



## REFLECTIONS

# ‘The Makings of a Success’: The Global Compact on Refugees and the Inaugural Global Refugee Forum

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### ABSTRACT

The last five years have witnessed a dramatic increase in the number of forcibly displaced people worldwide, and a key part of the international response has been a multilateral and multi-stakeholder effort to develop an architecture to share more equitably and predictably the burden and responsibility for hosting and supporting the world’s refugees. This piece offers a reflective assessment of this regime-strengthening exercise – the key milestones of which have been the New York Declaration, the Global Compact on Refugees, and the first Global Refugee Forum – and assesses what has been achieved and what challenges still lie ahead. The Global Compact on Refugees is presented as the product of a ‘States plus’ approach to multilateralism that brought together a wide range of States, other stakeholders, and – importantly – refugees to fill a crucial gap in the international refugee protection regime. It seeks to do this by bolstering international cooperation with a view to enhancing protection and expanding access to solutions, building on existing and emerging trends, and laying the ground for future cooperation. The first Global Refugee Forum in December 2019 was an important and positive first step in the Compact’s implementation, but much more remains to be done before success can be declared.

In postsript, the authors reflect on the emergence of the COVID-19 pandemic, its impact on the international refugee response regime, and the role for the Global Compact on Refugees in the response.

### 1. INTRODUCTION

The international refugee protection regime has undergone considerable change over the course of the last five years in the face of ever-more challenging realities on the ground, and at sea. The annual ‘Global Trends’ reports published by the Office of the United Nations High Commissioner for Refugees (UNHCR) have seen the

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number of forcibly displaced people around the world rise since the end of 2013 from 51.2 million to almost 80 million today; in the same time period, the number of refugees has grown from 16.7 million to 26 million.<sup>1</sup> With the international community seemingly unable to end wars and amid the potential for new waves of displacement driven by, *inter alia*, further conflict, competition for scarce resources, and climate change, many have asked what can be done to enhance the regime's fitness for purpose.

A crucial tipping point arrived in 2015, when more than one million people made their way to Europe by sea.<sup>2</sup> Thousands more died or went missing in the attempt.<sup>3</sup> Although many refugees had left Syria as early as 2011 and had been living in Jordan, Lebanon, and Turkey, millions had – by 2015 – lost hope that they would be able to return home. International support, though considerable, was proving insufficient to meet basic needs. With most refugees unable to work legally or educate their children, many came to the conclusion that they had no alternative but to make their way to Europe.<sup>4</sup> These movements, the reasons for them, and their often disastrous consequences drew attention to what many in academia, civil society, and the international civil service had been arguing in many contexts for many years: that the international refugee protection regime would not be complete until its 'perennial gap' – the absence of a framework for international cooperation to share the burden and responsibility for hosting and supporting the world's refugees more equitably and predictably – had been filled.<sup>5</sup>

<sup>1</sup> See UNHCR, 'Global Trends 2013' (20 June 2014) 2; UNHCR, 'Global Trends: Forced Displacement in 2019' (18 June 2020) 2.

<sup>2</sup> UNHCR, 'Global Trends: Forced Displacement in 2015' (20 June 2016) 7.

<sup>3</sup> *ibid.*

<sup>4</sup> Through its ongoing monitoring and assessment activities at the time, UNHCR identified seven key factors behind the large movements to Europe in the summer of 2015: loss of hope that the war would end, high costs of living, limited livelihood opportunities, reductions in humanitarian assistance occasioned by inadequate funding, hurdles to renewing legal residency in countries of asylum, limited educational opportunities, and uncertainties about physical safety: Ariane Rummery, 'Loss of Hope and Deepening Poverty Driving Syrians to Seek Refuge in Europe' (UNHCR, 25 September 2015) <<https://www.unhcr.org/news/latest/2015/9/S60558b06/loss-hope-deepening-poverty-driving-syrians-seek-refuge-europe.html>> accessed 1 April 2020. See also Ariane Rummery, 'Worsening Conditions inside Syria and the Region Fuel Despair, Driving Thousands towards Europe' (UNHCR, 8 September 2015) <<https://www.unhcr.org/news/latest/2015/9/55eed5d66/worsening-conditions-inside-syria-region-fuel-despair-driving-thousands.html>> accessed 1 April 2020.

<sup>5</sup> UNHCR, 'UNHCR Welcomes "Unprecedented Force and Resonance" of New York Declaration' (19 September 2016) <<https://www.unhcr.org/news/press/2016/9/57dff34f4/unhcr-welcomes-unprecedented-force-resonance-new-york-declaration.html>> accessed 1 April 2020; Volker Türk, 'The Promise and Potential of the Global Compact on Refugees' (2018) 30 *International Journal of Refugee Law* 575, 581; Volker Türk and Madeline Garlick, 'From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees' (2016) 28 *International Journal of Refugee Law* 656, 678.

In the context of these events, developments at the international level followed relatively quickly.<sup>6</sup> Following a series of joint statements by United Nations (UN) agencies and a high-level event convened in New York by the Secretary-General,<sup>7</sup> the General Assembly met in November 2015 ‘to consider ways to advance a comprehensive response to the global humanitarian and refugee crisis.’<sup>8</sup> The London Syria Conference in February 2016 attracted pledges of more than \$6 billion<sup>9</sup> and, in

<sup>6</sup> For a more comprehensive overview of the context for these developments, see Elizabeth Ferris and Katharine M Donato, *Refugees, Migration and Global Governance: Negotiating the Global Compacts* (Routledge 2020) ch 4. See also Elizabeth Ferris and Susan F Martin, ‘The Global Compacts on Refugees and for Safe, Orderly and Regular Migration: Introduction to the Special Issue’ (2019) 57 *International Migration* 5, 6–7.

<sup>7</sup> The joint statements were issued by the High Commissioner for Refugees, the High Commissioner for Human Rights, the Special Representative of the Secretary-General for International Migration and Development, and the Director-General of the International Organization for Migration (IOM): see UNHCR, ‘Joint Statement on Mediterranean Crossings’ (23 April 2015) <<https://www.unhcr.org/news/press/2015/4/5538d9079/joint-statement-mediterranean-crossings.html>> accessed 1 April 2020; UNHCR, ‘Joint Statement on Protection in the Mediterranean in Light of the EU [European Union] Council’s Decision of 23 April 2015’ (27 April 2015) <<https://www.unhcr.org/news/press/2015/4/553e41e66/joint-statement-protection-mediterranean-light-eu-councils-decision-23.html>> accessed 1 April 2020. For information on the high-level event, see UN, ‘Strengthening Cooperation on Migration and Refugee Movements beyond 2015’ (2 November 2015) <<https://www.un.org/development/desa/newsletter/dialogue/2015/11/17661.html>> accessed 1 April 2020.

<sup>8</sup> See UN General Assembly, ‘Ways to Advance Comprehensive Response to Global Humanitarian and Refugee Crisis’ (19 November 2015) <<https://www.un.org/pga/70/2015/11/19/ways-to-advance-comprehensive-response-to-global-humanitarian-and-refugee-crisis/>> accessed 1 April 2020.

<sup>9</sup> UNHCR, ‘Donors Pledge More than US\$6 billion for Syrians’ (4 February 2016) <<https://www.unhcr.org/news/latest/2016/2/56b3902c6/donors-pledge-us6-billion-syrians.html>> accessed 1 April 2020. See also Katharina Lenner, ‘The Politics of Pledging: Reflections on the London Donors Conference for Syria’ Policy Brief No 03 (Migration Policy Centre 2016) 1, 2 (noting that, ‘[a]fter three previous pledging conferences on the Syria crisis that barely scraped together the necessary funding to keep Syrian refugees in the neighbouring states alive, this year witnessed a change in tack’ driven by the large number of refugee arrivals in Europe). Follow-up conferences have been held annually in Brussels: see Council of the European Union, ‘Supporting the Future of Syria and the Region – Brussels Conference, 4–5 April 2017’ <<https://www.consilium.europa.eu/en/meetings/international-ministerial-meetings/2017/04/04-05/>> accessed 1 April 2020; Council of the European Union, ‘Supporting the Future of Syria and the Region – Brussels Conference, 24–25 April 2018’ <<https://www.consilium.europa.eu/en/meetings/international-ministerial-meetings/2018/04/24-25/>> accessed 1 April 2020; Council of the European Union, ‘Supporting the Future of Syria and the Region – Brussels III Conference, 12–14 March 2019’ <<https://www.consilium.europa.eu/en/meetings/international-ministerial-meetings/2019/03/12-14/>> accessed 1 April 2020. The 2020 iteration is scheduled for June: European External Action Service, ‘Syria: IV Brussels Conference on Supporting the Future of Syria and the Region’ <[https://eeas.europa.eu/headquarters/headquarters-homepage/75709/syria-iv-brussels-conference-supporting-future-syria-and-region\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/75709/syria-iv-brussels-conference-supporting-future-syria-and-region_en)> accessed 1 April 2020.

Geneva the following month, ‘States pledged modest increases in the number of re-settlement and humanitarian admission places’ for Syrian refugees.<sup>10</sup> The UN General Assembly’s Leaders’ Week in September 2016 opened with a Summit for Refugees and Migrants, during which the Assembly adopted the New York Declaration for Refugees and Migrants as the first resolution of its 71st session and, as advocated by the Secretary-General in his report preceding the Summit,<sup>11</sup> agreed to work towards the adoption of a ‘global compact on refugees’ and a ‘global compact for safe, orderly and regular migration’ over the following two years.<sup>12</sup> The next day, the Leaders’ Summit on Refugees brought together 52 countries to make commitments towards refugee responses, including financial pledges, expanded availability of third-country solutions, and improved access to education and livelihood opportunities.<sup>13</sup> After a bustling 18-month schedule of thematic discussions and formal consultations on evolving draft texts in Geneva, coupled with the practical application of the New York Declaration’s ‘comprehensive refugee response framework’ (CRRF) in 15 countries around the world,<sup>14</sup> the Global Compact on Refugees was affirmed by the General Assembly on 17 December 2018,<sup>15</sup> just in time for preparations to commence for the first milestone in its implementation, the inaugural ministerial-level Global Refugee Forum in December 2019.

As the international community transitions towards the longer-term implementation of the Global Compact on Refugees, it is timely to pause and reflect upon where we have come over the past five years, and what remains still to be done. After reviewing some of the key elements of background and process, this piece seeks to offer a substantive assessment, from UNHCR’s perspective, of the achievements of the Global Compact on Refugees and the first Global Refugee Forum, as well some of the challenges that the process posed, and that still lie ahead, in particular in light of the COVID-19 pandemic that the world faces at the time of writing.

- <sup>10</sup> UNHCR, ‘Geneva Conference on Syrian Refugees Ends with New Pledges of Places, Recognition of Challenges Ahead’ (30 March 2016) <<https://www.unhcr.org/news/press/2016/3/56fc0cf06/geneva-conference-syrian-refugees-ends-new-pledges-places-recognition-challenges.html>> accessed 1 April 2020.
- <sup>11</sup> UN Secretary-General, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants*, UN doc A/70/59 (21 April 2016) paras 68–86.
- <sup>12</sup> New York Declaration for Refugees and Migrants, UN doc A/RES/71/1 (19 September 2016) (New York Declaration).
- <sup>13</sup> UNHCR, ‘Summary Overview Document: Leaders’ Summit on Refugees’ (10 November 2016).
- <sup>14</sup> New York Declaration, Annex I (CRRF).
- <sup>15</sup> UNGA res 73/151 (17 December 2018) para 23 (‘Affirms the global compact on refugees ... and underscores its importance as a representation of political will and ambition of the international community to operationalize the principle of burden- and responsibility-sharing, to mobilize the international community as a whole, and galvanize action for an improved response to refugee situations’). The text as submitted to the General Assembly can be found at UNGA, *Report of the United Nations High Commissioner for Refugees*, UN doc A/73/12, Part II: Global Compact on Refugees (2 August 2018) (Global Compact on Refugees).

## 2. SOME BACKGROUND: ARRIVING AT THE GLOBAL COMPACT ON REFUGEES

By one account, discussions about the sharing of burdens and responsibilities in the international refugee protection regime have been running since at least the 1930s.<sup>16</sup> The finer points have been well documented elsewhere;<sup>17</sup> for present purposes, however, the following points are salient:

- i. The post-war international refugee protection regime establishes a number of clear obligations for States when it comes to refugees who make a claim for protection, most significantly and fundamentally that of *non-refoulement*. The responsibility for complying with these obligations, however, 'fall[s] squarely' upon receiving States which are, for the most part, low- and middle-income countries that are geographically proximate to armed conflict and other refugee-producing situations.<sup>18</sup>
- ii. The principle of burden and responsibility sharing has emerged to address this inequity but, despite being referred to in the preamble to the 1951 Refugee

<sup>16</sup> Susan F Martin and others, *Responsibility Sharing for Refugees in the Middle East and North Africa* (Delmi Report 2017:8) 3.

<sup>17</sup> Just a few of the treatments of this topic include the following: Türk and Garlick (n 5) 658–65; Alexander Betts, 'International Cooperation in the Global Refugee Regime' Global Economic Governance Programme, Working Paper 2008/44; BS Chimni, *International Refugee Law: A Reader* (Sage Publications 2000) 146ff; Benjamin Cook, 'Method in Its Madness: The Endowment Effect in an Analysis of Refugee Burden-Sharing and a Proposed Refugee Market' (2004) 19 *Georgetown Immigration Law Journal* 333; Rebecca Dowd and Jane McAdam, 'International Cooperation and Responsibility-Sharing to Protect Refugees: What, Why and How?' (2017) 66 *International & Comparative Law Quarterly* 863; J-P Fonteyne, 'Burden-Sharing: An Analysis of the Nature and Function of International Solidarity in Cases of Mass Influx of Refugees' (1978) 8 *Australian Year Book of International Law* 162; James C Hathaway and R Alexander Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection' (1997) 10 *Harvard Human Rights Journal* 115; Meltem Ineli-Ciger, 'The Global Compact on Refugees and Burden Sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?' (2019) 38 *Refugee Survey Quarterly* 115, 118–22; Patrick Wall, 'A New Link in the Chain: Could a Framework Convention for Refugee Responsibility Sharing Fulfil the Promise of the 1967 Protocol?' (2017) 29 *International Journal of Refugee Law* 201, 205–09; Alexander Betts, Cathryn Costello, and Natascha Zaun, *A Fair Share: Refugees and Responsibility-Sharing* (Delmi Report 2017:10); Susan F Martin and others, 'International Responsibility-Sharing for Refugees' (March 2018) KNOMAD Working Paper 32; UNHCR, 'Towards a Global Compact on Refugees: Thematic Discussion 1: Past and Current Burden- and Responsibility-Sharing Arrangements' Concept Paper (19 June 2017).

<sup>18</sup> Adrienne Millbank, 'The Problem with the 1951 Refugee Convention' Research Paper 5 2000–01 (Parliament of Australia 2000). See also Dowd and McAdam (n 17) 864; Hathaway and Neve (n 17) 117, 119, 141; Joan Fitzpatrick, 'Revitalizing the 1951 Refugee Convention' (1996) 9 *Harvard Human Rights Journal* 229, 250; Alexander Betts, *Protection by Persuasion: International Cooperation in the Refugee Regime* (Cornell University Press 2009) 12 ('In the sense that the regime sets out a clear normative framework regulating asylum but not burden-sharing, it may be regarded as half complete').

- Convention,<sup>19</sup> almost 90 General Assembly resolutions,<sup>20</sup> and almost two-fifths of the Conclusions on International Protection of UNHCR's Executive Committee,<sup>21</sup> there remain questions as to its precise nature and scope.<sup>22</sup>
- iii. More importantly, perhaps, there has not been an architecture or mechanism to implement the principle: '[a]ny responsibility sharing that does occur is *ad hoc*, voluntary, and, because it occurs in the absence of a framework for facilitating cooperation, unreliable.'<sup>23</sup> Despite many worthy and imaginative

- <sup>19</sup> Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) preamble ('Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation'). Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.
- <sup>20</sup> UNHCR, *Thematic Compilation of General Assembly & Economic and Social Council Resolutions* (2015) 36–37; UNGA res 69/189 (18 December 2014) para 25; UNGA res 70/134 (17 December 2015) paras 15, 24, 27, 28; UNGA res 70/135 (17 December 2015) paras 5, 9, 46, 48; UNGA res 70/234 (23 December 2015) paras 22, 36; New York Declaration, para 68; UNGA res 71/172 (19 December 2016) paras 4, 9, 18, 19, 50, 52; UNGA res 71/173 (19 December 2016) preamble, paras 15, 24, 27, 28; UNGA res 72/150 (19 December 2017) paras 4, 9, 18, 20, 21, 46, 53, 56; UNGA res 72/152 (19 December 2017) preamble, paras 18, 27, 30, 31; UNGA res 73/150 (17 December 2018) preamble, paras 22, 31, 34, 35; UNGA res 73/151 (n 15) paras 8, 17, 18, 20, 21, 23, 24, 25, 53, 60, 63; UNGA res 74/130 (18 December 2019) paras 6, 15, 18, 19, 21, 22, 23, 52, 59, 62; UNGA res 74/131 (18 December 2019) preamble, paras 4, 24, 34, 37, 38.
- <sup>21</sup> Forty-five of 114 Conclusions: see UNHCR, *A Thematic Compilation of Executive Committee Conclusions* (2014) 42–69; UNHCR Executive Committee Conclusion No 112 (2016) preamble, paras 1, 8, 10; UNHCR Executive Committee Conclusion No 113 (2016) para 7; UNHCR Executive Committee Conclusion No 114 (2017) preamble, para 7. The Executive Committee adopts Conclusions as a record of the consensus reached during discussions concerning international protection at its sessions: see, generally, UNHCR, 'Executive Committee' (2015) <<http://www.unhcr.org/pages/49c3646c83.html>> accessed 1 April 2020.
- <sup>22</sup> Türk and Garlick (n 5) 660 ('In the absence of specific elaboration in the Convention or otherwise, however, a significant challenge arises in determining precisely what form and content such cooperation would take, and what States' respective contributions thereto should be'); Wall (n 17) 207–08, 224 ('Is it merely a legal obligation, or does it have legal content? If so, can we go as far as to say that it is a binding rule of customary international law, or is it a non-binding legal principle?'); Betts (n 18) 3, 12 ('there is no clearly defined framework for burden-sharing ... to the extent that norms exist in relation to global burden-sharing, they remain weak and underdeveloped'); Tristan Harley, 'Innovations in Responsibility Sharing for Refugees' (May 2019) World Refugee Council Research Paper No 14, 5–7; Ineli-Ciger (n 17) 117–22.
- <sup>23</sup> Wall (n 17) 208–09. See also T Alexander Aleinikoff and Susan Martin, 'Making the Global Compacts Work: What Future for Refugees and Migrants?' Policy Brief 6 (Andrew & Renata Kaldor Centre for International Refugee Law 2018) 8; Rebecca Dowd and Jane McAdam, 'International Cooperation and Responsibility Sharing to Combat Climate Change: Lessons for International Refugee Law' (2017) 18 Melbourne Journal of International Law 180, 181.

proposals and initiatives over the decades,<sup>24</sup> burden and responsibility sharing has occurred in an ‘atomized and uncoordinated’ fashion,<sup>25</sup> and attempts to establish a more predictable architecture have not garnered the necessary broad-based political support.<sup>26</sup>

The events of 2015, however, made clear the real-world consequences of this failure properly to share burdens and responsibilities (and, indeed, to address root causes).<sup>27</sup> Whilst journeys to Europe cost many lives and led some countries to close borders and impose tight restrictions, there was also an outpouring of solidarity in many countries from governments, civil society, the business community, and the citizenry. Importantly, ‘a willingness to think anew about the treatment of refugees’ also emerged and prompted, *inter alia*, the General Assembly’s decision to hold a Summit for Refugees and Migrants in New York in September 2016.<sup>28</sup>

In the lead-up to the Summit, the Secretary-General called for ‘[a] more predictable and equitable way of responding to large movements of refugees’;<sup>29</sup> recognizing that this had contributed to the situation in Europe and elsewhere.<sup>30</sup> Noting that ‘individual countries cannot solve these issues [of mass displacement] on their own’, he argued for a strengthening of ‘[i]nternational cooperation and action to address large movements of refugees and migrants’ and, to this end, proposed the development of two ‘global compacts’, one on responsibility sharing for refugees and the other for safe, regular and orderly migration.<sup>31</sup>

The General Assembly embraced this recommendation and the New York Declaration – which was adopted at the Summit – provided for the development of

<sup>24</sup> See Filippo Grandi, ‘The Global Compact on Refugees: A Historic Achievement’ (2019) 57 *International Migration* 23, 23; Türk and Garlick (n 5) 665–73; Dowd and McAdam (n 17) 864.

<sup>25</sup> James C Hathaway, ‘Moving beyond the Asylum Muddle’ (*EJIL: Talk!*, 14 September 2015) <<http://www.ejiltalk.org/moving-beyond-the-asylum-muddle/>> accessed 1 April 2020.

<sup>26</sup> The ‘Convention Plus’ initiative, for example: see UNHCR, ‘Agenda for Protection’ (3rd edn, UNHCR 2003) 6 (‘The “plus” concerns the development of special agreements or multilateral arrangements to ensure improved burden sharing, with countries in the North and South working together to find durable solutions for refugees’), 13; UNHCR, ‘Progress Report: Convention Plus’ (2005). See also Ninette Kelley and Jean-François Durieux, ‘UNHCR and Current Challenges in International Refugee Protection’ (2004) 22 *Refuge: Canada’s Journal on Refugees* 6, 14; Betts (n 18) ch 5; Alexander Betts, Gil Loescher, and James Milner, *UNHCR: The Politics and Practice of Refugee Protection* (2nd edn, Routledge 2012) 64–68; Dowd and McAdam (n 17) 864–65, 866.

<sup>27</sup> See, generally, Matthew J Gibney, ‘Has the World Learned the Lessons of the 2015 Refugee Crisis?’ (*World Politics Review*, 31 March 2020) <<https://www.worldpoliticsreview.com/articles/28644/has-the-world-learned-the-lessons-of-the-2015-refugee-crisis>> accessed 1 April 2020.

<sup>28</sup> *ibid*; Ferris and Donato (n 6) 87–96.

<sup>29</sup> UN Secretary-General (n 11) 1.

<sup>30</sup> *ibid* para 3.

<sup>31</sup> *ibid* paras 3, 102–05. See also Wall (n 17) 210–11.

both compacts over the following two years.<sup>32</sup> Although the attention of the international community then turned to the compacts' development processes, it is important to emphasize the significance and enduring relevance of the New York Declaration, particularly in light of the range of challenges – most notably a rising tide of hostility towards refugees and migrants in some parts of the world<sup>33</sup> – that the two processes faced. The New York Declaration represents a landmark political commitment to refugee protection,<sup>34</sup> including the 1951 Refugee Convention and its 1967 Protocol as 'the foundation of the international refugee protection regime',<sup>35</sup> 'the fundamental principle of *non-refoulement*',<sup>36</sup> the right to seek asylum and 'protection for all who need it',<sup>37</sup> solidarity with the displaced,<sup>38</sup> the human rights of refugees and migrants,<sup>39</sup> efforts to address root causes,<sup>40</sup> and – crucially – burden and responsibility sharing:

We underline the centrality of international cooperation to the refugee protection regime. We recognize the burdens that large movements of refugees place on national resources, especially in the case of developing countries. To address the needs of refugees and receiving States, *we commit to a more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees*, while taking account of existing contributions and the differing capacities and resources among States.<sup>41</sup>

In addition to strongly reaffirming key principles, the New York Declaration also included a framework for comprehensive refugee responses (the CRRF) and set a course for the development of a common plan for sharing burdens and responsibilities in the form of a global compact on refugees. '[B]ased on the principles of international cooperation and on burden- and responsibility-sharing', the CRRF contains 'the elements ... for a comprehensive and people-centred refugee response, which is in accordance with international law and best international practice and adapted to the specific context'.<sup>42</sup>

<sup>32</sup> New York Declaration, paras 21, 63, Annex I para 19, Annex II.

<sup>33</sup> Ferris and Donato (n 6) x ('It is hard to imagine a more hostile environment for such negotiations to take place'), 17–20.

<sup>34</sup> The Declaration was, of course, also of enormous significance to the global governance of migration: see IOM, *World Migration Report 2018* (November 2017) ch 5.

<sup>35</sup> New York Declaration, para 65.

<sup>36</sup> *ibid* para 67.

<sup>37</sup> *ibid* paras 27, 33, 66, 67. See also paras 24, 70.

<sup>38</sup> *ibid* para 8.

<sup>39</sup> *ibid* paras 5, 6, 19, 24, 26.

<sup>40</sup> *ibid* para 12.

<sup>41</sup> *ibid* para 68 (emphasis added). See also Ferris and Donato (n 6) 25 ('Although watered down, the New York Declaration – for the first time – expresses the commitment of all UN member states to responsibility-sharing'), 44 (describing this paragraph as 'a significant advance forward' and noting that 'this was a controversial element').

<sup>42</sup> CRRF, paras 1, 3.

Divided into four substantive sections,<sup>43</sup> its stated objectives are ‘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.’<sup>44</sup> To develop the global compact, the General Assembly asked the High Commissioner for Refugees to initiate the practical application of the CRRF ‘in a range of specific situations’, to ‘engage with States and consult with all relevant stakeholders’ and – on this basis – to include a proposed compact in his annual report to the General Assembly in 2018.<sup>45</sup>

Following the adoption of the New York Declaration, UNHCR set about designing – in consultation with States and others – the process by which the compact on refugees would be developed. It was decided that the compact would consist of two substantive parts: the CRRF as agreed in the New York Declaration and ‘a programme of action that sets out actions that can be taken – both by Member States and by other relevant stakeholders – to underpin the comprehensive refugee response framework, to ensure its full implementation, and to share more equitably the responsibility for implementing it.’<sup>46</sup> A process for the development of the programme of action was designed that consisted of four key elements:

- i. The implementation of the CRRF in a number of specific refugee situations with a view to the identification of good practices, as well as ‘challenges and gaps that will inform the development of the programme of action’;<sup>47</sup>
- ii. The convening of a series of five thematic discussions for States and other stakeholders in 2017 ‘aimed at identifying the actions that are essential to the type of refugee response envisaged in the New York Declaration’;<sup>48</sup>

<sup>43</sup> Namely ‘Reception and admission’, ‘Support for immediate and ongoing needs’, ‘Support for host countries and communities’, and ‘Durable solutions’.

<sup>44</sup> CRRF, para 18.

<sup>45</sup> CRRF, paras 18, 19. It was originally envisaged that a ‘Global Compact on Responsibility Sharing for Refugees’ would be adopted as part of the New York Declaration in September 2016 and a draft was circulated in New York by the co-facilitators of the Summit for Refugees and Migrants: ‘Letter from HE Dina Kaware, Permanent Representative of the Hashemite Kingdom of Jordan to the United Nations, and HE David Donoghue, Permanent Representative of Ireland to the United Nations, to all Permanent Representatives and Permanent Observers to the United Nations’ (30 June 2016) <<https://www.un.org/pga/70/wp-content/uploads/sites/10/2015/08/Refugees-and-Migrants-30-June-2016.pdf>> accessed 1 April 2020. Ultimately, however, it was decided to develop the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration along similar timelines: Aleinikoff and Martin (n 23) 4, 7 (expressing the view that this deferral of the Global Compact on Refugees had ‘positive consequences’).

<sup>46</sup> UNHCR, ‘Towards a Global Compact on Refugees: A Roadmap’ (17 May 2017) para 13. In the event, the text of the Global Compact as affirmed by the General Assembly includes two further sections, entitled ‘Introduction’ and ‘Follow-up and review’.

<sup>47</sup> *ibid* paras 19, 21–23.

<sup>48</sup> *ibid* paras 19, 24–27.

- iii. A 'stocktaking of progress made and lessons learned', the centrepiece of which was the 2017 High Commissioner's Dialogue on Protection Challenges;<sup>49</sup> and
- iv. A series of formal consultations with States and other stakeholders in 2018 on the evolving drafts of the Compact itself.<sup>50</sup>

Each of these elements played an important part in the development of the Compact. The implementation of the CRRF was essential in generating practical experience in the application of the comprehensive approach and in sparking ideas for the programme of action;<sup>51</sup> more generally, it ensured that discussions amongst diplomats and others in Geneva were rooted, to the extent possible, in the realities of the field, where the Compact would ultimately need to be applied. The thematic discussions allowed for States and others to engage in broader conceptual thinking about the issues and challenges that the programme of action should address, and allowed UNHCR and others to put forward a series of concrete proposals for consideration.<sup>52</sup> The stocktaking process, in particular the High Commissioner's Dialogue, brought the first two strands of activity together and laid the groundwork for the formal consultations.

After the practical application of the CRRF in 15 countries, 20 days of official meetings in Geneva spread over 12 months, and five evolving draft texts, the High

<sup>49</sup> *ibid* paras 19, 28. The High Commissioner's Dialogue on Protection Challenges is an annual two-day event in Geneva that focuses each year on a new or emerging global protection issue. Documentation relating to the 2017 High Commissioner's Dialogue can be found at UNHCR, 'High Commissioner's Dialogue on Protection Challenges, 2017' <<https://www.unhcr.org/high-commissioners-dialogue-on-protection-challenges-2017.html>> accessed 1 April 2020.

<sup>50</sup> *ibid* paras 29–33. See also UNHCR, 'Towards a Global Compact on Refugees: Roadmap on the Formal Consultations Process' (16 April 2018).

<sup>51</sup> Some of the ways in which the CRRF implementation process influenced the programme of action are discussed below. See also UNHCR Evaluation Service, *Two Year Progress Assessment of the CRRF Approach: September 2016 – September 2018* (UNHCR 2018); Daniel Endres, 'Remarks to the Special Session on Lessons Learned and Good Practices in Applying the Comprehensive Refugee Response Framework' (UNHCR, 12 December 2017) <<https://www.unhcr.org/5a3114067>> accessed 1 April 2020; Ferris and Donato (n 6) 100 ('most observers agree that it has both encouraged creative thinking and action and a more inclusive approach to working with refugees'); Olabisi Dare and Allehone M Abebe, 'Regional Solutions and the Global Compact on Refugees: The Experience from Africa' (2018) 30 *International Journal of Refugee Law* 704.

<sup>52</sup> UNHCR's proposals were included in the concept papers for each of the thematic discussions: see UNHCR, 'Towards a Global Compact on Refugees': Thematic discussion two: Measures to be taken at the onset of a large movement of refugees – and – Thematic discussion three: Meeting needs and supporting communities (UNHCR, 9 October 2017); UNHCR, 'Towards a Global Compact on Refugees': Thematic discussion four: Measures to be taken in pursuit of solutions – and – Thematic discussion five: Issues that cut across all four substantive sections of the comprehensive refugee responses, and overarching issues (UNHCR, 6 November 2017). Further documentation relating to the thematic discussions is available at UNHCR, 'Thematic Discussions' <<https://www.unhcr.org/thematicdiscussions>> accessed 1 April 2020.

Commissioner submitted the proposed global compact to the General Assembly for its consideration in August 2018. Following discussion in the Third Committee, it was affirmed on 17 December 2018.<sup>53</sup>

### 3. THE GLOBAL COMPACT ON REFUGEES: A REFLECTIVE ASSESSMENT

What, then, has been the impact of all this activity on the international refugee protection regime? This part reflects upon what has been achieved, and on the challenges that still lie ahead. It explores some of the key themes that arose in the course of the Compact's development, and is structured around some of UNHCR's key aspirations for the Global Compact, namely that it:

1. Bring together States and a wide range of other actors to agree on a common plan;
2. Fill a crucial gap in the international refugee protection regime, namely the sharing of burdens and responsibilities;
3. Bolster international cooperation with a view to (a) enhancing refugee protection, and (b) expanding access to solutions;
4. Build upon and embed emerging trends in refugee responses aimed at enhancing refugee self-reliance; and
5. Lay the groundwork for future cooperation.

Finally, this part will also consider the relationship between the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration.

#### 3.1 Bringing together States and a wide range of other actors to agree on a common plan

The General Assembly left a considerable degree of leeway to the High Commissioner when asking him to lead the development of the Global Compact on Refugees and 'hold the pen' for its drafting.<sup>54</sup> Although it was open to UNHCR to adopt a minimalist interpretation of the invitation and retain a high degree of control over the text, such an approach would potentially not have received the fulsome engagement of a wide range of States and other stakeholders. The Office chose, therefore, to design a more open process that sought actively to reflect and balance a range of views amongst States and

<sup>53</sup> UNGA res 73/151 (n 15) para 23. The resolution was adopted by a vote with 181 in favour, two against (Hungary and the United States), and three abstentions (Dominican Republic, Eritrea, and Libya).

<sup>54</sup> As noted above, the New York Declaration requested that the High Commissioner initiate the application of the CRRF, 'engage with States and consult with all relevant stakeholders', and propose a text in his 2018 annual report to the General Assembly: CRRF, paras 18, 19. By way of contrast, an additional seven-page General Assembly resolution was negotiated concerning the process for the development and negotiation of the Global Compact for Safe, Orderly and Regular Migration: UNGA res 71/280 (6 April 2017). See also Ferris and Martin (n 6) 8–9.

others, in the belief that the result would be a true ‘compact’ that could be owned and implemented by the international community as a whole.<sup>55</sup>

Although, as penholder,<sup>56</sup> UNHCR retained a certain degree of soft influence and the capacity to prevent the process from drifting into territory that it believed would be detrimental to the international refugee protection regime, the Global Compact on Refugees is not a ‘UNHCR text’;<sup>57</sup> rather, it is the result of a multilateral,<sup>58</sup> multi-stakeholder process, with States at the centre: States requested the Compact’s elaboration, played a prominent role in its drafting and were the only actors with the opportunity to vote to affirm the final product.<sup>59</sup> Although the thematic discussions in 2017 were relatively informal and open, the formal consultations in 2018 were of a fundamentally intergovernmental character.<sup>60</sup> This is, of course, consistent with the

<sup>55</sup> In affirming the Global Compact, the General Assembly ‘[commended] the Office of the High Commissioner for the comprehensive and transparent process of engagement and consultation undertaken to develop the global compact on refugees’: UNGA res 73/151 (n 15) para 22. In the end, the process for the development of the Global Compact on Refugees looked quite similar to that by which the Global Compact for Safe, Orderly and Regular Migration was developed; each process involved: (a) a series of meetings in 2017 to explore the substantive topics to be addressed (‘thematic discussions’ for the Global Compact on Refugees and ‘consultations’ for the Global Compact for Safe, Orderly and Regular Migration); (b) a process of stocktaking centred around a key meeting in December 2017; and (c) discussions on evolving draft texts between February and July 2018 (‘formal consultations’ for the refugee compact and ‘intergovernmental negotiations’ for the migration compact): see UNHCR (n 46) paras 19–30; UNGA res 71/280 (n 54) paras 15–28.

<sup>56</sup> International organizations are not typically asked to hold the pen for a text that is to be adopted by States. The negotiation of the New York Declaration, for example, was co-facilitated by the Permanent Representatives of Jordan and Ireland in New York, whilst the negotiation of the Global Compact for Safe, Orderly and Regular Migration was co-facilitated by their Mexican and Swiss counterparts. Each year, the annual resolution on the work of UNHCR is negotiated by States, with UNHCR providing technical information and advice when requested. See also Türk (n 5) 581 (‘The UN General Assembly entrusted UNHCR with the responsibility to develop the Compact in consultation with States. This was an unusual move, placing enormous trust in this institution. It helped to depoliticize the process, particularly as States relied upon UNHCR to act in good faith and listen to their feedback’).

<sup>57</sup> See Jane McAdam, ‘The Global Compacts on Refugees and Migration: A New Era for International Protection?’ (2018) 30 *International Journal of Refugee Law* 571, 573.

<sup>58</sup> See Türk (n 5) 582 (‘The development of the Global Compact on Refugees provides food for thought on how multilateralism can be achieved today and what it can do to address difficult and sensitive issues. It has taught us much about the future of multilateralism in what, to many, seems like an increasingly polarized political space’).

<sup>59</sup> CRRE, para 19.

<sup>60</sup> States were the only participants in the formal consultations, technically speaking, and specialized agencies, intergovernmental agencies, and non-governmental organizations (NGOs) were invited only as observers. The observers were given the opportunity to take the floor, but only after all States had spoken, and NGOs made joint statements coordinated by the International Council of Voluntary Agencies: see UNHCR, ‘Towards a Global Compact on Refugees: Organizational Note for the Formal Consultations’ (16 April 2018) para 8.

centrality of States as actors in the international refugee protection regime; there are very important roles for others to play – as the Compact recognizes – but the ultimate questions of the admission of refugees and the rights that they are accorded are the domain of States.

The extent of States' influence on the Compact process is evident in the ways in which the text evolved.<sup>61</sup> For example, UNHCR initially proposed that resettlement States agree to 'progressively increase the size of their annual global resettlement programmes with the aim of meeting, by 2028, the annual global resettlement needs identified by UNHCR'; UNHCR also proposed developing 'a guide to encourage States to resettle a fair share of those refugees who are in need of resettlement.'<sup>62</sup> Feedback on these proposals provided during the course of the thematic discussions, as well as bilaterally, indicated, however, that this language was too ambitious for a number of States, and was removed from subsequent drafts.<sup>63</sup>

Another clear example concerns the Compact's objectives. Under the heading 'Goals of the global compact on refugees', Draft One explained that:

The success of the global compact will ultimately hinge on how much progress is made in the following areas: (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 socioeconomic 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.<sup>64</sup>

<sup>61</sup> During the period of formal consultations, UNHCR released the following drafts: UNHCR, 'The global compact on refugees: Zero Draft' (31 January 2018) (Zero Draft); UNHCR, 'The global compact on refugees: Draft 1' (9 March 2018) (Draft One); UNHCR, 'The global compact on refugees: Draft 2' (30 April 2018) (Draft Two); UNHCR, 'The global compact on refugees: Draft 3' (4 June 2018) (Draft Three); UNHCR, 'The global compact on refugees: Final Draft' (26 June 2018) (Final Draft).

<sup>62</sup> UNHCR, 'Towards a Global Compact on Refugees': Thematic Discussion four and Thematic discussion five (n 52) 4. UNHCR also proposed the following: 'Resettlement States, in cooperation with hosting States, other interested States, UNHCR and other partners, will ... engage in an open and transparent multi-year resettlement pledging process with a view to ensuring a coherent and strategic global resettlement response.'

<sup>63</sup> Both the Zero Draft and Draft One retained the ambition, also contained in the New York Declaration and CRRF, to meet the annual resettlement needs identified by UNHCR (see Zero Draft, para 69; Draft One, para 80; New York Declaration, para 78; CRRF, para 16), but did not propose any mechanism for its realization. Subsequent drafts did not include this goal.

<sup>64</sup> Draft One, para 5 (emphasis and fns removed).

States made it quite clear, however, that the objectives of the Global Compact should be the same as the objectives of the CRRF, as negotiated in New York in 2016. In wishing to respect and respond to this desire – but also eager to retain some of the content that it had proposed in relation to the distribution of contributions amongst States, refugee protection, and the resolution of protracted situations – UNHCR proposed a compromise in Draft Two:

In line with the CRRF, the objectives of the global compact as a whole are to: (i) ease pressures on host countries; (ii) enhance refugee self-reliance; (iii) expand access to third country solutions; and (iv) support conditions in countries of origin for return in safety and dignity. Success in achieving these objectives will be measured by how much progress is made in the following areas:

- an improved sharing of the burden and responsibility, building a system that facilitates a more equitable and predictable distribution of contributions among States – and, where relevant, other stakeholders – including through the hosting of refugees, making financial contributions, and supporting solutions;
- enhanced protection and socio-economic conditions for refugees and host communities, notably women and girls, children, older persons, people with disabilities, and others with specific needs, taking into account each country's capacities and resources; and
- a reduction in the number of refugees who live in protracted situations through the achievement of durable solutions.<sup>65</sup>

The bulleted text remained beyond what many States were able to accept, however, and the third and subsequent drafts transposed the four objectives of the CRRF as the objectives of the Compact without supplement.

Similarly, the suggestion in Draft Two that pledges by States and other stakeholders at the Global Refugee Forum would reflect 'what they consider to be their fair share of responsibility' was too ambitious for some, and was removed from subsequent drafts.<sup>66</sup>

This is not to say that the engagement of States served only to restrain ambition, however. Indeed, 'most of the contentious issues played out in favour of refugee protection.'<sup>67</sup> As the then Assistant High Commissioner for Protection explained at the commencement of the second formal consultation, the Zero Draft had been updated to reflect feedback that a *greater* emphasis on protection was required.<sup>68</sup> At the urging of States and others, subsequent drafts would continue to strengthen language concerning protection, including specific references to the right to seek asylum and core human rights treaties.<sup>69</sup>

<sup>65</sup> Draft Two, para 7 (emphasis and fns removed).

<sup>66</sup> *ibid* para 18.

<sup>67</sup> Türk (n 5) 580.

<sup>68</sup> Volker Türk, 'Opening Remarks to the Second Formal Consultation on the Global Compact on Refugees' (UNHCR, 20 March 2018) <<https://www.unhcr.org/admin/dipstatements/Sab0bb787/opening-remarks-second-formal-consultation-global-compact-refugees.html>> accessed 1 April 2020.

<sup>69</sup> See eg UNHCR, 'Global Compact on Refugees: From Draft 1 (9 March) to Draft 2 (30 April): Summary of Main Changes' (30 April 2018) para 6.

Whilst these examples demonstrate the centrality of the perspectives of States in the drafting of the Global Compact – and the compromises that were at times necessary – it can be argued that these compromises improved the overall outcome because the final text could be collectively ‘owned’ by the international community as a whole, was able to be affirmed by an overwhelming majority of States in the General Assembly, and – most importantly – is more likely to be implemented actively.

The process was not for States only, however. In line with the request to the High Commissioner that he ‘consult with all relevant stakeholders’ in developing the Compact,<sup>70</sup> the process adopted what can be described as a ‘States plus’ approach to arrive at a text that sought to reflect the diversity of opinion and perspective amongst the wide range of active participants. Many of these stakeholders engaged with vigour – and the roles of civil society, academia, and international organizations are of particular note in this respect – by emphasizing the importance of the process, contributing ideas, and encouraging the Compact’s adoption and full implementation. The written contributions of these actors to the process were particularly valuable: 490 contributions were received in all,<sup>71</sup> including 160 from NGOs, 83 from international organizations, and 40 from individuals, including academics. The gender audits produced by the University of New South Wales and women with lived experience of displacement, for example, ‘contributed significantly to the inclusion of strong gender commitments’ in the Global Compact.<sup>72</sup>

Particularly noteworthy is the role played by refugees themselves in the Compact’s development. The importance of refugee participation in international discussions concerning refugee issues has generated increasing attention in recent years.<sup>73</sup> At the General Assembly’s Summit for Refugees and Migrants in 2016, for example, there were few refugees in attendance, and only two were able to take the floor.<sup>74</sup> The process to develop the Compact (and subsequently to organize the first Global Refugee Forum) has gradually broadened the scope for the direct engagement of refugees in international conversations directly affecting them.<sup>75</sup> As a group of refugees recently explained in Geneva’s Palais des Nations:

<sup>70</sup> CRRE, para 18.

<sup>71</sup> These were posted online in the interests of transparency and historical record: UNHCR, ‘Written Contributions’ <<https://www.unhcr.org/S95259bd4>> accessed 1 April 2020.

<sup>72</sup> Global Refugee Forum Gender Audit, ‘Second Preparatory Meeting: 25 June 2019: UNHCR Geneva’ <<https://www.arts.unsw.edu.au/sites/default/files/documents/Gender-Audit-report-Second-Preparatory-Meeting.pdf>> accessed 1 April 2020. See, generally, University of New South Wales, ‘Gender Audits and the Global Compact on Refugees’ <<https://www.arts.unsw.edu.au/our-research/research-centres-institutes/research-networks/forced-migration-research-network/projects/gender-audits-and-global-compact-refugees>> accessed 1 April 2020.

<sup>73</sup> See Tristan Harley and Harry Hobbs, ‘The Meaningful Participation of Refugees in Decision-Making Processes: Questions of Law and Policy’ (2020) 32 *International Journal of Refugee Law* 200; Hayley Drozdowski and Mark Yarnell, ‘Promoting Refugee Participation in the Global Refugee Forum: Walking the Walk’ (Refugees International July 2019) 3–4.

<sup>74</sup> United Nations, ‘UN Summit for Refugees and Migrants 2016’ <<https://refugeesmigrants.un.org/summit>> accessed 1 April 2020.

<sup>75</sup> UNHCR, ‘From Commitment to Action: Highlights of Progress towards Comprehensive Refugee Responses since the Adoption of the New York Declaration’ (August 2018) 12–13.

The call for meaningful refugee participation has echoed through the halls of this building ... over the past two years. Thanks to UNHCR, and other supporters, refugees themselves have had unprecedented access to self-represent in these discussions ... As refugees we are not a new actor, we are just coming out of invisibility.<sup>76</sup>

As a result of this engagement,<sup>77</sup> the Global Compact explicitly supports the engagement of refugees and host communities – particularly women, youth, and people with disabilities – in the design of refugee responses and other key forums and processes, including the Global Refugee Forum.<sup>78</sup>

This represents a considerable advance, and further developments are forthcoming: a key objective of the Annual Tripartite Consultations on Resettlement in 2020 will be to build upon gradually expanding refugee participation in recent years ‘to make meaningful refugee participation a permanent part’ of the Consultations ‘for which all relevant stakeholders have responsibility’.<sup>79</sup>

Progress is also being made at the national and local levels, where increasing numbers of refugee-run organizations are becoming directly involved in responses. In the practical application of the CRRE, for example, refugees participate in coordination structures in Uganda, Djibouti, and Ethiopia, and more than a thousand displaced people were consulted in the preparation of the regional response in Central America.<sup>80</sup> As Martin and others note, ‘the introduction of organizations in which the “beneficiaries” in need of “saving” also become its agents ... marks a significant shift in the way we conceive of the subjects and agents of intervention’.<sup>81</sup>

Whilst this expanded recognition at the international level of the importance of the direct engagement of refugees in processes that affect them is most welcome, it is

<sup>76</sup> Global Refugee-led Network and UNHCR Global Youth Advisory Council, ‘Intervention from the Floor’ (Third Preparatory Meeting for the Global Refugee Forum, Geneva, 24 November 2019). See also Stefan Rother and Elias Steinhilper, ‘Tokens or Stakeholders in Global Migration Governance? The Role of Affected Communities and Civil Society in the Global Compacts on Migration and Refugees’ (2019) 57 *International Migration* 243, 244, 249–51.

<sup>77</sup> For a general overview of engagement, see Rother and Steinhilper (n 76) 252–53. Of particular note was the Global Summit of Refugees, which brought together 72 refugees from around the world in June 2018 ‘to discuss, plan and organise on the subject of refugee self-representation’: Global Summit of Refugees Steering Committee, ‘The Global Summit of Refugees and the Importance of Refugee Self-Representation’ (2018) 59 *Forced Migration Review* 62, 62.

<sup>78</sup> Global Compact on Refugees, paras 34, 106. See also Rother and Steinhilper (n 76) 253 (‘Refugee activists involved in the process consider the “meaningful” consultation concept as a clear victory for their efforts’).

<sup>79</sup> Conseil canadien pour les réfugiés, ‘ATCR 2019–2020 Refugee Participation: Report of Focus Groups to January 2020’ (30 January 2020). Canada will chair the Consultations in 2020 and will build upon the work of the previous chair, the United Kingdom (UK), which established a Refugee Advisory Group for the 2019 Consultations.

<sup>80</sup> UNHCR (n 75) 12–13.

<sup>81</sup> Martin and others (n 16) 72 (citing Noga Malkin, ‘My Brother’s Keeper: The Double Experience of Refugee Aid-Workers’ (2015) 10 *Journal of Peacebuilding and Development* 46–59).

not without challenges. A number of other participants in the process to develop the Compact questioned – publicly or privately – the need for this kind of participation, or queried the representativeness of the refugees who were able to participate.<sup>82</sup> Only some refugees are able to travel internationally, often those who have been resettled; others face insurmountable legal obstacles or burdensome administrative processes to obtain travel documentation and visas.<sup>83</sup> There is much that remains to be done to increase the frequency and visibility of refugee participation in international meetings, including by UNHCR.

### 3.2 Filling a crucial gap in the international refugee protection regime

As noted above, the absence of an institutional architecture for burden and responsibility sharing has been seen as a key shortcoming of the international refugee regime for decades, and the Global Compact on Refugees seeks explicitly to fill this gap.<sup>84</sup>

Türk and Dowd use the term ‘protection gaps’ to describe ‘inadequacies in the protection afforded to refugees and other forcibly displaced persons’;<sup>85</sup> they develop a typology of normative gaps, application gaps, and implementation gaps that is useful in explaining the ways in which the Global Compact seeks to fill the ‘perennial gap’ of burden and responsibility sharing.<sup>86</sup>

A normative gap has long existed in relation to burden and responsibility sharing as a result of the ambiguity concerning its scope and nature.<sup>87</sup> The Global Compact clarifies that the principle is broad in scope and encompasses a wide range of actions that States and others can take to share burdens and responsibilities;<sup>88</sup> these

<sup>82</sup> See Drozdowski and Yarnell (n 73) 5.

<sup>83</sup> By way of example, refugees in some countries wishing to come to Geneva for an international meeting must: (a) have or acquire a valid travel document; (b) travel a considerable distance to the capital city of their country of asylum, sometimes multiple times, to apply for and obtain a visa for a nearby country that has a Swiss consulate; (c) travel to the nearby country to undertake an interview with the Swiss consulate; (d) return to their country of asylum and await the outcome of their application; and finally, (e) make arrangements to travel to Switzerland if and when their visa application is approved. See also Global Summit of Refugees Steering Committee (n 77) 62–63.

<sup>84</sup> Global Compact on Refugees, paras 2, 3. See also David James Cantor, ‘Fairness, Failure, and Future in the Refugee Regime’ (2018) 30 *International Journal of Refugee Law* 627, 627 (‘the Refugee Compact looks to be one of the most significant additions in decades to the refugee regime’).

<sup>85</sup> Volker Türk and Rebecca Dowd, ‘Protection Gaps’ in Elena Fiddian-Qasimiyeh and others (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press 2014) 278. Although the typology as conceived applies to gaps of a legal nature – that is, those arising ‘where existing provisions of international law, notably international refugee law, are either not applicable, non-existent, or inadequate in scope, or are not interpreted and/or applied in an appropriate manner’ – it is of broader utility.

<sup>86</sup> UNHCR (n 5).

<sup>87</sup> See the references at n 22 above.

<sup>88</sup> Harley (n 22) 6.

are not limited to financial contributions and resettlement places,<sup>89</sup> but include material and technical assistance,<sup>90</sup> ‘dedicated efforts to address root causes’ (including diplomatic and peacebuilding efforts, and support to countries of origin where appropriate),<sup>91</sup> investment and job creation by the private sector,<sup>92</sup> preferential trade arrangements,<sup>93</sup> measures to combat sexual and gender-based violence,<sup>94</sup> and indeed any number of ‘other actions’ that can be seen as contributing to the Compact’s four objectives.<sup>95</sup>

Furthermore, the Compact recognizes that, although the principle of burden and responsibility sharing is not a binding rule of international law, it is an expression of ‘political will and ambition’.<sup>96</sup> Animated by ‘fundamental principles of humanity and international solidarity’, grounded in the international refugee protection regime and guided by international human rights law and international humanitarian law,<sup>97</sup> the Compact is to be implemented through the adoption of ‘a strong partnership and participatory approach, involving refugees and host communities, as well as age, gender and diversity considerations’.<sup>98</sup> States and others are to determine the nature of their own contributions, ‘taking into account their national realities, capacities and levels of development’, much as the international climate change regime recognizes the ‘common but differentiated responsibilities and respective capabilities’ of States.<sup>99</sup>

The Global Compact also makes progress towards filling an application gap by defining the appropriate personal and material scope of application – that is, *rationae personae* and *rationae materiae* – of the principle of burden and responsibility sharing. In terms of application *rationae personae*, the Global Compact makes clear that burden and responsibility sharing is for ‘the international community as a whole’,<sup>100</sup> comprising States that are – and are not – signatories to the 1951 Refugee Convention and its 1967

<sup>89</sup> Global Compact on Refugees, para 32 (‘contributions to burden- and responsibility-sharing by the international community as a whole go beyond funding’). cf Ferris and Donato (n 6) 44 (‘There are two obvious concrete ways that governments can share responsibility for refugees hosted by receiving states: by providing financial resources to frontline governments and by resettling refugee outside of the region’).

<sup>90</sup> Global Compact on Refugees, para 18.

<sup>91</sup> *ibid* paras 8–9, 15.

<sup>92</sup> *ibid* paras 32, 71.

<sup>93</sup> *ibid* para 71.

<sup>94</sup> *ibid* para 75.

<sup>95</sup> *ibid* para 18. See, generally, Global Compact on Refugees, Part III.B.

<sup>96</sup> *ibid* para 4. See, related to this point, Dowd and McAdam (n 17) 879–85.

<sup>97</sup> Global Compact on Refugees, para 5.

<sup>98</sup> *ibid* para 13 (fn omitted).

<sup>99</sup> As Dowd and McAdam explore, however, ‘the principle takes a somewhat different shape here than in the climate change context’: Dowd and McAdam (n 23) 190–99. See also Dowd and McAdam (n 17) 885–90; Ineli-Ciger (n 17) 135–36; Wall (n 17) 224–26.

<sup>100</sup> See eg Global Compact on Refugees, paras 4, 14.

Protocol,<sup>101</sup> as well as a wide range of other stakeholders.<sup>102</sup> Importantly, it also emphasizes the centrality of ‘widening the support base beyond those countries that have historically contributed to the refugee cause through hosting refugees or other means.’<sup>103</sup>

Concerning application *rationae materiae*, and in line with the General Assembly’s request, the Global Compact applies *stricto sensu* to international cooperation concerning refugee situations. Discussions with States over the course of its development made it clear that any attempt explicitly to apply the Compact to other displacement situations (such as internal displacement or displacement in the context of disasters or climate change) would put the entire exercise at risk. States were, nonetheless, willing to recognize that a number of displacement contexts beyond the classic refugee situation – including ‘large movements involving both refugees and others on the move’, situations involving ‘refugees and internally displaced persons’, and ‘external forced displacement [resulting] from sudden-onset natural disasters and environmental degradation’ – do ‘present complex challenges for affected States, which may seek support from the international community to address them.’<sup>104</sup> In such circumstances, the specific support measures set out in the Compact could form the basis for tailored assistance.<sup>105</sup> The Compact also provides for the provision of ‘guidance and support ... to address other protection and humanitarian challenges’, including – but not limited to – forced displacement caused by disasters,<sup>106</sup> and recognizes the linkages between statelessness and refugee movements.<sup>107</sup> The Compact affirms, therefore, that the principle

<sup>101</sup> *ibid* para 6. The vast majority of non-signatory States voted to affirm the Global Compact in the General Assembly and participated in the Global Refugee Forum, with many also making pledges. See also Thomas Gammeltoft-Hansen, ‘The Normative Impact of the Global Compact on Refugees’ (2018) 30 *International Journal of Refugee Law* 605, 607 (‘Just as several non-party States are members of the Executive Committee of the United Nations High Commissioner for Refugees (UNHCR), the Refugee Compact may similarly create a nodal point for linking important refugee-hosting States to the international refugee protection regime’).

<sup>102</sup> Global Compact on Refugees, para 3.

<sup>103</sup> *ibid* para 2. See also paras 3, 7, 27, 32, 90.

<sup>104</sup> *ibid* para 12. The Global Compact also recognizes that ‘[w]hile not in themselves causes of refugee movements, climate, environmental degradation and natural disasters increasingly interact with the drivers of refugee movements’: para 8. See, in this respect, Volker Türk and Madeline Garlick, ‘Addressing Displacement in the Context of Disasters and the Adverse Effects of Climate Change: Elements and Opportunities in the Global Compact on Refugees’ (2019) 31 *International Journal of Refugee Law* 389, 390–91.

<sup>105</sup> See Grandi (n 24) 26; Türk (n 5) 580. See also Türk and Garlick (n 104) 392–93.

<sup>106</sup> Global Compact on Refugees, para 63. See also Türk and Garlick (n 104) 393–96 (‘Although earlier drafts explicitly referred to the Nansen Protection Agenda, the final version did not include it directly since some Member States, in principle, did not support citing documents that had not been crafted within UN intergovernmental processes. However, it can be inferred that paragraph 63 incorporates such a reference indirectly in so far as it refers to instruments and practices’); UNHCR, *In Harm’s Way: International Protection in the Context of Nexus Dynamics between Conflict or Violence and Disaster or Climate Change* (December 2018).

<sup>107</sup> Global Compact on Refugees, para 83.

of burden and responsibility sharing is directed primarily towards refugee situations, but leaves open the possibility of its application to a broader range of displacement contexts.

Finally, the Global Compact on Refugees also addresses the implementation gap arising from ‘the lack of a well-structured system for responsibility-sharing among States’.<sup>108</sup> Aleinikoff and Martin argue, for example, that the ‘major innovation’ of the Compact is that, ‘[f]or 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’ and that this has the potential to ‘move the international system of refugee protection and assistance forward in a significant way’.<sup>109</sup>

The architecture for burden and responsibility sharing established by the Compact consists of a series of ‘arrangements’ for burden and responsibility sharing that operate at the global level, or in response to specific refugee situations. At the global level, a Global Refugee Forum is to be convened every four years – commencing in 2019 – to bring the international community together ‘to announce concrete pledges and contributions towards the objectives of the global compact ... and to consider opportunities, challenges and ways in which burden- and responsibility-sharing can be enhanced’.<sup>110</sup> Experience has demonstrated that such exercises can be of considerable utility in bringing a broader range of States and other stakeholders to the table, influencing policy- and decision-making processes, providing openings for discussions that might not otherwise have taken place, and establishing a basis and direction for future work and advocacy, particularly when pledges have been approved and announced at the most senior levels of government. This was particularly the case for UNHCR’s 2011 ministerial meeting and the 2016 Leaders’ Summit on Refugees,<sup>111</sup> whose pledges formed the cornerstone of CRRF application in a number of countries.<sup>112</sup> The absence of pre-agreed mechanisms to review the implementation of pledges or to allow for new or updated pledges to be made, however, limited the effectiveness of these processes. In light of this, the Global Refugee Forum is conceived as an ongoing, quadrennial process at the ministerial level with built-in review and renewal mechanisms, including

<sup>108</sup> Aleinikoff and Martin (n 23) 8.

<sup>109</sup> *ibid* 8, 10. See also Cantor (n 84) 628; Guy S Goodwin-Gill, ‘The Global Compacts and the Future of Refugee and Migrant Protection in the Asia Pacific Region’ (2018) 30 *International Journal of Refugee Law* 674, 676 (‘the Global Compact on Refugees ... and the Comprehensive Refugee Response Framework ... now offer, at least potentially, mechanisms for translating “crisis” into “opportunity”, for both refugees and host communities’).

<sup>110</sup> Global Compact on Refugees, para 17.

<sup>111</sup> See UNHCR, ‘Ministerial Meeting’ <<https://www.unhcr.org/ministerial-meeting.html>> accessed 1 April 2020 (officially the ‘Intergovernmental event at the ministerial level of Member States of the United Nations on the occasion of the 60th anniversary of the 1951 Convention relating to the Status of Refugees and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness’); UNHCR (n 13).

<sup>112</sup> UNHCR (n 75) 7, 8.

‘mid-term review’ meetings and a ‘mechanism for tracking the implementation of pledges and contributions’.<sup>113</sup>

For specific refugee situations, the Compact draws upon the experiences of the CRRF’s practical application. In view of the fact that truly comprehensive responses require national leadership and the engagement of actors across government and beyond it, a number of States applying the CRRF established a coordinating steering group at the centre of government, supported by a technical secretariat.<sup>114</sup> The Compact recognizes the utility of such ‘national arrangements ... to coordinate and facilitate the efforts of all relevant stakeholders working to achieve a comprehensive response’ and envisages UNHCR and others supporting hosting countries in establishing them.<sup>115</sup>

A further key lesson from the practical application of the CRRF was the need for sustained and predictable, ‘coordinated and coherent’ support from the international community, including but certainly not limited to additional financial support from donors.<sup>116</sup> Whilst the countries practically applying the CRRF did enjoy additional support, the Global Compact seeks to institutionalize this good practice by providing for the establishment of ‘Support Platforms’ in appropriate circumstances. Led by States, these are envisaged as a flexible modality for the engagement of relevant members of the international community in specific situations; their functions are to include galvanizing political commitment and advocacy for prevention, protection, response, and solutions; mobilizing financial, material, and technical assistance, as well as resettlement and complementary pathways, and facilitating coherent humanitarian and development responses.<sup>117</sup>

Finally, and again drawing on the experience of the CRRF application and a long history of good practice,<sup>118</sup> the Compact provides for the involvement of ‘regional and

<sup>113</sup> See Global Compact on Refugees, paras 17–19, 103–04. A similar logic motivates the development of ‘framework conventions’ in international environmental law: see Wall (n 17) 217–22.

<sup>114</sup> See UNHCR Evaluation Service (n 51) 4, 56; Endres (n 51) (‘In a number of roll-out countries, the establishment of dedicated mechanisms in the form of steering committees, secretariats and technical working groups has taken longer than initially anticipated and led to some delays in the formal application of the CRRF. Yet this has proved to be an essential foundation for a truly comprehensive response – for mobilizing support of bilateral donors, for strengthening collaboration between humanitarian and development actors, and for enhancing broad-based government ownership’); Sergio Carciotto and Filippo Ferraro, ‘Building Blocks and Challenges for the Implementation of the Global Compact on Refugees in Africa’ (2020) 8 *Journal on Migration and Human Security* 83, 87–93.

<sup>115</sup> Global Compact on Refugees, para 20.

<sup>116</sup> Endres (n 51); UNHCR Evaluation Service (n 51) 55, 56.

<sup>117</sup> Global Compact on Refugees, paras 22–27.

<sup>118</sup> The practical application of the CRRF was undertaken on a regional basis in both the East and Horn of Africa and in Central America and Mexico: see UNHCR (n 75) 3; UNHCR, ‘Comprehensive Regional Protection and Solutions Framework’ (2017); UNHCR, ‘MIRPS [Comprehensive Regional Protection and Solutions Framework in Central America and Mexico] Quantification’ (2019); Endres (n 51). See also Dare and Abebe (n 51); Carciotto and Ferraro (n 114) 86.

subregional mechanisms and groupings' in refugee responses where appropriate. This could be achieved within the framework of an existing regional or subregional organization, such as occurred with the Intergovernmental Authority on Development for the CRRF application in the East and Horn of Africa, or in a more *ad hoc* grouping of regional neighbours.

### 3.3 Seeking to bolster international cooperation ...

The Global Compact on Refugees seeks to enhance burden and responsibility sharing through international cooperation. Much has been made of the fact that – although deeply rooted in international law and representing ‘the political will and ambition of the international community as a whole for strengthened cooperation and solidarity with refugees and affected host countries’<sup>119</sup> – the Compact is not itself legally binding.<sup>120</sup> Even if a critical mass of States had been prepared to enter into formal negotiations to conclude a binding treaty, which they were not,<sup>121</sup> there are a number of reasons why a non-binding framework for cooperation was and remains the best way to commence the construction of an architecture for burden and responsibility sharing.

First, a non-binding framework for cooperation permits greater flexibility for all involved to adapt to changing circumstances and to be operationalized differently in different settings.<sup>122</sup> A binding treaty requires precisely formulated rules that are rigidly applied and that are impossible – or very difficult – to change.<sup>123</sup> As Betts has demonstrated, however, the most successful examples of burden and responsibility sharing

<sup>119</sup> Global Compact on Refugees, paras 4, 5. See also Fatima Khan and Cecile Sackeyfio, ‘What Promise Does the Global Compact on Refugees Hold for African Refugees?’ (2018) 30 *International Journal of Refugee Law* 696, 698 (‘many of its principles are founded on the 1951 Refugee Convention and human rights treaties, and its normative force is implied’).

<sup>120</sup> *ibid* para 4.

<sup>121</sup> A number of States were extremely vigilant to ensure that nothing in the Compact could be interpreted as creating additional legal obligations. Recall, for example, the resistance to suggestions even that States should be encouraged to assume a ‘fair share’ of the burden and responsibility, either in relation to resettlement or pledges at the Global Refugee Forum. See also Alexander Betts, ‘The Global Compact on Refugees: Towards a Theory of Change?’ (2018) 30 *International Journal of Refugee Law* 623, 625 (‘It is, of course, non-binding, but that, by itself, does not necessarily mean it cannot have normative impact on State behaviour’); Elizabeth Ferris, ‘The Global Summit on Refugees and Migrants: The Pesky Issue of Level of Ambition’ (*Andrew & Renata Kaldor Centre for International Refugee Law*, 14 September 2016) <<http://www.kaldorcentre.unsw.edu.au/publication/global-summit-refugees-and-migrants-pesky-issue-level-ambition>> accessed 1 April 2020 (‘academic journals are filled with bold, ambitious proposals that have zero chance of success in the “real world” of politics and diplomacy’).

<sup>122</sup> See eg the discussion above (text related to n 104) in relation to the possible application of the Global Compact on Refugees to ‘large movements involving both refugees and others on the move’, situations involving ‘refugees and internally displaced persons’, and ‘external forced displacement [resulting] from sudden-onset natural disasters and environmental degradation’.

<sup>123</sup> Jean-Pierre Fonteyne, ‘Burden-Sharing: An Analysis of the Nature and Function of International Solidarity in Cases of Mass Influx of Refugees’ (1983) 8 *Australian Yearbook of International Law* 162, 184.

historically have occurred where State action could advance broader interests linked to the specific context.<sup>124</sup> States' ability to adjust their contributions 'according to their own methods, existing national development priorities and strategic interests ... is likely to enhance incentives for provision.'<sup>125</sup> A binding instrument cannot adjust for such realities, whereas a more flexible and iterative approach 'offers the advantage for states to correct and adapt their behaviour', 'thus improving the odds for cooperation.'<sup>126</sup>

This links, then, to the second reason, namely that a non-binding framework for cooperation permits greater normative and operational ambition. The agreement becomes a ceiling to be reached for – and a diplomatic tool to be used in reaching for it – rather than a floor that has to be set low so that all States will agree to be legally bound not to sink below it.<sup>127</sup> As Noll argues, '[p]ushing Member States to a rigidly defined contract [on refugee responsibility sharing] might entice them to peg their commitment at a low level not responding to actual protection needs.'<sup>128</sup>

Thirdly, agreement is easier to achieve when States are not signing up to binding legal obligations.<sup>129</sup> As a procedural matter, the agreement can be more easily adopted: it can be agreed upon in the appropriate forum (here, the General Assembly) and work on implementation can begin straightaway. There does not need to be a lengthy process of ratification, nor a period of waiting for sufficient ratifications for the treaty to enter into force. Furthermore, in circumstances where the international cooperation in question requires the widespread participation of States – including 'beyond those countries that have historically contributed to the refugee cause'<sup>130</sup> – an easier adoption

<sup>124</sup> See, generally, Betts (n 18). See also Goodwin-Gill (n 109) 681 ('Whether [the Compact] will deliver must depend on the willingness of the international community of States at large to "buy in", but non-binding agreements and understandings have certainly worked in the past').

<sup>125</sup> Alexander Betts, 'International Cooperation and the Targeting of Development Assistance for Refugee Solutions: Lessons from the 1980s' (September 2004) *New Issues in Refugee Research*, Working Paper No 107, 16. See also Dowd and McAdam (n 23); Türk and Garlick (n 5) 672 (emphasizing the importance of 'common interests among concerned States' in previous responsibility-sharing exercises); Gammeltoft-Hansen (n 101) 609–10 (describing the Compact's 'underlying modalities for cooperation' as 'revolv[ing] around mutual incentive structures, issue linkages, and needs-based approaches'); Betts, Costello, and Zaun (n 17) 32.

<sup>126</sup> Gregor Noll, 'Risky Games? A Theoretical Approach to Burden-Sharing in the Asylum Field' (2003) 16 *Journal of Refugee Studies* 236, 246.

<sup>127</sup> This is not to say, however, that States do not take the outcomes of such processes seriously. The detailed legal analyses of the evolving drafts of the Global Compact on Refugees undertaken by the international law experts within some governments demonstrated as much. See also Geoff Gilbert, 'Not Bound but Committed: Operationalizing the Global Compact on Refugees' (2019) 57 *International Migration* 27, 29 ('governments nevertheless often regard politically binding obligations as just as authoritative in practice').

<sup>128</sup> Noll (n 126) 247. See also Betts (n 121) 624.

<sup>129</sup> Alan Boyle, 'Soft Law in International Law-Making' in Malcolm Evans (ed), *International Law* (4th edn, Oxford University Press 2014) 120.

<sup>130</sup> Global Compact on Refugees, para 2. As has been found in international environmental law, developing regimes for international cooperation with low barriers to entry can encourage wide participation that leads – over time – to more substantive engagement: see Wall (n 17) 221.

process makes that broad participation more likely, and reduces the risk of the world being divided into States that have and have not agreed to be bound.

Finally, and of particular relevance to the Global Compact on Refugees, a non-binding framework makes it easier to bring a wider range of stakeholders into international cooperation efforts.<sup>131</sup> Refugee protection has always involved a wide range of stakeholders, including governments, civil society actors, academia, international organizations, and refugees themselves. The Global Compact seeks to recognize and deepen these existing partnerships, and also to work towards a true ‘whole-of-society’ approach by engaging other key actors, such as cities and local authorities, parliaments, the private sector, and sporting and cultural organizations.<sup>132</sup> There would have been little scope for this in the context of a binding agreement reached between States.

The Global Compact provides for UNHCR to play a ‘catalytic and supportive role’ in the engagement of these actors.<sup>133</sup> Whilst UNHCR has been described as playing a catalytic role since at least the 1980s,<sup>134</sup> and indeed many of the functions conferred upon the Office in 1950 could be described as ‘catalytic’,<sup>135</sup> it will be all the more important that UNHCR’s work ‘facilitates, supports and accelerates’ the work of others as the international community seeks to implement the Global Compact and broaden the base of support for refugee responses.<sup>136</sup>

(a) ... with a view to enhancing refugee protection ...

The Global Compact aims to improve protection outcomes through the provision of support aimed at strengthening national institutions and capacities with a view to improving the ability of refugees to exercise their rights.

Rather than being separate from or somehow opposed to one another, the provision of protection to refugees and burden and responsibility sharing are inherently interlinked.<sup>137</sup> Indeed, the Compact conceives of the former as being a key purpose of the latter: it ‘seeks to operationalize the principles of burden- and responsibility-sharing

<sup>131</sup> See also Gammeltoft-Hansen (n 101) 607.

<sup>132</sup> See Global Compact on Refugees, paras 37–38, 39, 42, 44.

<sup>133</sup> *ibid* paras 33, 101.

<sup>134</sup> General Assembly, ‘Addendum to the Report of the United Nations High Commissioner for Refugees’, UN doc A/40/12/Add.1 (10 January 1986) para 126. See also UNHCR Executive Committee Conclusion No 89 (2000); Betts (n 125) 5; Betts, Loescher, and Milner (n 26) 103.

<sup>135</sup> UNGA res 428 (V) (14 December 1950) Annex, para 8 (‘Promoting ... Assisting ... Facilitating’).

<sup>136</sup> Sarah Collinson and Ed Schenkenberg, ‘UNHCR’s Leadership and Coordination Role in Refugee Response Settings’ (UNHCR Evaluation Service, ES/2019/16) 18 (noting that such a role ‘does not exclude UNHCR’s direct operational engagement’).

<sup>137</sup> António Guterres, ‘Opening Remarks at the 66th Session of the Executive Committee of the High Commissioner’s Programme’ (5 October 2015) <<https://www.unhcr.org/admin/hcspeeches/56122bd76/opening-remarks-66th-session-executive-committee-high-commissioners-programme.html>> accessed 1 April 2020 (‘the institution of asylum must remain sacrosanct, honoured as one of the deepest expressions of humanity ... It is my conviction that the best way to do this is through genuine international cooperation and equitable burden and responsibility sharing’); Türk and Garlick (n 5) 673–74; Gilbert (n 127) 28.

to better protect and assist refugees and support host countries and communities.<sup>138</sup> As the preamble to the 1951 Refugee Convention itself recognizes, it is the very act of providing protection to refugees that ‘may place unduly heavy burdens on certain countries.’<sup>139</sup> When a country hosts large numbers of refugees, this can compromise the capacity of the State to provide protection (*inter alia*) and it is at this point that assistance from the international community can be deployed to support the host State in a way that expands protection space;<sup>140</sup> conversely, a failure adequately to share burdens and responsibilities can result in a considerable shrinking of protection space. Properly formulated support can thus be of benefit to refugees and the quality of protection that they receive, as well as to the host country and communities in recognition of their contribution to the collective good.<sup>141</sup> In truth, it is UNHCR’s experience that – in many countries – an enormous willingness to provide protection is restrained by capacity,<sup>142</sup> meaning that support to expand capacities can pay considerable protection dividends.<sup>143</sup> It is for this reason that the Global Compact focuses on the establishment of mechanisms for support in a range of sectors essential to refugees’ protection and well-being.<sup>144</sup> As a case in point, the Global Compact establishes an Asylum Capacity Support Group that will mobilize experts from around the world ‘to provide support to relevant national authorities – in line with applicable international, regional and national instruments and laws – to strengthen aspects of their asylum systems’ and the quality of protection that they provide.<sup>145</sup> The provision of support is no silver bullet and will not guarantee international protection for all who need it, of course, but it will help to remove some of the obstacles that stand in the way of refugees receiving protection in many contexts.

The Global Compact is not only relevant to refugee protection in countries with stretched capacities, however. Whilst ‘the CRRF relates specifically to large refugee situations’,<sup>146</sup> the Compact as a whole is of more general application.<sup>147</sup> When it speaks

<sup>138</sup> Global Compact on Refugees, para 5 (emphasis added).

<sup>139</sup> Refugee Convention, preamble. Likewise, the Compact itself notes that the ‘[t]horough management of a refugee situation’ – including the provision of protection – ‘is often predicated on the resilience of the host community’: Global Compact on Refugees, para 64.

<sup>140</sup> See eg UNHCR Executive Committee Conclusion No 52 (XXXIX) on International Solidarity and Refugee Protection (1998) para 3. See also Gilbert (n 127) 30.

<sup>141</sup> Global Compact on Refugees, para 14.

<sup>142</sup> Ninette Kelley, ‘International Refugee Protection Challenges and Opportunities’ (2007) 19 International Journal of Refugee Law 401, 407–08 (detailing the ways in which ‘[t]he absence of sufficient national capacity has serious protection consequences for refugees’).

<sup>143</sup> Volker Türk, ‘Prospects for Responsibility Sharing in the Refugee Context’ (2016) 4 Journal on Migration and Human Security 45, 53.

<sup>144</sup> See, generally, Global Compact on Refugees, Parts III.B.1 (Reception and admission) and III.B.2 (Meeting needs and supporting communities).

<sup>145</sup> *ibid* para 62 (‘with a view to ensuring their fairness, efficiency, adaptability and integrity’). See, further, UNHCR, ‘Asylum Capacity Support Group Mechanism: Working Modalities’.

<sup>146</sup> Global Compact on Refugees, para 12.

<sup>147</sup> See European Council on Refugees and Exiles, ‘Global Means Global: Europe and the Global Compact on Refugees’ Policy Note #15 (2018) 1, 3.

of the international community's 'solidarity with refugees',<sup>148</sup> this is in no way limited to refugees who form part of large refugee situations, or who are hosted in low- or middle-income countries. Whilst it is true that developed States are encouraged to support the quality of protection in the developing world, there are many provisions of the Compact that apply equally within their own borders, including mechanisms to ensure that 'all those in need of international protection [are able] to find and enjoy it',<sup>149</sup> '[t]he development of non-custodial and community-based alternatives to detention',<sup>150</sup> and the socio-economic inclusion of refugees, including the promotion of 'economic opportunities, decent work, job creation and entrepreneurship programmes'.<sup>151</sup> Indeed, there is no better way for States to demonstrate commitment to the principles of the Global Compact than to implement them domestically.<sup>152</sup> The Compact does not give licence to developed States to 'externalize' refugee protection. It does reflect a focus on refugee protection in developing countries, predominantly because this is where the vast majority of the world's refugees are and will continue to be, but this in no way alters developed States' existing legal obligations relating to refugees and asylum seekers who are on or who are seeking to access their territory for the purposes of finding protection.

Furthermore, while the Global Compact does deal with a wide range of issues – in the course of seeking to fill the normative, application, and implementation gaps discussed above, or incidentally – it is important to emphasize that it is not and does not seek to be a panacea for all shortcomings of implementation that face the international refugee regime.<sup>153</sup> It does not seek to encapsulate, reframe, or repeat all that is important in that regime, nor do its objectives represent the objectives of the regime as a whole.<sup>154</sup> Given the anti-refugee sentiment that was on the rise in many countries

<sup>148</sup> Global Compact on Refugees, para 4.

<sup>149</sup> *ibid* para 61.

<sup>150</sup> *ibid* para 60.

<sup>151</sup> *ibid* para 70. See also OECD, *Ready to Help? Improving Resilience of Integration Systems for Refugees and Other Vulnerable Migrants* (2019).

<sup>152</sup> See Karen Hargrave and Veronique Barbelet, 'The Global Compact on Refugees: Lessons from Bangladesh' Briefing Note (Overseas Development Institute, Humanitarian Policy Group December 2019) 10.

<sup>153</sup> Some of which are outlined in Ferris and Donato (n 6) 42–48.

<sup>154</sup> See Volker Türk, 'Opening Remarks to the Formal Consultations for the Global Compact on Refugees' (13 February 2018) <<https://www.unhcr.org/admin/dipstatements/Sa82e7067/opening-remarks-formal-consultations-global-compact-refugees.html>> accessed 1 April 2020 ('Given that we have in place a strong international refugee protection regime with well-established principles, the global compact is not meant to be, and does not need to be, the 'be all and end all' of 70 years of law and practice or a standard-setting exercise'); Charlotte Alfred, 'UN Official: Refugee Compact Will Meet Fear and Ignorance with Facts' (*Refugees Deeply*, 1 March 2018) <<https://www.newsdeeply.com/refugees/community/2018/03/01/u-n-official-refugee-compact-will-meet-fear-and-ignorance-with-facts>> accessed 1 April 2020; Betts (n 121) 626 ('[The Global Compact] could not realistically have addressed all aspects of the refugee system; certainly not at the current historical juncture. It inevitably had to make choices in order to have focus'); Geoff Gilbert, 'Indicators for the Global Compact on Refugees' (2018) 30 *International Journal of Refugee Law* 635, 638.

as the Compact was being developed,<sup>155</sup> considerable risks would have accompanied any attempt to bring certain core principles into the process, in particular those which some States might seek to contest or renegotiate. A number of States that are not party to the 1951 Refugee Convention or 1967 Protocol – including major refugee-hosting countries – were keen to ensure that they were not seen to be endorsing even the existence of certain legal obligations that did not already apply to them. What was required was neither more law, nor amendment of or controversy about the law, but a pragmatic and practical tool – grounded in existing legal principles – that sought to improve and strengthen refugee protection in practice,<sup>156</sup> all the more so when the New York Declaration had only just ‘reaffirmed the tenets of refugee protection and the key legal instruments underpinning them.’<sup>157</sup>

(b) ... and with a view to expanding access to solutions

It is no secret that the search for durable solutions has not yielded sufficient results in recent years.<sup>158</sup> Refugee-producing conflicts have dragged on and efforts to address State fragility have made slow progress at best, meaning that opportunities for voluntary repatriation have been few and far between. The traditional reticence of States hosting large numbers of refugees vis-à-vis local integration has continued and even resettlement – which is a life-saving protection tool but which has never been of sufficient magnitude significantly to reduce the number of refugees worldwide – is becoming less available. When new refugee situations are included, the worldwide refugee number seems to be on an inexorable upward trajectory.

Although the trends have not been heading in the right direction, the Global Compact can serve as a rallying point for the international community to devote new energies to prevent forced displacement before it occurs and to find solutions when it does by providing tools – such as Support Platforms – to drive action forward. In the field of voluntary repatriation, the Compact recognizes the primary responsibility of the country of origin whilst calling upon the international community to support efforts ‘to address root causes, to remove obstacles to return, and to enable conditions favourable to voluntary repatriation.’<sup>159</sup> Whilst in many – if not all – cases, the establishment of conditions in the country of origin favourable to voluntary repatriation requires action that lies beyond the refugee regime and encapsulates questions of conflict resolution and the stabilization of fragile States, the Compact provides a framework for the deepening of interactions between humanitarian, development, and peace actors in displacement contexts that can support that work.

In terms of resettlement, the Compact aims to expand its availability by encouraging States and other stakeholders to work together ‘to establish, or enlarge the scope, size, and quality of, resettlement programmes.’ The key focus of these efforts – a three-year

<sup>155</sup> Wall (n 17) 214.

<sup>156</sup> Grandi (n 24) 24; Türk (n 143) 46–47; Türk (n 5) 576, 582 (‘It is not about having a new law as such, but about ensuring the collective buy-in to make its implementation effective’); UNHCR (n 46) para 17.

<sup>157</sup> UNHCR, ‘Note on International Protection’, UN doc EC/68/SC/CRP.12 (16 June 2017) para 5.

<sup>158</sup> See UNHCR Evaluation Service (n 51) 10–12.

<sup>159</sup> Global Compact on Refugees, para 88. See also paras 8–9.

strategy to expand the pool of available resettlement places and to increase the availability and predictability of complementary pathways for admission – was launched at the Annual Tripartite Consultations on Resettlement in 2019. It sets the ambitious target of three million refugees accessing a third-country solution over a 10-year time frame by:

- resettling one million refugees in 50 countries through the establishment of new resettlement programmes and the expansion of existing ones;
- developing protection-sensitive complementary pathways that are utilized by two million refugees; and
- supporting initiatives to promote welcoming and inclusive societies, and refugee integration.<sup>160</sup>

A key element of the Strategy's implementation will be the newly launched Sustainable Resettlement and Complementary Pathways Initiative, which will aim to build national capacities to establish and expand resettlement programmes and complementary pathways.<sup>161</sup> The Strategy's first-year resettlement target – to reach 60,000 resettlement departures to 29 States – was met.<sup>162</sup>

In light of the fact that it remains a sensitive political issue with many hosting States,<sup>163</sup> the scope for concrete progress on local integration in the multilateral Compact-drafting process was limited. The Compact thus mirrors previously negotiated language in reaffirming that local integration is a 'sovereign decision and an option to be exercised by States guided by their treaty obligations and human rights principles', whilst also providing for the provision of support to States that might be considering offering local integration.<sup>164</sup>

Because the three traditional durable solutions have been so elusive in recent years,<sup>165</sup> however, the Compact goes beyond them also to consider two further solutions, namely complementary pathways for admission to third countries and 'other local solutions'.<sup>166</sup> These two solutions are not ordinarily durable in nature, but they do offer an interim solution and can lay the groundwork for access to a future durable solution.

<sup>160</sup> UNHCR, *The Three-Year (2019–2021) Strategy on Resettlement and Complementary Pathways* (2019) 8–9.

<sup>161</sup> *ibid* 19, 25.

<sup>162</sup> As noted in the postscript, however, the COVID-19 pandemic has necessitated the temporary suspension of resettlement departures by UNHCR and IOM.

<sup>163</sup> See eg Lucy Hovil, 'Local Integration' in Elena Fiddian-Qasmiyeh and others (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press 2014); Karen Jacobsen, 'The Forgotten Solution: Local Integration for Refugees in Developing Countries' (July 2001) *New Issues in Refugee Research*, Working Paper No 45.

<sup>164</sup> *Global Compact on Refugees*, paras 97–99.

<sup>165</sup> See Ferris and Donato (n 6) 8–9; Martin and others (n 16) 66–67.

<sup>166</sup> See UNHCR (n 157) para 58; Türk and Garlick (n 5) 676.

Complementary pathways, which are addressed also in the three-year strategy referred to above, are to be 'made available on a more systematic, organized, sustainable and gender-responsive basis'.<sup>167</sup> The Compact emphasizes that they be additional to resettlement and contain appropriate protection safeguards, and that the number of countries offering these opportunities be expanded overall.<sup>168</sup>

'Other local solutions' involve 'interim legal stay', including for the purposes of 'economic social and cultural inclusion', but 'without prejudice to eventual durable solutions that become available'.<sup>169</sup> The specifics of such arrangements will vary considerably depending on context, and will be supported by States and other stakeholders. Just as many complementary pathways – such as student visas and labour mobility opportunities – do not proceed on the assumption that refugees will come to reside permanently in the country where they are studying or working, the provision of other local solutions does not assume that refugees provided with access to national services or interim legal stay will eventually be locally integrated; the benefits for the refugee that come with interim legal stay and inclusion – in particular self-reliance – are likely also to prepare them for other solutions, such as sustainable voluntary repatriation when conditions allow, or a third-country solution.

### 3.4 Building upon and embedding emerging trends

A fourth key feature of the Global Compact on Refugees is that, rather than seeking to reinvent the wheel, it consolidates a number of emerging trends in refugee responses and seeks further to embed and advance them.<sup>170</sup> Although this is true in a number of

<sup>167</sup> Global Compact on Refugees, paras 94–96.

<sup>168</sup> *ibid.* See also UNHCR, 'Complementary Pathways for Admission of Refugees to Third Countries: Key Considerations' (April 2019); OECD and UNHCR, 'Safe Pathways for Refugees: OECD–UNHCR Study on Third Country Solutions for Refugees: Family Reunification, Study Programmes and Labour Mobility' (December 2018); OECD and UNHCR, 'Safe Pathways for Refugees: OECD–UNHCR Study on Third Country Solutions for Refugees: 2019 Update' (December 2019).

<sup>169</sup> Global Compact on Refugees, para 100.

<sup>170</sup> Grandi (n 24) 24; Ariane Rummery and Jonathan Clayton, 'Volker Türk Explains the Global Compact on Refugees' (*UNHCR*, 30 August 2018) <<https://www.unhcr.org/news/stories/2018/8/5aa15d60c/volker-turk-explains-global-compact-refugees.html>> accessed 1 April 2020; Karen Hargrave and others, 'The Rohingya Response in Bangladesh and the Global Compact on Refugees: Lessons, Challenges and Opportunities' (April 2020) Overseas Development Institute, Humanitarian Policy Group Working Paper, 10 ('The [Compact's] greatest value is that it represents a collective framework consolidating good practices in refugee response'), 22 ('What is new is that suggestions for a more comprehensive solution to large-scale refugee movements are coalesced in one place, with aspirational targets and steps for both host and supporting countries'); Sarah Deardorff Miller, 'The GCR and the Role of Development Actors with Refugees: A Game-Changer, or More of the Same?' (2019) 57 *International Migration* 173, 177 ('Although the [Global Compact on Refugees] does not deserve sole credit for recent trends, its support for different financing models that encourage development actors to be engaged differently with refugee situations could have profound effects').



obliges States 'as far as possible [to] facilitate the assimilation and naturalization of refugees'.<sup>183</sup>

Applying such an approach beyond Europe – the context for which the Refugee Convention was initially designed – was to prove difficult, however. In 1967, as the Convention's Protocol prepared to expand the reach of international refugee law beyond Europe, the High Commissioner for Refugees – Prince Sadruddin Aga Khan – noted 'the interdependence between the refugee problem and the problem of development', advocated for an 'integrated approach' to the two, and argued that 'development plans which disregard the presence of large numbers of refugees ... would quite simply be doomed to failure'.<sup>184</sup>

Similar arguments were also pursued in the 1970s by academics, who 'highlighted the impact of refugee hosting on development and argued that refugee problems should be addressed in the context of development'.<sup>185</sup> Referred to in some quarters as 'refugee aid and development' (RAD), this line of thinking 'pointed to the possibility of moving beyond the dependency created by relief and emergency assistance and instead promoting the self-sufficiency of refugees or even their local integration through a developmental approach'.<sup>186</sup> Importantly, it also saw the potential of using a developmental lens to examine root causes and the creation of conditions for sustainable and voluntary return.<sup>187</sup>

Although RAD became influential in academic circles and within UNHCR,<sup>188</sup> it was a 'contested concept' with little support from donor or hosting States; the

<sup>183</sup> *ibid* art 34.

<sup>184</sup> Prince Sadruddin Aga Khan, 'Statement by Prince Sadruddin Aga Khan, United Nations High Commissioner for Refugees, to the Third Committee of the United Nations General Assembly at its 1519th meeting' (20 November 1967) <<https://www.unhcr.org/admin/hcspeeches/3ae68fb510/statement-prince-sadruddin-aga-khan-united-nations-high-commissioner-refugees.html>> accessed 1 April 2020.

<sup>185</sup> Betts (n 18) 69–70.

<sup>186</sup> *ibid*. RAD 'argued that refugees need not be viewed as passive and dependent burdens but might instead benefit their host states if they were empowered to play an active part in the development process': 100. It was said to have five elements: '(1) it had a development orientation, (2) it attempted to move refugees toward self-reliance and self-sufficiency, (3) its normative focus was on helping less-developed countries to cope with the impact of refugees on their infrastructure, (4) its approach sought to include the local population as the beneficiaries of projects alongside the refugees, and (5) it was consistent with national development plans': 70 (citing Robert Gorman, 'Linking Refugee Aid and Development in Africa' in Robert Gorman (ed), *Refugee Aid and Development: Theory and Practice* (Greenwood 1993)).

<sup>187</sup> Betts (n 18) 167; Jeff Crisp, 'Mind the Gap! UNHCR, Humanitarian Assistance and the Development Process' (May 2001) *New Issues in Refugee Research*, Working Paper No 43, 5–14.

<sup>188</sup> General Assembly (n 134) paras 125–36; General Assembly, 'Addendum to the Report of the United Nations High Commissioner for Refugees', UN doc A/42/12/Add.1 (22 January 1988) paras 101–22; Crisp (n 187) 2–5; Betts (n 18) 49, 70, 79; Betts (n 143); Ferris and Donato (n 6) 46–47; Miller (n 170) 175–76.

former did not broadly accept that its implementation necessitated additional financial support on their part whilst, in its absence, the latter often feared that it would compromise poverty reduction and developmental efforts designed to support their own citizens.<sup>189</sup> There were also concerns that the relative size and location of refugee populations (that is, often small and remote) would pose practical and other problems.

Although some feared that it had been ‘forgotten or discredited’,<sup>190</sup> the notion that development approaches are essential to address and respond to forced displacement challenges has enjoyed a resurgence in recent years,<sup>191</sup> and has been embraced by many who were previously skeptical. There is a realization that a purely humanitarian approach to providing protection and assistance to refugees is not only unsustainable in the long run, but also often inefficient. Furthermore, the creation of parallel socio-economic systems has the potential to undermine national development efforts.<sup>192</sup> On the other hand, an inclusive approach to refugee protection – supported by humanitarian and development actors – can contribute to development outcomes for refugees and their hosts. Whilst host communities have not become ‘of concern’ to UNHCR *per se*,<sup>193</sup> there is now a more fulsome recognition that their development is intrinsically linked to protection outcomes for refugees.

It is also true that – for a range of reasons – not all refugees will be able to become self-sufficient economic actors. Safeguards must be in place to avoid unintended

<sup>189</sup> Betts (n 18) 70, 170–71, 174; General Assembly 1998 (n 188) para 103 (referring to ‘the challenge of “additionality”’); Betts (n 143) 5; Betts, Loescher, and Milner (n 26) 88. Such concerns continue to exist, of course: see World Bank Group, *Forcibly Displaced: Toward a Development Approach Supporting Refugees, the Internally Displaced, and Their Hosts* (International Bank for Reconstruction and Development 2017) 129.

<sup>190</sup> Crisp (n 187) 19 (arguing that ‘the principle ... that refugees should enjoy productive lives and contribute to the development of the areas where they have settled ... could usefully be revived’).

<sup>191</sup> See, in particular, World Bank Group (n 189); OECD, ‘Addressing Forced Displacement through Development Planning and Co-Operation: Guidance for Donor Policy Makers and Practitioners’ (OECD Development Policy Tools 2017); Miller (n 170) 176–77. This is also true within UNHCR: see Julia Steets, Julian Lehmann, and Urban Reichhold, ‘UNHCR’s Engagement in Humanitarian-Development Cooperation: Think Piece on Research Phase 1 (November 2018 – June 2019)’ (UNHCR Evaluation Service, ES/2019/09, October 2019) 3.

<sup>192</sup> See Amy Slaughter and Jeff Crisp, ‘A Surrogate State? The Role of UNHCR in Protracted Refugee Situations’ (January 2009) *New Issues in Refugee Research*, Research Paper No 168.

<sup>193</sup> ‘Population of concern’ is an umbrella term used by UNHCR to describe people who fall within its core mandate (ie refugees, asylum seekers, returnees, and stateless people) or those outside the general or exclusive mandate in relation to which UNHCR nonetheless has an official role (such as internally displaced people and those in relation to whom UNHCR exercises a ‘good offices’ function). See UNHCR, ‘Note on the Mandate of the High Commissioner for Refugees and His Office’ (October 2013).

negative consequences and coping strategies,<sup>194</sup> alongside measures to enable an independent life for refugees able to live one. The goal should be the highest attainable level of self-reliance for each refugee; indeed, many displaced people see their own self-reliance as central to their human dignity.<sup>195</sup>

The evidence in favour of the inclusive approach is mounting: Sanghi, Onder, and Vemuru, for example, have found that the refugee presence in Kakuma, Kenya, has had ‘an overall beneficial and permanent impact’ on the local economy; it boosts economic output by more than 3 per cent, and the economic integration of refugees increases per capita incomes amongst the host population by 6 per cent.<sup>196</sup> Evidence from Ethiopia and Jordan suggests that the inclusion of refugees in national service delivery can reduce costs and improve service quality.<sup>197</sup> Whilst such developments are positive, they do depend on a range of factors, including an enabling policy environment and sufficient investment and financing (from domestic and/or foreign sources). Developing countries, where some 85 per cent of the world’s refugees live, need to be supported to adopt inclusive approaches,<sup>198</sup> including through a sharing of the financial responsibilities for inclusion.<sup>199</sup>

Recent years have seen considerable progress in the provision of this additional support as a number of donors shift focus to take longer-term perspectives on

<sup>194</sup> See World Bank Group (n 189) 1 (‘The forcibly displaced have often acquired vulnerabilities that are specific to them, such as catastrophic losses of assets or trauma. This affects their ability to seize economic opportunities, and it can trap them in poverty. Because such vulnerabilities set them apart from other poor people in the communities where they live, broad-based poverty reduction efforts may not suffice to relieve their plight and special interventions are needed’), ch 4; Lauren Post, Cindy Huang, and Sarah Charles, ‘World Bank Financing to Support Refugees and Their Hosts: Recommendations for IDA19’ (CGD–IRC Note, June 2019) 6.

<sup>195</sup> See eg Kerrie Holloway and Lillianne Fan, ‘Dignity and the Displaced Rohingya in Bangladesh: Ijot Is a Huge Thing in This World’ (August 2018) Overseas Development Institute, Humanitarian Policy Group Working Paper, 7–9.

<sup>196</sup> Apurva Sanghi, Harun Onder, and Varalakshmi Vemuru, ‘Yes in My Backyard? The Economics of Refugees and Their Social Dynamics in Kakuma, Kenya’ (World Bank Group 2016) 53, 54. Another study of the same camp documented the existence of more than 2,000 businesses, including 14 wholesalers, and concluded that 12% of refugees were business owners or self-employed: International Finance Corporation, ‘Kakuma as a Marketplace: A Consumer and Market Study of a Refugee Camp and Town in Northwest Kenya’ (April 2018). See also Post, Huang, and Charles (n 194) 2 (‘When refugees have access to the formal labor market, they can find a decent job, earn higher incomes, avoid negative coping strategies, and provide for themselves. At the same time, they can fill labor shortages, create new employment opportunities for other refugees and for host community members by increasing productivity or opening their own businesses, and contribute to the economy through taxes’).

<sup>197</sup> Steets, Lehmann, and Reichhold (n 191) 20.

<sup>198</sup> See World Bank Group (n 189) ch 3.

<sup>199</sup> Steets, Lehmann, and Reichhold (n 191) 21.

displacement.<sup>200</sup> One of the most visible examples is the \$2 billion ‘sub-window for refugees and host communities’ that forms part of the World Bank’s 18th replenishment of the International Development Association (IDA).<sup>201</sup> Other international financial institutions have also contributed: the European Bank for Reconstruction and Development has developed a €900 million investment plan to support Jordan and Turkey in hosting Syrian refugees,<sup>202</sup> and the Asian Development Bank has developed ‘an envisaged package totaling \$200 million to help the Government of Bangladesh develop basic infrastructure and services for displaced persons.’<sup>203</sup> The Global Concessional Financing Facility – an initiative of UNHCR, the Islamic Development Bank, and the World Bank – has leveraged more than \$3 billion in concessional lending to middle-income countries hosting large numbers of refugees, who do not qualify for concessional lending schemes reserved for low-income countries, since 2016.<sup>204</sup> Many major donors – including Germany,<sup>205</sup> Japan,<sup>206</sup> and the EU<sup>207</sup> – are also increasingly using their bilateral development cooperation to support policy reforms, promote economic and social stability, champion refugee self-reliance, and strengthen service provision for refugees and host communities. Indeed, the Organisation for Economic Co-operation and Development (OECD) calculates that, in the period 2015–17, the percentage of development funds from Development Assistance Committee members going to refugee-hosting contexts

<sup>200</sup> UNHCR Evaluation Service (n 51) 4, 5, 21–28, 58; UNHCR (n 75) 5–7 (making reference to support from the World Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank, the EU, Denmark, Germany, Canada, the Netherlands, the UK, Japan, Korea, Sweden, Norway, and Spain).

<sup>201</sup> Running from 1 July 2017 to 30 June 2020. For further information, see World Bank Group, ‘IDA18 Regional Sub-Window for Refugees and Host Communities’ <<http://ida.worldbank.org/replenishments/ida-18replenishments/ida18-regional-sub-window-for-refugees-host-communities>> accessed 1 April 2020 (‘The *sub-window* underpins the development approach to forced displacement, supporting commitments by host governments to enact policy change and address the social and economic dimensions of refugee situations’). See also World Bank Group, ‘World Bank Group Strategy for Fragility, Conflict and Violence 2020–2025’ (2020), especially paras 105, 211.

<sup>202</sup> European Bank for Reconstruction and Development, ‘Refugees: Building Host Countries’ Resilience’ <<https://www.ebrd.com/refugees>> accessed 1 April 2020.

<sup>203</sup> Asian Development Bank, ‘ADB \$100 Million Grant Approved as First Phase of Proposed \$200 Million Package for Displaced Persons in Bangladesh Camps’ (6 July 2018) <<https://www.adb.org/news/adb-100-million-grant-approved-first-phase-proposed-200-million-package-displaced>> accessed 1 April 2020.

<sup>204</sup> See Global Concessional Financing Facility, *2018–2019 Annual Report* (2019).

<sup>205</sup> See UNHCR, ‘German Development Cooperation in the Context of Forced Displacement’ (2019).

<sup>206</sup> See UNHCR and Japan International Cooperation Agency, ‘Japan International Cooperation Agency (JICA) Engagement Approach for Syrian Refugees’ (November 2019).

<sup>207</sup> See European Commission, ‘Emergency Trust Fund for Africa: Horn of Africa Region: Pioneering the Global Compact on Refugees in the Horn of Africa’ (2019).

increased from 23 to 30 per cent.<sup>208</sup> A review of development partnerships in Ethiopia in 2019 documented 17 projects and programmes directly related to the Global Compact on Refugees collectively worth more than \$1 billion that aimed, *inter alia*, to strengthen protection (including through access to justice and the rule of law), expand livelihood and education opportunities, improve access to services, address root causes, and find durable solutions.<sup>209</sup> Aleinikoff and Martin describe this growing role for development actors as ‘a game-changer’,<sup>210</sup> and with good reason: working together, humanitarian and development actors can advocate for, incentivize, and support the development of inclusive and rights-based laws and policies, as well as their implementation through the strengthening of key institutions.<sup>211</sup> Although the long-term effects of increasing engagement between humanitarian and development actors in forced displacement contexts are still emerging, early evidence is promising.<sup>212</sup>

Even more important, however, are host governments, whose support for inclusion is essential.<sup>213</sup> Uganda is a key leader in this respect; its Ministry of Education has developed an Education Response Plan for Refugees and Host Communities that charts a path to the education of more than half a million learners through an integrated, long-term approach that benefits refugee and Ugandan children.<sup>214</sup> Demonstrating the potential of such an approach, the Plan was 94 per cent funded and put an additional 90,000 refugee children in national schools in its first year of implementation.<sup>215</sup> Real progress was made on this front in a number of countries applying the CRRF as the

<sup>208</sup> Kathleen Forichon, ‘Financing Refugee-Hosting Contexts: An Analysis of the DAC’s Contribution to Burden- and Responsibility-Sharing in Supporting Refugees and Their Host Communities’ (December 2018) OECD Development Co-Operation Working Paper No 48, 9, 21. The vast majority of financial support to refugee contexts remained humanitarian in nature, however: 18–20. See also OECD, ‘DAC Recommendation on the Humanitarian–Development–Peace Nexus’ (OECD/LEGAL/5019, 2019).

<sup>209</sup> UNHCR, *R3D Ethiopia: Refugee Displacement Development Digest Issue 1* (December 2019) (detailing financial support from Denmark, Germany, Japan, the Netherlands, Norway, Spain, Sweden, the UK, the United States, the EU, the World Bank Group, Education Cannot Wait, and the IKEA Foundation). See also UNHCR, ‘Interventions of Bilateral Development Donors: How They Support Both Refugees and Their Hosts: Examples from the CRRF in Uganda’ (2018) (detailing financial support from Austria, Denmark, Germany, Japan, the Netherlands, Sweden, and the EU).

<sup>210</sup> Aleinikoff and Martin (n 23) 10. See also Post, Huang, and Charles (n 194) 1.

<sup>211</sup> World Bank Group (n 189) 5.

<sup>212</sup> Steets, Lehmann, and Reichhold (n 191) 3.

<sup>213</sup> *ibid* 7; UNHCR Evaluation Service (n 51) 4; Goodwin-Gill (n 109) 681 (‘The emphasis on host country leadership may look like the cynical endorsement of this world of sovereign entities, but it is also a corrective to “donor bias” in the humanitarian assistance context’).

<sup>214</sup> Uganda Ministry of Education and Sports, ‘Education Response Plan for Refugees and Host Communities in Uganda’ (September 2018).

<sup>215</sup> UNHCR, ‘Uganda’ (Global Compact on Refugees Digital Platform) <<https://globalcompactrefugees.org/article/uganda>> accessed 1 April 2020.

Compact was being developed,<sup>216</sup> and Chad, Djibouti, and Ethiopia are also making real changes to enhance refugee inclusion in the fields of education, livelihoods, and national justice systems.<sup>217</sup> Unfortunately some governments have not embraced inclusion of refugees to the same degree, limiting the potential benefits for refugees and host community members.<sup>218</sup>

Building on this progress, the Global Compact calls for the international community to ‘ensure that refugees and their host communities are not left behind in a country’s progress towards the Sustainable Development Goals’,<sup>219</sup> including by supporting refugee inclusion in national development planning,<sup>220</sup> national education systems,<sup>221</sup> labour markets,<sup>222</sup> national health systems,<sup>223</sup> social services, and child protection.<sup>224</sup> It also solidifies the emerging consensus amongst States on the key role for development actors in refugee responses:

States and other development actors will work to step up their engagement in support of refugees, host countries and host communities, and to include the impact of a refugee situation on host countries and communities in their planning and policies. This will involve additional development resources, over and above regular development assistance, provided as grants or with a high degree of concessionality through both bilateral and multilateral channels ... Whenever possible, development assistance in favour of countries of origin to enable conditions for voluntary repatriation will also be prioritized.<sup>225</sup>

It will be essential, of course, that such work proceeds in a manner that keeps refugee protection at the forefront. Experience demonstrates that ‘[t]he lack of rights, or

<sup>216</sup> UNHCR Evaluation Service (n 51) 7 (‘There have been positive policy shifts on refugee inclusion and self-reliance across both African and Central American CRRF countries as well as Mexico, with the majority of States making commitments towards continued inclusive approaches for refugees ... Noteworthy progress includes a commitment to providing alternatives to detention and explicit intent to include refugees into government social safety programmes in some MIRPS States, and a gradual move from encampment towards greater freedom of movement in African CRRF countries’), 8, 37–41.

<sup>217</sup> Türk (n 5) 578–79; UNHCR, *Working Towards Inclusion: Refugees within the National Systems of Ethiopia* (December 2017).

<sup>218</sup> Steets, Lehmann, and Reichhold (n 191) 27.

<sup>219</sup> Global Compact on Refugees, para 64.

<sup>220</sup> CRRF, para 8(b).

<sup>221</sup> Global Compact on Refugees, para 68.

<sup>222</sup> *ibid* para 70, drawing on International Labour Organization, ‘Employment and Decent Work for Peace and Resilience Recommendation’, Recommendation No 205 (2017) part XI ‘Refugees and Returnees’.

<sup>223</sup> *ibid* para 72.

<sup>224</sup> CRRF, para 7(b).

<sup>225</sup> Global Compact on Refugees, para 32 (noting that such support is to be in addition to ‘timely, adequate and needs-driven humanitarian assistance’). See also paras 3, 23, 35, 36, 64, 65. See also Miller (n 170) 179.

their poor enforcement, can be a key source of vulnerability and a critical bind on socioeconomic recovery.<sup>226</sup> Protection and refugee inclusion go hand in hand: true economic inclusion, for example, relies not just on the right to work, but also freedom of movement,<sup>227</sup> identity documentation, and the ability to use banking services.<sup>228</sup> The answer is for humanitarian actors to work actively with the development world to build common understandings about principles of protection, humanitarianism, and development work, and to leverage each other's comparative advantage to advance on both protection and development goals.<sup>229</sup>

Good progress is being made in this regard. At the conclusion of the current replenishment cycle of the IDA in June 2020, more than \$2 billion will have been allocated to some 40 projects benefiting refugees and host communities in 14 eligible countries. Priority is given to supporting legal and policy reforms that advance protection outcomes,<sup>230</sup> as well as more traditional development activities that benefit refugees and hosts,<sup>231</sup> and 'this financing has incentivized, enabled, and supported significant changes in refugee policies in several countries.'<sup>232</sup> Importantly, financing is contingent on the recipient country adhering to an 'adequate framework for the protection of refugees.'<sup>233</sup> This is assessed by reference to the country's 'adherence to international or regional instruments such as the 1951 Refugee Convention or its 1967 Protocol, or the adoption of national policies and/or practices consistent with international refugee protection standards.'<sup>234</sup>

UNHCR actively contributes to the World Bank's overall eligibility assessment in this respect, providing information on the protection environment, both in law and

<sup>226</sup> World Bank Group (n 189) 85.

<sup>227</sup> Access to decent work and freedom of movement are among the 15 indicators for the Global Compact: UNHCR, 'Global Compact on Refugees: Indicator Framework' (July 2019) 21–24.

<sup>228</sup> See also Türk (n 143) 53.

<sup>229</sup> World Bank Group (n 189) 1 ('The focus [of development actors] is on tackling the medium-term socioeconomic dimensions of forced displacement. This is complementary to, but distinct from, the rights-based protection agenda').

<sup>230</sup> Such as 'freedom of movement, formal labor force participation, identification documents and residency permits': World Bank Group (n 201).

<sup>231</sup> For example, improving 'access and quality of services and basic infrastructure', supporting 'livelihoods in host community areas, tailored to the needs and constraints of refugees and host community members' and 'strengthen[ing] government finances where these have been strained by expenditures related to their hosting responsibilities': *ibid.*

<sup>232</sup> Post, Huang, and Charles (n 194) 1 (citing examples from Ethiopia, Pakistan, and Chad).

<sup>233</sup> The others are that the host country must have received a minimum of 25,000 refugees or the equivalent of 0.1% of its national population, and 'have in place an action plan, strategy or similar document that describes concrete steps, including possible policy reforms that the country will undertake towards long-term solutions that benefit refugees and host communities': see IDA, *Addition to IDA Resources: Eighteenth Replenishment* (Report from the Executive Directors of the IDA to the Board of Governors (12 January 2017) 115. Similar requirements apply to the Global Concessional Financing Facility: see Global Concessional Financing Facility, *Operations Manual* (2016, last updated 20 April 2017) 5.

<sup>234</sup> *ibid.*

practice, to confirm the adequacy of the protection framework in the concerned countries.<sup>235</sup> Drawing on the expertise and knowledge generated through the exercise of its own legal mandate, UNHCR identifies specific priority areas of consequence to the realization of the objectives supported by the World Bank's financing. The assessments are regularly updated, reflecting the fact that the maintenance of an adequate protection framework is an ongoing requirement that needs to be re-confirmed at the disbursement and implementation stages.

It is also essential, of course, to ensure the sustainability of the provision of services to refugees through national systems. The full transitioning of refugees to national systems requires those systems to have adequate capacity and safeguards to prevent the premature withdrawal of humanitarian support;<sup>236</sup> it also requires UNHCR increasingly to work on catalysing the engagement of development actors and cooperating with them on policy advocacy.<sup>237</sup> This, in turn, requires the long-term commitment of governments and donors,<sup>238</sup> including to ensure the additionality of support. This is not simply a question of humanitarians 'handing over' to development actors,<sup>239</sup> but rather a question of ensuring complementary approaches, utilizing comparative advantages, and establishing a continuum that includes the gradual expansion and long-term strengthening of key institutions from the outset of a refugee situation.<sup>240</sup>

### 3.5 Laying the groundwork for future cooperation

In addition to embedding emerging trends, the Global Compact on Refugees also lays the groundwork for future action and cooperation. Through four key features, it seeks to sustain momentum for its own implementation, and to provide avenues to deepen burden and responsibility sharing in the future.

First, the Compact seeks to ensure continued interactions between key players so as to keep refugee issues high on the international agenda and 'sustain[] momentum and political will'.<sup>241</sup> The Global Refugee Forum and Support Platforms are conceived not just as one-off meetings, but rather – to use the language of game theory – iterative processes where players continue to interact with and learn about one another.<sup>242</sup> It is

<sup>235</sup> See Steets, Lehmann, and Reichhold (n 191) 11, 16.

<sup>236</sup> In terms of operational capacity and funding.

<sup>237</sup> See Steets, Lehmann, and Reichhold (n 191) 3, 7, 9–18; Collinson and Schenkenberg (n 136) 34.

<sup>238</sup> As was recognized by High Commissioner Prince Sadruddin Aga Khan in 1967 (n 184).

<sup>239</sup> Indeed, 'even where development actors engage, refugees and other persons of concern will require continued operational support from UNHCR for many areas': Steets, Lehmann, and Reichhold (n 191) 4, 19–22 (noting that UNHCR has supported refugee inclusion in some national systems by, for example, paying service fees), 27.

<sup>240</sup> See Global Compact on Refugees, paras 23 (envisioning that the functions of a Support Platform would include 'facilitating coherent humanitarian and development responses, including through the early and sustained engagement of development actors in support of host communities and refugees'), 35; World Bank Group (n 189) 2; Steets, Lehmann, and Reichhold (n 191) 21.

<sup>241</sup> Global Compact on Refugees, para 17. See also Goodwin-Gill (n 109) 678–79.

<sup>242</sup> See also Miller (n 170) 178.

easy to dismiss these as a series of ‘talkfests’ (and vigilance is required to prevent them becoming such), but theories of acculturation – as applied to international relations – suggest that the behaviour of States can be significantly influenced by the creation of ‘institutionalized social setting[s]’ where certain forms of behaviour and identity are promoted;<sup>243</sup> put another way, the expectation that States will announce contributions at Global Refugee Forums – and will have an appropriate platform to make the announcement – is likely to spur discussions and decisions within government that would not otherwise take place, all the more so if the government is to be represented at the ministerial level.<sup>244</sup> Such settings can also be used to encourage greater involvement from those who have previously been less active in refugee matters.

Secondly, the Compact seeks to build the evidence base necessary for the attainment of its objectives, and for the further enhancement of burden and responsibility sharing and refugee responses more generally.<sup>245</sup> The recently launched UNHCR–World Bank Group Joint Data Center on Forced Displacement will have an important role to play in this respect, as will the digital platform for the Global Compact on Refugees.<sup>246</sup> Of particular note is the ongoing effort to ‘measur[e] the impact arising from hosting, protecting and assisting refugees’, which is currently being undertaken with the technical support of the World Bank and the OECD ‘[t]o inform burden- and responsibility-sharing arrangements ... with a view to assessing gaps in international cooperation and to promoting burden- and responsibility-sharing that is more equitable, predictable and sustainable.’<sup>247</sup> The results of this exercise and the regular reports envisaged in the Compact will provide an important evidentiary basis ‘for determining whether there has been progress towards more equitable and predictable burden- and responsibility-sharing’ and to ‘highlight specific gaps where greater and wider international support and cooperation [is] required.’<sup>248</sup> Importantly, the

<sup>243</sup> Ryan Goodman and Derek Jinks, ‘How to Influence States: Socialization and International Human Rights Law’ (2004) 54 *Duke Law Journal* 621, 647, cited in Wall (n 17) 231. See also Ryan Goodman and Derek Jinks, ‘Toward an Institutional Theory of Sovereignty’ (2003) 55 *Stanford Law Review* 1749, 1757–65.

<sup>244</sup> See also Gilbert (n 127) 37 (‘For lawyers, [diplomatic engagements] may not seem like a means to uphold the [Global Compact’s] so-called commitments, but the continued engagement in periodic Global Refugee Forums and High Level Officials’ Meetings represents a massive improvement over the current regime where protracted refugee crises are forgotten in the wake of new displacements’).

<sup>245</sup> Global Compact on Refugees, paras 45–48.

<sup>246</sup> Which enables ‘individuals, governments, organizations and businesses to connect with each other’ and exchange experiences and lessons learned in the implementation of the Global Compact: Global Compact on Refugees Digital Platform <<https://globalcompactrefugees.org/>> accessed 1 April 2020.

<sup>247</sup> Global Compact on Refugees, para 48. This effort was initiated by the General Assembly in UNGA res 72/150 (n 20) para 20.

<sup>248</sup> Global Compact on Refugees, para 48; UNHCR, ‘UNHCR’s Coordination Efforts to Measure the Impact Arising from Hosting, Protecting and Assisting Refugees’, UN doc EC/70/SC/CRP.14 (28 May 2019) 3. See also UNHCR, ‘Measuring the Impact Arising from Hosting, Protecting and Assisting Refugees’ (1st Workshop, 12–13 February 2019, Geneva) 1.

exercise aims at ‘[a] better understanding not just of costs, but context and the implications of policies.’<sup>249</sup>

The academic community also has an important role to play in improving the evidence base.<sup>250</sup> To this end, the Compact provides for a ‘global academic network on refugee, other forced displacement, and statelessness issues’, which was launched at the first Global Refugee Forum.<sup>251</sup> Seeking to avoid duplication with existing academic networks, its objectives are to:

- ‘Facilitate research, teaching and scholarship opportunities which result in specific deliverables in support of the four objectives’ of the Global Compact;
- ‘Help junior academics ... and those in regions less well-served by existing networks to “plug into” global networks and discussions’; and
- ‘Broaden the geographical and thematic scope of disciplines and academics working on refugee and [Compact-]related challenges and opportunities.’<sup>252</sup>

The network will seek to support the work of all stakeholders, including UNHCR, towards the objectives of the Global Compact. The University of Essex pledged to serve as the initial venue for the network’s secretariat at the Global Refugee Forum, and this will foster greater collaboration with existing forced displacement teaching, refugee student support, and research. Ongoing analysis and critical thinking relating to the Global Compact and the international refugee protection regime as a whole – both within the network and more generally – will continue to be essential.

Thirdly, the Global Compact includes key tools to ensure individual and collective accountability for implementation and progress. Although it was quite clear during the process to develop the Global Compact that there was an appetite amongst States only for ‘light’ accountability mechanisms, the mutual accountability tools included provide an important basis for measuring progress and informing future advocacy and action.

At the level of individual actors, a ‘mechanism for tracking implementation of pledges and contributions’<sup>253</sup> will be established by UNHCR and will provide public information about the progress that States and other stakeholders have made in implementing

<sup>249</sup> UNHCR, ‘1st Workshop’ (n 248) 2. See also World Bank Group (n 189) 58 (‘Overall, medium-term impacts largely depend on [the] host country’s policies. In particular, concentrating the forcibly displaced in camps or in specific hosting areas may heighten challenges while reducing opportunities for the host community to benefit from their presence. Allowing them to contribute to the local economy may generate larger benefits for the hosts. Policies traditionally seen as more humane and more beneficial for the forcibly displaced may also serve the host communities’ interests’).

<sup>250</sup> See also Ferris and Donato (n 6) 127–28.

<sup>251</sup> Global Compact on Refugees, para 43.

<sup>252</sup> See UNHCR, ‘Global Academic Interdisciplinary Network’ (Global Compact on Refugees Digital Platform, 24 October 2019) <<https://globalcompactrefugees.org/article/global-academic-interdisciplinary-network>> accessed 1 April 2020.

<sup>253</sup> Global Compact on Refugees, para 103.

pledges and contributions announced at the Global Refugee Forum. Other pledging exercises typically do not include such a mechanism, nor an iterative process to review progress and encourage further contributions, and their inclusion in the Global Compact is expected to support mutual accountability.

There will also be collective accountability for the international community as a whole through regular reporting against the 15 indicators that have been developed to measure progress in achieving the four objectives of the Global Compact.<sup>254</sup> This is in addition to the effort – referred to above – to measure the impact of hosting refugees, which will result in regular reports that will ‘provid[e] the basis for determining whether there has been progress towards more equitable and predictable burden- and responsibility-sharing.’<sup>255</sup>

Finally, and crucially, the Global Compact on Refugees provides a framework within which further tools and mechanisms for burden and responsibility sharing can be developed. Although the first Global Refugee Forum in 2019 was to be ‘dedicated to receiving formal pledges and contributions’, future Forums will also ‘consider opportunities, challenges and ways in which burden- and responsibility-sharing can be enhanced.’<sup>256</sup> Informed by a stocktaking of the implementation of previous pledges and progress towards the achievement of the Global Compact’s objectives,<sup>257</sup> future Global Refugee Forums will allow for discussion of the ways in which burden and responsibility sharing could be extended.<sup>258</sup> Indeed, in affirming the Global Compact and calling for active engagement in the first Global Refugee Forum, the General Assembly itself signalled that States might consider ‘complementary mechanisms for ensuring predictable, equitable, efficient and effective burden- and responsibility-sharing’ in the future.<sup>259</sup>

<sup>254</sup> UNHCR (n 227). The indicator framework provides ‘a global overview’ and ‘does not strive to be exhaustive and cover all aspects of forced displacement. It should be considered illustrative and indicative’: 5.

<sup>255</sup> Global Compact on Refugees, para 48.

<sup>256</sup> *ibid* paras 19, 17, respectively.

<sup>257</sup> *ibid* para 19.

<sup>258</sup> See also Dowd and McAdam (n 23) 216 (noting that ‘[n]ew binding obligations on international cooperation are not politically palatable in the refugee context at present’ and describing the CRRF and Global Compact on Refugees as a possible ‘interim solution’). A range of possible mechanisms or ideas have been canvassed recently: see eg Türk and Garlick (n 5) 673, 678; Inel-Ciger (n 17) 132–37; Betts, Costello, and Zaun (n 17) chs 5, 8; Michael W Doyle, ‘Responsibility Sharing: From Principle to Policy’ (2018) 30 *International Journal of Refugee Law* 618, 621–22; Ferris and Donato (n 6) xi (‘There is now a treasure trove of ideas on how to improve the system, most of which did not make their way into the global compacts but which can be picked up and implemented by individual governments, or civil society actors and academics’), 46; Harley (n 22); Kevin Appleby, ‘Strengthening the Global Refugee Protection System: Recommendations for the Global Compact on Refugees’ (2017) 5 *Journal on Migration and Human Security* 780; Wall (n 17) 214–17, 233–34.

<sup>259</sup> UNGA res 73/151 (n 15) para 17.



International Organization for Migration (IOM) and a wide range of other partners to ensure the complementary implementation of both Compacts.<sup>271</sup>

#### 4. THE FIRST GLOBAL REFUGEE FORUM: A PROMISING START

Held exactly one year after the affirmation of the Global Compact on Refugees by the General Assembly, the inaugural Global Refugee Forum in December 2019 was the first opportunity for the international community as a whole to come together and build momentum for the Compact's implementation. Reflecting the enthusiasm of States and other stakeholders, participation was oversubscribed and more than 3,000 people were in attendance. This included four heads of State or government, more than 90 ministers, the Secretary-General of the United Nations, approximately 80 international organizations,<sup>272</sup> representatives of more than 100 companies and foundations, approximately 200 civil society organizations, and more than 70 refugees.

To supplement the more wide-ranging overviews contained in the co-convenors' summary (released at the close of proceedings)<sup>273</sup> and the outcome document (released in May 2020),<sup>274</sup> this part will provide some reflections on the way in which some of the issues addressed in the previous parts of this piece found voice at the Forum.

##### 4.1 A forum by and for the international community as a whole

As with the Compact development process, UNHCR was eager to ensure that – to the extent possible – the Forum was an event by and for the international community as a whole. As provided for in the Compact, UNHCR shared the co-hosting and co-convening responsibilities with States; the Forum was co-hosted with Switzerland and co-convened with Costa Rica, Ethiopia, Germany, Pakistan, and Turkey. To allow the engagement of a wider range of States and other stakeholders in the Forum's preparation, a system of co-sponsorship was established. States and other stakeholders were invited to co-sponsor one or more of the six 'areas of focus' for the Forum,<sup>275</sup> and thereby form a broad alliance of support and advocacy for the theme in question, to identify pledging opportunities, and to play a role in shaping how the area of focus would be reflected at the Forum. More than 160 co-sponsors volunteered to play such a role, with many co-sponsoring more than one area of focus; this included 39 States and seven refugee co-sponsors, who shared their expertise and provided a link between refugee communities and the Forum. Although issues of timing limited the progress that each

<sup>271</sup> Including in its capacity as a member of the Executive Committee of the UN Network on Migration, which has a central role in the migration compact's implementation. See 'UN Network on Migration' <<https://migrationnetwork.un.org/>> accessed 1 April 2020.

<sup>272</sup> Including UN system entities and specialized agencies.

<sup>273</sup> 'Summary of the first Global Refugee Forum by the Co-Convenors' <<https://www.unhcr.org/5dfa70e24>> accessed 1 April 2020.

<sup>274</sup> UNHCR, 'Outcomes of the Global Refugee Forum 2019' <<https://www.unhcr.org/events/conferences/Secd458c4/outcomes-global-refugee-forum-2019.html>> accessed 5 August 2020.

<sup>275</sup> Drawn from the Compact itself and prioritized following a process of internal and external consultation, the areas of focus were: burden and responsibility sharing, education, jobs and livelihoods, energy and infrastructure, solutions, and protection capacity.

co-sponsorship group was able to make, they did ensure a broad base of engagement for each of the areas of focus and many co-sponsors have agreed to continue their work together; the ‘GRF Education Co-Sponsorship Alliance’, for example, will work to track the progress of pledges against the Global Framework for Refugee Education (which was collectively developed by them to guide the development of education pledges at the Forum),<sup>276</sup> identify remaining gaps, and work to foster new commitments to address emerging needs.

Crucially, more than 70 refugees (hailing from 22 countries of origin and currently living in 30 States) were in attendance at the Forum,<sup>277</sup> including as members of State delegations.<sup>278</sup> The engagement and participation of refugees, including the seven refugee co-sponsors,<sup>279</sup> were an essential part of the preparations and the Forum itself,<sup>280</sup> indeed, the first announced pledge involved a wide range of States and other stakeholders committing ‘to support the meaningful participation of refugees and host communities in decisions that affect their lives’ and was developed by refugees.<sup>281</sup> Approximately 50 other pledges related to refugee participation and engagement. Despite the challenges referred to above, considerable progress has been made and the importance and legitimacy of refugees participating in such discussions are now broadly – although not yet universally – recognized.

Beyond Geneva, the Forum brought together governments and a wide range of other stakeholders at more than 30 preparatory meetings at national and regional levels. Alongside countless bilateral meetings and diplomatic demarches, these served to build momentum for the Forum and to facilitate the identification and consideration of pledging opportunities. In some countries, these consultations opened avenues that had not previously existed for multi-stakeholder engagement with governments on crucial protection issues. In addition, a series of regional workshops was conducted with representatives of refugee-led and diaspora organizations to identify pledging opportunities and ways to ensure that refugee voices were heard at the Forum, including

<sup>276</sup> Global Refugee Forum Education Co-Sponsorship Alliance, ‘Global Framework for Refugee Education’ (November 2019).

<sup>277</sup> See, generally, UNHCR, ‘Refugee Engagement and Participation in the Global Refugee Forum’.

<sup>278</sup> Nicholas Keung, ‘Canadian Refugee Makes History as State Delegate at UNHCR Forum’ *The Star* (12 January 2020) <<https://www.thestar.com/news/gta/2020/01/12/canadian-refugee-makes-history-as-state-delegate-at-unhcr-forum.html>> accessed 1 April 2020.

<sup>279</sup> See UNHCR, ‘Refugee Co-Sponsors’ <<https://www.unhcr.org/refugee-co-sponsors.html>> accessed 1 April 2020; UNHCR (n 277) 1.

<sup>280</sup> As outlined in the refugee statement to the closing plenary: Shaza Alrihawi, Wenasa Alaraba, Andrea Ayala Melendez, Arash Bordbar, and Tina Dixson, ‘Refugee Statement – Closing Plenary’ (18 December 2019) <<https://www.unhcr.org/events/conferences/5d4a4ace4/joint-statement-by-refugees.html>> accessed 1 April 2020. See also UNHCR (n 277) 1; Drozdowski and Yarnell (n 73).

<sup>281</sup> The full text of the pledge is as follows: ‘In accordance with the commitments established under goal 6 of the Grand Bargain to support a “Participation Revolution”, we (insert signatories) pledge to support the meaningful participation of refugees and host communities in decisions that affect their lives. Participation should take into account the diversity within communities, including age, gender, and disability. This pledge will support the agency of those we seek to assist while

through the showcasing of good practices by refugee-led and diaspora organizations.<sup>282</sup> The Global Refugee-led Network also convened refugee-led summits in Africa, Asia, Europe, and the Middle East.<sup>283</sup>

## 4.2 Good progress on burden and responsibility sharing

More than a thousand pledges were made at the Forum, many of them coming from States and other actors that have not traditionally played a major role in refugee responses. It is not possible in the present piece to provide a comprehensive overview of all pledges, which are available online;<sup>284</sup> rather, a number of pledges are highlighted below to illustrate particular features of the pledging process and its outcomes.

Although the Forum sought a wide range of pledges and contributions beyond pure financial support,<sup>285</sup> more than 280 pledges contained some kind of financial commitment, including the \$2.2 billion window for refugees and host communities announced by the World Bank that will form part of the IDA's 19th replenishment,<sup>286</sup> as well as \$1 billion in financing from the Inter-American Development Bank, and more than \$2 billion from other pledging entities in support of refugee responses.<sup>287</sup>

A broad range of States – more than two-thirds of the membership of the UN – participated in more than half of all pledges, but there was also very active participation in the pledging process by a wide range of other stakeholders:

- More than 300 civil society organizations made pledges, many of which involved working with other actors (such as States and the private sector) to

improving the relevance, quality, transparency and accountability of that assistance. We (insert signatories) furthermore commit to share experiences on the implementation of this pledge at subsequent Global Refugee Forums and/or high-level officials' meetings'. See UNHCR, 'Pledges & Contributions Dashboard' (Global Compact on Refugees Digital Platform) <<https://globalcompactrefugees.org/channel/pledges-contributions>> accessed 1 April 2020.

<sup>282</sup> The workshops were organized by the Danish Refugee Council and funded by UNHCR. See UNHCR (n 277) 2.

<sup>283</sup> *ibid.*

<sup>284</sup> See UNHCR (n 281). The dashboard contains the full text of the pledges and also includes 358 pledges made during the 70th session of UNHCR's Executive Committee in October 2019 as part of the Campaign to End Statelessness: see UNHCR, 'High-Level Segment on Statelessness' <<https://www.unhcr.org/ibelong/high-level-segment-statelessness/>> accessed 1 April 2020.

<sup>285</sup> UNHCR, 'Global Refugee Forum: Guidance Note: Pledges and Contributions and Good Practices' (April 2019).

<sup>286</sup> World Bank Group, 'World Bank Announces \$2.2 Billion Scale-Up in Support for Refugees and Host Communities at First Global Refugee Forum' (17 December 2019) <<https://www.worldbank.org/en/news/press-release/2019/12/17/world-bank-announces-us22-billion-scale-up-in-support-for-refugees-and-host-communities-at-first-global-refugee-forum>> accessed 1 April 2020. The new window complements \$18.7 billion in support to countries affected by fragility, conflict, and violence that will help to 'reduce the factors that can cause people to flee their homes', as well as a new \$2.5 billion funding window to support investment and job creation, including for refugees and host communities.

<sup>287</sup> Although some pledges of funding to UNHCR were made, this was not a focus of UNHCR's advocacy in the lead-up to the Forum.

advocate for refugee rights and inclusion, to expand programming that supports protection and solutions, and to undertake or participate in research that will build the evidence base for more effective responses. The Poverty Alleviation Coalition – consisting of 13 NGOs, the World Bank Partnership for Economic Inclusion, and UNHCR – will implement the ‘graduation approach’ to poverty alleviation for 160,000 refugee and host community households in 26 countries by the time of the second Global Refugee Forum.

- More than 250 private sector entities pledged, announcing more than \$250 million in financial support and a range of other contributions. Reflecting the dynamic role envisaged for the private sector in the Compact that goes well beyond fundraising and corporate social responsibility efforts and encapsulates investment, job creation, and access to financial services,<sup>288</sup> companies announced that they would provide more than 13,000 jobs and 2,500 job-training placements to refugees. A collection of law firms, bar associations, and corporations will dedicate a total of 125,000 *pro bono* hours per year to refugee causes, the MasterCard Foundation will provide 3,750 higher education scholarships to refugees, and the Vodafone Foundation will expand its Instant Network Schools connectivity programme to reach more than 500,000 refugee and host community students.
- More than 70 international organizations pledged, including through the joint UN system pledges, to ‘work with governments to include refugees and returnees in relevant development programmes’, ‘advocate for refugees and returnees to have access to national services in countries of origin, countries of transit and refugee-hosting countries’ and ‘advocate for their inclusion in regional frameworks and national development plans and reviews, as well as the new UN Sustainable Development Cooperation Framework’.
- Almost 50 local authorities made pledges; eThekweni Municipality (which includes the city of Durban) jointly pledged with a range of refugee organizations, faith-based organizations, international organizations, and the Durban Chamber of Commerce to establish ‘one-stop shops’ to provide information and other support to help migrants, refugees, and asylum seekers access health, education, and welfare services.
- Nearly 100 academic institutions and individual academics pledged, focusing on: scholarships and other support to refugee students and scholars; research, teaching, and advocacy on displacement issues; support for education pathways for admission to third countries; and representation of refugees and asylum seekers through legal clinics. An 11-university coalition (PROTECT 2020) will study the impacts of both Global Compacts on the functioning of the international refugee protection system while, under the Carta de Santiago, 30 academic institutions committed to provide research, teaching, and scholarship opportunities for displaced people in the Americas. Universities of Sanctuary Ireland will provide more than 100 scholarships.

<sup>288</sup> Global Compact on Refugees, paras 32, 42.

- Led by the International Olympic Committee, more than 80 sporting organizations pledged to promote and facilitate refugee access to sporting activities and facilities.<sup>289</sup>
- More than 40 faith-based organizations made pledges. The dioceses and parishes of the Church of England, for example, pledged to continue their support to the UK's expanding community sponsorship scheme.

Consistent with the fact that the Compact also envisages the application of some of its principles beyond pure refugee situations, more than 50 pledges (28 of them from States) were also explicitly expressed so as to benefit internally displaced people. The Democratic Republic of the Congo pledged to ratify the Kampala Convention, whilst Chad, Mali, and Mexico pledged to develop legal frameworks for the protection of internally displaced people. Eleven other States pledged other forms of support to internally displaced persons (IDPs) on their territory or elsewhere.<sup>290</sup>

The Global Refugee Forum also saw the launch of three Support Platforms, as provided for in the Global Compact on Refugees, to build upon and bolster three existing regional response initiatives, namely the Comprehensive Regional Protection and Solutions Framework in Central America and Mexico (known by its acronym in Spanish, 'MIRPS'), the Nairobi Process facilitated by the Intergovernmental Authority on Development in the East and Horn of Africa,<sup>291</sup> and the Solutions Strategy for Afghan Refugees that encompasses the Islamic Republics of Afghanistan, Iran, and Pakistan.<sup>292</sup> As noted above, it is envisaged that Support Platforms will foster the continuity, predictability, and sustainability of political, material, financial, and technical support for the States in question, to redouble the search for solutions, and to bring international attention to these three challenging situations. A number of States and regional organizations pledged or expressed their political support for these Platforms at the Forum.

### 4.3 Fostering international cooperation through joint contributions

In providing guidance on the kinds of pledges and contributions that could be made at the Forum, UNHCR encouraged States and other stakeholders to give consideration

<sup>289</sup> UNHCR, 'Sporting World Pledge Support for Refugees, Ahead of Next Week's Global Refugee Forum' (10 December 2019) <<https://www.unhcr.org/news/press/2019/12/5dee28304/sporting-world-pledge-support-refugees-ahead-next-weeks-global-refugee.html>> accessed 1 April 2020.

<sup>290</sup> Bulgaria, Denmark, El Salvador, Germany, Japan, Korea, Nigeria, Norway, Somalia, Spain, Switzerland.

<sup>291</sup> UNHCR, 'IGAD Countries Work Together to Address Displacement in the Horn of Africa' <<https://www.unhcr.org/afr/events/conferences/5dfa86234/igad-countries-work-together-to-address-displacement-in-the-horn-of-africa.html>> accessed 1 April 2020; Rashid Abdi and Laura Hammond, 'With Igad, There's Hope for Lasting Solutions to Crises in Horn of Africa' *The East African* (6 March 2020) <<https://www.theeastafrican.co.ke/oped/comment/There-is-hope-for-lasting-solutions-to-crisis-in-Horn-of-Africa/434750-5480402-9qonodz/index.html>> accessed 1 April 2020.

<sup>292</sup> UNHCR, 'New SSAR Support Platform Refocuses International Attention on Displaced Afghans' <<https://www.unhcr.org/ir/2019/12/19/new-ssar-support-platform-refocuses-international-attention-on-displaced-afghans/>> accessed 1 April 2020.

to developing ‘joint contributions’, which ‘could help focus on longer-term cooperation to build a broad, sustainable base of support for refugees and their hosts.’<sup>293</sup> The idea behind proposing these was to encourage States and others to work together to develop some of their pledges and contributions, communicate about possible pledges, identify where shared interests could be advanced through cooperation (in the spirit of the Compact), and establish peer-to-peer accountability between actors that had pledged jointly. More than one-sixth of pledges were made jointly, showing both that the idea of joint pledging has potential for future Global Refugee Forums, and that more work remains to be done.

Joint pledges at the Forum were of two kinds, broadly speaking. The first – which UNHCR called ‘partnership contributions’ – involved a number of different actors coming together and pledging to make separate contributions towards the achievement of a shared goal.<sup>294</sup> For example, Denmark pledged a total of 70 million DKK to support Uganda and Ethiopia’s commitments to include refugees in their national education systems. Likewise, Mexico and Germany pledged to work in partnership to strengthen the social, cultural, and economic inclusion of refugees, asylum seekers, internally displaced people, and migrants in vulnerable situations in up to 15 Mexican municipalities. Multi-stakeholder partnership pledges were also made: also in Mexico, for example, the government, the Habesha Project, and UNHCR jointly pledged to implement a university scholarship programme that will bring 100 refugees to Mexico to study, including through the identification of candidates and issuance of student visas. UNHCR is also exploring the possibility of ‘matching’ some pledges made at the Forum so that they can be implemented in partnership.<sup>295</sup>

Despite the novelty of the concept and the relatively short time frame within which partnership pledges needed to be organized for the first Forum, these examples show the potential of this concept in the future to bring together a wide range of stakeholders to pursue a common goal. For hosting States, the possibility of support being committed to enable the implementation of their pledges can encourage them to be more ambitious than they otherwise would be and, for donors, it gives a greater degree of confidence that their contributions will have demonstrable impact on the ground. We can expect more to be made in future Forums.

Another form of joint contribution promoted in advance of the Forum was the ‘common contribution’, which involves ‘a coalition of States or other stakeholders announc[ing] identical or near-identical commitments’. These have been used before in the refugee sphere; at UNHCR’s 2011 Ministerial Meeting, for example, Norway, Germany, Mexico, and Switzerland pledged to work to advance international cooperation on disaster-induced cross-border displacement. Launched as the Nansen Initiative in 2012, this work continues today through the Platform on Disaster Displacement.

<sup>293</sup> UNHCR (n 285) 7.

<sup>294</sup> *ibid.* Developed further, such contributions could become situation-specific ‘compacts’ in their own right: see Zero Draft, para 18. See also Forced Displacement and Development Study Group, ‘Refugee Compacts: Addressing the Crisis of Protracted Displacement’ (Center for Global Development and International Rescue Committee 2017).

<sup>295</sup> For example, policy pledges by some States can be ‘matched’ with pledges of financial or technical support and thus implemented jointly.

At the Global Refugee Forum, a number of common pledges and contributions were announced, often to commit to action in a particular field. Examples include the sports organizations' pledge referred to above, as well as the joint pledges made by companies and industry groups to include refugees in their recruitment strategies. Similarly, more than 30 States, international organizations, NGOs, and private sector entities signed up to the 'Clean Energy Challenge' and its ambition that 'all refugee settlements and nearby host communities will have access to affordable, reliable, sustainable and modern energy by 2030'; a number also made specific pledges of actions that they would take to support the achievement of this goal. Several States and other actors also used common pledges to advance issues of particular importance to them; these include the refugee participation pledge referred to above, as well as the 'Joint pledge on the rights of women and girls', in which a number of States, NGOs, and other stakeholders participated.

#### 4.4 Pledges to enhance protection

Some 271 pledges were made as part of the 'protection capacity' area of focus. More than 100 of these were policy pledges made by governments, including pledges by Brazil, Panama, Sudan, Tanzania, Uganda, and Zambia to maintain access to territory. Almost 50 States pledged to strengthen specific aspects of their protection systems,<sup>296</sup> including by:

<sup>296</sup> These include Afghanistan (issue identity documents to Afghan refugees abroad), Albania (develop a mechanism to enhance the fairness, efficiency, sustainability, and quality of asylum decision making), Angola (improve registration, documentation, and social protection measures), Argentina (expand capacities of the National Commission for Refugees), Armenia (improve the asylum system, including capacity building), Bosnia and Herzegovina (provide a range of enhancements for refugee status determination), Brazil (maintain a policy of admission, assistance, and inclusion of Venezuelan refugees and migrants, enhance processing of asylum applications), Chad (adopt asylum law and transpose the Kampala Convention into national law, issue identity documents to refugees), Costa Rica (establish a complementary measure for those found not to be refugees), Cyprus (introduce a new housing scheme for asylum seekers), Democratic Republic of the Congo (ratify the Kampala Convention, accede to both statelessness conventions, implement a simplified refugee status determination system), Dominican Republic (improve translation and interpretation for refugees who do not speak Spanish, improve border security and documentation, support, and access to justice for refugees and asylum seekers who are survivors of sexual and gender-based violence), Ecuador (update the legal framework for human mobility), El Salvador (strengthen protection and solution mechanisms at the national level for internally displaced people, deported people with protection needs, refugees and asylum seekers through a range of measures), Ethiopia (enhance social protection and asylum systems through improved legal and institutional frameworks, including for refugee status determination and civil documentation), Georgia (improve national legislation on international protection), Guatemala (establish a complaints mechanism for human rights violations against migrants in transit, strengthen the Directorate-General for Migration/Guatemalan Institute for Migration in matters of care and protection), Honduras (strengthen capacities to identify people in need of international protection, promote spaces for dialogue between State institutions and groups of displaced and at-risk people), Indonesia (implement the Presidential Regulation on Refugees), Kenya (strengthen asylum institutions), Lesotho (adopt a nationality Bill with statelessness protections, integrate refugee responses into disaster management planning), Madagascar (establish an Office of Stateless Persons and Refugees and an asylum system), Malawi (enhance refugee status determination, registration, and documentation, and strengthen the legal

- improving asylum systems, including through legislation;<sup>297</sup>
- developing complaints mechanisms for human rights violations suffered by those on the move;<sup>298</sup>

framework for asylum), Mali (reform the domestic legal framework to incorporate the Kampala Convention and strengthen the asylum system), Malta (review quality control mechanisms within the Office of the Commissioner for Refugees), Mauritania (prepare asylum legislation), Mauritius (integrate approaches to avert, minimize, and address displacement related to the adverse impacts of climate change), Mexico (develop federal legislation to prevent and respond to forced internal displacement, adopt simplified procedures for refugee status determination, harmonize migration legislation with the General Law of the Rights of Children and Adolescents, enhance registration, refugee status determination, and documentation), Moldova (extend temporary identity documents for asylum seekers, enhance arrangements for meeting the basic needs of asylum seekers), Montenegro (implement accelerated and simplified asylum procedures), Namibia (provide measures to strengthen social protection for refugees and host communities), Niger (strengthen the asylum system), Nigeria (ensure freedom of movement, access to birth registration, and adopt domestic legislation to give effect to the Kampala Convention), North Macedonia (include refugees and asylum seekers in ongoing law reform efforts aimed at combating sexual and gender-based violence, enhance case management procedures), Panama (ensure access to the territory and increase the reception capacity for receiving refugee status applications, streamline asylum application processing, improve biometric registration), the Philippines (enact a comprehensive law for refugees and stateless people), Portugal (strengthen refugee status determination, issue a new model of Convention travel documents to refugees), Republic of Korea (strengthen refugee status determination, including through the establishment of an appeals division), Senegal (revise asylum law, including to introduce an appeal body), South Africa (promote civil registration and documentation), Spain (implement a range of measures aimed at improving asylum decision making), Switzerland (enhance the procedure for recognition and protection of refugees on its territory), Tanzania (ensure access to a fair, efficient, and transparent refugee status determination process, provide continued access to territory for all people facing persecution), Thailand (apply measures alternative to detention for children in need of international protection, build capacity to implement a national screening mechanism, provide victims in need of international protection access to the criminal justice system), Togo (provide registration and documentation for all refugees), Uganda (build capacity and integrity of the asylum system through a range of measures), Zambia (maintain an open door policy, include refugees in the national registration system), Zimbabwe (review and update legal frameworks relating to refugees and asylum seekers, improve timely access to civil and birth registration and documentation of refugees and stateless people as well as the host community, strengthen data management within the asylum system). The full text of these pledges may be found on the dashboard for pledges and contributions (see UNHCR (n 281)).

<sup>297</sup> Albania, Argentina, Armenia, Bosnia and Herzegovina, Brazil, Chad, Democratic Republic of the Congo, Dominican Republic, El Salvador, Ethiopia, Georgia, Honduras, Indonesia, Kenya, Madagascar, Malawi, Mali, Malta, Mauritania, Mexico, Montenegro, Niger, North Macedonia, Panama, the Philippines, Portugal, Republic of Korea, Senegal, Spain, Switzerland, Tanzania, Thailand, Uganda.

<sup>298</sup> Guatemala. See also Thailand (access of victims in need of international protection to the criminal justice system). The full text of these pledges may be found on the dashboard for pledges and contributions (see UNHCR (n 281)).

- providing birth registration to all refugee children, thus minimizing the risk of statelessness;<sup>299</sup> and
- ensuring the inclusion of refugees and asylum seekers in efforts aimed at combating sexual and gender-based violence.<sup>300</sup>

A number of States pledged to support others in strengthening their asylum systems,<sup>301</sup> including through the Asylum Capacity Support Group, which was launched at the Forum and received pledges of financial, material, and technical support.

#### 4.5 Pledges to expand access to solutions

Progress was also made towards achieving solutions for refugees. Ten countries of origin pledged to work to create the conditions for and/or directly support the voluntary repatriation of refugees,<sup>302</sup> whilst more than a dozen States pledged to advance the local integration of refugees on their territory.<sup>303</sup> This commendable willingness to advance solutions by host countries and countries of origin was explicitly supported by pledges from some donors,<sup>304</sup> and it is hoped that these ambitious pledges can be a catalyst for further donor support in the coming years, as well as the broader engagement of peace actors. In a world where durable solutions have become so scarce, they represent real opportunities.

In terms of third-country solutions, more than 110 pledges were made towards resettlement and complementary pathways, in alignment with the Three-Year Strategy on Resettlement and Complementary Pathways. The EU announced the collective commitment by its Member States to resettle 30,000 refugees in 2020, and more than 20 States made individual resettlement pledges.<sup>305</sup> Members of the Global Refugee Sponsorship Initiative's States Network put forward a Ministerial Joint Statement in support of community-based refugee sponsorship, whilst nine States made pledges relating to private and community sponsorship programmes.<sup>306</sup> Nine States and the IOM will provide support to new or emerging resettlement

<sup>299</sup> Nigeria, Rwanda, Sudan, Zimbabwe. Other pledges to improve registration and/or documentation were made by Angola, Chad, Ethiopia, Malawi, Mexico, South Africa, Togo, Zambia.

<sup>300</sup> Dominican Republic, North Macedonia.

<sup>301</sup> Including from Argentina, Canada, Denmark, France, Georgia, New Zealand, Norway, Sweden, European Asylum Support Office.

<sup>302</sup> Angola, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Honduras, Mali, Nigeria, Somalia, South Sudan.

<sup>303</sup> Albania, Angola, Bosnia and Herzegovina, Central African Republic, Cyprus, Democratic Republic of the Congo, France, The Gambia, Guinea-Bissau, Liberia, Malta, Mexico, Mozambique, Namibia, South Africa, Tanzania, Zambia.

<sup>304</sup> Including Denmark, Sweden, Spain. Ireland pledged to support efforts to address the root causes of displacement, including through the UN Peacebuilding Fund.

<sup>305</sup> Canada, Croatia, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Lithuania, the Netherlands, Norway, Portugal, Republic of Korea, Romania, Spain, Sweden, Switzerland, Thailand, the UK, Uruguay. The Philippines and Romania also made pledges relating to the Emergency Transit Facilities on their territories.

<sup>306</sup> Argentina, Belgium, Brazil, Canada, Ireland, Malta, Portugal, Spain, the UK.

countries,<sup>307</sup> whilst 11 States made pledges relating to the establishment or expansion of complementary pathways.<sup>308</sup> The World University Service of Canada and the ICU Japan Foundation committed to provide third-country scholarships for refugees.

#### 4.6 Further advancing refugee inclusion

Finally, more than 100 pledges were made to shift policies towards ensuring greater inclusion for refugees, including in specific sectors. Eight States pledged to include refugees in national, regional, or local development plans or programming,<sup>309</sup> whilst a number of others pledged support to inclusion efforts, either through bilateral development cooperation or through other mechanisms, such as the Global Concessional Financing Facility.<sup>310</sup> The Netherlands, for example, has committed €500 million over four years to support a range of international agencies to ‘take a joint, integrated approach using their complementary strengths to improve prospects for refugees and host communities’ in eight hosting countries.<sup>311</sup> Korea will expand activities under its Humanitarian–Development–Peace Nexus Strategy, with a particular focus on refugees and IDPs.

Many of the 70-plus pledges by development actors were of a non-specific nature, however, as the detailed programme design and planning that development work requires makes it less amenable to a one-time announcement that coincides with a particular event. UNHCR continues to work with those States to further define the specific amounts involved and the countries and sectors of focus, including with a view to matching them with pledges whose implementation requires support.

To further advance and embed these promising trends, the 39 States and multilateral agencies that are members of the International Network on Conflict and Fragility (a collaboration between OECD Development Assistance Committee members and relevant multilateral agencies) adopted a Common Position on Supporting Comprehensive Responses in Refugee Situations,<sup>312</sup> whilst a group of seven multilateral development banks jointly pledged to expand and deepen their cooperation with one another, and with member countries and other relevant stakeholders, to maximize their collective development impact for the benefit of the forcibly displaced and their hosts (including through ‘rapid financing through dedicated financial instruments or sources that can help alleviate the strain on public services in host countries, and support livelihoods,

<sup>307</sup> Belgium, Canada, Germany, New Zealand, the Netherlands, Norway, Portugal, Sweden, Switzerland.

<sup>308</sup> Argentina, Brazil, Canada, Chile, Italy, Mexico, Norway, the Philippines, Japan, Peru, Spain. See also the pledge of Talent Beyond Boundaries.

<sup>309</sup> Burkina Faso, Chad, Djibouti, Kenya, Malawi, Mali, Nigeria, Somalia, Uganda.

<sup>310</sup> Including Canada, Denmark, Germany, Japan, Republic of Korea, the Netherlands, Sweden, the EU and the UN Development Programme.

<sup>311</sup> Iraq, Jordan, Lebanon, Egypt, Sudan, Ethiopia, Kenya, Uganda.

<sup>312</sup> OECD, ‘INCAF Common Position on Supporting Comprehensive Responses in Refugee Situations’ (2019).

inclusiveness and resilience for all').<sup>313</sup> Members of the UN system pledged to support and advocate such inclusion, and to include refugees and other displaced people in UN Sustainable Development Cooperation Frameworks.

At least 13 States committed to adopting more inclusive education policies or to expand access to education for refugees on their territory,<sup>314</sup> whilst the World Bank, Education Cannot Wait, and the Global Partnership for Education jointly committed to improve their collaboration, coordination, and financing of global efforts in support of education for refugees and host communities. These commitments will be backed up by a number of pledges of financial support: the Government of Germany, for example, pledged to contribute €13.4 million in 2020 to the Albert Einstein German Academic Refugee Initiative – which to date has enabled more than 18,000 refugee students to study at universities and colleges in more than 50 countries of asylum – whilst also inviting other donors to participate. Denmark accepted the invitation and pledged to contribute 10 million DKK in 2020, while the Said Foundation pledged an additional £700,000. Denmark also pledged to support Education Cannot Wait's work with refugee children through a four-year partnership worth 250 million DKK.<sup>315</sup>

In the field of jobs and livelihoods, four States pledged to ensure that refugees have the same conditions of access to the labour market as their nationals,<sup>316</sup> whilst Costa Rica pledged to ensure the full socio-economic inclusion of refugees. Twenty-three States pledged to expand access to employment and livelihood opportunities,<sup>317</sup> and Peru pledged to acknowledge the educational qualifications of doctors, engineers, and teachers. Qatar pledged to create jobs for five million refugees and IDPs in the Middle East and North Africa, whilst the African Entrepreneurship Collective pledged to support 35,000 refugee and host community entrepreneurs with business development support services and low-cost loans. Sweden and the Grameen Credit Agricole Foundation will ensure financial services for 100,000 refugee and host community households in Uganda, and Czechia, Denmark, Ireland, and Switzerland will contribute €39 million to the Regional Development and Protection Programme for the Middle East to support skills-training and livelihood opportunities for Syrian and Jordanian youth.<sup>318</sup>

<sup>313</sup> The African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the Inter-American Development Bank, the Islamic Development Bank, the World Bank Group.

<sup>314</sup> Central African Republic, Costa Rica, Cyprus, Djibouti, Dominican Republic, Georgia, Guatemala, Indonesia, Kenya, Peru, Rwanda, Sudan, Turkey.

<sup>315</sup> See also Australia, Croatia, Estonia, Germany, Ireland, Liechtenstein, Norway, Portugal, Qatar, Slovakia, Sweden, Switzerland.

<sup>316</sup> Central African Republic, Chile, Eswatini, Mauritania.

<sup>317</sup> Azerbaijan, Chad, El Salvador, Ethiopia, Guatemala, Italy, Lesotho, Liberia, Lithuania, Mexico, Namibia, New Zealand, Nigeria, Norway, Rwanda, Senegal, Serbia, South Sudan, Spain, Switzerland, Tanzania, Thailand, Zimbabwe.

<sup>318</sup> Pledges to support jobs and livelihoods in refugee contexts were also made by Germany, Japan, and the EU.

## 5. CONCLUSION: THE MAKINGS OF A SUCCESS

The last five years have seen considerable changes in the international refugee regime. The Global Compact on Refugees has sought to establish a strengthened global architecture for international cooperation – rooted in principles and values – to enhance equitable and predictable burden and responsibility sharing for refugees. The first Global Refugee Forum generated an impressive number and range of commitments to accelerate the realization of the Compact’s promise. These developments have the potential to transform the lives of tens of millions of refugees and their hosts by building self-reliance, promoting socio-economic inclusion, and paving the way to solutions.

This process has had its critics, and some of the criticisms are well founded. In order to build the kind of multilateral consensus necessary for ongoing cooperation, compromise was required. The Compact does not ‘solve’ burden and responsibility sharing once and for all; nor does it seek to address all the challenges facing the international refugee protection regime, many of which are not well suited to discussion in a multilateral setting. Work must continue both within the structures established by the Compact and beyond to continue to advance international protection for everyone in need of it, wherever they are, and to broaden and deepen the base of support for comprehensive refugee responses.

It is too early to declare this endeavour a success. A longitudinal perspective is required, as the full extent of the Compact’s impact on the international refugee regime will take some time to reveal itself.<sup>319</sup> A willingness to learn and adapt will be necessary, as will the enduring commitment of all stakeholders to carry out this shared plan. The challenge now is for the international community as a whole to work together to implement the Compact and pledges and to further our efforts to share burdens and responsibilities in a manner that enhances protection and expands access to solutions. As the High Commissioner noted in closing the first Global Refugee Forum:

[T]his has the making of a success. To make it a success is incumbent on all of us.<sup>320</sup>

### POSTSCRIPT: COVID-19 AND THE INTERNATIONAL REFUGEE PROTECTION REGIME

Less than two weeks after the closing of the first Global Refugee Forum in Geneva, the World Health Organization’s China Country Office was notified of cases of ‘pneumonia of unknown etiology’ in Wuhan City, Hubei Province.<sup>321</sup> From then until the time of

<sup>319</sup> UNHCR Evaluation Service (n 51) 58 (‘In contentious policy areas, although initial progress may be limited, opportunities for further progress may open up in the future. Engaging over longer periods of time and demonstrating the economic and social value to host communities and refugees of more inclusive approaches may create future space for negotiations and agreements.’).

<sup>320</sup> Filippo Grandi, ‘Closing Remarks at the Global Refugee Forum’ (18 December 2019) <<https://www.unhcr.org/admin/hcspeeches/5e15a8ff7/closing-remarks-global-refugee-forum.html>> accessed 1 April 2020.

<sup>321</sup> World Health Organization, *Novel Coronavirus (2019-nCoV) Situation Report 1* (21 January 2020).

writing, COVID-19 (as the disease has been since named) has spread across the world, infecting more than three million people and killing more than 200,000; by the time this piece is published, both numbers are certain to be higher. The disease and measures taken in response have turned many aspects of daily life upside down and will have vast long-term consequences in the spheres of public health, economics, politics, and beyond. There will also be consequences of unknown magnitude for the international refugee protection regime.

The disease poses many immediate risks to refugees, internally displaced people, and others in similar situations, of course: many of them live in crowded conditions with limited access to adequate health care and sanitation, posing serious challenges to social distancing and regular handwashing. Many of the pre-existing challenges that they live with – a lack of livelihood opportunities, no formal documentation, sexual and gender-based violence, and xenophobia, to name but a few – only serve to multiply the risks.

Core principles of the international refugee protection regime are also being challenged. At the time of writing, approximately 30 States have fully or partially closed their borders to contain the spread of the virus with no exception for access for asylum seekers.<sup>322</sup> Whilst these countries are in the minority, there must be no doubt that *non-refoulement* and the other core elements of the international refugee protection regime continue to apply; 'States are entitled to take measures to ascertain and manage risks to public health, including risks that could arise in connection with non-nationals arriving at their border[s]';<sup>323</sup> but 'such measures may not result in denying them an effective opportunity to seek asylum or result in *refoulement*'.<sup>324</sup>

The Global Compact on Refugees can be of use here.<sup>325</sup> It emphasizes the contribution that countries hosting large numbers of refugees make to the common good, and this continues to be the case through a situation like this one. Indeed, it is all the more important for the international community to share the burden and responsibility for protecting the world's refugees when the capacities of low- and middle-income host countries have been so strained by the health-related, economic, and other consequences of the virus. The Global Compact, for example, provides for the international

<sup>322</sup> Gillian Triggs, 'We Can Secure Both Public Health and the Rights of Refugees to Protection' (Andrew & Renata Kaldor Centre for International Refugee Law, 8 April 2020) <<https://www.kaldorcentre.unsw.edu.au/publication/we-can-secure-both-public-health-and-rights-refugees-protection>> accessed 8 April 2020.

<sup>323</sup> Such as health screening or testing, and the use of quarantines to public health ends: 'Reasonable measures to ascertain and manage risks to public health that could arise in connection with people arriving from other countries could include temporary limitations on movement for a limited period. ... Health concerns do not justify the systematic use of immigration detention against individuals or groups of asylum-seekers or refugees': UNHCR, 'Key Legal Considerations on Access to Territory for Persons in Need of International Protection in the Context of the COVID-19 Response' (16 March 2020).

<sup>324</sup> *ibid* ('Denial of access to territory without safeguards to protect against *refoulement* cannot be justified on the grounds of any health risk').

<sup>325</sup> See UNHCR, 'The Role of the Global Compact on Refugees in the International Response to COVID-19' (May 2020).

community 'to support protection-sensitive arrangements for ... health assessments of new arrivals';<sup>326</sup> in assisting countries to continue to admit those in need of protection whilst also protecting the health of their own populations, such support could prove vital in ensuring that the right to seek asylum is upheld through this difficult time. The Global Compact also provides for the international community to support host countries to identify refugees already on their territory with specific needs (including medical needs) and to establish processes and procedures to meet those needs.<sup>327</sup> Consistent with the Global Compact, UNHCR has been advocating 'for refugees and asylum seekers, and internally displaced persons to be included in the national surveillance, preparedness, response plans and activities'.<sup>328</sup> The Compact also provides, of course, for support to address many of the broader protection and socio-economic challenges that have emerged or become more acute as a result of the current situation. The Global Compact provides a strong basis to ensure that refugees and their host communities are not left behind in the response, and many humanitarian and development actors have committed to their inclusion as they scale up.<sup>329</sup>

At the Global Refugee Forum, a wide range of pledges were made that are now of direct relevance to the international response to COVID-19, particularly in relation to health, WASH, and social protection. These included pledges to include refugees in national health systems, improve health access and services for refugees, provide free health care to refugees, or include them in the national health insurance schemes.<sup>330</sup> A number of States and other partners made pledges to support efforts such as these. Whilst now is not the time to dismantle parallel humanitarian health systems when national systems are not in a position to take the increased strain, it is important that refugees are included in broader national responses. Where countries have developed health policies and systems that are inclusive of refugees, these may also need additional support, as provided for in the Compact.<sup>331</sup> Over time, measures that foster inclusion and build social cohesion and economic opportunity will help refugees and their hosts to recover.

<sup>326</sup> Global Compact on Refugees, para 57.

<sup>327</sup> *ibid* paras 54–55.

<sup>328</sup> UNHCR, 'UN Refugee Agency Steps Up COVID-19 Preparedness, Prevention and Response Measures' (10 March 2020) <<https://www.unhcr.org/news/press/2020/3/5e677f634/un-refugee-agency-steps-covid-19-preparedness-prevention-response-measures.html>> accessed 1 April 2020.

<sup>329</sup> For example, Germany, the EU, and the African Development Bank: see German Federal Ministry for Economic Cooperation and Development, 'German Development Ministry Presents Emergency COVID-19 Support Programme' (23 April 2020) <<http://www.bmz.de/20200423-len>> accessed 24 April 2020; EU, 'Coronavirus: EU Global Response to Fight the Pandemic' (8 April 2020) <[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_20\\_604](https://ec.europa.eu/commission/presscorner/detail/en/IP_20_604)> accessed 24 April 2020; African Development Bank Group, 'The African Development Bank Group's COVID-19 Rapid Response Facility' (April 2020) 12.

<sup>330</sup> Including Afghanistan, Azerbaijan, Cameroon, Costa Rica, Côte d'Ivoire, Cyprus, Djibouti, El Salvador, Malawi, Mauritania, Mexico, Moldova, Montenegro, Mozambique, Namibia, Nigeria, Senegal, Uganda.

<sup>331</sup> Global Compact on Refugees, paras 72–73.

In other areas, of course, the pandemic will place hurdles in the way of progress. For example, UNHCR reported in February 2020 that the total number of refugees resettled in 2019 represented a modest-but-encouraging 14 per cent increase on the previous year, whilst noting that a ‘tremendous gap ... between resettlement needs and the places made available’ remained.<sup>332</sup> The opportunities to build upon this promising result have been deferred, however, by the fact that COVID-19 has compelled UNHCR and IOM – at the time of writing – to temporarily suspend all resettlement departures.<sup>333</sup>

Perhaps most fundamentally of all, however, the current situation puts the very concept of international solidarity – upon which the Global Compact on Refugees rests – to the test. The pandemic is both a challenge and an opportunity to translate the Compact into action. Much like comprehensive refugee responses, this will require a multi-stakeholder, whole-of-society effort.

<sup>332</sup> UN News, ‘Refugee Resettlement: “Tremendous Gap” Persists between Needs, and Spaces on Offer’ (5 February 2020) <<https://news.un.org/en/story/2020/02/1056742>> accessed 1 April 2020.

<sup>333</sup> UNHCR, ‘IOM, UNHCR Announce Temporary Suspension of Resettlement Travel for Refugees’ (17 March 2020) <<https://www.unhcr.org/news/press/2020/3/5e7103034/iom-unhcr-announce-temporary-suspension-resettlement-travel-refugees.html>> accessed 1 April 2020.