

ISSUE BRIEF

No. 4929 | DECEMBER 13, 2018

The United States Should Not Sign on to the Global Compact on Refugees

Joshua Meservey and Brett D. Schaefer

On November 13, the Third Committee of the United Nations General Assembly voted on the Report of the U.N. High Commissioner for Refugees (UNHCR)¹ that included language affirming the Global Compact on Refugees.² Historically, the resolution adopting the report is generally non-controversial. However, this year the U.S. called for a vote and opposed the resolution, which passed 176 to 1 with 3 abstentions and 13 countries not voting.³ The U.S. listed several reasons for its vote against the resolution.

- It noted that the resolution called for countries to meet their commitments made in the New York Declaration for Refugees and Migrants.⁴ The Obama Administration supported the New York Declaration, which was the progenitor of both the Global Compact on Refugees and the Global Compact on Migration. The Trump Administration ended U.S. participation in the Migration Compact in December 2017—and understandably wishes to avoid implying support through references endorsing the New York Declaration and the calls within it to implement provisions “inconsistent with U.S. immigration policy” and endorse a global approach “not compatible with U.S. sovereignty.”⁵

- It also objected to language on the need to limit detention of asylum seekers that might be inconsistent with U.S. law and national interests. The U.S. notes that it will continue to “detain and prosecute those who enter U.S. territory illegally, consistent with our domestic immigration laws and our international interests.”⁶
- Finally, the Administration rightly objected to text in the ostensibly non-binding Global Compact on Refugees that suggests a more serious obligation. Specifically, the U.S. could not “accept the language contained in operative paragraphs 22 and 23 that ‘affirms’ the global compact on refugees and that ‘calls upon’ states to implement the compact, respectively.”⁷

Concerns with the Global Compact on Refugees

Despite the controversy of its “no” vote on the Report of the United Nations High Commissioner for Refugees, the U.S. broadly supports the goals and objectives of the Global Compact on Refugees. To wit:

We support much of what is included in the Global Compact on Refugees to provide a basis for predictable response and greater burden-sharing among UN Member States and other stakeholders, including development actors, refugee-hosting communities, and the private sector. We also support the Compact’s primary objectives to 1, encourage non-refugee hosting countries and countries that do not provide humanitarian assistance to do more; 2, ease pressure on refugee hosting countries that will allow refugees to

This paper, in its entirety, can be found at <http://report.heritage.org/ib4929>

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

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stay closer to their home; 3, increase third country options and facilitate solutions, including opportunities beyond traditional resettlement; and 4, improve conditions in countries of origin for safe and voluntary refugee returns.⁸

While there are many sensible and useful provisions within the Compact, there are also problematic provisions that the U.S. did not mention in its explanation of vote. Specifically, the Compact:

- Urges states to cede some authority to the UNHCR on refugee resettlement. Paragraph 92 of the Global Compact on Refugees seeks pledges from states to allocate resettlement slots for refugees—suggested at 10 percent of resettlement submissions—“from priority situations identified by UNHCR.”⁹ The U.S. works closely with the UNHCR and considers carefully resettlement cases referred by the UNHCR. Overlap between what the U.S. and the UNHCR consider priority situations is also common. However, the U.S. should not commit to reserving resettlement slots for refugees from particular situations only because the UNHCR has identified them as priorities. The U.S. must retain its responsibility to resettle refugees in accordance with its national interests.
- Equates emergency with protracted situations. The Compact includes protracted situations as one of the priority situations meriting a refugee consideration for resettlement.¹⁰ Yet a refugee should be in imminent danger inside the host country—not merely settled in a protracted situation—in addition to meeting one of the vulnerability criteria (persecution based on race, religion, nationality, political opinion, or membership in a particular social group) to merit resettlement consideration.¹¹
- References international agreements that the U.S. has not ratified. Paragraph 5 notes that the “global compact is guided by relevant international human rights instruments, international humanitarian law, as well as other international instruments as applicable.”¹² Among the instruments referenced in footnote 5 are the Convention on the Rights of the Child; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention on the Rights of Persons with Disabilities. The U.S. has not ratified these treaties for various reasons, but the Global Compact of Refugees does not acknowledge that such instruments are not universally accepted. The U.S. should insist that any such reference affirm that international treaties and conventions are binding only on those states that have ratified or acceded to them.

1. U.N. General Assembly, “Report of the United Nations High Commissioner for Refugees,” Resolution A/C.3/73/L.59, November 8, 2018, <http://undocs.org/A/C.3/73/L.59> (accessed December 8, 2018).

2. Report of the U.N. High Commissioner for Refugees, “The Global Compact on Refugees,” United Nations Document A/73/12, Part II, September 13, 2018, <http://www.unhcr.org/en-us/events/conferences/5b3295167/official-version-final-draft-global-compact-refugees.html> (accessed December 8, 2018).

3. U.N. General Assembly, “Vote: Resolution A/C.3/73/L.59,” November 13, 2018, http://www.un.org/en/ga/third/73/docs/voting_sheets/L.59.pdf (accessed December 8, 2018).

4. U.N. General Assembly, “New York Declaration for Refugees and Migrants,” Resolution A/RES/71/1, October 1, 2016, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1 (accessed December 8, 2018).

5. Ambassador Kelley Currie, “Explanation of Vote in a Meeting of the Third Committee on a UNHCR Omnibus Resolution,” U.S. Mission to the United Nations, November 13, 2018, <https://usun.state.gov/remarks/8744> (accessed December 8, 2018).

6. Ibid.

7. Ibid.

8. Ibid.

9. Report of the U.N. High Commissioner for Refugees, “The Global Compact on Refugees.”

10. A protracted refugee situation refers to a refugee living outside his home country for more than five consecutive years, a situation that affected more than 11 million refugees in 2015.

11. Olivia Enos, David Inserra, and Joshua Meservey, “The U.S. Refugee Admissions Program: A Roadmap for Reform,” Heritage Foundation *Backgrounder* No. 3212, July 5, 2017, <https://www.heritage.org/immigration/report/the-us-refugee-admissions-program-roadmap-reform>.

12. Report of the U.N. High Commissioner for Refugees, “The Global Compact on Refugees.”

- Calls for “complementary pathways” to resettlement that could be used too broadly. Some refugees may be eligible for consideration for non-resettlement means of entering the U.S. Efforts to make them aware of those opportunities are appropriate and the U.S. should give qualified refugees fair consideration. However, the U.S. should *not* reserve places in such programs for refugees, nor grant refugees visas for which they are not qualified. Doing so would disadvantage qualified applicants and subvert the purpose of those visa categories.
- Asks countries to count refugees resettled through private means as additional to yearly ceilings set by the government. Private resettlement is potentially a positive innovation, and the U.S. should pilot such a program to see if it results in the same advantages seen elsewhere.¹³ However, the number of refugees participating in private resettlement should count toward the yearly admissions ceiling and not be additional to the ceiling, as called for in the Global Compact.

The Perils of Even Non-Binding International Agreements

The U.S. should have a compelling reason to support any resolution, agreement, or other document, including “non-binding” ones such as the Global Compact on Refugees. Paragraph 4 of the Compact states that it is “not legally binding” and merely represents the “political will and ambition of the international community as a whole for strengthened cooperation and solidarity with refugees and affected host countries.”¹⁴ Regardless of the voluntary language in the Compact, its purpose is to establish agreed commitments and practices that many will expect states to honor. Supporters will accuse states

that fail to fulfill the commitments outlined in the Compact—as interpreted by the U.N. and supporting nongovernmental organizations—of bad faith and abandoning their commitments—as happened when the U.S. left the similarly voluntary Paris Agreement on climate change.¹⁵

Moreover, even though General Assembly resolutions are non-binding, many characterize them as reflecting the “will of the international community.” Some governments, international organizations, and civil society advocates will use unanimous approval as a justification for transforming voluntary contributions into binding obligations by asserting that the consensus reflects emerging international legal norms and necessitate follow-on treaties or conventions to codify their terms or objectives. Refugee advocates who disparage the Global Compact on Refugees as weak and lacking in accountability and burden-sharing mechanisms clearly intend additional steps in the future at the periodic meetings mandated by the compact.¹⁶

Declining to sign onto the Compact helps protect the U.S. from the negative parts of the agreement but does not—and should not—stop it from supporting the positive reforms outlined in the Compact. The U.S. is already the world’s most generous donor to the UNHCR by a large margin.

- The U.S. provided \$1.45 billion to the UNHCR in 2017—or *over 40 percent* of total funding—from governments including the European Union and the African Union.¹⁷
- In addition, the \$39.46 million donated by private Americans ranked 16th in all sources of funding to the UNHCR—ahead of many European governments and just behind France, Australia, and the United Nations regular budget.

13. Refugees in Canada, for instance, achieved better assimilation outcomes and reported higher levels of satisfaction than those resettled exclusively through the government program. A private resettlement program could also relieve U.S. taxpayers of some of the up-front costs of resettlement. For a description of the Canadian program, see Enos, Inserra, and Meservey, “The U.S. Refugee Admissions Program: A Roadmap for Reform.”

14. Report of the U.N. High Commissioner for Refugees, “The Global Compact on Refugees.”

15. Valerie Volcovici and Jeff Mason, “Trump Dismays, Angers Allies by Abandoning Global Climate Pact,” Reuters, May 31, 2017, <https://www.reuters.com/article/us-usa-climatechange-trump-idUSKBN18R1J4> (accessed December 8, 2018).

16. Amy Lieberman, “Global Compact for Refugees Moves Forward, but Without Clear Path for Implementation,” Devex, August 2, 2018, <https://www.devex.com/news/global-compact-for-refugees-moves-forward-but-without-clear-path-for-implementation-93179> (accessed December 8, 2018).

17. U.N. High Commissioner for Refugees, “Contribution to UNHCR-2017,” February 14, 2018, http://reporting.unhcr.org/sites/default/files/donor_ranking/2017%20-%20UNHCR%20Donor%20Ranking-FINAL.pdf (accessed December 8, 2018).

- In 2017, the U.S. took in more than one-third of all refugees resettled that year.¹⁸

In short, the U.S.'s record of supporting refugees, including via resettlement, is exemplary. Signing on to a voluntary compact would not change this commitment. However, implementing the sensible parts of the Compact is reasonable and practical, as doing so supports the international response to refugee crises and could prompt other countries to take on more of the burden associated with those crises.

A Nuanced Approach

The U.S. should continue its robust, historical financial support and willingness to resettle refugees in accordance with U.S. policy and interests. To best promote its interests regarding the Global Compact on Refugees and the associated resolution, the U.S. should:

- **Maintain its “no” vote when the full U.N. General Assembly votes.** The resolution and the Global Compact on Refugees have too many concerns to merit a positive U.S. vote.
- **Only sign international agreements and compacts when there is a compelling reason to do so.** Unless an agreement reaches that threshold, the U.S. should not sign, thereby avoiding the risks inherent in even non-binding international agreements.
- **Implement the sensible provisions of the Compact.** While the U.S. need not sign on to the Compact, the U.S. should work with the UNHCR and other relevant entities to champion and

implement the Compact's sensible provisions. Those include helping refugee-producing countries create environments conducive to refugee repatriation, involving the private sector in various response processes, coordinating responding entities' relief efforts, calling for more countries to support refugee relief efforts, helping refugee-hosting countries create environments that facilitate unfettered refugee economic activity, and collecting and sharing data to support evidence-driven interventions.

Conclusion

The Global Compact on Refugees is a political statement. There is no compelling reason for the U.S. to sign on to the Compact—and several reasons to be wary of signing. Too often, even non-binding, voluntary compacts serve as gateways to binding commitments and vehicles for politically motivated criticism.

Instead, the U.S. should support and implement the positive aspects of the Compact, assist refugee-hosting countries to create safe and economically viable environments that allow refugees to stay close to their homes, address crises to reduce drivers of refugee flows, and work with the UNHCR, nongovernmental organizations, and concerned countries to resettle refugees in the U.S. in accordance to U.S. law and policy.

—*Joshua Meserve* is Senior Policy Analyst for Africa and the Middle East in the Douglas and Sarah Allison Center for Foreign Policy, of the Kathryn and Shelby Cullom Davis Institute for National Security and Foreign Policy, at The Heritage Foundation. *Brett D. Schaefer* is the Jay Kingham Senior Research Fellow in International Regulatory Affairs in the Margaret Thatcher Center for Freedom of the Davis Institute.

18. U.N. High Commissioner for Refugees, “2017 in Review,” March 15, 2018, <https://www.unhcr.org/protection/resettlement/5a9d507f7/resettlement-fact-sheet-2017.html> (accessed December 8, 2018).