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DISSERTATION TITLE **HOW DOES THE PRESENCE OF BINDING AND NON-BINDING NORMS IN THE GLOBAL COMPACT ON REFUGEES HELP IN ITS IMPLEMENTATION?**

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Supervisor: GEOFF GILBERT

DISSERTATION

HOW DOES THE PRESENCE OF BINDING AND NON-BINDING NORMS IN THE GLOBAL COMPACT ON REFUGEES HELP IN ITS IMPLEMENTATION?

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INTRODUCTION

The United Nations High Commissioner for Refugees' (UNHCR) annual Global Trends Report released on 19 June 2019 shows that nearly 70.8 million people remain displaced at the end of 2018. Around 13.6 people were newly displaced during the course of the year. Among them nearly 25.9 million are refugees, over half of whom are under the age of eighteen.[1] Most refugees manage to cross only one border, the one closest to them.

When considering the distribution of the refugee population in the world there is a massive diversity between the Northern and Southern states. Northern states are regarded as comprising the industrialised states, usually outside refugees' area of origin, exerting a certain degree of border control and having extra-territorial influence. The Southern states are the ones that usually host refugees, act as transit countries and may also be refugee-producing.[2]

Southern states have almost always mostly hosted the overwhelming majority of the world's refugees, while States in the North have very few clearly defined obligations to contribute to the protection of refugees who seek asylum in the South. The states with the least capacity to host refugees seem to have the most significant responsibility to do so. The politics of protection has been characterised by a North-South impasse, which means that the Southern states seemingly have the *de facto* responsibility for refugee protection, but the Northern states have had little obligation or incentive to share this responsibility. This has had significant implications for refugees' access to protection and long-term solutions.[3]

The refugees who seek asylum in these Southern states are usually from countries neighbouring them. Asylum-seekers usually have limited means and privileges to travel long distances and therefore usually seek asylum in countries that are closest and least difficult to travel to. They are more accessible on account of having porous borders and weak border control. They also have limited capacity to deport

[1] Figures at a glance, UNHCR: The UN Refugee Agency, available at https://www.unhcr.org/figures-at-a-glance.html
[2] Alexander Betts, *Protection by persuasion: international cooperation in the refugee regime*, Ithaca: Cornell University Press, 2009, pp. 13-14
[3] ibid

refugees and are also bound by the legally defined obligation to not forcibly return people to a territory where there is fear of persecution (*non-refoulment*). Apart from the limited obligation to host refugees, these states are rarely able to provide refugees with other significant rights or work towards finding long-term solutions for them. Under the political and economic pressure to favour their citizens first, refugees are often confined to camps and settlements lacking essential services.

Northern states, have had little obligation to contribute to protection or durable solutions for refugees who are confined to the South. The assumption of burden-sharing is not a new concept in the refugee regime; however, it has not been clearly defined. In the absence of a clear and binding obligation related to burden-sharing, the contribution of Northern states towards the protection situation of refugees has often been discretionary. Their financial contributions have usually been limited in comparison to refugees' actual needs. There has been an increasing demand for burden-sharing over the years, however the assigned budget of Northern states to the UN for refugee protection has been limited. These also depend on the current Governments of these States and a change in the administration may further change policies.[4]

The result of this North-South impasse is that refugees continue to live in protracted situations, often in difficult camp situations without access to essential services like livelihood and education. There is no access to durable solutions and refugees are neither able to return to their home countries nor gain access to third-country solutions. The Northern states do not provide enough support to find permanent durable solutions. This attitude has undermined continuous effort by UNHCR over the years to facilitate international cooperation to overcome the refugee crisis. UNHCR, through its many Executive Committee conclusions, has consistently focussed on the importance of international cooperation.[5] However, there is no clear set definition in international law of what this principle involves and what kind of behaviour is expected from states in order to adhere to this.

A more recent endeavour by UNHCR and the General Assembly to reinforce this principle of international-cooperation and burden-sharing has been the New York Declaration 2016, which

[4] ibid
[5] ibid

eventually led to the formation of the Global Compact on Refugees (GCR)[6] which is the subject of this dissertation.

Through this dissertation, the researcher has tried to examine this principle, which plays a substantial role in the GCR and also analyse it through the previously existing principles of international law. In the course of this dissertation, the researcher will first introduce the GCR and then discuss the purpose of having a GCR. The GCR being a non-binding agreement, the researcher will then discuss the increased shift of the international community towards such agreements and the reason States decide to become parties to these agreements. The researcher will also discuss the principles of international-cooperation and burden-sharing in depth. The researcher will also examine how these principles are not new to the GCR and already existed in international law in other human-rights treaties. It also existed in the preamble to the 1951 Convention on the Status of Refugees and the researcher shall also examine this in the light of the importance of Preambles in international treaties. The researcher shall also discuss what the presence of binding treaties mentioned in the GCR means when it comes to its own non-binding character.

The NY Declaration also laid the foundation of the Comprehensive Refugee Response Framework (CRRF), which was piloted in some States. The lessons learnt from the CRRF pilot were included in the GCR. The researcher shall examine the success of this pilot scheme and discuss what role this plays in ensuring the success of the GCR.

The researcher shall also look at whether previous non-binding agreements like the Millennium Development Goals and the Sustainable Development Goals and examine their success to analyse the estimated success of the GCR.

[6] The New York Declaration for Refugees and Migrants, UNHCR: The UN Refugee Agency, available at https://www.unhcr.org/new-york-declaration-for-refugees-and-migrants.html [accessed 6 September 2019]

Finally, the researcher intends to look at the focus of the GCR for the future, how it intends to follow through the commitments it has made and how the UNHCR needs to play a vital role for its successful implementation.

The different concepts discussed in this dissertation may seem disconnected initially. However, the researcher, in the end, will try to bring together these ideas- from what how the GCR came into being and what was the intention behind having such a compact, how UNHCR has reinforced the principle of burden-sharing through the compact, can it be enforced through the presence of binding treaties in the text of the GCR, what role can UNHCR play to ensure that the GCR is followed through and lastly what role can all this play in the success of the GCR in the future.

CHAPTER 1

1.1 WHAT IS THE GLOBAL COMPACT ON REFUGEES?

The Global Compact on Refugees (GCR) is the result of the General Assembly's 2016 New York Declaration on Refugees and Migrants. This Declaration reaffirmed the importance of the international refugee regime and contained a wide range of commitments by the Member States to strengthen and enhance mechanisms to protect people on the move. The Declaration also established the Comprehensive Refugee Response Framework (CRRF). The CRRF sets out a range of different standards, recommendations, best practices addressed to both State and non-State actors in refugee protection. While again, these are non-binding, other areas of international law highlight that such principles and standards may nonetheless play an important role in governing State behaviour.[7] The GCR's primary focus is to strengthen the concept of "burden and responsibility sharing" which finds mention in many UNGA resolutions and ExCom conclusions. The GCR was formally adopted on 17 December 2018 by the General Assembly. The United States and Hungary were the only two nations that voted against the GCR, while 181 countries voted in favour. The Dominican Republic, Eritrea and Libya abstained.[8]

International law is a complex blend of customary, positive, declarative and soft law.[9] Does the GCR feature into these categories? Is it a treaty, an agreement or only a document which contains specific ideas on handling the refugee situation in the world and what role do state parties to the United Nations play in this?

The GCR has been classified as a compact. What exactly is a compact, and what is its significance in international law? The word "compact" can be described as an agreement between two or more parties,

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[7] Gammeltoft-Hansen, Thomas and Guild, Elspeth and Moreno-Lax, Violeta and Panizzon, Marion and Roele, Isobel, What is a Compact? Migrants' Rights and State Responsibilities Regarding the Design of the UN Global Compact for Safe, Orderly and Regular Migration (11 October 2017). Available at SSRN: https://ssrn.com/abstract=3051027 or http://dx.doi.org/10.2139/ssrn.3051027

[8] 'U.S. Rejects UN Global Compacts on Refugees and Migrants' (*Frontpage Mag*, 19 December 2018) <https://www.frontpagemag.com/fpm/272283/us-rejects-un-global-compacts-refugees-and-joseph-klein> accessed 7 September 2019.

[9] Christine Chinkin' Normative development in the international legal system' in Shelton, Dinah, (ed.) *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (Oxford University Press, Oxford, 2000) 23

organisations, or countries, while the word "global" relates to the whole world[10]. When it comes to the United Nations (UN), titles for documents are usually based on what they signify and not always on what they mean. The reason for term 'compact' was chosen may have been because it has not been used frequently, and there is no preconception associated with it in terms of State behaviour.[11]

In in recent times the term 'compact' has been increasingly used to denote soft law instruments, indicative more of a symbolic declaration of principles and goodwill than a legally binding expression of will.[12]

The UN Global Compact[13] was launched in 2000 to put networked governance theory into practice, bringing stakeholders (companies, academics, local networks) together. Its mandate was to "promote responsible business practices and UN values among the global business community and the UN System". It was a public-private initiative and multi-stakeholder venture. Using the term compact signalled an intention to bring this sort of networked governance to bear on migration.[14]

The UN Global Compact was addressed to states along with corporations, individuals and civil society. It was built on principles and values reflected in legally binding instruments on human rights, labour, environment and corruption, converting them into strategies, policies and procedures applicable to all in real-life conditions.[15]

A compact, therefore, may be seen as bundling of different deals or agreements across actors and issues. The compacts focus on multi-stakeholder involvement, best practice, and issue linkage as a means to ensure cooperation and accountability in areas where direct reciprocity and more formal institutionalisation are challenging to achieve.[16]

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[10] Cambridge Dictionary online
[11] Gammeltoft-Hansen (n7)
[12] 'EJIL: Talk! – Legislating by Compacts? – The Legal Nature of the Global Compacts'; available at https://www.ejiltalk.org/legislating-by-compacts-the-legal-nature-of-the-global-compacts/ [accessed 26 August 2019].
[13] https://www.unglobalcompact.org/
[14]'EJIL: Talk! – Legislating by Compacts? – The Legal Nature of the Global Compacts' (n 6).
[15]ibid.
[16] Thomas Gammeltoft-Hansen, The Normative Impact of the Global Compact on Refugees, *International Journal of Refugee Law*, Volume 30, Issue 4, December 2018, Pages 605–610, https://doi.org/10.1093/ijrl/eey061

The GCR has adopted a similar approach in terms of actors involved. It is divided into four parts. These are:

- An introduction setting out the background, guiding principles, and objectives
- The Comprehensive Refugee Response Framework (CRRF)
- A Programme of Action setting out concrete measures to help meet the objectives of the Compact, including:
    - Arrangements to share burdens and responsibilities through a Global Refugee Forum (every four years), national and regional arrangements for specific situations, and tools for funding, partnerships, and data gathering and sharing.
    - Areas in need of support, from reception and admission to meeting needs and supporting communities, to solutions.
- Arrangements for follow-up and review, which will primarily be conducted through the Global Refugee Forum every four years, an annual high-level official meeting held every two years between forums and the High Commissioner's annual report to the General Assembly.[17]

Also, the primary objectives of the GCR are (i) ease pressures on host countries; (ii) enhance refugee self-reliance; (iii) expand access to third-country solutions; and (iv) support conditions in countries of origin for return in safety and dignity.[18]

A new aspect of the GCR is that it suggests complementary pathways for admission to third countries which includes private or community-based programmes and humanitarian visas, corridors and other humanitarian admission programmes; educational opportunities for refugees through grant of scholarships and student visas, including through partnerships between governments and academic institutions; and labour mobility opportunities for refugees, including through the identification of refugees with skills that are needed in third countries. This will be achieved through a three-year strategy that will be created by UNHCR, which will also include an increased pool of resettlement places

[17] The Global Compact on Refugees available at https://www.unhcr.org/uk/the-global-compact-on-refugees.html [accessed 28 July 2019]
[18] Paragraph 7, GCR

and introduces new countries in the global resettlement efforts.[19] This is an additional step from the three traditional durable solutions of repatriation, local integration and resettlement.[20]

The GCR also includes development actors and stakeholders like the World Bank, United Nations Development Programme, International Labour Organization to foster economic growth for host communities who support refugees in economic opportunities along with host communities and also focuses on women, young adults, older persons and persons with disabilities. It also refers to trade arrangements in line with relevant international obligations, especially for goods and sectors with high refugee participation in the labour force.[21]

The GCR also sets out arrangements to improve the international response to specific refugee situations through Support Platforms, solidarity conferences, and regional and sub-regional approaches which will involve States and other actors dedicated to mobilising support for host countries in their search for solutions.[22] We shall now look at what the purpose was for having a new compact when there already exists an international refugee convention.

1.2 WHAT IS THE PURPOSE OF THE GLOBAL COMPACT ON REFUGEES?

In some areas of human rights law, soft law has come to fill a void in the absence of treaty law, applying a substantial amount of normative force notwithstanding its non-binding character. Additionally, the flexible character of soft law instruments may help to overcome the traditional boundaries associated with international law like assigning responsibility to a broader set of actors, which include the private sector, international organisations, and non-governmental organisations.[23]

The purpose of the GCR is to build upon, not replace, the existing international legal system for refugees – including the 1951 Convention on the Status of Refugees (Refugee Convention) and other international legal instruments on refugee, human rights and humanitarian law. The Refugee Convention creates a right to ask for asylum and not a right to it; it also imposes on states not a duty to

[19] Paras 91-95
[20] Para 89 Also see Volker Türk, The Promise and Potential of the Global Compact on Refugees, *International Journal of Refugee Law*, eey068, https://doi.org/10.1093/ijrl/eey068
[21] Para 70-71
[22] Para 22-26
[23] Gammeltoft-Hansen(n16)

recognize refugees but to not return them to a territory where they will face persecution.[24] It focuses on the rights of refugees and the obligations of states towards them. The GCR reaffirms these already existing standards and principles, and focuses on increasing international cooperation for a fairer, more systematic and comprehensive response to refugees and the states hosting them can rely on robust support. The Compact is a non-binding operational tool which aims to broaden the base of support available to refugees and the host communities. It does not create new legal obligations, nor does it modify the mandate of the UNHCR.[25]

As per Volker Türk, the Assistant High Commissioner for Protection at UNHCR the Refugee Convention focuses on rights of refugees and obligations of States, but it does not deal with international cooperation, and that is what the Global Compact seeks to address. Unlike the 1951 Convention, the GCR specifies how states should share burden and responsibility.[26]

Türk also says that the GCR may play a norm-creating role and help to formulate new principles paving the way to create a new binding international law in the form of custom or treaty through an additional protocol to the Refugee Convention.[27]

[24] Randall Hansen, 'State Controls' [2014] The Oxford Handbook of Refugee and Forced Migration Studies <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-032> accessed 6 September 2019.
[25] 'Global Compact on Refugees - World' (*ReliefWeb*) <https://reliefweb.int/report/world/global-compact-refugees> accessed 28 July 2019.
[26] *Global Compact on Refugees: How is this different from the migrants' pact and how will it help?* Available at https://news.un.org/en/story/2018/12/1028641 [accessed 28 July 2019]
[27] ibid.

CHAPTER 2

2.1 WHAT IS THE ROLE OF BINDING AND NON-BINDING AGREEMENTS IN INTERNATIONAL LAW?

States enter into several non-binding arrangements in the course of their normal diplomatic or political relations. Recently this practise has been prevalent in the fields of international economic law, *human rights* law, and international environmental law for States to enter into arrangements, or make formal declarations, which are not intended to be legally binding on them, but may be meant for creating political or moral pressure to act in accordance with their provisions. It may be difficult to distinguish between binding treaties and such so-called soft law instruments, which are also similar to international agreements.[28]

Article 38(1) of the Statute of the Court of International Justice (ICJ) lists the traditional sources of law[29]. Non-binding agreements are not within the realm of international law and might be classified as 'soft' norms.[30] Soft law can have many meanings. In law-making, it can simply be a variety of non-legally binding instruments in international relations. It can also be inter-state conference declarations, UNGA declarations, interpretative guidance of human rights treaty bodies, codes of conduct and also recommendations of intergovernmental organisations. Other category of soft law are common international standards adopted by transnational networks of national regulatory bodies and can also apply to non-treaty agreements between states or between states and other entities that lack capacity to conclude treaties.[31]

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[28] Malgosia, 'Treaties' <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1481> accessed 1 August 2019.

[29] international conventions, whether general or particular, establishing rules expressly recognised by the contesting states;
international custom, as evidence of a general practice accepted as law;
the general principles of law recognised by civilised nations;
subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

[30] Charney, Jonathan L. "Commentary Compliance With International Soft Law." In *Commitment and Compliance: The Role of Non-binding Norms in the International Legal System*, edited by Dinah Shelton. Oxford: Oxford University Press, 2003. Oxford Scholarship Online, 2010. doi: 10.1093/acprof:oso/9780199270989.003.0005.

[31] Alan E Boyle and CM Chinkin, *The Making of International Law* (Oxford University Press 2007).pp212-213

Binding agreements under international law create 'hard law' rights and obligations. Within such agreements some provisions may lack sufficient normativity to create absolute rights or obligations for the parties to such agreements. Therefore within international agreements, 'soft' provisions are found that may not amount to a right or obligation under international law.[32]

What is a soft international norm if it is not binding international law? As stated by Jonathan L. Charney, such 'soft' norms are predetermined generalised norms of behaviour that, while not binding as law, attract compliance by the targeted members of the international community. Compliance with international law is substantial. If a norm acquires the status of international law, the pull towards an agreement with the norm is strengthened for multiple reasons. However, whether the rate of compliance with an international law norm is greater than that of non-legally binding international norms or 'soft' norms has not been determined.[33]

As Dinah Shelton says, soft laws are legally non-binding instruments that are utilised for a variety of reasons, including to strengthen member commitment to agreements, reaffirm international norms, and establish a legal foundation for subsequent treaties. The international system is no longer solely determined by states but is also influenced by inter-governmental international organisations, non-governmental organisations, professional associations, and transnational corporations. Besides this growing multiplicity of actors, there has also been a creation of international legal norms, some of which have taken the form of soft law. Within the human rights area, soft law is primarily used, as a precursor to binding treaties. Soft law was see-states as a way to establish a consensus of norms between members, of an agreement that could later be codified through binding law. Over time there has been a decrease in binding human rights treaties and non-binding agreements have taken their place in tackling even complex issues[34]

The rates of compliance with 'hard' and 'soft' international norms cannot be specifically determined because the factors that influence compliance substantially overlap. An advantage of 'hard international

[32] ibid
[33] ibid
[34] Chantal de Jonge Oudraat Simmons PJ, 'Commitment and Compliance: What Role for International Soft Law?' (*Carnegie Endowment for International Peace*) <https://carnegieendowment.org/1999/11/22/commitment-and-compliance-what-role-for-international-soft-law-event-47> accessed 31 July 2019.

law,' the legal system provides specific remedies to aggrieved parties, *e.g.*, countermeasures, third party dispute settlement procedures. International law remedies, however, are generally the last resort of injured parties. Instead, they seek to exhaust non-legal remedies such as negotiation, or the use of political, economic, and other pressures to encourage compliance. Only in exceptional situations does an aggrieved party resort to law-based remedies and thus, although their use and availability have importance, resort to remedies for breaches of international law are relatively uncommon in the international legal system. In general, then, the remedies utilised are virtually the same whether the norm breached is 'hard' or 'soft'.

The international community has developed 'hard' and 'soft' norms to serve many of the same functions- to order relations among entities within a society and to satisfy the desire of groups within that society to promote their value preferences. While the status as law or non-law may be important to compliance in some respects, in most situations, it is not. More important is the contribution that the norm provides the ordering of relations within the international community.[35]

Within international law, the law-maker and the subjects of international law are identical comprising states and international organisations. Therefore, it can be said that international law lacks the essential prerequisites for legitimacy since no coherent structural framework can be found in the international legal system. In this case the binding effect of international law for its subjects is questioned. Due to the lack of coercive authority, compliance with international law almost entirely depends, on the political will of the State concerned. Big and powerful States are favoured over small or less potent States. Even within the framework of the UN representing the international community as a whole, no unified system of sanctions for non-compliance exists. Joint action by any of the powerful states depends on their vital interests. International law is only a mirror of the reality of politics in international relations. International law is held solely to constitute political or moral obligations from which States can pick or choose according to their wishes.[36] The Permanent Court of International Justice in The Lotus Case said, "International law governs relations between independent States. *The rules of law binding upon States, therefore, emanate from their own free will* as expressed in conventions or by usages generally

[35] Dinah Shelton, 'Compliance with International Human Rights Soft Law International Compliance with Nonbinding Accords: Chapter 4' [1997] Studies in Transnational Legal Policy 119.
[36] Meltem Ineli-Ciger, 'The Global Compact on Refugees and Burden Sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?' (2019) 38 Refugee Survey Quarterly 115.

accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims."[37]

2.2 **WHY DO STATES BECOME PARTIES TO SUCH NON-BINDING AGREEMENTS**

In December 1948, the General Assembly had approved the Universal Declaration of Human Rights (UDHR). This non-binding human rights document marked the early stages of a shift in the global attitude about the human rights of individuals. The declaration promised to uphold the "*equal and inalienable rights of all members of the human family."*

The UDHR was meant to be an articulation of widely held human rights principles. Since then it has been the root of many human rights treaties and agreements, and many of its provisions have since resulted in customary international law. In the time that followed, States have implemented legal tools to bring about the rights in the UDHR to state practice in both domestic and international laws.

Human rights agreements between states, unlike other agreements of trade, environment and others are not intended to affect interactions between states. They regulate behaviour between states. What then is the purpose of a state to conclude such agreements that place certain limits in their sovereignty and do not provide them with any benefits but rather just the assurance that that other states will conform to the same standards of behaviour.[38]

In understanding why states commit to human rights treaties, it is essential to know what effect will the treaties have on states once they have agreed to join. The expected positive and negative effects of international law influence the choice of states to accept international legal commitments. International treaties are not binding upon states unless they choose to be bound. Therefore, the effects of treaties depend on who agrees to be bound by them, which in turn depends on what effect treaties have on these states.[39]

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[37] SS "Lotus", *France v Turkey*, Judgment, (1927) PCIJ Series A no 10, ICGJ 248; Para 44

[38] Richard Gowan and Emily O'Brien, 'What Makes International Agreements Work: Defining Factors for Success' (New York University, 2012) <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/7839.pdf>.

[39] Oona A Hathaway, 'Why Do Countries Commit to Human Rights Treaties?' (2007) 51 The Journal of Conflict Resolution 588.

When states sign international agreements, there are often many reasons why they may be motivated to do so. They may be stand to gain economic benefits from the agreement, or they may have done so under the pressure of other powerful countries. The most straightforward reason for a state to sign an international human rights agreement is that it agrees with the principles embodied in the agreement. They want to protect the rights enshrined in the agreement and believe that recognizing and protecting these rights is necessary out of respect for fundamental human dignity.[40]

States also sign human rights agreements for their economic development. The protection of human rights may lead to economic stability nationally, regionally and internationally. When States sign treaties like the ICESCR, CRC or the Refugee Convention, they agree to implement national legislation which shall put laws into practice that prevent the agreed provisions of these treaties. This may work in favour of the state when other states see this as development and may agree to enter into trade agreements which benefit both states.

Even though States sign human rights treaties, internationally binding obligations may challenge sovereignty. Treaties and conventions create obligations which require a compromise between state sovereignty and the requirement that States comply with human rights standards internationally. When States sign treaties, they have to report on how they have implemented the provisions of the treaty and what have they done to prevent violations. Therefore many States sign treaties with reservations in a way to keep their sovereignty intact.[41]

The core treaties which govern international law are the ICCPR, ICESCR, CEDAW, CRC, CERD and CAT. These treaties govern the standards of behaviour that the States must meet. For some states with poor human rights records, these treaties demanded significant and far-reaching changes in their behaviour. However, the enforcement mechanisms for these are weak. Treaties establish committees

[40] Eric G Gensen, 'Introduction to the Laws of Iraq and Iraqi Kurdistan: Series Overview' (*Stanford Law School*, 2016) <https://law.stanford.edu/publications/introduction-laws-iraq-iraqi-kurdistan-series-overview/> accessed 16 August 2019.
[41] ibid

to monitor and review state behaviour and publicize their findings, but these mechanisms often lack teeth and states are not held accountable.

All governments have entered into some of the core agreements, committing to behaving in a manner that reflects the principles outlined in human rights laws. However, when it comes to assessing if human rights law has an impact on State behaviour, it has been seen in many cases that human rights abuses are still frequent and flagrant.[42]

As a general matter, human rights treaties specify the rights of persons that the state must respect. In assuming an obligation under a human rights treaty, a state usually assumes an obligation not only to respect other state parties and their citizens but also to the state's citizens.

The shared goal of most international human rights treaties is to define and protect the rights of individuals against abuse by their own government. There is hardly any formal international legal enforcement of treaties. International institutions do not impose any substantial legal sanctions against nations for violations of most universal human rights treaties. While all human rights treaties formally create hard law commitments, they also have soft-law characteristics, which means they are virtually unenforceable through traditional means.[43]

States may not enter into negotiations over human rights agreements out of humanitarian sentiments or because the governments think that such behaviour is expected from them. Governments enter into negotiations if they see the potential for gain and they think their position concerning international actors and domestic actors can improve. Agreements change the incentives for parties, through linkages to other issues, reputation, or the attainment of domestic goals.[44]

Some states, mainly established democracies, sign on to agreements that resonate their domestic attitudes and provide them with an opportunity to promote those attitudes. Emerging democracies embrace human rights agreements to facilitating the process of democratic gains that they have made

[42] Gowan and O'Brien (n 38).
[43] Hathaway (n 39).
[44] Gowan and O'Brien (n 38).

domestically by making it harder for future domestic actors to backslide. Repressive governments participate in agreements to divert attention from objectionable domestic behaviour by making international commitments that pacify actors pressing for change. Interests of having trade agreements or availing of loans also have an impact on decisions to commit to international agreements.[45]

The core human rights treaties details what the State's appropriate behaviour should be towards people on their jurisdiction and what changes are required in State's behaviour depends on what the State's existing attitude is, the central goal is to protect individuals from abuse. While agreements are intended to regulate sovereign behaviour, states have autonomy over the implementation of their commitments.

There are also third-party mechanisms to enforce human rights standards such as the International Criminal Court (ICC). Why would states agree to relinquish a portion of their sovereign rights to a third-party legal mechanism? States with reliable human rights records are not concerned that the ICC would pursue a case within their jurisdiction due to the "principle of complementarity."[46] The ICC is designed to act in extreme cases where states fail to act or are unable to act themselves because they lacked the capacity. It is only in exceptional circumstances that the ICC is mandated to intervene. For states with weak internal justice mechanisms and a record of human rights abuses, signing on to the ICC signals a credible commitment to reformed behaviour. The core human rights agreements are legally binding treaties with weak enforcement mechanisms. While not all states have become a party to every agreement, the vast majority of states have signed on to the treaties in the human rights regime. [47]

As described above, states with poor human rights record often sign on to agreements because participation carries with it benefits and non-compliance has few costs, without taking the necessary steps to comply with the standards set out in the agreement. States that have poor human rights records do not have a strict rule of law, and thus are unable to implement new laws and changes in institutional behaviour necessary to meet the requirements set out in a given agreement. One dimension of state

[45] ibid
[46] The principle of complementarity governs the exercise of the Court's jurisdiction. The Statute of the ICC recognizes that States have the first responsibility and right to prosecute international crimes. The ICC may only exercise jurisdiction where national legal systems fail to do so, including where they purport to act but in reality, are unwilling or unable to carry out proceedings genuinely
[47] Gowan and O'Brien (n 38)

behaviour where human rights agreements have a demonstrable impact is domestic politics, where the standards of behaviour outlined in a given agreement can be integrated into sedentary behaviours over time. Human rights agreements can shape the agenda of elite actors, and affect governments' priorities. They can also drive legal challenges and decisions in a state's court system, bringing about changes in laws to improve human rights practices.[48]

On applying a similar analysis to GCR, it can be understood that the reason why an overwhelming majority adopted the GCR is that it is a non-binding document and does not quite have any effect on a State's sovereignty. States are not compelled to change their domestic legislation or adopt new legislation so that they are in line with the objectives outlined in the GCR. As stated before, the GCR does not create new rules but builds on the already existing 1951 Refugee Convention of which a majority of states who are hosting refugees are not a part of. Therefore, states which primarily host refugees are doing what they can in terms of their limited capacity to support such large refugee populations. For example, Bangladesh, which has neither signed nor ratified the Refugee Convention or its Protocol, is hosting the world's largest population of Rohingya refugees. Pakistan is the second-largest refugee-hosting State and not a party to the Refugee Convention and also not a party to these. Turkey, which has the largest refugee population in the world is a signatory to the Refugee Convention, but the situation of refugees in Turkey has seen much improvement.

Therefore, the GCR does not quite make a difference in the situation of these countries. It only calls for greater responsibility sharing and international cooperation. It is to be examined if This principle binds states in terms of other international human rights commitments. International cooperation, burden and responsibility sharing finds mention in the Preamble of the Refugee Convention and also in the Charter of the UN. We now will see what does this mean for the GCR.

2.3 WHAT DOES THE NON-BINDING NATURE OF THE GCR ENTAIL?

Countries that receive refugees have legal obligations to assist and protect them and not sent them back to a territory where there is a threat to their life. However, the obligations that other states have to

[48] ibid

step in and help these host countries is not clear. While this had been the subject of many discussions by States, policymakers, academics, refugee law experts and UNHCR, there has been no uniform agreement at the global level. [49]

The GCR affords an opportunity to put in place strong arrangements and commitments to a consistent and enhanced sharing of responsibilities. These would encourage States to take collaborative approaches as the most effective way to address refugee displacement challenges.[50]

The NY Declaration commits States to a 'more equitable sharing of burden and responsibility', taking into account not only their differing capacities and resources but also their existing contributions. It just reaffirms States' existing legal commitments, it does not expand them, or contain clear action points, accountability mechanisms or targets.[51]

The title of 'Declaration' in the UN, indicates that it is *'a solemn instrument resorted to only in sporadic cases relating to matters of major and lasting importance where maximum compliance is expected* and being a General Assembly resolution is legally non-binding.'[52]

The first noticeable thing about the GCR is its non-binding nature. In that case how can international cooperation and burden and responsibility sharing be enforced through the GCR? As Rüdiger Wolfrum[53] says, *international cooperation is the voluntary coordinated action of two or more states which takes place under a legal regime and serves a specific objective*. Burden and responsibility-sharing can be understood as forms of international cooperation, or as objectives thereof, arising in the context of refugee protection. There are no strict definitions of these and States adopt a variety of interpretations based on their practice. Generally speaking, burden-sharing relates to alleviating the

[49] Dowd R and McAdam J, "International Cooperation And Responsibility-Sharing To Protect Refugees: What, Why And How?" (2017) 66 International and Comparative Law Quarterly 863
[50] Volker Türk, Madeline Garlick, From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees, *International Journal of Refugee Law*, Volume 28, Issue 4, 1 December 2016, Pages 656–678, https://0-doi-org.serlib0.essex.ac.uk/10.1093/ijrl/eew043
[51] Gammeltoft-Hansen (n 16).
[52] UN Commission on Human Rights, 'Use of the Terms "Declaration" and "Recommendation": Memorandum of the Office of Legal Affairs', UN Doc E/ CN.4/L.610 (2 April 1962) para 5; Ibid
[53] General Editor: Max Planck Encyclopaedias of International Law

pressure on States that are hosting large numbers of refugees, and responsibility-sharing relates to the recognition that refugee protection is a global responsibility.[54]

Not being legally binding, the GCR leaves state sovereignty intact even if it aims to create a binding law in the future that will shape state behaviour and create new norms that will eventually form the basis for a self-enforcing international human rights law. Generating political will and gathering data that supports the GCR's objectives are needed for its success. Civil society is a critical factor in the Compact's process, will create pressure on states to uphold this international commitment.[55]

Since the GCR was proposed by the NY Declaration, the willingness of States to adopt a Compact with actionable commitments, even if non-binding, has varied considerably. After the Declaration and before the actual negotiations on the GCR began, there were tensions arose over the concept of a Compact and the United States withdrew from the process initially while objecting to some of the statements in the NY Declaration and questioning the value of international-cooperation on migration in light of State sovereignty. The US was the country that accepts the most number of immigrants and also provides the biggest donations to the international migration organizations. Its initial absence meant that it was not going to play an active role in implementing a global agreement. Even though they later re-joined the process, they still did not vote in favour of the GCR .[56]

The significant potential impacts of the GCR is centred on improved delivery of assistance for refugees and host communities and enhanced responsibility-sharing. The CRRF, if globally implemented, would make a difference on the ground, as humanitarian, development and other actors undertake joint analysis, planning, and response for emergencies and protracted situations. However, effective CRRF implementation depends on the willingness of States to fulfil their commitments, particularly the pledge to increase development aid to countries hosting refugees. The same is required for the prospects for improved responsibility-sharing. The global refugee summits, Global Support Platform and solidarity conferences could represent the development, for the first time, of an international process for regular

[54] Gammeltoft-Hansen (n 16).
[55] 'The Global Compact on Refugees: A New Model for International Lawmaking' (*CIS.org*) <https://cis.org/Rush/Global-Compact-Refugees-New-Model-International-Lawmaking> accessed 29 July 2019.
[56] ibid

and robust responsibility-sharing. However, positive impacts will result only if States are genuinely willing to implement the commitments they make.[57]

The NY Declaration and its subsequent documents, being General Assembly (GA) Declarations, are not legally binding on member states. This explains why it so important for a resolution to have the broadest possible agreement among the Member States. Before taking action on a draft resolution, States spend hours discussing every word in the resolution in the hope of reaching agreement on the text. Consensus is achieved when all of the Member States agree to adopt the draft resolution without taking a vote. Adopting a draft without a vote is the most basic definition of what consensus means. Even if just one Member State requests a vote, consensus is not reached. As a GA resolution is not legally binding, then the best way to encourage all Member States to implement the recommendations expressed in a resolution is to get all of them to agree on the same text. When a resolution is adopted by a simple majority, the States that did not vote in favour of a resolution on a particular agenda item will be less likely to implement them.[58] In the case of the GCR, it lacked consensus from all member states. Therefore it is likely that States will not follow through all the provisions of the GCR or choose what they want to implement. Also refugees are a very sensitive topic in the world today and majority of States often are unwilling to implement policies or take measures solely to contribute towards refugee' protection needs. A non-binding document is not very likely to help in the achievement of these goals.

[57] T. Alexander Aleinikoff and Susan Martin; Making the Global Compacts Work: What future for refugees and migrants? (Kaldor Centre for International Refugee Law) <https://www.kaldorcentre.unsw.edu.au/sites/default/files/Policy%20brief_6%20final.pdf> accessed 29 July 2019

[58] 'How Decisions Are Made at the UN | Outreach.Un.Org.Mun' <https://outreach.un.org/mun/content/how-decisions-are-made-un> accessed 29 July 2019.

CHAPTER 3

3.1 WHAT IS INTERNATIONAL-COOPERATION AND BURDEN-SHARING AND WHAT ROLE CAN STATES PLAY IN IT?

Burden-sharing, a term used interchangeably with responsibility-sharing, is a form of international cooperation. There is no clear definition of “burden-sharing” and “responsibility-sharing” in international law though they usually refer to the distribution of costs and benefits between States, and in some cases among other actors, for addressing a particular global challenge or sharing a public good. In the international refugee law context, burden sharing and responsibility sharing concern protection of refugees worldwide. Responsibility sharing is a more politically correct usage of burden sharing as the latter might imply that refugee protection is burdensome and the fact that refugees contribute to host societies is overlooked.[59]

The GCR, even though non-binding, aims to operationalise the principles of burden and responsibility-sharing, to better protect and assist the refugees and to support the host countries and communities. Burden-sharing is not entirely new and features in other international documents like the preamble to the Refugee Convention, General Assembly and ExCom resolutions and Declarations.

What role can GA Declarations that mention burden-sharing play in international law?

Article 1(3) of the UN Charter says that *achieving international cooperation on solving 'international problems of an economic, social or humanitarian character' is among the overarching purposes of the United Nations (UN).* The obligation of States to cooperate is expressed in articles 55 and 56 of the UN Charter, in which all Member States pledge to 'take joint and separate action in cooperation' with the UN in order to achieve defined goals, including the resolution of international economic, social, and related problems.[60]

The General Assembly in reference to Article 1(3) on several occasions has emphasized on the need for *international cooperation in solving international problems of an economic, social, cultural or*

[59] Ineli-Ciger (n 36)
[60] Türk (n 50)

humanitarian character and of promoting and encouraging respect for human rights and fundamental freedoms. The importance of international cooperation was stressed by the GA in relief actions initially. Later on the GA emphasized on this when promoting development of developing countries by creating favourable conditions for them, obliging States or UN organs to render help, providing direct financial or technical assistance or by calling for cooperation among states. The GA has done these though various resolutions. The GA has also proclaimed that States have the duty to cooperate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations. [61]

The 1970 UN Friendly Relations Declaration also refer to this principle and says that *"States have a duty to cooperate with each other, irrespective of the differences in their political, economic and social systems ... in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination."*

Before this, the concept of burden and responsibility sharing was also found in the General Assembly's 1967 Declaration on Territorial Asylum which states,
"Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State".[62]

According to Article 10 of the UN Charter which defines the Functions and Powers of the GA, *"The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and,…may make recommendations to the Members of the United Nations or the Security Council or both on any such questions or matters."* In other words, resolutions adopted by the GA on agenda items are considered to be recommendations and are not legally binding on the Member States. The only

[61] ibid
[62] Article 2(2)

resolutions that have the potential to be legally binding are those that are adopted by the Security Council.[63]

The UN Charter says that UNGA resolutions can be used as recommendations to interpret treaties. Since the 1970 Declaration is also a UNGA resolution, it can be used to understand international-cooperation. Additionally, the 1951 Convention on the Status of Refugees also refers to this principle. Paragraph 4 of the Preamble refer to "international cooperation".[64] Also, Article 35 of the Convention obliges State parties to cooperate with UNHCR in the exercise of its functions.[65] Considering that most of the refugee population is contained in low and middle-income countries, the grant of asylum may place unduly heavy burdens on specific countries, and that a satisfactory solution of the problem of which the United Nations has recognised the international scope and nature cannot, therefore, be achieved without international cooperation.[66] Therefore, burden and responsibility sharing is not an entirely new concept in the GCR.

It is a matter of debate whether the purposes of the UN as contained in Article 1 of the Charter are meant to be legally binding. The wording of Article 1 is more appropriate for political objectives rather than for legally binding obligations. Certain elements of Article 1 come under customary international law like prohibition of aggression or other breaches of peace, respect for human rights, non-discrimination.[67]

The concept of burden-sharing has been stressed continuously by UNHCR and its Executive Committee and the UN General Assembly in its resolutions on UNHCR over the years. In 1981, Conclusion No. 22 on the protection of asylum seekers in situations of large-scale influx stated that,

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[63] How decisions are made at the UN; available at https://outreach.un.org/mun/content/how-decisions-are-made-un [accessed 27 July 2019]

[64] The grant of asylum may place unduly heavy burdens on specific countries, and that a satisfactory solution of a problem of which the United Nations has recognised the international scope and nature cannot, therefore, be achieved without international cooperation.

[65] 'EJIL: Talk! – Legislating by Compacts? – The Legal Nature of the Global Compacts' (n 12).

[66] Agnès Hurwitz, *The Impact of Safe Third Country Practices on Inter-State Relations* (Oxford University Press 2009) <https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199278381.001.0001/acprof-9780199278381-chapter-5> accessed 27 July 2019.

[67] Bruno Simma et al, *The Charter of the United Nations: A Commentary',* Third edition, Oxford University Press, 2012, pp121-165

A mass influx may place unduly heavy burdens on certain countries; a satisfactory solution of a problem, international in scope and nature, cannot be achieved without international cooperation. States shall, within the framework of international solidarity and burden-sharing, take all necessary measures to assist at their request, States which have admitted asylum seekers in large-scale influx situations.[68]

This was followed by Conclusions No. 52 and 77, where the Executive Committee reiterated the importance of the principle of international solidarity in the context of asylum. Since 1996, the Executive Committee has repeatedly insisted on its' commitment to upholding the principles of solidarity and burden-sharing'. Burden-sharing was also the central theme of the 1998 session too. The concept was more recently addressed by the Executive Committee in 2004, which reaffirmed that
[T]he achievement of international cooperation in solving international problems of a humanitarian character is a purpose of the United Nations as defined in its Charter and that the 1951 Convention relating to the Status of Refugees recognises that a satisfactory solution to refugee situations cannot be achieved without international cooperation.[69]

The UN General Assembly has also consistently expressed support for the principle of solidarity and burden-sharing in its resolutions on the Office of the UNHCR.[70]

States hosting large number of refugee population are mostly low and middle-income ones. They use the term burden-sharing, to emphasise the perceived and real inequalities in the distribution of direct and indirect costs that increase when dealing with refugees in situations of mass influx as well as protracted refugee situations. In such circumstances, receiving states often have to tackle serious political, security, social, environmental, developmental, economic, and infrastructural problems which arise from the influx and the protracted presence of refugees.[71]

[68] ibid
[69] ibid
[70] ibid
[71] Martin Gottwald, 'Burden Sharing and Refugee Protection' [2014] The Oxford Handbook of Refugee and Forced Migration Studies <https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-044> accessed 1 August 2019.

Humanitarian organisations stress on a more positive image of refugees and a stronger framework for international cooperation, and therefore prefer the term' responsibility sharing'. Such cooperation in sharing the burdens and responsibilities have different forms and ranges from prompt material and assistance during refugee emergencies, financial assistance at all stages of displacement, resettlement of refugees from first asylum countries to industrialised countries, and efforts to resolve conflicts and prepare the ground for durable solutions.[72]

What states think of burden and how they approach it has progressed over time. At the time of drafting of the Refugee Convention was drafted, refugee issues were approached in a state-centric, sedentary and linear manner. The focus was on the 'refugee problem' rather than the 'problem of refugees' with a definite stopping point, which is the end or reversal of movement. Refugees were also treated as passive individual actors in the displacement cycle that also needed to be protected by states. Displacement and onward mobility were also considered as sources of instability that needed to be reversed. Therefore, the use of the term 'burden' implied that refugees are a drain on receiving states and a security problem for the international community. The root causes of displacement were overlooked, and refugee displacement was treated in a linear cause-effect manner and not much attention was paid to forced movements and responses to these flows from other issues. The term 'burden' has not been explicitly defined anywhere. From its use, it seems to have a negative association with refugee movements.[73]

The word burden has also extended over the years through Declaration on Territorial Asylum and ExCom resolutions to include the post-emergency phase. There is more systemic consideration of the longer-term impact on host states' socio-economic and political situation because of refugee situations. Also, practitioners gradually recognised that the concept of 'burden' needs to be associated not only with the emergency phase but holistically with all stages of the refugee displacement cycle including prevention of and solutions to displacement in territories other than countries of asylum and that these phases are interdependent. The shift from reacting to these displacements to working towards preventing such future displacements also changed the concept of state sovereignty. [74]

[72] ibid
[73] Martin Gottwald (n 71)
[74] ibid

Under the terms of international law, the primary responsibility for protecting and assisting refugees lies with the host countries. This is spelt out in the 1951 Convention and its 1967 Protocol. While regional and international burden-sharing initiatives may be needed to assist host States, this does not diminish their responsibility regarding the refugees on their territory. Burden-sharing has three components: national, regional and international. The latter two components support and complement national responsibilities. Even in situations where regional or international actors participate in burden-sharing activities, there needs to be full recognition of the heavy burden that is placed on host States, particularly during the initial emergency phase of large-scale influxes and refugees or returnees, or where refugee situations are prolonged.[75]

ExCom conclusion number 22 on the Protection of Asylum Seekers in Situations of Large-Scale Influx, explains the need for burden-sharing and provides specific parameters for the implementation thereof. It notes the following rationale for burden-sharing:

- *A mass influx may place unduly heavy burdens on specific countries, and a satisfactory solution could not be achieved without international cooperation.*
- *States should, within the framework of international solidarity and burden-sharing, take all necessary measures to assist, at their request, states that have admitted a mass influx of refugees.*[76]

Mass influx and mass return situations require international solidarity and burden-sharing arrangements to address the humanitarian consequences and to enable the respective countries of asylum or origin to meet their obligations towards these population movements. There is increasing recognition of the extent to which large populations may hinder the development efforts of developing nations. Some of the population concentrations are found in countries that already suffer from weak economies and poor infrastructure, as well as widespread poverty. National and local authorities in these countries are often compelled to divert considerable resources and workforce to deal with issues relating to these

[75] 'Burden-Sharing - Discussion Paper Submitted By Unhcr Fifth Annual Plenary Meeting Of The APC - [2001] ISILYBIHRL 17' <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/17.html> accessed 1 August 2019.
[76] Para IV; ibid

populations, detracting from the pressing demands of their development which is one of the main reasons for the negative attitude surrounding refugee population.[77]

There are many different legal and political instruments that stress the importance of international solidarity, burden-sharing, and responsibility-sharing on refugee-related issues illustrates the commitment to cooperative partnerships which exists within the international community in general. Burden-sharing can be achieved through different ways depending on the nature of the problem and may range from contributions to agency programmes for bilateral assistance, provision of human resources, temporary admission of refugees or their resettlement.[78]

Will the GCR be able to address the existing gap in global refugee protection concerning burden-sharing? According to Meltem Ineli-Ciger, there can be two ways to address this. First, through the eventual adoption of a binding instrument on burden-sharing and second, through the adoption of commonly agreed on principles on how to achieve equitable burden-sharing in the form of soft law. The obstacle behind the adoption of a binding instrument is the fact that very few states are willing to be bound by predetermined criteria for the distribution of burdens. The problem is with soft law is the recommended guidelines or agreed principles on burden-sharing would be non-binding, and states cannot usually be held accountable for their unfulfilled pledges. The GCR does not provide a precise mechanism or ensure adequate compensation to the states hosting and supporting a large number of refugees.[79]

For states which have already been sharing some of the burden of others for hosting or supporting a large number of refugees, the GCR mentions how forums and tools can be used to achieve equitable burden-sharing.[80]

There are three elements in the GCR that are positive: first, solidarity conferences, as ad-hoc burden-sharing settings can allow states to carry out case by case negotiations leaving room for situation

[77] Martin Gottwald (n 71)
[78] ibid
[79] Meltem Ineli-Ciger, 'EJIL: Talk! – Will the Global Compact on Refugees Address the Gap in International Refugee Law Concerning Burden Sharing?' (20 June 2018) <http://www.ejiltalk.org/will-the-global-compact-on-refugees-address-the-gap-in-international-refugee-law-concerning-burden-sharing/> accessed 3 August 2019.
[80] Para 48 GCR

adapted behaviour, and this can increase the odds for burden-sharing. Second, the proposed review function of the Global Refugee Forums(GRF) can encourage states to fulfil their pledges. Third, the Compact envisages the use of relatively new and creative forms of burden-sharing such as: changing national asylum policies into refugee-friendly ones, offering scholarships for refugees and implementing private sponsorship programmes. For instance, Canada's private sponsorship programme which has enabled Canadian citizens to provide the financial, material and personal support to resettle refugees successfully since 1978 is incorporated into the Compact. This shows that GCR has the scope of taking an innovative approach the already existing concept of burden-sharing.[81]

3.2 WHAT IS THE ROLE OF ICESCR IN INTERNATIONAL-COOPERATION WITH RESPECT TO ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE GCR

The GCR in itself is non-binding, however throughout its text, it makes several references to many other binding international treaties[82]. Also, many of the provisions of the GCR strives to achieve for refugees economic, social and cultural rights similar to the ones mentioned in the International Covenant on Economic, Social and Cultural Rights (ICESCR) which is a binding treaty between member-states.

The realisation of economic, social and cultural rights essentially has a territorial scope meaning, it usually takes place on the territory of states. ICESCR is the leading universal treaty for the realisation these rights. State Parties to the ICESCR are bound by it to take all appropriate measures to realise these rights listed in the treaty progressively. However, as states do not exist in isolation and as members of the community of states they are dependent on international cooperation to cope with problems that go beyond national borders.[83] The ICESCR, like the GCR, also refers international-cooperation in achieving the rights set forth in the GCR.

The ICESCR does not mention territory or jurisdiction as defining criteria for its scope and application. Instead, it refers to the international or transnational dimensions for the realisation of economic, social

[81] Ineli-Ciger (n 79).
[82] Para 5 GCR
[83] McInerney SÁ, "Beyond National Borders: States' Human Rights Obligations in International Cooperation by Sigrun Skogly [Intersentia, Antwerpen–Oxford, 2006, 222 Pp, ISBN 90-5095-434-0, €49 (p/Bk)]" (2008) 57 International and Comparative Law Quarterly 482

and cultural rights. Its extraterritorial scope is also derived from the Preamble which contains a reference to *'the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms'*. It does not explicitly mention that the Covenant applies only to people in the States' territory or jurisdiction as in the International Covenant on Civil and Political Rights (ICCPR).[84]

Article 2(1) of the ICESCR contains the umbrella provision on state parties' obligations. It is legally binding on its State parties and reads as:

Each State Party to the present Covenant undertakes to take steps, individually and through ***international assistance and cooperation****, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*

The ICCPR, in Article 2(1) makes a similar demand. However, the tone and nature of the ICCPR are more mandatory and immediate, unlike the ICESCR, which seems more exhortatory and progressive. ICESCR rights are less demanding of states, less legal and more policy-oriented and set aspirational goals rather than having immutable minimum standards.[85]

The obligations imposed on state parties arising from Article 2(1) ICESCR, can be broken down into- the undertaking to take steps, to utilise maximum available resources, achieving the full realisation of rights progressively and doing so by employing all appropriate means.[86]

The term "international cooperation" further appears in Articles 2(1), 11(1&2), 15(4), 22 and 23 within the ICESCR. During the drafting process of the ICESCR, there were questions on the essential elements of "international assistance and cooperation", however, the final text of the treaty, does not clarify this. The treaty also does not clarify what international assistance and cooperation actually are.

[84] ibid
[85] Ben Saul author, 'The International Covenant on Economic, Social and Cultural Rights : Commentary, Cases, and Materials / Ben Saul, David Kinley and Jacqueline Mowbray'; Oxford University Press 2014, pp133-163.
[86] ibid

It also does not say whether its appearance in Article 2(1) makes it an obligation on State parties. During the drafting process, *international assistance and cooperation* as a mandatory obligation were not supported, since it was held that the legal duty would serve as an excuse for countries to evade any obligation based on the inadequacy of international assistance.[87]

There are provisions in other treaties too that refer to international assistance and cooperation in achieving socio-economic rights like the Convention of the Rights of the Child (CRC), Convention on the Rights of Persons with Disabilities (CRPD). It is also to be noted that all these treaties find mention in the GCR too.

In General Comment on the nature of States Parties' obligations under the ICESCR, the Committee on Economic, Social and Cultural Rights (The Committee) has referred to Articles 55 and 56 of the Charter and said that principles of international law and with the other provisions of the ICESCR, international cooperation for development and thus for the realisation of economic, social and cultural rights is an *obligation of all States*. It is particularly incumbent upon those States which are in a position to assist others in this regard.[88]

The Committee does not distinguish between cooperation and assistance. In the book *Beyond National Borders: States' Human Rights Obligations in International Cooperation*, Skogly says that 'international assistance and cooperation' in the meaning of the ICESCR goes beyond providing official development assistance and would include a wide area of subjects on which states cooperate and assist each other.[89]

The requirement of realising economic, social and cultural rights through international assistance and cooperation has different meanings for states in a position to assist as opposed to States that require it. International assistance and cooperation is not a self-standing, independent obligation that is binding upon the states parties at all times and in all circumstances. Article 2(1) does not envision international

[87] Takhmina Karimova, *The Nature and Meaning of 'International Assistance and Cooperation' under the International Covenant on Economic, Social and Cultural Rights* (Oxford University Press 2014) <https://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199685974.001.0001/acprof-9780199685974-chapter-6> accessed 9 August 2019.
[88] General Comment Number 3, para 14
[89] F Coomans, 'The Extraterritorial Scope of the International Covenant on Economic, Social and Cultural Rights in *The Work of the United Nations Committee on Economic, Social and Cultural Rights'* (2011) 11 Human Rights Law Review 1.

assistance and cooperation as a separate obligation but only as one of the possible means to achieve the realisation of the rights guaranteed by the ICESCR.[90]

This is also seen in the wording of Article 4 of Convention on the Rights of the Child which provides that states for the fulfilment of rights enshrined in the Convention are to *'undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation'*. The Convention on the Rights of Persons with Disabilities makes a similar reference. It can be said that the requirement of Article 2(1) on assistance and cooperation is not a substantive legal provision requiring states parties to abstain from performing or perform specific actions. Instead, it creates a legal obligation on *how* all the specific obligations contained in substantive provisions of the Covenant are to be performed.[91]

The agreement to foresee international assistance and cooperation widely can be attributed to the changes of perception concerning economic, social and cultural rights generally. Previously, the obligation of states parties to the ICESCR when looked at through 'maximum available resources' has given an impression that 'compliance is not a significant concern and states wish to comply and will do so if they have the necessary resources'. This is a longstanding perception which has changed over time. The Committee, in a number of general comments, has clarified that individual rights are of immediate effect. The obligation to respect economic, social and cultural rights, similar to civil and political rights, obliges states not to deprive someone of a right he or she already enjoys.[92]

The Committee however, has not been clear on what is meant by international assistance and cooperation and what such reference is meant to serve. The Covenant mentions that the objective of the obligation to cooperate is for the full realisation of human rights. It would, therefore, be logical to suggest that state parties to the ICESCR should come to a collective agreement of the obligations upon them in accordance with Article 2(1). In the absence of any such definition, the Committee on Economic Social and Cultural Rights, has only, referred to state pledges for development cooperation. For international cooperation under the ICESCR to become operational, legal principle and for developed and developing states to assist each other, an institutional framework of implementation is needed. This

[90] Karimova (n 87).
[91] ibid
[92] ibid

could make it possible to assert development assistance as a legal obligation or entitlement towards the State parties to the Covenant. In the Optional Protocol to the ICESCR, Article 14 on international assistance and cooperation, provides for the establishment of a trust fund based on voluntary contributions by member states. Article 31(3)(b) of the Vienna Convention on the Law of Treaties (VCLT) says that all State parties should agree on the interpretation of the treaty. The ICESCR, being a multilateral treaty, donor states represent some of the states, and only their understanding is not sufficient for Article 2(1) to be interpreted universally. The opinion of developing countries also needs to be considered as they are the ones who will be most affected by this.[93]

According to the Committee on General Comment No. 14, *'States parties have a joint and individual responsibility [. . .] to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugee and internally displaced persons'.* The Committee's interpretation of the obligations assumed by states under the ICESCR goes further than the commitments under the GCR, where states resolve to strengthen international-cooperation and burden-sharing for countries hosting refugees and to help to achieve durable solutions.[94]

International humanitarian law is also relevant in this regard because its normative content overlaps with provisions of economic, social and cultural rights, in particular, those that govern basic needs essential to the survival of civilians. When it comes to humanitarian assistance too, Article 1 of the Geneva Convention requires all states to ensure respect for the provision in the Convention under all circumstances. The ICJ in *The Nicaragua case*[95] confirmed that the obligation to respect and ensure respect derived from general principles of international humanitarian law, and with humanitarian assistance, it would imply the duty of all parties to respect and ensure respect for guaranteeing supplies essential for the survival of civilians. In line with this, in case of disasters, the International Law Commission has suggested that instead of 'a right to impose assistance', it was more appropriate to envisage it as a 'right to assist'. The point made was that if an affected State cannot discharge its

[93] ibid

[94] Magdalena Sepúlveda Carmona, 'The Obligations of "International Assistance and Cooperation" under the International Covenant on Economic, Social and Cultural Rights. A Possible Entry Point to a Human Rights-Based Approach to Millennium Development Goal 8' (2009) 13 The International Journal of Human Rights 86.

[95] *Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. the United States of America); Merits*, International Court of Justice (ICJ), 27 June 1986

obligation to provide timely relief to its people in distress, it must have an obligation to seek outside assistance.[96]

The ICESCR also envisages a similar form of 'collective responsibility' for states parties in attaining the fulfilment of rights enshrined in it. However, not all elements of the obligation to cooperate enjoy the same degree of recognition. The drafting history, negotiations, and current debates of the present day all underline the resistance to any implication of a legally binding duty in terms of transfer of resources—the resources that can be essential for ensuring food, water, access to essential healthcare, education, and a decent and secure place to live for the prevalent majority of the world. International law does not clarify what the obligation to international-cooperation and assistance is. Even in cases of severe distress, be it armed conflict, disaster situations, or extreme poverty, if there is a right to assert or to receive assistance and if it has to be directed towards the international community, and or any individual state. [97]

As mentioned, the GCR contains specific economic, social and cultural rights when it talks about burden and responsibility-sharing. Looking at how international cooperation can be implemented through the ICESCR, the same concept can be applied when it comes to the GCR. Additionally, the GCR also mentions that it is in line with international humanitarian law, which is governed by the Geneva Conventions. The GCR was endorsed by an overwhelming majority of states of the UN. Amongst these, are the developed nations of the north, who are signatories to the ICESCR and Geneva Conventions. Therefore, under these, they already bound by the concept of international cooperation. Therefore, when it comes to the GCR, it is merely a reiteration of their already agreed on principles.

Similarly many developing countries are parties to the ICESCR. Through this, they are therefore, already in the position to seek international-cooperation in the realisation of economic, social and cultural rights. Through the GCR too, countries hosting large refugee populations (most of which are again developing countries) have the option of asking for support to better deal with such refugee situations. The principle already exists in international law long before the GCR. The GCR is just a new way for States to be aware of the already existing rights.

[96] Karimova (n 87).
[97] ibid

Therefore, through the GCR and the already existing treaties, states have the right to ask to share their burden through international assistance.

3.3 WHAT ROLE DOES INTERNATIONAL-COOPERATION PLAY AS A PREAMBULAR PROVISION

We now look at the Preamble of the Refugee Convention which also refers to international cooperation and see whether Preambles have any binding effect on the parties to that treaty.

Paragraph 4 of the Preamble says

*considering that the grant of asylum may **place unduly heavy burdens on individual countries** and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot, therefore, be achieved **without international co-operation***

Paragraph 6 says,

*noting that the United Nations High Commissioner for Refugees is charged with the task of supervising international conventions providing for the protection of refugees, and recognizing that the effective co-ordination of measures taken to deal with this problem will depend upon **the co-operation of States with the High Commissioner**.*

We shall refer to Paragraph 4 here as it expressly mentions international cooperation, which is the focus of the discussion here.

To understand what possible obligations this may have on States who have signed this Convention, we first need to know what importance does a preamble have when it comes to international treaties or conventions.

In everyday phrasing, a preamble is simply a preliminary statement that often explains the purpose what it introduces. In the realm of law, a slightly more specific definition mainly links preambles with statements of the motivations and objectives that form part of the legal document they introduce.

Preambles appear in a variety of written legal documents, including contracts, statutes, laws, and constitutions. While legal definitions of the preamble address their placement and traditional content, they do not specify what the extent of their legality is.[98]

In case of a treaty, the preamble defines the purposes and considerations that led the parties to conclude the treaty. The preamble may also incorporate the parties' motivations for concluding the treaty by describing the foundation of their past, present, and future relations in so far as it relates to the treaty. Preambles are thus indicative of the intention of the parties to a treaty.[99]

The preamble has an essential role in the interpretation of treaties. The motives and aims mentioned in a preamble can be used to help to understand and interpret the provisions contained in the operative part of a treaty. The interpretative function of a preamble is also recognized in the VCLT which says, along with the text and other components of a treaty, the preamble may be relied on for interpretative purposes. Article 31 (2) VCLT which states: *'The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes...'*

A preamble can be used as an interpretative tool if the relevant provisions of the preamble are expressed with adequate accuracy. If the provisions are too general, they cannot be used to interpret the treaty. Overall, the preamble can be of importance for establishing the meaning of treaty provisions and clarifying their purpose but, only, if it sets forth the object and purpose of the treaty and expresses the intentions of the contracting parties. The ICJ has stressed on the importance of a preamble's interpretative function in *Guardianship of Infants Convention Case (Netherlands v Sweden),* where it stated that 'The 1902 Convention, as *indicated by its preamble*, was designed to "lay down common provisions to govern the guardianship of infants"[100]

[98] Max H Hulme, 'Preambles in Treaty Interpretation' (2016) 164 University of Pennsylvania Law Review 1282.
[99] Makane Moïse Mbengue, 'Preamble', *Max Planck Encyclopedia of Public International Law [MPEPIL]* (Oxford Public International Law 2006) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1456> accessed 4 August 2019.
[100] Ibid; [1958] ICJ Rep 67

In the Beagle Channel Arbitration[101], the tribunal while referring to Preambles, said:

"Although *Preambles* to treaties do not usually—nor are they intended to—contain provisions or dispositions of substance—(in short they are not operative clauses)—it is nevertheless generally accepted that they may be *relevant and important as guides to the manner in which the Treaty should be interpreted, and in order, as it were, to 'situate' it in respect of its object and purpose."*[102]

The ICJ in the *Territorial and Maritime Dispute between Nicaragua and Colombia* relied on preambular language while making a decision. In this case, Nicaragua sought the Court's definition of a continental shelf boundary that would equally divide the overlapping entitlements of the two countries. The Court rejected Nicaragua's request, under Article 76 of the United Nations Convention on the Law of the Sea (UNCLOS), which set forth specific procedural and informational requirements with which Nicaragua had not complied with. Nicaragua was a party to UNCLOS at the time; however, Colombia was not. This questioned whether Nicaragua's obligations under the treaty applied. The Court referred to the UNCLOS, Preamble and said that it intended to establish *"a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources".* It also stresses that "*the problems of ocean space are closely interrelated and need to be considered as a whole".* The Court said that given the object and purpose of UNCLOS, as stipulated in its Preamble, the fact that Colombia is not a party thereto does not relieve Nicaragua of its obligations under Article 76 of that Convention.[103]

Preambular provisions may also be used to fill gaps in treaties playing a supplementary role. First, the preamble can contain supplementary provisions intended to fill the gaps in the treaty by recalling the general principles of law that inspired the treaty. Such clauses clarifying the will of the parties facilitate the interpretation of the operative part of a treaty. Secondly, the preamble can be used to limit unequivocal treaty provisions by recognizing the application of other sources of international law to matters not regulated by a treaty.

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[101] 52 ILR 132
[102] Mbengue (n 99).
[103] Hulme (n 98).
Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012, p. 624, para 126

However, in international law, preambles are not capable of creating binding legal effects upon parties. Preambular provisions are formulated in general wording and are usually not intended to constitute substantive provisions. As such, preambles contain only instructive clauses and do not create any legal commitment above and beyond the actual text of a treaty. Preambles express the goodwill of the parties, explain their intention to achieve specific aims and may even refer to natural law and justice. Thus, preambles often have a political significance primarily and are concerned with explaining the policy rationale that led to the conclusion of the treaty. The preamble of a treaty may have more legal significance if both the motives and the aims of the treaty are mentioned in more specific terms, as was expressly recognized by the ICJ in South-West Africa cases[104] where the court said that "*Humanitarian considerations may constitute the inspirational basis for rules of law, just as, for instance, the preambular parts of the United Nations Charter constitute the moral and political basis for the specific legal provisions hereafter set out. Such considerations do not, however, in themselves amount to rules of law. All States are interested—have an interest—in such matters. But the existence of an 'interest' does not of itself entail this interest is specifically juridical in character."* Preamble statements may receive a relatively binding legal force if incorporated verbatim by treaty obligations.[105]

As can be derived from the above, the preamble is not binding on states parties to the treaty. When it comes to the Refugee Convention, even though the preamble mentions international cooperation, the text of the convention has not expressly referred to this concept. The preamble can be used to interpret the terms of the convention and seek to achieve them through international cooperation. However, it is not incumbent upon States who will decide what they want to do based on their political will. Therefore, it may prove to be challenging to bind States to cooperate internationally. The GCR builds upon the existing Refugee Convention and pays a lot of stress to this concept. The CRRF, which was piloted in Africa and the Americas, comprised of refugee-hosting States and also developing countries. However, it is not easy to get developed States to the table to implement the same. The States of the Global North have rarely done enough in the way of international cooperation to relive the burden borne by the

[104] Ethiopia v South Africa; Liberia v South Africa, South West Africa/Namibia [1966] ICJ Rep 34 Mbengue (n 99).

[105] ibid.

refugee-hosting States. In fact, in the past few years, they have initiated stricter policies on border control, decreased resettlement quota for refugees and overall are mostly closing their doors to them.

Even if the GCR stresses on international-cooperation, the UN Charters refers to it as does the Preamble of the Refugee Convention, in the absence of a binding law with sanctions for non-compliance, expecting States to follow through with this principle is not quite possible. Perhaps, it might still be possible if the GCR gives way to a new treaty or a protocol to the existing convention and the developed states sign and ratify the same. This, however, is a distant dream.

CHAPTER 4

4.1 MEASURING THE SUCCESS OF THE COMPREHENSIVE REFUGEE RESPONSE FRAMEWORK (CRRF) IN AFRICA AND THE AMERICAS

The CRRF was an annexure to the NY Declaration of 19 September 2016 for Refugees and Migrants. The CRRF lays out a vision for a more predictable and comprehensive response to the refugee crisis. It outlines a partnership framework between donors, international organisations, and host nations to help realise the commitments made under it.[106]

On 20 September 2016, the United Nations Secretary-General and seven Member States co-hosted the Leaders' Summit on Refugees to increase global responsibility-sharing for refugees worldwide and thereby strengthen the international community's capacity to address mass displacement. At the Summit, a geographically diverse group of 52 leaders and senior officials, including 32 heads of state or Government, pledged to increase multilateral humanitarian assistance by approximately $4.5 billion.[107]

The CRRF was initially rolled across eleven countries in Africa and Central America with support from the UNHCR as a way to deliver on their commitments at the Leaders' Summit and better meet the needs of refugees within their borders. The lessons learnt from this project was incorporated into the GCR to help for its better implementation.[108]

The human rights approach and sustainable development emphasised in the GCR is what makes it attractive to developing countries. International solidarity sits at the centre of the Compact, involving a far broader range of stakeholders than has traditionally been the case in refugee protection which includes national and local authorities, international organisations, international financial institutions,

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[106] Global Compact on Refugees platform; http://www.globalcrrf.org/, accessed 9 September 2019

[107] Summary Overview Document Leaders' Summit on Refugees available at https://refugeesmigrants.un.org/sites/default/files/public_summary_document_refugee_summit_final_11-11-2016.pdf [accessed 27 August 2019]

[108] Towards a New Global Compact on Refugees: Early Lessons from East Africa; *International Rescue Committee;* available at https://www.rescue.org/sites/default/files/document/1961/globalcompactearlylessonsandrecsseptember2017final.pdf [accessed 9 August 2019]

regional organisations, regional coordination and partnership mechanisms, civil society partners, faith-based organisations and academia, the private sector, the media, and refugees themselves. Further, the Comprehensive Refugee Response Framework (CRRF), which also forms a part of the Compact, provides a mechanism for the implementation of refugee rights, a strategy to meet specific targets, and a system to measure those outcomes. It strengthens the abilities of host countries to cope with increasing numbers of refugees strengthens their abilities to deal with the protracted crisis.[109]

The refugee situation in Africa is of a protracted kind. For a very long time, most refugees in Africa have been dependent on the care and maintenance programmes of UNHCR. The situation has not improved much despite efforts by host States and UNHCR to provide protection which has been more about crisis management than about addressing – or even recognising – individual needs.[110]

Even with many African countries having ratified international and regional refugee and human rights instruments, the situation of refugees in the continent has hardly changed.

Through the implementation of the CRRF and the GCR's sustainable development approach, African host countries stand a better chance at achieving equitable international cooperation. In the States in Africa that have already rolled out the CRRF, there has been a strengthening in refugee institutions, a growing resilience within refugee communities, refugee integration into host communities, and a general progression in legislation that addresses refugee rights.[111]

A multi-stakeholder approach is needed in developing strategies so that refugees have access to education, health care and employment. The capital needed to bring forth such substantive changes usually lacks in these countries and external investment is essential. These mechanisms for self-reliance can not only positively affect the lives of refugees but can also enable refugees and host communities to foster relationships of reciprocity, as refugees contribute to, and are included in, society.

[109] ibid
[110] Fatima Khan and Cecile Sackeyfio, 'What Promise Does the Global Compact on Refugees Hold for African Refugees?' (2019) 30 International Journal of Refugee Law 696.
[111] ibid

Thirteen States has formally initiated the application of the CRRF in Africa and the Americas.[112] As part of the CRRF, a comprehensive regional response for the Somali refugee situation was launched by the Inter-governmental Authority on Development (IGAD) Special Summit on Durable Solutions for Somali Refugees where in all IGAD countries who host Somali refugees, including Somalia, are developing national action plans contributing to the regional framework to provide better protection and solutions to Somali refugees.[113]

There have been several critical achievements made in Africa through the CRRF. The Republic of Chad was included to the CRRF in May 2018. By June 2018, a significant number of schools located in refugee sites were declared official Chadian schools, enabling refugee children to study alongside Chadian students.[114]

In Djibouti, a new refugee law was adopted in January 2017, which gives refugees access to legal employment, and education, health, and justice services on par with nationals. Refugees have also been allowed to open bank accounts.[115]

In Ethiopia, the enrolment of refugee children in primary schools has increased since the adoption of the CRRF, and in line with the pledges, Ethiopia made at the Leader's Summit. Kenya finalised the United Nations Development Assistance Framework (UNDAF) for 2018-2022, and in it, refugees and stateless persons are integrated as target populations of the plan. Rwanda initiated the verification process of urban and camp-based refugees, which will enable them to gain access to national health insurance and receive refugee ID cards and travel documents. A new Education Response Plan for Refugees and Host Communities in Uganda that ensures all refugee and host-community children and adolescents have access to quality education at all levels. Zambia has developed a new Refugee Act

[112] Belize, Costa Rica, Djibouti, Ethiopia, Guatemala, Honduras, Kenya, Mexico, Panama, Somalia, Uganda, United Republic of Tanzania and Zambia
[113] 'Practical Application of the Comprehensive Refugee Response Framework': Preliminary Progress Update, 8 December 2017, UNHCR, https://www.unhcr.org/uk/5a2eb12b7.pdf [accessed 10 August 2019]
[114] Application of Comprehensive Refugee Responses published by UNHCR. For more detailed information about how the CRRF has been applied to see: http://www.globalcrrf.org/crrf_country/
[115] ibid

that enables the Government to implement a settlement approach, grant refugees rights and access to more services, and also facilitates permanent residency and naturalisation.[116]

In the Americas, building on existing regional cooperation and responsibility-sharing mechanisms which includes the Brazil Plan of Action and the San Jose Action Statement, six States adopted the San Pedro Sula Declaration on 26 October 2017, agreeing to work together to develop and implement a Comprehensive Regional Protection and Solutions Framework (CRPSF) for Central America and Mexico (the MIRPS in its Spanish acronym). In a whole-of-society approach, the MIRPS was developed through government-led consultations together with persons of concern, UN country teams, civil society, the private sector and academia. The following progress has been made under it.[117]

In Belize, a few people with international protection needs have undergone English classes aimed at facilitating their local integration within social and economic spheres. In Costa Rica, refugees have been included as a category in the national registry system, which will allow for improved development of national plans and the response to large influxes. In Guatemala, refugees with official documentation can now access work permits within a week, making it possible for them to seek employment legally. Honduras has led a process to raise awareness and develop the capacity of public officials to develop actions that would encourage greater participation of municipalities within the response to forced displacement. Mexico has incorporated refugees and asylum-seekers within its programme of Unique Population Registry Password (CURP for its acronym in Spanish) which facilitates the issuance of documentation. In Panama, a letter of understanding was signed with a private company to facilitate training and job placement services for an initial group of ninety refugees in Panama City.[118]

As a means of support from development actors and other civil society organisations, the General Assembly of the Organization of American States (OAS) adopted a resolution making specific reference to the MIRPS as a regional cooperation model. As part of the OAS instructs the Committee on Juridical and Political Affairs to organise annual follow-up meetings to monitor the MIRPS. The Inter-American Development Bank is providing technical assistance towards the quantification of MIRPS National Action Plans and their inclusion in national budgets. The Central American Council of Ombudspersons

[116] ibid
[117] ibid
[118] ibid

agreed on a concrete programme of action to support the MIRPS for the years 2018-2020, including joint border monitoring and advocacy campaigns for forcibly displaced persons.[119]

UNHCR published a report in December 2018 which details the progress made under the four objectives of the CRRF. Under the first objective *of easing pressure on the host countries*, donors have recognised the pressure that member states face when hosting a large number of refugees have responded with many concrete funding initiatives which include humanitarian funding and coherent use of such funds. There has been the expansion of existing initiatives in the development sector, and the introduction of modest new funding initiatives from traditional development agencies, to include refugees. However, much of the development funding, primarily through new initiatives, is yet to come into effect and actors, including host governments across all CRRF contexts remain significantly underfunded in meeting both development and humanitarian needs. There has been increased collaboration with private sector investors in some CRRF countries, and an increased focus on private sector approaches in facilitating income opportunities for refugees and host communities.[120]

Since the implementation of the CRRF, there has been the emergence of regional frameworks in the Horn of Africa and Central America in like with the NY Declaration. These identify and address the barriers for refugees to access essential services and also enable countries to build support platforms so that refugees can be self-reliant, have access to legal protection and are included in national systems. In many CRRF countries, governments have improved the economic participation of refugees and undertaken actions to reduce refugees' reliance on humanitarian agencies and improved access to education.[121]

While measuring the progress towards objective three of *expanding access to third-country solutions,* it was seen that the numbers of people resettled are slightly lower when compared to the preceding ten years due to several key resettlement countries reduced their quotas.[122]

[119] ': Preliminary Progress Update, 8 December 2017, UNHCR (n 112)
[120] For full report see: Two-year Progress Assessment of the CRRF Approach: September 2016-September 2018; UNHCR; available at https://www.unhcr.org/5c63ff144.pdf [accessed 10 August 2019]
[121] ibid
[122] ibid

Finally in line with the fourth objective of *supporting conditions in countries of origin for return in safety and dignity*, it has been noted in the report that Member States have continued to support improving conditions in countries of origin to facilitate refugees to return in safety and dignity, with MIRPS countries and IGAD member States prioritising countries of origin at a regional level. There have also been limited voluntary returns since the adoption of the New York Declaration, reflecting the challenging environment for peacebuilding and the long-term engagement required to affect change in countries of origin.[123]

The GCR includes the CRRF in its text and strives towards achieving a number of the same objectives towards burden-sharing. It has been three years since the CRRF has been piloted and it has already made noteworthy progress.

Almost all of the countries that the CRRF has been implemented in is already part of the Refugee Convention and its 67 Protocol. Apart from this, the countries in Africa and South and Central America are also parties to the OAU Convention and the Cartagena Declaration respectively. Under these instruments, they already have specific responsibilities when it comes to burden-sharing. Notably, under the OAU Convention, the of the African Union can share burdens of the number of refugees if one country finds it difficult to continue to grant asylum.[124]

Does already being parties to these international instruments make a difference in how the GCR may be implemented? Despite being parties, there is yet to be a significant improvement in the refugee situation in these countries. Even though they have commitments through these already existing international treaties, the progress has been slow. While implementing the CRRF, there have been positive developments in these countries for refugees. If the objectives outlined in the GCR are adopted with the same enthusiasm, it is likely to have a lot more progress as then there will be the involvement of more countries, especially from the Global North, whose presence will better help in the sharing of burdens and responsibilities.

[123] ibid

[124] Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to the other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international cooperation take appropriate measures to lighten the burden of the Member State granting asylum. (OAU Convention, Article 2(4))

CHAPTER 5

5.1 THE SUCCESS OF MDGS AND SDGS IN ESTIMATING SUCCESS OF THE GCR

The GCR being very new, it is too soon to measure its success. However, to estimate if it has chances of being successful, one can look at the other non-binding agreements that have taken places between States before the GCR. These are the Millennium Development Goals (MDGs) and Sustainable Development Goals (SDGs). These were adopted through General Assembly resolutions by all countries to improve conditions in the world. If one can measure how successful these have been adopted and implemented by member states, then the same can be applied to the GCR as all these are built on states cooperating and with civil society and development organisations to improve conditions in the world for all. The GCR, even though focussed on refugees per se, uses the same principles of implementation.

During the MDG phase, it was recognised that some states face more significant obstacles to achieving the objectives set forth therein and therefore, that wealthier states should provide them with substantive assistance (financial and otherwise). The need to provide such assistance was a crucial underpinning of all MDGs, and it is specifically addressed. Goal 8 of the MDG called for the *'creat[ion] [of] a global partnership for development'*. From this, we can derive that without adequate resources being made available to some poor/underdeveloped countries, it would be impossible for them to meet the MDGs. A global coalition of states, civil society and the private sector was required to achieve the MDGs. In this regard, the full involvement of the human rights movement was also crucial.[125]

The MDGs met with success in the areas of poverty, education, gender equality, child mortality, maternal health, disease, environment and global partnership. Following MDG goal eight which is of assistance between countries, between 2000 and 2014 saw overseas development assistance from rich nations to developing countries being increased by 66%, and in 2013 reached the record figure of $134.8bn.[126]

[125] Magdalena Sepúlveda Carmona, 'The Obligations of "International Assistance and Cooperation" under the International Covenant on Economic, Social and Cultural Rights. A Possible Entry Point to a Human Rights-Based Approach to Millennium Development Goal 8' (2009) 13 The International Journal of Human Rights 86.

[126] For more see Achilleas Galatsidas and Finbarr Sheehy, 'What Have the Millennium Development Goals Achieved?' *The Guardian* (6 July 2015) <https://www.theguardian.com/global-

Following the progress made under the Millennium Development Goals (MDGs), which guided global development efforts in the years 2000-2015, the world's governments endorsed the Sustainable Development Goals (SDGs) for the period 2016- 2030 at the UN General Assembly (GA) in 2015. The SDGs aim to continue the fight against extreme poverty, but also adds the challenges of ensuring more equitable development and environmental sustainability. The SDG agenda is universal and requires the participation of all UN member states. The SDG framework was agreed upon by all UN member states on 25 September 2015 and is also expected to commit other stakeholders, including business and civil society, to the achievement of 17 SDGs and 169 targets spanning the three dimensions of economic, social and environmental development.[127]

The SDGs, like the MDGs, have an overarching objective to lift everyone out of poverty, reduce inequality between and within countries. The most crucial goal of the SDGs is that *'no one [is] left behind'* which is synonymous with the right to equality and that everyone is born equal in dignity and rights and it strives to pay attention to all kinds of vulnerable groups.[128]

In adopting the SDGs, States explicitly reaffirmed their commitment to international law and emphasised that the 2030 Agenda *'is to be implemented in a manner that is consistent with the rights and obligations of States under international law'.* These commitments and obligations have both national and international implications and include duties relating to international assistance and cooperation which is a feature of both international human rights law, as well as a specific goal in the SDGs (SDG17 Partnership for the Goals). To achieve the equality sought by the SDGs, and to ensure that human rights are realised for all, there is an acknowledged obligation on wealthier economies to support poorer ones.[129] This is common between the SDGs and the GCR which also relies heavily on international

development/datablog/2015/jul/06/what-millennium-development-goals-achieved-mdgs> accessed 21 August 2019.
A detailed report of the same can be found at https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf

[127] Jessica Espey, Karolina Walęcik and Martina Kühner, 'Follow-up and Review of the SDGs: Fulfilling Our Commitments' (2015) <http://unsdsn.org/wp-content/uploads/2015/12/151130-SDSN-Follow-up-and-Review-Paper-FINAL-WEB.pdf>.

[128] ibid

[129] Carmel Williams and Paul Hunt, 'Neglecting Human Rights: Accountability, Data and Sustainable Development Goal 3' (2017) 21 The International Journal of Human Rights 1114.

cooperation and burden and responsibility sharing between countries, in order to achieve better solutions to the refugee crisis existing in the world presently.

The follow-up and review architecture of the SDGs is designed as a multi-level process in which the United Nations High-Level Political Forum on Sustainable Development (HLPF) has a central role in overseeing a network of follow-up and review processes at the global level. The HLPF is structured around a four-year cycle. Every year, the HLPF takes place under the United Nations Economic and Social Council (ECOSOC), with an overarching theme and focuses on a different subset of the SDGs. Every four years, the HLPF also takes place under the General Assembly, with a focus on high-level political guidance and implementation for the overall 2030 Agenda and its 17 SDGs.[130]

The annual agenda of the HLPF is structured around Thematic Reviews, during which a subset of SDGs are reviewed in-depth, and Voluntary National Reviews (VNRs) which allow member states to present their progress on the implementation of the 2030 Agenda.[131]

Further vital inputs for the HLPF include reports from regional and sub-regional review processes, an annual progress report on the SDGs and the quadrennial Global Sustainable Development Report. The outcomes of the HLPF under the auspices of ECOSOC include a negotiated ministerial declaration and a factual summary of the discussions by the ECOSOC President. The HLPF is intended to be an inclusive forum. Thus, while reviews are state-led, both the VNRs at the HLPF and the national level should also include civil society, the private sector and other relevant stakeholders or organisations. Further opportunities for participation include the fact that major groups and other relevant stakeholders to report on their contribution to the implementation of the 2030 Agenda.[132]

To achieve success in the SDGs, the member states of the UN have recognised that climate change presents the biggest threat to its development. Therefore, collectively, the three post-2015 agendas for

[130] Eleni Dellas and others, 'Realising Synergies in Follow-up and Review: The Role of Local and Regional Governments and Their Partners in the Follow-up and Review of Global Sustainability Agendas' (Adelphi consult GmbH and Cities Alliance 2018) <https://www.saferspaces.org.za/uploads/files/adelphi_Cities-Alliance_Report_Synergies_Follow-up_and_Review.pdf>.
[131] ibid
[132] ibid

action – the Paris Agreement[133], the 2030 Agenda for Sustainable Development and the Sendai Framework for Disaster Risk Reduction[134] - provide the foundation for sustainable, low-carbon and resilient development under a changing climate.[135]

The SDG Index and Dashboard determine the global achievement of the goals, a scale from 0 to 100, where 0 is the worst level of implementation and 100 means full compliance with the targets. In this ranking, Sweden (84.5), Denmark (83.9), Norway (82.3) and Finland (81) top the leading positions, mainly due to their excellent performance in social and economic issues, although the data show that they must still work on the transition to a low carbon economy. By contrast, African countries like the Central African Republic (26.1), Liberia (30.5), the Democratic Republic of the Congo (31.3) or Niger (31.4) are in the queue. They share lacks in all aspects, especially poverty, hunger, education, and peace and justice. For its part, Spain ranks 30th with 72.2; Chile is 42nd with 67.2; Mexico is 56th with 63.4; Peru is 81st with 58.4 and Colombia is 91st (57.2). In addition, countries like the United States is in the 25th place with 72.7; Canada is 13th with 76.8; Australia is 20th with 74.5, and the United Kingdom is 10th with 78.1.[136]

In September 2019, will be the first time since the establishment of the 2030 Agenda that the heads of States will meet to discuss the advances, opportunities and lessons learned in making this ambitious global framework a reality. This is part of the accountability mechanism for the SDG 2030 Agenda.[137]

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[133] The Paris Agreement builds upon the UN Framework Convention on Climate Change (UNFCCC) and for the first time brings all nations into a common cause to undertake ambitious efforts to combat climate change and adapt to its effects, with enhanced support to assist developing countries to do so. As such, it charts a new course in the global climate effort.

[134] The Sendai Framework for Disaster Risk Reduction 2015-2030 (Sendai Framework) is the first significant agreement of the post-2015 development agenda, with seven targets and four priorities for action. It was endorsed by the UN General Assembly following the 2015 Third UN World Conference on Disaster Risk Reduction (WCDRR). The Sendai Framework is a 15-year, voluntary, non-binding agreement which recognises that the State has the primary role in reducing disaster risk but that responsibility should be shared with other stakeholders including local government, the private sector and other stakeholders.

[135] Eleni Dellas (n 130)

[136] Report of the Bertelsmann business group available at https://www.activesustainability.com/sustainable-development/are-countries-achieving-the-sustainable-development-goals/

[137] IISD's SDG Knowledge Hub, 'Guest Article: Taking Stock of SDG Implementation: Good Practices and Lessons Learned for the Next Cycle | SDG Knowledge Hub | IISD' <https://sdg.iisd.org:443/commentary/guest-articles/taking-stock-of-sdg-implementation-good-practices-and-lessons-learned-for-the-next-cycle/> accessed 22 August 2019.

The SDG 2030 agenda is also a non-binding agreement between States. However, in the four years since the General Assembly adopted it, many states have worked towards achieving the goals set forth in this. The SDGs are aimed at a better world and aimed at protecting and building a better future for everyone. The mechanism for monitoring progress of SDGs follows an approach that is similar to the accountability mechanism in the GCR. Another similarity is the involvement of a multi-stakeholder approach including civil society and development actors.

In the age of non-binding documents, the commitment of States towards implementing the SDGs and previously the MDGs, throws some light on what they may do when it comes to implementing other non-binding agreements like the GCR. It leaves some hope that States end up having the same political will that they do towards these SDGs, and when it comes to *leaving no one behind,* it includes refugees.

CHAPTER 6

6.1 WHAT HAS THE GCR PLANNED FOR THE FUTURE

The GCR represents principles agreed upon by the international community towards strengthened solidarity with refugees and affected host countries. This kind of soft law instrument may help to overcome the traditional boundaries associated with international law in terms of allocating accountability to a broader set of actors, including the private sector, international organisations, and non-governmental organisations.[138]

The aim of the GCR is to develop a 'predictable and equitable burden and responsibility- sharing among all Member States (para 3). This is beyond 'international cooperation' mentioned in the Preamble of the Refugee Convention and other declarations of the General Assembly. Para 50 the GCR says that it does not impose any *additional burdens* on host countries, and at the same time, also says that support will be provided upon request of the host country. The CRRF sets out a range of different standards, recommendations, best practices and others for both State and non-State actors. These are non-binding, but such principles and standards may nonetheless play an important role in governing State behaviour. The GCR making several references to existing human rights instruments and international law mechanisms aims to fill the gap that exists in the area of refugee law[139].

The general assumption about soft law instruments is that when States are not legally bound by something, they respond to the situation better, are more willing to make commitments and are more generally flexible. The existence of non-binding norms, and the consensus that emerges as States begin to comply with them, often leads to the development of legally binding norms. Soft law constitutes a primary reference point, but there is no prospect of it being codified into hard law. States may prefer the more flexible language of soft law instruments in order to make room for political manoeuvring. The GCR is ideal in this regard as States in the past have not been willing to make binding commitments when it comes to refugees. [140]

[138] Thomas Gammeltoft-Hansen (n 16)
[139] ibid
[140] ibid

The GCR foresees a global mechanism for mobilising international cooperation. UNHCR, together with one or more States, is to organise a Global Refugee Forum (GRF) in Geneva at ministerial level in 2019 and every four years after that unless otherwise agreed by the GA. In the GRFs, all UN members and relevant stakeholders will be invited to announce concrete and mutually reinforcing pledges to support the achievement of the goals of the GCR and consider opportunities, challenges and ways in which burden-sharing can be enhanced. In the first GRF, which will take place in 2019, States are expected to make formal burden-sharing pledges and contributions. This is a global mechanism for mobilising international cooperation. The GRFs will enable states to decide what their contributions should be for burden-sharing and will also provide a setting to review fulfilment of pledges made by states in previous forums. UNHCR is to establish a mechanism for the tracking of pledges by states and other stakeholders and will report on the realisation of pledges and contributions. [141]

Aside from GRF, the GCR also envisages the establishment of regional or country-specific mechanisms in case of a large-scale influx of refugees where the response capacity of a host state is likely to be overwhelmed. The participation of various stakeholders including national and local authorities, international organisations, NGOs and refugees is key to implementing these. States that are most affected by a specific displacement will be able to request a Support Platform. This platform is to be initiated by UNHCR with the request of host states. The GCR recognises that to achieve effective burden sharing, mobilisation of timely, predictable and adequate public and private funding; a multi-stakeholder and partnership approach; and timely collection, analysis and dissemination of data are necessary.[142]

The GCR builds on an established legal framework that was affirmed in the NY Declaration. which stressed that the principle of *non-refoulement* must be upheld while recognising States' interest in border control and that says measures at the border must be 'without prejudice to the right to seek asylum' (para 27). In the GCR the Refugee Convention and Protocol are seen as 'the foundation of the international refugee protection regime' (para 65), and references to international human rights law and international humanitarian law are a clear commitment to 'ensure protection for all who need it' (para

[141] Paras 17-19; Meltem Ineli-Ciger (n 36)
[142] ibid

66). It remains to be seen whether that will be sufficient to fill any protection gaps faced by groups or individuals who may be displaced.[143]

The GCR draws attention away from the humanitarian assistance model, and onto the development assistance model to address the obstacles faced by refugees when it comes to access to healthcare, accommodation and in their contribution to the community. This is important, because while 'humanitarian assistance' engages international donors and organisations in what are mainly short-term, self-contained, life-saving operations, with a focus on providing food, water, medication, and shelter, 'development assistance' is long term and involves national and local governments, aims to reduce poverty through job creation, education, and the development of health and related infrastructure. Low and middle-income countries host majority of the world's displaced people, and what is needed, and what the GCR aspires to do, is to find new ways in which to bring together donors, humanitarian and development agencies, the private sector, civil society, and refugees themselves in order to achieve sustainable outcomes. GCR is aimed at bridging the humanitarian-development divide, in expanding the constituency of 'stakeholders', in emphasising resilience and self-reliance for refugees and host communities, and in maintaining a rights focus. Whether it will work will depend on the willingness of the international community at large, but non-binding agreements have c worked in the past.[144] The SDGs have already achieved this.

For States that have not ratified the Refugee Convention, there is often a complex relationship with international refugee law. They engage in ongoing normative interpretation and, in some cases, closely mirror international norms as a matter of domestic law. Just as several non-party States are members of the Executive Committee of UNHCR, the GCR may assist in the creation of a nodal point for linking important refugee-hosting States to the international refugee protection regime.[145]

GCR allows putting in place robust arrangements and commitments to consistent and enhanced sharing of responsibilities. These would encourage States to see collaborative approaches as the most effective way to address refugee displacement challenges. The GCR will require political commitment

[143] Guy S Goodwin-Gill, 'The Global Compacts and the Future of Refugee and Migrant Protection in the Asia Pacific Region' (2019) 30 International Journal of Refugee Law 674.
[144] ibid.
[145] Gammeltoft-Hansen (n 16).

at the highest level, leadership, and a clearer longer-term vision than that evident in some current restrictive and inward-looking national responses today. Large-scale forced displacement does not have any prospect of ending in the immediate future and unilateralist measures would not be productive. Reinforced arrangements for action, in line with principles of international-cooperation and responsibility-sharing, are in the interest of all States. States should ideally use the opportunity created by the world's increased focus on refugee matters to put in place the framework needed to manage ensuing challenges now and in the future.[146] The GCR provides this. It can act as a road-map to help States form new policies which will help them better deal with refugee situations and with support from one another work towards their protection needs.

[146] Volker Türk (n 50)

CONCLUSION

Solidarity in the refugee regime is to improve the availability and quality of protection available. It is one of the principles that underline UNHCR's efforts to promote international-cooperation. It is complementary to States' responsibilities. It is also a means to enhance refugee protection and prospects for durable solutions. Arrangements for international-cooperation needs to be guided by principles of humanity and dignity in line with international refugee and human rights law. The primary responsibility for refugees lies with the host country. It also lies with countries of origin to govern in a way that protects the rights of displaced people and to improve conditions for safe return. The responsibility also lies with the international community to demonstrate solidarity by helping to shoulder these responsibilities in a consistent and effective way. Civil society organizations and other communities also often make meaningful contributions to improve the state of the world's refugees. While UNHCR in the past has consistently stressed on this principle, including having a ministerial meeting in December 2011 where States made pledges to help the refugee-hosting countries, there has been no concrete set of principles guiding States to do this.[147] Through the GCR, UNHCR has made an attempt to put these principles together which will guide States to better understand their humanitarian responsibilities and make effective contribution to the refugee crisis.

The GCR, if implemented collectively by all states, would play an essential role in improving the protection situation of the refugees that exist in the world today. There would be access to work, to better healthcare, adequate documentation and also better durable solutions, which includes the new complimentary access to third-country solutions. Using it as reference, state parties can reinforce their collective efforts in making sure the GCR achieves its purpose.

As has been seen from the pilot implementation of the CRRF, many countries have designed new laws or made arrangements so that refugees have better access to livelihood opportunities, to education and also to bank accounts and these schemes have been fairly successful. Even though these countries

[147] 'The State of the World's Refugees 2012: In Search of Solidarity', United Nations High Commissioner for Refugees, <https://www.unhcr.org/publications/sowr/4fc5ceca9/state-worlds-refugees-2012-search-solidarity.html> accessed 18 August 2019.

have regional mechanisms in place, through the GCR, there has been new developments which were not so visible before.

The GCR has a human-rights based approach which may help in the facilitation of already existing international standards. The GCR has prospects of serving a norm-filling role as states comply with existing standards without having to infringe on their sovereignty by ratifying a binding international instrument, thus indirectly contributing to the development of international law. If states amend national policies, the Compact as a soft law instrument may lead to the progressive development of binding international refugee law. This effect would be of importance particularly for refugees located in those countries who are not parties to the Refugee Convention and therefore are not subject to an international obligation to provide refugees access to economic, social and cultural.[148]

States can also at any time withdraw their policy amendments due to internal policy change or lack of international support mechanism. The Compact, being non-binding, there are no repercussions for States if this happens. Therefore there is a lack of stability and predictability. For the Compact to achieve any future normative impact, as well as practical developments to the benefit of refugees, it is required that states implement all the measures set out in the CRRF and Plan of Action and do not back out. As the realisation of rights of refugees in the GCR is dependent on financial, technical and material contributions from richer states, any future development is ultimately dependent on future financial as well as normative responsibility sharing.[149]

As previously mentioned, it is the hope of UNHCR representatives that the GCR will lead to the development of a future binding law because of its intention for a norm-creating and norm-filling potential despite being a soft law. The GCR draws on the existing legal framework in the international refugee regime, of which the cornerstone is the Refugee Convention and its Protocol. Through the NY Declaration which gave birth to the GCR, the General Assembly also called on the Member States to ratify these instruments[150]. This constant reiteration, as well as explicit mention of human rights

[148] Linnéa Roslund, "Reforming Refugee Protection: What Role Can a "Compact" Play in the Development of Future International Refugee Law?' (Master Thesis, Lund University 2018) <http://lup.lub.lu.se/student-papers/record/8955277> accessed 25 August 2019.
[149] Ibid
[150] Para 38 NY Declaration

instruments in the text of the Compact, may motivate States to try to implement the features of the GCR even if they do not become parties to the Refugee Convention.

We have previously discussed the presence of binding international norms in the GCR with specific reference to ICESCR. Most of the objectives which the GCR seeks to achieve centre around economic, social and cultural rights. These rights as seen are meant to be achieved through progressive realization and are not immediately incumbent on State parties. There are not many civil and political rights in the GCR which are more of an immediate nature. Therefore, it all depends on the political will of States on how or if at all they want to implement these provisions and the current Government structures in these states.

The GCR also refers to the principle of *non-refoulment*, which is the cardinal principle of international refugee protection. The GCR does set some high reaching ambitions and targets; however, looking at past experiences when it comes to refugees, after the passage of a certain amount of time, the world forgets about them. From Alan Kurdi, the Syrian child whose body was found on the shores of the Mediterranean to the Rohingya crisis which happened in 2012 and subsequently several times afterwards, initially caused a dramatic upturn in the international concern over the refugee crisis, but have been forgotten over time. The civil society, international human rights organisations, created pressure; however, it did little to change how States dealt with it. Millions of refugees arriving through sea are continued denial access to the shore, so many of them have been sent back to their countries non-voluntarily, the fear of persecution remaining. Even after all the uproar created when the world could see the plight of refugees after Alan Kurdi, the United States changed its policy under the new administration to make stricter border policies, change resettlement quota and also reduce funding to UNHCR.

The situation is that of a paradox. In case the GCR was binding, States would not have agreed to sign it as it would have restricted their sovereignty. On the other hand, the fact that it is non-binding, there is no strict way to hold states accountable and they will continue implement policies that suit them. The GCR was created with the good intention of bringing these powerful states to the table and have them make an effective contribution to the refugee crisis existing in the world, however, as it is still very new

and time will tell if it can be successful. Of the international treaties mentioned in the GCR- every one of them lacks membership of all States. Therefore, it is still questionable whether these States will contribute effectively to implement the GCR through its linkage to the already binding treaties it contains. For the GCR to be successful, UNHCR has to make continuous efforts and through the GRF consistently encourage pledges and commitments. A a large part of whether the GCR will be successful is incumbent what role UNHCR plays. UNHCR has high hopes from it however, whether it will be effective, can only be told with the passage of time. One can only hope that States continue to keep in mind the very precarious situation in the world today and contribute effectively because of their humanitarian nature.

As rightly said by author Dina Nayeri, *"It is the obligation of every person born in a safer room to open the door when someone in danger knocks."*

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