Contribution of the European Council on Refugees and Exiles (ECRE) to discussions on the Global Compact on Refugees

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Introduction

The aim of this paper is to discuss the potential of the Global Compact for Refugees (GCR) as a standard-setting instrument to promote protection standards and responsibility sharing at global level, and its relevance to Europe. Looking at some of the key issues identified in the framework of the CRRF Thematic Discussions and particular situations so far, the paper suggests operational standards that should be included in the GCR's Programme of Action in order to support states to improve their asylum policies and make concrete protection commitments. It is argued that European states should support the Global Compact not only as donors but also as refugee hosting states, to ensure global implementation of commitments.

What's in a Compact?

After over one year of pilot implementation and consultations on the CRRF, the GCR now starts taking shape. It is clear that one of the CRRF's main objectives is to change the mechanics through which refugee assistance and resources are mobilised in emergencies and large scale movements, a weakness inherent in the classic UNHCR appeals and operations set up. Development and humanitarian funding has to be more predictable, flexible and fast, and different actors need to work closer together. But there should be more to a Global Compact than that. The GCR could also contribute to global responsibility sharing.

One of the CRRF's main weaknesses is that, despite proclaiming to be a global framework, it is currently implemented in the developing world only, and not in any of the rich countries, including the European ones, which are also major refugee hosting states. Instead, these countries are contributing primarily through humanitarian and development funding, and possibly, some resettlement. This translates to different responsibility sharing obligations for the rich and the poor countries, whereby the first essentially provide the means for the second to host refugees in a sustainable way; they are also expected to open some limited legal channels to receive refugees, albeit without any concrete commitments. The GCR needs to address this and ensure that obligations and standards apply globally to refugee hosting states.

Being a legally non-binding 'Compact', the GCR has its limitations. While not introducing any new norms, this Compact still needs however to affirm the Geneva Convention and set certain standards, which even if non-binding, can pave the way for potential legally binding tools in the future. At a minimum, such standards need to allow an assessment of Geneva Convention compliance and adherence to human rights norms. The GCR is also an opportunity to define together what we mean by 'collective outcome' and shared responsibility, and how that will be measured.

More concretely, the Compact's Programme of Action should include clear and time-bound results and accountability mechanisms. Aleinikoff rightly observes that it is not sufficient to simply call for better coordination between actors on the ground or make emergency funding available more swiftly, if there is no accountability to hold states against certain commitments, and if there is no clear responsibility sharing system.[1]

The proposed '*Global Response Group*', is a structure potentially able to mobilise funds and capacities, and set up

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1 Aleinikoff A., *Statement of T. Alexander Aleinikoff University Professor and Director of the Zolberg Institute on Migration and Mobility The New School (New York City)*, 2017, http://www.unhcr.org/events/conferences/59e627ee7/panel-discussion-support-states-receive-large-numbers-refugees-safe-dignified.html

contingency plans and targets in a swift manner. It will be essential to ensure, however, that such a Group does not overlap with existing structures; its composition and tasks would require careful consideration, with balance between the North and the South, and the inclusion of civil society organisations. The Global response group could also take up the role of oversight, measuring progress against agreed targets in the Programme of Action. Solidarity conferences could be coordinated with the Global response group but would better work in a regional context.

A mapping of contributions and needs could address an important knowledge and preparedness gap; the impact of displacement on host communities has been a taboo topic for years, out of fear that discussing the impact would be a synonym for 'burden', and as if the moral imperative of reception and assistance neutralises any possible impacts. National impact studies could be conducted with the aim to assess the capacity of stakeholders to respond, especially when it comes to addressing large scale movements.

The 'whole of society' approach is a necessary and welcome element, but also requires some structure. At national level, that needs to be premised on a 'whole-of-government' approach, with coordination across ministries and regular information sharing. Governments have a major convening power and they can structure the 'whole of society' approach, by supporting public-private partnerships, including community groups in implementation, and institutionalising innovation. Taskforces can support the inclusion of different actors. The Programme of Action should include commitments for states to create these structures. The *'global network of solidarity'* proposed in the Thematic Discussion could support cities; Europe is a good example of this with various city networks supporting refugee reception. In Europe, following the 2015 refugee crisis community groups and the private sector have emerged as one of the most promising stakeholders in providing assistance and building community support, albeit so far in ad hoc basis. The suggestion for a working group, or even a *'global platform of businesses'* to collect good practices and source solutions for refugees worldwide would be a significant support for European businesses in order to understand the economies and risks involved and offer innovative solutions.

Translating the Global Compact to context-specific, regional frameworks will become necessary, if this is to be truly implemented. Such frameworks can ensure regional solutions, data collection and analysis, monitoring and evaluation. Europe is perhaps one of the most structured regional entities with organisations in place. It has its regional legal frameworks, such as the Common European Asylum System, providing the basis for a common approach.[2] Structurally, it has its funding instruments and mechanisms. Regional organisations can better centralise efforts to support resettlement and complementary pathways, like the Union Resettlement Framework currently discussed in Europe. Regional policies for vulnerable groups, in line with existing international standards, are also good examples, such as EU anti-trafficking legislation or EU policies on the rights of children in migration. Good past examples of early warning and response mechanisms at the regional level (Bali Process) could also teach other regions, like Europe.

The Compact is also about building closer partnerships within the UN, and with development and humanitarian aid actors in key sectors like education, child protection, health, labour market inclusion. A major step forward could be a model of common analysis, planning and development between development and humanitarian actors. The recent UNHCR – World Bank collaboration is a good example; this however needs to trickle down to the national and local level as well. Moreover, when it comes to bringing in developmental solutions to displacement from the outset, other UN actors might be better placed to lead this than UNHCR. Even so, there should be a clear division of labour and mandates between actors to ensure that protection imperatives are not lost in the process. Existing examples of intra-UN collaboration as the regional refugee resilience plans for the Syria crisis could serve as models of new ways of working. The EU 'Lives in Dignity' Communication (2016) and Strategic Approach to Resilience in external action (2017) are in the right direction, fostering self-reliance, bridging the humanitarian/development divide, and promoting a new approach for development-led solutions to displacement. At the same time, the EU Migration Agenda and the Partnership Framework follow an entirely different logic and are predominantly about controlling migratory flows to Europe and using development funding to support migration control.

These mechanics will get states, donors and organisations to mobilise resources and capacity; but they will not get states to commit to standards, to ensure rights and grant refugees access to protection. Instead, these need to be ensured through a common set of targets in the Programme of Action under the specific issues. These should apply to all refugee hosting states globally.

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2   European Union, *Global Compact on Refugees, Fifth Thematic Session Third Panel: In what ways can regional institutions contribute to comprehensive refugee responses?* Geneva, 15 November 2017, http://www.unhcr.org/events/conferences/5a1820fb7/statement-european-union-thematic-discussion-five-panel-three.html

Setting the operational standards

A GCR aiming for global responsibility sharing needs a strong early warning and early action component. This can help donors and host states – the EU included – to identify needs early on when indicators of certain risks emerge, starting with a better articulation of what this means in practice; evidence-based forecasting needs to be done for better planning on large scale movements. In a European context, enhancing Europe's preparedness to respond to possible future mass arrivals is crucial and still remains unaddressed. Emergency response requires a system for identification and analysis of early warning signs, and assessing the capacity to respond through registration, screening and reception. Recent practice in Europe shows that budgetary flexibility of reception and local authorities is key in determining the system's flexibility. In many European States the 2015/2016 crisis shed light on the lack of flexible procurement policies, rigid human resources policies and obstacles in the creation of new reception places. Recent experiences have also shown the key role of NGOs in ensuring access of newly arriving asylum seekers, migrants and refugees to basic humanitarian needs at the first stage of reception. Preparedness also includes building effective national asylum systems, especially in situations of mixed migration flows, as the case in Europe, to ensure access to protection for those in need and the right referrals according to needs.

The proposed '*Asylum Capacity Support Group*' is a welcome initiative, especially regarding the development of technical material such as Standard Operating Procedures for screening, referral and identification, protocols for assisting persons with specific needs and ensuring data confidentiality, gender guidelines for asylum decision-making, or guidance on new forms of 'group-based' recognition of persons in need of international protection, especially relevant in cases of mass arrival. Some European states have experience and could transfer lessons learned from providing such support through deployed experts. The European experience with EASO shows that the terms of reference and involvement of deployed experts need to be clearly defined, especially when it comes to involvement in individual assessment of claims even through an 'advisory' role. States with an established asylum framework have the ultimate responsibility for the assessment of asylum claims in Europe. The primacy of the UNHCR eligibility guidelines for assessment of protection needs should be ensured as the premise. All this would be useful, but further to that, the GCR also needs to set some operational standards.

In terms of reception, the GCR should ensure measures to commit states to provide for adequate, safe and dignified reception conditions and referral to competent authorities and service procedures within the shortest time possible after arrival. Responses should be based on a non-coercive approach to the management of arrivals. The GCR should include clear, protective definitions of material reception conditions and requisite standards applicable to all forms of accommodation, both relating to regular and exceptional reception measures. There should be clear commitments with regards to detention in the Programme of Action - no child detention, whatever the context, or detention of persons with special reception needs.

Regional frameworks can play an important role in setting equal standards for reception at regional level. There is a momentum in Europe with the reform of the Common European Asylum System and the setting up of a strengthened EU Asylum Agency. Standard setting in the Plan of Action could help address challenges in the European context, like the exclusion of applicants from reception conditions for reasons of absconding, as well as a range of preventive and punitive restrictions to the fundamental rights to free movement and liberty. Secondary movements are a major issue in Europe; the GCR could set standards for free movement and mobility for refugees, as a way to address irregular secondary movements and support solutions.

The Programme of Action should include commitments to ensure effective national registration and identification systems in the context of mixed migration to identify persons in need of international protection as refugees, with a particular emphasis on persons with specific needs, victims of human trafficking, child protection, family unity, and prevention of and response to sexual and gender-based violence, and support the contribution of receiving communities and societies in this regard. Individual registration and identification as quickly as possible upon arrival is crucial; immediate birth registrations for refugee children born in the territory and adequate assistance with obtaining any necessary documents. The GCR could set standards to ensure an age, gender and diversity-sensitive approach, with systematic inclusion of proper age determination procedures, and torture, sexual and gender-based violence referral mechanisms; a gender perspective should lead the GCR throughout. Identification mechanisms should also include specialised NGOs, with the legal framework to allow them to work and the funding to sustain them. Refugees, including women and children, can and should participate in identification of needs and decision-making, but self-identification should not be the only way for vulnerability assessments.

In Europe, substantial gaps still remain resulting from poor implementation as well as the complexity and limitations

inherent in current EU asylum law. Moreover, the terminological and conceptual ambiguity relating to the concept of 'vulnerability' and the varying scopes of the categories of asylum seekers considered 'vulnerable' has contributed to incoherent approaches to their protection in asylum processes. The GCR could put forward some clear concepts and standards of vulnerability assessment.

The importance of age- and gender-disaggregated data and analysis also needs to be highlighted. In Europe, important data gaps still persist with regards to the presence of vulnerable in national asylum systems and special procedural guarantees, such as exemption from special procedures applied. Procedural guarantees, including interpretation, need to be in place and assessments need to be beyond medical vulnerability.[3] The GCR should ensure standards so that vulnerable groups are exempted from any procedure that is by definition unsuitable and not conducive to offering sufficient time and safety for them to put forward their protection claims.

European states have devised sophisticated asylum systems based on complex procedural tools. In some cases, tools are designed and used for the purpose of avoiding responsibility for refugees, allowing claims to be dismissed as inadmissible before looking at the substance of the claim. Nowadays, European states still have disparate administrative traditions and procedures for examining asylum claims. The GCR would be an opportunity to set standards to avoid nationality-based differentiation of treatment of asylum claimants, whether under 'safe country' concepts or as a matter of administrative practice, which not only obstructs a full and fair examination of claims but also creates a policy of externalisation of protection obligations. The mandatory provision of free legal assistance and representation at all stages of the asylum procedures would also need to be part of these standards.

With regards to refugee inclusion, refugee self-reliance is not just about providing more funding to support livelihoods; it is a political issue and the dialogue on self-reliance and durable solutions must therefore also take place at the political level. In the New York Declaration states affirmed their determination to provide quality primary and secondary education for all refugee children, and the GCR should uphold this commitment. Some lessons learned could be drawn from European states that have enabled asylum seekers more rapid access to employment; the assumption that states with generous rules on asylum seekers' employment are more attractive to applicants is often dispelled in reality, and should not withhold states from applying reasonable labour market access policies. Instead, there is a need for assessments to identify labour market needs, as well as education, skills and needs assessments in the refugee communities, which can be supported by local or civil society groups. Skills validation, job matching and self-employment also need to be supported more structurally. States should be encouraged to provide for language courses as part of a holistic approach to encouraging self-reliance. Private sector engagement could be further strengthened.

Return and reintegration are one of these areas where standard setting through the GCR would be perhaps the most pertinent. There is first and foremost a need for clarity of the notions employed. The CRRF seems to have an understanding of 'return' as being generally voluntary, and one of the three durable solutions.[4] The reality of returns, however, is nowadays much more complex with states sometimes using coercive policies to encourage return to places that are not entirely safe, or where reintegration is not sustainable. For this reason, some organisations have rightly suggested that the Programme of Action should qualify what voluntary, safe and dignified return means;[5;] and that the emphasis should be on reintegration, not the return itself. The GCR' Programme of Action should explicitly discourage the use of measures to incentivize return that may deprive refugees of rights or access to assistance.[6] UNHCR should maintain a role of oversight to ensure that protection standards are met and rights of returnees upheld. Refugee return needs to be part of a holistic peacebuilding, reconstruction and recovery strategy. '*Tripartite agreements*' to facilitate consultation on returns with refugees and host communities, or a '*support group'* for voluntary return are useful structures, but should not only have an operational but also an oversight role.

In Europe return is currently understood as part of a broader strategy of migration deterrence, through measures such as decreasing safeguards, decreasing the period and opportunities for voluntary departure, increasing the length of detention and possible sanctions. The intention is to develop closer links between return and asylum policies, through

3   AIDA (2017*), The concept of vulnerability in European asylum procedures,* ECRE, http://www.asylumineurope.org/sites/default/files/shadow-reports/aida_vulnerability_in_asylum_procedures.pdf
4   *Thematic discussion four: Measures to be taken in the pursuit of solutions 14 November 2017 Panel one: How can we support voluntary and sustainable return? Summary*, http://www.unhcr.org/5a182efc7
5   *Statement by the Danish Refugee Council to the global thematic consultations, 14th Nov 2017, Voluntary and sustainable return*, http://www.unhcr.org/events/conferences/5a13e8997/statement-danish-refugee-council-thematic-discussion-four-panel.html
6   *NRC statement on returns*, http://www.unhcr.org/events/conferences/5a13f2c07/statement-norwegian-refugee-council-thematic-discussion-four-panel.html

the 'safe country' concepts, readmission and other informal return agreements, which clearly run contrary to international cooperation for fair responsibility sharing. The GCR should set standards to ensure that people are returned only after a fair and efficient examination of their asylum claim, in a safe and dignified manner.

Last but not least, if there is one area where the GCR needs to take a major leap forward, this is the opening of safe and legal channels. This is where the New York Declaration also proved to be the least ambitious. The Thematic Discussion on resettlement proposed to expand resettlement programmes, including 'vertical' expansion so that existing programmes grow over time, 'horizontal' expansion so that more states start a resettlement programme, and a 'whole of government' approach so that all stakeholders get involved in supporting resettlement. Some more ambitious elements however, such as a numerical target at global level or a guide to determine fair responsibility sharing between states were not taken forward. Solidarity conferences can be used for resettlement pledges, and tools or structures can be developed to strengthen the capacity of states to process cases, in coordination with existing UNHCR work and the ATCR. But beyond that, the GCR should set some standards for resettlement states to do *more* and to ensure that the humanitarian function of resettlement is safeguarded. Prioritisation of countries or caseloads should be based on global resettlement needs and identified protection situations, including protracted refugee situations and refugees that have no other solutions. All this is particularly relevant to European states, currently negotiating a European Resettlement Framework for the future. A concrete proportion in resettlement should be earmarked for emergency cases. Besides, as long as resettlement remains voluntary, setting a target for the international community to reach incrementally over the years, such as for example with a percentage, serves as an encouragement for states, without imposing any commitments. In other words, it has an important added value of articulating a vision for shared responsibility in the GCR that states should try to work towards.[7]

The Programme of Action should also encourage the use of complementary pathways and ensure that they remain complementary and additional to resettlement programmes; family reunification, educational or training opportunities, labour migration schemes, sponsorship programs and humanitarian visas or admission schemes. Education and labour migration channels for refugees are perhaps the least developed channels. Labour mobility schemes for refugees could be further supported with specific reference to protection safeguards for non-refoulement and access to asylum. The Thematic Discussion's suggestion of lifting visa requirements is a very welcome and concrete step to facilitate access in certain situations. The GCR should include commitments for states to facilitate family reunification for all beneficiaries of international protection, including children. States should also make it possible for refugees to benefit from family reunification, by simplifying and removing administrative obstacles and strengthening the capacities of embassies and authorities. Especially in the case of Europe, complementary pathways should be used for extended family members and not as a substitute for family reunification under relevant national or regional legislation. The best interest of the child should be a primary consideration throughout any of these procedures.

NGOs play an important role in the implementation of resettlement programmes and complementary pathways, and their role should be noted in the Plan of Action. States should also establish legal frameworks for the implementation of resettlement and complementary pathways to define roles and responsibilities at national and local level and ensure that refugees admitted through any scheme have access to long term status.

Finally, coherence and complementarity needs to be ensured with the Global Compact on Migration in a number of areas. In the European context of mixed migration flows, certain policies and processes, such as in identification, registration, search and rescue, reception, return, policies to counter smuggling and trafficking, and policies protecting children on the move pertain to both migrants and refugees. Addressing racism, xenophobia and discrimination also applies to both and should be connected through a common thread. The two Compacts should take a human rights approach and ensure that all the concrete commitments to human rights in the New York Declaration are upheld and translated into measures in the two frameworks. Complementarity and coherence has benefits for both, and can support better migration governance overall.

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7 The European Parliament in its report on the Union Resettlement Framework Proposal has recently proposed that the EU takes 20% of global resettlement needs. See *REPORT on the proposal for a regulation of the European Parliament and of the Council establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council (COM(2016)0468 – C8-0325/2016 – 2016/0225(COD)), Committee on Civil Liberties, Justice and Home Affairs,* 23 October 2017,
http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2017-0316&language=EN

Conclusion

The GCR's Programme of Action needs to be ambitious, concrete, and measurable; it needs to be framed in a way that allows absorption into governments' programming and planning. Showcasing good practices is not enough; the GCR should recognise key principles to which states have subscribed and provide the basis for specific refugee responses, be it at national, regional or global level with responsibility sharing measures. The Compact needs to support global implementation of commitments, and lead states to support a common objective and collective outcome, to increase protection globally and share responsibilities fairly. European states are major donors in humanitarian and development funding, but their contribution to responsibility sharing does not end there. It is imperative that European states apply the Global Compacts' commitments at home, as refugee hosting states, and open up safe and legal channels, in a strengthened global effort to increase resettlement and other forms of admission. This is about integrity and about Europe's own credibility as a donor and as partner to the Compact.

RECOMMENDATIONS FOR THE GCR PROGRAMME OF ACTION

- Operational standards set in the GCR's Programme of Action need to serve as baseline for states to assess their policies' compliance with the Geneva Convention and international human rights norms
- Ensure that structures such as the 'global response group' serve not only to mobilise resources and set targets, but also have a role of oversight
- Suggest concrete structures for states to put in place in order to support a **'whole of society'** approach
- Give a role to regional organisations to promote context and region-specific solutions
- Include a strong early warning and early action component, with measures for evidence-based forecasting for better planning on large scale movements; national impact studies can support preparedness
- Include commitments for states to provide for adequate, safe and dignified reception conditions and referrals to competent authorities and service procedures within the shortest time possible after arrival; include clear, protective definitions of reception conditions and standards applicable to all forms of accommodation
- Include clear commitments for alternatives to detention, and no detention of children or persons with special needs
- Include commitments to ensure effective registration, identification and referral systems in the context of mixed flows to identify persons in need of international protection, and those with specific needs, such as victims of trafficking, torture and sexual and gender-based violence; set standards to ensure an age, gender and diversity-sensitive approach, with systematic inclusion of proper age determination procedures
- Include specialised NGOs in identification mechanisms, with the necessary legal framework and funding to allow them to operate
- Put forward clear concepts and standards of vulnerability assessment, beyond medical vulnerability; ensure standards so that vulnerable groups are exempted from procedures that are unsuitable or unsafe for them
- Ensure that procedural guarantees, including free legal assistance and representation at all stages of the asylum procedure, and interpretation, are in place
- Set standards to avoid nationality-based differentiation of asylum claimants, or any other practice which obstructs a full and fair asylum examination or creates a policy of externalisation of protection obligations.
- Set standards for free movement and mobility for refugees, as a way to address irregular secondary movements and support solutions
- Ensure commitments for states to provide for language courses as part of a holistic approach to encouraging self-reliance
- Define in the Programme of Action what voluntary, safe and dignified return means
- Include explicit commitments for states to ensure that people are returned only after a fair and efficient examination of their asylum claim, in a safe and dignified manner; include commitments for states to limit the use of measures to incentivize return that may deprive refugees of rights or access to assistance
- Set a target for states to increase their resettlement programmes and commitments to ensure that the humanitarian function of resettlement is safeguarded
- Include commitments for states to facilitate family reunification and preserve family unity
- Encourage the use of complementary pathways and ensure that they are complementary and additional to resettlement programmes
- Ensure complementarity and coherence with the Global Compact on Migration in cross cutting human rights standards and in policies and practices applied in mixed migration flows.