

Global Governance Spotlight

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The UN Summit for Refugees and Migrants. Will it make a difference?

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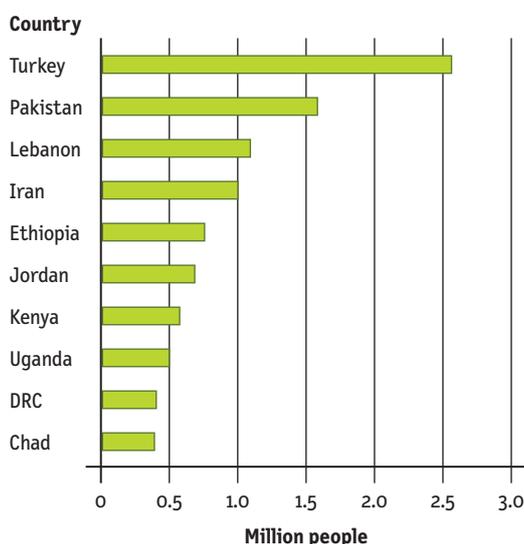
According to the UN, 244 million persons were living outside their countries of origin in 2015. Most migrants travel safely and lawfully to their places of residence. But millions face hardship at the hands of smugglers and traffickers, are subjected to arbitrary state policies, enter states in an irregular status, and are exploited by employers in their new countries of residence.

The plight of forced migrants in particular raises pressing concerns. More than 65 million people have been forced from their homes because of violence and conflict – the highest number since the end of

World War II. More than 4.5 million Syrians have fled to neighboring countries and twice as many again are displaced within Syria. A million asylum-seekers – primarily from Syria, Afghanistan and Iraq – have arrived in Europe, while tens of thousands of additional migrants have sought better lives by crossing the Mediterranean. These flows of persons seeking safety come in addition to long-standing refugee situations in which millions of persons have languished for years – some for decades.

Against this backdrop of humanity on the move, the United Nations will convene a high-level meeting during the meeting of the General Assembly in New York in September 2016 to consider global responses to large movements of refugees and migrants. In preparation of the summit, Secretary-General Ban Ki-Moon released a report in May 2016, and member states – led by the Irish and Jordanian ambassadors to the UN – have negotiated a draft “Outcome Document” for consideration and adoption at the Summit in September. This paper will discuss key recommendations of the mentioned draft Outcome Document, identify issues not adequately addressed by the drafters, and assess the likely impact of the Summit.

Top 10 Refugee Hosting Countries in 2015



Source: UNHCR – Global Trends, Forced Displacement, in 2015.

Key recommendations and likely outcomes

The flow of refugees and migrants across borders and regions has been front and center in the news for many months. The world has witnessed a humanitarian crisis for millions of Syrian refugees,

extraordinary measures adopted by European states to deter migrants and asylum-seekers, and the rise of populist movements and virulent anti-migrant and anti-refugee rhetoric on both sides of the Atlantic. The state of affairs in Europe and on the Mediterranean was the primary motivation for the convening of the UN Summit. But the Summit will take a broader view of the causes and consequences of migrant and refugee flows – affirming fundamental principles of human rights law, acknowledging the need for comprehensive analysis and planning, recognizing the importance of assisting hosting communities and recommending stronger commitments to international responsibility-sharing.

The draft Outcome Document identifies principles that apply both to migrants and refugees and then to each group separately. For the common commitments, the Document echoes the Secretary-General's report, noting the current "unprecedented level of human mobility." Importantly, it adopts the premise that "[m]igrants make positive and profound contributions to economic and social development in their host societies and to global wealth creation" by responding to "demographic trends, labour shortages and other challenges in host societies", and by adding "fresh skills and dynamism" to host community economies. The Document also extols the benefits of diversity that come from immigration: "[d]iversity enriches every society and contributes to social cohesion."

The draft Outcome Document takes note of the perilous situation of "vulnerable" migrants and refugees (with particular attention to women and unaccompanied children), and expresses "profound concern" at the thousands of persons who have lost their lives in transit. In adopting the Document, states would commit to "protect[ing] the human rights and fundamental freedoms of refugee and migrant children, regardless of their status, and in accordance with the best interests of the child." They would also pledge to support a "global campaign [...] to counter xenophobia," to be proposed by the Secretary-General.

Migration pillar

Concerning the commitments specific to migrants, the draft Outcome Document begins by noting that immigration control is a core attribute of state sovereignty. But it goes on to urge states to reap the benefits of immigration through better management, international cooperation and a normative framework to support the safety, dignity and human rights of migrants. The Document takes note of a commitment in the recently adopted Sustainable Development Goals (Target 10.7) which calls

on states to "facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies."

To make all this happen, the draft Outcome Document calls for the launching of "a process of inter-governmental negotiations leading to the adoption of a Global Compact for Safe, Orderly and Regular Migration in 2018." (The elements that might be included in such a Compact are described in a brief Annex to the draft Document.)

Refugee pillar

In a time when some of the fundamental principles of refugee protection are under attack, the draft Outcome Document stands firmly behind the 1951 Refugee Convention. The 1951 Convention provides a robust set of rights that states commit to respecting, most crucially, the right of a refugee not to be returned to a country in which they will face persecution.

In addition to affirming existing legal standards, the Document points toward a new model of "doing business": it calls for comprehensive planning and implementation by humanitarian and development actors with a focus on self-reliance for refugees and assistance to hosting communities. (This Comprehensive Refugee Response Framework is detailed in a draft Annex on Refugees.) Furthermore, "the centrality of responsibility-sharing and burden-sharing" is emphasized, and states are asked to commit to "equitable sharing of responsibility for hosting and supporting the world's refugees, while taking account of the differing capacities and resources among Member States for shouldering the burdens involved."

Together, these elements would establish a significant pivot in the international refugee regime, moving from a reliance on humanitarian relief (that continues indefinitely) to programs and policies that would provide incentives to hosting states to include refugees in the states' education and health systems and promote livelihoods opportunities. It would also commit member states to collective action on solutions from the earliest days of a large-scale emergency. If implemented, these measures could provide a real advancement for millions of refugees who are currently living lives "in limbo" in camps, settlements and marginal urban areas around the world.

Issues not adequately addressed

In the search for a consensus document, a number of issues were rendered in vague language or left out of the document entirely. The most significant include:

- **Attention to “root causes.”** The documents commit states to addressing the causes of migrant and refugee flows (through peace-making, development and preparedness) – that migration should be “a choice, not a necessity.” But little is said about how this can be done.
- **Implementation of the new “business model.”** Working to ensure self-reliance and inclusion of refugees in local services as well as assisting host communities and increasing financial resources requires collective action by host and donor states, humanitarian and development actors, NGOs, and the private sector. The documents appropriately call for a Comprehensive Refugee Response Framework, and the UN High Commissioner for Refugees (UNHCR) is given the responsibility to coordinate the efforts. But no system of overall accountability or for establishing collective goals is provided (indeed, the draft Outcome Document makes mention of a “transition” from humanitarian assistance to sustainable development – a formulation now outmoded, as all actors recognize that humanitarian and development work must be concurrent.)
- **Responsibility-sharing.** Establishing a joint commitment to responsibility-sharing is a key goal of the Summit, as the Syria situation has demonstrated the shortfalls of the current system (labelled by UN Special UN Special Representative Peter Sutherland as “responsibility by proximity”). But neither the draft Outcome Document nor the Annex on Refugees provides or calls for a formal responsibility-sharing agreement or structure. To be sure, much is said about the traditional three solutions for refugees (repatriation, resettlement and local integration). But in joining the Summit documents, states will not be committing themselves to any new obligations or establishing a process for generating such obligations.
- **Refugee rights.** The rights guaranteed by the 1951 Convention are routinely violated by states. In most countries, refugees are not given the right to work or establish businesses; some states deny the right to free movement by restricting refugees to camps; refugee children may face detention; restrictions on free speech and the practice of one’s religion may be imposed. It does not appear that the Summit will address these issues, other than calling for compliance with international refugee and human rights law. Soft language is included on the right to work for refugees: in the draft Outcome Document host governments are “encourage[d]” to open labor markets to refugees “wherever possible” – a far cry from the bold declarations of the refugee convention.
- **Internally Displaced People (IDPs).** Focusing on flows of persons across borders, the draft Outcome Document only mentions internally displaced persons as an aside. But two-thirds of the world’s forced migrants remain within their countries of origin, and many of the challenges faced by refugees and hosting states apply with equal vigor to IDPs and the communities in which they are located. Some member states and advocacy groups have pushed to have IDPs included in the September program, but so far to no avail.
- **Recognition of other categories of persons in need of international protection.** Persons fleeing conflict and violence are protected in several regional instruments but are not expressly included in the definition of “refugee” in the 1951 Convention (although, as a matter of practice, UNHCR treats such persons as persons of concern). So too, existing international norms say little about persons forced from their homes because of natural disasters and climate change. The Outcome Document could initiate a formal process for considering how international protection can be extended to these and other groups in “refugee-like” situations.
- **The role of the private sector.** Given the challenges facing states, migrants and refugees, looking to the private sector for resources, talent, and innovation makes sense. But the Summit documents make only a brief and vague reference to what role the private sector could play. For migrants and refugees, the private sector could be a source of jobs; it could also support research and advocacy underscoring the Summit’s core view that migration provides benefits to migrants, receiving and sending states. Foundations, NGOs and corporations (through corporate social responsibility) could significantly contribute to efforts to “change the discourse” on migrants and refugees.

Conclusion

UN Summits inevitably yield UN resolutions and documents that represent compromises among the many and varied interests of the many and varied states. Hosting states seek great burden-sharing; donor states seek greater efficiency in the use of re-

sources; some states would expand the definition of refugee in the Convention, others would restrict it; a number of states draw sharp differences between refugees and IDPs, others do not; states often do not agree on the scope and implementation of human rights norms. Thus, no one should be surprised if the September 2016 Summit fails to definitively resolve the numerous challenges raised by current large-scale movements of refugees and migrants.

The important question is whether anything will have changed the day after the Summit. To some degree the answer is “no” – or at least not much. The Summit will do little to ameliorate the humanitarian crisis facing migrants undertaking dangerous journeys to Europe. It will not call for the convening of a global conference on Syrian refugees (or Afghan, Somali or Eritrean refugees). It will not establish new norms for forced migrants who do not fit within the Convention’s definition of refugee. Nor will it provide a system of accountability for implementation of the new “business model” of refugee protection and assistance. It is widely recognized that millions of persons will be forced from their homes in the future because of natural disasters and climate change, yet the Summit will not produce outcomes concerning these issues.

Indeed, the Outcome Document itself will only be hortatory. It will not purport to establish any new obligations on UN member states.

However, in the face of increasingly contentious discussions and vitriolic rhetoric, the Summit will have made a difference if member states – through adoption of the Outcome Document – affirm the benefits of migration, promote international norms that protect migrants and refugees, commit to programs to counter xenophobia and discrimination, and call for international cooperation and responsibility-sharing for refugee protection and solutions (including assistance to hosting states).

But perhaps the most significant contribution of the Summit will be the call by member states for the drafting of a Global Compact on Safe, Orderly and Regular Migration and a Global Compact on Refugees. This work, which will take place over the next two years, can carry forward on the commitments of the Summit and also address the gaps identified above.

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