irregular migration, legal pathways, and contributions of migrants towards development. In addition, consultations took place, generally in coordination with existing consultative bodies, such as the GFMD, regional migration conferences and the UN regional economic commissions.

The second phase was stocktaking. A conference in Mexico in December 2017 reviewed the evidence presented during the first phase and discussed the implications for drafting the GCM. On 12 December 2017, the Secretary-General produced a report, entitled *Making Migration Work for All*, with findings and recommendations. The report called on States to 'maximize the benefits of migration rather than obsess about minimizing risks'.¹¹ It then set out the main areas for international cooperation, focusing on protecting the rights of migrants, strengthening the rule of law by expanding pathways to legal admission,

addressing legitimate security concerns, and addressing the reasons migrants move out of desperation rather than choice.

The final stage of the process set out in the modalities for the GCM was negotiation, during which States would review drafts of the GCM presented by the co-facilitators. Negotiations would take place monthly, beginning in February 2018 and continuing through to July 2018. These timelines were set when it appeared that the GCM would be adopted in conjunction with the GCR at the annual meeting of the UN General Assembly, presumably in September 2018. Although the anticipated adoption has since been delayed until December, as yet no steps have been taken to adjust the negotiation timeline. The negotiations are all intended to take place at the New York headquarters of the UN. This has presented some tensions because governments' missions to the UN in New York are not as familiar with migration issues as those in Geneva, where the principal agencies focused on migration are located.

3 The Global Compact on Refugees

3.1 The draft GCR

UNHCR had initially hoped that the New York Declaration would include the GCR, which, at that time, primarily consisted of the CRRF. To our minds, the failure to adopt the GCR in 2016 has had positive consequences.

First, despite the profound challenges facing the international refugee regime, the CRRF breaks little new ground. As we describe below, it essentially calls for an operational model that humanitarian and development agencies had already largely adopted. Second, the two-year drafting process established by the New York Declaration permitted programmatic reforms to be included in the GCR that go beyond the CRRF. This was accomplished through UNHCR's decision to include in the GCR both the existing CRRF and a new Programme of Action. As the GCR process has moved forward, UNHCR has focused nearly all of its attention on the Programme of Action.

Draft one of the GCR was issued on 9 March 2018. The text of the draft sets out the GCR's four major goals. These are:

- (1) an improved system of burden- and responsibility-sharing, measured in terms of the distribution of contributions among States – and, where relevant, other stakeholders – including through the hosting of refugees, making financial contributions, and providing solutions;
- (2) strengthened national protection systems and response capacities worldwide that safeguard the rights of refugees;

- (3) enhanced socio-economic conditions for refugees and host communities, notably women and girls, measured against the 2030 Agenda for Sustainable Development ('the 2030 Agenda'); and
- (4) greater efforts to resolve protracted situations, measured by a reduction in the number of refugees who live in such situations through the achievement of durable solutions.¹²

As noted above, the GCR includes both the pre-existing CRRF, and the new Programme of Action.

3.1.1 The Comprehensive Refugee Response Framework (CRRF)

The CRRF is directly incorporated into Part II of the draft GCR.¹³ According to UNHCR, there is no need to repeat the language of the CRRF, because UN Member States agreed to it when they adopted the New York Declaration. This decision by UNHCR essentially takes revision of the CRRF off the table.

The CRRF itself spells out four main areas of focus, which overlap with the overall goals of the GCR.¹⁴ The first is policies and practices for refugee reception and admission, including measures for identifying persons in need of international protection as refugees, and for identifying and meeting their immediate needs. The second is support for immediate and ongoing needs, with resources to be provided in a prompt and predictable manner and at an adequate level to meet needs of refugees and hosting communities, supported by joint planning of humanitarian and development actors. The third area of focus is support for host countries and communities and incorporation of the CRRF into national development planning, with additional financing, and without prejudice to official development assistance. Finally, the CRRF focuses on the promotion of durable solutions, including complementary pathways for admission and local solutions such as legal stay arrangements and efforts to foster refugee self-reliance.

3.1.2 The Programme of Action

The Programme of Action is set out in Part III of the draft GCR. It is divided into two main sub-parts.

Part A of the Programme of Action addresses 'mechanisms to achieve more equitable and predictable burden- and responsibility-sharing'.¹⁵ For many years, a central challenge facing the international refugee regime has been the lack of a well-structured system for responsibility-sharing among States. The result is that the vast majority of refugees reside in countries in the global South, with few opportunities to move beyond countries of first asylum. As the drafting of the GCR has proceeded, UNHCR has put more emphasis on this aspect of it, which in fact represents the major innovation of the draft GCR. Part B sets out 'specific areas requiring concrete and mutually reinforcing contributions to be made in support of host States, and countries of origin where appropriate, by other States and relevant stakeholders'.¹⁶

The Programme of Action includes several new elements, not specifically referenced in the CRRF. These new elements further the goals of the New York Declaration, support the development and implementation of a comprehensive response to refugee situations, and address a number of important related issues. This is appropriate given that both the New York Declaration and draft GCR cover the entire scope of refugee response, from reception to solutions.

These new elements include:

- recommendations for group-based recognition of refugee status in large-scale movements;¹⁷
- establishment of an asylum capacity support group;¹⁸
- delivery of assistance through local and national service providers where possible (instead of establishing parallel systems for refugees from which host communities do not benefit over time);¹⁹
- negotiation of preferential trade arrangements and access to global supply chains;²⁰
- promotion of internet connectivity and access to new technologies;²¹
- preference for alternatives to refugee camps;²²
- support for renewable energy and sustainable development for refugee hosting States.²³

In addition, the Programme of Action contributes significantly to developing two key areas of refugee protection that are critical to meeting the current challenges facing the international refugee regime. These are: equitable and predictable responsibility-sharing among States, and broadening the scope of international protection.

Toward more equitable and predictable responsibility-sharing

The Programme of Action set out in the draft GCR proposes several new structures for international cooperation. The first is the convening of **global refugee summits** at which participating States would pledge financial, material and technical assistance, resettlement places and other pathways for admission, and, where appropriate, support for countries of origin working toward voluntary repatriation arrangements. The draft GCR calls for the first summit to be held in 2019 with subsequent summits every three years after 2021.²⁴

A second innovation is the creation of a **Global Support Platform**, which would be ‘activated’ for specific refugee situations and whose membership would vary depending on the context. The Platform would be ‘dedicated actively to providing and mobilizing more equitable and predictable burden- and responsibility-sharing through concrete financial, material and other contributions’, to assist in the search for solutions, and to support development of country or regional compacts. Pledges made at the global refugee summits could be relied upon for ‘pre-determining’ contributions to the Platform of participating States and other actors. The High Commissioner would trigger the Platform for a particular situation, and UNHCR would support the Platform’s work.²⁵

Third, the Global Support Platform could organise **solidarity conferences** whose goal would be to broaden the number of States and other organisations participating in the Platform.²⁶

The draft GCR also recognises the responsibility-sharing role of actors other than States. For example, the enhanced role of development actors is recognised throughout the draft GCR as vital to improving responsibility-sharing and effective implementation of comprehensive response plans. Importantly, development actors are called upon to provide support to refugees and hosting communities ‘over and above’ regular development programming.²⁷ States would also commit to examining opportunities for private sector investment that would benefit hosting communities and support job creation. Specifically, States and other stakeholders (such as international financial institutions) could assist in searching out investments that are commercially viable and supporting ‘de-risking’ arrangements for such investments.²⁸

Refugee hosting States have regularly called for a greater appreciation of the burdens they assume in welcoming and sustaining refugees within their borders, and they have sought quantification of their efforts in a way that can be compared with the financial support offered by donor States. The draft GCR responds to this concern by requesting UNHCR to work with international and local partners to measure the cost and impact of hosting refugees ‘with a view to assessing gaps in international cooperation and to promoting burden- and responsibility-sharing that is more equitable, predictable and sustainable’.²⁹

Taken together, these measures could move the international system of refugee protection and assistance forward in a significant way. For the first time since adoption of the 1951 Refugee Convention, international structures would be established to bring States together on a regular basis with the express goal of enhancing international responsibility-sharing. Equally important is the recognition that comprehensive refugee responses and solutions to protracted situations cannot be accomplished through the work of humanitarian organisations alone; the new role for development actors in displacement is a game-changer.

A broader scope for international protection

The definition of a ‘refugee’ in the 1951 Refugee Convention specifies a particular sub-set of forced migrants – that is, those targeted for persecution on certain specified grounds – who benefit from the Convention’s provisions. This definition has been read in an ‘evolutive’ manner, and today is understood to extend protection to a wide range of individuals and groups who are targeted by governments and other actors. In addition, the UN General Assembly, UNHCR and several regional refugee protection instruments have recognised that those who flee more generalised and indiscriminate conflict and violence across an international border are also entitled to international protection, whether as refugees or under some form of ‘subsidiary protection’ regime.

Beyond these categories are other forcibly displaced persons who are not understood as coming within the Refugee Convention or other established forms of international protection. These include persons who are fleeing natural disasters, the effects of climate

change, droughts and other emergencies, and persons who are displaced within their countries of origin. While there appears to be little appetite for including internally displaced persons (IDPs) in either the GCR or GCM, both draft Compacts refer to the broader category of forced migrants. The draft GCR states in important, even if somewhat cryptic, terms that:

The 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.³⁰

This language would cover persons forced over borders due to natural disasters and other environmental events – although it does not purport to confer upon them refugee status, nor guarantee them the rights set out in the Refugee Convention. Essentially, then, it supplies a basis for international organisations to treat such persons as ‘of concern’ and to provide them international protection; it would also support actions of States in this regard.

A subsequent paragraph in the draft GCR further requests UNHCR to provide ‘guidance and support’ to address broader international protection challenges, including ‘measures to protect those displaced by natural disasters... as well as practices such as temporary protection, humanitarian stay arrangements, and complementary or subsidiary protection’.³¹

Here, again, the draft GCR is treading cautiously in identifying a broader scope for international protection. Indeed, similar language in the ‘zero draft’ was more capacious; it called upon UNHCR to provide advice on measures to protect ‘those displaced by natural disasters *and climate change*’.³² The reference to climate change has been deleted in draft one of the GCR. Nonetheless, the two provisions cited above on the scope of international protection are an important step forward.

3.2 Recommendations for the GCR

Rights

In contrast to the draft GCM, the draft GCR includes little specific language on refugee rights. Draft one of the GCR, in a number of places, recognises the importance of human rights, but there is no mention of rights that are particularly important to refugees and specifically guaranteed in international law. In addition to the 1951 Refugee Convention and the Universal Declaration of Human Rights (UDHR) – which find mention in the draft GCR – other human rights agreements and norms should be referenced, such as the International Covenants on Economic, Social, and Cultural Rights (ICESCR) and on Civil and Political Rights (ICCPR). Furthermore, the GCR ought to specifically cite rights that are vital to refugees’ well-being and their ability to achieve self-reliance. These would include the right to work, rights at work (including union and labour rights, rights to fair pay, equal treatment and against exploitation), freedom of movement to pursue economic and educational opportunities, and welfare rights. Rights to sexual and reproductive freedom for women also should receive particular mention.

Access to asylum

The draft GCR includes provisions on managing reception of refugees, registration, documentation and addressing persons with special needs (including children and victims of trafficking).³³ But it does not purport to guarantee access to territory where an asylum claim can be filed, nor does it take aim at deterrence measures that burden opportunities to request asylum (such as detention, relocation of asylum-seekers, and ‘push-backs’). Specific mention should be made of the right to seek asylum, as well as rejecting policies put in place to deny that right.

Targets

The draft GCR directs UNHCR to develop ‘a set of key indicators to monitor and evaluate progress and outcomes of the global compact’. Furthermore, it provides that the goal of enhancing social and economic conditions for refugees and host communities should be measured against the Sustainable Development Goals (SDGs). But it establishes few specific targets for any of the many programs and outcomes anticipated by the Compact. The final GCR should include targets relating to health and education, work opportunities and self-reliance, inclusion of refugees in social protection programs, solutions (including additional pathways to mobility), and enhanced funding (particularly from development actors). Some of these targets could be stated as collective goals of States and could be assigned to the Global Support Platform for action.

Accountability

Accountability is only lightly touched upon in the draft GCR. UNHCR is asked to provide, on an annual basis, ‘information on progress made’ in the GCR’s application, and Member States are not called upon to evaluate progress under the Compact until 2021.³⁴ The GCR should be amended to specify that accountability needs to be fostered in a number of different ways: accountability of all stakeholders to refugees; of donor States to agencies and hosting States; of international agencies to funders; of third countries to countries of asylum; and of all States to a system of robust responsibility-sharing. Monitoring processes should be specified for each of these forms of accountability.

Broader economic policies affecting hosting States

A core feature of the New York Declaration and the draft GCR is the recognition of the important role that development actors can and should play in responding to refugee situations. That role is described as providing financial assistance to hosting States for traditional development projects, supporting private sector investment, and facilitating access to banking and other financial services. States are also asked to include refugees in national development plans. But the draft does not mention broader international macro-economic policies that have an impact on the ability of hosting States to provide support to local communities and refugees, such as levels of debt and requirements that social spending be reduced as a prerequisite for loans from international financial institutions. Furthermore, offering loans to hosting States – even at low interest rates – may be unacceptable to States that view refugee protection and assistance as an international responsibility, not a function for which a state should increase its debt level. It is crucial that

the possibility of this lack of coherence be recognised in the final GCR and that mechanisms be established for ameliorating the burdens on those States that are shouldering most of the world's responsibility toward refugees.

Participation of refugees

The draft GCR includes a general call for States and other stakeholders to 'explore how best to include refugees, particularly women and youth, in key fora, institutions, and decision-making processes'.³⁵ This vague language should be augmented with specific initiatives to ensure the meaningful participation of refugees. For example, UNHCR could be requested to convene a global group of representatives of refugees; the UNHCR Executive Committee and Standing Committee could expressly include refugee representatives; and UNHCR could conduct annual surveys of refugees.

Beyond refugees to forced displacement

We have taken note of the draft GCR's declaration 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'. While this language is welcome, the draft GCM provides a more concrete recognition of the groups in need of protection. We recommend that the GCR adopt the more robust language of the GCM in this regard.³⁶

Mobility

The central challenge facing the international refugee regime is that the vast majority of refugees are locked into protracted refugee situations. This is the result of unresolved conflicts in their home States and a wholly inadequate number of opportunities to leave countries of first asylum and seek a better life elsewhere. States have largely ignored repeated calls for initiating and increasing resettlement programs; indeed the United States, traditionally the leading country of resettlement, has now reduced its resettlement numbers by more than half. In recent years, UNHCR has proposed alternate pathways for refugees to move to third countries, such as programs to open up opportunities to seek work, education or join family members. Enhancing mobility for refugees would be a significant step in reforming of the current system. It would reduce the burden on hosting States, contribute to responsibility-sharing and advance refugee self-reliance. We suggest that the GCR identify mobility as a goal and note that increased mobility could be accomplished through regional arrangements and programs initiated by States with particular affinities. It could further provide that the Secretary-General convene a working group to consider and propose ideas regarding appropriate documentation and strategies for enhancing mobility among States.

4 Global Compact on Migration

4.1 The draft GCM

On 5 February 2018, the co-facilitators of the GCM process, Their Excellencies Juan José Gómez Camacho, Permanent Representative of Mexico to the UN, and Jürg Lauber, Permanent Representative of Switzerland to the UN, issued the 'zero draft' to be used in negotiation of the GCM. After the first negotiating session, the co-facilitators issued a 'zero draft plus' with minor and generally non-substantive revisions. A revision on 26 March 2018 included more substantive changes. Quotes in this document are drawn from the March revision unless specifically referencing the zero draft.

The draft GCM has three principal components. The first component sets out the vision of the GCM and principles guiding its contents. The second, and by far the most detailed, component describes the objectives and actionable commitments of States in adopting the GCM, organised around 22 separately delineated objectives. The final component discusses implementation and a review process to ensure follow-up to the commitments.

4.1.1 Vision and principles

The preamble to the draft GCM sets out the aspirations and boundaries of the initiative:

This Global Compact presents a non-legally binding, cooperative framework that builds on the commitments agreed upon by Member States in the New York Declaration for Refugees and Migrants. It upholds the sovereignty of States and fosters international cooperation among all actors on migration, acknowledging that no State can address migration alone.³⁷

Then, the vision that permeates the draft GCM is set out in simple terms:

This Global Compact expresses our collective commitment to improving cooperation on international migration.³⁸

Although this statement seems almost oxymoronic in that it is the vision for a Global Compact negotiated within the framework of the UN, it is by no means self-evident that States would have reached this point in accepting the need for international cooperation in managing migration. Rather, several decades of fits and starts led to the conclusion articulated in the draft GCM: 'No country can address the challenges and opportunities of this global phenomenon on its own.'³⁹

Perhaps because of this political backdrop to the negotiations, the principles that undergird the GCM are not framed in normative terms; rather they are descriptive, often stating the realities that define the GCM process and outcomes.⁴⁰ This is not to say that the zero draft is devoid of normative principles or references to protection and rights. The preamble states that the GCM is based on the UN Charter, UDHR, core international human rights treaties, and a listing of other conventions and international agreements. Moreover, as discussed in the next section, the actionable commitments often are framed in rights-based terms.

Among the ten guiding principles set out in paragraph 14 of the draft GCM, three attempt to humanise the endeavour using terms such as people-centred, gender-responsive and child sensitive. Two principles link the GCM to other related transnational agendas – human rights and sustainable development – that seek to protect and provide opportunities to migrants. In two other principles, international cooperation and national sovereignty are juxtaposed, in effect arguing that national sovereignty is paramount but international cooperation is necessary for effective national responses. Buttressing this approach, a further principle emphasises the rule of law, reminding readers that entities and persons ‘are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international law and standards’.⁴¹ The final two principles call for whole-of-government and whole-of-society approaches that bring in a variety of perspectives, interests and expertise in the formulation of migration policies.

4.1.2 Objectives and actionable commitments

This section is the heart of the draft GCM and its most important contribution. It is organised around 22 objectives drawn from the New York Declaration’s listing of key issues to consider in the document. Since some of these objectives are closely connected (though not necessarily cross-referenced in the document), this analysis groups them into six sections to draw out the relationships. This grouping also reflects our concern that the GCM not become a laundry list of commitments, with no prioritisation or sense of importance. Providing a framework within which the commitments are presented may help to provide some structure to the endeavour.

The overall thrust of the draft GCM is to avert irregular and involuntary migration by addressing conditions that prevent people from achieving the SDGs; and ensure that migration that occurs does so in a safe, orderly and regular manner. To achieve these goals, the GCM focuses on the following main objectives:

- improvement of data and information;
- mechanisms to address the drivers of migration, with particular focus on those that lead to unsafe and disorderly movements;
- measures to protect the human rights of those on the move;
- avenues of regular migration;
- steps to curtail irregular migration and provide border security; and
- options to encourage (re)integration of migrants and promotion of development in destination and origin countries.

Data and information

The draft GCM’s commitments begin with a strong call for improvements in the collection and use of data. Actions to accomplish this objective include efforts as ambitious as harmonisation of methodologies for data collection through the elaboration of a comprehensive data strategy on migration, as well as more specific activities, such as increasing support, evidence and updated inputs to the Global Migration Data Portal. The

GCM urges States to include migration-related questions and modules in national censuses and surveys, as well as greater use of administrative data. A number of commentators have pointed out that data security and privacy concerns receive too little attention in the GCM given the serious consequences for citizens and migrants if their records are misused or stolen.⁴² The draft also focuses on the use to be made of the data collected, as well as other information. States would commit to pursuing policies that foster evidence-based decision-making⁴³ and dissemination of timely information to migrants, communities and States at all stages of migration.⁴⁴

Drivers of migration

The draft GCM focuses specifically on ways to ‘minimize the adverse drivers and structural factors that compel people to leave their country of origin’.⁴⁵ More specifically, it suggests that more conducive political, economic, social and environmental conditions for people would enable them to lead peaceful, productive and sustainable lives in their own country and ‘ensure that desperation and deteriorating environments do not compel them to seek a livelihood elsewhere’.⁴⁶ The draft GCM then outlines twelve ambitious actions to achieve this objective. They group into two categories. First are those that relate to under-development as a driver of migration, including operationalising the SDGs. Although highly desirable in their own right, as ways to address the ‘push’ factors causing people to migrate, these actions are unlikely to deter internal or international migration. Since the early 1990s, research has repeatedly shown that increasing development in countries of origin tends to increase mobility in the short- to medium-term as people gain the human, social and financial capital needed to move.⁴⁷ In fact, as stated elsewhere in the GCM, migration may very well spur development of home countries because of the financial and social remittances that migrants send to their families and home communities.

The remaining actions focus on minimising the effects of humanitarian crises that drive displacement. These actions will not likely eliminate displacement but they are designed to minimise the adverse effects on those who are forced to move and the communities into which they relocate. Referenced are: operationalising the Nansen Initiative *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change* (Protection Agenda) and Migrants in Countries in Crisis Initiative (MICIC) *Guidelines to Protection Migrants in Countries Experiencing Conflict or Natural Disaster*; promoting early warning and effective early responses to crises; improving collaboration between humanitarian and development actors; integrating displacement considerations into disaster preparedness; developing tailored programs, including planned relocation, to facilitate migration as an adaptation strategy to slow-onset environmental degradation; and other actions. The GCM will be groundbreaking if these commitments remain in the document. It will be the first time that States address in a collective manner crisis-driven displacement of people who are not formally refugees in the sense of international law but who are nevertheless escaping life-threatening situations that preclude immediate return. This is an area that deserves extended mention in the GCR as well.

Human rights of migrants

The human rights of migrants are addressed in numerous objectives in the draft GCM: objectives 4, 7, 8, 12, 14, and 15 are most specific in their focus on rights. Because these are scattered through the document, however, the draft does not provide a unified statement of commitment to protect the human rights of migrants. One has to read this commitment into the various objectives, some of which are indirect in framing the issues raised as rights-based ones. In a direct statement, States commit to ‘maintain or develop non-discriminatory policies in order to provide all migrants, regardless of their migration status, equal access to basic services necessary to exercise their human rights’.⁴⁸

The draft GCM includes specific commitments to labour rights, focusing on ensuring fair and ethical recruitment and protection of migrant workers’ rights.⁴⁹ It sets out the need to equalise treatment of migrant and other workers to reduce exploitation and abuse. Actions to achieve this commitment are familiar, including ratification of or accession to, and implementation of, all relevant international instruments related to international labour mobility.

Perhaps the most important and, in some respects, innovative part of the draft GCM is the emphasis on ensuring the human rights of vulnerable migrants.⁵⁰ States would commit ‘to protect and assist migrants, in accordance with our obligations under international human rights law, by responding to particular, multiple and intersecting forms of vulnerability arising from personal characteristics, the reasons for leaving their country of origin, the circumstances in which they travel or the conditions they face on arrival’.⁵¹ Some actions are preventive – for example, reviewing policies to determine if they may increase or exacerbate vulnerabilities – and others are responsive – for example, ensuring access to independent legal assistance and representation in legal proceedings that affect migrants.⁵²

The draft GCM focuses specifically on children as a vulnerable population, including a clear statement that the best interests of the child should be the primary consideration in any actions taken. Actions to protect children include the development of specialised procedures for their identification and care, and actions to ensure their rights to health, education, and to be heard in administrative and judicial proceedings, including by appointing a legal guardian. These are noted as ‘essential means to address their particular vulnerability and protect them from violence’.⁵³

The draft GCM gives particular attention to one of the most publicised and troubling realities in migration – the large number of migrants whose lives are lost in transit. In the draft, States would ‘commit to save lives and prevent migrant deaths and injuries through joint search and rescue operations, standardized collection and exchange of information’,⁵⁴ and ‘to identify those who have died or gone missing, and to facilitate communication with affected families’.⁵⁵ The actions address improvements in search and rescue operations, seeking to ensure that States refrain from pushbacks at land and sea borders, and enhance reception and assistance capacities. Importantly, the draft is clear in saying that ‘the provision of humanitarian assistance for migrants is never criminalized’.⁵⁶ The draft also references actions to alleviate the concerns of families about their missing relatives.⁵⁷

Regular migration

Although the GCM is about *safe, orderly and regular migration*, only objective 5 focuses specifically on mechanisms for, and aspects of, regular migration policies. Three types of regular migration are included: labour mobility, family reunification and humanitarian admissions. With regard to labour mobility, the draft calls for development of new human rights-based and gender-sensitive labour mobility model agreements for migrants at all skill levels. The actions reference many forms of mobility, ranging from free movement arrangements and visa liberalisation to temporary, seasonal, circular, and fast-track programs where there are labour shortages. The text also references flexible visa status conversions from one category to another. In a nod to the interests of major corporations, accelerated processes for companies with good track records of compliance are mentioned.⁵⁸

Family reunification admissions are addressed in one action item, compared to the multiple sub-paragraphs on labour mobility. The draft urges States to adopt policies to facilitate family reunification for migrants at all skills levels. It also lists a variety of bars to family reunification to be lifted, including income requirements, language pre-tests, length of stay, and type of status. It recommends that work authorisation and access to social security and services be provided to family members. Some of these provisions, such as elimination of income requirements, will face hurdles, as they are long-standing parts of family reunification policies.

Actions pertaining to humanitarian admissions are drawn largely from the Nansen Initiative Protection Agenda's compilation of effective practices already implemented by some States. The March draft of the GCM specifically references that States should:

build on existing national practices of providing protection and reception schemes... for migrants compelled to leave their countries of origin temporarily or permanently in cases when return is not possible, due to sudden-onset natural disasters, slow-onset environmental degradation, emergency situations, and serious violations of human rights, including by providing humanitarian visas, private sponsorships, access to education for children, and temporary work.⁵⁹

Notably they go beyond the situations covered in the Nansen Initiative Protection Agenda, which focused on natural disasters and other impacts of environmental change, to include other emergency and life-endangering situations.⁶⁰

Irregular migration and border management

Objectives 9-13 and part of objective 21 focus on reducing irregular migration, including through smuggling and trafficking operations, and ensuring secure and efficient border controls. The draft GCM attempts to balance protection of human rights, facilitation of regular migration, and assurance of security in the management of borders.⁶¹ Although there is a clear reference to national sovereignty, the draft emphasises the need for international cooperation. One action item includes development of technical cooperation agreements that would enable States to request and offer assets, equipment and other

technical assistance to strengthen border management, particularly in the area of search and rescue, and other emergency situations.⁶²

The draft GCM also sets out commitments to strengthen certainty and predictability in migration procedures.⁶³ Status determination procedures should be human rights-based and protection-sensitive in order to ensure adequate and timely referral and assistance for migrants. Although the zero draft of the GCM referenced the need to distinguish clearly between migrants and refugees, the March draft removes actions related to asylum and refugee status determination, as well as language pertaining to those displaced in the context of disasters and crisis.

The final objectives within this area focus on detention and return. The draft GCM seeks to ensure that States use detention only as a last resort and in a non-arbitrary, proportional manner.⁶⁴ Actions include monitoring conditions in detention, expanding the use of alternatives to detention, reviewing laws and policies to make sure that detention is used only for lawful and legitimate purposes, upholding the rights of detainees, and training government officials and private sector operators of detention centers in their responsibilities towards detainees. A final action item is to end the practice of child detention in the context of international migration and 'allow children to remain with their family members or legal guardians in non-custodial contexts, including community-based arrangements'.⁶⁵

Return is difficult for migrants and States alike, particularly when it is involuntary for migrants and disruptive for their home countries. The objectives regarding return and readmission include one of the clearest statements of international cooperation in the document. States would commit 'to cooperate for safe, human rights-based and dignified return and readmission, ensuring that our returning nationals are duly received, in accordance with the obligation of States to readmit their own nationals'.⁶⁶ Action items include enhancing cooperation in identifying nationality and issuing travel documents for return and readmission, and ensuring that decisions to mandate return are carried out by competent authorities and removal orders follow an individualised assessment of the circumstances that may weigh against the expulsion. Fostering capacity and institutional ties between countries of destination and origin to facilitate returns⁶⁷ is an important issue for many destination countries, including members of the European Union; the inclusion of these provisions may be essential for agreement to be reached on the GCM.

Migration, development and (re)integration

The last cluster of objectives relates to the interconnections between migration and development, including in the context of integration into destination communities and reintegration into home communities.⁶⁸ Objectives 16-22 focus either entirely or in part on these issues. This is not surprising since States have discussed these issues in the context of the UN HLMs as well as the GFMD. They also arose in the context of the negotiations over the SDGs. The draft GCM seeks empowerment of migrants and societies for full inclusion and social cohesion, elimination of all forms of discrimination, and investment in skills development and recognition. These are seen as prerequisites for effective integration of migrants into countries of destination.

Other sections focus on the relationships between migrants and their home countries. Objective 19, for example, seeks to benefit both source and destination countries by empowering migrants and diasporas. Remittances receive attention, with States committing, as they have done in other documents, to promote faster, safer and cheaper transfers. Effective reintegration of migrants into home countries is an important issue, and States would commit to creating conditions conducive for personal safety, economic empowerment, inclusion and social cohesion in communities. More specifically, the GCM promotes portability of social security entitlements and earned benefits upon return or when migrants work in another country.

4.1.3 Implementation and review processes

With regard to implementation, the draft GCM promotes establishment of ‘a capacity-building mechanism that allows Member States, the UN and other stakeholders, including the private sector and philanthropic foundations, to contribute technical, financial and human resources in order to strengthen capacities of national and subnational authorities on migration’.⁶⁹ The whole-of-society approach is described as key to effective implementation, with States to commit to cooperation and partnership with migrants, civil society, migrant and diaspora organisations, cities and local communities, the private sector, trade unions, parliamentarians, national human rights institutions, academia, and the media.

In the draft, States request the Secretary-General to improve capacities within the UN and carry out actions to ensure system-wide coherence and support Member States in the implementation of the objectives and actionable commitments. The draft further asks the Secretary-General to provide a ‘leading, coordinating and servicing’ role to IOM within the UN system in support of these objectives.

Although the commitments made in the GCM are non-binding, the draft describes a review process that would allow for sharing of experiences and measurement of progress in meeting the commitments made by States. Under the draft, the current UN High-Level Dialogue on International Migration and Development (High-Level Dialogue) would be repurposed and renamed the International Migration Review Forum, and become the principal vehicle for review of implementation. The Forum would take place every four years beginning in 2022 and issue a progress declaration. Each region would convene a Regional Migration Review Forum to inform the quadrennial international forum.

4.2 Recommendations for the GCM

Vision and structure

The draft GCM is quite comprehensive in its coverage of cross-border migration issues. It reads, however, as a laundry list of worthwhile objectives. What is primarily missing is a chapeau and structure that provides an overarching vision. The draft does not explicitly reiterate the commitments made in the New York Declaration. When the benefits of migration are discussed, they are largely in reference to contributions towards sustainable development, and sometimes cast migrants in highly instrumental terms. The cultural, social, artistic and other contributions of migrants and the benefits of diversity are not referenced at all.

In making their 22 commitments, it is not clear what States hope to achieve through the adoption of the GCM. Presumably, they are making commitments in the context of an international agreement because they believe that international cooperation in managing migration is preferable to today's system. Is the aim to move towards a more effective system of global governance (as mentioned in the New York Declaration), or to strengthen national and/or regional systems? Regardless of which level is intended, what form would an effective system take? What are the guiding principles and norms that should underlie migration management within a global, regional or national system? Even if a non-binding agreement is a practicable outcome today, is there need in the future for a more binding convention that would address all aspects of migration? These and other questions, let alone the answers, do not appear to be part of the process to date. The zero draft deferred until 2026 the discussion of specific measures to strengthen the global governance of international migration,⁷⁰ but this paragraph was removed from the March draft.

The final GCM should convey more effectively the purpose of the Compact and the vision and principles that underlie the commitments that are made. At a minimum, the principles should state clearly that: (1) migration is a public good that should be facilitated in ways that ensure it occurs in safe, orderly and regular manner; and (2) that the safety of migrants must be the first priority of policies adopted by States to manage movements. In this context, the discussion of drivers of migration should be more explicit in explaining that the aim of ameliorating adverse drivers is not to eliminate all migration, just that which is by necessity and not by choice.

The GCM should also group the commitments by overall topic, either as presented herein or using another schema that allows for greater linking of objectives and actions towards a common purpose. In this context, it should cross-reference commitments when applicable, both internally within the GCM but also to the GCR when applicable. Moreover, cross-referencing similar commitments made in multiple sections of the GCM would reinforce their importance.⁷¹

Life-threatening migration

The drafters are to be commended for raising concerns about movements from potentially life-threatening situations, such as acute natural disasters and the slow-onset effects of climate change. However, the draft falls short of commitments that would ensure: (1) that people in these situations, as well as other life-threatening ones, are not involuntarily returned to the situations that would cause them harm; or (2) that those unable to reach safety would be eligible for humanitarian admissions to a safe country. The discussion of these issues in the context of mixed migration flows is particularly weak.⁷²

To help address this situation, the final GCM should bring together the actionable commitments related to people whose lives would be threatened if returned home but who do not qualify for refugee status, into a coherent commitment that would address both non-return (*non-refoulement*) and humanitarian admission of these persons. This should apply not only to those affected by natural disasters and the slow-onset effects of climate change, but also other emergency situations, such as: armed conflict; terrorist, gang, cartel and other similar violence; epidemics; and human-made disasters such as nuclear accidents. A similar statement should be encompassed in the GCR and language added to promote coordination between UNHCR and IOM in these situations.

Drivers of migration

The draft GCM discusses drivers of migration in countries of origin,⁷³ and to a lesser extent in countries of transit or temporary stay, but says little about conditions afforded to migrants and refugees in those countries that encourage onward irregular movements. It also does not sufficiently address poor governance as a driver of migration, nor make actionable commitments to improve the ways in which governments protect the human rights of their citizens and non-nationals residing on their territory. Much of the discussion on drivers relates to under-development, but the positive ways that migration – particularly when safe, orderly and regular – contributes to increasing development is not mentioned in this regard (although it is discussed in later objectives). Moreover, the strong normative support within the UDHR and ICCPR for the right of every person to leave and re-enter their own country is not mentioned.

Internal movements

The draft GCM includes only two mentions of internal movements. Internal migration is referenced in objective 2 as being part of the scope of a crisis centre that would provide early warning of movements. Internal displacement is referenced in objective 21 in the context of returns, as a negative consequence of the failure to reintegrate returnees. Yet, the connections between internal movements – both voluntary and forced – and cross-border movements are much more complex, far-reaching and deserving of attention both on their own merits and in relationship to international migration. We recommend that the GCM expand on the relationship between internal and international migration and displacement, committing, at a minimum, to bring States, experts and other stakeholders together to: identify mechanisms to improve protection of the rights of internal migrants and IDPs; assess the relationship between internal and international movements; improve

access to assistance and sustainable livelihoods for these populations; and identify ways to improve the responses of the broader international community, including the UN system, in these situations.

Avenues of legal admissions

The draft GCM includes little on avenues of regular migration beyond labour mobility. For example, there is only one paragraph focused on family reunification and formation. There is no reference to migration for education purposes, even though hundreds of thousands migrate each year for education in other countries. Similarly, migration to engage in trade and/or investment is not referenced. We recommend that the next draft add details to the section on modes of safe, orderly and regular migration to reinforce its actionable commitments and encompass a broader range of purposes for which people migrate. In particular, the GCM should embed its call for facilitation of family reunification in human rights instruments, such as the ICCPR.

Definition of vulnerable migrants

Although the draft references vulnerable migrants, they are not defined with sufficient precision to allow for actionable commitments specific to each affected population. Only the needs of children are discussed in sufficient detail to provide concrete actions. Other groups could be defined by the socio-demographic characteristics that render them vulnerable, such as women-headed households, older migrants, and adolescents. Others could be defined by the situations in which they find themselves, such as in conflict or disaster zones (as in MICIC), detention, or stranded in transit. Then, actionable commitments could be devised for each group as appropriate. The GCM should be more explicit in defining vulnerability; alternatively, the GCM could request the Secretary-General to convene an expert task force to develop recommendations in this area.

Monitoring and governance

Finally, the repurposing of the High-Level Dialogue into a quadrennial review conference does not constitute an effective means by which to monitor progress in achieving the objectives set out in the GCM nor to hold States accountable for meeting their voluntary commitments. More specifically, the draft GCM does not set out any mechanism for national-level review: it does not identify metrics or roles for expert or stakeholder input to the review process that are comparable, for example, to the International Panel on Climate Change or the SDGs; and there are no funds committed to the implementation of the GCM. Finally, there is no process for assessing the adequacy of the UN migration system, as a whole, for addressing the challenges presented by migration in the years ahead.

We recommend strengthening the review and monitoring process to: (1) ensure annual review and monitoring at the national, regional and global levels, bringing in expertise as needed to conduct these reviews; (2) provide a voluntary financing mechanism for capacity building and assessment of progress in meeting actionable commitments; and (3) establish a Global Policy Platform on Migration (GPPM) that would be responsible for systematically assessing progress and making recommendations to improve implementation. Such a

platform could set an agenda for GCM implementation by prioritising collective commitments and by constituting working groups for specified tasks.

It would be appropriate for IOM to serve as Secretariat of the GPPM, in consultation with other UN and non-UN agencies and actors. In time, the GPPM might take on other functions, such as addressing policy issues not identified in the GCM. It might also establish a panel of experts for providing technical assessments and review of data.

Further, the GCM should expand on the view of global governance that it supports. In the context of adoption of both Compacts, the GCM should recommend that the Secretary-General designate a Special Representative on Displacement, who, along with the Special Representative on International Migration, would be responsible for ensuring coherence in addressing the issues that fall through the cracks of the two Compacts.

5 Conclusions

There are gaps, overlaps, opportunities and challenges ahead if the two Global Compacts are to be successful. The principal gap is the absence of meaningful commitments regarding internal displacement and migration in either Compact. States appear to have made a concerted decision to refrain from making any commitments in these areas. Yet, there are twice as many IDPs as refugees counted as persons of concern to UNHCR. The connections between the two populations are close. Refugees have often been IDPs prior to crossing borders, and large numbers of repatriated refugees are unable or unwilling to return to their home communities after return, generally because the conditions that caused their flight have not yet been resolved. Similarly, internal migration often leads to international movements of people and those who have moved internationally often become internal migrants when they return to their home countries. In effect, the same economic, political, environmental and other drivers lead to both internal and international movements, whether voluntary or forced. Moreover, the conditions faced by internal migrants and IDPs become drivers of further movement. The failure to address internal migration and displacement will undermine otherwise worthy goals of the Compacts while leaving many of those moving internally in vulnerable situations.

The principal overlap between the two Compacts is forced migration that does not currently fall under the purview of the refugee system. Both Compacts are clear in recommending that more be done to protect people in the types of vulnerable situations that arise from natural disasters and other emergencies. They do not point, however, to a clear path forward in addressing these situations. Nor do they assign responsibilities for which international organisations should take the lead in helping States identify needed policies and practices. Both UNHCR and IOM have competences in these areas and have worked together when needed to protect and assist vulnerable migrants in these situations. It would be useful for the Compacts to spell out what commitments States are willing to make to ensure smooth responses in the future. The decision to remove references to mixed migration from the current draft of the GCM does not bode well, however, for addressing this issue.

Prospects for adoption

The prospects for adoption of each Compact are still unclear, as negotiations continue. We are cautiously optimistic about the likely adoption of the GCR. No major hosting or donor State has withdrawn from the drafting process or announced deal-breaking objections to the drafts that have been released by UNHCR. This is good news, but it may also be a testament to the lack of ambition in the current draft. That is, the draft GCR asks relatively little of donor States. It states a number of non-binding commitments – such as increasing funding and enlarging resettlement programs – but donor States may well read into the current draft a preference for refugees to be better taken care of in countries of first asylum and for repatriation as the primary solution to protracted situations. While the establishment of global refugee summits and the Global Support Platform may prove to be significant innovations, State participation will be wholly voluntary. No new obligations are imposed on hosting States. Indeed, implementation of existing obligations is soft-pedaled. For example, the Refugee Convention provides that refugees should enjoy the same right to work as other non-nationals; but the draft GCR provides only that other States will assist hosting States in ‘promot[ing] economic opportunities for host communities and refugees’.⁷⁴

Two potential developments could yet derail adoption of the GCR. First, hosting States may decide that the GCR does not require enough of third countries. They could rightly assert that they have been bearing the lion’s share of the burden of refugee assistance and protection for many years and that wealthier States are now taking strong steps to prevent onward movement of refugees from States of first asylum. They may decide to withhold their support for the GCR unless donor States are willing to put more on the table in terms of additional resources and an actionable plan for responsibility-sharing.

Second, it is possible that the GCR could be ‘held hostage’ to the GCM. That is, because both Compacts are being negotiated simultaneously, States with major objections to parts of the GCM could say that they will not agree to the GCR until their concerns about the GCM are addressed. This strategy would only be successful, however, if the international community is strongly committed to concluding a Compact on refugees; if not, it is an empty threat.

The level of commitment that exists for the GCR is not entirely clear. UNHCR fervently hopes that a Compact can be adopted, believing that it would benefit refugees and provide an important step toward improving the international system of refugee protection. We agree with this assessment, but only if the commitments in the Compact come to fruition and a number of the recommendations we have made here are adopted. At present, however, the Compact faces a conundrum: an unambitious Compact may be acceptable to donor States (they have may little to gain but nothing to lose) but of little interest to hosting States (who are seeking tangible results in terms of increased assistance and do not favour assuming additional commitments); yet an ambitious Compact that would help refugees and hosting States alike may not be acceptable to donor States. Arriving at a Global Compact on Refugees that will be worth the effort will require strong leadership and political will that is, regrettably, not present in abundant supply at the moment.

We are also cautiously optimistic about adoption of the GCM, though greater barriers are present. The appetite of States to adopt even a non-binding Compact with actionable commitments has varied considerably since proposed in the New York Declaration. Even before the actual negotiations began, tensions arose over the entire concept of a Compact. Most notably, the United States withdrew from the process altogether, with the Trump administration objecting to some of the statements in the New York Declaration and questioning the value of international cooperation on migration in light of State sovereignty. Although other governments have not, as yet, followed suit, the absence of the United States from the Compact means that the country that accepts the largest number of immigrants and provides the most sizeable donations to international migration organisations will not take an active role in the formulation or implementation of what is meant to be a global agreement.⁷⁵

The zero draft of the GCM was received favourably by States and stakeholders, who complimented the co-facilitators on the actionable commitments on human rights, people-centered focus, pathways to regular migration, actions to address drivers of migration, and other provisions. The principal questions that have emerged following the zero draft relate to the eventual scope and tone of the Compact – specifically, whether it distinguishes sufficiently between migrants and refugees and regular versus irregular migration. For example, the EU delegation argued that the Compact ‘should avoid any language that might be interpreted as justification or even an incentive for irregular migration’,⁷⁶ and emphasised ‘the obligation of states – under international law – to take back their nationals without any conditions and actively cooperate to facilitate returns and readmission’.⁷⁷ By contrast, the Philippines found that ‘this structure of discussions, on “differentiation between regular and irregular” creates a false and dangerous dichotomy’.⁷⁸ A third perspective was provided by civil society participants, who argued that the Compact should ensure ‘non-discriminatory access to basic services for both “regular” and “irregular” migrants alike’.⁷⁹

In many ways, exchanges such as these regarding the language of the Compact represent a step forward in international negotiations on migration. Just a little over a decade ago, the first High-Level Dialogue issued a ‘Chair’s Report’ because of the unwillingness of States to issue a declaration or resolution. The GFMD was established as a State-led process because of reluctance for further UN engagement on international migration, and States were only comfortable discussing international cooperation on migration as a development issue. Since then, significant advances have been made: a second High-Level Dialogue resulted in a negotiated statement by States, the 2016 High-Level Meeting greatly expanded the scope of migration-related discussions beyond the intersection with development, the New York Declaration reflected growing consensus regarding the need for international cooperation, and IOM entered the UN system as a related organisation.⁸⁰ This progress in such a short period bodes well for the negotiation and adoption of the GCM.

How will the Compacts make a difference?

Even if both the GCR and GCM are adopted, however, the most important question still remains: how will the Compacts make a difference?

The major potential impacts of the GCR centre on improved delivery of assistance for refugees and host communities and enhanced responsibility-sharing. The CRRF, if fully implemented, should make a difference on the ground, as humanitarian, development and other actors undertake joint analysis, planning, and response for emergencies and protracted situations. But effective CRRF implementation depends on the willingness of States to carry through on their commitments, particularly the pledge to increase development aid to hosting communities. The same can be said for the prospects for improved responsibility-sharing. The global refugee summits, Global Support Platform and solidarity conferences could represent the fashioning, for the first time, of an international process for regular and robust responsibility-sharing. But they will work only if States participate and carry through on their commitments. We think that the adoption of the GCR will provide some impetus for States to do so, but we are no more than cautiously optimistic.

As to refugee protection and rights, the GCR is not likely to have a significant impact because it does not promise much in these areas. The GCR – at least in its current draft form – says nothing about a right to access asylum and little about detention of asylum-seekers (other than children), the right to work, or refugee mobility. On protection and relief for those arriving by boats in Europe – the motivating factor for the New York Declaration and thus the Compacts – the GCR is silent. The absence of any reference to IDPs is also disconcerting given their large numbers, relationship to refugees, and heightened vulnerability.

The GCM also has the potential to yield significant improvements – in this case, in the management of international migration. The GCM tackles just about all of the key challenges facing States in the years ahead, from addressing the drivers of migration to increasing regular channels for movement, curbing irregular migration and helping migrants to (re)integrate. It is ambitious in its scope while being practical in its content and action items.

As is the case for the GCR, however, positive impacts will result only if States are truly willing to implement the commitments they make. The voluntary nature of the GCM makes it all the more important that States take leadership in holding themselves and other States accountable. Strengthening the mechanisms for monitoring and accountability will be essential if the GCM is to make any difference.

In the longer term, working against the GCM is the weak normative framework for the protection of the rights of migrants. The *Convention on the Rights of All Migrant Workers and Members of the Families* (Migrant Workers Convention) still has fewer ratifications than most other core human rights instruments. No major destination country has ratified it. Even if more robustly accepted, the Migrant Workers Convention would still be a deficient source of protection for migrants' rights, since it does not cover all forms of migration. For example, it extends rights to family members of migrant workers who have already entered another country, but does not provide a right to family reunification. Also concerning is the absence of a strong normative framework to determine which forced migrants, apart from refugees, should be entitled to *non-refoulement* and other forms of protection.

Finally, in contrast to the GCR, for which UNHCR has lead responsibility, it is not clear what role international organisations will play in the implementation and follow-up of the GCM. The draft sees the repurposed High-Level Dialogue, renamed the International Migration Review Forum, as the principal follow-up mechanism. The High-Level Dialogues have previously been organised by the UN Economic and Social Council, with the UN Population Division (UNPD) taking the lead. However, UNPD is not an operational migration agency, and does not have the expertise or personnel to help states monitor GCM implementation. The GCM calls for IOM to take on leading, coordinating and servicing roles, but without any details as to what these roles would require. Most seriously, it does not call for any improvements in the financing of IOM, which is already seriously impeded by its reliance on project-by-project funding.

Some of these wrinkles may be worked out in later drafts of the GCM. We hope that this will happen. It is essential that States strengthen the measures and means to hold themselves accountable for implementation of the GCM if it is to have any chance of success.

To summarise, in their current forms, both the GCR and GCM hold potential for improving the lives of migrants and the capacities of States to manage complex movements of people. Whether that potential is realised will largely depend on the consultations and negotiations that take place during the next few months. If States maintain the commitments already made and strengthen the documents in the ways recommended herein, the Compacts will have beneficial consequences. Even with the best outcomes now achievable, however, political leadership will be needed to ensure that States follow through on their commitments. States must continue to strengthen their own capacities and that of the UN system to protect and find solutions for refugees, while also ensuring effective pathways to safe, orderly and regular migration.

Endnotes

¹ *New York Declaration for Refugees and Migrants*, UN GAOR, 71st sess, Agenda Items 13 and 117, UN Doc A/RES/71/1 (3 October 2016) (*'New York Declaration'*).

² *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants, Report of the Secretary-General*, UN GAOR, 70th sess, Agenda Items 15 and 116, UN Doc A/70/59 (21 April 2016).

³ *New York Declaration* annex 1 ('Comprehensive refugee response framework') para 18.

⁴ *New York Declaration* annex 2 ('Towards a global compact for safe, orderly and regular migration') para 2.

⁵ *Ibid.*

⁶ *New York Declaration* annex 1, para 19.

⁷ UNHCR, *Towards a Global Compact on Refugees: A Roadmap* (17 May 2017).

⁸ UNHCR, above n 7, para 30.

⁹ The term 'zero draft' is commonly used in the UN system to denote an early version of a document that will go through multiple revisions as States make comments on different provisions.

¹⁰ *Modalities for the intergovernmental negotiations of the global compact for safe, orderly and regular migration*, GA Res 71/280, UN GAOR, 71st sess, Agenda Items 13 and 117, UN Doc A/RES/71/280 (6 April 2017).

¹¹ *Making Migration Work for All, Report of the Secretary-General*, UNGAOR, 72nd sess, Agenda Items 14 and 117, UN Doc A/72/643 (12 December 2017) para 4(a).

¹² *Global Compact on Refugees*, Draft 1 (9 March 2018) ('GCR') para 5.

¹³ See GCR para 10, which provides: 'Part II of the global compact is the CRRF as adopted by the United Nations General Assembly (A/RES/71/1, Annex I).'

¹⁴ *New York Declaration* annex 1, paras 5-16.

¹⁵ GCR para 11.

¹⁶ GCR para 11.

¹⁷ GCR para 52.

¹⁸ GCR para 53.

¹⁹ GCR para 57.

²⁰ GCR para 54.

²¹ GCR para 54.

²² GCR para 65.

²³ GCR para 66.

²⁴ GCR paras 16-18.

²⁵ GCR paras 22-26.

²⁶ GCR para 24.

²⁷ GCR para 28.

²⁸ GCR para 28.

²⁹ GCR para 42.

³⁰ GCR para 52.

³¹ GCR para 55.

³² GCR para 47, emphasis added.

³³ GCR paras 44-55.

³⁴ GCR paras 76, 79.

³⁵ GCR para 31.

³⁶ *Global Compact for Safe, Orderly and Regular Migration* Draft Rev 1 (26 March 2017) ('GCM') para 20(f). See below text to note 59.

³⁷ GCM para 6.

³⁸ GCM para 7.

³⁹ GCM para 10.

⁴⁰ The framing of these principles differs sharply from other state-led endeavours, such as the Migrants in Countries in Crisis Guidelines and Nansen Initiative on Disaster-Induced Cross-Border Displacement/Platform for Disaster Displacement. None of these initiatives were meant to provide a new normative framework; instead, they restated and built on existing norms that applied to the particular situation addressed. In doing so, however, they included stronger language than is found in the GCM.

⁴¹ GCM para 14.

⁴² See, eg, Elspeth Guild and Tugba Basaran (eds), *First Perspectives on the Zero Draft* (5 February 2018) for the UN Global Compact on Safe, Orderly and Regular Migration (11 February 2018).

⁴³ GCM para 16.

⁴⁴ GCM para 18.

⁴⁵ GCM para 17.

⁴⁶ GCM para 17.

⁴⁷ For an early explication of these issues, see, eg, Philip L Martin and J Edward Taylor, 'The Anatomy of a Migration Hump' in J Edward Taylor (ed), *Development Strategy, Employment, and Migration: Insights from Models* (OECD, 1996) 43-62.

⁴⁸ GCM para 30.

⁴⁹ GCM para 21.

⁵⁰ See GCM paras 22-23 ('objectives 7 and 8').

⁵¹ GCM para 22. Vulnerabilities may relate to a person's age, gender or the situation in which they find themselves.

⁵² GCM para 22(g). The actions to be taken build on the Global Migration Group's *Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations*. See *Report of the United Nations High Commissioner for Human Rights to the Human Rights Council on Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations - Addendum*, UNHRC, 37th sess, UN Doc A/HRC/37/34/Add.1 (7 February 2018).

⁵³ GCM para 22(f).

⁵⁴ GCM para 23.

⁵⁵ GCM para 23.

⁵⁶ GCM para 23(a).

⁵⁷ However, absent is any commitment to return the remains of those who died in transit to families in countries of origin or ultimate destination. Language in the *Guiding Principles on Internal Displacement* may be applicable in this context: 'The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.' See *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39 – Addendum: Guiding Principles on Internal Displacement*, UNES, 54th sess, Agenda Item 9(d), UN Doc E/CN.4/1998/53/Add.2, principle 16(3).

⁵⁸ GCM para 20.

⁵⁹ GCM para 20.

⁶⁰ For a discussion of the fuller range of humanitarian crises that may lead to such displacement, see Susan F Martin, Sanjula Weerasinghe and Abbie Taylor, *Migration and Humanitarian Crises: Causes, Consequences and Responses* (Routledge, 2014).

⁶¹ The draft GCM refers to the UN Office of the High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights at International Borders* (2014).

⁶² GCM para 26.

⁶³ GCM para 27 ('objective 12'). This is a new title. Previously the title of the objective was 'Strengthen procedures and mechanisms for status determination.' The March draft also removed references to asylum and refugee status determinations.

⁶⁴ GCM para 28.

⁶⁵ GCM para 28.

⁶⁶ GCM para 36.

⁶⁷ GCM para 36.

⁶⁸ Migration – through economic and social remittances – can be an effective contributor to development by improving educational, health and other outcomes for communities of origin of migrants and providing capital for investment in productive enterprises and infrastructure. For fuller explication of impact of migration on development, see Richard Adams, 'Evaluating the Economic Impact of International Remittances on Developing Countries Using Household Surveys: A Literature Review' (2011) 47(6) *Journal of Development Studies* 809; Hein De Haas, 'International Migration, Remittances and Development: Myths and Facts' (2005) 26(8) *Third World Quarterly* 1269.

⁶⁹ GCM para 41.

⁷⁰ GCM para 45.

⁷¹ To the extent possible, cross-referencing common issues across the two Compacts would be useful as well. The potential for this to occur has been lessened, however, by the removal of references to refugees and asylum in the GCM.

⁷² This is especially so given that paragraph 27(a) from the zero draft of the GCM was removed in the March draft. This paragraph read: 'Support global efforts in situations of broader international protection challenges of mixed movements, such as the UNHCR asylum capacity support group, to promote effective and swift status determination, protection and referral of asylum seekers, refugees and migrants, including those displaced in the context of disasters and crisis.'

⁷³ See GCM para 17 ('objective 2').

⁷⁴ GCM para 61.

⁷⁵ The US could yet re-enter the process at a later stage. For example, during the George W. Bush administration, the US did not participate in meetings of the Global Forum on Migration and Development. The Obama administration, by contrast, was an active participant and leader of that process as well as the various UN convenings on migration.

⁷⁶ Delegation of the European Union to the United Nations, *EU Statement – United Nations Global Compact for Migration: General Statement on the Zero Draft* (20 February 2018) <https://eeas.europa.eu/delegations/un-new-york/40981/eu-statement—united-nations-global-compact-migration-general-statement-zero-draft_en>.

⁷⁷ Ibid.

⁷⁸ See Teddy Locsin Jr, 'The Bedrock is Decency', *Business Mirror* (online) 13 March 2018 <<https://businessmirror.com.ph/the-bedrock-is-decency/>>.

⁷⁹ See 'Time to move forward - not backward - on migration issues', International Catholic Migration Commission, 15 March 2018 <<https://www.icmc.net/newsroom/news-and-statements/time-to-move-forward-not-backward-on-migration-issues>>.

⁸⁰ *Agreement concerning the Relationship between the United Nations and the International Organization for Migration*, GA Res 70/296, UN GAOR, 70th sess, Agenda Item 175, UN Doc A/70/976, Annex 1 (25 July 2016).

