**Brief for the House of Commons Standing Committee on Citizenship and Immigration**

**On the Global Refugee Compact**

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(this submission is made as individual academic with expertise in the area)

In lieu of appearing before the Committee

**Analyzing the Global Compact for Refugees: Considerations for Canada**

I regret that I am unable to appear before you in person this month, but my professional duties place me in Calcutta on the day of the hearings (Nov. 29th), where by coincidence I will also be discussing the Global Compact for Refugees (GCR) at an international conference. I have decided to focus on the GCR in this brief, given the request to speak directly to it in the invitation to appear. I have worked with CARE Canada and the United Nations High Commissioner for Refugees (UNHCR) in East Africa, have conducted contract research for UNHCR as an academic, and have been studying and publishing findings on displacement and refugee protection in refugee camps and among internally displaced persons since 1992.

Based on my participation in one regional UNHCR consultation in San Jose for the Americas (Sept. 2017), one international consultation held at UNHCR in November 2017, and the Canadian GCR consultations facilitated by Global Affairs Canada (GAC), I wish to make three main points about the GCR and Canada's relation to it.

**First**, Canada's commitment to and support for the process leading up to the final draft of the GCR are impressive and important, especially in light of the U.S. vote not to support it in Third Committee this month. GAC has consulted widely and often across the country, and it has been impressive to see the degree of engagement by civil society organizations to be part of these meetings and see the drafts develop.

In particular, Canada has been strong on gender dimensions of the GCR and its work around 'women and girls; its **feminist international disaster policy** has been put into practice and is indicated in the number of GAC staff devoted to a gender-centred approach and the seniority of many in the department. It was the Canadian Government that first provided gender-related expertise to the UNHCR in the 1990s when Ann Howarth-Wiles was seconded from GAC/then CIDA for two years to work as Senior Coordinator for Women, reporting directly to the UN High Commissioner for Refugees. To date, concrete proposals to implement **a gender audit** of the GCR have been discussed that include Australian participants (who have funding), an idea that is endorsed here in order to provide accountability and impact. I and others met on October 31, 2018 at GAC to discuss concrete prospects. The Australian leadership in concert with partners in the Asia-Pacific Refugee Research Network has ensured that a gender audit of the GCR process was in place throughout the consultation.

One omission in the GCR not highlighted by Canada is naming of and protection for sexual and gender minorities refugees. While 'women and girls' are an acceptable category of vulnerable refugees to most UN countries, those whose sexual orientation and gender identity (SOGI) put them at risk are not. In short, **SOGI status is grounds for persecution and making a genuine refugee claim but is absent from discussions of 'vulnerability' in managing refugees,** camps, and the protection they need. As people often at risk *within* their own communities in countries of first asylum, **SOGI refugees need to count as vulnerable**. As a world leader in providing legal protection and asylum to SOGI claimants, Canada is well-placed to promote SOGI vulnerability in the GCR.

Canada's role in promoting private refugee sponsorship program (PRSP) has also been constructive to fleshing out the meaning of 'complementary pathways' to protection in the GCR. The PRSP goes above and beyond the government's own commitment to support government-assisted refugees (GARs). The BVOR (blended visa-office referred) refugee category has proven less successful than the PSR category to date, and GRSI insists that the BVOR category should be part of its model, but research is afoot to analyze the differences.

Since 1979, some 300,000 refugees have to come Canada through private sponsorship, an impressive accomplishment that proves that genuine protection is possible by engaging civil society. How this can be scaled up and exported remains an open question. I currently conduct granular, ethnographic research on the private sponsorship program, am on a research team studying sponsors, and have provided support to the Global Refugee Sponsorship Initiative.

Canada is well-placed to facilitate the concrete scaling up of 'complementary pathways', like the PRSP, outlined in the GCR to create more permanent protection places. The World University Services of Canada (WUSC) student refugee sponsorship is another practice in place for decades already, that deserves attention. The often invisible, little known, small-scale and non-legal protection strategies for refugees in states, such as India, Bangladesh, Malaysia, Thailand, Jordan, and Lebanon, which are outside the Convention and its Protocols, offer lessons and examples that Canada can help to showcase. Studying, analyzing, and collating these where successful could contribute to both scaling up efforts and impact going forward.

**Second**, my main concern about GCR is its non-binding nature and the lack of accountability to ensure implementation and impact. **More equitable responsibility-sharing for refugees among states, especially in the global North,** is both the most promising goal of the GCR and the most elusive. The Global Refugee Forum to be convened in 2019 as part of the GCR makes any commitments to resettling, accepting, and protecting refugees optional. Pledges from states will be accepted at that first Forum, but there is little motivation for wealthy states to do more on this front. **Paying global South countries (including many in the Middle East) to host refugees, through multilateral aid and concessionary loans, as with the EU-Turkey deal, remains the norm**. More than 85% of refugees live in global South locations. The GCR does nothing to change this distribution, even though it encourages 'responsibility-sharing' and 'burden-sharing'.

In November 2018 in Geneva, some academics were invited to be part of the GCR Academic Network. **This network, if it exists,** is not robust or representatives and includes only those who could afford to self-finance their participation could attend. At the meeting it was announced that UNHCR had no funding to support such a network moving forward; academics would be expected to finance their own travel and offer their time in-kind. I am sure many academics would be happy to share their knowledge if travel, room and board were provided but I cannot imagine any UN employee or government civil servant travelling for such work without basic expenses covered. A similarly anemic network (one that came to fruition on email) was created out of the brief 1.5 day San Jose consultation I attended in September 2017, where lawyers,

civil society organizations and academics came together to share knowledge, and after which an email 'network' was named and created with UNHCR's leadership. In that instance, travel was funded, but only those with a prior relationship to UNHCR (most as former research contractors) were selected, skewing participation again.

**Third**, and finally, **the separation of the Global Compact on Refugees from the Global Compact on Migration is arbitrary and of concern to many researchers.** A migrant and a refugee can be the same person at different points in a given journey: s/he may decide to leave a protracted situation and become migrant who gets help through a smuggler to come Canada, at which time she may become a refugee claimant or even an 'irregular arrival' in the Canadian context. **These labels matter hugely in terms of access to rights and asylum and the potentially punitive measures of detention and *refoulement* they may face, yet few states have challenged the architecture of separate compacts and treatment for people who may fall under both.**

Canada's obligation to refugees is clearly defined and laid out in IRPA and international law, but the Convention definition of refugee is narrow, with a focus on persecution as grounds for status. In 2017 more than 600,000 Rohingya people from Myanmar fled to Bangladesh, which is not a signatory to the Refugee Convention, after a genocidal campaign against them in Myanmar/Burma. They do not qualify as Convention refugees per se in Bangladesh. Likewise, in Malaysia people who would be adjudicated as refugees in Canada cannot avail themselves of such protection in this non-signatory state. However, there are still informal protections being offered which must be documented: jobs in the informal sector, a UNHCR presence, and relative security for a number of refugees. Canada has a history of working with other resettlement countries to offer protection to refugees stuck in Malaysia through group processing and sharing, ie. of Acehnese refugees in detention who came to Canada in 2004. Such strategic efforts to expand protection space by Canada should be kept in mind in the context of the Compact. Canada can do more.

Referred to as 'complementary pathways' in the GCR, other less visible and less known strategies for forging self-authorized security need to be studied and documented. As Indian migration scholar, Ranabir Samaddar (2018:11), asked in the context of GCR consultations, "was there any postcolonial voice in this cacophony of anguished statements for humanitarian protection of the victims of forced migration?" Sadly, not as much as there could have been. The regions of South Asia and Southeast Asia, where countries have been less likely to sign onto the 1951 Convention and its 1967 Protocol, have been quietly sidelined by the GCR consultations because they are outside this international legal architecture. Perceived as lacking in refugee law, this exclusion constitutes a kind of legal orientalism (Ruskola, 2013).

The Global Compact on *Migrants* (GCM) is by default more pertinent to South and SE Asia because migrants who would be refugees elsewhere in the world are merely migrants in these regions. The GCM takes seriously the 2030 Sustainable Development Goals and as such has more indicators and measures to ensure accountability for stated goals. The GCR demands the same kinds of indicators, and **this is an area where Canada could take a leadership role: in**

**extracting the precise objectives of the GCR, ensuring they are adequately funded by Member States, and then measuring outputs, uptake and impact.**

International refugee law and human rights law are foundational to refugee protection and humanitarian treatment of all persons, and yet the Global Compact for Refugees does not strengthen any of these instruments. Instead**, the GCR provides more *development opportunities for refugee-host countries*, specifically more loans or loan-forgiveness to host countries to incentivize continued hosting of most of the world's refugees.** Turkey is perhaps the most egregrious 'deal' (or compact; Lebanon and Jordan also have compacts with the EU) forged by the EU to prevent 'migrants' from making an asylum claim in EU countries.

**My co-author, Dr. Alison Mountz (CRC in Global Migration, WLU), and I have labelled this *neo-refoulement*,** the geographical *preclusion* of asylum claims by preventing access to territory that allows such claims under international law, and specifically the 1951 Convention Relating to the Status of Refugees and/or its 1967 Protocol. Because asylum seekers have not arrived on a state territory, their return is not *refoulement,* but because the same state(s) are actively preventing arrival on the territory in the first instance, one can speak of *neo-refoulement* which is contrary to the access to asylum elaborated in S. 33 of the 1951 Convention. **This approach only instantiates the status quo of containment for refugees in global South locations. It does nothing to advance concretely more equitable responsibility-sharing among states.**

Ensuring the enforcement of international human rights law, refugee law, and access to refugee status determination in Canada but also beyond our borders can be one of the most vital contributions Canada can make moving forward. Creating indicators to track impact and improvements around responsibility-sharing for refugees is also critical to giving meaning to the GCR.

**References Cited**

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To be presented November 2018 in Kolkata (which is why I cannot appear before you).