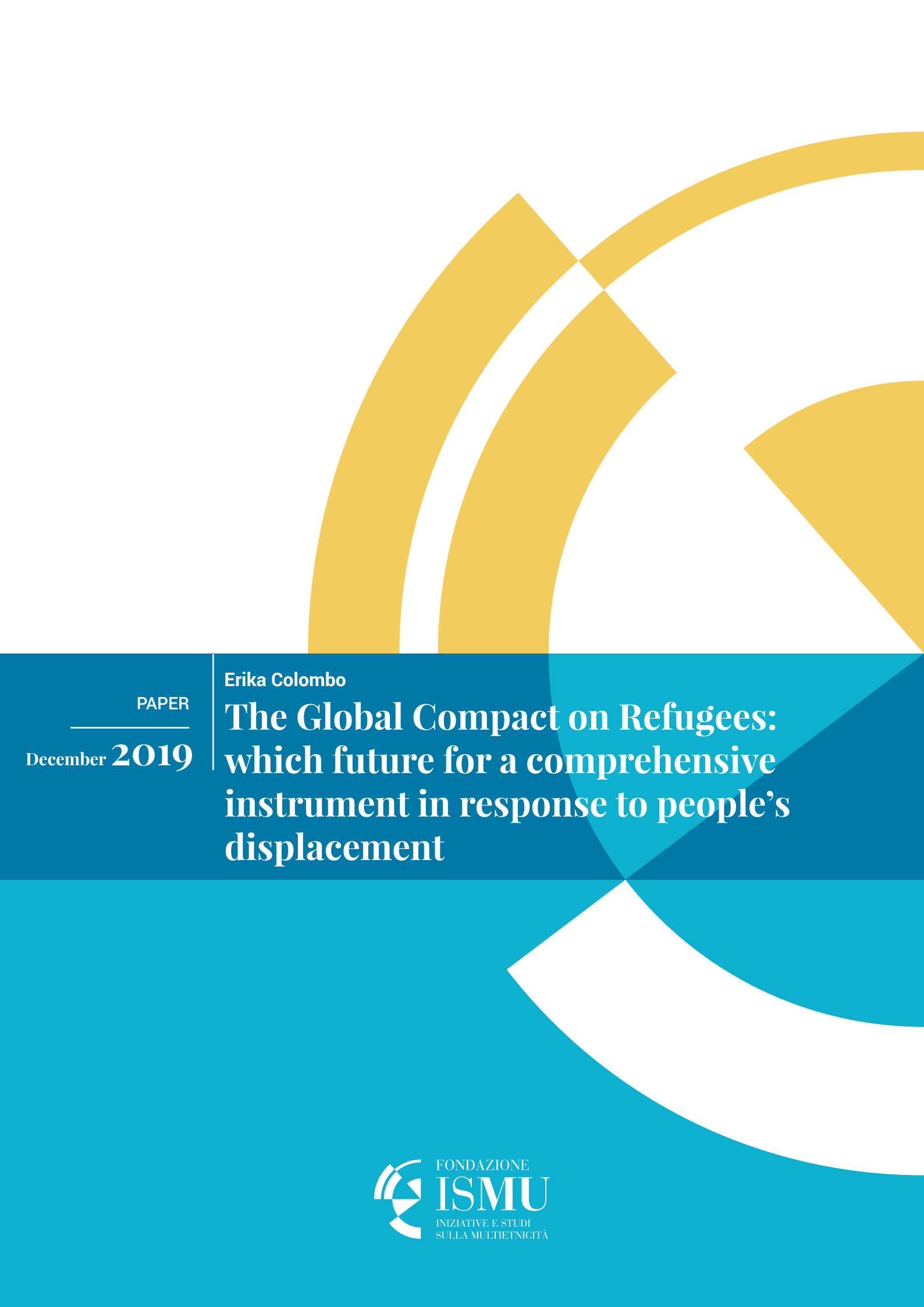




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The Global Compact on Refugees: which future for a comprehensive instrument in response to people's displacement

The Global Compact on Refugees: which future for a comprehensive instrument in response to people's displacement?

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Abstract

In a historical period when displacement is a daily concern, the Global Compact on Refugees represents the political ambition of the international community to cooperate for the creation of a framework for more predictable and equitable responsibility-sharing (Durieux, 2019). Indeed, it offers a blueprint for governments, international organizations, and other stakeholders to provide benefits both for refugees and the communities that host them, ensuring, on the one hand, that host communities get the support they need and, on the other, that refugees can lead productive lives.

The purpose of this paper is to delineate the process which led to the adoption of the Compact, illustrating the characteristics and the content of this non-binding instrument, trying to assess whether any of its objectives would result feasible and whether it could be the answer to the challenges posed by high numbers of refugees registered nowadays. Then, we would draw a panoramic of the current situation in some countries, in order to highlight the progresses of its implementation around the world and focusing on the role played by each State during the phase of consultations before its adoption. Considering that the GCR has originated less than one year ago, it will be hard to individuate consistent step forward in the achievement of its objectives, but it will however be useful to delineate the state of play.

1. The genesis of the Compact

On September 19, 2016, all 193 Member States of the United Nations made a fundamental step in the history of the global solidarity and refugee protection: they unanimously adopted the New York Declaration for Refugees and Migrants¹, which underlined the importance of the international refugee regime and established various commitments by Member States to reinforce mechanisms to protect people on the move. It represents a significant statement by the international community on the main legal issues related to contemporary migratory phenomena and to massive movements - "*large movements*" - of

¹ Resolution adopted by the General Assembly on 19 September 2016, *New York Declaration for Refugees and Migrants*, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1.

migrants and refugees. The Declaration reaffirms the relevance of the respect for international law and international standards for the protection of human rights of migrants and refugees, regardless of their legal status, and for international humanitarian law and international refugee law². Also, remarking the words proclaimed by the UN High Commissioner for Refugees, Filippo Grandi:

The New York Declaration marks a political commitment of unprecedented force and resonance. It fills what has been a perennial gap in the international protection system – that of truly sharing responsibility for refugees.

Furthermore, the treaty traced the path for the adoption of two new global compacts in 2018: the *Global Compact on Refugees* (GCR) and the *Global Compact for Safe, Orderly and Regular Migration* (GCM)³. While this last provides for the sharing of some general guidelines on migration policies in order to give a coordinated and global response to the migratory phenomenon⁴, the GCR aims to address this concern by focusing more on investment, both from governments and the private sector, in order to further strengthen infrastructure and services for the benefit of both refugees and host communities. It calls for policies and measures to allow refugees access to education and lead productive lives during the period in which they are in exile, and provides for increased resettlement opportunities – for instance, through family reunification, scholarships or humanitarian visas. This approach is strongly correlated to the Millennium Sustainable Development Goals, drawn up in 2015 by the UN General Assembly with the publication of the “2030 Agenda for Sustainable Development”⁵, evoking, specifically, what it is affirmed in paragraph 29 of the 2030 Agenda⁶:

We recognize the positive contribution of migrants for inclusive growth and sustainable development. We also recognize that international migration is a multidimensional reality of major relevance for the development of countries of origin, transit and destination, which requires coherent and comprehensive responses.

² In this regard, however, it should be noted that the Declaration takes for granted a category of fundamental human rights applicable to any individual, but whose definition is anything but unique. In that sense: RUOZZI ELISA, *La Dichiarazione di New York sui rifugiati e sui migranti: verso un modello condiviso di gestione del fenomeno migratorio?*, in *Ordine internazionale e diritti umani*, 2017, pp. 24-41.

³ *Global Compact for Safe, Orderly and Regular Migration. Final Draft* (as 11 July 2018), <https://www.un.org/pga/72/wp-content/uploads/sites/51/2018/07/migration.pdf>.

⁴ The GCM was adopted at the Intergovernmental Conference in Marrakech, on 11 December 2018, and then by the United Nations General Assembly, on 19 December 2018, receiving the favorable vote of 152 countries, the contrary vote of 5, while 12 countries (including Italy) abstained.

⁵ See: https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

⁶ *Ibid.*, para. 29.

The idea of a Refugee Compact was launched for the first time by the UN Secretary-General Ban Ki-moon, through his report *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants*⁷ in May 2016, in order to develop a principle of responsibility sharing «*through the application of standards that reflect the 1951 Convention and the 1967 Protocol thereto, regional refugee instruments and international human rights and humanitarian law*»⁸. Thus, to call for greater support on this perspective, the New York Declaration set out the so-called Comprehensive Refugee Response Framework (CRRF), a practical instrument for the individuation of the key elements for an extensive and predictable response to any large movement of refugees. In particular, the UN High Commissioner created a dedicated Task Team to help initiate the CRRF, including internal staff and secondees from civil society, the private sector and the development community. As affirmed in the New York Declaration⁹:

We invite UNHCR to engage with States and consult with all relevant stakeholders over the coming two years, with a view to evaluating the detailed practical application of the comprehensive refugee response framework and assessing the scope for refinement and further development. This process should be informed by practical experience with the implementation of the framework in a range of specific situations. The objective would be to ease pressure 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.

That process comprised a series of thematic discussions in 2017 with relevant stakeholders - Member States, civil society, private sector, UN agencies, development partners, international financial institutions -, followed by formal consultations on successive drafts of the text between February and July 2018¹⁰ - and, finally, it ended up with the adoption of the Global Compact on Refugees, on 17 December 2018¹¹.

2. The characteristics of the Compact

When we undertake the final document, we immediately individuate the four parts that compose it.

⁷ See: https://refugeesmigrants.un.org/sites/default/files/in_safety_and_dignity_-_addressing_large_movements_of_refugees_and_migrants.pdf.

⁸ *Ibid.*, para. 70.

⁹ *New York Declaration for Refugees and Migrants*, Annex 1, para. 18.

¹⁰ *The Global Compact on Refugees. Final Draft* (as of 26 June 2018), <https://www.un.org/pga/72/wpcontent/uploads/sites/51/2018/07/Global-Compact-on-Refugees.pdf>.

¹¹ On 13 November 2018, the Social, Humanitarian and Cultural (Third) Committee of the UN General Assembly approved the resolution which affirms the refugee compact with overwhelming majority and has sent the text to the General Assembly plenary for adoption. See: https://www.unhcr.org/gcr/GCR_English.pdf.

First, we find an introduction with the background, the guiding principles and the objectives of the Global Compact¹². This section underlines how the migratory crisis has increased considerably in scope, scale and complexity and, thus, how much is pressing the need for protection, assistance and solutions required by refugees. On the ground of the international refugee protection regime, centered on the cardinal principle of *non-refoulement*, and guided by principles of humanity and international solidarity, the Compact aims «to operationalize the principles of burden- and responsibility-sharing to better protect and assist refugees and support host countries and communities»¹³. Furthermore, paragraph 7 lists the four goals of the Compact: (i) ease pressures on host countries; (ii) enhance refugee self-reliance; (iii) expand access to third country solutions; (iv) support conditions in countries of origin for return in safety and dignity.

Then, it includes the Comprehensive Refugee Response Framework (CRRF)¹⁴, as agreed to by Member States in Annex I of the New York Declaration, described above, together with a Programme of Action¹⁵, setting out concrete measures to facilitate to reach the goals of the compact. On the one hand, this programme, reflecting a participatory approach, includes arrangements to share burdens and responsibilities, in order to support those countries that receive and host refugees, making an essential contribution from their own resources to the collective good. Among these arrangements, we find the Global Refugee Forum¹⁶, that will see the participation, at ministerial level, of all United Nations Member States and relevant stakeholders, to discuss pledges, opportunities, challenges and ways in which the objectives of the GCR can be achieved; and national¹⁷ and regional arrangements for specific situations, and tools for funding, partnerships, and data gathering and sharing. On the other hand, the programme individuates areas in need of support, from reception and admission, to meeting needs and supporting communities, to solutions.

Finally, the Compact sets out instruments for follow-up and review¹⁸, which will primarily be conducted through: the Global Refugee Forum every four years; the annual high-level officials meeting, held every two years between forums, to ensure “mid-term

¹² *Ibid.*, para. 1-9.

¹³ *Ibid.*, para. 5.

¹⁴ *Ibid.*, para. 10.

¹⁵ *Ibid.*, para. 11-100.

¹⁶ The first Forum will be convened in 2019. Subsequent Forums will be convened every four years, unless otherwise agreed by the General Assembly, in order to ensure sustained momentum and political will (*ibid.*, para. 17).

¹⁷ For instance, in support of national arrangements, host countries would be able to seek the activation of a *Support Platform*, which includes functions like galvanizing political commitment and advocacy for prevention, protection, response and solutions; mobilizing financial, material and technical assistance, as well as resettlement and complementary pathways for admission to third countries; facilitating coherent humanitarian and development responses; supporting comprehensive policy initiatives to ease pressure on host countries, build resilience and self-reliance, and find solutions (*ibid.*, para. 22).

¹⁸ *Ibid.*, para. 101-107.

review” of progress; and the High Commissioner’s annual report to the General Assembly, on progress made towards the achievement of the objectives of the Global Compact.

2.1 The non-binding nature: a weakness?

A crucial factor that should be beard in mind approaching an analysis of the Global Compact on Refugees is that this instrument is characterized by a non-legally binding nature on signatories, so that, as expressed in the document¹⁹, «*It will be operationalized through voluntary contributions to achieve collective outcomes and progress towards its objectives*».

How inferred by its name, the GCR is a “*pact*”, a collection of agreements among different parts and about various issues, which, for its own conformation, tends to place emphasis on political and practical cooperation as opposed to legal commitments. Indeed, it a soft law instrument²⁰, which fixes technical and operational principles and parameters, based on existing binding international agreements, but subsidiary to them (Gammeltoft-Hansen, 2018).

These considerations led the doctrine to reflect if this nature could be considered as a weakness or as an expression of cooperation and goodwill of the UN Members States.

From a certain point of view, we can affirm that non-binding status does not necessarily mean that the GCR cannot assume a relevance for the normative development of international refugee law. Indeed, as we already tried to explain, GCR’s potentiality lies in the fact that this instrument may lead to find collective responses to future situations more predictable, and, at the same time, it may encourage a reassessment of national laws (Durieux, 2019). Furthermore, the Compact could perform as an incentive to elaborate or to renew internal legislative frameworks, stimulating regional, rather than international, agreements²¹.

On the contrary, the GCR, due to its nature and to the reticence of States to renounce their sovereignty, may appear almost ineffective, not adequate to concretely help to promote international cooperation in dealing with the global refugee crisis. For instance, Chimni (2019) underlined various “weaknesses” of the text: first, it does not take into account fundamental principles of international refugee law; also, it does not provide real mechanisms for responsibility sharing; it does not investigate on the main drivers of recent refugee flows; it avoids strengthening the protection of children and women; and

¹⁹ *Ibid.*, para. 4.

²⁰ Soft law is here understood as referring to rules that are neither strictly binding in nature nor completely lacking legal significance, as opposed to hard law, that is legally binding and directly enforceable. For further details, see: GAMMELTOFT-HANSEN THOMAS, CERONE JOHN, AND LAGOUTTE STEPHANIE, *Tracing the Roles of Soft Law in Human Rights* in LAGOUTTE STEPHANIE, GAMMELTOFT-HANSEN THOMAS, AND CERONE JOHN (eds), *The Roles of Soft Law in Human Rights*, in Oxford University Press, 2016.

²¹ AKRAM (2019) offers an example supporting this thesis: in the Middle East area, agreements such as the Arab Charter on Human Rights, the Organization of the Islamic Conference’s (OIC) Covenant on the Rights of the Child in Islam, and the Protocol for the Treatment of Palestinians in Arab States (Casablanca Protocol), have been re-designed remaining faithful to the Global Compact’s guidelines.

it gives the United Nations High Commissioner for Refugees (UNHCR) the task of supervision without supporting it with the needed instruments to achieve its duties.

However, it is not simple to identify where the boundary line lies between a non-binding instrument such as this and the risk that its nature will determine its substantial ineffectiveness. However, at least abstractly, the Compact may represent the basis for the formulation of new principles or rules that may eventually lead way for binding international law in the form of either custom or treaty.

3. Evolutive perspectives

The [Global Compact on Refugees](#) begins with the premise that «*the predicament of refugees is a common concern of humankind*», and it «*intends to provide a predictable and equitable burden- and responsibility-sharing*» in response to both new and protracted situations of human displacement. Because the compact is non-binding, its successful implementation depends on “*mobilisation of political will*”, which the text explicitly calls for.

Therefore, even though the first real assessment of whether the compact is working will come next year, when countries meet again for the first Global Refugee Forum (Karas, 2018), it seems to be essential to look at the implementing perspectives of some countries, in order to understand which further steps would be to take.

3.1 The European Union

Since the European Union and its Member States strongly expressed their commitment to the Global Compact on Refugees and had a central and active role during the phase of consultations before its approval, they are expected to be particularly involved in its implementation, bearing in mind that the Compact applies to EU Member States both in the way they act domestically and in their approach to third countries on asylum, displacement and migration.

Moreover, it is essential to remind the provision contained in article 4, paragraph 3 of the Treaty of the European Union (TUE): it establishes a duty of sincere cooperation among EU countries, according to that «*the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.*». Considering that this rather general principle has often been used by the European Court of Justice (ECJ) to ensure close cooperation between the EU and the Member States in the context of participation to international organizations and conventions (Van Elsuwege, 2019), it will consequently become a legal parameter to measure the adequacy of the Union's engagement in the implementation of the Global Compact. indeed, It represents a reference – even not binding – framework to assess European Union actual and future policies in the field of asylum and immigration.

Starting from such considerations, if we look at the content of the Compact, we can immediately underline two main issues that should help redefine these policies: on the one hand, the role and contribution of the EU and its Member States towards the implementation of the GCR in ways that are respectful of the Compact and EU Treaties guiding

principles; on the other, the need for filling the main gaps existing in resettlement and complementary admission instruments for refugees and would-be refugees, implemented at the EU and Member State levels (Carrera and Cortinovis, 2019). Indeed, the Compact includes between its key objectives, as we explained before, the establishment of expanding mobility and admission channels for people in search of international protection through resettlement and “complementary” pathways of admission.

Nevertheless, exactly on the contrary, current EU legal instruments, policy arrangements and emergency-driven funds seem to give major priority to non-admission of refugees. Indeed, the European Union, in order to face the 2015 migratory crisis, have re-prioritised the cooperation with third countries, adopting informal and political “arrangements”, rather than legal acts and international agreements (Carrera, den Hertog, Panizzon and Kostakopoulou, 2018; Carrera, Santos and Strik, 2019). Thus, the recent “contained mobility” approach, used by the EU’s States to draw policies in the field of asylum and migration, seems to prefer externalizing the problem rather than finding a way to define effective measure within the Member States themselves. Some scholars reconnect this trend to the association made by policy makers between migration and security concerns: using the fear that immigration may infringe on public order, the securitised approach implies stronger borders – despite the freedom of movement within Europe – and an externalisation of migration controls (Andersson, 2016; Bourbeau, 2015).

A concrete illustration of what we are discussing is the conclusion of the 2016 EU-Turkey Statement²², a deal which included a mechanism according to which asylum seekers having irregularly entered Greece via Turkey, or been intercepted in Turkish waters, would be returned to the latter. Moreover, it set up the so-called ‘one-for-one’ resettlement arrangement: for every Syrian returned from Greece to Turkey, another Syrian would be resettled from Turkey to the EU²³. The statement has been harshly criticized by authors and non-governmental organizations because it has been signed considering Turkey as a “safe third country”, even though the country is not bound by the 1967 Protocol to the United Nations Geneva Convention on Refugees and the human rights violations existing in the country.

At the same time, in the framework of the reform of the CEAS launched in 2016, the European Commission called for a broader use of border procedures and for the mandatory use of inadmissibility procedures based on “safe country” concepts. This approach involves higher risks of breaches of the *non-refoulement* principle and the proposed border procedure would entail systematic long-term detention of individuals involved.

²² Council of European Union (2016), EU-Turkey statement, 18 March 2016, Press Release 144/16, 18 March, <https://www.consilium.europa.eu/en/press/press-releases/2016/03/18/eu-turkey-statement/pdf>.

²³ For a synthetic report, see: Roberto Cortinovis, ReSOMA Final Synthetic Report - Implementing the UN Global Compact on Refugees: Which role for the EU?, ReSOMA Project, http://www.resoma.eu/sites/resoma/resoma/files/policy_brief/pdf/Final%20Synthetic%20Report%20-%20Implementing%20the%20UN%20Global%20Compact%20on%20Refugees-%20Which%20role%20for%20the%20EU.pdf.

Also, even though the EU expressed its intention to implement legal avenues for protection, the realities on the ground are revealing how this far from being reached. Indeed, despite the success of the first resettlement plan, started in July 2015 – which offered resettlement to 22,500 people –, the second one, aimed at resettling an additional 50,000 people from September 2017 to October 2019, less than the half of the planned resettlement placements have been fulfilled²⁴. Neither the proposal for a permanent Union Resettlement Framework in order to coordinate European efforts in the long term and set up a unified procedure and common criteria, suggested by the Commission in July 2016, has found concretization yet.

Moreover, while the European Parliament promoted the presentation of a legislative proposal even on an EU humanitarian visa, the Commission did not support the idea, considering it not “politically feasible” and not respectful of the principle of territorial enforceability of the Common European Asylum System (CEAS)²⁵.

Therefore, the analyzed approach should be replaced by one that puts refugees’ rights at the core, establishing facilitated resettlement and other complementary pathways driven by a fundamental rights and international protection logic (Guild and Grant, 2017). In particular, according to a policy note published by ECRE in 2018²⁶, the European Union should be involved in the implementation of the Compact on other different levels.

First of all, Member States, that are the world’s biggest development donor, are requested to invest appropriately in asylum and integration²⁷, and, considering that the EU’s funding power in these fields is not restricted to external action, the EU should decide on funding priorities and programmes that support the objectives of the GCR²⁸ and that do not block people’s access to asylum in Europe.

²⁴ See: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20190619_managing-migration-factsheet-delivering-resettlement_en.pdf.

²⁵ European Commission (2019). Follow up to the European Parliament non-legislative resolution with recommendations to the Commission on Humanitarian Visas. “Territorially bound” means that the CEAS only covers applications for international protection made in the territory of the Member States and not requests for diplomatic asylum lodged at Member State representations in third countries. Nevertheless, considering that the EU has extraterritorial protection-related obligations under the Charter of Fundamental Rights of the European Union (EUCFR), the principle of territoriality is not a decisive criterion, not enough to exclude the realizability of humanitarian visas. On this issue, see: Moreno-Lax, V. (2018), *Humanitarian Visas: Legal Aspects*, in *European Added Value Assessment accompanying the European Parliament’s legislative own-initiative report* (Rapporteur: Juan Fernando Lopez Aguilar), European Parliament Research Service, <http://www.europarl.europa.eu/cmsdata/150782/eprs-study-humanitarian-visas.pdf>.

²⁶ See: <https://www.ecre.org/wp-content/uploads/2018/11/Policy-Note-15.pdf>.

²⁷ To see trends in official development assistance (ODA) and plans for future funding to programmes and projects that support refugees and their host communities: 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*, 17 Dec 2018, <https://doi.org/10.1787/24db9b07-en>.

²⁸ These objectives could be prioritized during the next Multiannual Financial Framework (MFF), which will govern the EU’s budget from 2021-2027. As explained by the mentioned policy note: «*Inside the EU, increased resources for inclusive societies and allocation and spending requirements for EU funding would re-*

Secondly, the European Union should be an example in the engagement with civil society, sharing its good practice in a systematic involvement of organisations and communities in discussions on policies and programmes that affect them. Indeed, the GCR contains few concrete proposals on the active participation of refugees and host communities in its implementation. Also, the EU has an engagement in supporting refugees and displaced people²⁹ and, in order to promote the rights of these people and to encourage positive change, it needs to develop approaches to third countries that bring together all relevant policies and tools, including diplomacy, development, trade and security.

Finally, as the GCR has a non-binding nature, it is essential to design a dedicated accountability mechanism which records and tracks commitments, in order to ensure that pledges are implemented and that monitoring of the achievements of the GCR is taking place. In that sense, the European Commission should develop the adequate indicators to reach the objectives of the GCR and regularly report the progresses, while the European Parliament should take on a monitoring role of the ongoing situation.

3.2 Africa

Africa has always been a country “on move” and, nowadays, the second largest number of refugees in the world are in Africa, that counts almost 6.3 million refugees³⁰.

Thus, the African Union has increasingly supported the freedom of people across the African continent, ratifying a series international and regional refugees and human rights measures. Indeed, it has one of the most generous refugee protection instruments currently in force, the 1969 OAU Convention, and the world’s first binding treaty on the protection of internally displaced persons, the 2009 Kampala Convention. Also, in 2006, it came alive the AU Migration Policy Framework for Africa³¹, recently updated with a protocol on the freedom of movement, formally adopted in early 2018³², which calls for

quire all EUMS to invest adequately in asylum and integration. Outside Europe, the EU can support the improvement of asylum systems that uphold and promote human rights including by funding independent civil society to monitor and hold institutions to account».

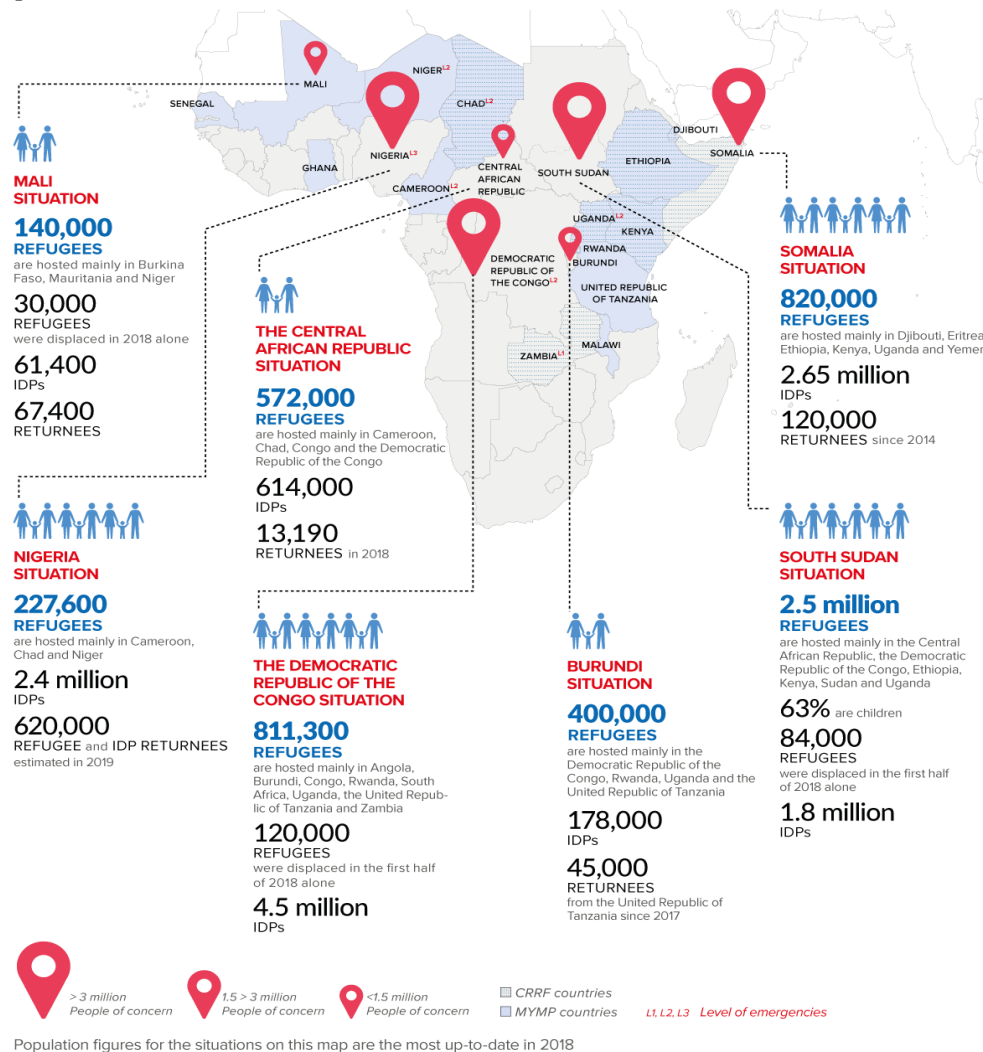
²⁹ The EU has a strong commitment to humanitarian-development cooperation as part of its overall approach to forced displacement which is set out in its 2016 Communication, *Lives in Dignity: from Aid-dependence to Self-reliance* (see: https://ec.europa.eu/echo/files/policies/refugees-idp/Communication_Forced_Displacement_Development_2016.pdf).

³⁰ Statistics updated in 2019. See: <http://reporting.unhcr.org/node/27>.

³¹ During their 74th Ordinary Session in July 2001, the Organisation of African Union Council of Ministers called for the development of a migration policy framework and this resulted in the AU Migration Policy Framework for Africa (MPFA), which was adopted in Banjul, the Gambia, in 2006. See: http://www.fasngo.org/assets/files/resources/EXCL276_IX_Strategic_Framework_for_Policy_Migration.pdf.

³² In 2016, the AU Commission (AUC) conducted an evaluation of the MPFA regarding its efficiency, its implementation challenges and opportunities. Thus, at their meeting of November 2016, AU Member States and Regional Economic Communities (RECs) updated the MPFA and formulated a plan of action for its implementation. For further information, see: Executive Summary - Migration policy framework for Africa and

“comprehensive, human-rights based and gender-responsive national migration strategies and policies”.



Furthermore, the Economic Community of West African States (ECOWAS)³³ has enshrined freedom of movement – including the right of entry, establishment and residency in a series of protocols since 1979 including a memorandum on refugees from

plan of action (2018 – 2030), African Union Commission, AU Department for Social Affairs, Addis Ababa, May 2018, <https://au.int/sites/default/files/documents/35956-doc-au-mpfa-executive-summary-eng.pdf>.

³³ The Economic Community of West African States (ECOWAS) is a regional group of fifteen countries, founded in 1975, with the aim to promote economic integration in all fields of economic activity, particularly industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial questions, social and cultural matters. See: <https://www.ecowas.int/>.

2007, while the Intergovernmental Authority on Development (IGAD)³⁴ has developed a comprehensive regional migration policy framework. Moreover, the African Union has launched an initiative in 2014, the Horn of Africa Initiative (AU HoAI)³⁵, to respond to human trafficking and people smuggling on the continent.

However, people from the African continent are the most vulnerable of persons who have leaved their countries and are seeking protection at their closest borders, in order to escape persecution and war-torn states. Furthermore, most refugees in Africa have been dependent on the care and maintenance programmes of the United Nations High Commissioner for Refugees (UNHCR). Thus, this is the proof that the application of existing refugee law is deficient in providing them adequate safety and security conditions (Khan and Sackeyfio, 2018).

In that sense, scholars think that the Global Compact on Refugees, which put at the center the essentiality of the international solidarity, could represent a hope for a legislative implementation and a turning point for refugees' situation in the *black continent*. Also, the UNHCR's new Director of the Africa Bureau, Raouf Mazou³⁶, affirmed during an interview that, considering that Africa has the largest population of refugees, it could be a perfect place where to analyze not just the consequences, but also the root causes of the phenomenon and to reflect on how do better. Anyway, according to some scholars, the real success of this pact in Africa will depend on concrete commitments by the international community and the degree to which resources are put aside in more predictable and equitable ways to address large movements of people (Githinji and Wood, 2018).

Furthermore, the Comprehensive Refugee Response Framework (CRRF) is central to the implementation of GCR in Africa. It involves two relevant aspects, that captured African countries' attention: first, it encourages the juxtaposition of humanitarian aid with investments to achieve long-term solutions to forced displacement challenges; second, it promotes self-reliance and enhancing of refugees and host communities' livelihoods, helping them collaborate and develop together. Indeed, as highlighted by scholars (Khan and Sackeyfio, 2018), its appreciation has been immediately evident:

In the seven African States that have already rolled out the CRRF (Chad, Djibouti, Ethiopia, Kenya, Rwanda, Uganda, and Zambia), we have seen a strengthening in

³⁴ The Intergovernmental Authority on Development (IGAD) was created in 1996 to assist and complement the efforts of the member States to achieve, through increased cooperation: food security and environmental protection, peace and security, and economic cooperation and integration in the region. See: <https://igad.int/>.

³⁵ Founded in 2012 and established in 2014, the AU-Horn of Africa Initiative on Human Trafficking and Migrant Smuggling (AU HoAI) serves as a forum for participating countries from the Horn of Africa region to debate issues, exchange information, share experiences and deliberate on the status and counter measure approaches to human trafficking and migrant smuggling in the Horn of Africa region. See: <https://au.int/en/ea/ric/hoai>.

³⁶ ARIANE RUMMERY, *Why including refugees makes economic sense*, Geneva, 04 April 2019, <https://www.unhcr.org/news/stories/2019/4/5c9caee84/including-refugees-makes-economic-sense.html>.

refugee institutions, a growing resilience within refugee communities, refugee integration into host communities, and a general progression in legislation that addresses refugee rights.

To look closer at these developing processes, we can take as an example the ongoing situation in Kenya, where the formal application of the CRRF was announced following the 68 Session of UNHCR's Executive Committee in October 2017 and where progressive and concrete steps have been taken since that moment. On the basis of UN guiding principles, Kenya - that currently hosts 473,971 refugees³⁷ - developed a framework that reflects the Sustainable Development Goals set up by the GCR: Kenya's Vision 2030³⁸ and the related President Uhuru Kenyatta's legacy projects, known as "Big Four agenda"³⁹. Kenya has played a central role in regional efforts to find a common approach for the Somali refugee situation, to handle which IGAD Member States⁴⁰ adopted the Nairobi Declaration on Durable Solutions for Somali Refugees and Reintegration of returnees in Somalia (known as the Nairobi Declaration)⁴¹. At the same time, Kenya participated in IGAD's first inter-ministerial thematic meeting with a focus on Education, that saw the adoption of the Djibouti Declaration on Regional Refugee Education⁴², committing to refugee inclusion in national systems across the region by 2020. Furthermore, for the first time, the Turkana and Garissa County⁴³ have arranged development programs for the period 2018-2022 that include refugees, creating a precedent for greater inclusion of refugees in development plans, in the spirit of comprehensive responses.

Another State that became one of the first countries to apply the Comprehensive Refugee Response Framework (CRRF) is Ethiopia, which hosts the second largest refugee

³⁷ See: <http://reporting.unhcr.org/node/2537>. Kenya is one of the biggest refugee-hosting countries in Africa after Uganda, Sudan and Ethiopia.

³⁸ Kenya Vision 2030 was launched in 2008 as Kenya's development blueprint covering the period 2008 to 2030. It was aimed at making Kenya a newly industrializing, "*middle income country providing high quality life for all its citizens by the year 2030*". The Vision was developed through an all-inclusive stakeholder consultative process, involving Kenyans from all parts of the country. See: https://www.researchictaf-rica.net/countries/kenya/Kenya_Vision_2030_-_2007.pdf.

³⁹ For further information, see: <https://www.delivery.go.ke/flagship>.

⁴⁰ See note n. 34.

⁴¹ See: <https://igad.int/communique/1519-communique-special-summit-of-the-igad-assembly-of-heads-of-state-and-government-on-durable-solutions-for-somali-refugees>.

⁴² See: <http://www.globalcrrf.org/wp-content/uploads/2018/04/Djibouti-Declaration-on-Refugee-Education.pdf>.

⁴³ Turkana and Garissa County are two administrative counties in Kenya. See, respectively: <https://cog.go.ke/downloads/category/106-county-integrated-development-plans-2018-2022?download=321:turkana-county-integrated-development-plan-2018-2022>; and <https://cog.go.ke/downloads/category/106-county-integrated-development-plans-2018-2022?download=356:garissa-county-integrated-development-plan-2018-2022>. In particular, UNHCR and the Government of Turkana County launched a new development plan, the Kalobeyei Integrated Socio-Economic Development Program (KISEDPP; https://www.unhcr.org/ke/wp-content/uploads/sites/2/2018/12/KISEDPP_Kalobeyei-Integrated-Socio-Econ-Dev-Programme.pdf) to ensure that refugees and local communities benefit from services such as education and healthcare, and increased socio-economic opportunities.

population in Africa. The Government has individuated nine pledges⁴⁴ to improve the lives of refugees and has established a CRRF governance structure for the CRRF, which includes a Steering Committee (SC), Line Ministries, federal agencies, development actors, UN, NGOs and the donors based in Ethiopia, in order to drive the practical implementation of these pledges. Also, Ethiopia equipped itself with the Ethiopia CRRF National Coordination Office (NCO), which was established by the Government in January 2018 to ensure the implementation program is realized through a multi-stakeholder approach.

Nevertheless, we need to remind that the GCR is not legally binding and it remains crucial to focus on the ways in which the Refugee Compact could be implemented. Even if the CRRF has represented and represents a valid tool in that sense, it is not enough. Indeed, as affirmed by the Director of UNHCR Regional Bureau for Africa, Valentin Tapsoba

In a region confronted by record levels of displacement, and with the need for humanitarian aid exceeding available funding, a “new way of working” is not a choice, but a necessity.

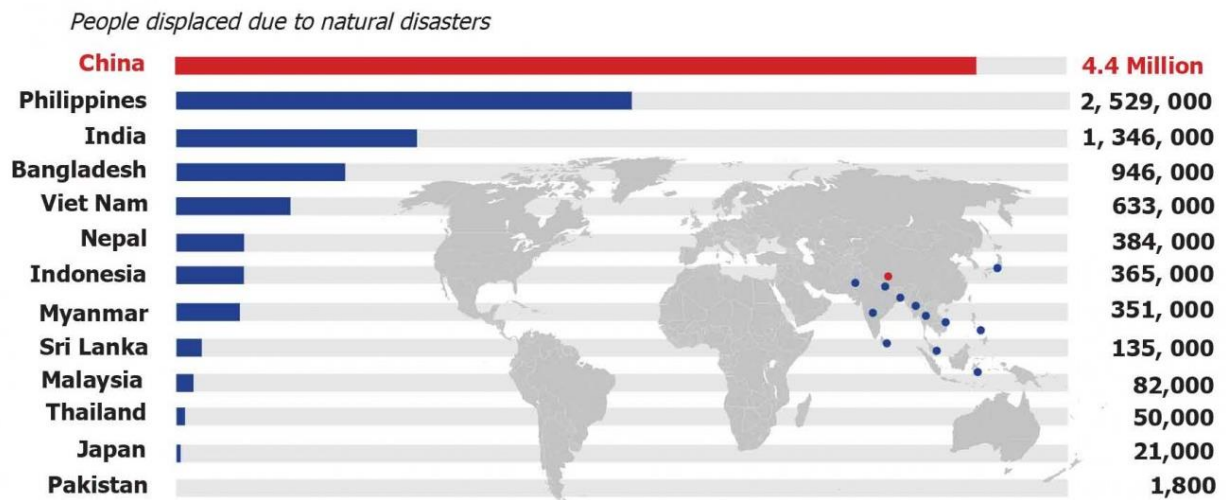
3.3 Asia Pacific Region

The Asia Pacific region has historically hosted millions of refugees over several decades⁴⁵; nevertheless, its countries are under-represented as part of the 1951 Refugee Convention and its 1967 Protocol and generally in the context of global cooperation related to migration. Indeed, only nineteen states in the Asia Pacific region are parties to the Refugee Convention; they are: Afghanistan, Australia, Cambodia, China, Fiji, Japan, Kazakhstan, Kyrgyzstan, Nauru, New Zealand, Papua New Guinea, Philippines, Samoa, Solomon Islands, South Korea, Tajikistan, Timor Leste, Turkmenistan, and Tuvalu. On this field, the influence of sovereign competence has particularly been felt, so that the dialogue and the international collaboration have long been difficult to achieve.

⁴⁴ The nine pledges are: 1. to expand the “out-of-camp” policy to benefit 10% of the current total refugee population; 2. to provide work permits to refugees and those with permanent residence ID; 3. to provide work permits to refugees in the areas permitted for foreign workers; 4. to increase enrolment of refugee children in preschool, primary, secondary and tertiary education, without discrimination and within available resources; 5. to make 10,000 hectares of irrigable land available, to enable 20,000 refugees and host community households (100,000 people) to grow crops; 6. to allow local integration for refugees who have lived in Ethiopia for over 20 years; 7. to work with international partners to build industrial parks to employ up to 100,000 individuals, with 30% of the jobs reserved for refugees; 8. to expand and enhance basic and essential social services for refugees; 9. to provide other benefits, such as issuance of birth certificates to refugee children born in Ethiopia, and the possibility of opening bank accounts and obtaining driving licenses. For further information, see: http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_71_1.pdf.

⁴⁵ According to UNHCR, the Asia and Pacific region is home to 7.7 million people of concern to UNHCR. They include 3.5 million refugees, 1.9 million internally displaced people and 1.4 million stateless people (see: <https://www.unhcr.org/asia-and-the-pacific.html>).

Anyway, according to statistics, the region has two of the countries that host the largest number of refugees - Myanmar and Afghanistan -, and two out of three of the largest populations of stateless people in the world⁴⁶. Furthermore, climate-related displacement is predicted to rise in the region, that already host the five countries with the largest populations in low-lying coastal areas and has more than 90% of the world's exposure to tropical cyclones⁴⁷. Indeed, as illustrated though the following graph⁴⁸, the numbers of internal displaced persons in Asia due to natural disaster are impressive:



Moreover, the lack of status for many refugees in the region exposes them to many human rights violations, including incidences of human trafficking, and denies them livelihood opportunities, work rights or access to healthcare and education⁴⁹.

Therefore, within this challenging context, in recent years, notable developments with respect to refugees have been achieved: the adoption of the Association of Southeast

⁴⁶ Data reported by UNHCR for the end of 2018 captures 3.852 million stateless people globally, showing no marked change as compared to the end of 2017, (3.854 million stateless people were recorded). Among the ten countries that report the largest stateless populations, we can find Bangladesh, with 906,635 millions of people, and Myanmar, with 620,939 millions of people. For further details, see: *Statelessness in numbers: 2019 An overview and analysis of global statistics*, Institute of Statelessness and Inclusion, July 2019, available at: https://files.institutesi.org/ISI_statistics_analysis_2019.pdf.

⁴⁷ See: LIM JANET AND BROWN ANNABEL, *Asia Pacific's role in the Global Compacts on migration and refugees*, Lowy Institute, 13 April 2017, <https://www.lowyinstitute.org/the-interpreter/asia-pacific-s-role-global-compacts-migration-and-refugees>.

⁴⁸ Source: 2018 Global Report on Internal Displacement (GRID 2018), <http://www.internal-displacement.org/global-report/grid2018/>.

⁴⁹ See: MATHEW PENELOPE AND HARLEY TRISTAN, *Refugees, Regionalism and Responsibility*, 2016; BARBOUR BRIAN, *Protection in Practice: The Situation of Refugees in East Asia*, in *Nanmin Kenkyu Journal* 81, 2012; Jesuit Refugee Service Asia Pacific, *The Search: Protection Space in Malaysia, Thailand, Indonesia, Cambodia and the Philippines*, 2012.

Asian Nations (ASEAN) Human Rights Declaration, in 2012⁵⁰; the development of the Jakarta Declaration on Addressing Irregular Movement of Persons, in 2013⁵¹; and the endorsement of the Bali Process Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime, in March 2016⁵². Civil society collaboration has also implemented with the creation of the Asia Pacific Refugee Rights Network (APRRN), with over 350 members including refugee leaders, community-based organisations, national NGOs, faith-based organisations, advocates and researchers from 28 countries working to advance the rights of refugees and other displaced persons.

Thus, considering that migratory movements are not just matters of internal concern, but they engage the legal interests of all States, *«the realities of population displacement today could well be the catalyst that moves States away from unilateralist assumptions, and from the inclination to leave well alone»* (Goodwin-Gill, 2019). In that sense, the signature of the Global Compact in Refugees could represent a turning point for this region, providing an integrated approach that could enable those countries in responding effectively to the protection and related needs of those who move. Indeed, the GCR, together with the Comprehensive Refugee Response Framework, offer instruments for transforming the current “problems” into opportunities for both refugees and host communities.

At a supranational level, the first steps in this direction have been taken throughout the course of 2017, when the Asia Pacific Refugee Rights Network (APRRN)⁵³ actively participated in consultations with States, international organisations, civil society, refugees, and other relevant actors to encourage the development of the Global Compact on Refugees. APRRN produced written submissions for these consultations, explaining the significance of the New York Declaration on Refugees and, thus, the importance of the normative framework for more effective and coordinated responses to refugee issues that the New York Declaration have offered for the Asia Pacific region. Also, APRRN highlighted issues, concerns and opportunities that should be considered in the development of the

⁵⁰ ASEAN Human Rights Declaration was adopted by the Heads of State/Government of ASEAN Member States at Phnom Penh, Cambodia, the 18 November 2012. For a comment about the AHRD, see: RENSHAW CATHERINE SHANAHAN, *The ASEAN Human Rights Declaration 2012*, in *Human Rights Law Review*, Volume 13, Issue 3, September 2013, Pages 557–579, <https://doi.org/10.1093/hrlr/ngt016>.

⁵¹ Jakarta Declaration on Addressing Irregular Movement of Persons was adopted in Jakarta, the 20 August 2013; available at: <https://www.unhcr.org/admin/dipstatements/5214ae709/jakarta-declaration-addressing-irregular-movement-persons.html>.

⁵² Bali Process Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime was adopted at the Sixth Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, in Bali, the 23 March 2016; available at: <http://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Declaration%20on%20People%20Smuggling%20Trafficking%20in%20Persons%20and%20Related%20Transnational%20Crime%202016%20%281%29.pdf>.

This document, which represents a useful framework for regional cooperation on migration and human mobility has helped to inform Global Compacts' drafts.

⁵³ The Asia Pacific Refugee Rights Network (APRRN) is a network consisting of more than 402 civil society organisations and individuals from 29 countries committed to advancing the rights of refugees in the Asia Pacific region. See: <https://aprrn.info/>.

GCR, underlining the need to build new and strengthen existing national asylum systems, based on *non-refoulement* principle and safe access to territory, that could ensure not only short-term responses to the phenomenon, but that should provide durable solutions. In that sense, it would be essential to adopt a systematic approach, to reinforce the institutional capacity of governments and to promote the collaboration with other actors (such as the private sector), through local and national laws, policies and practices.

Instead, at a national level, we can mention two examples of a primary operationalization of the spirit of the Global Compact. On the one side, the first country in Asia that announced its decision to support the Comprehensive Refugee Response Framework was Afghanistan. There, the application of comprehensive responses is embedded in the *Solutions Strategy for Afghan Refugees to Support Voluntary Repatriation, Sustainable Reintegration and Assistance to Host Countries* (SSAR), established by the Governments of Islamic Republics of Afghanistan, Iran and Pakistan in 2012 with support from UNHCR. SAAR, in line with CRRF, created a regional framework for combined interventions and initiatives, aimed at facilitating the voluntary and gradual return of Afghan refugees and their sustainable reintegration. On the other, China expressed its ambition to lead the global effort to solve the refugee problem and adopted noteworthy initiatives in relation to refugee assistance. For instance, in September 2017, it demonstrated broad interest in taking a relevant role in solving the Rohingya crisis, not only offering humanitarian assistance, but also helping in the mediation between Bangladesh and Myanmar⁵⁴; and in April 2018, it established for the first time its own foreign aid agency, the International Development and Cooperation Bureau, which oversees administration of Chinese development aid (Song, 2018).

Therefore, if implemented effectively, the Compact could provide considerable benefits for refugees, migrants, their hosts and the entire global community at large. In that sense, civil society, including refugees, migrants and host communities, will have a critical role to play (Domicelj and Gottardo, 2019).

4. Conclusion

Almost a year after the adoption of the first Global Compact on Refugees, what has been tried to achieve in the previous pages has been the description of the current scenario in some countries of the world, with a view both to identify the degree of development of refugee legislation in each of these countries and to examine the evolutive perspectives related to the process of implementation of these legislative apparatus, in the light of the GCR. On the one hand, Member States of the European Union have shown active participation in the process of genesis and development of this agreement, but, in practice, they have adopted and are adopting a contrasting

⁵⁴ This proactive approach is particularly relevant, considering that this is one of the few occasions where China has played the role of mediator, as the principle of non-interference has long been a cornerstone of Chinese foreign policy. In October 2018, China facilitated an informal meeting concerning Rohingya refugees between the UN, Myanmar, and Bangladesh.

approach to the main objectives of the GCR itself. On the other, some African countries, despite the difficulties and weaknesses that characterize them, are making significant progress towards increasing the protection of refugees. In the same way, the countries of the Asian and Pacific region, having regard to the exponential increase of refugees in their territories, are beginning to demonstrate that they have understood the need for active cooperation in the protection of these subjects; in this sense, the Global Compact could be the most appropriate stimulus to stimulate a broader legislative development. In the light of this, it is essential not to forget that the GCR, as a non-binding instrument vis-à-vis the signatories of the Agreement, can only act as a mere incentive or as a “blueprint” for a legislative transformation that places the rights of refugees at the core. At that point, however, it will be the real intention of the single State to make the difference and to determine its actual usefulness and concretization.

According to Volker Türk, who worked as Assistant High Commissioner for Protection for UNHCR, we can assess the validity of the approach behind this agreement when one looks back at the zero draft of the GCR, shared at the beginning of 2018, and considers how far it came in less than a year. As he affirmed⁵⁵, the Compact was born through

an intricate process and one of immense complexity – an exercise in listening and collective ownership. While the text does not meet all the ambitions of everyone, it does provide a means to achieve a more sustainable response to displacement and to improve the lives of refugees and their host countries and communities.

17

However, at least at present, it is not yet possible to give a definitive assessment of the success or otherwise of the project launched with the adoption of this instrument, as much as favourable the premises may be. The conclusion of this agreement has certainly made it clear that the need to manage migration better and, thus, to ensure the most appropriate forms of protection for refugees is perceived as urgent by the vast majority of the world’s countries. What is certain, anyway, is that only an authentic determination to change and cooperate at international level will lead to the achievement of the objectives of this ambitious but essential project. Only time will reveal the answer to the question about the future of this instrument.

References

- AKRAM S. M. (2019), *Assessing the Impact of the Global Compacts on Refugees and Migration in the Middle East*, in *International Journal of Refugee Law*, 17 February 2019, <https://doi.org/10.1093/ijrl/eeey071>.
- ANDERSSON, R. (2016), *Europe’s failed ‘fight’ against irregular migration: Ethnographic notes on a counterproductive industry*, “*Journal of Ethnic and Migration Studies*”, 42(7), 1055-1075.

⁵⁵ TÜRK V. (2018), *The Promise and Potential of the Global Compact on Refugees*, in *International Journal of Refugee Law*, 2018, Vol 30, No 4, p. 581, doi:10.1093/ijrl/eeey068.

- BARBOUR B. (2012), *Protection in Practice: The Situation of Refugees in East Asia*, "Nanmin Kenkyu Journal" 81.
- BOURBEAU, P. (2015), *Migration, resilience and security: Responses to new inflows of asylum seekers and migrants*, "Journal of Ethnic and Migration Studies", 41(12), pp. 1958–1977.
- CARRERA S., CORTINOVIS R. (2019), *The EU's Role in Implementing the UN Global Compact on Refugees - Contained Mobility vs. International Protection*, No. 2018-04, April, <https://www.ceps.eu/publications/eu's-role-implementing-un-global-compact-refugees>.
- CARRERA S., DEN HERTOOG L., KOSTAKOPOULOU D., M. PANIZZON M. (2018), *The External Faces of EU Migration, Borders and Asylum Policies: Intersecting Policy Universes*, Brill Nijhoff, Leiden.
- CARRERA S., SANTOS J., STRIK T. (2019), *Constitutionalising the External Dimensions of EU Migration Policies in Times of Crisis: Legality, Rule of Law and Fundamental Rights Reconsidered*, Edward Elgar Publishing, forthcoming.
- CHIMI BS (2019), *Global Compact on Refugees: One Step Forward, Two Steps Back*, in *International Journal of Refugee Law*, Vol XX, No XX, pp. 1–5, <https://doi.org/10.1093/ijrl/eeey067>.
- DOMICELJ T., GOTTARDO C. (2019), *Implementing the Global Compacts: the importance of a whole-of-society approach*, "Forced Migration Review", March.
- DURIEUX J. (2019), *Success under the GCR: Can it be measured?*, Jan 29, Global Compact on Refugees, <https://rli.blogs.sas.ac.uk/2019/01/29/success-under-the-gcr-can-it-be-measured/>.
- FORICHON K. (2018), *Financing Refugee Hosting Contexts - An analysis of the DAC's contribution to burden- and responsibility-sharing in supporting refugees and their host communities*, 17 Dec., <https://doi.org/10.1787/24db9b07-en>.
- GAMMELTOFT-HANSEN T. (2018), *The Normative Impact of the Global Compact on Refugees*, "International Journal of Refugee Law", Vol 30, No 4, pp. 605–610 doi:10.1093/ijrl/eeey061.
- GAMMELTOFT-HANSEN T., CERONE J., LAGOUTTE S. (2016), *Tracing the Roles of Soft Law in Human Rights* in LAGOUTTE S., GAMMELTOFT-HANSEN T., CERONE J. (eds), *The Roles of Soft Law in Human Rights*, in Oxford University Press.
- GITHINJI E. N., WOOD T. (2018), *Prospects for the Global Compacts in Africa: Combining International Solidarity with Home-Grown Solutions*, "International Journal of Refugee Law", Vol 30, No 4, pp. 699–703 doi:10.1093/ijrl/eeey072.
- GOODWIN-GILL G. S. (2018), *The Global Compacts and the Future of Refugee and Migrant Protection in the Asia Pacific Region*, "International Journal of Refugee Law", Vol 30, No 4, pp. 674–683 doi:10.1093/ijrl/eeey064.
- GUILD E., GRANT S. (2017), *What role for the EU in the UN negotiations on a Global Compact on Migration?*, CEPS Research Report, Brussels.
- KARAS T. (2018), *Briefing: The new global refugee pact "A common concern for humankind"*, IRIN Analysis, <http://www.irinnews.org/analysis/2018/12/18/briefing-new-globalrefugee-pact>.
- KHAN F., SACKEYFIO C. (2018), *What Promise Does the Global Compact on Refugees Hold for African Refugees?*, "International Journal of Refugee Law", Vol 30, No 4, pp. 696–698 doi:10.1093/ijrl/eez002
- LIM J., BROWN A. (2017), *Asia Pacific's role in the Global Compacts on migration and refugees*, Lowy Institute, 13 April, <https://www.lowyinstitute.org/the-interpreter/asia-pacific-s-role-global-compacts-migration-and-refugees>.
- MATHEW P., HARLEY T. (2016), *Refugees, Regionalism and Responsibility*.
- MORENO-LAX V. (2018), *Humanitarian Visas: Legal Aspects*, in *European Added Value Assessment accompanying the European Parliament's legislative own- initiative report* (Rapporteur: Juan Fernando Lopez Aguilar), European Parliament Research Service, <http://www.europarl.europa.eu/cmsdata/150782/eprs-study-humanitarian-visas.pdf>.

- RENSHAW C. S. (2013), *The ASEAN Human Rights Declaration 2012*, in *Human Rights Law Review*, Vol 13, Issue 3, Settembre, pp. 557–579, <https://doi.org/10.1093/hrlr/ngt016>.
- RUMMERY A. (2019), *Why including refugees makes economic sense*, Geneva, 04 April, <https://www.unhcr.org/news/stories/2019/4/5c9caee84/including-refugees-makes-economic-sense.html>.
- RUOZZI E. (2017), *La Dichiarazione di New York sui rifugiati e sui migranti: verso un modello condiviso di gestione del fenomeno migratorio?*, “Ordine internazionale e diritti umani”, pp. 24-41.
- SONG L. (2018), *Strengthening Responsibility Sharing with South–South Cooperation: China’s Role in the Global Compact on Refugees*, “International Journal of Refugee Law”, Vol 30, No 4, pp. 687–690 doi:10.1093/ijrl/eeey059.
- TSION T. A. (2019), *Refugees’ Self-reliance: The dilemma of implementing the Global Compact on Refugees in Africa*, Apr., 3.
- TÜRK V. (2018), *The Promise and Potential of the Global Compact on Refugees*, “International Journal of Refugee Law”, Vol 30, No 4, pp. 575–583, doi:10.1093/ijrl/eeey068.
- VAN ELSUWEGE P. (2019), *The Duty of Sincere Cooperation and Its Implications for Autonomous Member State Action in the Field of External Relations: Member State Interests and European Union Law*, 10.1007/978-3-030-05782-4_13.