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Killing asylum softly or leaving no one behind? The New York declaration and global compacts in a divided world

Penelope Mathew

Auckland Law School, The University of Auckland, Auckland, New Zealand

ABSTRACT

This paper explores the competition and interrelationship between a cooperative approach to protection of refugees pursued through the United Nations – one that seeks to ‘leave no one behind’ – and externalization practices that deflect obligations for refugees. The New York Declaration and Global Compacts present a welcome contrast to discourses concerning a crisis in sovereignty. Nevertheless, the catch-cry of the SDGs, ‘leave no one behind’ which features prominently in these documents may serve to mask many states’ determination to provide just, or not even ‘enough’ [Moyn, 2018. *Not enough: Human rights in an unequal world*. Harvard University Press] for refugees on the premise that these others must be demobilized (in the case of refugees and asylum seekers) or contracted to do the humanitarian heavy lifting (in the case of host states).

KEYWORDS

Externalization; migration and development; New York Declaration; Global Compact on Refugees

1. Introduction

In 2015, the United Nations High Commissioner for Refugees reported that the world was witnessing the highest levels of human displacement since the Second World War (UNHCR, 2016, p. 5). The UN Secretary-General at the time, Ban Ki-moon wrote that the resultant media images

shocked the world’s conscience: rickety boats piled high with people seeking safety; women, men and children drowning in their attempts to escape violence and poverty; fences going up at borders where people used to cross freely; and thousands of girls and boys going missing, many falling prey to criminal groups. (UN Secretary-General, 2016)

The sense of crisis surrounding these large cross-border movements of migrants and refugees, especially into Europe, prompted states to negotiate several important, though non-binding or ‘soft law’ (see Shelton, 2008) instruments for more efficacious and humane responses, commencing with the adoption of the New York Declaration for Refugees and Migrants (‘New York Declaration’, 2016) and followed by the Global Compact on Refugees (‘GCR’) (2018) and the Global Compact for Safe, Orderly and Regular Migration (the ‘Marrakech Compact on Migration’, 2018). In theory, the approach set out in the Declaration and Compacts should be an alternative to the walls that went up during the 2015 ‘European migration crisis’. However, this paper will argue that there may be a risk of reinforcing the many ‘externalization’ practices that ‘transfer and

CONTACT Penelope Mathew  p.mathew@auckland.ac.nz

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diversify border control and migration management mechanisms' to other states and entities (Stock et al., 2019) and which have led to warnings about the end or death of asylum in the Global North (Ghezelbash, 2020; Mountz, 2020).

A key motif running through these instruments is that development will improve levels of protection, and, ultimately, perhaps, lessen migratory push factors. The international community has declared it will 'leave no one behind' (the catch-cry of the Agenda for Sustainable Development), drawing in multiple stakeholders, not just states (GCR [33]), to enhance refugee protection and find solutions. The linkage between migration and refugee flows and development has potential to improve on the current situation where the costs of protection are borne unevenly – namely by host countries in the Global South. However, the physical location of protection and solutions is envisaged by the New York Declaration and GCR as remaining largely in the Global South. There is therefore a risk that the instruments may come to be viewed, or indeed facilitate a cooperative version of externalization practices. The mantra of leaving no one behind may mask a determination within the Global North to provide just, or not even 'enough' (Moyn, 2018, pp. 173–211) for refugees on the premise that these 'others' must be demobilized (in the case of refugees and asylum seekers) or contracted to do the humanitarian heavy lifting (in the case of host states) under the guise of development.

On the one hand, there are obvious differences between the Declaration and Compacts and externalization – in particular, the reiteration of the right to seek asylum, the sustained focus on protection and durable solutions, and the framing of migration as a development opportunity in the Declaration and Compacts. On the other hand, the historical and ongoing use of externalization measures, the tendency to cloak these measures in humanitarian language, and long-standing links between development approaches and immobilization of migrants, along with difficulties implementing development approaches in the context of migration, raise the question whether the Global North is truly committed to leaving no one behind or is killing asylum softly.

The paper develops in three parts. First, it examines the ambiguous compromise in the 1951 Convention relating to the Status of Refugees ('Refugee Convention') between sovereignty and protection, which has provided fertile ground for externalization practices. It then discusses the development and replication of a purportedly humane deterrence script to justify externalization measures within the Global North and illustrates its migration between two representative places within the Global North – Europe and Australia. Finally, the paper examines the role of developmentalism in refugee protection and durable solutions. The paper unpacks the underlying theme of the New York Declaration and the Global Compacts that orderly migration and development are mutually supportive. It argues that the goal of securing better protection and durable solutions for refugees through development is worthy, offering benefits for refugees and their hosts, but fraught with complexity and, perhaps, contradiction.

2. The Refugee Convention: an ambiguous compromise between sovereignty and crisis in an unequal world

Externalization might be viewed as a recent turn away from the Refugee Convention's principles. However, harbingers of today's externalization policies were present at the Convention's negotiation, and indeed, are buried just below the surface of the international state system.

Originally, the Refugee Convention contained temporal and geographical restrictions – only events prior to 1 January 1951 were captured and parties could limit their obligations to refugees fleeing events occurring in Europe (Refugee Convention, Art 1A(2); Art 1B(1)(a)). 'Others' like

those created by the partition of India were not fully included by the protections owed to refugees (Davies, 2006; Mayblin, 2017, pp. 135–8) until the adoption of the 1967 Protocol relating to the Status of Refugees. Although the 1967 Protocol extended the Convention's ambit, its protective reach remains limited. Refugees, by definition (Refugee Convention, Article 1A(2)), must be outside their countries to receive protection, but there are few 'regular' ways to seek protection prior to departure or *en route*. Consequently, refugees use people smugglers to overcome obstacles to migration, often resulting in further vulnerability (Weber & Pickering, 2011). Resettlement of refugees from host countries is a matter for state discretion, and for the last thirty years, through *non-entrée* (Hathaway, 1992) and externalization practices, Western states have exploited a fundamental lacuna in the Convention in order to prevent asylum seekers' arrival.

During the drafting of the Refugee Convention, no binding provision on responsibility sharing or entry for refugees could be agreed (see the proposal in the Memorandum by the Secretary-General, 1950, Art 3(2)). Rather, the cardinal obligation owed to refugees is *non-refoulement* (literally meaning 'not to force back': Refugee Convention, Art 33). Refugee status is also envisaged as temporary – a surrogate for citizenship that may cease upon a fundamental change of circumstances in the country of origin (Refugee Convention, Art 1(C)(5) and (6)). It is a crisis stop gap both for the person (Nathwani, 2000) and within the sovereign state system (Dauvergne, 2013, p. 13). If one of the traditional durable solutions – local integration, resettlement or (voluntary) repatriation – is offered, normalization occurs. Otherwise, the refugee occupies a purposefully ambiguous space between sovereigns (Haddad, 2008, ch. 3) – that of asylum, which responds to a failure in state protection. The international community neither redresses that failure at its source (which is difficult for both legal and practical reasons) nor positively mandates freedom of migration as a means of self-help.

While the temporal and geographical restrictions on refugee status were largely removed by the 1967 Protocol, an attempt to develop a Convention on Territorial Asylum failed (see Weis, 1979). The refugee definition also remains tethered to persecution as compared with the broader, regional definitions developed in Africa and South America that better recognize the role of conflict in flight and the resultant need for protection (Cartagena Declaration on Refugees, 1984; Convention governing the Specific Aspects of Refugee Problems in Africa, 1969). Yet

the forced displacement crisis is rooted in a relatively small number of conflicts, which have been going on for years or even decades. It primarily affects developing countries: about ten countries in protracted conflict and about 15 of their neighbours. (World Bank Group, 2017, p. 15)

This state of affairs is hardly surprising given the broader history of border control. Freedom of movement was invoked to justify colonization, but fortified borders became ubiquitous when the colonized sought to move (Lake & Reynolds, 2008; McKeown, 2008; Nafziger, 1983). The state system itself is implicated in forced migration. State building has often resulted in the rejection and expulsion of minorities (Zolberg, 1983) and decolonization has left a very unequal international system of states where economic and social rights are perceived in terms of subsistence, though reaching for more through the obligation of 'progressive achievement' (International Covenant on Economic, Social and Cultural Rights, Art 2(1)), rather than equality (Moyn, 2018, pp. 146–172). The result is global apartheid (Richmond, 1994) where conflict and deprivation exist primarily in the Global South, with refugee flows – defined broadly to include those fleeing from conflict and generalised violence – occurring mainly from South to South, imposing additional strains on low to middle income countries (New York Declaration, [7]; World Bank Group, 2017, p. 19, 23).

The consequence of these combined factors – a narrow ‘universal’ definition of refugeehood, the lack of a formal right of entry and territorial asylum for refugees and *non-entrée* and externalization practices – is a depressingly protracted crisis situation for many refugees. Around half the global refugee population have been in exile for over four years (World Bank Group, 2017, pp. 25–26) and rather than offering surrogate citizenship, some countries house refugees in UNHCR-administered camps resembling states (Slaughter & Crisp, 2009).

3. Borrowing from the same sovereign songsheet: externalization and narratives of crisis in the EU and Australia

In the Global North, externalization practices prevail over meaningful efforts to share the obligation of protection as the perilous journeys towards protection are portrayed as the crisis, rather than a symptom of a deeper malaise within the state system. States have liberally borrowed *non-entrée* and externalization processes from each other, although their sources of inspiration are unacknowledged or plagiaristic (McAdam, 2013). While sovereignty is often the justification for these measures, humanitarianism and the need to prevent dangerous migration is also invoked, as demonstrated by Australian and European practice.

Australia’s willingness to provide asylum was first tested with the arrival of Vietnamese asylum seekers travelling by boat during the 1970s. However, as Australia participated in the resettlement effort under the 1989 Comprehensive Plan of Action for IndoChinese Refugees (UNHCR, 1989) most Vietnamese refugees arrived in Australia through regular means. Since 1989, visa-less boat arrivals have prompted increasingly restrictive measures, with mandatory detention legislation adopted in 1992 (Higgins, 2017; Lester, 2018, ch. 5).

In 2001, the arrival of the Norwegian freighter *The Tampa* with 433 asylum seekers rescued from the Indian Ocean, spurred the government into crisis mode and prompted more draconian measures (Manne, 2002). These borrowed from previous United States’ practice intercepting Haitian asylum seekers (Ghezelbash, 2016, p. 26, 83), and, most likely, Europe’s ‘safe third country’ concept. The response involved closing the territorial sea and using the Special Air Service to board *The Tampa*, and, following that, a programme of boat push-backs (Operation Relex) and detention of asylum seekers on Manus Island in Papua New Guinea and Nauru (the so-called ‘Pacific Solution’: see Metcalf, 2010). The then prime minister, John Howard, famously declared ‘we will decide who comes to this country, and the circumstances in which they come’ (Howard, 2001) and subsequently claimed victory in the 2001 federal election.

The first Rudd government abandoned the Pacific Solution. The Gillard government reintroduced offshore detention, following the successful High Court challenge to the ‘Malaysia swap’ whereby Australia was to send 800 asylum seekers who had arrived by boat to Malaysia while resettling 4000 recognized refugees from Malaysia (*Plaintiff M70/2011* (2011) 244 CLR 144). Mr Rudd then introduced ‘regional resettlement agreements’ when re-installed as prime minister (Commonwealth of Australia, 2013a, 2013b), although this did not secure him the election. Having successfully campaigned using the slogan ‘stop the boats’, the newly elected Abbott government introduced ‘Operation Sovereign Borders’, a militarized border protection programme including boat push- and tow-backs.

The Gillard government’s return to offshore detention resulted from panic about growing numbers of boat arrivals and continued pressure from the Abbott-led Opposition (Pickering & Weber, 2014, p. 1009). A crisis has been ‘constructed’ around the arrival of boats in Australia (Pickering & Weber, 2014, p. 1007) and a variety of ‘deterrence scripts’ developed, including purportedly

humane deterrence for the purpose of ‘breaking the people smugglers’ business model’ and ‘preventing deaths at sea’ (Pickering & Weber, 2014, p. 1007).

In reality, offshore detention has caused severe psychiatric harm to refugees and asylum seekers (Boochani, 2018; Gleeson, 2016, pp. 317–319). It has also created an administrative nightmare as countries in which refugees and asylum seekers have been held (and refugees supposedly resettled) no longer want to host the refugees and asylum seekers or have made them feel unwelcome, while third countries have only participated in resettlement belatedly (Kaldor Centre, 2018; Rummery, 2008). Nevertheless, the electoral success of Australia’s policies has rendered them attractive to the far right and populist politicians in Europe (Polakow-Suransky, 2017). The ‘deterrence scripts’ also appear to have migrated.

If Europeans have borrowed externalization practices from Australia, the impetus for European externalization policies is autochthonous. Although the EU aspires to be an area of freedom, justice and security (*Consolidated Version of the Treaty on the Functioning of the European Union*, 2016, Art 67), internal freedom of movement for EU citizens has depended on secure EU external borders (Klug, 2011, p. 128). Responsibility for asylum seekers is generally allocated to the state which first allows entry into the EU (Dublin Regulation, Art 13). Until challenged in the courts (*M.S.S. v Belgium and Greece*, ECtHR, 2011; *N.S. v SSHD and M.E. and others*, CJEU, 2011), the Dublin Regulation operated on the presumption of mutual trust and justified return of irregularly arriving asylum seekers in the face of notorious violations of obligations towards refugees. Consequently, the Dublin Regulation has offered a perverse incentive for *refoulement* and interception of asylum seekers (Langford, 2013).

While freedom, justice and security seem chimerical as various EU responses seek to make refugees disappear, the Union has itself faced an existential threat, including the UK’s decision to leave, or Brexit (Tilford, 2016), and the walls erected during 2015 to contain the flows of migrants and refugees. Walls prevailed over physical responsibility sharing, with Hungarian Prime Minister, Viktor Orbán, leading this trend and building ‘an impressive narrative of crisis’ (Illés et al., 2018, p. 803), portraying migrants as a threat against Christianity and the State in order not to cooperate with collective EU measures. The EU applied a limited mandatory quota system with respect to asylum seeker relocation from Italy and Greece, but not without resistance and litigation (*Slovak Republic and Hungary v Council of the European Union*, CJEU, 2017), and obstruction on reform of the Dublin Regulation. This relocation scheme ended in 2017 with reportedly only 34,705 relocations taking place (European Court of Auditors, 2019, p. 21).

Some recent externalization measures taken by EU member states and the Union itself appear to borrow from Australia, much as Australia had earlier borrowed from Europe (Mathew, 2003). Italy, through former Interior Minister, Matteo Salvini, was a particularly vocal objector to disembarkation of asylum seekers. Australia’s practice provided a precedent for Italy (Balmer & Scherer, 2018; Magnay, 2018), and not for the first time. Under the Berlusconi government, Italy intercepted vessels and returned them to Libya, a practice condemned by the European Court of Human Rights (*Hirsi v Italy*, ECtHR, 2012).

In 2018, the European Council declared its determination to ‘break the business model of the smugglers, thus preventing tragic loss of life’ and called for the exploration of ‘regional disembarkation platforms.’ (European Council, Conclusions, 2018: see Leigh, 2018; Maiani, 2018; Oxfam, 2018). While short on detail, the platforms sounded a lot like the Pacific Solution.

The so-called EU-Turkey deal (EU-Turkey Statement, 2016), through which irregular migrants are to be returned to Turkey, with one Syrian resettled in Europe for every Syrian returned, resembles the failed Malaysia swap. Familiar features include the replacement or swapping of

Syrians arriving without visas with resettled Syrians and the low rate of returns to Turkey (1908 by October 2019) as compared with resettlement numbers (25000 by October 2019: Progress Report on the Implementation of the European Agenda on Migration, 2019, p. 6).

The accompanying rhetoric sounds familiar too. The agreement was meant to ‘break the business model of the smugglers and to offer migrants an alternative to putting their lives at risk’ (EU-Turkey Statement, preamble [4]). However, refugees in Turkey have been subjected to incidents of violence and forced return, and housing and jobs have been difficult to access (Haferlach & Kurban, 2017; Human Rights Watch, 2019). The agreement is a counterproductive ‘transactional security agreement’ that has heightened Turkey’s bargaining power with respect to Europe (Haferlach & Kurban, 2017). It remains to be seen whether the proposed New Pact on Migration and Asylum (European Commission, 2020) departs from this transactional financing of refugee protection.

4. An antidote to externalization? The New York Declaration and Global Compacts

The historical exchange of externalization practices and humanitarian deterrence scripts, and acceleration of externalization practices in some countries, including the United States under the erstwhile Trump administration, underlines the need for caution in assuming that the commitments in the New York Declaration and Compacts will necessarily lead to different practices (Gibney, 2020). Externalization measures are not inevitable, however. Neither the positions of states nor popular sentiment are monolithic or static. There are always crosscurrents, and particularly horrific moments encourage changes of heart: the devastating image of little Alan Kurdi’s body, lifeless on a Turkish beach was one such moment.

Through the New York Declaration and the Global Compacts, United Nations member states aim to forge an approach based on international solidarity with states and refugees (New York Declaration [8]) that works with multiple stakeholders (GCR [33] – [44]). The aim of solidarity did not see developed states give up their discretion over matters such as resettlement programmes (Crisp, 2017) and foreign aid, but the soft commitments in the Declaration and Compacts were a reasonable path forward given the prevalent anti-immigration sentiment (Türk, 2016). Using a constructivist lens (Kwiatkowski, 2017, p. 96), one may hope these soft law arrangements build trust and agreement (*cf* Aleinikoff, 2018, p. 612).

Together, the New York Declaration for Refugees and Migrants and the Global Compacts seek to preserve the right to seek asylum (New York Declaration [27], [67]) and offer more regular, safe pathways for cross-border movement of refugees and, in principle, others on the move (New York Declaration, Annex II [8(e)]), along with ‘a more equitable sharing of the burden and responsibility for hosting and supporting the world’s refugees ...’ (New York Declaration [68]; GCR [1]). The Marrakech Compact on Migration sets out twenty-three objectives and accompanying actions, the fifth of which is to enhance available, flexible pathways for regular migration, focusing strongly on labour mobility (Marrakech Compact on Migration [21]).

The GCR has four objectives: easing pressures on host countries, enhancing refugee self-reliance, expanding access to third country solutions, and supporting conditions in countries of origin for return in safety and dignity (GCR [7]). The first part of the GCR (GCR [11], incorporating New York Declaration, Annex I), the Comprehensive Refugee Response Framework (CRRF), aims simultaneously to improve protection in host states, which are to provide ‘legal stay’ to refugees and asylum seekers, and access to basic human rights (New York Declaration, Annex I [13 (a)]); increase safe migration pathways for refugees, including resettlement; and increase

resourcing for humanitarian needs and development in host states (New York Declaration, Annex I [6], [8(c)], [14], [15] and [16]). It also seeks to promote conditions for eventual return of refugees, including through development (New York Declaration, Annex I [12(c)–(f)]).

The second part, the Programme of Action, establishes four-yearly Global Refugee Forums (GCR [17]), and envisages Support Platforms in particular crises that may include solidarity conferences (GCR [24]) in order to garner the necessary contributions. It also establishes the Asylum Capacity Support Group (GCR [62]). The First Global Refugee Forum, in December 2019, garnered over 1400 pledges (UNHCR, *Outcomes of the Global Refugee Forum 2019*, p. 7), ‘launched’ three regional support platforms developed alongside the Global Compact negotiations (UNHCR, *Outcomes of the Global Refugee Forum 2019*, p. 8), and raised several billion dollars’ funding (UNHCR, *Outcomes of the Global Refugee Forum 2019*, pp. 25–26; Triggs & Wall, 2020, p. 45).

The GCR also outlines a firmer regime regarding targets and allocation of responsibilities. Indicators for the four GCR objectives are envisaged (GCR [102]) together with mechanisms to track the implementation of pledges and contributions (GCR [103]). The Indicator Framework was duly adopted in July 2019 (UNHCR, *Global Compact on Refugees: Indicator Framework*, 2019).

The New York Declaration and Global Compacts view the crisis as one of non-cooperation with respect to refugee and migration flows (New York Declaration [7]; GCR [1]). This is appropriate given that migrant stocks amount to less than four per cent of the global population and forced migrants comprise barely one per cent (Abel & Sander, 2014, pp. 1520–2; Mingels, 2016). Thus, they attempt to normalise migration, countering irregular migration by increasing pathways for ‘orderly migration’ and reframing migration as a development opportunity (New York Declaration [4], [17], [46], [84], [85], [86]; Marrakech Compact [8]). This effort builds on UNHCR’s work on the humanitarian-development nexus (Krause, 2017), the idea that a development approach for refugees is needed in addition to an emergency humanitarian response, and 25 years of international summits and reports beginning with the Cairo Conference on Population and Development (1995) and culminating in the *2030 Agenda for Sustainable Development* (2015).

The Agenda for Sustainable Development encapsulates sustainable development in the catchphrase ‘leave no one behind’ (Agenda for Sustainable Development [4]), a goal reiterated in the New York Declaration and Compacts (New York Declaration [16]; GCR [1]; Marrakech Compact on Migration [6]). Theoretically, this entails a shift from trickle-down economics and averages that ignore or hide growing inequalities and regressions (Stuart & Samman, 2017). The international community seeks to reach those furthest behind first (Agenda for Sustainable Development, [4]), acknowledging refugees, internally displaced persons and migrants as vulnerable (Agenda for Sustainable Development [23]; New York Declaration [16]) and likely to be left behind.

The Agenda has not been without its critics, however (for example, Weber, 2017), and the role of development in providing protection and durable solutions for refugees is not straightforward. Development assistance may accelerate migration until middle income country status is reached (Hatton & Williamson, 2005, ch.4), suggesting that development assistance is not a quick fix to ‘economic’ migration occurring within mixed migration flows. Underdevelopment is not generally in itself a cause of forced migration – conflict and violence are – and ‘among conflict-affected countries, there is no clear and strong correlation between forced displacement and economic development, as measured by GDP’ (World Bank Group, 2017, p. 46). However, economic hardship may compound physical danger and prompt decisions to leave (World Bank, 2017, pp. 46–7). Poverty may also feed violent crime and forced migration, as in Colombia (Knox, 2019), and scholars and practitioners now acknowledge the phenomenon of ‘survival migration’ (Lester, 2010).

The agenda for development actors in the forced migration context as DeVictor et al see it, is not focused on any particular durable solution, but seeks ‘to help the forcibly displaced overcome their specific vulnerabilities in a durable manner, without adversely affecting other groups’ (World Bank Group, 2017, p. 118). It is to ‘engage in a dialogue on policies that may induce displacement, by helping host countries prepare for the shock, and by supporting those who stay behind’ (World Bank, 2017, p. 50). They argue that development is not an accelerator of economic migration in most conflict situations (World Bank Group, 2017, p. 53, Box 2.8). Therefore, development actors can help those who remain in countries of origin ‘by financing investment projects in stable parts of unstable countries to maintain livelihoods and strengthen community-based institutions’ (World Bank Group, 2017, p. 52).

For host countries experiencing the shock of large-scale arrivals, the agenda includes assisting them to ‘manage the shock and make further progress in their own development and poverty reduction efforts in a transformed environment’ (World Bank Group, 2017, p. 73). Ideally, services will be supported for refugees and citizens through national, rather than parallel systems (World Bank, 2017, pp. 74–75). Middle income countries whose development status is threatened by the strains imposed by large-scale refugee arrivals can now access concessional financing (World Bank Group, 2017, p. 131).

For the forcibly displaced, the aim is to avoid the poverty trap induced by flight and lack of economic opportunities in asylum countries (World Bank Group, 2017, p. 90), including by guaranteeing freedom of movement and the right to work (World Bank Group, 2017, p. 91). The private sector is vital to this effort (World Bank Group, 2017, p. 91) while humanitarian assistance is essential until self-reliance can be achieved (World Bank Group, 2017, p. 91).

Bringing this agenda to life is a complex undertaking, however. The CRRF has been piloted, mainly in Africa and Latin America, providing insight into actual and potential improvements for refugees and their hosts. Reports so far are mixed. For example, an ODI report synthesising a series of working papers on four pilot countries in Africa is downbeat (Crawford & O’Callaghan, 2019). It argues that ‘easing pressure’ correlates to compensation for hosting refugees (‘you host, we fund’); that the voluntary GCR ‘commitments’ have not translated into more funding; and that the assumption that inclusion of refugees in national systems will be more suitable, cost-efficient and sustainable has not been borne out so far (Crawford & O’Callaghan, 2019, p. 3). They also argue that the objective of self-reliance is based on flawed assumptions, including its viability and feasibility of private sector support in underdeveloped border areas, ability of refugees to access rights of mobility and to work, and the neglect of vulnerabilities of many refugees (Crawford & O’Callaghan, 2019, p. 3). They also perceive ‘little sign of “additionality” from donors’ (aid above current levels to acknowledge the additional cost of protecting refugees) (Crawford & O’Callaghan, 2019, p. 4). The working papers suggest that some host states (Kenya and Rwanda) are reluctant to commit to CRRF processes as a result (Crawford et al., 2019, p. 7; O’Callaghan et al., 2019, p. 6). Others are less pessimistic, pointing to the strong leadership by the Intergovernmental Authority on Development, but also identify the need for local ownership, participation and consultation and ‘secure, adequate and reliable funding streams’ (Hammond et al., 2019, p. 5; similarly, for cautious optimism regarding both Latin America and Africa, see Garlick, 2021).

It appears that development assistance and investment is not a straightforward ‘good’ and might be viewed as a pay-off to the developing world to continue to provide a significant public good – refugee protection – because the developed world is physically unprepared to do so. The balance in the New York Declaration and GCR between responsibility-sharing through funding and hosting refugees, while not the subject of a trade-off (on which, see Hathaway & Neve, 1997; Schuck, 1997,

2015), is weighted towards financing protection. The aim of meeting UNHCR's annual resettlement needs (New York Declaration [78]; Annex I [16]) – a significant drop from ten per cent of the global refugee population as envisaged by the zero draft (*Draft Global Compact on Responsibility Sharing for Refugees*, 2016 [23]) – is as close as UN member states have come to a target.

Meeting this aim would be an achievement. Less than seven per cent of refugees needing resettlement were resettled in 2018 (UNHCR, *Projected Global Resettlement Needs, 2020*, p. 9); under the Trump administration, the United States slashed (but now has restored) its resettlement programme (Shear & Kanno-Youngs, 2021); and COVID-19 stopped resettlement temporarily. However, the goal is modest given the global refugee population of 26 million (UNHCR, *Global Trends, 2020*, p. 2), the fact that 85 per cent of refugees are hosted in the developing world and that over the last decade 'just ten countries hosted nearly 3 in 5 of those displaced across borders' (UNHCR, *Global Trends, 2020*, p. 22).

Financing protection where people are could be viewed as a good thing (Triggs & Wall, 2020, p. 26), avoiding complex and expensive relocation exercises. However, the emphasis on financing protection signals that refugees are a development opportunity primarily in developing countries. Similarly, the Marrakech agreement tends to valorise productive, desirable migrants over 'vulnerable' migrants (on which, see Marrakech Compact on Migration [23]) and the challenge to clarify the position regarding vulnerable migrants (Sutherland, 2017) has not been met. Wealthy Northern States pursue their own development by selecting desirable migrants, potentially reinforcing the idea that 'undesirables', including irregularly arriving refugees, are best returned to their country of origin. There is rightly a perception of hypocrisy, given the rhetoric that migration is good for development. As one host state delegate quipped concerning the descriptor of refugees as an 'opportunity', he looked forward to other states seizing these opportunities (Statement by Iran, Closing Plenary – UNHCR: 10th High Commissioner's Dialogue, 2017).

The convenient hypocrisy evident in the selection of productive and therefore desirable migrants over vulnerable and apparently needy ones hints at a deeper problem with development discourse. The history of development is one of an unequal, extractive relationship between colonizers and colonized. Development discourse assumes developed countries have reached perfection, thus development is the task of the developing world (Pahuja, 2011, p. 186), enabling constant intervention by developed countries (Pahuja, 2011, pp. 189–190). Even proponents acknowledge the pressures imposed by 'the structural and social transformations induced by development' (World Bank Group, 2017, p. 63).

Social movements may 'appropriate the idiom of development' to achieve their own goals (Nilssen, 2016, p. 280) and the multi-stakeholder approach of the GCR (GCR [33]) suggests a desire for bottom-up approaches. However, views within participating African states on whether the CRRF is essentially about assisting host countries or coopting them in stemming migration are mixed (Hammond et al., 2019, p. 4). The latter would be no surprise since the conceit of a development solution to problematic migration shares the same colonial past as development itself.

Extractive development has shaped colonial and postcolonial approaches to mobility. Bakewell has argued that colonial development in Africa sought to control African mobility, leading ultimately to a sedentary bias in development practice which views migration as a development failure (Bakewell, 2007). Landau has aptly applied the moniker 'containment development' to European development projects designed to prevent African migration into Europe and elaborated its potential for distorting, perverse effects on mobility and human rights through reinscription of borders and greater empowerment of tyrannical governments within Africa (Landau, 2018). Similarly,

perverse outcomes could eventuate if practice under the Global Compacts privileges protection of refugees within host countries at the expense of mobility.

On the one hand, the CRRF's worthwhile goals for 'host states' could vastly improve protection, and adequate and predictable humanitarian and development funding would provide important assistance. On the other hand, these obligations effectively apply mainly to low or middle income countries, even if they formally apply to all states. There is a whiff of the colonialist civilizing mission about a state of affairs in which developing nations must achieve higher protection standards while hosting the lion's share of refugees in exchange for financial assistance and, meanwhile, developed states may treat their own hosting of refugees *as* development assistance. (The indicator of volume of Overseas Development Assistance includes 'in-donor' assistance for refugees for the first twelve months of resettlement: UNHCR, *Global Compact on Refugees: Indicator Framework*, 2019, p. 13). From this angle, 'leaving no one behind' appears not as an attempt to achieve equality or parity of development, but as bolstering the *status quo*.

This undercuts the normalization of (regular) migration and exposes a potential internal contradiction. As Antoine Pécoud has written of the international discourse about the relationship between migration and development,

It posits that migration is a symptom of development differentials between countries, and that ideally, people should be able to stay at home and remain immobile. This is difficult to conciliate with the claimed normality of migration as a central feature of the globalising economy. Recognising the normality of migration indirectly amounts to recognizing the normality of underdevelopment and of global inequality (Pécoud, 2014, p. 117).

In the New York Declaration, the tension between the agency of migrants and states is reflected in the powerful proposition that 'migration should be a choice, not a necessity' (New York Declaration [43]). The international community's mission is articulated as being, in part, to save the lives of migrants and refugees (New York Declaration [10]). These words echo developed states' humanitarian deterrence scripts. If the promised safe migration pathways do not materialise and offer migration as a choice, these words will sound less like an expression of solidarity and more like those scripts. This risk is even more acute if humanitarian and development assistance remains inadequate and unpredictable. Development assistance in the context of refugee protection may come to be viewed as externalization with a humanitarian face.

5. Conclusion

It is premature to offer conclusions as to success or failure of the New York Declaration and the Global Compacts, but there are many intriguing questions about the potential of the overarching narrative and political/soft law framework to secure buy-in from stakeholders and promote change. The idea that migration is normal and important for development globally is far more positive than the populist and xenophobic posturing which sees borders as protection for citizens and seeks to externalize those borders. However, there is an ongoing struggle between these competing ideas and instability within the narrative espoused by the New York Declaration and Global Compacts.

This narrative may be coopted by organised hypocrisy (on which, see Lavenex, 2018) whereby developmentalism supports cooperative externalization by the developed world. This undermines the institution of asylum as a universal value. If additional resources are not forthcoming, there is less incentive for the developing world to tolerate the hypocrisy and improve the quality of protection. Asylum could come to be seen as conditional on humanitarian/development assistance or as part of a transactional security regime. Meanwhile, the soft law framework for solidarity through

resettlement and complementary protection pathways has suffered a serious setback because of COVID-19. States have frequently not only externalized, but closed or hardened their borders to asylum seekers. We may hope for something better, but it will take a great deal more work and commitment to slow the death of asylum in the Global North, let alone reach for true equality between North and South.

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Notes on contributor

Professor *Penelope (Pene) Mathew* commenced her role as Dean of Auckland Law School in March 2019. Her primary area of research expertise is international refugee law and she has published extensively in this field. Educated at the University of Melbourne and Columbia Law School, her disciplinary background is international law and politics, both of which inform her research on refugee issues. Her career in academia has included positions at The University of Melbourne, The Australian National University, Michigan Law School and Griffith University, where she also served a four-year term as Dean and Head of Griffith Law School. In addition, Pene has worked as a human rights lawyer. She served for two years as legal and policy advisor to the Australian Capital Territory's Human Rights Commission, leading the work on an audit of the territory's remand centres, among other matters. In 2008, the ACT government awarded her an International Women's Day Award for outstanding contributions to human rights and social justice. She has also worked on shorter contracts with the Jesuit Refugee Service, and as a consultant to the Australian Human Rights Commission and to the Office of the United Nations High Commissioner for Refugees. She has also contributed her expertise to many parliamentary inquiries in Australia and to media stories about refugees and asylum seekers.

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