

EXPERTS INITIATIVE ON THE GLOBAL COMPACT ON REFUGEES

On October 2-3, 2017, the Zolberg Institute on Migration and Mobility of The New School convened a meeting of experts on refugee law and policy to deliberate on, and to make concrete recommendations for, the Global Compact on Refugees (GCR). The meeting was convened with support from the Open Society Policy Center and held at the offices of the Open Society Foundations in New York City.

The following is a working paper prepared for the Experts Group.

Advancing Refugee Mobility: A Proposal for the Global Compact on Refugees

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The Problem

Refugees lose the ability to make decisions about mobility in three ways. First, they are forced to be mobile—as they flee their homes for safety. Second, they are often denied their right freedom of movement within a country of first asylum. Third, they are generally denied opportunities to move to another state (through resettlement or some other “legal pathway.”) That is, refugees are pushed out and then locked in.

These limitations on mobility restrict refugee efforts to rebuild their lives, restore self-reliance, connect with family, pursue education, and plan for the future. And because most refugee situations are now protracted, the cumulative effect is dramatic. Third countries assume no obligations to permit onward movement of refugees; indeed, most establish physical and legal obstacles to such movement. The result is that refugees are left to languish for years in countries of first asylum, dependent on (decreasing levels of) international assistance.

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Discussion

The importance of refugee mobility was recognized early on in the development of an international protection regime. The storied “Nansen Passport” facilitated movement across borders and return to the state of asylum. Such movement was understood as important in helping refugees find employment and (re-)attain self-reliance. (In these early days, programs of long-term international assistance—what we now call “care and maintenance”—did not exist.) The Nansen Passport did not guarantee entry into another state; admission decisions remained within the discretion of the receiving state. But possession of documentation removed a barrier to international movement that refugees had faced.

The Refugee Convention provides a template for a refugee travel document. So in theory a form of the Nansen Passport still exists. But two things have changed. First, states no longer see cross-border movement as an important element of refugee protection; such protection is to be afforded in the country of first asylum, with onward movement provided through resettlement programs only. Second, care and maintenance has become the dominant model of refugee programming. Hosting states routinely deny refugees permission to work (in contravention of the Refugee Convention), arguing that refugees should be provided for through assistance programs funded by the international community. Lock in thus becomes lock down.

The New York Declaration and its Annex I (Comprehensive Refugee Response Framework) [begin to move in right direction]. The Declaration calls for expansion of resettlement and other humanitarian admission programs, as well as for enhancement of other legal pathways, including family reunification, private sponsorship, visas for education, and “opportunities for labour mobility for refugees” (Para. 79.). Annex I repeats this call for greater onward movement (para. 14), and suggests that the CRRF commit states to “[t]ake measures to foster self-reliance” by, inter alia, expanding refugee access to education and “livelihood opportunities and labour markets.” Neither document addresses limitations on refugee movement within countries of asylum,² nor does either come close to urging establishment of a general right to international mobility for refugees.

When the Refugee Convention was drafted and ratified in 1951, the focus was on the million or so refugees who had not been repatriated to European states or resettled outside

² The Declaration deals with this indirectly by stating that “refugee camps should be the exception and, to the extent possible, a temporary measure in response to an emergency.” (Para. 73.)

Europe. The idea was that hosting states should integrate the remaining refugees, and the rights guaranteed by the Convention are geared toward facilitating such integration (right to work, education, movement, protection of labor and welfare laws). The Convention did not create a global responsibility-sharing system that sought to distribute refugees among member states.

In the intervening years, proposals have been made for establishing such a mechanism that would assign member states “shares” of the world’s refugees based on a variety of factors (GDP, population, etc).³ While these proposals would fill the gap left by the Convention, they do so at the expense of refugee agency and mobility: refugees would be assigned and distributed to participating states. Indeed it is seen as a virtue of such proposals that refugees would not be guaranteed settlement in the country in which they first arrived, thereby deterring unauthorized onward movement as well as “abusive” asylum claims.

Strategies that are more agency-promoting—although perhaps less politically feasible—are imaginable.⁴ The proposal I wish to press here would establish freedom of movement for refugees among member states of the international refugee regime. Think of this as an enhanced Nansen Passport (or perhaps a Grandi Visa), one that provides entry rights as well as identification. This would constitute essentially a self-resettlement mechanism, where refugees would be able to move to places where they could best pursue goals of self-sufficiency, education, and family unification and the like. Such movement would surely improve the life prospects of refugees; and by relieving burdens on countries of first asylum, it would help to keep borders open for persons fleeing harm.

Would countries of destination agree to such a plan? One could start by arguing that by signing on as a member of the international refugee regime, states take on an obligation to the system to make it “fit for purpose” and able to accomplish its goals of providing international protection and durable solutions. Simply guaranteeing rights to those refugees who happen to be present in one’s territory cannot be the sum total of that obligation, since the location of most refugees is an accident of geography. As noted, a global responsibility-sharing scheme is not part

³ J. Hathaway and R.A. Neve, ‘Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection’, 10 Harv. Human Rights J., 155 (1997); P. Schuck, “Refugee Burden-Sharing: A Modest Proposal” (1997). Faculty Scholarship Series. Paper 1694. http://digitalcommons.law.yale.edu/fss_papers/1694. Under some proposals, shares could be bought and sold.

⁴ See the proposal in the draft Mobility Treaty (prepared by the Columbia Global Policy Initiative under the leadership of Michael Doyle) that would give priority to refugees for work visas.

of the Refugee Convention. Recognizing freedom of movement for refugees would, in effect, establish it.

Furthermore, it would be possible to construct limits on freedom of movement without sacrificing the overall goal of enhancing refugee mobility. So, for example, states might establish quotas on the number of refugees who could enter in any given year. Or states could condition entry upon having a job or means of self-support (although limiting mobility opportunities to those able to work would disadvantage those unable to work or who are not in the labor market because they are taking care of children or elderly family members). Perhaps such programs would best be pursued on a regional basis (similar to freedom of movement norms in the EU and ECOWAS) or among states that form other communities of shared interests (such as the program under which citizens of Lusophone countries can enter Portugal).

A commitment to freedom of movement for refugees would also need to be accompanied by some international mechanism for affirming refugee status. If not, states of first asylum might grant refugee status to all persons arriving in order to facilitate their departure to other countries. (This was the charge against Italy—that it failed to fingerprint arriving asylum-seekers so that they could continue north and not be returned under the Dublin Convention.) Exactly what this would mean would have to be worked out. But it would dramatically change (for the good) the existing practice under which states treat refugees who arrive irregularly as asylum-seekers and re-adjudicate their claims.

Proposal

I would propose that the Compact:

1. affirm freedom of movement within states of asylum, as guaranteed by the Refugee Convention;
2. ask for specific commitments for enhanced inter-state movement, through increased resettlement and access to other legal pathways (as called for by the New York Declaration); and

3. establish a refugee visa regime that permits freedom of movement among participating states.

Language for the Compact

1. “We recognize and reaffirm the right of freedom of movement within a country of asylum, as guaranteed by the 1951 Convention relating to the status of refugees.”
2. “In furtherance of solidarity with refugee-hosting states, we commit to increasing resettlement for displaced persons unable to return to their countries of origin and to developing alternative legal pathways for displaced persons to be admitted to third countries to pursue labor and education opportunities and to be unified with family members. We call on UNHCR to convene a conference within 6 months seeking specific commitments from states.”
3. “We will work toward freer movement of displaced persons among member states. We call on the Secretary General, based on appropriate consultations with states and civil society, to report within 12 months on the feasibility of a ‘refugee visa’ that would authorize admission to participating states.”