



Report

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A Fair Share: Refugees and Responsibility-Sharing

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Refugees and Responsibility-Sharing

Alexander Betts, Cathryn Costello and Natascha Zaun

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Preface

The great majority of refugees are hosted by developing countries. While Europe struggled to cope with the influx of refugees arriving in 2015-2016, Syria's neighbours received considerably larger numbers of people seeking protection, as they have done in past decades. Although western countries contribute economically to humanitarian aid, the distribution of responsibility for those who flee from a conflict and need protection is inequitable. This situation fails to deliver a permanent solution for refugees.

This Delmi report examines 'responsibility-sharing' from a global perspective. It analyses past and present models and discusses the feasibility of these for the future. The central argument is that a single legal mechanism or centralised allocation system is unlikely to achieve responsibility-sharing under the current political conditions. The authors propose instead a range of complementary mechanisms which could overcome the endemic collective action failure that has the refugee system has suffered since its creation.

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The work on this report has been followed by Alexandra Wilton Wahren, member of Delmi's Board of Directors, as well as Head of the Unit for Migration Law at the Ministry of Justice. At Delmi's Office, the Delegation Secretaries Constanza Vera-Larrucea, Henrik Malm Lindberg, Anton Ahlén and Iris Luthman have contributed

to the review. As usual in the Delmi context, the authors are responsible for the content, results and policy recommendations in the report.

This is the third Delmi-report on responsibility-sharing, under the thematic of Regulations. The previous two reports within the topic are Responsibility Sharing for Refugees in the Middle East and North Africa, by Susan Martin, Rochelle Davis, Grace Benton and Zoya Waliany, and Reforming the Common European Asylum System by Bernd Parusel and Jan Schneider.

Stockholm, December 2017

Joakim Palme,
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Summary

Responsibility-sharing relates to the distribution of costs and benefits between states for addressing a particular global challenge. The global refugee regime has historically had relatively weak norms relating to responsibility-sharing. For geographical reasons, states proximate to the source of a conflict or crisis tend to receive disproportionately large numbers of refugees. Meanwhile, the contributions of more geographically distant states, whether through providing money or accepting people, have been largely discretionary. A longstanding challenge has therefore been how to create mechanisms to ensure more predictable and equitable responsibility-sharing.

In the aftermath of the so-called ‘refugee crisis’ in the Middle East and Europe, there have been renewed calls to create effective mechanisms for responsibility-sharing, including through the UN Global Compact on Refugees. But how should such institutional mechanisms be designed? This Delmi-report seeks to provide policy-makers with an accessible overview of the historical, political, and legal dimensions of responsibility-sharing.

Historically, at the global level, responsibility-sharing has generally been through discretionary commitments by donor states to humanitarian assistance or resettlement places. When large-scale movements have occurred or protracted refugee situations have arisen, the United Nations has convened a series of ad hoc initiatives or solidarity conferences, with differing degrees of success. At the regional level, the European Union has developed the most strongly institutionalised responsibility-sharing system through its Common European Asylum System (CEAS). However, the Dublin system, which primarily allocated responsibility based on proximity has proved inadequate when faced with large numbers of refugees.

While acknowledging that different mechanisms will be needed at the global and regional levels, the report argues that effective responsibility-sharing is unlikely to

be achieved through the creation of a single legal mechanism or centralised allocation system. Rather, it requires a range of complementary mechanisms – analytical, political, and operational – in order to overcome collective action failure. Effective institutional design is as much about creating the capacity for situation-specific political leadership and facilitation within international institutions as about the negotiation of generic allocation principles.

The report concludes by suggesting that policy-makers should consider four broad sets of recommendations. First, at the level of metrics, a responsibility-sharing index might offer not only a means to measure state contributions but also a source of normative influence over state behaviour. Second, in relation to principles, it is crucial that responsibility-sharing be for the purpose of enhancing rather than undermining refugees' access to protection, assistance, and solutions. Third, it requires the development of organisational capacities, and it requires relevant international institutions to have an ongoing capacity to engage in political analysis and political facilitation. Fourth, it needs a set of new operational tools, which may go beyond traditional operational approaches including in areas such as preference matching, development-based approaches, and alternative migration pathways.

Sammanfattning

Ansvarsfördelning avser kostnads- och nyttofördelning mellan stater för att hantera en viss global utmaning. Den globala flyktingregimen har länge präglats av svaga normer och riktlinjer vad gäller ansvarsfördelning. På grund av geografisk närhet tenderar stater nära konfliktområden att ta emot ett oproportionerligt stort antal flyktingar. Samtidigt har stödet från mer geografiskt avlägsna länder varit godtyckligt, oavsett om det gäller att tillhandahålla ekonomiskt bistånd eller vidarebosättning av människor. Upprättandet av mekanismer för att säkerställa en mer pålitlig och rättvis ansvarsfördelning är därför en betydande utmaning.

Efterdyningarna av flyktingkrisen i Mellanöstern och Europa har lett till förnyade diskussioner kring upprättandet av mer effektiva mekanismer för ansvarsfördelning, bland annat genom FN:s ”Global Compact on Refugees”. Men hur ska sådana institutionella mekanismer utformas? Den här rapporten syftar till att ge beslutsfattare en överskådlig bild av de historiska, politiska och juridiska dimensionerna som format och formar ansvarsfördelning av migranter och flyktingar.

Historiskt sett har ansvarsfördelning på global nivå styrts av skönsmässiga åtaganden från givarestater vad gäller tillhandahållandet av humanitärt bistånd eller bosättningsplatser. När omfattande flyktingströmmar har uppstått så har FN i regel reagerat genom att sammanställa en rad, mer eller mindre framgångsrika, ad hoc-initiativ eller solidaritetskonferenser. Genom sitt gemensamma europeiska asylsystem (CEAS) så har EU utvecklat det mest omfattande och institutionaliserade systemet för ansvarsfördelning på regional nivå. Dublin-systemet, som i första hand fördelar ansvar utifrån en närhetsprincip, har emellertid visat sig vara otillräckligt när det utsatts för stora påfrestningar.

Rapporten framhåller behovet av olika mekanismer för att uppnå ansvarsfördelning på global och regional nivå. Samtidigt menar författarna att det är osannolikt att en effektiv ansvarsfördelning kan uppnås genom en enskild juridisk lösning eller

genom ett centralt fördelningssystem. Det krävs således en rad komplementära lösningar – analytiska, politiska och operativa – för att undvika det kollektiva handlandets problem (s.k. *collective action failure*). Effektiv institutionell design handlar lika mycket om att skapa strukturer som möjliggör ett effektivt politiskt handlande inom internationella institutioner, som förhandlingar om övergripande fördelningsnycklar.

Rapporten avslutas med att författarna presenterar fyra övergripande rekommendationer: 1) Ett index för ansvarsfördelning kan användas för att mäta statliga insatser såväl som att bidra till att skapa ett normativt ramverk för hur stater bör handla; 2) En överordnad princip bör vara att ansvarsfördelningen syftar till att stärka snarare än att undergräva flyktingars tillgång till skydd och stöd; 3) Relevanta internationella institutioner måste ha förutsättningar för politisk analys och politiskt förankringsarbete för att effektiva verksamhetsstrukturer ska kunna utvecklas; 4) Nya operativa verktyg behöver utvecklas, bland annat för att tillgodose behovet av preferensmatchning och migranternas behov av lagliga vägar.

Acronyms

3PR	Regional Refugee and Resilience Plan 2017-2017
AMIF	Asylum Migration and Integration Fund
ASEAN	Association of South East Asian Nations
BATNA	Better Alternative to the Negotiated Agreement
CBDRS	Common-but-Differentiated Responsibility-Sharing
CEAS	Common European Asylum System
CEPS	Centre for European Policy Studies
CIREFCA	International Conference on Central American Refugees
CJEU	Court of Justice of the European Union
CPA	Comprehensive Plan of Action
CRRF	Comprehensive Regional Response Framework
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ERF	European Refugee Fund
ESS	European Social Survey
EU	European Union
EUCFR	European Union Charter of Fundamental Rights
EUDO	EU observatory on citizenship
EUREMA	EU Relocation from Malta
FYR/FYROM	Former Yugoslav Republic of Macedonia
GDP	Gross Domestic Product
HAP	Humanitarian Admission Programmes
HEP	Humanitarian Evacuation Programme

HRP	Humanitarian Response Plan
ICARA	International Conference on Assistance to Refugees in Africa
IMPIC	Immigration Policies in Comparison
IOM	International Organization for Migration
MIPEX	Migration Integration Policy Index
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organisation
OAU	Organization of African Unity
QMV	Qualified Majority Voting
SRV	Socialist Republic of Vietnam
TFEU	Treaty on the Functioning of the European Union
TPD	Temporary Protection Directive
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commission for Refugees

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1. Introduction

The so-called European ‘refugee crisis’ was widely regarded as indicative of a failure of international cooperation in the global refugee regime. In 2015 and 2016 more than 1.2 million asylum seekers submitted their asylum claims in Europe (Eurostat 2017), as compared to 625,000 in 2014 (Eurostat, 2015, p. 4). Yet despite the existence of a Common European Asylum System (CEAS), the distribution of refugees was highly inequitable. In both years, Germany received almost 1.2 million asylum applications with the actual number of arrivals expected to be much higher indeed (Eurostat 2017), whereas the United Kingdom (UK) only received less than 80,000 applications in the same timeframe (UNHCR 2017a). Within and beyond Europe, governments resorted to unilateral measures to avert responsibility for refugee protection. Shortfalls in humanitarian funding for Syrian refugees, the onward movement of refugees to Europe, and the creation of new deterrence measure in Europe were all argued to be symptoms of an underlying collective action failure.

Meanwhile, on a global scale, the refugee challenge is geographically concentrated within a relatively small number of host countries in the developing world. 84 percent of the world’s refugees are currently estimated to be in developing regions of the world, and just 10 countries host 60 percent of the world’s refugees (UNHCR 2017b). Although donor states contribute to humanitarian aid for refugees in these countries, the gap between needs and assistance levels continues to grow. Meanwhile, just over 1 percent of refugees receive access to resettlement. This inequitable distribution of responsibility undermines protection and access to durable solutions for refugees: over half of the world’s refugees are in protracted situations, having been in exile for at least five years, with an average duration of over two decades.

This recognition has triggered renewed calls for improved ‘responsibility-sharing’ models to enable states to more equitably and predictably cooperate in their at-

tempts to protect, assist, and find durable solutions for refugees. Yet the gap in responsibility-sharing is not new: it reflects a systemic and longstanding gap in the international refugee regime (Betts 2009). Although states have clearly specified obligations to provide asylum to refugees within their territory or jurisdiction, their obligations to support refugees who are on the territory or within the jurisdiction of another state – through sharing money or people – are widely regarded as discretionary and weakly institutionalised.

More specifically, states' financial contributions to the humanitarian organisations that serve refugees have generally been based on annual voluntary contributions with high levels of earmarking in accordance with national interests. Meanwhile, resettlement places have also been discretionary with many governments refraining from offering resettlement at all, and others offering low numbers of places also in accordance with national priorities. The result is that protection, assistance, and durable solutions are provided to refugees at levels that fall well below needs, and responsibility is allocated based on proximity. Yet, despite the fact that this state of affairs has persisted for decades, no adequate institutional mechanisms – whether legal, political, or operational – have been created to ensure more equitable and predictable responsibility-sharing.

Within the United Nations (UN) system, the history of responsibility-sharing has been one of *ad hoc* regional initiatives with varying degrees of success. For particular large-scale refugee situations, the UN has occasionally convened major international conferences or processes to elicit discretionary commitments from states. On a regional level, the EU remains the only area to develop formal institutional structures of responsibility-sharing through its CEAS. Yet the limitations of both have been highlighted through the so-called European refugee crisis.

Today, as at various times in the past, there is a renewed recognition of the need to create better mechanisms for responsibility-sharing. On the 19th September 2016, United Nations General Assembly adopted the New York Declaration for Refugees and Migrants, a landmark political declaration. Annex I to the declaration sets out the 'Comprehensive refugee response framework' which purports to be 'based on the principles of international cooperation and on burden-and responsibility-

sharing’ such as to enable better protection and assistance to refugees and better support for host States and communities. The ensuing process, which will lead to two Global Compacts, one on refugees and the other on migrants, has placed renewed focus on mechanisms to improve responsibility-sharing.

However, history offers a prescient warning: at various past junctures, the responsibility-sharing gap has been recognised and attempts have been made to close it; yet none has had a significant or enduring legacy. Many attempts to institutionalise responsibility-sharing have failed or led to short-lived outcomes.

Part of the problem, we suggest, has been a lack of analytical clarity. In terms of *definition*, ‘responsibility-sharing’ has often been used vaguely and imprecisely with little clarity of definition. Sometimes it has been used synonymously with terms like ‘burden-sharing’, ‘international solidarity’, and ‘international cooperation’. But are they synonyms, and what does responsibility-sharing include? What is the appropriate scope of responsibility sharing; does it extend, for example, attempts to address governments’ migration policies or their engagements with the root causes of displacement?

In terms of *concepts*, understanding the conditions for effective responsibility-sharing relies on having a basic grasp of key theoretical ideas relating to international cooperation. How can we account for the potentially positive ‘benefits’ of hosting refugees as well as simply ‘costs’? If we want to measure responsibility-sharing, how can we think about equivalence across different types of contribution, and what might this mean for attempts to develop metrics or indexes? There has also been a lack of clear normative or ethical guidance on what criteria – equity or efficiency, for instance – and what values – refugee protection or collective action – should guide an understanding of ‘effectiveness’. Whose voices and perspectives matter in determining these criteria?

In terms of *history*, the factors that explain past success and failure have often been misunderstood, despite policy-makers’ frequent rhetorical invocation of selectively derived historical precedents. What lessons can we derive from the past, and when are they relevant to the present?

Our main question is: what kind of reforms to institutional design are needed at the global and regional levels in order to enable equitable and predictable responsibility-sharing? What is the balance of change required across norms, organisations, and operational practices? In order to answer this question, our approach draws upon insights from political science and international relations, law, and history. Our aim is to provide analytical guidance to policy-makers and practitioners.

Our central argument is that under current political conditions responsibility-sharing is unlikely to be achieved through the creation of a single legal mechanism or centralised allocation system. Rather, it requires a range of complementary mechanisms – analytical, political, and operational – in order to overcome the collective action failure that has historically beset the refugee system. Responsibility-sharing is inherently political. It requires that regional and international organisations have the capacity for political engagement, including through brokering principles but pragmatic bargains between states and other actors. It is at least as much about leadership, analysis, and political facilitation as about rules and binding agreements.

The report is structured in seven sections. First, it discusses definitional issues relating to responsibility-sharing. Second, it outlines some conceptual tools used by scholars to make sense of the collective action failures around responsibility-sharing. Third, it examines existing levels of responsibility-sharing, both over the last fifteen years and during the European ‘refugee crisis’, in order to illustrate the challenges of creating criteria to assess states’ relative contributions to responsibility-sharing. Fourth, it assesses a range of allocation mechanisms. Fifth, it looks at the global level, examining competing models. Sixth, it turns to the regional level and particularly the EU context to assess possible models. Finally, the report concludes with a series of policy implications.

2. Definitional Challenges

Before we can speak meaningfully about responsibility-sharing, we need to know what it means, and what it stands for. It remains a term that has often been used imprecisely, sometimes with deliberate ambiguity. What does it mean, what is the scope of the concept, and how does it relate to other concepts? In a broad sense, responsibility-sharing relates to the distribution of costs and benefits between states (and potentially other actors) for addressing a particular global challenge. Applied to the refugee context, a series of definitional questions stand-out, which merit discussion.

First, what is the relationship of ‘responsibility-sharing’ to other concepts such as ‘burden-sharing’, ‘international solidarity’, and ‘international cooperation’? Until recently, ‘burden-sharing’ was the dominant term used in the refugee regime, and it was used mainly to describe donor and resettlement states’ voluntary contributions to support states hosting most refugees in developing regions of the world. ‘International cooperation’ is referred to in the Preamble to the 1951 Convention on the Status of Refugees, reflecting the fact that the Convention was preceded by a period of mass displacement and resettlement.¹ The first recorded use of ‘burden-sharing’ in the refugee context is 1979 and relates to the Indochinese refugee crisis. ‘Responsibility-sharing’ emerges in policy circles from the late 1990s. ‘Solidarity’ is a value referring to the acknowledgment of shared interest. In the EU context, it takes a particularly amplified form as the EU Treaties set out a legal obligation that EU asylum policy are ‘governed by *the principle of solidarity and fair sharing of responsibility*.’² In recent years, amid concerns that burden-sharing inherently views refugees as an inevitable cost, ‘responsibility-sharing’ has been assumed to be a more neutral term than ‘burden-sharing’.

In most policy debates, ‘responsibility-sharing’ has generally been used as a more ‘politically correct’ synonym for ‘burden-sharing’. But, occasionally, some au-

thors (such as Hathaway and Neve 1997) have distinguished the two by regarding ‘responsibility-sharing’ as the broader of the two concepts, encompassing all forms of state contribution to protect, assist, and find solutions for refugees, while ‘burden-sharing’ relates only to support given by states to refugees on the territory of another state.

Meanwhile, ‘international cooperation’ should be understood as the broadest level concept, encompassing all forms of coordinated and collaborative action undertaken by states. Formally speaking, it relates to the process through which states mutually adjust their behaviour based on the preferences of other states (Keohane 1984). But one can imagine forms of cooperation that do not amount to responsibility-sharing. For example, states can and do often cooperate in a way that leads to the avoidance or negation of responsibility for refugees, rather than its sharing.

Second, we need to consider the question of purpose: what is responsibility-sharing *for*? In the refugee context, is it trying to ensure refugees receive access to assistance, protection, and solutions? If so, what does this mean for certain types of international cooperation that may have ambiguous consequences for these outcomes? How do we judge contributions to safe zones to prevent people fleeing across borders or to the protection of internally displaced populations which depending on their design and content, may either enhance protection or contribute to containment in dangerous conditions, thereby undermining protection?³ Similarly, how should we categorise the allocation of resources to border management, in particular if it undermines refugees’ access to protection? Many activities may make either a positive or negative contribution to responsibility-sharing depending on their configuration.

Third, what is the scope of responsibility-sharing? At its broadest level, how do we delimit the domain of refugee-related responsibility-sharing? Does it just include refugees, or other displaced populations? Does it also include broader contributions to humanitarian assistance and development, or to peacekeeping and peacebuilding, or wider activities intended to address root causes in fragile states? Even if delimited to the refugee context, does it relate to all forms of support to refugees, including asylum, financial assistance, and resettlement? Does it include policy

coordination as well as multilateral collaboration? Does it include contributions by non-state actors such as business and civil society? The answer is that it depends.

Whether to include the grant of asylum as a contribution to refugee responsibility-sharing depends on whether the starting point is institutional or analytical. Institutionally, the reason to regard burden- and responsibility-sharing as excluding asylum is to distinguish asylum (states contributions to support refugees on their territory) from responsibility-sharing (as states contributions to support refugees on the territory of another state). Historically, this is a distinction that has been made in most institutional references to burden- and responsibility-sharing in order to highlight where the normative gap exists. Asylum usually has strongly institutionalised norms, while responsibility-sharing does not. However, arguments could be made that if the goal is to establish a complete picture of how costs and benefits of refugee protection are distributed globally then assessing contributions by the grant of asylum should evidently be included.

It must also be clarified whether ‘sharing policies’ should also be regarded as an aspect of responsibility-sharing. Noll (2000) includes three forms of responsibility-sharing within his analysis: (1) physical responsibility-sharing (sharing people), (2) financial responsibility-sharing (sharing money) and (3), harmonising asylum policy (sharing policy). However, it seems clear that ‘sharing policy’ is analytically distinctive from sharing people or money. The distinction is one that exists within the wider literature on international cooperation, which distinguishes ‘collaboration’ from ‘coordination’ (Stein 1982). The former relates to the provision of goods, and the latter to the creation of common standards. Coordination through shared policies may contribute to responsibility-sharing, but it may also entail sharing rules and practices that undermine that aim. Nor does it necessarily follow that sharing policies necessarily leads to greater cooperation to share responsibility. The EU’s Dublin System, for example, entails shared policies that arguably undermine responsibility-sharing.

Fourth, and relatedly, does responsibility-sharing relate to inputs or outputs? If we were to measure responsibility-sharing contributions – such as greater financial contributions to humanitarian or development assistance – there is nothing inevi-

table about this translating into particular outcomes, such as greater protection, assistance, or solutions for refugees. This is in part because some forms of contribution may be more efficient than others. Furthermore, some forms of contribution may lead to outcomes that have little to do with improving the welfare of refugees – for example, benefits to host communities, benefits to host governments, or improvements to immigration control, for example. Yet, measuring outputs is likely to be methodologically challenging; hence ‘inputs’ – in terms of money or resettlement places – are usually taken as indicators of responsibility-sharing.

Fifth, how can we account for the potential benefits as well as costs of sharing responsibility for refugees? A growing body of research suggests that refugees can sometimes provide economic benefits to host states, especially in the context of appropriate development policies (Betts et al 2016). Reflecting this, the Government of Pakistan recently framed responsibility-sharing for refugees as ‘opportunity-sharing’ in the deliberations on the Global Compact for Refugees.⁴ Does our framing of responsibility-sharing need to be broadened to include the possibility to reframe refugees as a ‘benefit’ rather than simply an inevitable ‘cost’?

Acknowledging these definitional challenges, we choose to adopt a working definition of responsibility-sharing in the refugee context as ‘the contribution of states towards supporting refugees who are on the territory of another state through the redistribution of money or people’. In that sense, we choose to distinguish the concept from asylum as relating to the contribution of states towards supporting refugees who are on their own territory or jurisdiction. But we recognise that to attain a full picture of the state of international cooperation relating to refugees, one would need to take into account other elements, and be aware of the challenges created by delimiting the scope of the concept.

Endnotes section 1.

1. The authors thank Leah Zamore for emphasising this point.

2. Article 80 of the Treaty on the Functioning of the European Union (TFEU), states that: The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.

3. This report focuses on responsibility-sharing relating to refugees but it would be equally important and possible to develop metrics and indicators relating to states' contributions to assist, protect, and find solutions for IDPs.
4. We thank Clare Inder of UNHCR for bringing this to our attention.

3. Concepts for Policy-Makers

Insofar as responsibility-sharing is a phenomenon commonly studied in International Relations, this section contains a primer on some concepts from that discipline, by way of background for the ensuing analysis. These concepts are legalisation, public goods theory, and game theory.

First, we introduce ideas on *legalisation in world politics* (Abbott and Snidal 2001; Goldstein et al. 2001). The key insight from this work is that not all institutional mechanisms have to be formal or binding in order to be effective. Some forms of cooperation involve legalisation; others do not. Even for those involving the creation of international law, there is variation in type. Goldstein et al. (2001) explore the continuum between ‘hard’ and ‘soft’ law, which describes different ways of institutionalising international cooperation. They distinguish between three different dimensions of variation: precision, obligation, and delegation. Each of these entails a spectrum. The degree of ‘precision’ can vary from a vague principle to an explicit rule. The degree of ‘obligation’ can vary from being non-binding to being binding. The degree of ‘delegation’ can vary from diplomacy to delegation to a third-party adjudicator such as a court.

Crucially, Goldstein et al. (2001) offer an explanation for when different types of institutional arrangements along these spectra are chosen and appropriate. It is not that one form is inherently better or worse than another, but that they have value to states in particular contexts. Goldstein et al. (2001) suggest that whether institutions are created with high levels of precision, obligation, and delegation depends upon a range of factors. One explanation is offered by Abbott and Snidal (2001), who suggest that whether softer or harder law is selected depends upon the perceived trade-off states experience between the certainty offered by legalisation, on the one hand, and the retention of discretion on the other. Keohane, Moravcsik and Slaughter (2000) extend this analysis to suggest that the distribution of costs

and benefits across domestic actors within powerful states may also explain different degrees of legalisation. The key takeaway point for our purposes is that there is nothing inherently better about higher levels of legalisation; different forms of institutionalisation will be more politically desirable and effective given different configurations of power and interests.

Based on this literature, three factors will tend to support the emergence of a system with high levels of precision, obligation, and delegation, namely a) powerful states are better off trading off sovereignty for long-term predictability (Abbott and Snidal 2001); b) there are no significant domestic veto players and domestic actors benefit from legalisation (Keohane, Moravcsik, and Slaughter 2001); c) the existence of a strong normative bias in favour of international law (Lutz and Sikkink 2001). More broadly, these are the types of factors that predict whether there is a demand for new forms of institutionalised global governance (Acharya 2016). Finally, it should be recalled that even if states commit to a highly legalised system, there may be high levels of non-compliance, as the Dublin System in the EU case demonstrates.

Second, relatedly *global public goods theory* offers criteria to judge the circumstances under which different degrees of institutionalisation are likely to be necessary in order to induce states to contribute to a particular form of global public good. One account of international cooperation treats its central purpose as to manage externalities (both negative and positive). Externalities arise when the actions of one state have consequences for others.

Within certain policy fields, an extreme form of positive externality is a 'global public good'. Rather like domestic public goods – such as street lighting – global public goods have two main properties: 1) non-rivalry (one actor's consumptions do not reduce the quantity available to other actors); 2) non-excludability (it is impossible to prevent anyone else using the good). Because of these properties, there will be strong incentives for free-riding and under-provision in the absence of robust institutional mechanisms to coordinate provision. But as we know from the EU, it is evidenced that even with a mechanism to overcome veto players, cooperation is often difficult to achieve with incentives to free-ride. Global public goods include, for example, action to mitigate climate change; action to eradicate polio; a response to a meteorite on a collision course with earth (Barrett 2007).

Astri Suhrke (1998) argues that refugee protection represents a global public good, and that this explains the limited degree of historical responsibility-sharing. In the absence of clearly specified institutional mechanisms, she suggests that collective action failure is inevitable. The only exceptions to this have been examples of contexts such as the immediate aftermath of the Second World War and the Indochinese Comprehensive Plan of Action when the United States has played the role of a global hegemon, valuing the provision of protection so greatly as to tolerate free-riding by smaller states.

Much of the literature on international institutions attempts to identify the conditions under which international regimes can facilitate collective action, notably through the creation of highly legalised regimes, with significant levels of precision, obligation, and delegation. The purpose of such institutions is to limit free-riding by, for example, reducing the transaction costs of cooperation, increasing the time horizons within which states interact, punishing free-riders, or linking issues so that cooperation is mutually beneficial, for example (Keohane 1984).

However, crucially, not all international challenges are pure global public goods, for which the benefits are entirely non-excludable. Refugee protection is a case in point. While some of the benefits of refugee protection – such as enhanced global order and the provision of human rights – are global public goods (albeit with asymmetrically distributed benefits) from which all states benefit irrespective of who provides, others are private goods, with a degree of excludability. For example, some states may derive benefits from being the provider of certain forms of protection – enhancing their reputation, generating a ‘feel-good’ factor domestically, or protecting particular populations in accordance with their own national interests (Betts 2003).

The extent to which we regard particular aspects of refugee protection as pure or impure global public goods has implications for the degree of institutionalization that is likely to be necessary or effective in eliciting responsibility-sharing. Broadly speaking, public goods are likely to require higher degrees of ‘hard law’ and private goods will rely more on a mixture of softer institutional mechanisms combined with effective *ad hoc* political facilitation.

The value of using public goods theory is that it enables a simplified understanding of the institutional incentives that are likely to be more or less effective in facilitating cooperation among ‘rational’ state actors. However, an important qualification is that it is premised upon a clear understanding of the extent to which a particular outcome is understood to be a ‘good’ or a ‘bad’ one – in other words, whether it confers costs or benefits on states. In the refugee context, whether, and under what conditions refugees are perceived as ‘cost’ or ‘benefit’ is socially constructed, and subject to change over time. This creates the possibility that the extent to which refugee protection is perceived as a public good or a private good can itself be shaped by institutions and policies.

Third, and relatedly, *game theory* offers a means to identify the nature of the cooperation problem within a particular policy field and to understand the conditions under which it is likely to be overcome. Analytically, it provides a stylized way in which to understand the strategic interaction between states concerned to maximize their own benefits and minimize their costs.

Collective action in the context of global public goods is commonly illustrated by the *Prisoner’s Dilemma* in game theory (See Table 1). The situation draws upon the analogy of two prisoners both accused of conspiring to jointly commit a crime but held and interrogated in separate cells, unable to communicate or collaborate with one another on their story. They face two choices: to keep quiet (the cooperative strategy) or to confess (the defecting strategy). Their collectively optimal strategy is to both keep quiet, which would result in both going to jail for only a short time (one year). But their individually optimal strategy is to confess and for the other one to keep quiet, which results in the one that confesses walking free, and the one that keeps quiet going to prison for ten years. The problem is that this leads to the collectively sub-optimal outcome that both confess, and end up in prison for five years.

Table 1. Prisoner's Dilemma game

Prisoner 1/Prisoner 2	Keep Quiet	Confess
Keep Quiet	Both go to jail for 1 year	Prisoner 1 goes to jail for 10 years; prisoner 2 goes free
Confess	Prisoner 2 goes to jail for 10 years; prisoner 1 goes free	Both go to jail for 5 years

This is simply a metaphor but it has been applied more broadly to illustrate how, in the absence of coordination mechanisms, states are likely to free-ride on the provision of global public goods by other states, leading to collectively sub-optimal outcomes. Applied to the refugee context, if – following Suhrke (1998), we regarded refugee protection to confer non-excludable benefits on all states – such as security and the knowledge that human rights have been respected – irrespective of whether they have contributed – then we would end up with sub-optimal provision.

In the abstract illustration (See table 2), two states would have a choice to cooperate or defect. Their collectively optimal strategy (with an overall pay-off of 6) would be to cooperate. But, acting in isolation, they will each seek their individually optimal scenario (to defect while the other party cooperates), with an individual pay-off of 4. The outcome – without coordination – is that they end up in the collectively sub-optimal scenario of box DD, with an individual pay-off of 2 and aggregate pay-off of 4.

Table 2. Suasion game

State 1/State 2	Cooperate (C)	Defect (D)
Cooperate (C)	3,3	4,1
Defect (D)	1,4	2,2*

International regimes, commonly defined as “norms, rules, principles, and decision-making procedures around which actor expectations converge” (Krasner 1982)

have been created in many policy fields to overcome the kind of collective action failure illustrated by Prisoner's Dilemma. Regimes institutionalize cooperation and responsibility-sharing and increase the likelihood of achieving the outcome of CC. They do so by creating the institutional structures that enable self-interested states to make enduring commitments to international cooperation. For example, with the theoretical literature, regimes can play this role by providing information, reducing the transaction costs of cooperation over time, ensuring the interactions repeat over time to reduce incentives to free-ride in a one-off interaction, or linking issues in which the parties have a range of interests. They may also play a role in socializing states' behaviour through persuasion, ideas, expert authority, or moral leadership.

If refugee protection were characterised by the Prisoner's Dilemma, then the main institutional challenge would be to create institutional mechanisms that enable states to credibly commit to engage in responsibility-sharing over time. However, the analogy side-lines one important feature of global responsibility-sharing in the refugee regime: the centrality of power. Prisoner's Dilemma assumes two actors with symmetrical interests and power relations.

As it has long been recognised, geography and power – whether on a global or regional level - defines the structural position occupied by states in the refugee regime (Acharya and Dewitt 1997). Just ten countries host nearly 60 percent of the world's refugees and 84 percent of the world's refugees are in developing regions of the world (UNHCR 2017b). Due to their usually porous borders and strong normative obligations to offer asylum, states proximate to conflict and crisis face very little alternative other than to open their borders to refugees. Meanwhile, those richer states further afield face only a discretionary duty to contribute through responsibility-sharing, assuming that their access barriers work and they are able to prevent refugees from arriving spontaneously. This asymmetry is replicated on a regional level, in which proximity to an influx often leaves states on a weaker bargaining position.

Betts (2009) has therefore suggested that a Suasion Game is a better analogy than Prisoner's Dilemma for the cooperation problem in the global refugee regime (See table 3). The game envisages two states: a distant state (e.g. a Northern donor state)

and a proximate state (e.g. a Southern host state), and so reflects a typical starting point where refugees have fled from a country in the Global South to a neighbouring country. It also assumes the Northern donor state is otherwise insulated from the arrival of refugees (whether as they lack the means to flee further, or are prevented from doing so by the containment policies of the Northern State). The Northern donor has two options: to engage in responsibility-sharing (its cooperative strategy) or not to engage in responsibility-sharing (its defecting strategy). The Southern host faces two different options: to offer asylum (its cooperative strategy) or not to offer asylum (its defecting strategy). The game assumes that host states have little option but to offer asylum, whether because of a legal obligation to provide asylum, while donor states' commitment to responsibility-sharing is discretionary. Given the power asymmetry (also referred to as the North-South impasse), the equilibrium outcome is invariably CD, an outcome that leads to the under-provision of protection and contributes to the existence of protracted refugee situations in the South.

Table 3. Suasion game in Responsibility Sharing.

Southern host/Northern donor	Responsibility-Sharing (C)	No Responsibility-Sharing (D)
Asylum (C)	4,3	3,4*
No Asylum (D)	2,1	1,1

The reasons for the power asymmetry are two-fold: geography and policy. Through physical distances, Northern donors are less likely to receive refugees onto their territory and incur legal obligations to provide territorial asylum. Furthermore, the asymmetry is reinforced through policy. A range of access barriers, including visas and carrier sanctions implemented by the 'Northern donors' contribute to maintaining the relevance of physical distance for the de facto allocation of responsibility. As Gammeltoft-Hansen (2014) has shown, Northern donors have become ever more adept at reinforcing this dynamic through new deterrence policies designed to avoid incurring a responsibility for protection.

The key analytical question is: under what conditions can the Suasion Game be overcome? Historically, there have been four such circumstances.

First, *border closures*. A Southern host state may attempt to induce a shift by the Northern donor to box CC by initially moving to box DD and thereby making both itself and the donor worse off in the short-run. This is a high-risk strategy and one that relies upon the capacity to engage in either border management or expulsion. Historical examples of this strategy being used effectively include Macedonia's border closure in 1999 when faced with a mass influx of Kosovan refugees. Its threat to close its border contributed to Northern donors creating a Humanitarian Evacuation Programme. Meanwhile the ASEAN states did similarly immediately prior to the creation of the Indochinese Comprehensive Plan of Action in 1989, when they engaged in 'push backs' of boats of Vietnamese refugees, thereby inducing a wider global commitment to responsibility-sharing.

Second, *linked interests*. In the absence of a binding legal obligation to engage in responsibility-sharing, Northern donors' commitment to responsibility-sharing has generally been driven by self-interest rather than an altruistic commitment to refugees per se. These interests have usually been derived from other policy fields such as security, development, or wider foreign policy concerns. When these have been credibly linked to the refugee issue, this has sometimes led to a commitment to responsibility-sharing. Within the analogy of the Suasion Game, this sometimes leads the pay-offs in box CC to change to 4,5, creating a new, alternative equilibrium outcome.

Third, *waive-throughs*. One way of framing the mass influx of refugees to Europe in 2015 highlights that many states avoided responsibility by waving refugees through their territory. Most refugees left Turkey, crossed Greece, the Balkans and Austria, before they reached what would become their country of asylum, Germany or Sweden. Turkey was thereby able to waive through refugees as a means to overcome its weaker bargaining position in the Suasion Game with the EU, leveraging the EU-Turkey statement of March 2016. As Greenhill (2016) has highlighted, this is an example of a first country of asylum using onward movement as a means to change its bargaining position. When frontline or transit countries are able to disrupt the presupposition that 'geography' insulates the 'Northern Donor', they are able to subvert the Suasion Game. This move effectively changes the pay-offs

within the matrix, reducing the benefits of non-cooperation in box CD from 3,4 to, for example, to 3,2, and making greater responsibility-sharing a more optimal outcome for the donors.

Fourth, there is theoretically an additional way to overcome the Suasion Game: *reframing*. Recognising that the extent to which refugees are seen as a 'cost' or 'benefit' can change and be changed over time, opens up a further option for overcoming the Suasion Game: to change the pay-offs (notably in box 'CC') by reframing the refugee issue. If, for example, refugees were understood to contribute socio-economically or culturally to host states, such a reframing would theoretically change the nature of the Game. For example, Uganda has adopted a Self-Reliance Strategy to enable refugees to access socio-economic inclusion in part because it recognises refugees' economic contributions. This implies that institutional design relating to responsibility-sharing should also consider whether and how far it can iteratively contribute to reframing refugee as a potential benefit to host states and societies.

This simplified, rationalist model of a Suasion Game is also relevant to the EU context. In particular, it highlights the dynamic between 'frontline' states along the Mediterranean like Greece and Italy and member states able to hide behind territory and water, and thereby avert responsibility for arrivals. This North-South logic is reinforced by the institutional context of the Dublin System, which formally allocates primary responsibility for asylum seekers to the first country in which they arrive. However, one key difference between the global and the European contexts is that the EU institutional framework creates a background context within which asylum can be negotiated alongside a range of other policy areas. These allow bargaining and issue-linkages to partly offset the collective action failure that results from a power asymmetry within an isolated policy field. A complicating factor in the EU context though is the de facto mobility of asylum-seekers in spite of the Dublin System's allocation mechanisms. This means that in practice most asylum-seekers claim asylum not in the country of first arrival, but further north.

4. Dimensions of Responsibility-Sharing

In this section, we will empirically examine to what extent individual states contribute to global responsibility-sharing. After providing an overview of the current distribution of refugees world-wide, we assess which states engage particularly in responsibility-sharing. We do this first, for a period of ten years (2007-2016) and second, for the Syrian refugee crisis. In line with our definition of responsibility-sharing above, we focus on resettlement and financial contributions to the United Nations High Commissioner for Refugees (UNHCR) to assess states' contribution to responsibility-sharing. Focusing on a ten-year period instead of singling out a particular year has the advantage that we are able to demonstrate current trends more adequately than a one-year snap-shot could do. Generally, we cover the time-frame 2007-2016, which includes the most recent data available.

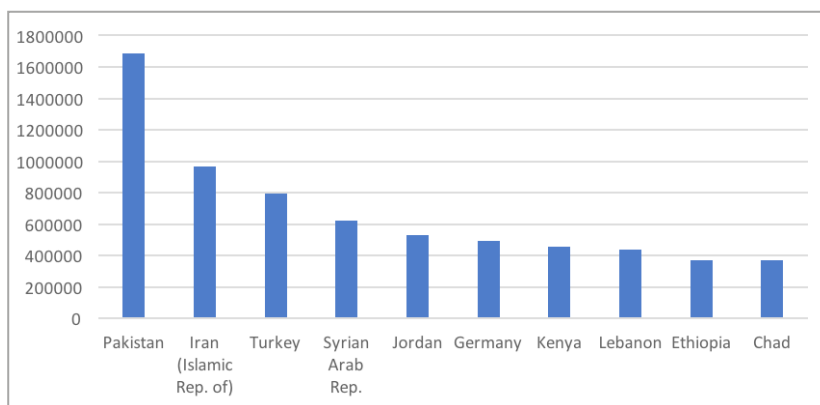
Top and bottom recipients of refugees world-wide

In this sub-section we assess which countries on average received the biggest share of refugees world-wide during the last ten years, both in absolute terms as well as related to GDP per capita. The data on refugees is retrieved from UNHCR¹ (2017c). The GDP per capita is taken from the World Bank development indicators (World Bank 2017) and represents the average of 2007-2016 (in 2010 USD).

Figure 1 gives an overview over the top ten recipients of refugees on average per year (in absolute terms) between 2007 and 2016. These are: Pakistan (1,683,419), Iran (964,047), Turkey, (792,801), Syria (624,069), Jordan (530,143), Germany (490,116), Kenya (457,086), Lebanon (439,655), Ethiopia (373,134), and Chad (369,930). Except for Turkey and Germany all of the top recipient countries are de-

veloping countries. Except for Germany, these are all in close vicinity to the home countries of refugees.

Figure 1. Top ten recipients of refugees (by average number of refugees hosted 2007-2016)



Source: UNHCR 2017c.

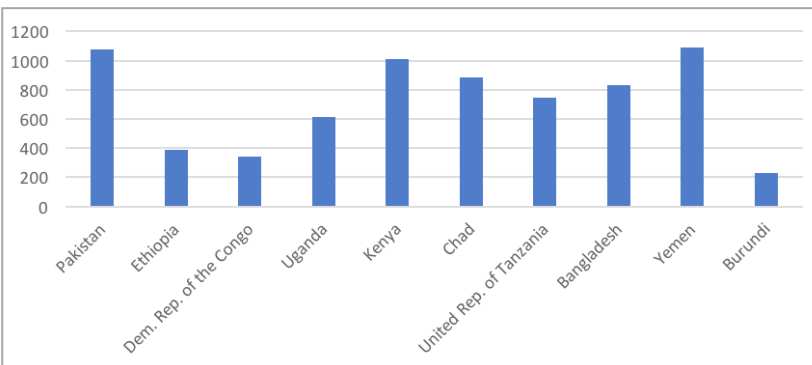
Controlling for population size and only considering states with a population of over one million, the bottom ten recipients of refugees are several states that receive no refugees at all (Equatorial Guinea, Laos, Mauritius, Myanmar, and North Korea) or on average less than eight refugees per year (Timor-Leste, Haiti, Singapore, Mongolia, and Madagascar). This is illustrated by Figure A2 (see appendix). Many of these are either autocratic states, refugee-sending states, or hard-to-reach islands.

Scholars have argued that states should receive refugees according to their capacities (to absorb refugees). For instance, the eminent refugee lawyer Atle Grahl-Madsen proposed that states should adopt a pre-determined quota system, taking into account the GDP and the population of the individual state (Grahl-Madsen 1966; Guild et al. 2014).

We will therefore assess which Member States are the top recipients based upon Grahl-Madsen's approach. Figure 2. shows that, applying the Grahl-Madsen formu-

la, the top ten recipients per GDP per capita are on average between 2007-2016 are Pakistan, Ethiopia, the Democratic Republic of Congo, Uganda, Kenya, Chad, Tanzania, Bangladesh, and Burundi. Clearly, countries in the Global South and especially Africa take by far the largest share of refugees, when taking into account their actual capacities to do so.

Figure 2. Top ten recipients of refugees (by GDP per capita, average number of refugees hosted 2007-2016)



Sources: UNHCR 2017c; World Bank 2017.

The group of states that receives a low share of refugees as compared to their capacity is very similar to the group of states that receives few refugees in total. Except for those states that receive no refugees, Singapore, Timor-Leste, Qatar, Haiti, Mongolia, and Trinidad and Tobago receive few refugees in relation to their GDP, as Figure A2 (see appendix) shows.

Refugee responsibility-sharing

After having presented the top recipients of refugees, we will now assess different countries' contributions to physical and financial responsibility-sharing. The data on resettlement is based on UNHCR statistics (UNHCR 2017d). The data on financial contributions are based on yearly reports by UNHCR (UNHCR 2007-2016). The GDP

per capita is taken from the World Bank development indicators (World Bank 2017) and represents the average of 2007-2016 (in 2010 USD).

Physical responsibility-sharing

Physical responsibility-sharing includes resettlement, relocation and humanitarian admission programmes. Among these three physical responsibility-sharing schemes, resettlement is the most institutionalised one.

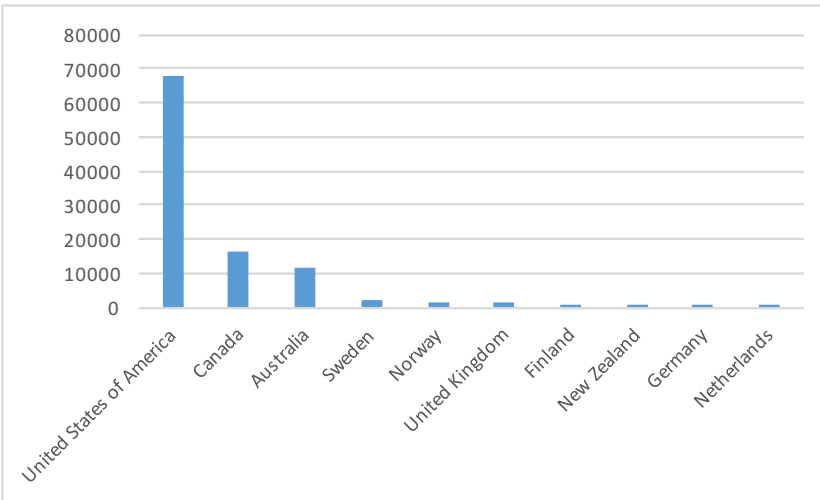
UNHCR defines resettlement as “the transfer of refugees from an asylum country to another State that has agreed to admit them and ultimately grant them permanent settlement” (UNHCR 2016b). UNHCR is mandated to undertake and organise resettlement and only a small number of countries actively takes part in UNHCR’s resettlement programmes. According to UNHCR “of the 14.4 million [i.e. the 20 million refugees minus the Palestinians] refugees of concern to UNHCR around the world, less than one per cent is submitted for resettlement” (UNHCR 2016c: 55). The main beneficiaries of UNHCR-facilitated resettlement programmes in 2015 were refugees from Syria (53,305), Democratic Republic of Congo (20,527), Iraq (11,161) and Somalia (10,193) (ibid.).

While resettlement can be considered an important contribution to physical responsibility-sharing, it is not completely uncontested and raises a number of ethical questions. The notion of vulnerability, which is a key criterion UNHCR uses for resettlement, is rather vague (UNHCR 2011a). Moreover, some states appear to base their decisions whom to admit, among others, on religion or ethnicity, which would be legally prohibited in case of in-country applications. Additionally, resettlement may encourage refugees to tolerate poor conditions (hoping they will one day be resettled) and demotivate them from trying to integrate locally, or travel onwards in search of the protection they are due. This is particularly harsh when the chances of resettlement are remote, as they are for many refugee populations. It may even de-legitimize other modes of seeking protection. A point in case is Australia, where in-country applications have been delegitimized and are today almost impossible, but where refugee resettlement is portrayed as the only acceptable route to protection. Another example is the EU-Turkey statement, which purports to offer resettle-

ment in Europe for Syrian refugees, to the extent Turkey accepts refugees returned back, who have entered the EU irregularly through Greece. This illustrates that resettlement may come at the price of containment. A feature of the EU-Turkey deal is that if refugees no longer enter Greece irregularly, the resettlement commitment to refugees in Turkey apparently also lapses.

Figure 3 shows that in total the United States of America (USA) has been by far the largest resettling country between 2007 and 2016, with on average 68,011 refugees being resettled each year.

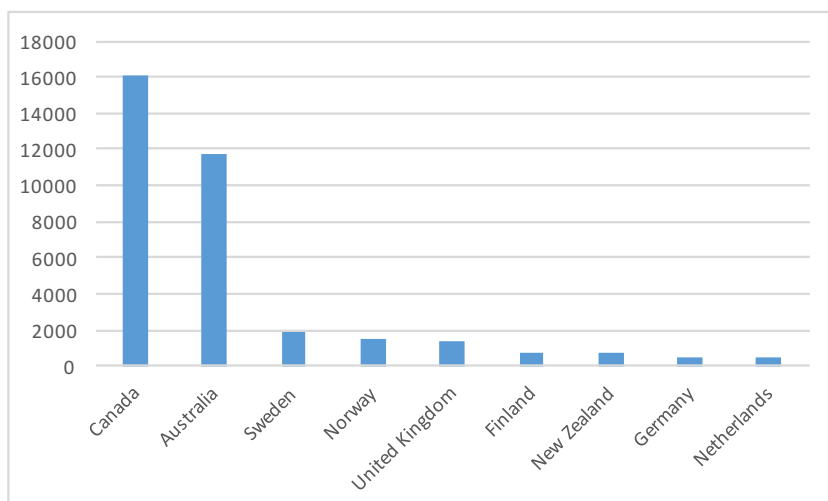
Figure 3. Top ten resettlement countries (2007-2016)



Sources: UNHCR 2017d; World Bank 2017.

Figure 4 shows that Canada ranks second (16,017 refugees on average being resettled each year), Australia third (11,707), followed by Sweden (1,918), Norway (1,471), the UK (1,319), Finland (768), New Zealand (684), Germany (519), and the Netherlands (481).

Figure 4. Top ten resettling countries (average resettlement places 2007-2016, excluding the USA)



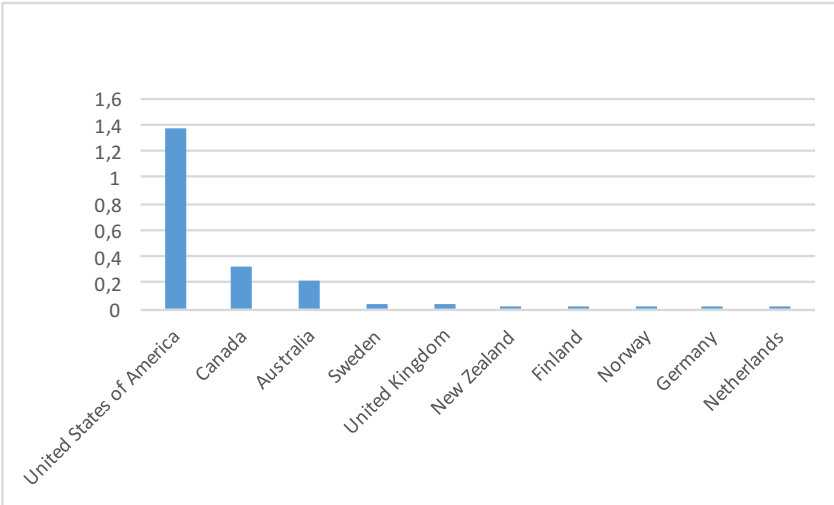
Sources: UNHCR 2017d.

Several countries do not resettle at all. Some of them are top recipient countries themselves such as Iran, Jordan, and Yemen. Other countries are developing countries such as Burundi, Burkina Faso, the Central African Republic, Benin, or Cameroon, Ecuador, Guatemala, and El Salvador. But also, two medium income countries such as Mexico and South Africa do not resettle at all (UNHCR 2017d).

While the absolute numbers of resettled refugees provide an overview over which states effectively contribute the most to physical responsibility-sharing, they neglect that some states have better capacities to receive refugees than others and hence can contribute more.

Applying the Grahl-Madsen approach, which accounts for capacity based on the GDP per capita, however, changes the picture only marginally, as Figure 5 shows.

Figure 5. Top ten resettlement countries 2007-2016 (per GDP per capita)



Sources: UNHCR 2017d; World Bank 2017.

Other forms of physical responsibility-sharing include protected entry procedures and humanitarian admission programmes. Protected Entry Procedures are summarised by Noll et al. (2002) as “an overarching concept for arrangements allowing a non-national to approach the potential host state outside its territory with a claim for asylum or other form of international protection and to be granted an entry permit in case of a positive response to that claim, be it preliminary or final”. For instance, Brazil has a humanitarian visa programme which enables would-be asylum seekers to travel legally to Brazil and claim asylum there. Some European states formerly ran embassy asylum procedures which enabled refugees to have their status determined pre-admission to the territory of the state in question. Many other states run small *ad hoc* protected entry procedures.

Under the practice of EU States, Humanitarian Admission Programmes (HAPs) have been defined as the process by which “countries admit groups from vulnerable

refugee populations in third countries so as to provide temporary protection on humanitarian grounds” (European Resettlement Network 2016a). This definition is limited in that it refers only to admission for temporary stay, whereas some protected entry procedures may lead to asylum, with a pathway to local integration.

The term HAP should not be confounded with the notion of humanitarian protection, a term sometimes used to capture the status granted to applicants who do not qualify for refugee status or subsidiary protection, but cannot be returned to their home country due to other reasons, e.g. special health conditions (see D vs. UK; European Court of Human Rights 1997). HAPs complement resettlement programmes and are used for a previously identified refugee population in an extremely insecure or vulnerable situation and in need of urgent protection. Of course, definitions are again rather slippery and open to various interpretations. HAPs are largely based on national discretion of the hosting state, but have the advantage that they are less bureaucratic and thus larger numbers of refugees can depart quickly. For instance, in 2013 the German government admitted 10,000 Syrian refugees from Lebanon for two years (with the possibility of extension) via a Humanitarian Admission Pilot Programme. This programme prioritised refugees with humanitarian needs, those with family links in Germany, and individuals who can contribute to reconstruction in Syria (Ibid.). In 2014, Ireland announced its Syrian HAP as well, which allowed a family sponsor present in Ireland to bring two family members to Ireland, provided that the sponsor was ready to support and maintain their family members. The programme focuses particularly on vulnerable family members including elderly parents, children, unaccompanied mothers and their children, single women and girls at risk, disabled persons (European Resettlement Network 2016b). In order to assess the contribution of such programmes to refugee protection generally, their scope needs careful scrutiny. Refugees have a strong existing claim to family reunification under human rights law, and to the extent that these programmes sometimes privilege family links, they can be viewed as states’ meeting their obligations to refugees on their territory, rather than accepting sharing responsibility for refugees based elsewhere.

At this point again, the asylum-migration nexus is clear. Refugees who are resettled or offered a protected entry procedure are usually offered protection in family units. In contrast, most other asylum seekers make irregular journeys but on recognition as a refugee, may accrue a right to family reunification. Whether this is so varies across states and the scope of states' obligations to refugees' family members is generally regulated by immigration laws, with a restrictive turn evident in Europe (Council of Europe 2017).

A third option of physical responsibility-sharing is relocation, which again refers to intra-EU programmes. It is usually designed as a solidarity instrument to support those EU Member States that are receiving numbers of refugees/asylum-seekers that exceed their own capacities. Relocation can take place either pre- or post-recognition. The first relocation programme, one that applied post-recognition, was the EU Relocation from Malta (EUREMA) Programme in 2011 through which ten Member States received 227 refugees relocated from Malta. In 2012 seven Member States agreed to take 86 refugees and additional eight Member States agreed to receive 233 refugees through bilateral agreements with Malta (European Resettlement Network 2016a). A case of pre-recognition relocation is the EU's 2015 relocation agreement (Guild et al 2017). When it became obvious that the border countries Italy and Greece had received more asylum seekers than their asylum system was able to absorb, EU Member States adopted a relocation agreement, which proposed the relocation of 160,000 asylum seekers with strong protection needs from these two countries by September 2017. Notably, without the intervention of this agreement, those arriving in Italy and Greece were typically relocating themselves at the time to Northern European States. The relocation decision, containing a distribution key, would have ensured a more even distribution of asylum-seekers across the EU. However, as of July 2017, only about 25 percent of persons have been relocated (European Commission 2017).

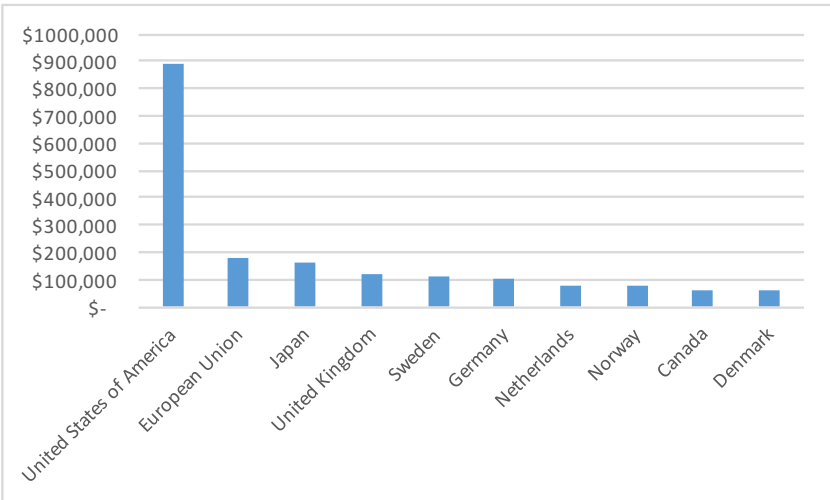
Financial responsibility-sharing

Another form of showing support for refugee protection is through financially contributing to UNHCR, the UN Agency that specifically deals with refugees and

provides protection, e.g. through running refugee camps in many countries of the Global South, which we have demonstrated to receive a disproportionate share of refugees. It is debatable to what extent supporting UNHCR can be actually compared to hosting refugees both with regard to expenditures as well as the efforts that need to be taken to effectively integrate refugees into the host society. One might wonder to what extent generosity in funding is a way for states to buy themselves out of refugee protection. Japan, for instance, has been shown above to receive a number of refugees that is way below its capacities. Yet, it is among the top donors (in absolute terms) to UNHCR.

By far the top donor to UNHCR (in absolute terms) is the USA with an average of 889.07 million USD between 2007 and 2016. The EU ranks second (177.83 million USD), followed by Japan (163.89 million 770 USD), the UK (117.37 million USD), Sweden (113.04 million USD), Germany (99.00 million USD), the Netherlands (78.95 million USD), Norway (77.26 million USD), Canada (62.32 million USD), and Denmark (61.05 mill USD). (see Figure 6).

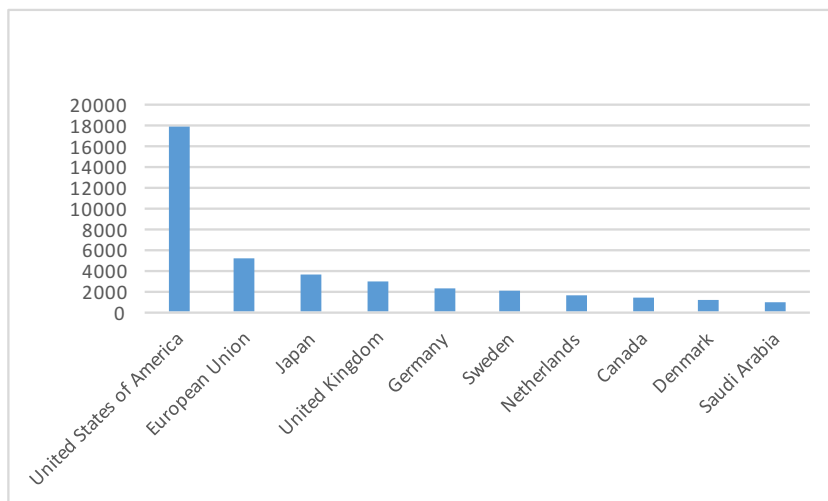
Figure 6. Average contribution to UNHCR 2007-16 (million USD)



Source: UNHCR 2007, 2008, 2009, 2010, 2011b, 2012, 2013b, 2014, 2015, 2016a.

Assuming that richer countries can provide more support to UNHCR and controlling for GDP per capita, Figure 7 shows which are the top ten donors. The picture does not change dramatically and the USA, the EU, Japan, the UK, Germany, Sweden, the Netherlands, Canada, and Denmark still rank among the top donors. However, when controlling for GDP, Saudi Arabia ranks ten in the top ten donors and Australia is pushed back to rank thirteen, after Kuwait on rank twelve.

Figure 7. Top ten UNHCR donors 2007-2016 on average (per GDP per capita)



Sources: UNHCR 2007, 2008, 2009, 2010, 2011b, 2012, 2013b, 2014, 2015, 2016a; World Bank 2017.

Case Study: Responsibility-Sharing During the Syrian Refugee Crisis

We now turn to a case study on responsibility-sharing during the Syrian refugee crisis. After presenting the number of refugees and asylum-seekers hosted (i.e. the responsibility to be shared), we investigate which states have provided the largest amount of resettlement places for Syrian refugees and the largest financial support for Syria and its neighbouring countries under the Regional Refugee and Resilience Plan (3PR) and the Humanitarian Response Plan (HRP). While data on refugees (UNHCR 2017c), asylum seekers (UNHCR 2017a) and resettlement places (UNHCR 2017d) covers the years 2015 and 2016 and it is not yet available for 2017, 3PR and HRP only started in 2016 and data is available until June 2017 (UNHCR 2017e). To

control for capacity to receive and protect refugees and for wealth of the host state, all numbers are related to the host state's GDP per capita (in 2010 US-Dollar, average GDP per capita of 2015/2016).

Number of refugees hosted

Controlling for the GDP per capita in 2015/16, the top asylum countries for Syrian refugees during the crisis are Middle Eastern countries, some of which are situated in the immediate neighbourhood of Syria, including Jordan, Turkey, Lebanon, Iraq and Egypt. Germany is the first Western country to provide refugee status to Syrian refugees, which can be probably explained through its initially welcoming approach towards this group of refugees in August 2015. Other important asylum-providing states for Syrians include diverse countries such as Yemen, Armenia, Sudan and Bulgaria.

Table 4. Top ten hosts of refugees during the crisis

Country / territory of asylum/residence	Asylum per GDP per capita 2015/16	Rank
Jordan	194.8072093	1
Turkey	190.4372481	2
Lebanon	147.4153184	3
Iraq	43.40613594	4
Egypt	43.35894692	5
Germany	5.39484874	6
Yemen	4.34018389	7
Armenia	3.977832991	8
Sudan	2.534129435	9
Bulgaria	1.855247069	10

Sources: UNHCR (2017c), World Bank (2017).

Number of Syrian asylum seekers received in 2015-6

In addition to analysing the numbers of recognised refugees hosted in a country, one might also want to consider the number of asylum seekers present on a state's territory. While, on the one hand, these numbers might not provide clear insights into the actual commitment of a country – as asylum applications may still be rejected – the number of asylum seekers can be a potential indicator of the number of refugees a particular state may host in the future. Obviously, asylum procedures, particularly in situations of an increased inflow, can take longer and hence at least some of these asylum seekers will eventually be recognised as refugees. This is particularly important, given the fact that the Syrian crisis is still unfolding in 2016 when the data collection for the data used here ended.

Top ten host countries of asylum seekers in 2015 and 2016 were several European states and again neighbouring states in the Middle East (see Table 5). While among the European states, Germany, Greece, Sweden and Austria are relatively obvious candidates (UNHCR 2017a; Zaun 2017), as they received large numbers of asylum applications and later asked their fellow EU Member States to share some of their responsibility, Hungary is probably not regularly associated with strong commitment in the protection of refugees. The high rank as a top host for asylum seekers can be explained by the fact that it received large numbers of applications in early 2015 (UNHCR 2017a) but then many of these further moved to Germany, Austria and Sweden when these countries opened their borders as asylum seekers faced strongly inhuman and degrading treatment in Hungary (Zaun 2018, forthcoming). This again shows that the numbers of asylum seekers hosted by a country are not always an indicator to an actual commitment to refugee protection.

Table 5. Top ten hosts of asylum seekers during the crisis

Country / territory of asylum/residence	Asylum seekers per GDP per capita	Rank
Germany	4.746778032	1
Hungary	4.598822858	2
Jordan	1.124050542	3
Greece	0.689675222	4
Lebanon	0.643830756	5
Bulgaria	0.55801347	6
Sweden	0.548012293	7
Egypt	0.453035912	8
Algeria	0.380046345	9
Austria	0.34826587	10

Sources: UNHCR (2017a), World Bank (2017).

Adding up the numbers of refugees and asylum seekers hosted, the top host countries are Jordan (195,9 persons per GDP per capita), Turkey (190,4), Lebanon (148,1), Egypt (34,8), Iraq (43,4), Germany (10,1), Hungary (4,6), Yemen (4,3), Armenia (4,0), and Sudan (2,6).

Resettlement places for Syrians in 2015-16

The top resettling countries (per GDP per capita) in the crisis were many countries which are usually strong in resettlement (compare Table 6 with the section on resettlement more generally), including Canada, the USA, Australia, Germany and the Scandinavian states. All top resettling countries are industrialised states which can arguably shoulder a larger share of the responsibility. Compared to the number of refugees Lebanon, Jordan, and Turkey receive, however, this share is marginal. With few exceptions, these states receive comparatively few refugees and asylum seekers. Germany, however, is among the top ten hosts of both refugees and asylum seekers and among the top resettling countries taking a strong part in responsibility-sharing.

The fact that Germany, France, and Austria took such an active role in resettlement in recent years, may be the result of recent EU resettlement policy which was initiated in July 2015. As part of this programme 22,000 refugees are to be resettled. Since March 2016 also refugees from Turkey under the EU-Turkey deal may be resettled this way (European Commission 2017). Additionally, 54,000 relocation places from Hungary under the EU relocation programme may also now be resettled from Turkey under this resettlement scheme, as the relocation programme from Hungary is not implemented due to Hungary's opposition to resettlement altogether (Guild et al 2017). It is questionable if the commitment to responsibility-sharing laying behind such resettlement schemes is the same one guiding traditional (UNHCR-led) resettlement programmes.

Table 6. Top ten resettling countries

Country / territory of asylum/residence	Resettlement per GDP per capita 2015/16	Rank
Canada	0.410190595	1
United States of America	0.169470981	2
United Kingdom	0.067064903	3
Norway	0.025550111	4
Australia	0.014414434	5
France	0.014162187	6
Germany	0.013435989	7
Sweden	0.012271559	8
Finland	0.010130771	9
Austria	0.010032502	10

Sources: UNHCR (2017d), World Bank (2017).

Financial support to Syria and its neighbouring countries 2016/17

In 2016 the 3PR, which is supposed to support Egypt, Iraq, Jordan, Lebanon, and Turkey was implemented. The HPR, introduced at the same time, aims to support

Syria. Financial support to Syria and its neighbouring countries most of which are top hosts of refugees is certainly not the same as receiving or resettling refugees and providing them access to protection. Some states might use financial contributions ‘to buy themselves out’ of refugee protection. Yet, as demonstrated earlier in this study also financial support is a way of engaging in responsibility-sharing. Mainly industrialised countries share the largest financial responsibility, including the US, Germany, the UK, Canada, Japan, Norway, France, and Finland for instance (see Table 7). But also, Saudi Arabia and China have engaged particularly in financial responsibility-sharing during the crisis.

Table 7. Financial support as part of the 3PR and HPR

Country / territory of asylum/residence	Financial per GDP per capita 2016/17	Rank
United States of America	11049.77993	1
Germany	6357.841283	2
United Kingdom	1779.459928	3
Canada	1509.65212	4
Japan	991.1574222	5
Norway	856.3228623	6
Saudi Arabia	661.037026	7
France	506.0618885	8
China	290.0877997	9
Finland	228.2356672	10

Source: UNHCR (2017e), World Bank (2017).

Comparing contributions to responsibility-sharing in the Syrian crisis

In this section, we compare the individual contributions to responsibility-sharing in the Syrian crisis by focusing only on those contributions that are uncontested, namely resettlement and financial contributions. Of course, it remains questionable if financial support is really an equivalent commitment to resettlement.

While financial responsibility-sharing cannot be immediately compared to physical responsibility-sharing for lacking a shared common denominator, contributions of countries can be compared based on their ranks in each of the categories. When doing so the USA, Canada, the UK, Germany, Norway, France, Sweden, Finland, Australia and Austria are the top contributors to responsibility-sharing in the Syrian refugee crisis.

Table 8. Contribution to responsibility-sharing (resettlement and financial contributions under 3PR and HPR

Country / territory of asylum/ residence	Rank Resettle	Rank Financial	Sum ranks	Rank total
United States of America	2	1	3	1
Canada	1	4	5	2
United Kingdom	3	3	6	3
Germany	7	2	9	4
Norway	4	6	10	5
France	6	8	14	6
Sweden	8	11	19	7
Finland	9	10	19	8
Australia	5	14	19	9
Austria	10	16	26	10

Sources: UNHCR (2017d), UNHCR (2017e).

Endnotes section 2.

1. We are aware of potential limitations of UNHCR data, resulting from the fact that data is collected by national authorities, which could measure differently. UNHCR is itself aware of these limitations (UNHCR 2013). Yet, there is no other institution providing such comprehensive data on refugee protection. Therefore, we draw on UNHCR data, despite these limitations.

5. Allocation mechanisms

Under the *status quo*, there are few formal allocation mechanisms for responsibility-sharing at the global level. At the regional level, the EU's Dublin system provides one of the few legal mechanisms for the allocation of responsibility, although it is incomplete and undermines fair sharing of responsibility. In that sense, responsibility-sharing is currently based on a highly decentralized system in which states have significant discretion. The metrics provided in the above section can largely be regarded as based on 'implicit responsibility-sharing'; they do not represent inter-governmentally negotiated outcomes or mechanisms. However, there are a range of mechanisms discussed in the literature that might enable for systematic allocation to emerge.

Measurement and Indexes

The data provided above highlight the challenge of 'commensurability': how many units of one form of responsibility-sharing equate to another? What is the aid equivalent of a resettlement place? To what extent should states be rewarded for the diversity of their contributions as opposed to specializing in particular areas based on perceptions of comparative advantage? If we are to measure states' overall contributions, should they also 'score' negatively for the restrictions and deterrence measure they introduce? To what extent should contributions be relative to GDP, population size, or a country's geographical land mass? All of these questions make creating a single overarching 'responsibility-sharing' score analytically challenging. Furthermore, incommensurability highlights the political challenge entailed in any one standard of responsibility-sharing attaining the legitimacy required among states with divergent interests and perspectives.

In order to even consider a single ranking, measurement, or metric of 'responsibility-sharing', it is important to be aware of the underlying normative and ethical

purpose of responsibility-sharing. It does not matter for its own sake. It matters insofar as it achieves two broad goals: 1) enhancing efficiency: its capacity to enhance and increase refugee protection, assistance, and access to solutions; 2) enhancing equity: promoting fair distribution of costs and benefits. In order to meet its first aim, responsibility-sharing for refugee protection must aim to increase the protection capacity of states, regions and the global level, in order to enhance both the quantity of protection for refugees, and crucially its quality. Quantity relates to the numbers of people protected, assisted, and given access to durable solutions. Quality is more challenging but might be measured against widely agreed standards of international human rights and refugee law.

In relation to equity, there is considerable consensus that a state's capacity to host refugees is related (at least roughly) to three considerations: total numbers, GDP and population size. As Gibney puts it 'the lack of consensus over which standards to use should therefore not be exaggerated... such that States, I think, could not reasonably disagree to a proposal that balanced the three main standards – population, GDP and refugee population – together to determine their shares, particularly given the perversity of the current distribution' (Gibney 2015). Empirical evidence also suggests that public opinion supports proportional equality as the basis for distribution of refugees (Bansak et al 2016).

Related to equity is the question of whose perspective matters in determining a 'fair share'? Should refugees, in particular, be involved in considering what a just distribution of responsibility looks like? Similarly, to what extent should refugees be considered as actors in their own right with duties and responsibilities, whether towards one another or the wider international community (Gibney 2017)?

However, equally challenging questions emerge about what – in addition to money and resettlement – needs to be included within an aggregate assessment of a state's contribution to responsibility-sharing. Can states make negative contributions? It is worth noting that not all forms of intergovernmental cooperation on asylum enhance refugees' access to protection. Sometimes, states engage in cooperation which undermines refugee protection, for instance by engaging in forms of extraterritorial border controls which do not differentiate between those in need of

international protection and other irregular migrants. The concentration of refugees in developing countries, described above, is determined not only by geographical proximity to refugee source countries, but also by the non-arrival policies of states in the Global North, in particular visa regimes, interdiction and carrier sanctions. These practices create a cordon sanitaire around the world's richest countries, keeping most of the world's refugees confined to the South (Chimni 1998; Gibney 2014; Gibney 2015; Mau et al. 2015). Such containment practices may sometimes undermine the content of refugee protection, especially where spontaneous arrival asylum outside the region of origin is needed in order to secure effective protection.

A number of authors have already tried to develop measures of states' positive or negative contributions to asylum. Hatton (2014; 2016) and Hatton & Moloney (2015) discuss an Asylum Policy Index, which takes into account the policies that enable or constrain refugees' ability to access asylum. At present, refugees (especially those who seek protection in Europe) have few legal routes to get access to protection. Given this, one might consider instruments that create legal and safe pathways to asylum as an important aspect of responsibility-sharing? Using protected entry procedures to screen potential refugees or offer them humanitarian visas might, for example, be considered as tools of responsibility-sharing. Meanwhile, Thielemann (2006) has developed an 'asylum deterrence index' to capture the restrictiveness of national asylum policies in 20 OECD countries between 1985 and 1999. The index is a composite of three major aspects of asylum policies: access controls; determination procedures; and integration policies, which are operationalized by the existence of a dispersal scheme, the provision of welfare benefits to asylum seekers through cash payments instead of in-kind or voucher systems, and granting of work permits during assessment of the asylum claim. Aggregation of these five (equally weighted) policy dimensions yields a composite deterrence index that ranges from zero (none of the measures in place) to five (all measures in place).

But there are methodological challenges to simplistically equating a reduction in border restrictions to responsibility-sharing. Completely dismantling access barriers to asylum in the Global North would in likelihood over time have some significant impact on the distribution of refugees globally, but that impact is difficult to assess.

Access barriers are blunt, and at times of high demand for asylum, when new smuggling routes open up, they are relatively easily overcome, for a price. Moreover, under conditions of relative ease of movement, mass influx seems less likely. Studies on the impact of immigration policies demonstrate those policies have a range of unintended consequences, including ‘now or never’ surges and limitations on return migration. Nonetheless, it is apparent that access barriers work, to an extent. Imposition of visas, for instance, reduces the number of asylum applicants (Czaika and de Haas 2013). However, restrictive visa policies also deflect into irregularity. Czaika and Hobolth (2016) demonstrate that a 10 percent increase in short-stay visa rejections leads to a 4 percent to 7 percent increase in irregular border entries.

Quotas

An additional factor complicating the measurement of a state’s contributions is the mechanism of allocation used to distribute refugees themselves. Asylum often functions on the basis that refugees themselves have some influence over their destination. Under the Universal Declaration of Human Rights (UDHR) and international human rights treaties, everyone has a human right to leave any country, including her own.¹ Various asylum-related rights are also enshrined in the UDHR and regional human rights instruments. While the UDHR speaks of a right to ‘seek and be granted’ asylum (UN 1948), in some regions, this is formulated more strongly as a ‘right to asylum’.² In practice, this means that refugees may address their claims to particular states. While refugees do not have a positive right to choose a particular state of asylum (as states may under very limited conditions find asylum for refugees elsewhere, or return them to where they already had protection), the right to seek asylum presupposes a duty to assess the protection needs of individuals within states’ jurisdiction or territory.

Centralised responsibility-sharing mechanisms, based on quotas, for example, have been proposed as a means to create more predictable and equitable responsibility-sharing, while offering durable solutions to refugees. However, they have so far remained elusive. Hathaway and Neve (1997)’s centralised model proposes the allocation of quotas based on a distribution key (such as GDP and population). It

then suggests that beyond a 'cut-off' of, say, five or seven years, all refugees should be entitled to resettlement to a third country if they are unable to go home.

However, even if quotas could be agreed, Noll (2007) points out the normative challenge of how to implement such a scheme without using coercion against refugees. Gibney (2015: 457-458) has expressed concern that '[t]o shuffle refugees between states in this way is going to involve, in practice, ignoring the preferences of refugees as to where they want asylum. This is, to be sure, an overriding of refugees' choice justified in pursuit of a good end: distributive justice for states which, as I have argued, is closely connected to justice in the provision of asylum for refugees. But refugees will be treated largely as people with little interest in where they end up beyond the guarantee of basic security.

Tradable Quotas

A variant on this kind of centralised model is the use of tradable quotas. Drawing upon the precedent of climate change governance, it has been suggested that each country could be allocated a given quota of refugees for whom it should offer resettlement, based, for instance, on GDP and population criteria. However, states should then be allowed to buy and sell their prescribed allocation. It has been argued, as with climate change emissions, that such a mechanism facilitates optimum allocation of scarce resources by enabling states to specialise in the form of contribution that they regard as fitting their own preferences. Some states would prefer to pay significant sums of money rather than receive refugees; others would happily receive money in order to accept refugees. Overall the outcome would be an improvement in allocative efficiency (Kuosmanen 2013).

However, the idea has been strongly criticised. Gibney (2014; 2015), for instance, has suggested that quotas risk demeaning refugees by commoditising them. His concern is that allowing states to buy their way out of refugee protection would be at odds with promoting a common, shared and human rights-based commitment to asylum. Furthermore, it might risk undermining the notion of solidarity and common humanity that underpins asylum by making it transactional and subject to a

market-based logic of exchange. On the other hand, proponents suggest it could be ethical if it increased the overall provision of asylum on a global scale or made existing provision more sustainable by reducing the aggregate cost.

However, the coercion implied by quotas could be minimised if refugees are offered a range of options, and have a say in their country of destination. A range of new forms of institutional design have emerged in other policy fields from food banks to organ donation to education. Yet, until recently, such ideas have rarely been applied to the refugee context to consider how responsibility-sharing might be made more efficient and sustainable. One new form of institutional design that could be applied to balance quotas with choice is ‘preference matching’.

Preference Matching

If part of responsibility-sharing involves the distribution of persons, it is crucial that it is consensual and offers refugees a range of options. Recently, a number of academics have explored the possible use of preference matching for refugee resettlement (Rapoport and Moraga 2014; Jones and Teitelboym 2016;). The basic idea is that both refugees and receiving countries could be allowed to rank order their preferences in terms of destination criteria and refugees’ demographic criteria respectively, and distribution partly based on matching those rankings. At an international level, here is how the scheme would work for refugees: first, quotas would be determined for the overall number of refugees each country is prepared to resettle under the scheme. Second, a decision would be made about what criteria would be permitted as valid for state or refugee priorities. This would be an ethical and political choice that would need to bear in mind the consequences for third parties. For example, the sort of gender and income-related selectivity that has inadvertently happened as a result of the Syrian exodus to Germany would be unlikely to meet ethical standards. Third, the scheme elicits the priorities and capacities of both, countries (or their sub-regions) and the preferences of refugees. Finally, a centralised process is needed to undertake the match (this might be at a UN-level, a regional level, or a national level, for instance).

The scheme offers an example of how creative institutional design can enable both refugees and host countries to be better off than they otherwise would be. Refugees get to express a preference on destination where they often do not. States get to consider the types of refugees they believe they are better able to integrate – subject of course to any caveats based on ethical considerations.

The idea has already been applied, albeit at the national level. Jones and Teytelboym (2016) created a non-profit called ‘Refugees’ Say’ as the vehicle through which to build and disseminate the related algorithms. Their first pilot has been a ‘local refugee match’ within the United Kingdom. Working with the UK government, they have developed a pilot match between refugees and local communities for resettled Syrian refugees.

Endnotes section 5.

1. In treaty law, formulations of this right are to be found in arts 12(2), 12(3) and 12(4) of the International Covenant on Civil and Political Rights, in a number of other human rights instruments. The following instruments contain provisions relating to the right to leave and the right to return: International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 21 December 1965, 660 UNTS 195, art 5(d)(ii) (entered into force 4 January 1969); African Charter on Human and Peoples’ Rights, opened for signature 27 June 1981, 1520 UNTS 227, art 12 (entered into force 21 October 1986); Inter-American Convention on Human Rights, opened for signature 22 November 1969, 1144 UNTS 143, art 22 (entered into force 18 July 1978). A right to enter the country of which one is a national is enshrined in Protocol No 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Securing Certain Rights and Freedoms Other Than Those Already Included in the Convention and in the First Protocol Thereto, opened for signature 16 October 1963, ETS 46, art 2 (entered into force 2 May 1968).

2. Article 18 EU Charter of Fundamental Rights 2000, 2007: ‘The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union; Article 12(3), African Charter on Human and Peoples’ Rights 1987: ‘Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions’; Article 22(7) American Convention on Human Rights 1969: ‘Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.’

6. Global Responsibility-Sharing within the United Nations

Norms of Responsibility-Sharing

In contrast to the principle of asylum, for which there are relatively strong institutionalised norms at the global level, the normative framework governing responsibility-sharing is relatively weak. Consequently, responsibility-sharing, in terms of supporting refugees who are on the territory of another state, is generally regarded by states as a discretionary act.

The main source of normative obligation to engage in burden-sharing can be found in paragraph 4 of the Preamble to the 1951 Convention on the Status of Refugees, which states: “considering that the grant of asylum may place unduly heavy burdens on certain 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”.¹

This principle reflects the wider recognition that international cooperation is a general principle of international law, stemming from the Charter of the United Nations. Article 1(3) of the UN Charter, for example, stipulates the achievement of international cooperation in resolving problems of, inter alia, a humanitarian character as one of the central purposes of the UN. Article 2 extends this as a duty of all UN Member States (Flores 2016).

However, the preamble does not create a binding obligation on its signatories. It merely provides the context in which the Convention is to be interpreted. The in-

tended meaning of paragraph 4 becomes apparent through an examination of the *travaux préparatoires* to the 1951 Convention. The *ad hoc* Committee created to draft the 1951 Convention established a working group composed of representatives of Belgium, France, Israel, the United Kingdom, the United States, and Canada to, among other tasks, draft the preamble.

France, as one of the governments facing the heaviest refugee-hosting burdens, initially proposed a more strongly worded reference to responsibility-sharing for paragraph 4:

“But considering that the exercise of the rights to asylum places an undue burden on certain countries because of their geographical situation, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot be achieved without international cooperation to help to distribute refugees throughout the world” (Weis 1990).

The two elements included in the draft but dropped in the final version were 1) explicit reference to geography as the source of inequitable distributions of responsibility; 2) the redistribution of people as a mechanism to address that inequality. However, other states on the committee – China, Chile, Denmark, and the US raised doubts based both on the principle and on this being too much detail for a Preamble. China, for instance, was noted as saying:

“In connection with the reference in the fourth paragraph to the necessity for international cooperation to help to distribute refugees throughout the world, he wished to make it clear that the Chinese Government was not in a position to accept refugees from other countries, though in the past China had played its full part by giving asylum, particularly to White Russians and Jews.” (Weis 1990).

Nevertheless, the principle adopted in the Preamble has come to be reflected in a range of other regional instruments of refugee law, including the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees.

The other main source of normative guidance on responsibility-sharing comes from UNHCR's Executive Committee of the High Commissioner's Programme ('ExCom'), which has adopted several relevant conclusions. Given that ExCom includes signatories to the Refugee Convention, its conclusions are relevant insofar as they represent an interpretation by the parties to the 1951 Convention (Hathaway and Foster 2014; Flores 2016).

These conclusions notably include the 2004 Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations (No. 100 [LV]), which recommends the use of comprehensive plans of action, including "arrangements on a bilateral or multilateral basis to apportion burdens and responsibilities in response to specific mass influx situations". It also "reiterates its commitment to uphold the principles of international solidarity and responsibility-sharing, reaffirms the need for resources to be mobilized to assist countries receiving refugees, particularly developing countries who host the large majority of the world's refugees and bear a heavy burden in this regard, and calls upon Governments, UNHCR and the international community to continue to respond to the asylum and assistance needs of refugees until durable solutions are found".

Other ExCom conclusions that relate to the principle of responsibility-sharing include: Conclusion No. 22 (XXXII) of 1981 on the protection of asylum seekers in situations of large-scale influx, Conclusions No. 15 (XXX) of 1979 on refugees without an asylum country, No. 52 (XXXIX) of 1988 on international solidarity and refugee protection, No. 80 (XLVII) of 1996 on comprehensive and regional approaches within a protection framework, No. 91 (LII) of 2001 on registration of refugees and asylum seekers, No. 94 (LIII) of 2002 on the civilian and humanitarian character of asylum, No. 112 (LXVII) of 2016 on international cooperation from a protection and solutions perspective, and Conclusions No. 77 (XLVI) of 1995, No. 85 (XLIX) of 1998, No. 89 (LI) of 2000 on international protection, as well as General Assembly Resolution 58/169 of 22 December 2003 on human rights and mass exoduses.

Over time, the UN General Assembly has called upon the UN Secretary-General and the specialised agencies of the United Nations, including UNHCR, to convene *ad hoc* conferences and initiatives to respond to regional refugee crises, including through

measures to facilitate international cooperation and responsibility-sharing. These resolutions include the following: 1) First International Conference on Indochinese Refugees (e.g. UNGA Resolution A/RES/34/62, 29 November 1979); 2. International Conference on Refugees in Africa (UNGA Resolution A/RES/35/42, 25 November 1980); 3. Second International Conference on Refugees in Africa – 1984 (A/RES/38/120 UNGA Resolution, 16 December 1983); 4. International Conference on Indochinese Refugees (A/RES/43/119, 8 December 1988); 5. International Conference on Central American Refugees – 1989 (A/RES/43/118, 8 December 1988); 6. Regional Conference for Refugees and Displaced Persons from Commonwealth of Independent States – 1996 (A/RES/51/70, 10 February 1997).

The Cooperation Problem

Despite the recognition of the principle of responsibility-sharing as central to the refugee regime, in practice, the norms are weakly institutionalised and few mechanisms exist to operationalise equitable responsibility-sharing on a global scale. The consequence is that responsibility-sharing is largely determined by politics rather than law. As has been widely documented, during each crisis there is a tendency towards collective action failure, whereby, acting individually states have a strong incentive to free-ride on the contributions of other governments.

As has been discussed above, the Suasion Game offers an analogy for the cooperation problem in the global refugee regime. Although it is a broad generalisation, the refugee challenge is not one of absolute numbers but of geographical concentration. Within the refugee regime, the main actors that matter are around ten major 'donors' and around ten major 'hosts' – one might collectively call them the 'R20'. The challenge is that the donors and hosts are in structurally very different positions. Given strongly institutionalised norms of asylum but only weakly institutionalised norms of responsibility-sharing, host states in the developing world have little choice but to admit refugees onto their territories, while donors have significant discretion in their contributions to responsibility-sharing. This creates a structural power asymmetry, which has been referred to as the North-South impasse.

The result of this power asymmetry between North and South is sub-optimal provision of the responsibility-sharing needed to provide adequate protection, assistance, and solutions to refugees. One of the greatest historical challenges faced by UNHCR has been how to overcome this Suasion Game logic, and induce more extensive commitments by Northern donor states despite their significant levels of discretion. For most of its history, UNHCR has relied upon *ad hoc* approaches to responsibility-sharing given the weakness of the normative framework on responsibility-sharing. It is not that the *ad hoc* approaches are inherently inferior to more strongly institutionalised or even legalised approaches but that to be effective they have relied upon a different set of skills, notably political analysis and political facilitation.

Models to Facilitate Responsibility-Sharing

Recognition of this cooperation problem leads to the question of how one can best create effective models for global responsibility-sharing that transcend the historical North-South impasse. There are broadly three options: *ad hoc*, centralised, or hybrid systems. It is not that one is inherently superior to another. Which one is likely to be effective in inducing cooperation depends upon a prior question: to what extent one regards refugee protection and assistance to be a global public good. As we learned above, pure global public goods (for which all benefits are non-excludable) rely upon centralised, institutional coordination with strong mechanisms to ensure compliance with commitments. However, mixed goods, with some public and private goods can often be provided with looser and more *ad hoc* institutional structures with the flexibility to appeal to specific and context-related national interests.

Model 1: *Ad Hoc*

Under the *status quo*, refugee responsibility-sharing at the global level is mainly governed by *ad hoc* structures. On a general level, both financial responsibili-

ty-sharing and resettlement, allocated through the UN system, are undertaken on an *ad hoc* and voluntary basis. States exercise almost total discretion in setting the amount of their annual voluntary contributions to UNHCR or to resettlement places. In addition to being discretionary, such contributions are often heavily earmarked, enabling states to direct them towards regions or populations that relate to their strategic priorities.

Scholarship on *ad hoc* responsibility-sharing reveals the ways in which states' strategic allocations of money and resettlement places historically correlate to their own specific geo-political interests. For example, Betts (2003) shows how European donor states' earmarked contributions to UNHCR closely correlate to the regions from which they receive the highest numbers of spontaneous arrival asylum seekers, as well as the regions in which they have clearly identifiable geo-strategic interests or colonial ties.

In addition to these annual *ad hoc* contributions, the primary means by which the UN has elicited responsibility-sharing to address refugee mass influx or protracted refugee situations has been through a series of *ad hoc* conferences. These have generally been convened by UN General Assembly Resolutions in response to major refugee crises. However, UN General Assembly resolution A/AC.96/987 of 2003 recognises this trend and thereby supports UNHCR's regular convening of such *ad hoc* conferences: "...welcomes the High Commissioner's intention to organize (...) a ministerial meeting involving States Parties to the Convention and/or its 1967 Protocol (...) normally within every five years, as a means to give a higher profile to refugee issues and to promote the objectives of the 1951 Convention and its 1967 Protocol". Some examples include the first conference on Iraqi refugees in 2007 and the Ministerial Meeting of UN Member States on the occasion of the 60th anniversary of the 1951 Refugee Convention in 2011.

Model 2: Centralised

There is currently no centralised model of coordinated responsibility-sharing at the global level. However, a number of proposals for centralised models have been advanced. Hathaway and Neve (1997), for example, have proposed to replace the

ad hoc models of the *status quo* with a centralised quota system based on the principles of equitable responsibility-sharing and comparative advantage. Their approach is grounded in a logic of equitable state quotas based on capacity, as measured by, for example, GDP and population size but nuanced with the logic of common-but-differentiated responsibility-sharing (CBDRS).

The notion of CBDRS is intended to imply that all states should have to contribute some minimum level of all aspects of refugee protection – providing money and admitting people. However, there should still be scope for significant levels of specialisation. For Hathaway and Neve, it would be acceptable for some states to focus more on providing money (e.g. Japan) while others specialise in admitting people (e.g. Canada), with a logic of exchange creating efficiency gains for the overall system and thereby allowing all states to be collectively better off than they would be if they all contributed in an identical way.

One of the challenges of such a model is that it relies upon an authoritative centralised broker to allocate and enforce the implementation of quotas. Yet it is unclear what incentive powerful states have to commit themselves to such a scheme or how compliance could be enforced. A further challenge is that such quota schemes work largely with the implicit assumption that refugee assistance is a purely global public good that relies upon centralised coordination rather than a impurely public good in which carefully brokered, situation-specific agreements may offer more effective ways to appeal to state interests.

Model 3: Hybrid

In contrast to the underlying assumptions of the *ad hoc* or the centralised models, refugee protection is neither a purely private good nor a purely public good. Instead, there is evidence, that refugee protection and assistance are impure public goods with asymmetrically distributed benefits. There are both non-excludable benefits from provision, including the human rights and security benefits that accrue to all states irrespective of who provides, and some private benefits that accrue from provision (Betts 2003; Roper and Barria 2010). The implication is that the optimum institutional design will contain a means to balance centralised coordination

to overcome collective action failure with situation-specific responses that allow governments to contribute in the areas in which they have particular interests e.g. relating to the population or the region of origin, for example.

Many of the current proposals at the UN level implicitly offer such a hybrid model. The New York Declaration of 19th September 2016 envisages a UN Global Compact on Refugees. The Compact, to be presented to the UN General Assembly in 2018, will entail two elements: a Programme of Action setting out a platform for responsibility and burden-sharing, and a Comprehensive Regional Response Framework (CRRF), providing an operational framework for implementation. The Programme of Action invites commitments by states and other actors in support of UNHCR's work, notably through sharing money and sharing people. The latter outlines a series of operational elements, with a focus on facilitating self-reliance for refugees in host countries and encouraging resettlement and alternative pathways to durable solutions. The approach situates UNHCR as the key broker facilitating contributions from states, business, and civil society.

Historical Examples

History provides important insights into the conditions under which responsibility-sharing is likely to be effective at the global level (Betts 2009). UNHCR-led *ad hoc* initiatives have often led to a variety of outcomes, some with more positive outcomes for refugees and for international cooperation. Although each is specific to its regional and historical context, they nevertheless offer insights into the ways in which aspects of institutional design can shape outcomes.

Resettlement and the Hungarian Revolution (1956)

The invasion of Hungary by the Soviet Union in November 1956 led to the displacement of 200,000 refugees into neighbouring Austria and Yugoslavia. Austria called upon UNHCR to appeal on its behalf for wider support. In response, the organisation established a coordinating group comprising a range of international organisation and NGO staff. Despite itself having only a small staff and limited funding, UNHCR played an effective facilitating role as the UN's 'lead agency', directly an emergency operation to mobilise both material and resettlement places.

Within a few days of the first refugees arriving, a massive effort was launched to resettle the Hungarians. Over the following months, they were transferred by bus, train, boat and plane to 37 different nations on five continents. The United States and Canada each took in around 40,000, while the United Kingdom accepted 20,000 and Germany and Australia some 15,000 each. Two African and twelve Latin American countries also took in Hungarians. In the end, 180,000 were resettled from Austria and Yugoslavia to 37 countries (Loescher 2001; Betts et al 2012).

The operation was remarkable and unprecedented because of the speed and diversity of the resettlement commitment made by governments. In many ways this was attributable to effective leadership by UNHCR and a range of resettlement NGOs, as well as the role of the Austrian government in mobilising solidarity. However, the Cold War context also offered a significant basis on which the West was willing to show solidarity and its anti-communist ideology through resettlement. It was also one of the first occasions when media attention has focused to such a great extent on a refugee emergency (Zieck 2013; Colville 2006).

Effective social integration was a key element of making the resettlement sustainable. One Hungarian refugee resettled to the UK later remarked: “People were incredibly friendly”, he said. “I think it must be horrible now but journalism was very different then and the press was very positive about migrants. No one made me feel I didn’t belong. It was the time of [Lords] Kaldor and Balogh [two Hungarian economists who advised the Wilson government] and we benefited from the misconception that we were all intellectuals” (The Guardian 2006).

The International Conferences on Refugees in Africa (ICARA I and II) (1981 and 1984)

By the end of the 1970s, some 3-4 million refugees were spontaneously settled across Africa. Until that point, it had been generally assumed that most of these people would go home as soon as independence was achieved. However, by 1979 it was clear that the majority of Africa’s refugees were in protracted displacement because of intractable Cold War proxy conflicts in countries like Burundi, Chad, Ethiopia, Angola, Uganda, and Zaire. Consequently, African states realised they needed a change in approach. In May 1979 all of the African states met, under the

auspices of the Organisation of African Unity (OAU) in Arusha. There, they decided that they would call upon the UN to request a series of development projects capable of compensating them for the costs of long-term hosting while simultaneously promoting the self-reliance of refugees, pending their eventual repatriation.

This call led UNHCR and the African states to jointly convene the International Conference on Assistance to Refugees in Africa (ICARA I) in April 1981 and a second conference in 1984 (ICARA II). The conferences were mainly donor events, held in Geneva. But unlike today's big refugee conferences, they were entirely focused on development assistance. UNHCR and UNDP spent several months working with the African states to compile a list of projects and programmes, which could then be put to prospective donor countries to finance. The submitted projects included rural development, infrastructure such as roads and water systems, and the improvement of education and health facilities for nationals and refugees (Gorman 1987; Betts 2009; Milner 2009).

The first conference – ICARA I – unambiguously failed. The main reason was that African states generally put forward project ideas that served their own interests but often had very little to do with supporting solutions for refugees. Donor governments' pledges at the conference fell far short of expectations, both in terms of overall amount and the politicised ways in which it was earmarked to support Cold War allies. Donors were frustrated that the projects submitted by African states were of low quality and were self-serving. African states were frustrated that donor contributions focused on strategic interests and were self-serving. UNHCR's approach was naïve, believing that African states would benevolently submit projects of benefit to refugees and donors would simply fund them.

Three years later, UNHCR tried again, convening a second iteration – ICARA II – in July 1984. This time the strategy was modified in deference to *Realpolitik*. Instead of simply hoping for altruistic pledges and goodwill on both sides, UNHCR tried to introduce greater scope for mutually beneficial bargaining. African states, for their part would provide self-reliance and long-term local integration for refugees, thereby reducing the long-term drain on humanitarian budgets. In exchange, donor governments would provide significant 'additional' development assistance that

would also benefit host governments and their citizens. The conceptualisation was far superior to the first-time round. This might have worked but for the fact that by 1984 the world became distracted by an emerging crisis: the famine and drought unfolding in Ethiopia and across the Horn of Africa that would both claim the lives of 400,000 people and transform the face of humanitarianism in Africa forever (for more details on ICARA I and II, see Betts 2009).

Despite their failure, the ICARA conferences had an intellectual legacy: it was the first moment in history when UNHCR openly embraced what it called a ‘refugee aid and development strategy’ (RAD). The conferences recognised that rather than simply being a humanitarian issue, refugees could be thought of in terms of international development. Furthermore, they indicated the possibility for a mutually beneficial deal to be done between Northern donors and Southern hosts to promote refugee self-reliance pending access to longer-term solutions, whether repatriation or local integration. Development for refugees could, at least hypothetically, be “win-win”.

The Indochinese Comprehensive Plan of Action (1989)

To take an example, after the end of the Vietnam War in 1975, hundreds of thousands of Indochinese “boat people” crossed territorial waters from Vietnam, Laos and Cambodia towards south-east Asian host states such as Malaysia, Singapore, Thailand, the Philippines and Hong Kong. Throughout the 1970s and 1980s, the host states, facing an influx, pushed many of the boats back into the water and people drowned. Like today, there was a public response to images of people drowning on television and in newspapers, but addressing the issue took political leadership and large-scale international cooperation (Robinson 1997).

In 1979, a first international conference on Indochinese refugees was convened by the UN to identify solutions. The agreement reached was that all Indochinese refugees arriving in South-East Asian states would receive resettlement to the US, Europe, Canada, and Australasia. Initially, the agreement led to hundreds of thousands receiving resettlement but it soon broke down. As the numbers became overwhelming, the resettlement countries began to renege on their commitments, the detention centres and camps in South-East Asia became overcrowded, and collective action broke down.

However, by the end of the 1980s, an opportunity arose to renegotiate the deal: the main country of origin, the Socialist Republic of Vietnam (SRV) was for the first time considered a viable negotiating partner and a country to whom those not regarded as refugees could be returned. This made it possible to envisage a deal premised upon screening: only refugees would receive resettlement while other migrants could be returned to the country of origin.

In 1989, under UNHCR leadership, a Comprehensive Plan of Action (CPA) was therefore agreed for Indochinese refugees. It was based on an international agreement for sharing responsibility. The receiving countries in south-east Asia agreed to keep their borders open, engage in search-and-rescue operations and provide reception to the boat people. However, they did so based on two sets of commitments from other states. First, a coalition of governments – the US, Canada, Australia, New Zealand and the European states – committed to resettle all those who were judged to be refugees. Second, alternative and humane solutions, including return and alternative, legal immigration channels were found for those who were not refugees in need of international protection. The plan led to over 2 million people being resettled and the most immediate humanitarian challenge was addressed, partly because of the political will generated at the end of the Cold War and partly because of exceptional leadership by UNHCR (for an overview of the Indochinese CPA, see Robinson 1997).

As the Indochinese example highlights, these *ad hoc* initiatives have sometimes succeeded when they have been accompanied with decisive leadership and a clear framework for collective action, and have met the interests of states. But such initiatives have been rare and their very existence is indicative of a broader structural weakness in the refugee regime: the absence of norms for responsibility-sharing.

The International Conference on Refugees in Central America (CIREFCA) (1989)

It would not be long, though, before UNHCR was able to prove that this could be the case. By the end of the 1980s, as the Cold War drew to a close, longstanding conflicts in countries like Guatemala, El Salvador, and Nicaragua came to an end. In 1987 the governments of the region even signed off on a peace deal. The legacy of violence was that nearly 2 million people were left displaced, at least 150,000 of

them as recognised refugees but the peace deal opened the possibility for refugees to either go home or be locally integrated. The international community chose an approach that built upon the ‘refugee aid and development’ ideas pioneered in the ICARA conferences. But this time it got it right.

The International Conference on Central American Refugees (CIREFCA) was jointly convened by UNHCR and UNDP in Guatemala City in July 1989. In practice it was a process, rather than just a one-off event, and lasted until 1995. The premise of CIREFCA was that an integrated development approach could simultaneously benefit refugees and host communities, and it adapted its approach from country to country depending notably on whether the state was primarily a country of origin or of asylum and, in the latter case, how tolerant or restrictive that country was towards the socio-economic integration of refugees.

The projects were also notable for the extent to which they facilitated self-sufficiency and local integration. The most obvious case study for successful self-sufficiency was in Mexico in Campeche and Quintana Roo in the Yucatán Peninsula, where investment in agricultural projects and new schools and hospitals benefited both Mexican hosts and Guatemalan refugees. In Chiapas, self-sufficiency was also encouraged, but a shortage of land was an obstacle to allowing refugees to become equally engaged in agricultural activities. In Campeche and Quintana Roo, local integration and repatriation were promoted simultaneously from 1996, while in Chiapas local integration *followed* repatriation from 1998 onwards. The self-sufficiency and local integration projects ultimately provided education, health services, access to markets, and sustainable livelihoods. For the Mexican Government, the projects were seen as an attractive means to develop the poorest areas of the country, particularly in the Yucatán Peninsula.

CIREFCA also provided local integration for Salvadoran refugees in Belize, particularly in the hitherto underdeveloped Valley of Peace, a region comprising jungle area, with poor roads and poor quality land. CIREFCA helped to transform the area. By 2003, some 300 refugee families still remained and were integrated alongside the Belizeans of predominantly Maya Quechi ethnicity. The refugees were supported initially with food aid, a fund to build housing, tools, and seeds, and many of the

Salvadorans now work in the tourism industry or in local employment, receiving social services alongside the Belizean community.

In total, CIREFCA is estimated to have channelled over 400 million USD in additional resources to the region, and the process has been widely credited with helping to consolidate peace in Central America. The most significant group of donors were the European states, which saw sustainable solutions for refugees as a way to guarantee stability for the region, and thereby encourage inter-regional trade. In its immediate aftermath, CIREFCA was generally seen as a 'success'. A General Assembly Resolution in 1993 suggested that CIREFCA 'could serve as a valuable lesson to be applied to other regions of the world' (for more details on CIREFCA see Betts 2009).

And yet, despite, the success, CIREFCA has never been replicated. An approach that created opportunities for refugees to be self-reliant while offering development opportunities for underdeveloped regions of their host countries has never subsequently been reproduced on the same scale.

The Kosovo Humanitarian Evacuation Programme (1999)

In the context of the Kosovo War of 1998-99, Slobodan Milosevic's ethnic cleaning of Kosovar Albanians and NATO's intervention triggered large-scale refugee movements. Ultimately around 800,000 refugees fled, mainly to other parts of Europe. From March 1999, when NATO began its high-altitude bombing, hundreds of thousands fled into Albania, Montenegro and FYR Macedonia. The speed and scale of the influx overwhelmed these neighbouring states. Macedonia in particular was concerned about the destabilising effect on national security, not least given the ethnic composition of the country, threatening to close its borders if there was not immediate international responsibility-sharing. The threat by Macedonia to close its border worked, in part because of the significant political commitment of NATO countries to the Kosovo situation, and their ostensibly humanitarian motives for intervention.

UNHCR and IOM jointly coordinated a Humanitarian Evacuation Programme (HEP) in April 1999, leading to the immediate evacuation of around 96,000 Kosovans to 28 countries in Western Europe and around the world. Contributions were broadly

correlated with GDP and population, with Germany and the USA taking the largest number – around 14,000 each. The scheme was innovative insofar as it did not in itself grant refugee status. Rather it provided evacuation and was connected to different forms of temporary protection status (TPS), enabling the Kosovans to remain in the receiving country either until it was safe to return or allowing them to seek asylum following arrival. The speed and scale of the evacuation has not been repeated since but it illustrates that large-scale responsibility-sharing based on distributing people is feasible (Barutciski and Suhrke 2001; Van Selm 2000; Williams and Zeager 2004).

The Different Historical Variants of *Ad Hoc* Approaches

From these historical precedents, it is possible to derive at least three archetypal approaches of responsibility-sharing initiatives, all of which represent variants of the broader *ad hoc* model outlined above. None of these is necessarily mutually exclusive from the other but they highlight quite different historical approaches, each with their own pros and cons. They serve to illustrate the breadth of approaches, and types of facilitation required, for an *ad hoc* approach based on low levels of institutionalisation to be effective.

First, ‘pledging’ conferences elicit responsibility-sharing by outlining a series of projects and programmes and inviting the international donor community to voluntarily contribute, whether through contributing money or resettlement places. The ICARA conferences are an example of this approach. More recently, though, this model was used in many of the initiatives of 2016; for example, a pledging approach underlay the London Syria conference, UNHCR’s 30th of March resettlement conference, and the 20th September Obama refugee summit. Such an approach is premised upon appealing to states’ pre-existing interests in contributing in specific, earmarked ways. It has the advantage of only requiring that the conference convenor have the technical competence and credibility to outline projects and programmes that meet states’ pre-existing interests. However, it has the disadvantages that it will struggle to elicit contributions to aspects of refugee protection and assistance that exhibit the properties of global public goods, for which states will have significant incentives to free-ride on the provision of others. This is why such

an approach has repeatedly led to disappointingly low commitments or the failure to honour commitments made at the original conference.

Second, 'reciprocity'-based initiatives elicit responsibility-sharing through negotiations that lead to inter-locking commitments between states. The Indochinese CPA and the Kosovo HEP are rare successful examples of such an approach being deployed in the refugee regime. In this example UNHCR served as the broker setting out a three-way deal between host countries, resettlement countries, and the main country of origin. The advantage of such an approach is that the reciprocal nature of the commitments means it can overcome the collective action failure inherent to the provision of global public goods. The challenge though is that to achieve this requires effective political leadership and credible consequences for non-implementation.

Third, 'embedded' initiatives elicit responsibility-sharing by making the response to refugees a component part of a broader process. For instance, it might integrate refugee-related responsibility-sharing within a wider peace agreement or post-conflict reconstruction process. CIREFCA represents a historical example of such an approach. Rather than addressing displacement in isolation, solutions for refugees were an inherent part of the Esquipulas II peace agreement for Central America as well as the UN-led post-conflict reconstruction and development approach for the region. There have been further subsequent attempts to embed responsibility-sharing within broader peace processes. UNHCR's Somali Comprehensive Plan of Action of 2003-5, for example, tried to link responsibility-sharing in support of Somali refugees to an abortive peace deal for the country. Commitments are based on the basis of issue-linkage: channelling interests in security and development into the refugee field. The advantage of such an approach is that it can enable states' pre-existing commitment to high-level politics to be channelled into refugee assistance. The disadvantage is that it ties the fate of the refugee –related initiative to that of the wider process. Success relies on effective coordination by relevant organisations in different policy fields.

Table 9. Variants of *Ad Hoc* Approaches

Type of Initiative	Commitments Mobilised	Organisational Skills Needed
Pledging (e.g. ICARA I and II)	Private goods	Technical competence
Reciprocity (e.g. Indochinese CPA)	Public goods	Political leadership
Embedded (e.g. CIREFCA)	Linked interests	Coordination

It is worth noting that these models are archetypes not templates. They are not mutually exclusive, and their insights can be combined. However, they have analytical value because they demonstrate the underlying particular logic behind particular forms of institutional design. Achieving cooperation on particular forms of global public goods requires specific types of institutional approach. One of the historical sources of failure within the refugee regime has been the inability of the key brokers to appreciate these analytical distinctions.

Remembering the Broader Context

As Leah Zamore (2017) has argued, successful responsibility-sharing relating to refugees often takes place in a broader context. The post-Second World War settlement on refugees, for example, had three inter-related elements: aid (the Marshall Plan), resettlement (the programmes of the International Refugee Organization and then UNHCR), and asylum (the 1951 Convention). According to Zamore’s historically revisionist argument, the creation of the 1951 Convention is rarely understood in relation to the Marshall Plan, and yet the two are inextricably related because the Plan provided the responsibility-sharing that made a commitment to temporally and regionally-specific commitment to asylum viable.

Responsibility-sharing was also directly related to asylum. For example, in Central America at the end of the Cold War, CIREFCA envisaged providing aid to the region. But it was part of a complementary set of institutions. Alongside it, the region committed to a series of principles related to asylum. But beyond this, Central America not only connected responsibility-sharing to asylum but also to peace. CIREFCA was

part of the regional Esquipulas II peace agreement and institutionally linked to the post-conflict reconstruction plan for the region.

Yet since the Second World War, discussions relating to responsibility-sharing have tended to neglect that aid, resettlement, and asylum were arguably intended to work coherently alongside one another. From this perspective, responsibility-sharing (in terms of money and people) has an important relationship to asylum, and to peace. This insight has been neglected in the context of the Syria crisis and contemporary debates on responsibility-sharing. This compartmentalisation leads to a tendency to view responsibility-sharing as discretionary, asylum as binding, and peace as exogenously determined.

One way of addressing this might be to analytically distinguish between three distinct domains of responsibility-sharing: 'refuge' (support for host states in regions of origin through aid and resettlement), 'asylum' (the reception of spontaneous arrival refugees by countries further afield), and 'root causes' (all activities related to peace and political transition in countries of origin).

Endnotes section 6.

1. 1951 Convention on the Status of Refugees, Preamble, Article 4.

7. Responsibility-sharing in the EU

Norms of Responsibility-sharing at the EU level

The normative situation at the EU level is broadly comparable to the international level. While the principle of asylum, refugee protection and protection against torture, inhuman and degrading treatment are strongly institutionalised, the normative framework on solidarity is much less so. However, in contrast to the global level, a normative framework on solidarity has recently emerged.¹

The EU itself is not a party to the 1951 Convention relating to the Status of Refugees, the Convention against Torture, or any other human rights treaty (with the sole exception of the UN Convention on the Rights of Persons with Disabilities). Yet, international human rights law, in particular the ECHR, inform the EU general principles of law, and the EU Charter of Fundamental Rights, which has the same legal rank as the EU Treaties. All EU asylum legislation must be ‘in accordance with the 1951 Refugee Convention’ (Article 78(1) TFEU). The Court of Justice of the European Union (CJEU) repeats that the Refugee Convention is ‘the cornerstone of the international legal regime for the protection of refugees’ (Case C-604/12 HN [2014] OJ C202/6, para 27 and the case-law cited therein). The EU Charter of Fundamental Rights enshrines the right to asylum in Article 18, which states that ‘The right to asylum shall be guaranteed with due respect for the rules of the [Geneva Convention] and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union.’ The legal implications of Article 18 EUCFR have yet to be fully clarified (Garlick 2016).

The European Court of Human Rights (ECtHR) has developed a dense jurisprudence on issues related to the protection of asylum seekers and refugees from return, in particular under Article 3 ECHR. It has confirmed that *non-refoulement* applies extraterritorially if states are exercising jurisdiction (*Hirsi v Italy*); that protection against return under Article 3 ECHR is absolute (*Chahal v UK*); and that returns to ostensibly safe countries (where under the Dublin system or otherwise) entail careful individual examination of the risks posed for the individual (*MSS v Belgium and Greece*; *Tarakhel v Switzerland*). In combination with national laws on asylum, EU asylum legislation and the role of the CJEU in this field, we find overall dense and comparatively strongly institutionalised normative framework on the protection of forced migrants.

Given the absence of strong international norms on solidarity, however, such an institutionalised normative framework is also missing at the EU level. The exception to this is Art. 80 TFEU provides that EU policies on border checks, asylum and immigration need to be “governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, by Member States”. Yet, the notions of ‘solidarity’ and ‘fair sharing of responsibilities’ are not further defined and therefore allow for different interpretations (Goldner-Lang 2013). This wording leaves considerable leeway regarding the precise measures to be adopted in order to achieve solidarity (Vanheule et al. 2011; Garlick 2016). Of course, if solidarity covers border protection to a same degree as physical, financial or policy-related responsibility-sharing, strengthened intra-EU solidarity does not always mean better protection for those in need of it. Overall, Garlick (2016) summarises that state of intra-EU solidarity as follows:

“Notwithstanding the unequivocal references to it in the EU Treaties, there are sobering indications that in practice, solidarity is little more than a memorable phrase, deprived of meaning from overuse in political discourse and failed application in practice”.

Nonetheless, the solidarity clause is legally binding. If an EU instrument violates this principle, then it is potentially open to legal challenge, and open to being reinterpreted or even annulled by the CJEU.

Explaining the failure of responsibility-sharing within the EU

The EU has so far faced two situations which were characterised as ‘mass influx’, during or after which responsibility-sharing mechanisms between Member States were discussed. The first was the inflow of refugees from the former Soviet Union in the early 1990s and from Yugoslavia in the mid- to late 1990s. The second is the 2015/16 arrivals of refugees coming mainly from Syria, but also from Afghanistan and Iraq (UNHCR 2016d; for a discussion on the failure of EU asylum cooperation in light of the 2015/16 crisis see Zaun 2017).

During the first episode, top recipient countries such as Germany and Sweden were strongly in favour of responsibility-sharing within the EU. The German Council Presidency thus proposed a responsibility-sharing mechanism in a Draft Council Resolution in July 1994, which laid down that refugees should be distributed according to GDP, population size and size of the territory (Council Document 7773/94 ASIM 124, see Thielemann 2003). The key idea of this proposal was that

“[w]here the numbers admitted by a Member State exceed its indicative figure [...], other Member States which have not reached their indicative figure [...] will accept persons from the first State.” (Ibid.)

This distribution key was very similar to the German national distribution key, the *Königsteiner Schlüssel*, which distributes refugees across the *Bundesländer*, according to the population size and the tax income of each *Bundesland* (but not the size of the territory). Yet, Germany was unsuccessful in introducing this key at the EU level. Other Member States which received fewer refugees at the time, including France and the United Kingdom, had little interest in adopting a distribution key that would have required them to host additional refugees. Eventually, a watered down, non-compulsory solidarity declaration was adopted, proposing that participation in peace keeping operation could also be counted against the admission of displaced persons. This instrument was not even called upon during the later inflow of refugees from the disintegrating Yugoslavia (Thielemann 2003).

Instead, the 1990 Dublin Convention was maintained and extended to Austria and Sweden in 1997 and to Finland 1998. The Dublin Convention had been introduced

as part of a package deal between Northern European Member States and Southern European Member States (and envisaging the accession of Central Eastern European states). Northern European Member States were reluctant to give up border control at borders they shared with countries that were known for their weak border enforcement. To be part of the Schengen area, Southern (and later Eastern) Member States would thus have to participate in the Dublin system and take responsibility for refugees that entered the Schengen area through them (Thielemann and Armstrong 2010; Parusel and Schneider 2017).

Unless, for instance, a refugee had close family in other Member States or had received a visa from another Schengen state, the Dublin Convention foresaw that border states had to process applications of asylum seekers that entered their territory and take back those that moved on to other Member States. As carrier sanctions had made it increasingly difficult for refugees to reach Europe by airplane, the Dublin Convention, if applied correctly, meant a redistribution of refugees from the North-West to the South-East of Europe. However, since its inception, the system has been characterised by low levels of compliance, both by Southern States and asylum seekers who move irrespective of its provisions (see Bosso 2017 who argues that non-compliance has been strategic).

As neither the Dublin Convention nor some of the non-binding instruments to harmonise status determination (Council 1996a) and asylum procedures (Council 1996b, Council 1997) had proven effective and Member States were largely non-compliant, top recipients advocated the communitarisation of these policies (Zaun 2017: 64-68; Barbou des Places 2003; Stetter 2000). Germany had been a fervent supporter of full communitarisation of EU asylum policies in the mid-1990s. However, when the Amsterdam Treaty was negotiated refugee numbers were on the decline in Germany and so it “[...] was unwilling to dilute national sovereignty to an extent that could enable European decision makers to reverse this trend” (Hellmann et al. 2005). Therefore, qualified majority voting (QMV) in the Council was not introduced with the Amsterdam Treaty, but made conditional on a positive decision from the Council five years later (art. 67II Treaty of Amsterdam, see EU 1997). QMV allows overcoming veto players and thus taking decisions more efficiently. When this de-

cision finally was to be taken, Germany still received comparatively low numbers of asylum application and therefore opposed full communitarisation of EU asylum policies. The UK, on the other hand, had turned into a top recipient of refugees in the EU and therefore supported it. Fella (2006) notes:

“The belief within the [UK] government appeared to be that by adopting decisions in this area by QMV, it had a better chance of ensuring that a common policy was established which could ensure that its fellow [M]ember [S]tates could take a greater share of asylum seekers and take back those that had passed through their territories, given the perception that the UK was receiving a disproportionately high number.”

Subsequent to the Amsterdam Treaty a number of legislative instruments were adopted. Most importantly, the EU passed the Dublin Regulation, the successor of the Dublin Convention, the Temporary Protection Directive (Council 2001) which aimed to develop a responsibility-sharing system in situations of a particularly high inflow and three directives aiming at the harmonisation of asylum procedures (Council 2005), status determination and content (Council 2004) and reception conditions of asylum seekers (Council 2003). In addition, the European Refugee Fund (ERF) was adopted, which foresaw financial compensation for refugee receiving Member States.

The adopted policies represent the two dimensions of responsibility-sharing which are uncontested, namely the sharing of people, and the sharing of money. Additionally, they include the more contested sharing of policy, i.e. policy harmonisation (Thielemann and Dewan 2006: 360). While the responsibility-sharing dimension of the sharing of money was enacted through the European Refugee Fund (ERF), the sharing of people was to be ensured through the Dublin (II/III) Regulation and the Temporary Protection Directive (TPD).

Even though the EU adopted a number of policy instruments, it was not able to establish functioning responsibility-sharing. The ERF did not provide a real compensation, but foresaw fixed payments for all Member States in addition to flexible payments, based on the total amount of refugees a state received. The latter was particularly criticised by small countries and weaker economies, as they felt

their contribution was not equally valued. In a nutshell, the ERF was therefore rather considered “symbolic politics” (Thielemann 2006). Its successor, the Asylum, Migration and Integration Fund (AMIF) (2014-2020) does not seem to have closed this gap, particularly as this fund now covers a variety of issue areas, including even border protection. While the latter might be part of solidarity towards border countries, it is not beneficial to refugees present in third countries and hence is not included in the previous definition of responsibility-sharing. As ERF funds were usually not spent on reception facilities with poor conditions, which would have needed them the most, scholars proposed AMIF should be specifically dedicated to those facilities (Guild et al. 2014).

The TPD required a political decision to activate its provisions, and again, did not provide a clear distribution scheme. It has lain dormant since its introduction. It was not formally considered during the mass arrivals of 2015 or in 2011, when Italy first claimed to be overburdened by large numbers of refugees entering the country after the so-called Arab Spring in North African countries (Zaun 2017: 199). According to Costello and Mouzourakis (2016), it appears that the TPD was not applied as it was considered ill-fitting because of the nature of arrivals, which were not based on a single influx but arrivals from different countries. Using the TPD, however, would imply giving protection to all arrivals. For others, the objection was the rights package included – in particular family reunion from the outset. This was considered to create pull-factors.

The Dublin system did not aim to be a fair distribution scheme, but rather aimed to shift the responsibility for refugee protection to the border countries. However, it was unsuccessful in meeting this responsibility-shifting aim. Again, border countries had no incentives to prevent refugees from moving on to more attractive destinations and to register their fingerprints in the Eurodac system so that they could be returned in case of leaving the country. Thus, most asylum seekers continued to move further North to the traditional top recipient States, although admittedly border countries received increasing numbers of asylum applications in recent years (see UNHCR 2016a). By 2012 when the Dublin III Regulation was negotiated and after the judgments on *MSS vs. Belgium and Greece* (ECtHR 2011) and *NS vs.*

Secretary of State for the Home Department (CJEU 2011) it was clear that automatic transfers to Greece, were unlawful. With *Tarakhel vs. Switzerland* (ECtHR 2014), the ECtHR made clear that sending states had to obtain individual assurances on the likely treatment of transferred asylum seekers.² While Dublin remained in place, it did not ensure swift allocation of responsibility for claims, quite the contrary. Moreover, throughout its history, only a tiny minority of asylum seekers have ever been subject to Dublin transfers. For most, it remains an empty threat, but one that can lead to detention and prolongation of asylum procedures (Guild et al. 2015).

Still, many North-Western Member States did not want to give up on Dublin for three reasons. First, they did not want to lose the *status quo* according to which border countries were in principle responsible for refugees. Second, they wanted to send a clear message to asylum seekers that they were not entitled to choose their country of asylum, and that moving onwards would bring adverse consequences. Third, they wanted to send a message to their electorate that they were in control (Thielemann and Zaun 2013: 11).

In sum, when the 2015 arrivals of refugees started, the EU had seen more than fifteen years of intensive policy-making in the field with a variety of policy instruments being adopted. Yet, it was not better prepared than during the refugee inflows of the 1990s and had no effective policy in place to ensure effective responsibility-sharing.

Discussions therefore mirrored those of the early 1990s, and yet again revolved around a relocation scheme to support particularly the border countries Italy and Greece that had since 2015 faced large numbers of arrivals. On 22 September 2015, a relocation agreement was adopted, which proposed a relocation based on GDP (40 percent), population size (40 percent), unemployment rate (10 percent) and number of applications (10 percent) (European Commission 2015).³ While the key was portrayed as benefitting border countries, its true value was to distribute asylum seekers across the EU based on a quota system, and thus end ‘self-relocation’ to Germany and Sweden (Costello and Mouzourakis 2016).

Initially, relocation was envisaged as involving only 160,000 asylum seekers with strong protection needs from Italy and Greece. The notion of strong protection

needs is highly problematic, because it meant that only certain nationalities were eligible for relocation, namely those coming from countries with recognition rates of over 75 percent in the past, entailing a problematic discrimination against other asylum seekers (Costello and Mouzourakis 2016).

The relocation agreement was strongly contested, particularly in Central and Eastern Europe, where it would have meant an increase in the numbers of asylum seekers in many states. The Czech Republic, Hungary, Romania and Slovakia openly opposed this proposal and were eventually outvoted by a qualified majority vote. Slovakia and Hungary eventually challenged this proposal before the CJEU (CJEU 2015a, CJEU 2015b). By July 2017, only one fourth of the relocation target had been reached (European Commission 2016a). The Commission submitted a proposal for a Dublin IV Regulation in May 2016 (European Commission 2016b), but as of September 2016 the idea of 'flexible solidarity' was promoted, which meant that states which did not want to receive refugees could provide financial support or expertise instead (Zalan 2016).

The previous analysis and particularly the analysis of the discussions around a distribution scheme during the disintegration of the Soviet Union/the Yugoslavia wars in the 1990s and the Middle Eastern refugee crisis in 2015 shows that European states have adopted a strongly reactive approach instead of a proactive one. Usually, EU Member States only promote enhanced EU asylum cooperation if they consider themselves disproportionately faced with refugee flows, considering cooperation merely as means to reduce their own share of refugees. Once these states received fewer refugees themselves, their support for European cooperation would fade. Of course, other Member States are very much aware of this strategic move of top recipients and are barely inclined to agree on any distribution key implying a redistribution towards themselves (Zaun, 2017; 2018, forthcoming).

From a theoretical perspective, non-cooperation at the EU level can again be explained with the Suasion game. Patience is usually considered a crucial power factor in negotiations. Actors that urgently need a policy to be adopted are usually prone to make more concessions than those that do not benefit from this proposal (Knight 1992). Moravcsik (1993) summarises this under the notion of best alterna-

tive to negotiated agreement (BATNA). States that do better without an agreement are likely to prefer unilateral alternatives and defect from cooperation. Following the collective action logic described above, top recipients usually have a strong interest in establishing a responsibility-sharing mechanism. Refugee protection involves material, ideational and electoral costs for policy-makers who therefore try to shift the responsibility for refugees to their neighbouring countries. Since they feel disadvantaged from the *status quo* and need EU legislation to reach their redistributive aims, they are less patient than non-recipients and prefer any agreement over the current situation. States that receive few refugees benefit from the *status quo* as they receive comparatively few applications. Thus, they have no incentives to engage in EU cooperation (Zaun, 2018, forthcoming).

In the EU context host states during the 2015 refugee inflow promoters of responsibility-sharing have been 1) traditional recipients of asylum seekers, Germany, Austria and Sweden, which had adopted comparably liberal policies at the beginning of the crisis and 2) border countries, such as Greece and Italy, which faced increasing numbers of arrivals due to their geographic situation. Based on the Suasion Game dynamics, countries with few asylum applications such as France, Spain, the UK and most of the Central and Eastern European Member States had no incentives for cooperation. Hungary played a rather peculiar role: initially a host state, it treated refugees so badly that that German courts began to prohibit Dublin transfers to Hungary, and Germany suspended Dublin transfers back to Hungary (European Asylum Database 2015).⁴ Thus, by the time the relocation scheme was to be adopted, Hungary acted like a non-host state.

Like in global responsibility-sharing, non-hosts in the European context have two options: to offer responsibility-sharing (cooperation) or not to offer it (defection). Host states face two different options: to offer asylum (cooperation) or not to offer asylum (defection). In the Schengen area, this is particularly so as the Member States that are considered attractive by refugees can no longer prevent refugees from entering their territory, unless these opt for unilateral border closures as done by Germany, Sweden, Austria, and Denmark during the crisis. According to the Suasion Game host states have no alternative but to offer asylum, both because it is their legal obligation, and because of an inherent threat to security and stability if

there are large numbers of people present on the territory deprived of access to any civil or social rights. The non-hosts' commitment to responsibility-sharing, again, is purely discretionary. Based on this power asymmetry, host states will provide asylum (or at least access to an asylum procedure), while the non-host defects from cooperation.

The previous analysis has demonstrated that effective EU cooperation in the area largely failed, which can be explained through the lack of incentives for donors. Yet, as the cases of the adoption of QMV in the Council (on the instigation of the then top recipient UK) and of the adoption of the Dublin Convention/Regulation (with its potentially strong redistributive effects on border countries) show, the dynamics of the Suasion Game may be overcome. Indeed, although the practical results as yet are underwhelming, the agreement on the use of a distribution key for relocation is a further example that QMV enables veto players to be overcome. These cases lead to the conclusion that two factors need to be present to overcome the Suasion Game dynamics. First, the redistributive dimension of the policy needs to be rather implied than explicit. While QMV is known to make policy processes smoother and commitment more credible as decisions can be taken against reluctant minorities, Member States are unlikely to foresee all of the consequences this may have for the number of asylum seekers or refugees they receive.

In a similar vein, Southern European border countries are unlikely to have foreseen that they would turn into top recipients upon signing the Dublin Convention, as they were countries of emigration at the time and did not have a history as countries of asylum (Aus 2006: Annex 2; Zaun 2017: p. 220-221). Second, package deals and side-payments enhance chances that non-host countries are willing to adopt policies that imply a redistribution of refugees towards them. Border countries agreed to the Dublin Convention in exchange for access to the Schengen area and Germany agreed to QMV in asylum policies as part of a package deal that proposed delaying QMV in other areas of immigration policies. Given that the EU is a highly integrated entity covering a wide range of policy areas and where Member States are involved in a number of negotiations at the same time, there are numerous possibilities for package deals and side-payments which are absent at the international level.

Moreover, the European Commission could make more use of infringement procedures, as in the past it has mainly focused on infringement of formal non-implementation.

Models to facilitate EU responsibility-sharing

Model 1: Free Choice / Dublin without coercion

The Dublin System is deeply dysfunctional. The vast majority of asylum seekers who arrive in Europe do not claim asylum in their country of arrival, but rather move onwards, sometimes clandestinely. If the Dublin first arrival rule was suspended, and replaced with a system of free choice or preference matching, asylum seekers could be encouraged to consider the range of countries of asylum available. Depending on the institutional mechanisms put in place, our current understandings of the determinants as choice of asylum-country suggest that refugees' preferences in that matter are not fixed. Rather, well-designed non-coercive processes could be used to encourage asylum seekers to seek protection in the many EU Member States which currently receive comparatively few refugees. At present, asylum seekers have no source of advice other than smugglers and networks, so it is the perception of countries that determines asylum flows. The limited experience with relocation suggests people have been happy to go to, say, Portugal, but would never have considered it as a country of asylum was it not for a process giving them information about this possibility.

Model 2: An EU Migration, Asylum and Protection Agency

A centralised EU Migration, Asylum and Protection Agency charged with decision-making power over asylum claims could be an important contribution to responsibility-sharing. The CEAS intends to create comparable asylum standards across the EU, an endeavour that so far was clearly unsuccessful. Williams (2015) has pointed out, "establishing a 'European Asylum Service' along these lines operating in all Member States could, potentially, leapfrog the slow process of

harmonisation.” A study of the Centre for European Policy Studies (CEPS) (Carrera et al. 2015: 3) envisaged this agency as follows:

“This agency should become a proper Common European Asylum Service, responsible for processing asylum applications and determining responsibilities across the EU, and with competence for overseeing a uniform application of EU asylum law. The Service could be modelled along the lines of the European Central Bank or, to be more precise, the European System of Central Banks (the Eurosystem). The Service would be financed either directly by the EU budget or via contributions from member states, which would be proportional to their GDP.”

This agency could also monitor the conditions of reception facilities and ensure equal standards for applicants during the asylum procedure and perhaps even after status recognition. Guild et al. (2014) affirm that with an EU wide status enforced through an EU centralised process physical responsibility-sharing should be much less of a problem, as processing costs were covered centrally. Yet, of course accommodation of asylum seekers during the asylum procedure would still involve costs. Hence, asylum seekers could still be distributed according to quota system or costs could be covered through the EU budget or the above proposed funding scheme which is based on the contributions from member states (proportional to their GDP). With central decision-making, refugee status is usually assumed to be an EU-wide status which allows refugees to move freely within the Schengen area. Thus, Member States should incentivise refugees to stay and could be ‘punished’ if they are unable to do so (Guild et al 2017).

Model 3: Distribution keys

In recent years, a number of variations of the idea of a distribution key have been advanced in academic and policy debates. A 2014 ICMPD Study shows that many of these keys entail a somewhat different distribution, yet these differences are usually minor ones (Wagner and Kraler 2014).

The EU Relocation Decisions did entail a distribution key, but a standing quota system is now unlikely to be adopted (Zalan 2016). The key reflected both the ab-

sorption capacity and the integration capacity of the Member States. The two major factors are: 1) the size of the population (40 percent): the larger the population, the easier it is for the Member States to absorb and integrate refugees; 2) the total GDP (40 percent): large economies are considered better equipped to shoulder more refugees. There are two corrective factors which reduce the allocation, including 1) the number of the asylum applications received and the resettlement places already offered in the past 5 years (10 percent); and 2) the unemployment rate (10 percent). Strengthening the redistribution of already recognised refugees, as done with the EUREMA programmes described in chapter 4 is another means of physical responsibility-sharing (Guild et al. 2015).

Some proponents of a distribution key argue that if refugees are no longer able to choose freely which they apply with, allocation of persons must still be consensual and allow asylum seekers at least some options. Rapoport and Moraga (2014) argue that a matching mechanism could help to ensure this. At the same time, such a mechanism would mean that also states, which usually complain not being able in control of whom applies for asylum with them, can at least to some extent choose the asylum seekers they receive. This raises the chances for a real commitment and has the potential to lead to decisions that are closer to the preferences of both refugees and hosting states. For the EU level, Jones and Teitelboym have proposed to introduce a 'central clearing house' which matches the preferences (Jones and Teitelboym 2016: 80). This idea could be easily connected with that of a central processing agency for asylum applications.

Endnotes section 7.

1. The CEAS's approach to responsibility-sharing is further analyzed in another Delmi report (2017:9) by Parusel and Schneider (2017) on Reforming the Common European Asylum System: Responsibility-sharing and the harmonisation of asylum outcomes.
2. The Commission recently adopted a recommendation that Dublin transfers to Greece should be resumed from March 2017 on (for applicants entering through Greece), given recent improvements in the Greek asylum system (European Commission 2016c).
3. However, unemployment rate and number of applications are capped so that they do not exceed 30 percent of the population size and GDP effects (Ibid.).
4. In April 2017, the ECtHR ruled detention practices unlawful (Ilias and Ahmed v Hungary); since then, several Member States have suspended Dublin transfers to Hungary (AIDA 2017).

8. Policy Implications

Responsibility-sharing is a necessary condition for the effective functioning of the refugee system, at both global and regional levels. Without it, there will be inadequate assistance, protection, and solutions for refugees. And yet there has remained a longstanding gap in terms of institutional mechanisms to ensure predictable and equitable responsibility-sharing, especially at the global level.

In the aftermath of the 2015 European refugee crisis, there is a unique historical opportunity to address gaps and dysfunctionalities in responsibility-sharing. However, building effective mechanisms relies upon sound institutional design. Many of the current debates on responsibility-sharing lack a clear analytical starting point from which to initiate the types of institutional reforms needed for effective responsibility-sharing.

Our central argument is that a more efficient and equitable responsibility-sharing is unlikely to be achieved through the creation of a single legal mechanism or centralised allocation system. Rather, it requires a range of complementary mechanisms – analytical, political, and operational – in order to overcome the collective action failure that has historically beset the system. Institutional design for responsibility-sharing is likely to need both generic structures and the capacity for situation-specific responses.

At a normative level, a series of principles and standards for responsibility-sharing are likely to be useful in order to build shared understandings about expectations among states and other relevant actors. However, alone, they are likely to be insufficient. The history of responsibility-sharing shows how much it depends upon the existence of appropriate organisational capacities to facilitate principled yet pragmatic bargains on a situation-specific basis. The type of capacities required for this are analytical and political, as much as operational. Each mass influx, protracted refugee situation, or humanitarian emergency requires elements of a context-specific response.

Below, we outline a series of specific recommendations for policy-makers and practitioners relating to the type of metrics, principles, organisational capacities, and operational procedures needed to make responsibility-sharing effective.

i) Metrics

- *Creating a Responsibility-Sharing Index*

As we have shown, the development of clear indexes or metrics of refugee responsibility-sharing presents numerous conceptual challenges. In particular, it poses the question of how many units of a particular type of responsibility-sharing should be understood as equivalent to other forms of contribution. This problem of equivalence is both conceptual and political: how would states come to accept an index as legitimate and authoritative? Nevertheless, the development of an authoritative responsibility-sharing index would be extremely worthwhile both in contributing to a shared understanding of what responsibility-sharing means but also in creating incentives upon states to increase their own contributions. It would offer a means to ‘name and shame’ or recognise free-riders and effective contributors, in ways that could contribute to building stronger norms of responsibility-sharing.

Despite methodological challenges, it is possible to imagine a responsibility-sharing index for refugees. Indexes offer not only a means to measure state contributions but also a source of normative influence over state behaviour. Indexes can change state behaviour precisely because of the normative influence of ranking performance, and hence creating incentives for improved performance. Indexes have been used effectively in a range of other policy fields. Transparency International’s International Corruption Index, for example, offers an implicit ‘naming and shaming’ function and hence provides a source of normative influence. Within the migration field, indexes have already been developed on a small scale, such as MIPEX (the migration integration policy index), IMPIC (immigration policies in comparison), and EUDO (the EU observatory on citizenship).

The challenge with developing a public index is that it would need to have legitimacy in order to have the authority to influence state behaviour. It would therefore

need to be based on criteria that states found to be valid and managed by a body or a coalition of actors regarded as objective, rigorous and non-political, such as a university or an autonomous NGO regarded as beyond political influence. But indexes represent a serious and long-term undertaking. They require that measurements and metrics are perceived by states as legitimate. Such an index would need to be compiled by a credible and objective actor, and be sufficiently resourced to endure. Done effectively, they can offer authoritative leadership and a source of soft normative influence over government decision-making.

- *Accounting for Negative Policies*

One example of a conceptual challenge is that the traditional conception of responsibility-sharing encompasses only the 'positive' aspects of contributions – notably through money and taking in people. It does not 'deduct points' for restrictive or more 'negative' policies. For example, a state can adopt a range of deterrence policies to exclude asylum seekers from its territory, some of which may be inconsistent with international refugee and human rights law and yet it would still feature towards the top of a responsibility-sharing index that was based purely on levels of financial and resettlement relative to GDP and population. For example, Australia would feature highly on the Grahl-Madsen formula of refugee responsibility-sharing despite most refugee rights advocates strongly criticising many aspects of its own asylum policies, not least its use of indefinite offshore detention on Nauru and Manus Island. Any metric of responsibility-sharing therefore has to take into account the ways in which a government engages in forms of responsibility-sharing, including policies that evade or avoid asylum and responsibility-sharing.

- *Beware Janus-Faced Responsibility-Sharing*

A related challenge is that responsibility-sharing may, paradoxically, be motivated by their desire to restrict or limit the movement of asylum seekers. How acceptable is it to pay more money towards protection in developing countries if the underlying goal is to take in fewer refugees? In many European states, the notion of 'Protection in the Region of Origin', for example, has been presented as a form of responsibility-sharing (Betts and Milner 2006). Indeed, on the surface, it is: it offers addi-

tional development and humanitarian assistance to host countries in the developing world. And yet, much of its underlying political motivation is to protect people 'there' rather than 'here': to offer 'arms-length' refugee protection while managing immigration. In that sense, it ticks the responsibility-sharing box but may well be accompanied by measures that reduce access to asylum in Europe.

This in turn could be considered to undermine the underlying purpose of responsibility-sharing if it either limited access to asylum in Europe or led to 'ripple effects' (Hargrave and Pantuliano 2016), whereby other host states in the developing world – from Kenya to Turkey, for example, felt inclined to replicate the introduction of deterrence measures or restrictions for asylum seekers. ECRE, for example, has shown how some European approaches to states in North Africa and East Africa have been rejected by those governments and potentially had damaging implications for asylum and refugee protection. One means to mitigate this would be to include some form of asylum or deterrence index within measures of a state's contribution to responsibility-sharing. However, it is also important to be realistic, and recognize the Northern states' desires to manage immigration may represent an important – and sometimes even valid – motivation for responsibility-sharing.

ii) Principles

• *Political Sustainability*

In order to be realistic and effective, any responsibility-sharing system has to be politically feasible and sustainable. Around the world, public attitudes towards immigration are increasingly sceptical, and human mobility is increasing in its political salience. Against the backdrop of rising populism, extremist parties are scapegoating migration as a means to narrate structural changes in the global economy. Migration was a major issue in the UK's 'Brexit' referendum and the US presidential election. There is further concern that the Far Right will gain a significant share of the vote across Europe, particularly in Central Eastern Europe. These dynamics are not unique to Western liberal democracies. Populist nationalism has emerged from the Philippines to Russia to India to Kenya.

These dynamics have significant implications for the global refugee regime. They effectively reduce the political space within which politicians can advocate for open, human rights based refugee and asylum policies. They necessitate that at a regional and global level, responsibility-sharing mechanisms are reconciled with the evolving political context. Nevertheless, it is worth noting that across Western Europe, ‘attitudes to immigration’ data highlight at least two salient points. First, the public is still far more supportive of refugee protection than of immigration in general (Hatton 2016). Second, publics are most concerned with a sense of loss of control. This suggests that a predictable and managed responsibility-sharing system that offers outcomes that are perceived as equitable and efficient may well be compatible with political sustainability, even within an increasingly nationalistic political climate.

Public opinion research tends to show strong support for refugee protection, while sentiments on immigration, and in particular when framed as ‘illegal immigration’, show divergent or less support. For example, Hatton (2016) reviews the European Social Survey (ESS) data of 2002 and 2014, and demonstrates that negative opinion towards refugees is now in the minority for every country. Meanwhile, Bansak et al. (2016) have probed support for responsibility-sharing in Europe specifically, using a survey experiment involving 18,000 citizens across fifteen European countries. They demonstrate that public preferences on this issue reflect support for ‘proportional equality’, whereby asylum seekers would be allocated proportional to each country’s capacity. At global level, a recent Amnesty International Global Survey (2016) demonstrates high levels of support for refugee protection.

- *Ad Hoc vs Centralised*

At both the global and regional levels, there is an increasing trend towards advocating centralised approaches to responsibility-sharing. Globally, UNHCR’s leadership of the Global Compact on Refugees has argued for the need to move beyond the *ad hoc* approaches of the past, and to develop more predictable outcomes through the CRRF. Regionally, the European Commission has advocated for a strengthened European Asylum Support Office (EASO) as a basis for more coordinated and equitable decision-making on asylum. This tendency towards centralization also finds

strong proponents within the literature on refugee responsibility-sharing. Common-but-differentiated responsibility-sharing suggested by Hathaway and Neve (1997), for example, proposes mechanisms based on a central allocation system that allocates quotas based on clearly defined criteria and leaves latitude for different types of contributions.

However, at both levels, it is worth noting that centralisation is not inherently superior to *ad hoc* mechanisms for responsibility-sharing. Instead, both approaches may have a role to play, and it is likely that both globally and in the EU, a ‘hybrid’ model with both centralized and *ad hoc* elements is likely to be the most effective. This is in part because each particular refugee situation is different. While enduring and generic principles are important, so is the flexibility to respond to each refugee situation on its own terms. In conceptual terms, the effectiveness of hybrid models stems in part from the nature of refugee protection as an impure global public good. Although some of its benefits are non-excludable between actors, requiring institutionalised coordination, providing protection also confers private benefits from being the provider. Put less abstractly, states sometimes have particular interests in particular refugee situations. A fully centralised system may risk undermining such commitments, unless it builds in a degree of flexibility.

Furthermore, as we learn from the literature on legalisation in world politics, the creation of binding mechanisms based on high-levels of obligation, precision, and delegation is unlikely under the present circumstances, and so effective brokerage of *ad hoc* mechanisms is more likely to succeed than attempts to build highly institutionalized mechanisms, let alone those based on hard law. Nevertheless, flexible but permanent structures like secretariats, dedicated staff, or independent commissions (such as the recently composed World Refugee Council) may have a role to play in supporting such facilitation.

• *Refugees’ Contributions*

There has been a move towards recognising that non-state actors, including the private sector have a contribution to make to responsibility-sharing. One important group of actors, too often marginalised from these discussions, is refugees

themselves. There are at least three contexts in which this matters. Firstly, in determining systems of allocation, refugees should be consulted, both on institutional design and where they are directly affected by particular allocation decisions. To what extent, for instance, can a system of responsibility-sharing be regarded as legitimate with consultation with those it primarily affects? Second, though, refugees can also be considered to be an important contributor to responsibility-sharing in their own right. They often contribute directly to protection, assistance, and durable solutions for themselves and other refugees through, for example, refugee-led community based organisations and informal networks. Third, in designing responsibility-sharing mechanisms, policy-makers should consider how refugees can be reframed as a 'benefit' to societies rather than an inevitable cost or 'burden'. The shift towards development-based approaches to refugee assistance greatly expands the opportunities for reconceiving refugees as contributors.

iii) Organisational Capacities

• *Effective Brokers*

Some aspects of responsibility-sharing can be negotiated and pre-empted prior to a crisis. Generic principles have value in establishing an accepted basis on which costs and risks will be distributed between states. However, each situation will have its own dynamics. This means that in addition to law and principle, effective responsibility-sharing requires context-specific facilitation. It requires that an international organisation can identify areas of mutual gain among states and set out a vision for resolving a particular refugee crisis through collaboration and coordination.

In the past UNHCR has sometimes offered this type of brokering on responsibility-sharing. The Indochinese CPA and CIREFCA are important examples. Yet the 'European' and Syrian refugee crises highlight a contemporary gap in strategic leadership relating to responsibility-sharing. In order to address this, political capacity needs to be built within UNHCR and the European Commission in order to outline responsibility-sharing plans based on recognition and appeal to states' collective interests overcoming a particular crisis. This is especially important given

the extent to which politics rather than simply law and principle determines states' behaviour with regards to responsibility-sharing.

There is far greater likelihood today of success for *ad hoc* or soft law-based responsibility-sharing mechanisms than highly centralised or legalised approaches. The skills of the broker are especially important to the success of responsibility-sharing. Political analysis and political facilitation skills are especially important in order to make responsibility-sharing work. Until now, organisations like UNHCR have rarely hired professional political scientists in order to contribute to responsibility-sharing. Yet such skills are needed in order to identify opportunities for responsibility-sharing based on both an appeal to values and interests, as well as the ability to put together credible packages based on mutual gain.

- *Beyond Hegemony*

State leadership also matters. Historically, the role of large governments has mattered for responsibility-sharing. Globally, the US has played the role of benevolent 'hegemon' for much of the history of the refugee regime, providing a far greater commitment to financial and resettlement-based responsibility-sharing than any other government in the world (Suhrke 1998). Regionally, Germany has played a similar role in the EU, providing the largest financial and resettlement commitment in many refugee crises, including Bosnia, Kosovo, and Syria.

Yet, the position of both the US and Germany as global and regional leaders is now being called into question, not least by their own electorates. The election of Donald Trump and the criticism of Angela Merkel's 'Wir schaffen das' policy towards refugees have partly undermined both governments' scope for leadership on refugee issues. This presents a major challenge to the politics of responsibility-sharing. It means that effective leadership has to emerge from elsewhere, and it is likely to have to be pragmatic and interest-based rather than premised upon an appeal to the values-based leadership of a benevolent hegemon. In a multi-polar world, leadership may have to come from international organisations, business leaders, small coalitions of states, or civil society.

- *Carrots and Sticks*

Responsibility-sharing relies upon incentives. And it breaks down when there are none. History tells us that responsibility-sharing cannot rely simply upon states having a values-based commitment to ‘do the right thing’. It has to be based on a combination of appeal to states’ interests through providing an efficient or highly leveraged collective solution to areas in which they place value on security or human rights, or upon institutional mechanisms that can enforce compliance.

At the global level, in the absence of enforcement mechanisms, effective examples of responsibility-sharing have historically been based on appeal to interests and the creation of reciprocal agreements that make states better off acting together than they would be acting in isolation. Even at the regional level, where strong institutional enforcement mechanisms have been present in the EU, responsibility-sharing has still failed when divorced from an appeal to state interests. Generating commitments therefore relies upon understanding how national and local political actors perceive the relationship between refugees and other strategic priorities relating to migration, development, and security, for example.

- iv) Operational Procedures

- *Temporal Dimensions*

To be fully efficient, responsibility-sharing has to be about more than simply the allocation of refugees once a crisis has taken hold. It must relate to each temporal stage in the ‘refugee cycle’: root causes, early warning, emergency response, asylum, and durable solutions. One of the key lessons of the so-called 2015/16 European refugee crisis is that it was avoidable. The Syrian refugee crisis had been unfolding for four years by the time significant numbers of refugees began seeking protection in Europe. Still, few systems were in place to mitigate the overall impact of displacement.

A commitment to sharing responsibility for early warning systems, early-stage humanitarian evacuation programmes, or insurance schemes, for example, may reduce the overall long-term burden that needs to be shared by states. In theory,

the EU's Temporary Protection Directive was creative for such a purpose: to ensure that a structure was in place to address a mass influx. However, the circumstances under which it could be invoked were so ambiguous and contested that states have failed to use it since its inception in the aftermath of the Kosovar crisis. During the 2015/16 especially, an unwillingness to provide family reunion from the outset and the nature of influx, which came not only from Syria but from various countries, undermined its application (see above). Yet all states could be better off if predictable responsibility-sharing mechanisms also applied upstream of a crisis.

- *Development-Based Approaches*

Effective responsibility-sharing is not just about allocating more money; it is also about allocating it more efficiently. Although humanitarian assistance is important in the emergency phase, indefinite humanitarian relief can contribute to dependency. Development-based approaches can empower refugees to help themselves, leverage contributions from other actors including the business sector, improve relations between refugees and host communities, and restore refugees' autonomy and dignity. The operational focus of such an approach should be on creating an enabling environment for both refugees and hosts: creating employment, improving education, and supporting entrepreneurship, for example. Such approaches are not new and CIREFCA provides an important historical example of how development-based responsibility-sharing can lead to 'win-win' outcomes for refugees, host societies, donor states, and host governments. To be effective, such approaches rely upon collaboration between a range of actors, not just humanitarian and development, but also business, civil society, and refugees themselves. They also rely upon the effective brokerage of principled yet pragmatic bargains between governments.

- *Preference Matching*

At both the global and regional levels, preference matching offers one of the potentially most innovative means that make responsibility-sharing less costly and more efficient for all states, while also offering a means to enhance refugees' own choices in terms of destination. So far, two-sided preference matching has only

been piloted at the national level to distribute refugees within particular countries, but it has the potential to be applied to resettlement at a regional level through, for example, EASO, and even at a global level through UNHCR's brokerage of resettlement. However, to be at its most effective, preference matching is not a stand-alone framework it is a component part of a wider coherent responsibility-sharing system. For example, in the European context, preference matching would be most effective when combined with a renegotiated Dublin agreement that clearly and equitably allocates responsibilities as a basis for a preference matching scheme.

- *Legal Routes*

Finally, it is evident that responsibility-sharing cannot be divorced from asylum, even if they are analytically distinctive. One of the reasons for collective action failure in the European refugee crisis has been not only geography but the restrictive policies of states with the capacity to exclude refugees from their territories and jurisdictions. This reinforces a structural inequality within the refugee regime, as well as leading to perversely competitive dynamics between governments' intents on the avoidance and evasion of responsibility. Yet the irregular onward movement of refugees and the strategic use of waive-throughs by first countries of asylum and transit countries leads to collectively sub-optimal outcomes for all. This implies that a central element of efficient and effective responsibility-sharing must be alternative legal pathways – including through humanitarian visas, labour migration channels, student visas, and family reunification, all of which technically fall outside the framework of the refugee regime but nevertheless contribute to its sustainability.

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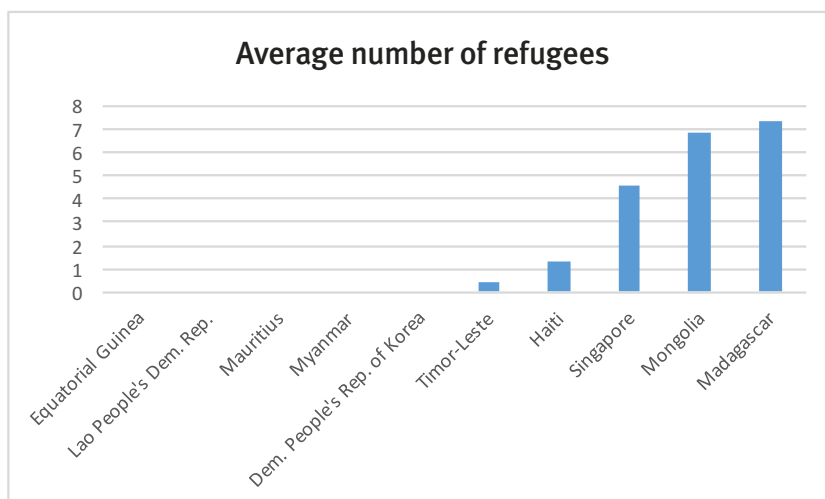
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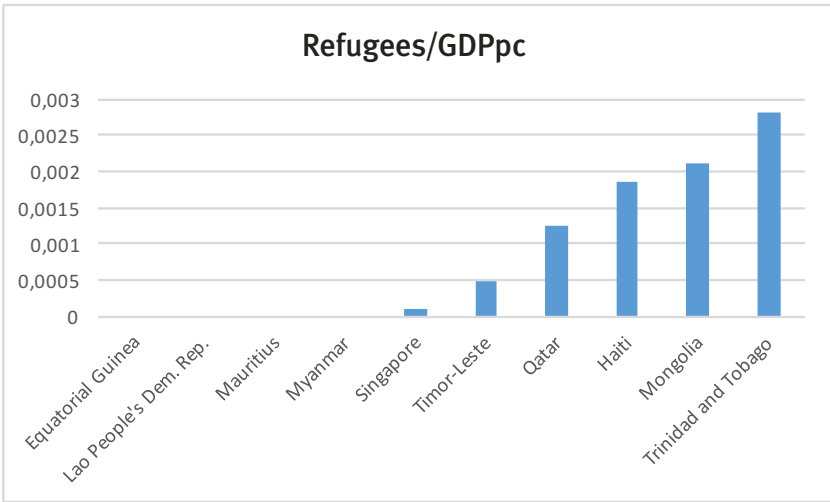
Appendices

Figure A1. Bottom ten recipients of refugees (by average number of refugees hosted 2007-2016, population > 1 mio.)



Source: UNHCR 2017c.

Figure A2. Bottom ten recipients of refugees (by GDP per capita, average number of refugees hosted 2007-2016, population > 1 mio.)



Sources: UNHCR 2017c; World Bank 2017.

List of previous publications

Rapport och Policy Brief 2014:1, *Radikala högerpartier och attityder till invandring i Europa*, av Mikael Hjerm och Andrea Bohman.

Rapport och Policy Brief 2015:1, *Internationell migration och remitteringar i Etiopien*, av Lisa Andersson.

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Rapport och Policy Brief 2017:9, *Reforming the Common European Asylum System: Responsibility-sharing and the harmonisation of asylum outcomes* Bernd Parusel and Jan Schneider

Responsibility-sharing relates to the distribution of costs and benefits between states for addressing a particular global challenge. The global refugee regime has historically had relatively weak norms relating to responsibility-sharing. In the aftermath of the so-called 'refugee crisis' in the Middle East and Europe, there have been renewed calls to create effective mechanisms for responsibility-sharing. But how should such institutional mechanisms be designed? This Delmi-report seeks to provide policy-makers with an accessible overview of the historical, political, and legal dimensions of responsibility-sharing.

While acknowledging that different mechanisms will be needed at the global and regional levels, the report argues that effective responsibility-sharing is unlikely to be achieved through the creation of a single legal mechanism or centralised allocation system. Rather, it requires a range of complementary mechanisms – analytical, political, and operational – in order to overcome collective action failure.



The Migration Studies Delegation is an independent committee that initiates studies and supplies research results as a basis for future migration policy decisions and to contribute to public debate.



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