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THE CONCEPT OF 'INTERNATIONAL PROTECTION' IN THE GLOBAL COMPACTS ON REFUGEES AND MIGRATION

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The Concept of 'International Protection' in the Global Compacts on Refugees and Migration

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Abstract

The adoption in 2018 of two Global Compacts, on Refugees and Migration, has reinvigorated longstanding debates about the distinction between these two groups. On the one hand, differentiating between the two is crucial to ensuring that people forced to leave their homes are not removed to any place where they face a real risk of persecution or other serious harm. On the other hand, drawing a hard line between them does not reflect the current state of international law, nor the complex reasons that people move. This article argues that, in the context of cross-border mobility, the most important distinction is not between refugees and migrants per se, but rather between those who require 'international protection' and those who do not. Using the term 'refugee' as shorthand for the former is no longer accurate or desirable, and risks arbitrarily privileging the rights of some forced migrants over others.

A close reading of the Global Compacts reveals that both, in fact, recognise the importance of international protection and that States' international protection obligations extend beyond any specific definition of a 'refugee'. These obligations derive from the broader body of international refugee and human rights law that underpins, and should guide, the interpretation and application of the compacts themselves. They include the core obligation not to remove (*refouler*) individuals to any place where they would face a real risk of persecution or other serious harm. Such principles must remain at the forefront of efforts to implement both Global Compacts, unobscured by nomenclature or neat categorisations.

Keywords

International protection, *non-refoulement*, Refugee Convention, Refugee Compact, Migration Compact, refugees, migrants

1. Introduction

While the distinction between 'refugees' and 'migrants' may once have provided a useful shorthand for identifying the different needs and entitlements of those who move across international borders, it has arguably become more problematic than helpful. Neither concept is amenable to a precise definition – the term 'migrant' is not defined in international law, while 'refugee' is subject to regional and national variations. The distinction can lead to the marginalisation of both groups, and simple labels do not reflect the complex reasons why people move.

Debates about the value of the refugee–migrant distinction have surfaced most recently in relation to the adoption in 2018 of the Global Compact on Refugees (Refugee Compact) and the Global Compact for Safe, Orderly and Regular Migration (Migration Compact). On the one hand, these instruments acknowledge that refugees and migrants face similar challenges and vulnerabilities (Migration Compact, para 3) and 'are entitled to the same universal human rights and fundamental freedoms' (Migration Compact, para 4). On the other hand, they declare that 'migrants and refugees are distinct groups governed by separate legal frameworks' (ibid; see also Refugee Compact, para 5). Indeed, 'on one reading the Migration Compact simply does not apply to refugees' (Costello 2019, 5).

The Global Compacts have been criticised for reinforcing 'unhelpful binary thinking between voluntary and forced migration' (MMC 2018a, 2) and for 'assum[ing] certain categorical distinctions between refugees and migrants, which are more fluid than they imagine' (Costello 2019, 2). Such criticisms are valid, not least because there are *two* compacts purporting to deal distinctly with each group. However, one must not overlook the fact that, under international law, the distinctions made between refugees and it migrants continue to demarcate rights and entitlements, access to assistance and protection, and standards of treatment and solutions. In this respect, they remain fundamentally important.

Ironically, those on either side of the debate share a common concern – namely, that individuals should be able to secure full respect for their human rights, irrespective of their categorisation as 'refugee' or 'migrant'. And it is true that the fundamental rights of *all* human beings should be respected and upheld. But it is also true that the needs and rights of individuals may differ depending on their individual characteristics, experiences and circumstances.

This article argues that, in the context of cross-border mobility, the most important distinction is not between 'refugees' and 'migrants' per se, but between people who require international protection and those who do not. As a general rule, there is no right to migrate under international law – it is 'a matter for the State to decide who it will admit to its territory' (UNHRC 1986, para 5). However, there are well-established exceptions to this general rule for those in need of 'international protection'. Under these exceptions, the usual discretion of the State to control entry and stay is constrained by an overriding obligation to ensure that no one is removed to a place where he or she faces a real risk of persecution or other serious human rights violations – that is, the obligation to provide 'international protection'.

The notion of international protection finds its most classic expression in refugee law, pursuant to which 'refugees', as defined in relevant international and regional refugee instruments, accrue certain rights and entitlements. These include, crucially, protection from *refoulement*. However, the scope of States' international protection obligations now extends beyond 'refugees' to include, for example, 'complementary protection' obligations on States not to remove people to places where they face a risk of torture, cruel, inhuman or degrading treatment, or arbitrary deprivation of life (among others). As UNHCR notes:

> Risks that give rise to a need for international protection classically include those of persecution, threats to life, freedom or physical integrity arising from armed conflict, serious public disorder, or different situations of violence. Other risks may stem from: famine linked to situations of armed conflict; natural or man-made disasters; as well as being stateless. Frequently, these elements are interlinked and are manifested in forced

> displacement. Over the years, the full scope of international protection has been elaborated in corresponding State practice, treaty law, various international and national legal instruments, judicial decisions, as well as standards expressed in General Assembly resolutions and the Conclusions of UNHCR's Executive Committee. (UNHCR 2017b, 1, fn omitted)

Using the term 'refugee' as a shorthand for international protection is therefore no longer accurate or desirable, in particular because it risks marginalising those who require international protection but do not meet the refugee definition. In the context of the Global Compacts, it could create the impression that States' international protection obligations are relevant only in relation to the Refugee Compact, when in fact they are relevant to the Migration Compact as well.

As the analysis in this article shows, the Migration Compact explicitly recognises and addresses the movement of people across borders in contexts that could give rise to international protection needs. It recognises some common drivers of forced migration, including poverty, inequality, corruption and poor governance (eg para 39(b)) and contains provisions relating to movement resulting from 'sudden-onset and slow-onset natural disasters, the adverse effects of climate change [and] environmental degradation' (para 18(h)–(l); see also para 39(b)). In addition, States commit to 'upholding the prohibition of collective expulsion and of returning migrants when there is a real and foreseeable risk of death, torture, and other cruel, inhuman, and degrading treatment or punishment, or other irreparable harm' (para 37). Moreover, the Refugee Compact should not be taken to be confined to a limited category of 'refugees' as defined in international law. The application of the Compact's provisions, and the practical mechanisms they envisage, may also extend to a broader range of people forced to move (see, eg, paras 12, 61, 83). It is therefore crucial that the full range of States' international protection obligations remain at the forefront of efforts to implement *both* the Global Compacts.

This article begins with a brief overview of the traditional distinction between 'refugees' and 'migrants' and the key criticisms and limitations it engenders. Against this backdrop, the next section sets out why a more useful, and important, distinction is between those who are in need of 'international protection', and those who are not. While this article does not aim to provide a comprehensive analysis of States' international protection obligations, it does explain how the notion of international protection has expanded beyond the definition of a refugee to include others at serious risk of harm if removed. The final section of this article explores the implications of international protection in the context of the Global Compacts, in particular recognising that some migrants on the move may also have international protection needs which must not be obscured by nomenclature.

2. The refugee–migrant distinction

2.1. Overview

When the first legal instruments on refugees were adopted almost a century ago, they were driven by concerns about refugees' lack of formal legal status, need for material relief, and access to durable solutions (Goodwin-Gill 2016). While these concerns remain, they now extend beyond 'refugees' to other forced migrants as well. Refugee law's competence remains deliberately confined: States have been unwilling to create new legal obligations or fundamentally extend the mandate of the United Nations High Commissioner for Refugees (UNHCR) to address 'new' drivers of displacement. However, as noted at the outset, there have been considerable developments in international human rights law since 1951, including the adoption of the International Covenant on Civil and Political Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These developments have widened the class of people whom States must not remove, precluding (at a minimum) the removal of those who face a real risk of being

arbitrarily deprived of life, or subjected to the death penalty, torture, or cruel, inhuman or degrading treatment or punishment (see generally McAdam 2007). Still broader notions of 'non-returnability' suggest that those displaced in the context of natural hazards, disasters and climate change might also be among those people whom States must not remove (Kälin and Schrepfer 2012, discussed below).

Yet, despite these developments, the distinction between 'refugees' and 'migrants' retains considerable force. Often framed as one of choice, it draws a line between those whose movement is perceived to be predominantly 'forced' (refugees) and those who move 'voluntarily' (migrants) (see Zetter 2007; Crawley and Skleparis 2018). Thus, in its most basic formulation, a refugee is compelled to leave (or is unable or unwilling to return) on account of a well-founded fear of being persecuted, while migration is understood as 'a voluntary process, for example, [when] someone … crosses a border in search of better economic opportunities' (UNHCR 2016).

The refugee–migrant distinction has long been defended by UNHCR and others who argue that refugees' distinctive cause of flight (persecution) and the specific framework of rights and responsibilities that applies to them – in particular, under the 1951 Convention relating to the Status of Refugees (Refugee Convention) – demonstrate 'a clear distinction between the two categories of persons' (Feller 2005, 28; see also Karatani 2005). For refugees, the 'minimum social bond' (Shacknove 1985, 277) that usually exists between every individual and his or her country of origin has been broken, leaving no option but to seek international protection. According to Hathaway, 'even if all that binds refugees is their common international legal status, that is more than enough' (2007, 350). Feller argues that 'as long as the designation "refugee" remains key to recognition and protection of rights and the exercise of responsibilities which attach thereto, refugees and migrants should not be confused' (2005, 28). Viewing refugees as merely a sub-category of migrants has been criticised for leading to confusion (UNHCR 2016) and blurring 'the distinction between migration control and refugee

protection' (Feller 2005, 27, 31). Accordingly, one 'must not sacrifice the specificity of refugeehood on the altar of a misguided effort to pursue formal equality with other migrants' (Hathaway 2007, 354).

2.2. Criticism and limitations of the distinction

While there is a general consensus that the terms 'refugee' and 'migrant' cannot be used interchangeably, the hard distinction between the two groups is increasingly untenable in light of developments in international law and the complex reasons why people move. These conceptual tensions are evidenced by notions such as 'mixed migratory flows', a term that refers to the collective movement of people with a range of legal statuses and motivated by a variety of factors (MMC 2018b, 9), and 'secondary movements', which occur when refugees or asylum seekers move from the country of first refuge to seek more permanent solutions elsewhere (EPRS 2017, 1). Neat classifications may play a role in arbitrarily privileging certain types of forced migrants over others.

As a matter of international *law*, refugees and migrants are not comparable categories. Refugees are protected by widely-ratified international and regional treaties, a plethora of soft law, and a specialist, normative UN agency with a strong field and institutional presence. Migrants do not benefit from a parallel institutional or treaty framework. There is also no overarching migration treaty: the poorly-ratified Migrant Workers Convention addresses only a subset of migrants; various ILO treaties address migrants' labour rights; while the Protocol against the Smuggling of Migrants by Land, Sea and Air aims to prevent migrant smuggling within the context of combatting transnational organized crime. Institutionally, IOM has a broad set of functions which do not formally include international protection (IOM Constitution).

In fact, neither the term ‘refugee’ nor ‘migrant’ is amenable to a precise, universal definition. While the Refugee Convention’s definition of a refugee as someone with a ‘well-founded fear of being persecuted’ remains the cornerstone of the international protection regime, it has been supplemented, and expanded, in many parts of the world. In the EU, for example, the domestic legislation of some States includes ‘gender’ as an additional ground of persecution. In Africa and Latin America, regional agreements extend the scope of the term refugee to people fleeing more generalised and indiscriminate forms of harm, including events seriously disturbing public order and serious violations of human rights. Even under the Refugee Convention, the refugee concept is continually evolving such that it can be applied to groups not specifically enumerated there, such as women and homosexuals (see generally Thomas 2012).

The term ‘migrant’ is even less well-defined. International law does not provide a definition, nor does it recognise migrants as having a special legal status like that of refugees. The International Organization for Migration (IOM) adopts a very broad definition which encompasses ‘any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person’s legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is’ (IOM 2019). The Nansen Initiative on Disaster-Induced Cross-Border Displacement’s description of migration is more nuanced, encompassing ‘human movements that are *preponderantly* voluntary’ (Nansen Initiative 2015, para 20; see also Sydney Declaration 2018, ‘Definitions’). However, such definitions have been adopted for specific purposes and do not have formal legal implications. As a former UNHCR Director of International Protection explained in 2015: ‘Migrants are not, yet, a recognized group as such, with a cohesion and status which equates with that of refugees’ (Feller 2015, 28).

Perhaps most importantly, however, a hard line between refugees and migrants does not capture the complex reasons why people move. This is reflected in increasing awareness of the

'mixed' nature of most migration flows and the 'multicausality' of individuals' decisions to move (see, eg, Nansen Initiative 2015, 6; MMC 2018b, 9). At the very least, the distinction is potentially fluid, as people not only migrate, but also 'migrate between labels' (Zetter 2007, 180). Those who migrate in search of work or study opportunities may later become refugees – for example, if conditions in their country of origin change while abroad (creating refugees *sur place*). Refugees who have fled their homes may use labour or other migration pathways as they search for protection and lasting solutions (Long 2013). Many of those entitled to protection as refugees will never be recognised as such, or may simply migrate for other opportunities (Costello 2019, 3). Under certain migrant worker treaties, 'a refugee may fall within the definition of migrant workers and inversely. Likewise, an undocumented migrant may be protected as an asylum-seeker, a migrant worker, and a trafficked migrant at the same time' (Chetail 2018, 22).

In practice, the terms 'refugee' and 'migrant' have become 'deeply politicised' (Crawley and Skleparis 2018, 49), leading to the potential marginalisation of both groups. In some contexts, the 'privileging' of refugees has been used to downplay the protection needs of others who move across borders and may still have protection needs (Zetter 2007, 177; Costello 2019, 6–7). In others, recognition of 'refugee' status may result in social and political exclusion, and limitations on fundamental rights (see, eg, Maple 2016). Despite this, in many cases the protection needs of refugees are not unique: 'people in mixed migration flows, irrespective of status (i.e. whether they are refugees or migrants) face similar risks, and vulnerabilities to the same threats and/ or perpetrators' (MMC 2018b, 8).

The limitations and complexities of the refugee–migrant distinction are 'not merely an issue of semantics. Categories have consequences. They entitle some to protection, rights and resources whilst simultaneously disentitling others' (Crawley and Skleparis 2018, 59). Doing away with categories altogether risks undermining the specific needs of particular individuals or groups. It would be nonsensical to undo the legal framework that has evolved to protect refugees simply

because there are others who might also benefit from it (but are not formally encompassed. What is important is to ensure that the lines drawn in practice between different groups of people on the move reflect genuine differences in people's needs, and that they are consistent with States' international law obligations – in particular, with respect to fundamental human rights.

3. The importance of 'international protection'

It is a fundamental principle of human rights that '[a]ll human beings are born free and equal in dignity and rights' (UDHR, art 1). Yet, as noted at the outset of this paper, people's needs may differ based on their personal characteristics and/or individual circumstances. Thus, despite the universality of human rights law, certain groups are given additional protection by the specialist human rights treaties, such as the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of Persons with Disabilities. Analogously, in the context of cross-border mobility, one of the most important and specific needs is that of 'international protection'.

The concept of 'international protection' is based on the 'cardinal principle of non-refoulement' (Refugee Compact, para 5), which precludes States from removing individuals to any territory where they face a real risk of persecution or other serious harm. As UNHCR (2017a) explains:

> The need for international protection, which concerns all those outside their own country and who are unable to return home because of a serious threat to their life, physical integrity, or freedom as a result of persecution, armed conflict, violence, or serious public disorder, against which their country is unwilling or unable to protect

them. Persons in need of international protection are typically entitled to protection against *refoulement*.

It is clear that '[r]espect for the principle of *non-refoulement* is absolutely critical to achieving international protection' (UNHCR 2011, para 28). Beyond its expression in refugee law, the principle extends in human rights law to preclude (at a minimum) the removal of people who face a real risk of being arbitrarily deprived of their life, or a real risk of being subjected to the death penalty, torture or cruel, inhuman, or degrading treatment or punishment (commonly described as 'complementary protection'). Goodwin-Gill identifies an even broader principle of (temporary) refuge in customary international law, which he describes as an 'overarching principle of protection, sufficient to accommodate all those instances where States are obliged to act or refrain from action in order that individuals or groups are not exposed to the risk of certain harms' (2014, 458). It includes that 'deeper level of obligation which underpins, among others, rescue at sea, the landing of the shipwrecked, and the admission of victims of conflict or other humanitarian disaster' (440).

Kälin and Schrepfer (2012) describe this concept through the lens of 'non-returnability'. 'The point of departure should not be the subjective motives of individuals or communities behind their movement', they write, 'but rather whether, in light of the prevailing circumstances and the particular vulnerabilities of those concerned, they can be required to return to their country of origin' (ibid, 65). Non-returnability encompasses those who flee, as well as those 'who now cannot be expected to return because the situation has deteriorated to such an extent that return is no longer an option.' It should be assessed through a three-pronged test which asks 'whether it is legally permissible, factually feasible and morally reasonable' for a person to be removed (ibid). The legal component relates to whether removal violates the principle of *non-refoulement* under human rights law, as noted above. The factual element relates to whether there are any practical impediments to return (eg if roads are cut off due to a disaster) or administrative reasons why return is not feasible (eg the country will not readmit those who

have lost travel documents). The reasonableness criterion relates to whether there are compassionate or humanitarian reasons why people should not be expected to return, such as if protection or assistance is lacking in the country of origin, or there are no durable solutions in sight. Kälin and Schrepfer (66) conclude:

> If the answer to one of these questions – is return permissible? Is it feasible? Can it reasonably be required? – is 'no', then individuals concerned should be regarded as forcibly displaced persons in need of protection and assistance in another state. In this case, they should be admitted and granted at least temporary stay in the country where they have found refuge until the conditions for their return in safety and dignity are fulfilled.

UNHCR, for its part, has acknowledged that the concept of international protection may extend beyond refugees and beneficiaries of complementary protection to include situations where: (a) people 'are displaced across an international border in the context of disasters or the adverse effects of climate change but … are not refugees' (in which case 'a need for international protection would reflect the inability of the country of origin to protect against serious harm'); (b) 'protection—including leave to remain—[is offered] on a humanitarian basis to persons whose own country is unable, for some period of time, to protect them against serious harms, for instance in the context of natural hazards or public health emergencies'; and (c) people are stateless and cannot be removed (2017b, 4; see also Türk and Garlick).

Beneficiaries of international protection may be entitled to specific rights, or even a special protected 'status' during their stay in the country of destination (see McAdam 2012). The distinction between those who are and who are not entitled to international protection is thus crucial when it comes to addressing cross-border movement because it limits the general discretion of States to deny entry to their territory, and to remove people from it.

Finally, 'international protection' may be distinguished from the broader notion of 'protection' which encompasses, among other things, respect for human rights and the provision of

humanitarian assistance to those in need. This notion of protection was originally developed in a series of protection workshops by the International Committee of the Red Cross (ICRC) involving some 50 human rights and humanitarian actors. It has been adopted by the Inter-Agency Standing Committee (IASC), UNHCR (2007, para 20) and the Nansen Initiative (2015, 7). For example, the IASC has defined protection as:

> *all activities* aimed at obtaining *full respect for the rights of the individual*, in accordance with *the letter and the spirit of the relevant bodies of law* (i.e. HR law, IHRL, refugee law) (1999, 4, emphasis added).

Garlick and Inder describe it as a more 'operational concept' than 'international protection':

> The notion of "international protection", as it has evolved over time, broadly refers to a status offered by States to some non-nationals on their territory who are protected against return to persecution, serious harms or human rights violations. This is most commonly associated with asylum and the status afforded to refugees. By contrast, the more operational concept of "protection" is used to refer to a range of activities and assistance not just for refugees, but many persons, including those impacted by conflict, disaster, State failure or violence, where the international community, often through international organizations, intervenes to provide support.

Defined in this way, 'protection' extends, or should extend, to *all* those who move across international borders. It is based on States' obligations under human rights law to respect, protect and fulfil the human rights of all persons within their jurisdiction or control, including non-nationals.

4. 'International protection' in the Global Compacts

What, then, does the concept of 'international protection' mean for the Global Compacts? At face value, the very existence of two compacts – one on 'refugees' and one on 'migration' –

seems to reflect the hard line between refugees and migrants critiqued above. This could create the impression that international protection is relevant only to the Global Compact on Refugees. Yet, States' international protection obligations exist independently of the two compacts and, as set out above, do not permit such a neat distinction.

In fact, while the two compacts are intended to be 'complementary' (Migration Compact, para 3), they should not be viewed as parallel instruments, given their divergence in scope and aims, and their different legal/institutional architecture and history (see also Garlick and Inder date, page [this volume]). The Refugee Compact builds on a longstanding body of law, and thus its scope is narrow. It has only two key objectives, both of which relate to responsibility-sharing among States in large-scale refugee situations. By contrast, the Migration Compact in many ways marks the beginning for the global regulation of migration, which is why it is framed as 'a milestone in the history of the global dialogue and international cooperation on migration' (preambular para 6). It sets out a broad-ranging set of 23 objectives and 'offers a 360-degree vision of international migration and recognizes that a comprehensive approach is needed to optimize the overall benefits of migration' (para 11). In short, the Refugee Compact and the Migration Compact do not present two sides of the same coin: they stem from different contexts and serve different purposes. It is therefore unrealistic to expect neat divisions between the two.

Moreover, a closer look at the provisions of the two compacts reveals a more nuanced approach to notions of protection and forced and voluntary movement than their titles might suggest. In fact, both compacts recognise States' international protection obligations (both implicitly and explicitly), including the fact that such obligations extend beyond 'refugees'.

Although the Refugee Compact accords pre-eminence to the Refugee Convention, its scope extends beyond the application of that instrument. The Compact's 'Guiding Principles' refer to a broad range of relevant international law instruments – including those relating to human rights, humanitarian law and the protection of stateless persons – and recognise that '[s]ome

regions have … adopted specific instruments which apply to their own respective contexts' (para 5). The provisions of the Refugee Compact are not limited to States parties to the Refugee Convention but extend to *all* Member States of the United Nations (see paras 3, 9, 17, 48, 104), noting that 'a number of States not parties to the international refugee instruments have shown a generous approach to historing refugees' (para 6).

According to UNHCR's former Assistant High Commissioner for Protection, Volker Türk, who spearheded the process, the Refugee Compact 'clearly acknowledges … that some situations involve not only refugees, but also different categories of persons on the move', and it 'allows space for States facing large mixed movements to draw upon the architecture of support set out in the Compact where appropriate' (2019, 6). Despite apparent pressure on UNHCR by States to keep the Refugee Compact limited to Convention refugees (Aleinikoff 2018, 5), the Refugee Compact recognises that 'external forced displacement may result from sudden-onset natural disasters and environmental degradation' (para 12) and that 'statelessness may be both a cause and consequence of refugee movements' (para 83). Most importantly, the Refugee Compact calls on States to implement their commitments under it 'in a way which avoids protection gaps and enables *all those in need of international protection* to find and enjoy it' (para 61, emphasis added).

The Migration Compact also acknowledges the concept of 'international protection', even if it is less central to the Compact as a whole. It recognises a number of drivers of forced migration, including several identified in the Refugee Compact as well. These include: 'poverty, unemployment, climate change and disasters, inequality, corruption and poor governance, among other structural factors' (para 39(b); see also para 18(h)–(l)). Paragraph 37 of the Migration Compact refers directly to States' international protection obligations in providing that:

> We commit … to guarantee due process, individual assessment and effective remedy, by upholding the prohibition of collective expulsion and of returning migrants when

there is a real and foreseeable risk of death, torture, and other cruel, inhuman, and degrading treatment or punishment, or other irreparable harm, in accordance with our obligations under international human rights law.

The Migration Compact refers to, but does not define, the notion of 'migrants in situations of vulnerability' (see paras 13, 21, 23(b), 23(k), 23(l), 27(a), 28(b), including variants of that notion), noting that such vulnerability may arise 'from the circumstances in which [migrants] travel or the conditions they face in countries of origin, transit and destination' (para 23). While it has been suggested that this category extends only to those migrants who fall outside the legal category 'refugee' (OHCHR 2018), such an approach risks obscuring the international protection needs that such migrants may have. Even UNHCR has noted that in situations where vulnerability is linked to conditions in a migrant's country origin, this 'could give rise to an international protection claim under refugee law' (UNHCR 2017a).

A number of commitments set out in the Migration Compact are relevant to *all* those who move, including refugees and others in need of international protection. As above, some of these are reflected in the text of the Refugee Compact as well. They include the commitments to save lives (Migration Compact, objective 8; Refugee Compact, para 8), eliminate all forms of discrimination (Migration Compact, objective 17; Refugee Compact, paras 9, 13, 84), uphold the principle of the best interests of the child (Migration Compact, paras 15, 21(i), 23, 23(e), 23(f), 27(e), 29(h), 37(g); Refugee Compact, paras 13, 60, 76), uphold the right to family life (Migration Compact, paras 21, 23(f), 27(e), 28(d), 29(h), 32(c), 37(g)); Refugee Compact, para 95), and use immigration detention only as a measure of last resort (Migration Compact, objective 13; Refugee Compact, para 60). The authority (and application) of principles such as these derives from international human rights law, which exists independently of the compacts themselves.

Other more policy-oriented commitments in the Migration Compact 'could [also] be helpful to refugees in seeking either protection or solutions through migration' (Costello 2019, 4-5), such

as those to '[a]ddress and reduce vulnerabilities in migration' (objective 7), 'realize full inclusion and social cohesion' (objective 16), 'promote evidence-based public discourse to shape perceptions of migration' (objective 17), '[i]nvest in skills development and facilitate mutual recognition of skills, qualifications and competences' (objective 18), '[c]reate conditions for migrants and diasporas to fully contribute to sustainable development' (objective 19) and ensure that 'migrants in a situation of vulnerability, regardless of their migration status, [are provided] with necessary support at all stages of migration' (para 23(b)). Indeed, some of these ideas are also reflected in the Refugee Compact, New York Declaration, Executive Committee Conclusions and other UNHCR materials (see, eg, Refugee Compact, paras 94–96; New York Declaration, Pt II; UNHCR 2016).

The key point here is that the Migration Compact should not automatically be interpreted as excluding certain people from international protection simply because they are described as 'migrants'. Nominated systemic drivers of 'irregular migration' (para 39(b)) may also contribute to refugee movements. Their inclusion in the Migration Compact should not be taken to imply otherwise. Nor should the Refugee Compact be taken to have relevance only for a narrowly circumscribed category of 'refugees'. Regional variations in refugee protection, large-scale mixed flows and the complex reasons why people move will all shape the Refugee Compact's scope and operation in practice.

Most importantly, nothing in either of the Global Compacts detracts from States' extant obligations under international law, including, crucially, the obligation to provide international protection to persons in need. States' international protection obligations derive from existing instruments of refugee and human rights law, as well customary international law. These are not altered by the compacts, but in fact underpin them, and they should guide States in their interpretation and implementation of their commitments therein.

5. Conclusion

In the context of cross-border movement, the core distinction that matters is between those who need international protection and those who do not. Using the term 'refugee' as a shorthand for the former is no longer accurate or desirable, since refugees are not the only people who require international protection. Nor should the 'migrant' label automatically foreclose an international protection need. The principle of *non-refoulement* under human rights law, and the notions of non-returnability and (temporary) refuge in customary international law, mean that there are other people on the move who need complementary, subsidiary, temporary or other forms of humanitarian protection. Importantly, in this respect, States' international protection obligations exist independently of the two Global Compacts and must underpin the interpretation and application of both.

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