

Research Article

Solidarity and Sharing Responsibility for Refugee Protection: Does the *Global Compact on Refugees* move the needle?

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Abstract

It is well established that there is a substantial gap between rhetoric and state practice of solidarity in international refugee protection. Global North states are increasingly employing strategies of deterrence and externalisation to retreat from obligations. In this context, this article considers whether the adoption of the Global Compact on Refugees in 2018 has shifted the dialogue. As an instrument of soft law, the Global Compact on Refugees represented an opportunity for the international community to advance the principles of solidarity and responsibility-sharing. These principles are largely missing from the foundational texts of international refugee law, the 1951 Convention and its 1967 Protocol. The article examines novel perspectives and principles to advance solidarity in refugee protection, with the support of postcolonial critiques, and considers the future of responsibility-sharing. In particular, the article will question the potential for international refugee law frameworks to equitably address and remedy the historical injustices of the colonial project, which perpetuate the contemporary crisis.

Introduction

As the scale and complexity of the ‘refugee crisis’ grows, many have repeatedly called for international law to provide better mechanisms for responsibility-sharing and cooperation between Global North and Global South states. The term ‘refugee crisis’ represents the enormity of the problem in terms of the number of people displaced and the lack of political support for solutions. At mid-2024, the Office of the United Nations High Commissioner for Refugees (UNHCR) reported that 122.6 million people were forcibly displaced around the world, with the Least Developed Countries hosting approximately 22% of this population.⁸⁵⁷ While the Global South often hosts larger numbers of refugees due to their proximity to the root causes of displacement, it can also be attributed to Global North states employing harsher asylum and immigration laws and policies. For example, the European Union’s funding and training of the Libyan Coast Guard to intercept and return asylum seekers before they reach European shores, and the Australian government’s policy that no ‘illegal maritime arrivals’ will ever be resettled permanently in Australia.⁸⁵⁸ These policies evidence the lack of international cooperation in managing increasing displacement. Postcolonial scholars have long demanded that international refugee law respond meaningfully to how colonialism and neo-colonialism impact and shape the refugee crisis.⁸⁵⁹ This article will consider the capacity for international refugee law to address or impose duties on Global North states for their complicity in conflicts and displacement in the Global South. In short, this article aims to contribute to shifting the conversation from focusing on the responsibility of countries at the root of displacement, towards the Global North’s historical responsibility for the ‘refugee crisis’ and resultant obligations. The capacity for change is examined through the lens of a contemporary addition to the international refugee law framework, the Global Compact on Refugees.⁸⁶⁰

⁸⁵⁷ “Mid-Year Trends 2024”, UNHCR Global Data Service, updated October 29, 2024. <https://reliefweb.int/report/world/unhcr-mid-year-trends-2024>.

⁸⁵⁸ Biora Chinedu Okafor, “The Future of International Solidarity in Refugee Protection,” *Human Rights Review* 22, no. 1 (2021): 5.

⁸⁵⁹ See for example, BS Chimni, “The Geopolitics of Refugee Studies: A View from the South,” *Journal of Refugee Studies* 11, no. 4 (1998).

⁸⁶⁰ UNHCR, *Report of the United Nations High Commissioner for Refugees: Part II Global Compact*, 73rd sess, Supp No 12, UN Doc A/73/12 (Part II) (2 August 2018, reissued 13 September 2018) (‘*The Global Compact*’).

The Global Compact on Refugees: foundations and content

In 2016, UN Member states adopted the New York Declaration for Refugees and Migrants which led to the development of the Global Compact on Refugees ('The Compact'), with a similar model for migrants. The Compact built upon international refugee law instruments and principles, with a specific focus on protection and responsibility-sharing. Before examining the Compact's usefulness, it is important to review the existing legal frameworks of international refugee law. The foundational text, the *Convention Relating to the Status of Refugees* ('The 1951 Convention'), offers refugee status to individuals fleeing persecution based on their 'race, religion, nationality, membership in a particular social group, or political opinion'.⁸⁶¹ The *1951 Convention* was devised in Europe, in a post-WWII context, and therefore initially limited its scope to persons displaced in Europe before 1951.⁸⁶² However, throughout the following decade, with decolonisation movements and wars throughout much of the Global South, as well as consistent advocacy from Global South actors, it became clear that a truly international framework was essential. The *1967 Protocol Relating to the Status of Refugees* removed the temporal and geographic limitations of the *1951 Convention*, thereby offering refugee status and the resultant protections to a broader range of displaced persons.⁸⁶³ Since the adoption of the *1951 Convention*, the principle of non-refoulement, which prohibits states from returning an individual to a place where they may face persecution or torture, has been widely accepted as a *jus cogens* norm, evidencing an important development in international law.⁸⁶⁴ Following the adoption of the *1951 Convention* and its *1967 Protocol*, most legal developments have occurred regionally; for example, the *1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa* ('The 1969 OAU Convention') and the *Cartagena Declaration*, adopted by Central and Latin American states.⁸⁶⁵ The *1969 OAU Refugee Convention* and the *Cartagena Declaration*

⁸⁶¹ *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) Art 1(B)(1).

⁸⁶² *Convention Relating to the Status of Refugees*, Art 1(B)(1).

⁸⁶³ *Protocol Relating to the Status of Refugees*, opened for signature 31 January 1967, 606 UNTS 267 (entered into force 5 October 1967).

⁸⁶⁴ Jill Goldenziel, "The curse of the nation-state: refugees, migration, and security in international law," *Arizona State law journal* 48 (2016): 634.

⁸⁶⁵ *Cartagena Declaration on Refugees*, The Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, adopted 22 November 1984; *1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa*, African Union,

developed the refugee definition ‘to include people who have fled violent conditions or disturbances in public order’.⁸⁶⁶ Most developments in refugee law have focused on widening the definition of potential refugees. Yet there remains a normative gap regarding states’ obligations for sharing the responsibility of the immense numbers of refugees around the globe. In light of this, the main contribution of the Compact was envisioned as operationalising burden and responsibility-sharing mechanisms.

The Compact begins by foregrounding the ‘urgent need for more equitable sharing of the burden and responsibility for hosting and supporting the world’s refugees’ among United Nations Member states.⁸⁶⁷ While not legally binding, the goals of the Compact purport to be implemented through ‘voluntary contributions’ determined by each state’s capacity, in a spirit of ‘strengthened cooperation and solidarity’.⁸⁶⁸ The Compact’s introductory remarks acknowledge states that are not party to the *1951 Convention*, yet which have contributed immensely to hosting and protecting refugees – an important recognition that alludes to states predominantly located in the Global South.⁸⁶⁹ The Compact acknowledges that large-scale refugee situations are matters of concern to the international community as a whole, but equally that ‘addressing root causes is the responsibility of countries at the origin of refugee movements’.⁸⁷⁰ Here, the accepted correlation between ‘root causes’ being the responsibility of countries at the epicentre is an important and problematic notion that this article will return to.

The Compact then introduces the Comprehensive Refugee Response Framework (CRRF), an integral part of the text which aims to facilitate a unified approach to supporting refugees and host countries.⁸⁷¹ The CRRF contains mechanisms to support responsibility-sharing, such as the Global Refugee Forum, held every 4 years, where states pledge assistance in the form of financial, technical, material or other aid and are held accountable to previous pledges.⁸⁷² It also introduces Support Platforms which provide context-specific support for both refugees and host communities in

opened for signature 10 September 1969.

⁸⁶⁶ Goldenziel, “The curse of the nation-state”, 633.

⁸⁶⁷ *The Global Compact* [1].

⁸⁶⁸ *The Global Compact* [4].

⁸⁶⁹ *The Global Compact* [6].

⁸⁷⁰ *The Global Compact* [8].

⁸⁷¹ *The Global Compact* [11].

⁸⁷² *The Global Compact* [17].

circumstances of large-scale refugee situations.⁸⁷³ Support Platforms are led by states and aim to provide a 'strategic vehicle to garner broad-based support for host states or countries of origin'.⁸⁷⁴ The Compact acknowledges that the success of the above-mentioned mechanisms depends on the 'international community as a whole providing concrete contributions to bring these arrangements to life'.⁸⁷⁵ Part B of the CRRF outlines specific areas in need of support, such as: overall preparedness of receiving countries of large scale refugee movements, safety and security of refugees, fostering jobs and inclusive economic growth for refugee and host communities, particular aid for gender-related barriers faced by women and girl refugees, and food security.⁸⁷⁶ The Compact's final chapter focuses on 'Solutions'. The Compact extends the focus from the three traditional durable solutions of voluntary repatriation, resettlement and local integration, to include 'other local solutions and complementary pathways for admission to third countries'.⁸⁷⁷

Notably, the Compact does not address many critical areas of how international refugee law is implemented, such as the detention of refugees illegally entering a state or constructive refoulement. However, the focus of this critique is the Compact's silences surrounding the Global North's historic responsibility in producing large-scale refugee movements and, subsequently, practising policies of containment and deterrence.

Postcolonial approaches to international refugee law

The central challenge of international refugee law is that it must balance the sovereign right of states to expel aliens, or non-nationals, from within their borders with the international principles of non-refoulement, dictating that states cannot return a person to a country where they fear persecution. The universal acceptance of non-refoulement as a *jus cogens* norm indicates that 'states are willing to cede some of their sovereignty to protect human rights'.⁸⁷⁸ Yet this core tension remains. The refugee definition itself emphasises state sovereignty as the starting point for a finding of refugee status. The

⁸⁷³ *The Global Compact* [23].

⁸⁷⁴ *The Global Compact* [27].

⁸⁷⁵ *The Global Compact* [49].

⁸⁷⁶ *The Global Compact* [52-74].

⁸⁷⁷ *The Global Compact* [85].

⁸⁷⁸ Goldenziel, "The curse of the nation-state", 634.

individual must be 'outside their country of origin' to seek protection, implicitly acknowledging that international refugee law will not seek to determine practice within a nation's borders.⁸⁷⁹

However, postcolonial scholars have critiqued the supremacy of state sovereignty and national borders as organising principles of international law.⁸⁸⁰ Critical approaches to international legal history help us understand and analyse how the historical experience of colonialism fundamentally shaped concepts and doctrines of international law. Antony Anghie's scholarship depicts how the doctrine of sovereignty was constituted through the colonial encounter.⁸⁸¹ Tendayi Achiume builds upon postcolonial theory by contending that, for formerly colonised states, decolonisation did not signify complete independence, but merely represented a shift in power relations between indefinitely linked states.⁸⁸² Achiume seeks to reimagine 'national borders and the institutions of political inclusion' by foregrounding the implications of unilateral European migration during the colonial project.⁸⁸³ Between the nineteenth century and the first half of the twentieth century, 62 million Europeans emigrated to colonies around the world, while 'human and natural resources' were pulled in the opposite direction for the benefit of Europeans.⁸⁸⁴ As a consequence of this shared history, Third World migrants form part of the 'shared demos' of the nation-state that benefited from their subjugation and thus are 'political insiders' deserving of association and membership in the First World.⁸⁸⁵ Achiume's scholarship demonstrates how the contemporary hyper-focus and militarisation of borders is inherently racial, denying Third World citizens the reciprocal right to migration.⁸⁸⁶ Achiume advocates that, in order to achieve corrective and retributive justice for the effects of colonialism, political association to the First World must be reimaged.⁸⁸⁷ Importantly, Achiume uses the

⁸⁷⁹ Laura Barnett, "Global Governance and the Evolution of the International Refugee Regime," *International Journal of Refugee law* 14, no. 2-3 (2002): 246.

⁸⁸⁰ Tendayi Achiume, "Migration as Decolonization," *Stanford Law Review* 71, no. 6 (2019): 1551; Antony Anghie, "The Evolution of International Law: colonial and postcolonial realities", in *International Law and the Third World*, ed. Antony Anghie, Jacqueline Stevens, Balakrishnan Rajagopal, Richard Falk (Taylor & Francis Group, 2008).

⁸⁸¹ Antony Anghie, "The Evolution of International Law: colonial and postcolonial realities", 37.

⁸⁸² Tendayi Achiume, "Migration as Decolonization," *Stanford Law Review* 71, no. 6 (2019): 1551.

⁸⁸³ Achiume, "Migration as Decolonization," 1574.

⁸⁸⁴ Achiume, "Migration as Decolonization," 1518.

⁸⁸⁵ Achiume, "Migration as Decolonization," 1549.

⁸⁸⁶ Achiume, "Migration as Decolonization," 1518.

⁸⁸⁷ Achiume, "Migration as Decolonization," 1549.

terms First World and Third World for their analytical significance in evoking ‘imperial histories and politics’.⁸⁸⁸

The political and economic institutions born in the period of decolonisation which seek to respond to the refugee crisis, such as the UNHCR, must also be reimagined. BS Chimni sheds light on how influential states in the Global North formed and continue to exert control over the UNHCR, and yet have legitimised this dynamic through emphasising the organisation’s non-political character.⁸⁸⁹ To remedy this injustice, international refugee law and the institutions upholding it must diverge from legal positivism and acknowledge the historical legacy of the colonial project.⁸⁹⁰ It is essential to situate instruments and institutions of international law in the historical and political context from which they originated.

Building on Achiume’s critique of international migration law, this article considers the colonial foundations and implications of international refugee law. Achiume’s critique is pertinent to the norm of burden and responsibility-sharing because it highlights the immense responsibility that the Global North owes in this struggle. This radical reimagining of accepted doctrines seeks to challenge many of the material realities that these assumptions rely on, such as inflexible national borders and restricted political membership. In light of the contemporary crisis, where harsher immigration and asylum practices of Global North states contain 86% of the world’s refugees in the Global South,⁸⁹¹ it is imperative that international refugee law frameworks are considered through a postcolonial lens, which centres the impact of colonialism and neo-colonialism on the current refugee crisis. The following section examines how the Compact could have effectively addressed the principle of solidarity in a manner that truly acknowledged the historical legacy and ongoing impacts of colonialism.

⁸⁸⁸ Achiume, “The Postcolonial Case for Rethinking Borders” *Dissent* 66, no. 3 (2019): 28.

⁸⁸⁹ BS Chimni, “The Geopolitics of Refugee Studies: A View from the South,” *Journal of Refugee Studies* 11, no. 4 (1998): 366.

⁸⁹⁰ Achiume, “The Postcolonial Case for Rethinking Borders”, 32.

⁸⁹¹ “Mid-Year Trends 2024”, UNHCR Global Data Service, updated October 29, 2024. <https://reliefweb.int/report/world/unhcr-mid-year-trends-2024>.

The normative impact of the Compact's language and obligations

Soft law instruments have proliferated in recent years, perhaps evidence that states are unwilling to commit to concrete obligations in international law.⁸⁹² However, precisely due to this limitation, they are often capable of containing more aspirational and expansive concepts than traditional frameworks. The Compact's status as a non-legally binding instrument presented an opportunity for the international community to meaningfully address the structural and historic inequalities which account for the Global South hosting 86% of the world's refugees.⁸⁹³ Guzman and Meyer define soft law as 'nonbinding rules or instruments that interpret or inform our understanding of binding legal rules or represent promises that in turn create expectations about future conduct'.⁸⁹⁴ The Compact does not contain any legally binding obligations, it merely affirms and elucidates existing principles of international refugee law, and therefore is clearly soft law. However, as soft law, there was a significant opportunity to address the Global North's complicity in producing and sustaining conflict, without forcing states to make concrete obligations to remedy this injustice. Furthermore, the Compact could have acknowledged the historical divide between the First and Third World, to use Achiume's preferred terminology, which contains the refugee crisis in the Third World. In this light, the Compact's weak language is further evidence of the lack of political will from Global North states to share the burden or responsibility of refugee protection. For example, the focus on voluntary commitments in the spirit of partnership and needs-based approaches is more indeterminate than the traditional language of rights and obligations.⁸⁹⁵ The lack of binding commitments represents 'a step back from international law as the otherwise preferred language of international relations'.⁸⁹⁶ While concrete obligations from Global North states are unlikely, the soft law nature of the Compact offered a significant opportunity to include language that explicitly

⁸⁹² Vincent Chetail, "The Functions and Evolution of Soft Law in Global Migration Governance" in *International Migration Law* (Cambridge University Press, 2019).

⁸⁹³ Volker Türk, "The Promise and Potential of the Global Compact on Refugees," *International Journal of Refugee Law* 30, no. 4 (2019): 576.

⁸⁹⁴ Andrew Guzman and Timothy Meyer, "International soft law," *Journal of Legal Analysis* 2, no. 1 (2010): 171.

⁸⁹⁵ *The Global Compact* [32]; Thomas Gammeltoft-Hansen, "The Normative Impact of the Global Compact on Refugees," *International Journal of Refugee Law* 30, no. 4 (2019): 609.

⁸⁹⁶ Gammeltoft-Hansen, "The Normative Impact of the Global Compact on Refugees," 609.

acknowledges the longstanding historical injustices of the colonial project and its impact on the contemporary refugee crisis.

In this context, the international climate framework provides an interesting model for understanding how international legal instruments can attempt to address historical injustices and adequately share responsibility. The United Nations Framework Convention on Climate Change (UNFCCC) endorses the principle of ‘common but differentiated responsibilities’ (CBDR) among member states to address the ‘unique responsibility of the developed world and the sovereign countries it comprises’ in combating climate change.⁸⁹⁷ The UNFCCC illustrated this principle by dividing developed and developing nations into two groups, set out in its annexes, with differentiated responsibilities.⁸⁹⁸ The Kyoto Protocol to the UNFCCC then operationalised the CBDR by introducing legally binding targets only for developed nations in Annex I, a controversial decision.⁸⁹⁹ International climate law has since retreated from this position, now requiring nationally determined contributions, however, the UNFCCC’s language still provides a useful model for the Compact. The burden and responsibility for the production of greenhouse gas emissions is less controversial than the responsibility for creating and sustaining conflicts that have displaced millions of persons. However, the international climate framework may be instructive in demonstrating how historical injustices can be addressed through legal principles. I contend that the Compact could have included language that reflects the ‘common but differentiated responsibilities’ of (Global North) states which have fuelled conflicts and continue to maintain harsh border regimes and deterrence policies for those seeking protection.

The Compact’s guiding principles and its implementation are pronounced as ‘entirely non-political in nature’.⁹⁰⁰ The Assistant High Commissioner (Protection) for the UNHCR himself stated that multilateralism in the Compact process was difficult to

⁸⁹⁷ *United Nations Framework Convention on Climate Change*, opened for signature 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994); Edward Page, ‘Distributing the burdens of climate change’ (2008) 17(4) *Environmental Politics* 556, 557.

⁸⁹⁸ Sophie Yeo and Simon Evans, “Explainer: Why ‘differentiation’ is key to unlocking Paris climate deal” CarbonBrief. Published 7 December 2015. <https://www.carbonbrief.org/explainer-why-differentiation-is-key-to-unlocking-paris-climate-deal>.

⁸⁹⁹ *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, opened for signature 10 December 1997, 2303 UNTS 148 (entered into force 16 February 2005).

⁹⁰⁰ *The Global Compact* [5].

achieve in ‘*an increasingly polarised political space*’ (emphasis added).⁹⁰¹ A text that was created in such a controversial, polarised space can surely not withstand some vestiges of political bias and hierarchies. The Compact’s focus on addressing root causes of conflict is inherently political. Chimni reflects that the Compact is ‘silent on the role of external actors in the production of refugees’.⁹⁰² This is particularly striking when one considers that intervention, often in pursuit of regime change, by the Global North in Global South states has resulted in some of the largest protracted refugee situations; for example, in Afghanistan, Iraq, Libya and Syria.⁹⁰³ The Compact recognises the role of the ‘international community as a whole’ in addressing root causes; however, the neutral language absolves the importance of the Global North’s responsibility in the ‘environmental, economic and political destabilisation of the South’.⁹⁰⁴ Furthermore, the focus on addressing root causes places the onus on factors exclusively within the country of origin, rather than acknowledging structural causes of displacement and conflict at the global level.⁹⁰⁵

The reality of responsibility-sharing

Who takes responsibility for responsibility-sharing? The largest chasm in global refugee protection remains the gap between the rhetoric of international cooperation and state practice. In the lead up to the Compact’s drafting, a large point of discussion was the necessity for concretisation of burden and responsibility-sharing in the international refugee protection regime. While the drafting process focused largely on principles of international cooperation and solidarity, the final text of the Compact is largely silent on the topic. Notably, the Compact extends beyond the *1951 Convention*, which merely advocates for ‘international cooperation’, by attempting to define just and equitable sharing of the responsibility and burden for the refugee crisis.⁹⁰⁶ Yet the concept remains an abstract principle. The Compact still promotes ‘national ownership’

⁹⁰¹ Türk, “The Promise and Potential of the Global Compact on Refugees,” 582.

⁹⁰² BS Chimni, “Global Compact on Refugees: One Step Forward, Two Steps Back,” *International Journal of Refugee Law* 30, no. 4 (2019): 630.

⁹⁰³ Chimni, “Global Compact on Refugees,” 630.

⁹⁰⁴ The Global Compact [8]; Tally Kritzman-Amir, “Not in my backyard: On the Morality of Responsibility Sharing in Refugee Law,” *Brooklyn Journal of International Law* 34, no. 2 (2009): 365.

⁹⁰⁵ Martin Gottwald, “Burden Sharing and Refugee Protection,” in *The Oxford Handbook of Refugee and Forced Migration Studies*, ed. Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long, and Nando Sigona (Oxford University Press, 2014) 529.

⁹⁰⁶ The Global Compact; *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) Preamble.

of the refugee crisis, with a focus on aiding host states and addressing 'root causes of conflict'.⁹⁰⁷ State responsibility for the refugee crisis has long been defined by 'geography and proximity to the crisis'.⁹⁰⁸ For example, in February 2017, 90% of the 4.9 million Syrian refugees were hosted by just three countries: Turkey, Lebanon and Jordan.⁹⁰⁹ As such, the Global South retains responsibility for managing large movements of displaced persons which often engenders political, social and economic concerns in the host country. It is imperative to note that the movement of refugees alone does not create social and political unrest. However, there is an undeniable burden placed on host states hosting large numbers of refugees.

Responsibility-sharing has been enshrined in regional instruments; for example, the *1969 OAU Convention* states that: 'where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall...take appropriate measures to lighten the burden of the Member State granting asylum'.⁹¹⁰ While the provision has been largely overlooked in practice, the *1969 OAU Convention* provides important guidance as to how legal instruments can redress power imbalances by offering host states the capacity to appeal directly to other states to lighten the burden. Interestingly, during the process of negotiating the Compact, delegates from Türkiye proposed to include 'a template or road map... for technically guiding or assisting states as to what to do during the outbreak of a crisis'.⁹¹¹ Ineli-Ciger suggests that Türkiye's proposal could have been adapted to create a template for equitable burden sharing which could include 'certain resettlement quotas or determine a minimum amount of financial support to be provided by each state in a given emergency'.⁹¹² Thus, the Compact could have identified specific concrete actions that states must take at the

⁹⁰⁷ Aleinikoff, "The Unfinished Work of the Global Compact on Refugees," 612.

⁹⁰⁸ Alexander Betts, "The Global Compact on Refugees: Towards a Theory of Change?" *International Journal of Refugee Law* 30, no. 4 (2018): 623.

⁹⁰⁹ Patrick Wall, "A New Link in the Chain: Could a Framework Convention for Refugee Responsibility Sharing Fulfil the Promise of the 1967 Protocol?" *International Journal of Refugee Law* 29, no. 2 (2017): 203.

⁹¹⁰ *1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa*, African Union, opened for signature September 10 1969, Art 2(4).

⁹¹¹ Meltem Ineli-Ciger, "Will the Global Compact on Refugees Address the Gap in International Refugee Law Concerning Burden Sharing?". *EJIL:Talk!* Published 20 June 2018. <https://www.ejiltalk.org/will-the-global-compact-on-refugees-address-the-gap-in-international-refugee-law-concerning-burden-sharing/>.

⁹¹² Ineli-Ciger, "Will the Global Compact on Refugees Address the Gap in International Refugee Law Concerning Burden Sharing?".

outbreak of a refugee crisis to increase the potential for predictable and equitable sharing of the burden.

It is significant that the Compact does acknowledge the ‘immense contribution’ that host countries make ‘from their own limited resources to the collective good, and indeed to the cause of humanity’, implicitly commending the Global South for their contribution.⁹¹³ Similarly, it acknowledges the ‘significant regional or subregional dimension’ of mass refugee movements.⁹¹⁴ To address burden and responsibility-sharing on a regional level, the Compact details that host countries can seek assistance from a Support Platform.⁹¹⁵ The Support Platform would be context-specific and only activated upon request of the host country or country of origin of refugee movements.⁹¹⁶ Importantly, it can involve ‘relevant states that have committed to contributing’.⁹¹⁷ The ad hoc mechanism has potential to share the burden more equitably as each Support Platform will be adapted to suit the specific needs of the host country. Since the adoption of the Compact, several Support Platforms have been activated to respond to situations in the Horn of Africa, Central America and Afghanistan.⁹¹⁸ However, Support Platforms are largely regional and remain voluntary, potentially limiting their capacity to overcome the North-South divide. The Compact also attempts to share responsibility among many relevant stakeholders, including the private sector. The Compact highlights the importance of involvement and assistance from the private sector, including public-private partnerships will respect for humanitarian principles.⁹¹⁹ There is potential for the private sector to bypass the politics of state cooperation and create transnational partnerships to address the refugee crisis equitably.

There is a clear theme throughout the Compact, primarily emphasising the responsibility of countries of origin and host communities, with no clear obligations for the international community at large. By reimagining the discourse on solutions to the

⁹¹³ *The Global Compact* [14].

⁹¹⁴ *The Global Compact* [28].

⁹¹⁵ *The Global Compact* [22].

⁹¹⁶ *The Global Compact* [23].

⁹¹⁷ *The Global Compact* [24].

⁹¹⁸ “Uniting for People Forced to Flee and Their Hosts: Lessons learned and future directions for Support Platforms”, United Nations High Commissioner for Refugees, published June 2023, <https://globalcompactrefugees.org/media/2023-support-platforms-lessons-learned-report>.

⁹¹⁹ *The Global Compact* [42].

refugee crisis in the spirit of promoting flexible borders and greater international solidarity, the potential for equitable responses to refugee movements and protection could greatly increase.

Beyond traditional solutions to the refugee crisis

A primary objective of the Compact is to promote solutions. The Compact does not limit 'solutions' to the traditional three; it extends beyond to suggest potential for other 'local solutions and complementary pathways for admission to third countries, which may provide additional opportunities' for refugees.⁹²⁰ For example, the Compact outlines strategies for resettlement such as 'private or community sponsorship programmes' or educational opportunities which are tangible mechanisms to share the burden.⁹²¹ Significantly, the Compact acknowledges the success of private sponsorship programmes, modelled from the Canadian programme that has operated since 1978, in offering resettlement opportunities outside of traditional state-centric mechanisms.⁹²² Yet this acknowledgment of the success of private regimes potentially absolves further responsibility from the state, which could be counterproductive. The Compact's flexible approach to alternative solutions to the refugee crisis offers some hope for more innovative and historically conscious solutions. However, they remain highly dependent on a state's willingness to implement them.

The Compact labels 'voluntary repatriation in conditions of safety and dignity' as the preferred solution.⁹²³ However, the Compact elucidates that voluntary repatriation is not always 'conditioned on the accomplishment of political solutions in the country of origin'.⁹²⁴ This approach 'accepts the dilution of the principle of non-refoulement' and legitimises the repatriation of refugees to a country with no foreseeable change in its approach to the persecuted group.⁹²⁵ By accepting voluntary repatriation without political solutions in the country of origin, the Compact satisfies the political will of states seeking to divest of the responsibility to resettle refugees into their communities. Thus, it weakens the threshold of voluntary repatriation, inadvertently favouring Global North

⁹²⁰ *The Global Compact* [85].

⁹²¹ *The Global Compact* [95].

⁹²² Ineli-Ciger, "Will the Global Compact on Refugees Address the Gap in International Refugee Law Concerning Burden Sharing?".

⁹²³ *The Global Compact* [87].

⁹²⁴ *The Global Compact* [88].

⁹²⁵ Chimni, "Global Compact on Refugees", 631.

states seeking to reinforce 'the North-South divide'.⁹²⁶ The focus on voluntary repatriation as the ideal 'solution' has become increasingly clear through UNHCR's move from focusing on countries of asylum to the 'task of returnee integration'.⁹²⁷ Postcolonial scholarship links the rise in the UNHCR's focus on voluntary repatriation with the significant growth of the non-European refugee following the end of the Cold War. Chimni explains that post-Cold War the refugee 'no longer possessed ideological or geopolitical value' to Global North states.⁹²⁸ Therefore the Global North disseminated the 'myth of difference', predicated on the 'unprecedented' levels of migration, to justify 'the institutionalisation of the non-entrée regime'.⁹²⁹ The Compact's submission that voluntary repatriation may occur without political solutions may therefore be interpreted as implicitly reaffirming Global North containment and deterrence practices.

Discourse on solutions remains single-mindedly focused on regularising the individual refugees' status in the nation-state; through local integration, return or resettlement. However, reconceiving of the problem may offer new solutions. Katy Long reimagines the discourse on solutions to focus on the 'political and social conditions' which have caused persecution rather than the physical displacement of people outside their country of origin.⁹³⁰ This perspective shifts the problem from the physical displacement of refugees, to why people are forced to seek protection elsewhere, and the regional and global causes at the root of the conflict. It is my contention that the Compact could have gone further in the language of international cooperation to promote greater political inclusion of refugees by Global North States. Many postcolonial scholars advocate for migration being 'a powerful technology' to create and reform political communities.⁹³¹ Achiume envisions migration as a radical political act in the process of decolonisation whereby Third World migrants assert their fundamental right to belong to the political and economic community of the First World.⁹³² Without permeable

⁹²⁶ BS Chimni, "From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems," *Refugee Survey Quarterly* 23, no. 3 (2004): 73.

⁹²⁷ Chimni, "From Resettlement to Involuntary Repatriation", 69.

⁹²⁸ Chimni, "The Geopolitics of Refugee Studies", 351.

⁹²⁹ Chimni, "The Geopolitics of Refugee Studies", 351.

⁹³⁰ Katy Long, "Rethinking 'Durable' Solutions," in *The Oxford Handbook of Refugee and Forced Migration Studies*, eds. Elena Fiddian-Qasbiyeh, Gil Loescher, Katy Long, and Nando Sigona (Oxford University Press, 2014) 478.

⁹³¹ Achiume, "Migration as Decolonisation", 1567.

⁹³² Achiume, "Migration as Decolonisation", 1567.

borders and political inclusion, the refugee crisis is contained in the Global South and the Global North can absolve itself of responsibility for the inequity. Reconceiving of how and why people are forced to seek protection from persecution, including the global forces influencing these movements, offers a radical break from traditional solutions.

Future steps: towards more equitable sharing of responsibility for the refugee crisis

‘The idea of belonging and its rather inflexible association with bounded space needs to be actively revisited in the global age’.⁹³³ The Compact missed an opportunity to address the unequal distribution of responsibility for the refugee population by overlooking the Global North’s active role in the production of refugee movements. Furthermore, by purporting to be historically and politically neutral, the Compact does not address the role of colonialism and neo-colonialism on refugee movements. As an instrument of soft law, there was significant opportunity for the Compact to address the ongoing effects of the economic and political subjugation of the Global South. To achieve equitable responsibility-sharing for large-scale refugee movements, Global North states must acknowledge their complicity in the production of refugees and commit to concrete obligations for protection. The Compact’s focus on addressing the root causes of conflict perpetuates the notion that responsibility for the refugee crisis and solutions lies with Global South states. The Compact could have employed strong rhetoric to highlight the responsibility of Global North states in responding to increased displacement. Despite these failings, the Compact does offer many platforms and future opportunities to continue pressuring states to fulfil their legal and ethical obligations towards refugees.

⁹³³ Chimni, “Global Compact on Refugees”, 610.

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