

Reflections on the significance of the New York Declaration on Refugees and Migrants for the Asia Pacific region

Asia Pacific Refugee Rights Network

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Introduction

1. The adoption of the New York Declaration on Refugees and Migrants (New York Declaration) on 19 September 2016 by all 193 Member States of the United Nations General Assembly represents a significant opportunity for the international community to address the shortcomings in refugee protection, particularly with respect to establishing more equitable and predictable responses to large-scale refugee movements and protracted refugee situations.¹
2. The Asia Pacific Refugee Rights Network (APRRN) is committed to working with states, UN-HCR, civil society organisations and other relevant stakeholders to convert the commitments made in the New York Declaration and its accompanying Comprehensive Refugee Response Framework (CRRF) into meaningful protection gains for refugees in the Asia Pacific region.
3. This brief reflections paper considers the significance and application of the New York Declaration for the Asia Pacific region, and looks at some of the preliminary issues, concerns and opportunities that should be taken into account in the ongoing development and implementation of a Global Compact on Refugees (GCR) and any interim application of the of the CRRF in the region.

The New York Declaration, including the CRRF

4. APRRN considers the adoption of the New York Declaration, including the CRRF, by all UN General Assembly Member States, including all states in the Asia Pacific region, a significant opportunity for the advancement of refugee rights both universally and in the Asia Pacific region.
5. Although the text is non-binding, the New York Declaration marks a commitment by states to a normative framework for more effective and coordinated responses to refugee issues, as well as other issues relating to forced migration. This commitment has added significance in the Asia Pacific region, given the number of states in the region that are not parties to the 1951 Refugee Convention or its 1967 Protocol.
6. Under the New York Declaration, states have not only reaffirmed the 1951 Refugee Convention and its 1967 Protocol as the ‘foundation of the international refugee protection regime’, but also committed to the development of ‘a more equitable sharing of the burden and responsibility for hosting and supporting the world’s refugees’.²
7. This commitment is important because effective and predictable protection for refugees in large-scale situations will never be achieved unless states and other actors develop and agree upon new ways to cooperate with one another and share responsibility for providing such protection.

¹ *New York Declaration for Refugees and Migrants*, UNGOAR, 71st sess, Agenda items 13 and 117, UN Doc A/RES/71/1 (3 October 2016) (‘New York Declaration’) <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/1&=E%20>.

² *Ibid* [11], [68].

8. APRRN broadly supports the commitments made by the international community in the New York Declaration, particularly with respect to implementing a whole-of-society approach to refugee issues, as well as the commitments to ease pressures on host countries, enhance refugee self-reliance, expand access to third-country solutions, and support conditions in countries of origin for return in safety and dignity.³
9. These commitments, if implemented in compliance with international human rights instruments and in a true spirit of enhancing refugee protection through greater international cooperation, could amount to much needed reform in the area of refugee protection.
10. At the same time, APRRN remains concerned about the challenges posed in translating the principled commitments made in the New York Declaration into protection gains on the ground. APRRN is also concerned about some of the language included and omitted from the text of the New York Declaration, including the CRRF, and believes that the development of the GCR in 2017 and 2018 should be seen as an opportunity to build upon the potential of the CRRF, ensuring the implementation of firm commitments from states with regards to refugee protection and enlivening the broader New York Declaration promises of a whole-of-society approach and more equitable and predictable responsibility-sharing.

The Asia Pacific Context

20. The first attempt to really apply a comprehensive refugee response to a large-scale refugee situation in the modern refugee regime took place in the Asia Pacific region. The Comprehensive Plan of Action for Indochinese Refugees (CPA), which was implemented under two major arrangements developed in 1979 and 1989 respectively (and got its name from the latter arrangement), aimed to develop a large-scale coordinated response to the mass number of Vietnamese, Cambodian and Laotian refugees fleeing their homelands at this time. The CPA proposed the balancing of a suite of solutions, whereby states of first asylum within the region offered temporary protection in return for states outside the region offering long-term resettlement.⁴ While the CPA was by no means perfect,⁵ it did secure protection from *refoulement* for refugees in countries of first asylum, as well as open up substantially more resettlement opportunities than perhaps would have been the case otherwise.⁶ The CPA also demonstrated that greater responsibility sharing on refugee issues is indeed possible in the Asia Pacific region.
21. The legacy of the CPA has not been entirely forgotten in the region. At the New York Summit, the Government of Cambodia expressed its gratitude for the international assistance that was provided

³ UNHCR, 'Towards a global compact on refugees: a roadmap' (17 May 2017) <<http://www.unhcr.org/58e625aa7.pdf>> [9] - [10].

⁴ See *Office of the United Nations High Commissioner for Refugees, International Conference on Indo-Chinese Refugees, Report of the Secretary-General*, UN GAOR, 44th sess, Provisional agenda item III(c), UN Doc A/44/523 (22 September 1989).

⁵ For criticisms of the CPA, see W C Robinson, 'The Comprehensive Plan of Action for Indochinese Refugees, 1989 - 1997: Sharing the Burden and Passing the Buck' (2004) 17 *Journal of Refugee Studies* 319; Richard Towle, 'Processes and Critiques of the Indo-Chinese Comprehensive Plan of Action: An Instrument of International Burden-Sharing?' (2006) 18 *International Journal of Refugee Law* 537; Arthur C Helton, 'The Comprehensive Plan of Action for Indo-Chinese Refugees: An Experiment in Refugee Protection and Control' (1990) 8 *New York Law School Journal of Human Rights* 111.

⁶ See Penelope Mathew and Tristan Harley, *Refugees, Regionalism and Responsibility* (Edward Elgar, 2016) 151.

to its citizens at this time under the 1979 arrangement.⁷ Unfortunately, the CPA also entrenched the view among many states in the Southeast Asia region that they are not required to offer anything other than temporary protection to refugees.⁸ This position is still commonplace, despite several countries experiencing significant economic growth since the time of the CPA.⁹ The CPA also failed to bring about long-term improvements in the regional architecture in place to support refugees.

22. At the time of writing, the Asia Pacific region hosts some of the world's most protracted refugee situations, including the decades-long displacement of refugees from Afghanistan in Pakistan and Iran, of refugees from Myanmar in Thailand, Bangladesh and other parts of Southeast Asia, and of refugees from Sri Lanka in India. The region is also characterised by the limited provision of livelihood opportunities for refugees. While states in the region have informally hosted millions of refugees over several decades, most refugees in the Asia Pacific region are not accorded work rights or access to healthcare and education.¹⁰ The lack of status for many refugees in the region exposes them to many human rights violations, including incidences of human trafficking.¹¹
23. There have been some notable developments with respect to refugees in recent years in the Asia Pacific region. These include the adoption of the Association of Southeast Asian Nations (ASEAN) Human Rights Declaration in 2012,¹² the development of the Jakarta Declaration on Addressing Irregular Movement of Persons in 2013,¹³ and the endorsement of the Bali Process Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime in March 2016.¹⁴
24. These developments, albeit non-binding on states, mark an increasing recognition in the Asia Pacific region of the rights of refugees and the need for durable solutions. In particular, the Bali Declaration acknowledges 'the importance of a comprehensive approach to managing irregular migration by land, air and sea, including victim-centered and protection-sensitive strategies'.¹⁵ It also recognises that 'the principle of *non-refoulement* should be strictly respected',¹⁶ and that there is a 'need for

⁷ *High-Level Plenary Meeting on Addressing Large Movements of Refugees and Migrants*, UNGOAR, 71st sess, Agenda items 13 and 117, UN Doc A/RES/PV.6 B (19 September, 2016) 6.

⁸ See Sara E Davies, *Legitimising Rejection: International Refugee Law in Southeast Asia* (Martinus Nijhoff, 2008) 18.

⁹ See the comments made by Singapore at the New York Summit, discussed below, for example.

¹⁰ See, for example, Jesuit Refugee Service Asia Pacific, *The Search: Protection Space in Malaysia, Thailand, Indonesia, Cambodia and the Philippines* (JRS Asia Pacific, 2012); also Mathew and Harley, above n 6, 49.

¹¹ *Ibid.*

¹² *ASEAN Human Rights Declaration* (adopted by the Heads of State/ Government of ASEAN Member States at Phnom Penh, Cambodia, 18 November 2012).

¹³ *Jakarta Declaration on Addressing Irregular Movement of Persons* (Jakarta, 20 August 2013) <<http://www.refworld.org/pdfid/530db94f4.pdf>>.

¹⁴ *Bali Process Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime* (adopted at the Sixth Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, 23 March 2016) <<http://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Declaration%20on%20People%20Smuggling%20Trafficking%20in%20Persons%20and%20Related%20Transnational%20Crime%202016%20%20281%2029.pdf>> ('Bali Declaration').

¹⁵ *Ibid* [5].

¹⁶ *Ibid.*

comprehensive and long-term solutions for mixed migration flows, which by definition can include refugees and irregular migrants'.¹⁷

25. There has also been broader interest among states in other areas of forced migration in the Asia Pacific region. This interest is primarily seen in forums such as ASEAN and the Bali Process, as well as the ratification of regional legislative instruments such as the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, which entered into force in six Southeast Asian countries in March 2017.¹⁸ Additionally, it can also be identified in Asia Pacific states' interest in the process relating to the development of the Global Compact for Safe, Orderly and Regular Migration (GCM), which is called for in Annex II of the New York Declaration.¹⁹
26. All of these developments and forums present new opportunities for advocacy and engagement on refugee protection issues in the region. This advocacy and engagement is vital given the stark challenges facing refugees in the region.
27. Currently, the regional architecture in place for ensuring the protection of refugees in the Asia Pacific region still remains relatively weak. The Asia Pacific region, along with the Middle East, has the smallest percentage of states parties to the 1951 Refugee Convention and the 1967 Protocol.²⁰ Significantly, many Asia Pacific states which host substantial numbers of refugees, such as Bangladesh, India, Malaysia, Pakistan and Thailand, are not parties to either the Refugee Convention or the Protocol. The differing levels of legal commitments among states in the region, as a result of the absence of widespread ratification of the 1951 Refugee Convention, has also undermined some opportunities for international cooperation on refugee issues.²¹ Further, unlike some other regions in the world, there is no regional body in the Asia Pacific region mandated with ensuring rights protection for asylum seekers and refugees.
28. According to UNHCR's 2017 Global Update, there are currently more than 9.5 million people of concern to UNHCR in the Asia Pacific region, including roughly 3.7 million refugees, 2.4 million internally displaced people and 1.6 million stateless people.²² While the Asia Pacific region used to host the largest numbers of refugees in the world up until 2013,²³ the rapid growth of the Syrian refugee crisis has meant that the total persons of concern to UNHCR in the Asia Pacific region

¹⁷ Ibid [9].

¹⁸ *Convention Against Trafficking in Persons, Especially Women and Children*, opened for signature 21 November 2015, ASEAN (entered into force 8 March 2017).

¹⁹ New York Declaration, above n 1, Annex II: Towards a global compact for safe, orderly and regular migration.

²⁰ Only nineteen states in the Asia Pacific region are parties to the Refugee Convention and/or the Refugee Protocol. These countries are Afghanistan, Australia, Cambodia, China, Fiji, Japan, Kazakhstan, Kyrgyzstan, Nauru, New Zealand, Papua New Guinea, Philippines, Samoa, Solomon Islands, South Korea, Tajikistan, Timor Leste, Turkmenistan, and Tuvalu.

²¹ See for example, *Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff 106 of 2011 v Minister for Immigration and Citizenship* (2011) 244 CLR 144. This case considers the *Arrangement between the Government and Australia and the Government of Malaysia on Transfer and Resettlement* (signed 25 July 2011).

²² UNHCR, *Global Appeal Update: 2017* (2016) <http://reporting.unhcr.org/sites/default/files/ga2017/pdf/11_Asia_-_Summary.pdf> 54.

²³ UNHCR, *Global Trends 2013: War's Human Cost* (2014) <<http://www.unhcr.org/en-us/statistics/country/5399a14f9/unhcr-global-trends-2013.html>> 12.

- now amounts to only 15 per cent of the global demographic,²⁴ even though there has been an increase of almost two million persons of concern to UNHCR in the Asia Pacific region since 2013.²⁵
29. This change in global refugee needs has had significant consequences for the Asia Pacific region, by way of decreasing financial support and resettlement places for refugees, as well as a decrease in UNHCR's presence in the region. For example, in 2017, UNHCR's forecasted budget for the Asia Pacific region is \$545 million USD, down from \$671 million USD in 2016.²⁶ As of 22 May 2017, UNHCR has only received 21% of its forecasted budgeting needs for the Asia Pacific region.²⁷
 30. Further, out of all the pledges that were made by states to support refugees (in countries other than their own) at the Leaders' Summit on Refugees that took place the day after the adoption of the New York Declaration (known as 'the Obama Summit'), almost all were directed towards addressing and financing refugee movements in Europe, the Middle East and Africa. The only state from outside the Asia Pacific region that made a pledge to assist refugees in the Asia Pacific region specifically was Saudi Arabia, which pledged \$50 million to 'support Rohingya refugees in Indonesia through UN agencies and International NGOs', as well as \$30 million 'to Afghan refugees in Pakistan through UN agencies and International NGOs'.²⁸
 31. APRRN believes that in order to address the challenges relating to the implementation and application of the CRRF and the GCR in the Asia Pacific region, it is important to understand not only the political, legal and cultural complexities that exist in the region relating to refugee rights, but also the implications of this fundamental shift in global priorities.

Asia Pacific states' engagement with the New York Declaration, including the CRRF

32. So far, based on the initial comments made by Asia Pacific states at the New York Summit and the pledges made at the Obama Summit, it appears that Asia Pacific states' interest and engagement with the New York Declaration, including the CRRF, has been mixed. On the one hand, Japan pledged one of the largest financial donations among all UN Member States, \$2.8 billion between 2016-2018, to assist refugees and migrants.²⁹ It also committed to resettle 150 Syrian refugees over a five year period.³⁰ Thailand, while not pledging any financial support, agreed to establish a new screening mechanism to identify refugees, as well as develop skills training and education programs for certain refugee groups.³¹
33. On the other hand, only five other states from the Asia Pacific region made pledges at the Obama Summit (Australia, Bangladesh, China, Pakistan and Korea), and many of these pledges simply restated commitments that they had already made previously. Australia's pledge to 'participate in the

²⁴ See UNHCR, Populations (19 May 2016) <<http://reporting.unhcr.org/population>>.

²⁵ Ibid.

²⁶ UNHCR, Operations: Asia and the Pacific (22 May 2017) <<http://reporting.unhcr.org/node/29>>.

²⁷ Ibid.

²⁸ United Nations, *Summary Overview Document: Leaders' Summit on Refugees* (10 November 2016) <https://refugeesmigrants.un.org/sites/default/files/public_summary_document_refugee_summit_final_11-11-2016.pdf>.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

United States-led program to resettle Central American refugees³² was disingenuous, given that this commitment now appears conditioned upon the United States' agreement to resettle some of the thousands of refugees that Australia has kept languishing in indefinite offshore detention.³³ Such a commitment is not in keeping with the primary aim of the New York Declaration, namely to share responsibility for refugees in a 'humane, sensitive, compassionate and people-centred manner'.³⁴

34. At the New York Summit, Singapore's welcoming of the fact that 'the New York Declaration affirms that the commitments undertaken should take into account differing national realities, capacities and levels of development, and should respect national policies and priorities, as stated in paragraph 21 of the Declaration' was also cause for concern.³⁵ Given that Singapore is not a party to the 1951 Refugee Convention or its 1967 Protocol, and did not participate or make a pledge at the Obama Summit, this focus on the differentiated capacity element of the New York Declaration appears to be used as a justification for avoiding a genuine commitment to the equitable sharing of responsibility on refugee issues. This is particularly worrying given that Singapore, according to the World Bank, ranked 10th in GDP in 2015,³⁶ and the US places Singapore as high as 5th globally in 2017.³⁷ If such a position is replicated by other states, the potential of the New York Declaration to achieve meaningful gains for refugees will be seriously jeopardised.
35. To address the issue of differentiated capacity, APRRN believes that two approaches should be taken. First, there needs to be a more practical method in place to assess states' existing capacity and build on this to develop the capacity necessary to ensure protection for refugees. This is a long-term sustainable approach that requires the provision of proper support and resourcing to national and local service providers from local, national, regional, and international actors among states, institutions and donors. Second, there needs to be a more rigorous method to measure the equitable sharing of responsibility for refugee protection among states. This measurement can enable more effective responses and evaluation of states' commitments to responsibility-sharing in the short term, as well as provide the basis for more formal mechanisms which apportion and allocate the responsibility of hosting, financing and resourcing refugee protection in the longer term.
36. For both of the above proposals, the measurement of capacity should address not only economic capacity (determined by, for example, GDP per capita), but also other factors such as population size and density, and the quality of environmental infrastructure.³⁸ It should also consider factors relevant to refugees specifically, such as the capacity of states to implement refugee status determination and high-quality reception, assistance, and integration with a view towards solutions. This

³² Ibid.

³³ See Khanh Hoang, 'US-Australia Resettlement Deal', *The Official Blog of the International Law Association (Australia)* (6 March 2017) <<http://ilareporter.org.au/2017/03/us-australia-resettlement-deal-khanh-hoang/>>; also Charis Chang, 'Australia won't be sucked into 'silly outcome' over Nauru and Manus Island refugee deal with US', *News Limited* (22 February 2017) <<http://www.news.com.au/national/politics/australia-wont-be-sucked-into-silly-outcome-over-nauru-and-manus-island-refugee-deal-with-us/news-story/05216b7a957e958ec40a75e4a076ccfc>>.

³⁴ New York Declaration, above n 1, [11].

³⁵ *High-Level Plenary Meeting on Addressing Large Movements of Refugees and Migrants*, UNGOAR, 71st sess, Agenda items 13 and 117, UN Doc A/RES/PV.6 A (19 September, 2016) 22.

³⁶ The World Bank, GDP per capita (2015) <http://data.worldbank.org/indicator/NY.GDPPCAP.CD?end=2015&start=1989&year_high_desc=true>.

³⁷ US Central Intelligence Agency, *The World Fact Book: Country Comparison - GDP per capita (PPP) (2016)* <<https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html>>.

³⁸ See Mathew and Harley, above n 6, 243.

measurement would assist states in genuine need of assistance to receive the international support required.

37. Finally, India's comment at the New York Summit that the impetus for the New York Declaration and the CRRF has been forged by the 'the more immediate impact of the refugee crisis in certain parts of the world', most likely referring to the large movements of Syrian refugees, is also unsettling.³⁹ It highlights the genuine questioning that Asia Pacific states may have in regards to the application of the CRRF and the GCR in the Asia Pacific region. If the CRRF is to be applied universally, 'in that it will, with time, be applied to all situations involving large movements of refugees', then Asia Pacific states will need to be engaged and convinced of the application and appropriateness of the CRRF and the GCR for the region and the benefits of their application.⁴⁰ If we do not engage effectively, we will see a repeat of mistakes that have been made in the past in the Asia Pacific region in dealing with the perception that its context is not well understood or considered, and norms are being imposed upon them.

The challenge of implementation

38. The challenge of implementing the commitments made in the New York Declaration including the CRRF is not an easy task. APRRN recalls that this is not the first occasion where the international community has attempted to develop a permanent framework for responsibility sharing with respect to refugee protection. The 1951 Refugee Convention attempted to foster 'a true spirit of cooperation' so that 'refugees may find asylum and the possibility of resettlement'.⁴¹ However, the text that was finally adopted in the 1951 Refugee Convention three days later removed all references to resettlement and only proposed a relatively weak preambular paragraph noting that 'the grant of asylum may place heavy burdens on certain countries' and a 'satisfactory solution ... cannot be achieved without international co-operation'.⁴²
39. Similarly, between 2002 and 2005, UNHCR attempted to address some of the shortcomings in responsibility sharing by articulating an ambitious 'Agenda for Protection', which became known as the 'Convention Plus' initiative.⁴³ This initiative shared many similarities with the New York Declaration, including proposals on 'protecting refugees within broader migration movements' and 'sharing burdens and responsibilities more equitably'.⁴⁴ However, the initiative was ultimately never implemented, in part because some of the pilot projects stalled and focus was lost on the overarching aim of the initiative.⁴⁵

³⁹ *High-Level Plenary Meeting on Addressing Large Movements of Refugees and Migrants*, above n 7, 14.

⁴⁰ UNHCR, above n 3, [9].

⁴¹ *Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons*, A/CONF.2/108/Rev.1 (25 July 1951).

⁴² *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954) (Refugee Convention)

⁴³ UNHCR, *Agenda for Protection* (October 2003) < <http://www.unhcr.org/en-au/protection/globalconsult/3e637b194/agenda-protection-third-edition.html>>.

⁴⁴ *Ibid* 10.

⁴⁵ See Marjolienne Zieck, 'Doomed to Fail from the Outset?: UNHCR's Convention Plus Initiative Revisited' (2009) 21 *International Journal of Refugee Law* 387, 419. See also Alexander Betts, *Protection by Persuasion: International Cooperation in the Refugee Regime* (Cornell University Press, 2009) ch 5.

40. APRRN believes that it is important for all relevant stakeholders to draw lessons from these past initiatives - as well as others - to ensure that similar shortcomings are not repeated. While APRRN is generally supportive of the New York Declaration's approach to task UNHCR with both trialling the application of the CRRF to a range of specific countries and situations, as well as developing a GCR by 2018, it is important that these processes retain focus on the diversity of global needs and the principled commitment made by states to enhance and share the responsibility of providing protection. The voices, needs and opportunities presented by refugees should be central to this approach.
41. So far, there are few published details about how UNHCR, states and other stakeholders are planning to apply the New York Declaration and the CRRF in the Asia Pacific region. Although there has been some discussion about the possibility of trialling the application of the CRRF with a state in the Asia Pacific region, to date this has not eventuated. Instead, all of the practical applications (pilots) formally being developed under the CRRF are focussed on either the East Africa region (Ethiopia, Djibouti, Somalia, Tanzania and Uganda) or the Central America region (Honduras).⁴⁶
42. APRRN is already concerned that without concerted engagement with states and other stakeholders in the Asia Pacific region on the actions needed to apply the CRRF currently and the GCR once developed, there is the serious possibility that the instruments will be overlooked in the region and fail to deliver the outcomes that the New York Declaration sets out to achieve.

The implementation of the GCR

43. While the adoption of the New York Declaration including the CRRF presents a significant opportunity for greater responsibility sharing on refugee issues, APRRN has some concerns about the inclusion and exclusion of particular language in the text of these instruments. As a response, APRRN believes that the development of the GCR in 2017 and 2018 should be seen as an opportunity to strengthen the normative framework of the CRRF to ensure that it is fully compliant with international human rights standards. While it is beyond the scope of this brief response paper to complete a line-by-line analysis of the CRRF with suggestions for future implementation, APRRN identifies three areas that should be prioritised for strengthening in the GCR.
44. First, it is important that the GCR ensures, as the CRRF outlines, that the return of refugees only takes place where the safety and dignity of the returnees can be ensured. APRRN is concerned that, while the text of the CRRF outlines limitations on when return can occur, the suggestion in the text that establishing conditions for return is the 'primary goal' and that 'voluntary repatriation should not necessarily be conditioned on the accomplishment of political solutions in the country of origin' may encourage states to pursue the premature return of refugees or incidences of constructive *refoulement*.⁴⁷ In the Asia Pacific region, this is particularly risky given that states such as Pakistan, Iran and Thailand are already calling for and trialling return programs in situations where the safety of returnees in the country of origin cannot always be guaranteed. Importantly, any application of the CRRF in the Asia Pacific region must not be entirely centred upon returns. Otherwise, there may be the risk that states may equate the application of the CRRF in the Asia Pacific region with a mechanism solely focused on the return of refugees and the tackling of root causes.

⁴⁶ Daniel Endres, *Oral Update on the Comprehensive Refugee Response* (Speech delivered at 68th Meeting of the Standing Committee, Palais des Nations, 17 March 2017) <<http://www.unhcr.org/58cfa1d97.pdf>> 1.

⁴⁷ New York Declaration, above n 1, [76], Annex I: Comprehensive refugee response framework [11].

45. Second, the GCR should reiterate the ongoing importance of offering local integration as a traditional durable solution for refugees, as well as create opportunities for local integration. While the use of the terminology of ‘local solutions’ in the text of the CRRF identifies opportunities for new migration pathways in host communities, particularly in areas such as labour migration and tertiary study, it is important that these opportunities do not simply replace the pursuit of local integration as a specific durable solution for refugees.⁴⁸ APRRN is concerned that the omission of local integration in the text of the CRRF may further entrench the view among many states in the Asia Pacific region that they are not required, either legally or morally, to offer anything other than temporary protection to refugees.
46. Third, if UNHCR, states and other relevant stakeholders are genuinely committed to establishing more predictable responses to large-scale refugee movements, then there needs to be greater clarity in the GCR as to what constitutes a large-scale movement, and most importantly, what will be the trigger point for the implementation of the CRRF. Without clarity as to this trigger point, there is the risk that the CRRF will be either:
- (a) implemented in all refugee situations, without proper consideration of or respect for other human rights obligations;
 - (b) implemented on a randomised, *ad hoc* basis without any greater consideration as to the equitable distribution of responsibility among states; or
 - (c) never implemented.

Next steps

42. As stated in the introduction to this paper, APRRN is committed to working with states, UNHCR, civil society organisations and other relevant stakeholders to translate the commitments made in the New York Declaration and the CRRF into meaningful protection gains for refugees in the Asia Pacific region. So far, there are few published details about how this may happen. APRRN is concerned that without concentrated engagement with states and other stakeholders in the Asia Pacific region on the actions needed to implement the CRRF and the GCR, there is the serious risk that the instruments will merely reaffirm the status quo at a time when substantial cooperative efforts are needed, and the political opportunity for a substantial increase in responsibility sharing among states on refugee issues may be lost for an extended period.
43. To address this issue, APRRN believes that there needs to be more focused consideration on the specific application of the CRRF and the GCR to the Asia Pacific region and that all relevant stakeholders need to be engaged in this process. In the short term, one positive step may be the convening of a regional roundtable which brings together all relevant actors to consider this issue. In the longer term, this should also be supported by a stronger nexus to capacity development and broader outreach and engagement with more diverse stakeholders for a whole-of-society approach.
44. Importantly, the New York Declaration’s push for the implementation of a whole-of-society approach to refugee protection should be implemented not just after the development of the GCR, but also during this trial phase. This implementation of a whole-of-society approach requires the full participation of diverse stakeholders, including the voices and concerns of refugees themselves. Collaboration from the earliest stages is critical, from brainstorming and design, through to implementation and evaluation. Consultation is not enough.

⁴⁸ Ibid, Annex I: Comprehensive refugee response framework [10].

45. As explained in its roadmap ‘Towards a global compact on refugees’, UNHCR has developed a ‘Task Team on Comprehensive Approaches’ to, among other things, review the application of the CRRF, identify good practices, as well as challenges and gaps that will inform the development of the GCR.⁴⁹ Further, UNHCR has also established a UNHCR-NGO-IFRC Reference Group, of which APRRN is a member. While APRRN is supportive of the stocktaking of good practices through these forums and other forms of engagement, and plans to assist in the identification and evaluation of these practices, it is important that the GCR is informed by lessons learned from poor practices, as well as seeking to replicate or build upon good practices.
46. Given the stark challenges facing refugees today, there is also a critical need for the development of innovative approaches to refugee issues, including new ideas for implementation of the whole-of-society approach, as well as new opportunities to develop the relationship between humanitarian and development actors, for example. There is also the need for greater consideration as to how innovative practices from other regions can, if successful, be replicated elsewhere. This broader approach to innovation should consider approaches that may be politically feasible in the short term, as well as approaches that may be considered more aspirational. The inclusion of the latter is important because they will never be implemented if no-one ever advocates for them.
47. In the Asia Pacific region, there are already opportunities for advocacy and engagement with Asia Pacific states on several of the courses of action contemplated in the New York Declaration and the CRRF. For example, Asia Pacific states have already been considering the development of labour migration initiatives, like those contemplated in the CRRF, through regional forums such as the Bali Process. In the 2016 Bali Declaration, Asia Pacific states indicated that they would welcome ‘efforts and initiatives by member states to expand safe, legal and affordable migration pathways and reduce migrant exploitation, including by regulating and legalising labour migration flows, ensuring transparent and fair recruitment processes and exploring viable temporary migration schemes’.⁵⁰
48. Similarly, there are also opportunities in areas of issue-linkage between the GCR and the GCM. These opportunities may include, among others, efforts towards the introduction of universal civil registration and identification systems, programs to assist all migrants to secure finance at non-exploitative rates, and alternatives to immigration detention.⁵¹ To date, the nexus between refugee protection and migration has yet to be fully explored and considered. The development of the two global compacts is beneficial in that it recognises the unique rights and needs of refugees in comparison to other migrants, however there appears to be insufficient mechanisms at this stage to ensure that the compacts adequately capture the section of the New York Declaration relating both to refugees and migrants. Steps need to be taken to further research these opportunities and consider how they can be implemented in the Asia Pacific region.
49. Finally, another area that may yield opportunities for the future implementation of the CRRF and the GCR in the Asia Pacific region is the renewed interest in the linkage between humanitarian and development assistance. This linkage, which has its origins in the 1984 International Conference on Assistance to Refugees in Africa, has the potential not only to open up new sources of funding for refugees from actors such as the World Bank, but also establish long term benefits through the in-

⁴⁹ UNHCR, above n 3, [21].

⁵⁰ Bali Declaration, above n 14, [11].

⁵¹ *Report of the Special Representative of the Secretary-General on Migration*, UNGOAR, 71st sess, Agenda items 13 and 117, UN Doc A/71/728 (3 February 2017) [52], [57], [69].

clusion of refugees and returnees in national development programs.⁵² Importantly, as global trends shift away from the inter-regional assistance provided to the Asia Pacific region, there may be opportunities to explore new forms of South-South cooperation among Southern states as part of this approach. China, for example, has already shown some interest in this area, as seen by its pledge at the Obama Summit of \$50 million annually for the next three years to the UN South-South Cooperation Assistance Fund.⁵³

Conclusion

50. Although the New York Declaration and the CRRF has been primarily developed in response to the challenges posed by the large movements of Syrian refugees in the Middle East, North Africa and Europe, the urgent need for increased and more equitable responsibility sharing with respect to refugee protection can be seen in so many humanitarian tragedies today, including in the Asia Pacific region.
51. This brief response paper has attempted to consider the significance of the New York Declaration for the Asia Pacific region and make some preliminary insights regarding the opportunities and challenges for implementing the CRRF and the GCR in the Asia Pacific region.

About APRRN and this document

52. APRRN is a network that brings together more than 300 civil society organisations and individuals from over 28 countries in the Asia Pacific working on refugee rights issues. APRRN is well-positioned to engage with relevant stakeholders with regards to the implementation of the CRRF and the GCR in the Asia Pacific region.
53. APRRN has a longstanding commitment to supporting refugees in the region, and advocates at the domestic, regional and global levels on behalf of the rights of refugees in the Asia Pacific. APRRN has developed a core document that shapes its approach to furthering the advancement of refugee protection in the region. This document is known as the APRRN Vision on Refugee Protection, and was developed following extensive consultations among members and other stakeholders between 2012 and 2014.⁵⁴
54. This response paper was developed following a regional roundtable hosted by APRRN's Regional Protection Working Group in Bangkok on 2-3 May 2017. The paper was prepared as an initial response by the network to the New York Declaration, including the CRRF. The views expressed in this document do not necessarily reflect the views of all members of the APRRN network.

⁵² See *Second International Conference on Assistance to Refugees in Africa: Report of the Secretary-General*, UN GAOR, 39th sess, UN Doc A/39/402 (22 August 1984).

⁵³ United Nations, above n 28.

⁵⁴ APRRN, Asia Pacific Refugee Rights Network Vision for Regional Protection (June 2014) < <http://aprrn.info/wp-content/uploads/2016/08/APRRN-Vision-for-Regional-Protection-14.6.14.pdf>>.