

**RESPONSIBILITY-SHARING IN DEALING WITH REFUGEE CRISIS:
CHALLENGES AND SOLUTIONS**

DISSERTATION

Submitted to:

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Certificate

This is to certify that this dissertation titled ‘Responsibility-sharing in Dealing with Refugee Crisis: Challenges and Solutions’ submitted by Ms. Neha Shree (ID No. 942) in partial fulfilment of the requirements of LL.M. Degree for the academic session 2020-21 at National Law School of India University, Bengaluru, is a bonafide research work carried out by her under my guidance and supervision.

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Declaration

I, the undersigned, solemnly declare that this dissertation titled as “Responsibility-sharing in Dealing with Refugee Crisis: Challenges and Solution” submitted to National Law School of India University, Bengaluru for LL.M. Degree (2020-21), is an original and bonafide research work carried out by me under the supervision of my guide. In case the contributions of others are involved, every effort has been made to give due credit to them through reference to the literature. The information contained in this work is true to the best of my knowledge. This dissertation or any part thereof has not been submitted for the award of the degree, diploma, certificate or fellowship not has it been sent for any publication purpose.

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I. INTRODUCTION

“It is the obligation of every person born in a safer room to open the door when someone in danger knocks.”

- Dina Nayeri, author of “The Ungrateful Refugee”

Responsibility-sharing, International assistance and cooperation are core tenets of not only international refugee law but international law in general. When it comes to refugee crisis specifically, responsibility-sharing becomes all the more crucial, since the burden of hosting refugees is often inequitably distributed.

The United Nations (hereinafter “UN”) at various instances emphasised upon the importance and urgency of sharing the responsibility in cases of prolonged refugee crisis.¹ However, still the reality differs starkly from the commitments and promises made by nation-states on paper. Today, almost 90 per cent of the world’s total refugees are hosted by developing states.² Only eight countries host more than half the world’s refugees.³ It is estimated that the total number of displaced people have reached the highest ever recorded since the World War II.⁴ Placing the burden of housing and hosting such massive number of refugees on developing nations which struggle to maintain their own populations represents a gross and collective failure on the part of the international community.

¹ ‘UN Calls for More “equitable” Responsibility-Sharing to Relieve Plight of Syrian Refugees’ (*UN News*, 30 March 2016) <<https://news.un.org/en/story/2016/03/525592-un-calls-more-equitable-responsibility-sharing-relieve-plight-syrian-refugees>> accessed 9 August 2021.

² ‘UN Secretary-General’s Op-Ed: “Refugees and Migrants: A Crisis of Solidarity” – Office of the Secretary-General’s Envoy on Youth’ <<https://www.un.org/youthenvoy/2016/05/secretary-generals-op-ed-refugees-migrants-crisis-solidarity/>> accessed 9 August 2021.

³ *ibid.*

⁴ Nick Cumming-Bruce, ‘Number of People Fleeing Conflict Is Highest Since World War II, U.N. Says’ *The New York Times* (19 June 2019) <<https://www.nytimes.com/2019/06/19/world/refugees-record-un.html>> accessed 9 August 2021.

In the current scheme of things, states are failing in almost every aspect of responsibility-sharing. There have been instances where states have refused to accept asylum-seekers from the frontline states that border the refugee producing states. The European Union's (hereinafter "EU") deal with Turkey to use the latter state as a border guard to prevent refugees from entering the EU has been criticised as an attempt to shirk away from their responsibility to host and relocate refugees.⁵

Responsibility-sharing is indispensable because the costs of protecting and hosting refugees are unequally placed. Large scale concentration of refugees in certain states is mostly an accident of geography. States that share borders with countries in conflict often host far greater numbers of refugees than those states that are farther. There are times, of course, when refugees move directly or out of proximate host countries into other regions.

It is in this backdrop, that the this study argues for a holistic approach towards responsibility-sharing. An approach that enhances protection of refugees while taking into consideration the needs of host communities. The study focuses on various areas of responsibility-sharing, such as efforts to address the root causes of creation of refugees; efforts to find sustainable solutions, including resettlement of refugees from host countries to third countries; providing financial support to refugees and the communities in which they reside; and providing technical assistance and training for host states and local organizations. These issues are examined from the perspective of host states' governments, other stakeholders such as, donor governments, NGOs, service providers, and, most importantly, the refugees themselves.

1.1 Statement of Problem

International responsibility-sharing in refugee law regime is not a novel concept. The importance of and need for the same has been time and again reiterated by the UN. Even after various

⁵ 'EU-Turkey Summit: Don't Wash Hands of Refugee Rights' <<https://www.amnesty.org/en/latest/news/2016/03/eu-turkey-summit-refugees/>> accessed 9 August 2021.

declarations and commitments by nation states, there is little to no improvement in the conditions of refugees as well as the developing host states which shelter them. The current refugee law regime leaves much to be desired. There is no method which can ensure that the burden of hosting, settling, relocating of refugees is divided equitably. There is no mechanism which could provide a solution to the problem of limit availability of resources in developing countries which are expected to maintain both their native populations as well as asylum-seekers.

1.2 Importance of Study

Although large scale movement of refugees is not a new phenomenon. There were huge numbers of displacements after both the World Wars. But in the recent years, these numbers have increased significantly, crossing the number of people displaced after World War II.⁶ In absence of a coordinated and collective international response, the world bore witness to the plight of refugees when harrowing images of rickety boats filled with people escaping death and torture, children drowning in Mediterranean and washing ashore, surfaced. If such tragedies are to be avoided, there is a need for international coordination and action to address these large-scale movements. However, under the present scheme of things, there are no concrete mechanisms of responsibility and burden sharing. This study aims to identify the challenges that arise while applying the principle of responsibility-sharing and how can those challenges be overcome to produce an effective and holistic approach towards responsibility-sharing.

1.3 Objectives

The aim of this research is to identify the reason as to why a principle as widely recognised as responsibility-sharing is not being implemented in an effective manner. This study also aims at identifying the different formidable challenges that plague effective application of principle of

⁶ Cumming-Bruce (n 4).

responsibility-sharing. It further aims to find out what could be the possible ways in which a holistic approach can be taken towards dividing responsibility towards refugees equitably amongst all the nation states. In light of the above, the following are the precise objectives:

1. to identify how the principle of responsibility-sharing works in current international refugee law regime.
2. to explore what kind of obligations does the principle of responsibility-sharing put on the nation states.
3. to identify challenges faced in the application of the principle of responsibility-sharing.
4. to suggest reforms in the current scheme of responsibility-sharing practices so that a holistic way of equitable distribution of responsibility could be achieved.

1.4 Hypothesis

There is a need for changing the present nature and scheme of the obligation of responsibility-sharing in times of refugee crisis since the same has failed to provide an equitable and holistic distribution of responsibilities among various nation states which has in turn resulted in hardships and uncertainty for refugees and overburdening of developing host nations.

1.5 Research Questions

On the basis of the objectives stated and hypothesis emphasised, the researcher attempts to answer within the scope of the present study, the following research questions:

1. Does there exist an international obligation of responsibility-sharing? If yes, then what is the origin, nature and scope of the obligation of responsibility-sharing?
2. Is the present scheme of responsibility-sharing adequate and effective?
3. If not, then what are the challenges that occur while implementing the obligation of responsibility-sharing?
4. What does the study of Middle Eastern and North African (MENA) region reveal about the various areas which can benefit from more equitable responsibility-sharing?

5. Whether the international environmental law principle of common but differentiated responsibilities and respective capabilities (CBDRRC) be applied to international refugee law?

1.6 Research Methodology

The researcher has adopted the doctrinal research method to complete the research. The doctrinal method has contributed to the development of the theoretical premise, concepts and developments involved in the research study. The researcher has dealt with the research questions using materials like Statutes, International Covenants and Treaties, Reports of Various Commissions and Government/ Statutory Bodies, Case Laws, textbooks, commentaries, law review articles, case commentaries and newspaper reports.

1.7 Mode of Citation

In this Report, the researcher has adopted the Oxford University Standard for Citation of Legal Authorities (OSCOLA) 4th edition format of citation. The mode of citation is uniform throughout the study.

1.8 Scope and Limitation of the Study

While examining the principle of Responsibility-sharing, the focus is limited to international legal instruments and literature involving the application of the principle of responsibility-sharing. While, the study proposes a new legal instrument dedicated to equitable responsibility-sharing, by no stretch of imagination, it is going to discuss the operational and practical application of the same. Wherever possible, apart from principle of CBDR, other approaches would be briefly discussed.

1.9 Review of Literature

The article “International Cooperation and Responsibility-sharing to Protect Refugees: What, Why And How?”⁷ by Rebecca Dowd and Jane Mcadam discusses how there has never been an agreement at the global level on a mechanism which facilitates equitable, systematic and predicable responsibility-sharing. The article provides insight into the meaning of international cooperation and responsibility-sharing from the perspective of a individual nations, by observing the statements made by the nations at various UN events. The authors concluded that different nation states have different understandings of this principle. Majority of push towards application of this principle comes from developing states, more specifically by host states. Moreover, they concluded that states with the most capacity to help have the least political will to do the same.

In the article “The Geopolitics of Refugee Studies, A view from the South”,⁸ B.S. Chimni talks about the complicated relationship between the Global North and South, when it comes to refugee movements. He counters the myth of difference between the refugee flows in third world and the refugee flows in Europe. He attacks the image of a “normal” refugee created by the North, who was white, male and anti-communist. Due to lack of wealth of knowledge creation in the South, little was done to combat this prejudice. He points out that post the Cold War, states from the Global North started insisting that refugees are being produced due to internal conflicts in the home states. This internalist view completely ignored external and foreign reasons, which was mostly the doing of Global North, that impacted socio-economic and political situation of states in Global South resulting in displacement of people in Global South.

⁷ Rebecca Dowd and Jane McAdam, ‘International Cooperation and Responsibility-sharing to Protect Refugees: What, Why and How?’ (2017) 66 *International and Comparative Law Quarterly* 863.

⁸ BS Chimni, ‘The Geopolitics of Refugee Studies: A View from the South’ (1998) 11 *Journal of Refugee Studies* 350.

In the article “Convention Plus as a Norm-Setting Exercise”,⁹ the authors Alexander Betts and Jean-Francois Durieux, investigate the UNHCR’s The Convention Plus initiative, which operated from 2002 to 2005 and was intended to supplement the 1951 refugee convention with a normative framework for global burden-sharing. Although, the initiative was not a resounding success, but it was seen as a huge step with regards to the role of UNHCR in norm creation within the refugee regime. The authors reflect upon the initiative, its procedural and conceptual innovations and how they can be reworked in future to develop the mechanisms of responsibility-sharing. The article studies the ‘top-down’ institutional bargaining model, that has roots in the interests–linkages–norms approach and also studies the ‘bottom-up’ good practice model. The article concludes that adapting these models can result in UNHCR’s playing a potential role in norm-creation which can further result in developing a normative framework for global burden-sharing.

The article “The Movements of People between States in the 21st Century: An Agenda for Urgent Institutional Change”¹⁰ by Guy S Goodwin-Gill, points out that responsibility-sharing and international cooperation in refugee law regime is largely unstructured and funding depends on voluntary contributions by the states. It further notes that the mechanisms such as early warning, conflict prevention, and diplomacy have all proven to be largely insufficient. It also notes that the challenge of large scale displacements is further exacerbated by the refugee-producing states’ reluctance to ‘internationalize’ the situation. As a result early trends are unnoticed and the situation comes to attention only when it has grown into a monster that can no longer be hidden. The paper proposes certain structural changes to counter this. It suggests that the General Assembly should revise 1951 Refugee Convention to not only to reflect its current responsibilities for refugees and the stateless people, but also to extend its mandate to include migrants without protection and to reform the funding base. It doesn’t call for any new treaty or

⁹ A Betts and JF Durieux, ‘Convention Plus as a Norm-Setting Exercise’ (2007) 20 *Journal of Refugee Studies* 509.

¹⁰ Guy S Goodwin-Gill, ‘The Movements of People between States in the 21st Century: An Agenda for Urgent Institutional Change’ (2016) 28 *International Journal of Refugee Law* 679.

organization and does not change the core nature of states' international obligations. It proposes that if States work with UNHCR they can develop a legal database on migration, so as to facilitate international cooperation.

James C. Hathaway, has written extensively about the subject in his articles “Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection” (co-authored with Alexander Neve),¹¹ ‘Why Refugee Law Still Matters’,¹² ‘The Global Co-Op Out on Refugee’,¹³ and ‘Reconsideration of the Underlying Premise of Refugee Law’.¹⁴ In these articles, the author has published a range of holistic reforms to the international refugee law regime. In 1997, Hathaway and Neve introduced a mechanism of ‘common but differentiated responsibility’. These works focus on the lack of a common framework for fair distribution of burden among states is one of the major failing of the Refugee Convention. These studies advocate for a UN administered allocation system of common but differentiated responsibility. They propose that the states in refugee regions would have the responsibility to provide asylum, while states afar from the affected region would have the responsibility to support them through funding and developmental assistance. Apart from funding, the Northern states would also have the responsibility to resettle those refugees who haven’t been able to be repatriated or locally integrated. These works have attempted to strike a balance between fulfilling the responsibility to protect and shouldering the costs of such protection. In the 2007 article, Hathaway talks about a multilateral system for the strategic distribution of different responsibilities amongst states. The criteria for distributing these responsibilities will be set up in advance and supervised by a revamped UNHCR. The article also proposes an oversight institution that would be responsible for monitoring the resource and funds transfers under the

¹¹ James C Hathaway and R. Alexander Neve, ‘Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection.’ (1997) 10 Harvard Human Rights Journal 115.

¹² James C Hathaway, ‘Why Refugee Law Still Matters’ (2007) 8 Melbourne Journal of International Law 89.

¹³ James C Hathaway, ‘The Global Cop-Out on Refugees’ (2019) 30 International Journal of Refugee Law 591.

¹⁴ James C Hathaway, ‘A Reconsideration of the Underlying Premise of Refugee Law’ (1990) 31 Harvard International Law Journal 129.

system. The author emphasises that allocations should ‘operate against a basic foundational principle that even if states take on the responsibility to take on financial burden, they still cannot justify withdrawing from human protective responsibilities’. That is, industrialised Global North nations should not escape from a minimum obligation to provide a primary form of hospitality towards refugees, even if they are assuming the fiscal burdens.

1.9.1 Research Gap

After reviewing the literature on the concept of responsibility-sharing, it’s clear that much has been written on the concept of responsibility-sharing. This study also tries to tackle the problem of unequitable responsibility-sharing. It does so through the concept common but differentiated responsibility while keeping the structure of United Nations Framework Convention on Climate Change (hereinafter “UNFCCC”) in mind. It is for the first time that the global community has come up with a mechanism which needs international cooperation.

1.9.2 Importance of the Study

This study adds to the existing literature on the tenet of responsibility-sharing. The study looks at the unequitable responsibility-sharing from the perspective of an asylum seeker, rather than in abstract theoretical terms. It tries to gather the lived experiences of refugees and then investigates how can international responsibility-sharing make a difference in their day to day lives. Further, it tests out other possible ways and mechanisms in which responsibility-sharing can be made more equitable and enforceable. It does so by taking a cue from UNFCCC’s principle of common but differentiated responsibilities and respective capabilities and analysing if it would be feasible to implant it in the international refugee law regime.

1.10 Chapter Scheme

In *Chapter II: Understanding the Principle of Responsibility-sharing*, the researcher does a deep dive into the principle of responsibility-sharing. In this chapter the origins of the principle would be traced. The chapter then talks about the existing framework of the principle in the current refugee law regime. The nature and extent of responsibility-sharing as well as the different types of ways in which responsibility can be shared will be discussed.

In *Chapter III: Shortcomings of the Existing Mechanisms of Responsibility-sharing: Takeaways from the MENA region*, the researcher analyses secondary sources of information, i.e., various interviews, reports, stories of refugees and asylum seekers in the MENA region published in various studies, to find out from a refugee's perspective, about the problems that plague them. It is in this backdrop, that the chapter would explore the shortcomings of the current structural framework of responsibility-sharing, its impact on the day to day life of refugees and what are the areas in which international community can help.

In *Chapter IV: Possible Approaches Towards an Equitable Responsibility-sharing Framework*, the researcher discusses what can be other alternate frameworks under which responsibility-sharing can be divided equally so as to not overburden the host nation. Under this chapter, the researcher performs the thought experiment of implanting the CDDRRC principle of international environmental law into the refugee law regime. The researcher also discusses the developmental aid approach, where in affluent states aid the development infrastructure and resource building in the host country, which benefits both the people of the host state and the refugees. Various other approaches and their critiques are also mentioned in this chapter.

In *Chapter V: Conclusions*, the researcher ties in all the observations made in the study and concludes the study by commenting on various strategies and frameworks which aim to equitably share responsibility of protection of refugees. The researcher also notes down a few suggestions on the course of the future of international responsibility-sharing in international refugee law.

II. UNDERSTANDING THE PRINCIPLE OF RESPONSIBILITY-SHARING

According to the United Nations, this is “age of unprecedented mass displacement.”¹⁵ This crisis is not new by any standard, however, it seems to be getting worse by the day. Data suggests that in 2015, the number of displaced people reached an all-time high of 65 million.¹⁶ Many of these displaced people are refugees, that is, people who are fleeing persecution from their country of origin.¹⁷ Refugees have been dubbed as “the world's least wanted”¹⁸, since they are floating from one State to another seeking protection and some semblance to normalcy. Since, it so happens that large scale movements of people from one State to another is mostly an accident of geography. Refugees and asylum seekers tend to seek shelter in neighbouring states with which their home states often share porous borders. Resultantly, some states host more states than others, thus skewing the scales of equity.

In this Chapter, the researcher would try to trace the origins of the principle of responsibility-sharing, why was it needed, the nature of the obligation, and types of ways in which responsibility can be shared. It also explores the existing conventional framework facilitating the principle of responsibility-sharing. The chapter also attempts to find out whether the principle finds enough support in the international community to be considered as customary international law.

¹⁵ Somini Sengupta, ‘60 Million People Fleeing Chaotic Lands, U.N. Says’ *The New York Times* (18 June 2015) <<https://www.nytimes.com/2015/06/18/world/60-million-people-fleeing-chaotic-lands-un-says.html>> accessed 15 August 2021.

¹⁶ *ibid.*

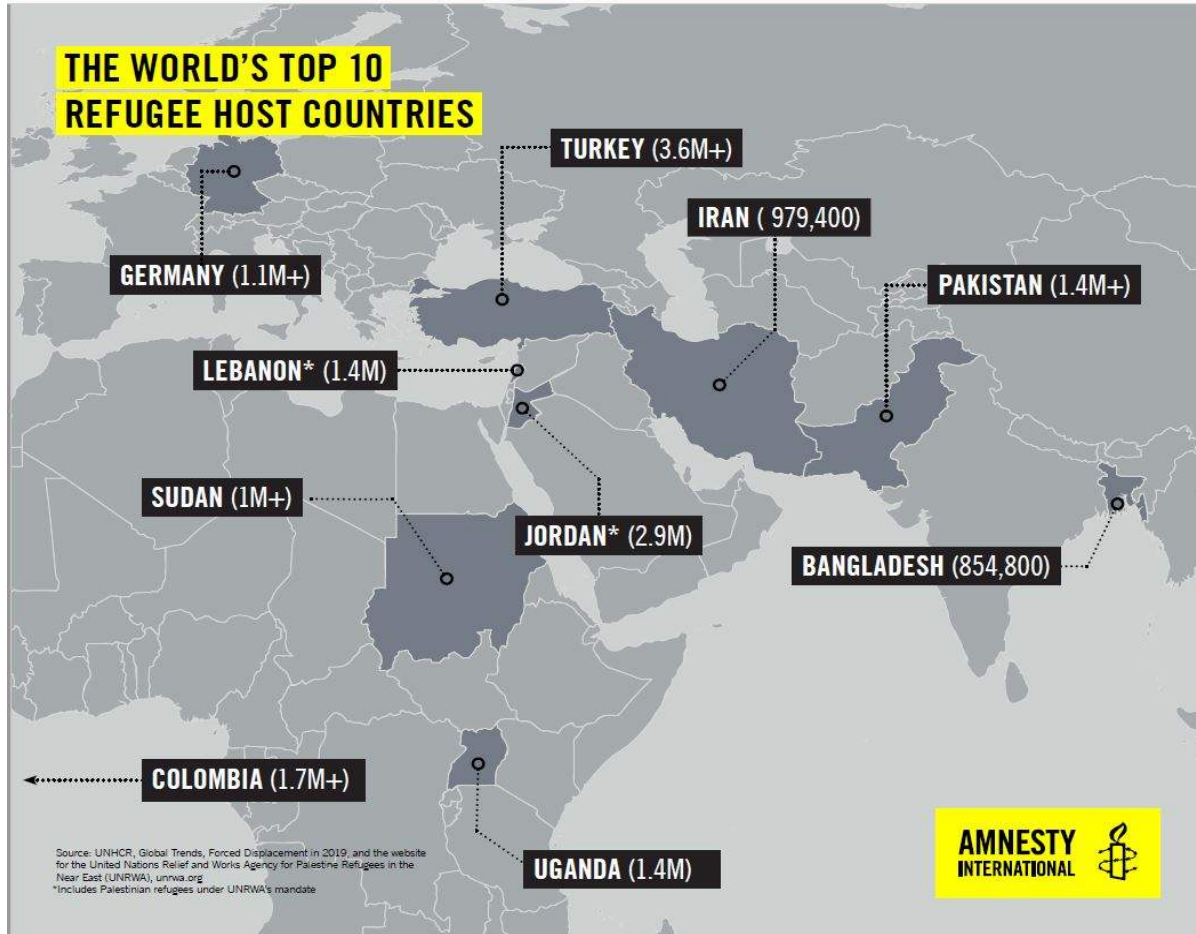
¹⁷ Convention Relating to the Status of Refugees, adopted July 28, 1951, art. 1, 189 U.N.T.S. 137, 150 (entered into force Apr. 22, 1954).

¹⁸ ‘Dhaka “cracks down” on Rohingyas’ (18 February 2010) <<http://news.bbc.co.uk/2/hi/8521280.stm>> accessed 15 August 2021.

2.1 Why Do We Need The Principle of Responsibility-sharing

Only eight countries host more than half the world's refugees.¹⁹ 85% of refugees are hosted by developing states.²⁰

Figure: 2.1 Refugees in Host States, End-2019



Source: Amnesty International's illustration based on UNHCR Global Trends Report 2019

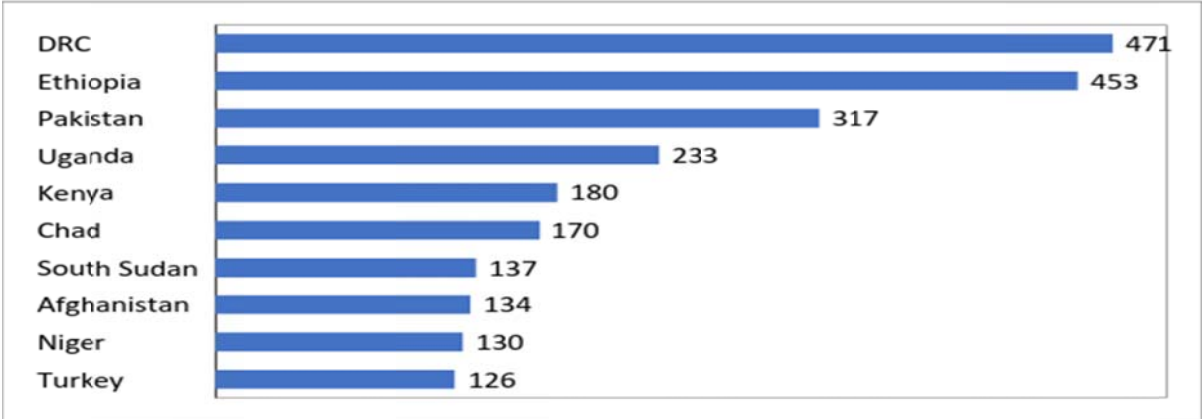
¹⁹ 'UN Secretary-General's Op-Ed: "Refugees and Migrants: A Crisis of Solidarity" – Office of the Secretary-General's Envoy on Youth' (n 2).

²⁰ 'Global Facts and Figures about Refugees' <<https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/global-refugee-crisis-statistics-and-facts/>> accessed 15 August 2021.

As seen in Figure 2.1 above, it so happens that majority of states hosting the most refugees are the states which struggle to feed their own populations. This is because refugees tend to escape to neighbouring states which are located close to their home country. This is because many a times neighbouring states share a porous borders. Ofttimes refugees flee to neighboring states because it's easier for them to get to places where there is an existing community of refugees.²¹ There is often movement of people in neighbouring states for economic reasons and since there are already people of same nationality living in neighbouring states, it makes it easier for them to assimilate.²² Often countries in the same region share the same language, culture etc. Due to ease of movement across borders and sharing a similar cultural connect, refugees, as the first recourse, tend to move to neighbouring states rather than travelling to nations afar.

However, oftentimes, states in the same region suffer from similar political instability or are themselves dealing with few economic resources.

Figure 2.2: Refugees in Major Host States per US\$1 GDP per Capita



Source: Global Trends Report 2015, UNHCR.

UNHCR’s Global Trends Report of 2015 shows in Figure 2.2 above, the number of refugees living in major host states per US\$1. In least developed nations, like Congo, 471 refugees are

²¹ T Kritzman-Amir, ‘Responsibility-sharing and the Rights of Refugees: The Case of Israel’ (2009) 41 The George Washington International Law Review 619.

²² *ibid.*

sustaining per 1 USD GDP per capita, thus putting severe economic burden on the nation's already strained economic resources.²³ The situation is further strained in *protracted* situations where refugees and displaced people live in host states for more than five years. In some situations, the duration of refugees and asylum seekers can be days, months, years and generations.²⁴ This puts an additional burden on the education, health care sectors and other social service of the host state. It also adversely affects local labor market and housing options in the host community.²⁵

An analysis of the above facts clearly indicate that the cost associated with protecting and hosting refugees is unequally distributed. This makes responsibility-sharing all the more elemental. People fleeing war, violence, persecution are the responsibility of the entire global community and thus, the costs associated with hosting and assisting refugees should be shared equitably. The next section traces the origins and nature of the principle of responsibility-sharing.

2.2 Origins of Responsibility-sharing

In international refugee policy discussions, literature, and international instruments, the following four terms are used sometimes interchangeably as well as consecutively, indicating the same principles, these are, “international cooperation”, “international solidarity”, “burden sharing” and “responsibility-sharing”.²⁶ While the idea behind these different terms is more or less the same, various scholars have commented how each differs from the others.

Responsibility-sharing is an evolved principle of international cooperation. The idea of the principle of solidarity as a fundamental principle is not a new one. The roots of the same can be

²³ UN High Commissioner for Refugees (UNHCR), Global Trends: Forced Displacement in 2015, (2016) <<https://www.refworld.org/docid/57678f3d4.html>> accessed 15 August 2021.

²⁴ Susan F. Martin, Rochelle Davis, Grace Benton and Zoya Waliany, ‘International Responsibility-Sharing for Refugees’ (2018) KNOMAD Working Paper 32.

²⁵ *ibid.*

²⁶ Claire Inder, ‘The Origins of “Burden Sharing” in the Contemporary Refugee Protection Regime’ (2017) 29 International Journal of Refugee Law 523.

traced to *Natura law*. The concept of a *universitas christiana* developed from Christian values influenced the early development of public international law.²⁷ In the eighteenth century, international law was no longer connected to its religious roots and attempts were made to construe a state community based on shared conception of humanity. Since then, international law have evolved from a system governed by the coexistence of states,²⁸ in which all forms of government are considered equal, into a system which follows law of cooperation,²⁹ and subsequently, into into a legal system based upon common values.

The drafters of the 1951 Refugee Convention did not include the terms “burden sharing” or “responsibility-sharing” but used the terms “international cooperation” and “solidarity” in their discussion.³⁰ The preamble explicit reference has been to “international co-operation”.³¹

In the refugee law regime, the principle of international collective action, was called the principle of “burden sharing”. The term “burden sharing” has been criticised by some commentators since it implies that hosting and protecting refugees is a burden on the host state, and carries a negative and prejudicial connotations.³² “Responsibility-sharing” has been advocated as the politically correct term, since it connotes that protecting and providing assistance to refugees is not a burden but a responsibility of the global community. The first use of the term ‘burden sharing’ can be

²⁷ Wolfrum Rüdiger, ‘Part III Structural Principles, Ch.17 Solidarity’ in Wolfrum Rüdiger, *The Oxford Handbook of International Human Rights Law* (Oxford University Press 2013) <<http://opil.ouplaw.com/view/10.1093/law/9780199640133.001.0001/law-9780199640133-chapter-18>> accessed 16 August 2021.

²⁸ Wolfgang Friedmann, ‘The Changing Structure of International Law’ (1966) 60 *American Journal of International Law* 130.

²⁹ Rüdiger Wolfrum, ‘International Law of Cooperation’ in Rudolf Bernhardt (ed), *Encyclopedia of Public International Law* (Elsevier 1995).

³⁰ Inder (n 27).

³¹ Preamble, Convention Relating to the Status of Refugees, adopted July 28, 1951, 189 U.N.T.S. 137, 150 (entered into force Apr. 22, 1954).

³² Volker Türk and Madeline Garlick, ‘From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees’ (2016) 28 *International Journal of Refugee Law* 656.

traced to the 1970's during the Indochinese exodus.³³ It was then prevalent in the refugee protection discourse during the late 1990's.³⁴ UNHCR advocates in the favour of use of "responsibility-sharing" since the organization believes that the term "reflects a more positive image of refugees and a stronger framework for international cooperation".³⁵ 'It is believed to cast refugees in a better light as potential contributors to the host communities and as the holders of various rights which create correlating responsibilities for the host state.'³⁶ Thus, the researcher has opted to use the term 'responsibility-sharing' rather than 'burden sharing' in the rest of the study.

2.3 Existing Legal Framework of Responsibility-sharing

Now that we have a fair bit of understanding of the need for and the origins of responsibility-sharing in the refugee law regime, this section explores the existing legal framework in which the principle of responsibility-sharing operates. The nature of obligation, the ways in which states have interpreted the obligation, whether it forms a part of customary international law etc will be discussed in this section.

2.3.1 Conventional Framework

As mentioned in the previous section, the term responsibility-sharing does not appear in the 1951 Refugee Convention. However, reference to the idea of responsibility-sharing has been made in the Preamble of the Convention. Paragraph 4 of the preamble states that:

"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

³³ *ibid.*

³⁴ *ibid.*

³⁵ UNHCR, Global Consultations on 'International Protection Mechanisms of International Cooperation to Share Responsibilities and Burdens in Mass Influx Situations', EC/GC/01/7 (2001).

³⁶ Türk and Garlick (n 33).

Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation”³⁷

The above mentioned paragraph makes it clear that the instrument recognises that mass displacement may result into a crisis which is beyond the what any single country can handle, thus prompting international co-operation. The convention does not talk about how this “international co-operation” is to be achieved.

Subsequently, para 5 of the Preamble states that:

“Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States.”³⁸

Para 5 of the Preamble leaves it up to the nation states to do “everything within their power”. It does not set any parameters on what the states are expected to do or refrain from doing. This indicates that the nature of obligation is voluntary.

As it is known that the Preamble of a treaty guides the interpretation of the substantive clauses of the treaty.³⁹ Article 31 of the Vienna Convention on the Law of Treaties, states that any treaty should be interpreted in good faith in accordance, giving ordinary meaning to its terms in light of its ‘object and purpose’.⁴⁰ It reflects the drafters’ purposes and considerations and is also helpful shedding further light on its object and purpose.⁴¹ The reference to international cooperation in paras 4 and 5 of the Preamble indicates that the Convention relies upon international cooperation

³⁷ Preamble (n 32).

³⁸ *ibid.*

³⁹ Article 31, Vienna Convention on the Law of Treaties, adopted May 3, 1969, U.N.T.S. 1155, 331 (entered into force Jan. 27, 1980).

⁴⁰ *ibid.*

⁴¹ Makane Moïse Mbengue, ‘Preamble’, *Max Planck Encyclopedias of International Law* (Oxford University Press 2012).

in order to fulfil the core aim, i.e., to ensure that refugees can enjoy the ‘widest possible exercise of fundamental rights and freedoms’.⁴²

The substantive part of the Convention does not contain any direct references to international co-operation or responsibility-sharing, but indirect reference is made in Article 35 of the Convention as duties of state to co-operate with the UNHCR:

“Contracting states undertake to cooperate with the office of the UNHCR, or any other agency that may succeed it, in the exercise of its functions and in particular facilitate its duty of supervising the application of the provisions of this Convention.”⁴³

The Refugee Convention can also be said to fall within the scope of Article 55 of the UN Charter, which promotes international cooperation for social and economic problems.⁴⁴ Further, Article 35 of the Convention specifically gives effect to the obligation of international cooperation under Article 56 of the UN Charter.⁴⁵

Further, international co-operation finds a mention the High Commissioner’s statute. Article 8 (d) of the UNHCR statute calls upon states to promote assimilation of refugees, especially by facilitating their naturalization.⁴⁶ This imposes a duty on States to enable the naturalisation of refugees under Article 34 of the Refugee Convention.⁴⁷

⁴² United Nations High Commissioner for Refugees, ‘Challenges to the 1951 Convention in Its 50th Anniversary Year: Statement by Ms. Erika Feller, Director, Department of International Protection, UNHCR, at the Seminar on “International Protection within One Single Asylum Procedure”, Norrköping, Sweden, 23-24 April 2001’ (*UNHCR*) <<https://www.unhcr.org/en-in/admin/dipstatements/429d74282/challenges-1951-convention-its-50th-anniversary-year-statement-ms-erika.html>> accessed 16 August 2021.

⁴³ Article 35 (n 32).

⁴⁴ United Nations High Commissioner for Refugees, ‘Refworld | Commentary of the Refugee Convention 1951 (Articles 2-11, 13-37)’ (*Refworld*) <<https://www.refworld.org/docid/4785ee9d2.html>> accessed 16 August 2021.

⁴⁵ *ibid.*

⁴⁶ Article 8 (d), Statute of the Office of the United Nations High Commissioner for Refugees, adopted December 14, 1950, A/RES/428(V)

⁴⁷ Commentary of the Refugee Convention (n 46).

A combined reading of the para 4 and 5 of Preamble and Article 34 of the Refugee Convention along with Article 8 (d) of UNHCR statute, gives the meaning that the duty of states to co-operate extends to all stages in a refugee crisis till a solution for each individual refugee is achieved.⁴⁸

2.3.2 Extra-conventional Framework

Outside the Convention, similar ideas of international co-operation finds a mention under Chapter IX of the UN Charter. The chapter titled ‘International Economic and Social Cooperation’ talks about all member states pledging themselves to take joint and separate action in fulfilment of purposes set in Article 55 of the Charter.⁴⁹ Since UNHCR is a subsidiary organ of the United Nations General Assembly, the duty of cooperation is cast not only on members of Refugee Convention, but on all nations who are part of the United Nations.

2.3.2.1 UNHCR’S Executive Committee

Much of the jurisprudence about responsibility-sharing has been generated by the Executive Committee of the UNHCR. The Committee has at various occasions stressed upon the importance of the principle of responsibility-sharing. Beginning from as early as 1978, the Committee has time and again reiterated the significance of international cooperation.⁵⁰ The Committee’s Conclusions no. 11, 22, 52, 77, 79, 80, 85, 89, 100, and 102, all urge states to abide by the principle of responsibility-sharing.⁵¹ The Committee in its Conclusion No. 100 discussed

⁴⁸ T. Alexander Aleinikoff, Stephen Poellot, ‘The Responsibility to Solve: The International Community and Protracted Refugee Situations’ (2014), Georgetown Law Faculty Publications and Other Works 2090.

⁴⁹ Article 56, Charter of the United Nations, adopted Oct. 24, 1945, 1 U.N.T.S. XVI.

⁵⁰ UN High Commissioner for Refugees (UNHCR), ‘A Thematic Compilation of Executive Committee Conclusions’ 7th Edition, (June 2014), <<https://www.refworld.org/docid/5698c1224.html>> (accessed 16 August 2021).

⁵¹ *ibid.*

the global implications of mass influxes and urged states to cooperate in a spirit of solidarity and international cooperation to address the crisis.⁵²

The Committee's resolutions and conclusions add to the formation, interpretation and direction of refugee law.⁵³ Thus, even though such notes, resolutions and conclusions have a soft law-character,⁵⁴ these Conclusions of the Committee which reiterate states' duty to cooperate with one another, and with the UNHCR, still have some normative weight.⁵⁵

2.3.2.2 The Global Compact on Refugees

Global Compact on Refugees held in 2018 is the latest addition in the international refugee law regime. The Compact aims to strengthen international response to mass displacement and protracted refugee situations.⁵⁶ It states that the problem of mass influxes is a 'common concern of humankind',⁵⁷ which can only be solved by international cooperation between states.⁵⁸ It seeks to offer 'a basis for predictable and equitable burden and responsibility-sharing among all United Nations Member States ..' as an objective of the duty to cooperate in refugee matters in pursuance with the UN Charter.⁵⁹

The Global Compact provides more support to the claim that refugee protection serves a collective interest which can only be achieved through international cooperation and responsibility-sharing. Certain commentators have also said that the Global Compact represents a

⁵² UNHCR, Conclusion on International Cooperation and Burden and Responsibility-sharing in Mass Influx Situations, 2004 Executive Committee 55th session, A/AC.96/100.

⁵³ Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (3rd ed, Oxford University Press 2007) 429.

⁵⁴ Gunther F Handl and others, 'A Hard Look at Soft Law' (1988) 82 Proceedings of the Annual Meeting (American Society of International Law) 371.

⁵⁵ Vincent Chetail, *International Migration Law* (1st ed, Oxford University Press UK 2019) 385.

⁵⁶ 'The Global Compact on Refugees' (*UNHCR Philippines*) <<https://www.unhcr.org/ph/the-global-compact-on-refugees>> accessed 17 August 2021.

⁵⁷ Para 1, Global Compact on Refugees, 2018.

⁵⁸ Para 2, *ibid.*

⁵⁹ Paras 2 and 3, *ibid.*

“quasi-legislative” effort indicating that states are working together at the global level to address and solve the refugee problem.⁶⁰

2.4 Nature and Types of Responsibility-sharing

From the discussion in the previous section, it can be said that a collective reading of the UN Charter, the Refugee Convention, the UNHCR Statute, along with soft law instruments such as UNGA Resolutions, UNHCR Executive Committee Conclusions, and finally, the Global Compact on Refugees, indicates that there exists some sort of duty on states to cooperate.

Even though such notes, resolutions and conclusions have a soft law-character,⁶¹ these Conclusions of the Executive Committee which reiterate states’ duty to cooperate with one another, and with the UNHCR, still have some normative weight.⁶²

A study of these international instruments make it clear that responsibility-sharing is a facet of the duty of states to cooperate in refugee protection. However, even though the principle of responsibility-sharing has been reaffirmed by the UN and international community time and again, still it does not cast positive obligation on each state to mandatorily contribute to the responsibility-sharing effort.⁶³ Responsibility-sharing remains voluntary in nature. The only positive obligation is on the State in which refugees arrive, i.e., the obligation of non-refoulement.⁶⁴

Responsibility-sharing mainly revolves around three central goals: to prevent such circumstances to arise that result in mass displacement; to ensure protection for refugees and displaced persons while at the same time addressing excessive burdens on host states; and to

⁶⁰ Rüdiger Wolfrum, *Identifying Community Interests in International Law*, vol 1 (Oxford University Press 2018) <<https://oxford.universitypressscholarship.com/view/10.1093/oso/9780198825210.001.0001/oso-9780198825210-chapter-2>> accessed 17 August 2021.

⁶¹ Handl and others (n 55).

⁶² Chetail (n 56).

⁶³ *ibid.*

⁶⁴ Hathaway and Neve (n 11).

promote and seek solutions for refugees, such as local integration, voluntary repatriation, and resettlement.⁶⁵

The ways to achieve the above-mentioned three goals are many, but for the sake of brevity they can broadly be divided into five main areas. The first tool to achieve the goals is the *financial tool* that support states in tackling the costs associated with hosting refugees.⁶⁶ Providing humanitarian assistance, development assistance, costs of peacebuilding and peacekeeping, etc are some of the ways in which financial support is provided. Fiscal burden-sharing is widely accepted as a crucial component of international cooperation in the refugee law context.⁶⁷

The second set of tools tackles the underlying root causes of displacement. Mostly, large scale displacement of people is a result of persecution, massive human rights atrocities, violence and prolonged conflict. These causes can be avoided by preventative diplomacy, early warning mechanisms, peacebuilding and peacekeeping, and, if the need arises, by UNSC's sanctions to the parties in conflict.⁶⁸

The third set of tools aims at promoting protection for refugees by granting them asylum.⁶⁹ Protection of refugees is the foundation of national responsibility and international co-operation. Refugees and asylum seekers enjoy no protection from their own state, often their own government is the one that is persecuting them.⁷⁰ Therefore, in a situation like this if other states do not offer them safe spaces, shelter and support, then it equates to condemning them to an

⁶⁵ Martin, Davis, Benton and Walian (n 25).

⁶⁶ Beth Elise Whitaker, 'Funding the International Refugee Regime: Implications for Protection' (2008) 14 *Global Governance: A Review of Multilateralism and International Organizations* 241.

⁶⁷ Agnès Hurwitz, *The Collective Responsibility of States to Protect Refugees* (Oxford University Press 2009) <<https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780199278381.001.0001/acprof-9780199278381>> accessed 17 August 2021.

⁶⁸ Martin, Davis, Benton and Walian (n 25).

⁶⁹ Eiko R Thielemann, 'Between Interests and Norms: Explaining Burden-Sharing in the European Union.' (2003) 16 *Journal of Refugee Studies* 253.

⁷⁰ Report of the sixty-seventh session of the Executive Committee of the High Commissioner's Programme, Executive Committee of the High Commissioner's Programme, A/AC.96/1165 (2016).

awful situation where they are stripped of their basic rights, security and putting their lives at the risk of torture or death.⁷¹

The fourth way of responsibility-sharing is to promote durable and sustainable solutions. The traditional durable solutions to refugee crisis are repatriation, local integration, and resettlement. In simple terms it means refugees' return to their home country, integration into the host country, or resettlement in a third country. However, due to a variety of reasons (which will be discussed in the next chapter), these solutions are difficult to achieve, leaving many refugees in dodgy situations where they struggle to find new homes, livelihoods and are forced to live and work in insecure environments. Ensuring durable solutions for refugees where they enjoy security of status, life and livelihoods, requires not only the exercise of national responsibility but also international support and cooperation.⁷²

The fifth type of responsibility-sharing exercise is that of capacity building. This can be done by sharing of data and good practices to enhance the capabilities of the host state which resultantly reduces the cost for host communities. Majority of states with the most refugees are among the least developed states lacking infrastructures. These states already have infrastructural deficiencies for even their local communities which are exacerbated with the advent of refugees. However, capacity-building is a long-term process and requires active involvement of local, national, regional, and international actors.⁷³

The discussion above indicates that responsibility-sharing is required at all stages of displacement, from early prevention to long term capacity building. The principal goal throughout is protection of refugees and securing their rights in the host community. Although the principal responsibility of this lies with national authorities, it can't be achieved without international cooperation or responsibility-sharing.

⁷¹ *ibid.*

⁷² Martin, Davis, Benton and Walian (n 25).

⁷³ *ibid.*

III. SHORTCOMINGS OF THE EXISTING MECHANISMS OF RESPONSIBILITY-SHARING: TAKEAWAYS FROM THE MENA REGION

The last chapter discussed about the principle of responsibility-sharing in detail. The origins, nature and type of and need for responsibility-sharing were discussed. The existing legal framework, both conventional and extra- conventional were also highlighted. This Chapter will discuss the challenges that prove as a hindrance in equitable responsibility-sharing.

As discussed in the previous chapter, UNHCR and many states have time and again committed to work together in international solidarity to solve the refugee problem. The most recent effort in this direction is Global Compact on Refugees in 2018, where many states reaffirmed the importance of international cooperation and responsibility-sharing. However, despite various commitments, statements, resolutions etc, equitable responsibility-sharing is far from being achieved. This chapter would explore what are the various challenges due to which the vision of a world where responsibility-sharing is divided equally is yet to achieved. The challenges which plague the implementation of existing mechanisms of responsibility-sharing would be discussed. The chapter also includes a case study of Middle East and North African (MENA) region, where the researcher has tried to accumulate information about the living conditions of refugees and asylum seekers living there, through interviews and reports published in various newspapers, blogs and studies. The case study is then used to identify the shortcomings in the existing mechanisms of responsibility-sharing and explores why there is a need for the global community to do more.

3.1 Challenges in Implementation of Existing Mechanisms of Responsibility-sharing

As discussed in the previous chapter there are various sets of tools through which states can contribute towards dealing with refugee crisis. Despite of a plethora of resolutions, commitments, and various other other soft law instruments reiterating the importance of responsibility-sharing, the same is not being translated from paper to action. The following section discusses the various challenges that plague the implementation of existing mechanisms of responsibility-sharing.

3.1.1 Challenge of Sovereignty

One of the primary challenges in execution of responsibility-sharing principle is that of state sovereignty. The principle of State sovereignty is one of the most fundamental principles of international law. The United Nations is based on the principle of sovereign equality of all members.⁷⁴ According to the principle of sovereignty, all states are equal and should refrain from use of force or any other unwarranted interference into each other's territories.⁷⁵ International law requires all states to respect and protect the rights of its populace and fulfil all the positive obligation it owes to its citizenry. However, in some cases, the states are unwilling or unable to fulfil these obligations towards a group of its population, thus creating refugees. Now when refugees don't enjoy protection from their home state, they seek asylum elsewhere. The principle of sovereignty enables a state to control its borders.⁷⁶ Asylum seekers who cross borders without proper documentation or who cannot return to their origin state (due to non-refoulement obligation) challenge that notions of state control and state responsibility. This leaves asylum seekers and refugees in limbo within a country that is not their own. While on one hand, responsibility-sharing offers solutions for such issues, but it also takes weakens the state's control and sovereignty.

As discussed in the previous chapter, one set of tools of responsibility-sharing is tackling the underlying root causes of displacement. Large scale displacement of people is a result of persecution, massive human rights atrocities, violence and prolonged conflict. These causes can be avoided by preventative diplomacy, early warning mechanisms, peacebuilding and peacekeeping, and, if the need arises, by UNSC's sanctions to the parties in conflict.⁷⁷ However, none of these mechanisms can work if there is no willingness on part of the state. Principle of

⁷⁴ Article 2 (1), Charter of the United Nations, adopted Oct. 24, 1945, 1 U.N.T.S. XVI.

⁷⁵ Article 2 (4), *ibid*.

⁷⁶ James C Hathaway (ed), *Reconceiving International Refugee Law* (M Nijhoff Publishers ; Sold and distributed in the USA and Canada by Kluwer Law International 1997); BS Chimni (ed), *International Refugee Law: A Reader* (Sage Publications 2000).

⁷⁷ Martin, Davis, Benton and Walian (n 25).

state sovereignty again poses a challenge in such cases, since no state can dictate to another state how it should or should not treat its own citizens.

Since oftentimes refugees are created due to state's own actions, certain commentators have expressed that a sovereign state's responsibility and accountability to both domestic and external constituencies cannot remain 'internal' matters and must be affirmed as interconnected principles of the national and international order. In order to be establish legitimate sovereignty, state must at the very least providing for the basic protection to its people, so that its citizens don't become the responsibility of some other nation.⁷⁸

In other words, responsibility-sharing can protect potential refugees and asylum seekers whose rights have been violated by states. However, these are exactly the situations when governments use sovereignty as an excuse to bar accountability and international support for those who need it the most.

3.1.2 Voluntary Nature of the Principle

Another challenge that plagues the effective implementation of refugee sharing is that of its voluntary nature. As discussed in the previous chapter, there exists no binding legal obligations on states to support other states dealing with mass influx of refugees and asylum seekers.

No authority, state or organisation can hold another state accountable for contributing less or for not contributing all. It is left up to the states to do as much or as little as they want to. States can perform the lowest common denominator of action rather than the optimal path to ensuring protection for the displaced, and still it would qualify as responsibility-sharing.

⁷⁸ Francis M Deng and others, *Sovereignty as Responsibility: Conflict Management in Africa*. (Brookings Institution Press 2010) xvii <<https://www.jstor.org/stable/10.7864/j.ctv80cc8b>> accessed 17 August 2021.

The crucial disadvantage of such a sharing schemes is that “they may encourage collective action along restrictive lines, similar to the process of asylum harmonization in Europe, or permit involuntary relocation of refugees among states”.⁷⁹

Since the principle of cooperation and solidarity is voluntary, and not binding upon states, it can be used in sinister ways. Powerful state can cooperate more when they see a national interest in ensuring protection but on the other hand can limit said cooperation when their national interests are challenged or are unclear. The cooperation a host state receives from powerful nation depends upon a variety of factors such as its relations with the powerful state, political interests, foreign policy concerns, public opinion, economic conditions, etc.⁸⁰ All these factors can impact the level of support these other factors which impact the amount of aid a host community would receive has little to do with the protection needs of refugees. For example, during the Cold War, many Western state saw a foreign policy and ideological interest in ensuring shelter to refugees who were fleeing communist countries.⁸¹ But similar treatment was not meted out to the refugees who were fleeing from authoritarian governments that were allies of the West in the fight against communism.⁸² Similarly, more generous treatment is meted out to refugees who have shared beliefs, religion or culture, while the ones with different beliefs and culture are greeted with hostility. The West has been criticised for creating the image of a perfect refugee- white, male, anti-communis, and any refugee from the South who counters this image is not welcome.⁸³

⁷⁹ A Suhrke, ‘Burden-Sharing during Refugee Emergencies: The Logic of Collective versus National Action’ (1998) 11 *Journal of Refugee Studies* 396.

⁸⁰ Chimni (n 8).

⁸¹ *ibid.*

⁸² *ibid.*

⁸³ *ibid.*

3.2 Inadequacy of the Current Scheme of Responsibility-sharing: Case Study of MENA Region

The previous section dealt with few of the challenges that arise during implementation of the current mechanism of principle of refugee sharing. The next section would discuss how the existing framework of responsibility is wholly inadequate to ensure fair and equitable distribution of burdens. To achieve this, the researcher would take a hard look at the experiences of refugees in the MENA region. Through MENA region's case study, failures and shortcomings of the existing mechanism of responsibility-sharing would be recognised and analysed.

3.2.1 Responsibility Shifting: Lessons from Europe

As mentioned in the previous chapter, there are various ways in which states can contribute. One of these ways was by financial responsibility-sharing. In this form of responsibility-sharing, a state can contribute fiscally and financially to the refugee hosting state. It is this approach which is most favoured by the Global North. Global North much prefers to contribute fiscal resources to finance the cost of hosting and protecting refugees. Western affluent states, such as states forming part of the European Union (hereinafter "EU") often donate to the UNHCR for refugee protection, or in other ways such as in form of humanitarian assistance, developmental aid and capacity building.⁸⁴

This preference of the Global North to finance refugee protection in the Global South, rather than admitting refugees stems from the idea that seeks to contain the locus of refugee protection to the Global South.⁸⁵ Developed states want to insulate themselves from actually admitting refugees by taking on other forms of responsibility-sharing such as financial support, speculating on the ways of migration control etc.⁸⁶

⁸⁴ 'Desperately Searching for Solidarity: The EU Asylum Saga Continues - EU Immigration and Asylum Law and Policy' <<https://eumigrationlawblog.eu/desperately-searching-for-solidarity-the-eu-asylum-saga-continues/?print=print>> accessed 18 August 2021.

⁸⁵ Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law' (n 14).

⁸⁶ *ibid.*

From 1980's, Global North developed refugee law policies the aimed to keep the site of refugee protection within countries of the Global South.⁸⁷ These deterrence measures are called as *non-entrée*.⁸⁸ Non entrees are efforts by affluent states to prevent refugees from ever reaching their jurisdiction since if they did, they would become entitled to the benefit of protection from *non-refoulement* and other rights in the Refugee Convention'.⁸⁹ These measures aim to prevent access to the territory to asylum seekers through strict migration and border control. Some states even use deterrence measures to retroactively exclude refugees who have already arrived at the territory, using methods such as Safe Third Countries (hereinafter STC) etc.⁹⁰

Other deterrence measures include use of carrier sanctions, international zones, visa controls, sophisticated cooperation-based agreements with other states for interception of asylum seekers on the high seas, deployment of immigration officials, shared law enforcement, direct migration and border control, and the use of international agencies to intercept refugees.⁹¹

This is how the Global North participates minimally under the refugee law regime. It pays lip service to the commitments made under the Refugee Convention, knowing very well that it would never actually be compelled to live up to that regime's burdens and responsibilities.⁹² The Global North reaffirms and reiterates the importance of commitments under Refugee Convention, knowing very well that it is the Global South which will have to bear the burden of these commitments.⁹³ The Global North has created '*cordon sanitaire*' around itself, keeping most of the world's refugees confined to the South.⁹⁴

⁸⁷ *ibid.*

⁸⁸ James C Hathaway, 'The Emerging Politics of Non-Entrée' (1992) 91 *Refugees* 40.

⁸⁹ Thomas Gammeltoft-Hansen and James Hathaway, 'Non-Refoulement in a World of Cooperative Deterrence' (2015) 53 *Columbia Journal of Transnational Law* 235.

⁹⁰ Gammeltoft-Hansen and Tan (n 87).

⁹¹ Gammeltoft-Hansen and Hathaway (n 90).

⁹² *ibid.*

⁹³ *ibid.*

⁹⁴ Matthew J Gibney, 'Refugees and Justice between States' (2015) 14 *European Journal of Political Theory* 448.

One of the major tool that West uses to cordon off refugees in the Global South is the concept of ‘protection elsewhere’ or as it is more commonly known as “Safe Third Country”.⁹⁵ In the last three decades various responsibility shifting agreements of this sort have cropped up.⁹⁶ Critics have stated that this notion of “protection elsewhere”, is a departure from the rule of territorial asylum created through the use of legal fictions.⁹⁷ Some examples of STC arrangements are the Dublin Regulation under the Common European Asylum System (CEAS), the EU cooperative arrangement with Turkey, the bilateral arrangement between Italy and Libya etc.

3.2.2 *Failures of International Responsibility-sharing in MENA Region*

The previous section discussed various ways in which wealthier states shift the responsibility of protection of refugees to other lesser developed states through various comprehensive agreements, such as the EU-Turkey deal etc. The Global North has been criticised for buying off their responsibility to provide protection to refugees. The next section will discuss what are the challenges faced by refugees in these states face. The conditions of refugees in MENA region, precisely, Turkey, Lebanon, Egypt etc are discussed and how responsibility-sharing can do more to improve the conditions of refugees.

3.2.2.1 Education

Numbers indicate that in Lebanon there are approximately 488,000 refugee children who are of school going age, but only 221,000 of them are enrolled. More than half of the children remain out of schools, most of whom are adolescent.⁹⁸ Reports indicate that most of these schools are informal, overcrowded and due to their informal nature can’t issue certificates. Children also

⁹⁵ Rosemary Byrne and Andrew Schacknove ‘The Safe Country Notion in European Asylum Law’ (1996) Harvard Human Rights Journal 185.

⁹⁶ SHARES Expert Seminar Report ‘Shared Responsibility in International Refugee Law’ (2011) <www.sharesproject.nl> accessed 18 August 2021.

⁹⁷ Thomas Gammeltoft-Hansen, ‘The Extraterritorialisation of Asylum and the Advent of Protection Lite’ (Danish Institute for International Studies (DIIS) 2007) DIIS Working Paper 2007:2 <<http://hdl.handle.net/10419/84510>>.

⁹⁸ ‘Education’ (*UNHCR Lebanon*) <<https://www.unhcr.org/lb/education>> accessed 18 August 2021.

faced other barriers in accessing education such as security concerns in commuting to school, discrimination in class, language barriers etc.⁹⁹

There have been various calls from the states of region asking for support to fund education of refugees.¹⁰⁰ It should also be noted that allocated budget for education in emergency situations is only 2 percent of total humanitarian aid.¹⁰¹ The situation clearly indicates a collective failure on part of the international community and the principle of responsibility-sharing in particular. It is up to the global community to provide assistance to the host countries to build schooling infrastructure, hire more teachers, procure books, uniforms and other materials, etc. States can come up with a monthly budget to provide refugees who have no other resources, a fixed amount to cover for school uniforms, commute, and other costs associated with children's education.

3.2.2.2 Livelihood

Letting refugees work and participate in the economy is a tricky proposition. Historically, whenever refugees or asylum seekers work to earn a livelihood, it was led to friction between the them and the host community.¹⁰² Since resources and opportunities in most developing states are limited, it results in a 'race to a bottom' kind of situation, where either community offers their services for a lower price.¹⁰³ This also creates dissatisfaction and unrest among the locals. However, on the other hand, the 'in-camp' policy or keeping refugees in a camp, providing them with meals and not allowing them to leave to earn a living, creates another set of problems. Not only does it increase the burden on the host state, but also deprives the refugees to integrate with the local community.

⁹⁹ Martin, Davis, Benton and Walian (n 25).

¹⁰⁰ 'Queen Rania Urges Support for Girl's Education at Event Hosted by First Lady Michelle Obama | Queen Rania' (*Queen Rania official website*, 20 September 2016) <<https://www.queenrania.jo/en/media/press-releases/queen-rania-calls-greater-support-girls-education-conflict-zones-event-hosted>> accessed 18 August 2021.

¹⁰¹ Martin, Davis, Benton and Walian (n 25).

¹⁰² BS Chimni, 'The Legal Condition of Refugees in India' (1994) 7 *Journal of Refugee Studies* 378.

¹⁰³ Joya Chatterji, "'Dispersal' and the Failure of Rehabilitation: Refugee Camp-Dwellers and Squatters in West Bengal' (2007) 41 *Modern Asian Studies* 995.

Certain countries such as Turkey and Jordan provide work permit to refugees, however, the process to achieve these is quite complicate and difficult. Even after obtaining such permits there are excessive restrictions on what kind of work a refugee can do and other barriers.¹⁰⁴ Lebanon refuses to give any work permit and employment opportunities to refugees, which led to refugees seeking employment through a back alley network of black market.¹⁰⁵

Not allowing refugees to work has been criticised for ‘wasting human resources’. Allowing refugees to pursue their livelihood can benefit the host community as well. A study showed that there were about 3,000 Syrian teachers in Cairo, who weren’t allowed to work.¹⁰⁶ Had they been allowed to open their own schools or contribute to the existing schools, it would benefit both the refugees and the host community.

3.2.2.3 Legal and Physical Protection

Protection of refugees can be understood as recognising refugees with valid legal status and ensuring basic safety and security for them. Protection of refugees is a prerequisite for providing them with further access to livelihoods, education, healthcare medical care etc. Hence, when states violate this basic commitment of protection and the same doesn’t result in evoking any adverse responses from the international community, then that becomes a cause of concern for refugee protection. There have been instances such as deportation of around 800 Sudanese asylum seekers from Jordan in 2015.¹⁰⁷ In cases, where refugees don’t face deportation, they face

¹⁰⁴ ‘Overview of Right to Work for Refugees Syria Crisis Response: Lebanon & Jordan’ (International Rescue Committee 2016) <<https://www.rescue.org/sites/default/files/document/987/policybrief2righttoworkforrefugees-syriacrisisresponsejanuary25.pdf>> accessed 18 August 2021. ‘Overview of Right to Work for Refugees Syria Crisis Response: Lebanon & Jordan’ (International Rescue Committee 2016) <<https://www.rescue.org/sites/default/files/document/987/policybrief2righttoworkforrefugees-syriacrisisresponsejanuary25.pdf>> accessed 18 August 2021.

¹⁰⁵ *ibid.*

¹⁰⁶ Martin, Davis, Benton and Walian (n 25).

¹⁰⁷ ‘Sudanese and Somali Refugees in Jordan’ (*MERIP*, 26 September 2016) <<https://merip.org/2016/09/sudanese-and-somali-refugees-in-jordan/>> accessed 19 August 2021.

barriers in obtaining residency permits from the host state.¹⁰⁸ Reports indicate that approximately 70 percent of refugees are living in Jordan without a residency permit.¹⁰⁹

Apart from legal protection, physical protection of refugees and asylum seekers is another pressing issue. Reports highlight that refugees from Sudan, Ethiopia, Somalia, Eritrea face harassment, discrimination and violence, due to their skin colour which is different from people of hosting Arab nations.¹¹⁰

International community can certainly contribute to make sure that states abide by their *non-refoulement* obligations and no deportation of refugees takes place. This can be done by applying diplomatic pressure on host countries to reform their policies. High level diplomatic talks, conferences, criticisms, etc can help ensure transparency and accountability about the actions taken by host states with respect to treatment of refugees.

IV. UNDERSTANDING AND ASSESSING MORE EQUITABLE RESPONSIBILITY-SHARING METHODS

The previous chapter discussed the various loopholes and shortcomings in the existing mechanisms of refugee sharing. The ways in which certain states make use of legal fiction to shift the responsibility of protection to other states was also discussed. Finally, the impact of these inadequacies on the life of refugees was also discussed and the thematic areas in which international community can do more were also highlighted.

¹⁰⁸ Martin, Davis, Benton and Walian (n 25).

¹⁰⁹ “‘The Silent Treatment’: Fleeing Iraq, Surviving in Jordan: VI. Surviving in Jordan’ <<https://www.hrw.org/reports/2006/jordan1106/6.htm>> accessed 19 August 2021.

¹¹⁰ ‘Fleeing War, Poverty, African Migrants Face Racism in Egypt’ (*AP NEWS*, 20 April 2021) <<https://apnews.com/article/ap-top-news-international-news-poverty-sudan-immigration-50f901e74759384266bf6a189805c8f2>> accessed 19 August 2021.

This chapter would analyse the various ways in which new direction can be given to the current course of responsibility-sharing mechanism. The chapter would delve into analysing more equitable responsibility-sharing methods and would assess the viability of the same.

4.1 Bridging the Gap Between Humanitarian and Developmental Aid

The mass displacement of refugees is typically considered as a humanitarian and human rights issue. Thus, solutions protracted situation of refugees also offers significant development challenges and opportunities to the host states.¹¹¹ Bridging the gap between humanitarian and developmental approach can offer a win-win approach for all parties involved.

Protracted refugee crises put substantial amount of social and economic burdens on states of Global South who are already struggling with developmental challenges.¹¹² Integrating the humanitarian and developmental approaches will not only better equip host states to cater to their populations as well as the refugees, but it will also increase self-sufficiency amongst refugees, thus making them effective contributors to the economy.

An integrated approach fulfils two major purposes. First, in protracted refugee crisis, it will lessen the burden on host communities' infrastructure. Second, it will provided sustainable and durable solutions to the problem of livelihood of refugees and would result in minimising the waste of human resources.¹¹³ A humanitarian response is not sufficient in itself, the cost of humanitarian model was estimated around 30 billion in 2019,¹¹⁴ but still failed to provide long term and sustainable solutions to the refugee crisis.¹¹⁵ An integrated approach recognizes that

¹¹¹ Roger Zetter, 'Reframing Displacement Crises as Development Opportunities' (Global Initiative on Solutions 2014) Policy Brief <<https://www.rsc.ox.ac.uk/files/files-1/pn-reframing-displacement-crises-2014.pdf>> accessed 18 August 2021.

¹¹² Roger Zetter, 'Theorizing the Refugee Humanitarian-Development Nexus: A Political-Economy Analysis' [2019] *Journal of Refugee Studies* <<https://doi.org/10.1093/jrs/fez070>> accessed 19 August 2021.

¹¹³ *ibid.*

¹¹⁴ 'Global Humanitarian Assistance Report 2020 - World' (*ReliefWeb*) <<https://reliefweb.int/report/world/global-humanitarian-assistance-report-2020>> accessed 19 August 2021.

¹¹⁵ Zetter (n 113).

refugees as potential contributors who have resources and skills, and impact economic demand and supply functions. Thus, if refugees are managed strategically they can help boost aggregate productive capacity and improve the development trajectory of the receiving states.¹¹⁶ An integrated approach would support resilience and self-sufficiency amongst refugees and foster the dignity of the refugees by making reducing their reliance on humanitarian aid.¹¹⁷ Employment generation is at the heart of an integrated strategy, thus, there is increasing pressure on states to open up their labour markets for refugees and relax their usually stringent requirements for securing work permits.¹¹⁸

After recognising the nexus, many steps have been taken under the refugee law regime to integrate the two. In 2010, UNHCR launched the Transitional Solutions Initiative under which there was a collaboration of the World Bank, UNHCR and United Nations Development Program (hereinafter “UNDP”) with the objective of ensuring long term arrangements of developmental actors and humanitarian actors.¹¹⁹ Subsequently, at the World Humanitarian Summit in 2016, the ‘Grand Bargain’ took place, in which, world’s leading humanitarian donors, NGOs, host states and other stakeholders recognised the importance of integration of humanitarian and developmental programmes and launched the ‘New Way of Working’ under United Nations Office for the Coordination of Humanitarian Affairs (OCHA). Further, in 2016 United Nations High-level Meeting on Addressing Large Movements of Refugees and Migrants was held which laid the foundations for Global Compact on Refugees in 2018, wherein the significance of the above-mentioned nexus was reinstated, which finally led to operational consolidation of the same in form of Comprehensive Refugee Response Framework.

¹¹⁶ Jeffrey Crisp, ‘Mind the Gap! UNHCR, Humanitarian Assistance and the Development Process’ (2001) 35 *International migration review* 168.

¹¹⁷ Martin, Davis, Benton and Walian (n 25).

¹¹⁸ Roger Zetter and Ruaudel Ruaudel, ‘Refugees’ Right to Work and Access to Labor Markets – An Assessment (Part 1)’ (KNOMAD, World Bank 2016) <https://www.knomad.org/sites/default/files/2017-03/KNOMAD%20Study%201%20Part%20I-%20Assessing%20Refugees%27%20Rights%20to%20Work_final.pdf> accessed 18 August 2021.

¹¹⁹ Zetter, ‘Theorizing the Refugee Humanitarian-Development Nexus: A Political-Economy Analysis’ (n 113).

New and hybrid structures have been developed on this principle to help refugee-impacted nations. Developmental initiatives have been reconfigured according to the nuances of the refugee regime, including significant buy-ins from development actors, concessionary funding by agencies such as the World Bank and the European Investment Bank.¹²⁰ The severe financial stress, developmental shocks and economic instabilities cause by large-scale refugee influxes are now recognized and acted upon. For example, the 18th and 19th replenishments of International Development Associations, i.e, IDA18 and IDA19 which are usually available only to the world's poorest countries, now provides access to funding on concessionary terms for middle income countries such as Jordan since it is heavily impacted by refugees.¹²¹

Although the policy of integrated approach offers to improve the global refugee sharing framework, there are certain drawbacks of following this approach. These interventions have been criticised for promoting neo-liberal globalization agendas.¹²² Another apprehension regarding this model is that it will weaken the long-established public-welfare model of refugee assistance in order to give way to privatized humanitarian assistance, reflecting a central element of the neo-liberal 'roll-back' of the state.¹²³ It should also be highlighted that a demand-led intervention instead of needs-based intervention will shift the accountability and regulation away from state and international actors to private interests.¹²⁴ Thus, achieving the correct mix of humanitarian, development and peace approaches is integral. An integrated approach should

¹²⁰ 'Concessional Financing for Refugees and Host Communities in Middle-Income Countries' (World Bank 2016) Case Study <<https://pubdocs.worldbank.org/en/802571523387514211/case-study-Financial-Products-concessional-financing-for-refugees-and-host-communities.pdf>> accessed 19 August 2021.

¹²¹ 'IDA18 Regional Sub-Window for Refugees and Host Communities' (*International Development Association - World Bank*, 26 April 2018) <<https://ida.worldbank.org/replenishments/ida-18replenishments/ida18-regional-sub-window-for-refugees-host-communities>> accessed 19 August 2021.

¹²² Zetter (n 112).

¹²³ *ibid.*

¹²⁴ Zetter (n 113).

never be a reason for delay or non-delivery of humanitarian assistance where needed, nor a reason due to which development assistance is pushed back.¹²⁵

4.2 Common But Differentiated Responsibilities and Resource Capacity

The previous section discussed about an integrated humanitarian and development nexus to more effectively contribute towards sharing the burden of refugee influxes. This section will take the principle of CDDRRC from international environmental law jurisprudence and would try to implant the same in the refugee law regime.

4.2.1 Understanding CDDRRC in the Context of Environmental Law

The CBDR principle is central to international environmental law as reflected in the United Nations Framework Convention on Climate Change (hereinafter “UNFCCC”).¹²⁶ CBDR recognizes that States have contributed to environmental problems to differing degrees and have varying resource capacities to address them.¹²⁷

CBDR aims to balance two conflicting goals—the protection of our shared environment while at the same time not hindering economic development of developing nations. The UNFCCC and CBDR principle poses the problem of climate change as a shared global problem, requiring cooperation from all states in accordance with their common but differentiated responsibilities and respective capabilities.¹²⁸

Under the UNFCCC greater responsibility is assigned to those nations which have contributed more to the climate’s degradation due of their higher levels of emissions as well as to those states

¹²⁵ ‘The Humanitarian-Development-Peace Nexus: What Does It Mean for Multi-Mandated Organizations? - World’ (*ReliefWeb*) <<https://reliefweb.int/report/world/humanitarian-development-peace-nexus-what-does-it-mean-multi-mandated-organizations>> accessed 19 August 2021.

¹²⁶ Robyn Eckersley, ‘The Common but Differentiated Responsibilities of States to Assist and Receive “Climate Refugees”’ (2015) 14 *European Journal of Political Theory* 481.

¹²⁷ Dowd and McAdam (n 7).

¹²⁸ Preamble, United Nations Framework Convention on Climate Change, adopted 9 May 1992, 32 I.L.M 849 (21 March 1994).

which have more resources and capacities.¹²⁹ Annex I of the Convention lists down parties (developed states) who have a legal obligation to adopt national mitigation policies and take measures to limit their emissions.¹³⁰ This differentiation based on historic emissions, resource capacity laid the foundation for further developments in international environmental regime such as the Kyoto Protocol and the Paris Agreement.

Financial assistance is another important aspect of the CBDR principle. The developing states rely on developed states to secure the requisite financial, technology and capacity building resources needed to meet their mitigation commitments under the climate change regime.¹³¹

All major environmental law instruments, such as the Paris Agreement etc provide for developed countries' financial commitments to the developing countries.¹³² The financial assistance provided by developed states works as quid pro quo for the developing states who are then expected to cooperate and participate effectively in the climate change regime.¹³³

4.2.2 *CBDR in the Context of Refugee Law*

Common but differentiated responsibilities is an emerging concept in international refugee law, since states, institutions, scholars have been struggling for decades to find an equitable solution to the refugee responsibility-sharing problem. CBDR recognizes that States have different strengths and resource capacities to provide protection to refugees, and thus, it is not reasonable or practical to expect all nations to contribute in the same way or to an equal degree.¹³⁴ Should a system of CBDR be adopted, the net resources available for refugee protection would be

¹²⁹ Michael Weiszlitz, 'Rethinking the Equitable Principle of Common but Differentiated Responsibility: Differential versus Absolute Norms of Compliance and Contribution in the Global Climate Change Context' (2002) 13 Colorado Journal of International Environmental Law & Policy 477.

¹³⁰ Article 4 (2) (b) (n 129).

¹³¹ Daniel Bodansky, Jutta Brunnée and Lavanya Rajamani, *International Climate Change Law* (First edition, Oxford University Press 2017) 138.

¹³² Article 4 (3) and 4 (4) (n 129)

¹³³ Bodansky, Brunnée and Rajamani (n 132).

¹³⁴ Dowd and McAdam (n 7).

maximized by calling on to states to contribute according to their relative capacities and strengths.¹³⁵ Hathaway proposed a system under which all states would have the basic responsibility to provide first asylum. Beyond that common duty, states would assume varied roles under a ‘responsibility-sharing quota’ such as protection for duration of risk, immediate permanent integration in exceptional circumstances, subsequent resettlement etc. Keeping the existing scenario where Global North does not take in refugees but funds the Global South to contain the locus of refugees in the South, he propose that under an equitable system of responsibility-sharing all states would be required to make contributions to both financial and human aspects of responsibility-sharing, with no trade-offs allowed between the two.¹³⁶

Similarly, other literature available by various other scholars also suggest different proposals for a more equitable and fair responsibility-sharing framework.¹³⁷ All stakeholders came together in 2018, and came up with The Global Compact on Refugees. The GCR is of great significance since it shows a clear intention on the part of the international community to work together to tackle refugee crisis as a ‘common concern of humankind’ and not a region-specific issue.¹³⁸ Although a laudable effort, the Compact fails in certain key aspects. The pledges and contributions under the Compact and participating in Global Refugee Forums are entirely discretionary for states. Moreover, There is no formal operation structure except the ad hoc Global Refugee Forums.¹³⁹ The Compact does not lay down an explicit responsibility-sharing partnership between states based in international law.¹⁴⁰ In simpler terms, the Compact relies

¹³⁵ Hathaway and Neve (n 11).

¹³⁶ James C Hathaway, ‘A Global Solution to a Global Refugee Crisis’ (2016) 1 *European Papers - A Journal on Law and Integration* 9399.

¹³⁷ Hathaway and Neve (n 11); Peter H Schuck, ‘Refugee Burden-Sharing: A Modest Proposal’ (1997) 22 *Yale Journal of International Law* 243; Tally Kritzman-Amir, ‘Not in My Backyard: On the Morality of Responsibility-sharing in Refugee Law’ (2009) 34 *Brooklyn Journal of International Law* 355.

¹³⁸ Para 3, Global Compact on Refugees.

¹³⁹ T Alexander Aleinikoff, ‘The Unfinished Work of the Global Compact on Refugees’ (2019) 30 *International Journal of Refugee Law* 611.

¹⁴⁰ Geoff Gilbert, ‘Not Bound but Committed: Operationalizing the Global Compact on Refugees’ (2019) 57 *International Migration* 27.

solely on the goodwill of states to participate in the Forums every four years, to keep their pledges, and in general to achieve the objectives of the Compact.

4.2.3 *What would an Ideal Responsibility-Sharing Mechanism Rooted in CBDR look like?*

Having understood the CBDR principle in environmental law context and having seen what existing literature of responsibility-sharing suggests, the question remains, what would an ideal responsibility-sharing framework look like? In the light of the proposals suggested by various scholars,¹⁴¹ and the Global Compact on Refugees, this section makes some suggestions as to what appears missing in international responsibility-sharing structures and how the same can be rectified. It should be noted that the study does not attempt to provide an exhaustive operational new Convention or Treaty that would radically change the course of international refugee regime. But what this section aims to do is provide some suggestions which would help in achieving a more equitable framework of responsibility-sharing.

4.2.3.1 A new ‘soft’ legal instrument in form of a Protocol

Suggestion of a new additional protocol to the Convention addressing burden sharing is not new. UNHCR, in 2004 had recommended a second protocol on responsibility-sharing.¹⁴² Calls of such protocol can also be found elsewhere in refugee law jurisprudence.¹⁴³ Since, it is more difficult to persuade states to become party to a treaty, due to its binding nature and the even more so in case of a highly political topic such as intake of refugees, an optional protocol would be the ‘sweet spot’ to nudge the states in the direction of international cooperation without the apprehension of their sovereignty being compromised.

¹⁴¹ Hathaway and Neve (n 11); Schuck (n 138); Kritzman-Amir (n 138).

¹⁴² ‘Ensuring International Protection and Enhancing International Cooperation in Mass Influx Situations, EC/54/SC/CRP.11, June 2004: Advance Summary Findings of the Study Commissioned by UNHCR’ (2005) 24 Refugee Survey Quarterly 118.

¹⁴³ Türk and Garlick (n 33); United Nations High Commissioner for Refugees, ‘Opening Remarks at the 66th Session of the Executive Committee of the High Commissioner’s Programme. António Guterres, United Nations High Commissioner for Refugees. Geneva, 5 October 2015’ (*UNHCR*) <<https://www.unhcr.org/en-in/admin/hcspeeches/56122bd76/opening-remarks-66th-session-executive-committee-high-commissioners-programme.html>> accessed 21 August 2021.

4.2.3.2 Setting expectations, not commitments

Any sort of instrument which proposes to set mandatory commitments, such as setting compulsory refugee intake quotas etc is bound to fail. This is because refugee intake is a highly political topic, considering the populist narratives that surround it. On the other hand, a quasi-legislative instrument like the GCR is considered too ‘soft’. The proposed additional protocol will have to find a balance between the two. A lesson can be taken from the Paris Agreement. Not all the provisions of the Agreement create binding obligations. Only those provisions which are the crux of climate change regime, i.e., provisions related to action taken to mitigate emissions and those of transparency create obligations, and those provisions have also been ‘softened’ by focusing more the procedure than the outcome.¹⁴⁴ Similarly, in the refugee law context, there is a need for a ‘soft’ legislation which focuses more on procedure would lead to broader participation. It should aim to engage both, the less and more powerful states, and instead of setting precise standards, it should rather recommend a course of action and contextualise the level of its implementation.

4.2.3.3 Using CBDR as a Guiding Framework

An equitable responsibility framework centred around CBRD should first all acknowledge that mass displacements and refugee influxes are not the problems of any specific nation or region alone, but rather they are the shared concern of all the states, thus, states collectively have the responsibility to solve these crises. The GCR was a significant step in this direction since it frames the refugee problem as a ‘common concern of humankind’.¹⁴⁵

The problem arises in attributing the ‘differentiated’ responsibilities. Should more responsibility be attributed to the refugee producing states, or should it be attributed to the states of Global North because of their higher resource capacities?

¹⁴⁴ Lavanya Rajamani, ‘The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations’ (2016) 28 *Journal of Environmental Law* 337.

¹⁴⁵ The Global Compact on Refugees (n 58).

While some commentators have argued that states who play a part in events leading to refugee influxes should have more responsibilities towards the refugee hosting states.¹⁴⁶ Moreover, imposing obligation on such states would desist them from doing acts that might result in refugee crises. While such an argument also finds support in the concept of ‘reparations’ under Draft Articles on Responsibility of States for Internationally Wrongful Act,¹⁴⁷ it would be outside the scope of refugee law. Refugee law regime does not deal with the cause of refugee influxes but limits itself to protection of refugees.

A common argument discussed in literature surrounding the refugee law regime is that the Global North is obligated to contribute more, not only because of their greater resource capacity, but also because of Global North has contributed to refugee influxes in its colonial past and continues to do so, albeit indirectly, through its foreign policies and interventions.¹⁴⁸

Again, to attribute direct or indirect responsibilities based on foreign policies of states, is beyond the scope of refugee law regime. But the argument that the Global north entails responsibilities due to its greater resource capacities not only finds support in climate change regime and international law in general, but also sets right according to the notions of equity and fairness.

To conclude, a framework based on CBDR would require a baseline commitment from all states for refugee protection. Further the responsibility to operationalise solutions would be differentiated based resource capacities and socioeconomic realities, level of development, national policies, priorities etc. Due to the greater capacities of the developed countries, their responsibilities would also vary accordingly.

¹⁴⁶ Goodwin-Gill (n 10).

¹⁴⁷ Article 31, International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1

¹⁴⁸ Aristide R Zolberg, Astri Suhrke and Sergio Aguayo, *Escape from Violence: Conflict and the Refugee Crisis in the Developing World* (First issued as an Oxford University Press paperback, Oxford University Press 1992) 279; Rosemary Byrne and A Shacknove, ‘The Safe Country Notion in European Asylum Law’ [1996] Harvard Human Rights Journal 185.

V. CONCLUSIONS

In this study an attempt was made to understand the principle of responsibility-sharing, the challenges that plague its application and how can it be made more equitable and effective. To this end, the first chapter was dedicated to the theory surrounding responsibility-sharing. A study of the current refugee influxes revealed a skewed ratio in which states with least resources were hosting most of the refugees. This highlighted the need for a mechanism which would prompt all states to contribute towards solving the problem of refugee protection. Subsequently, the chapter dealt with the origins of the concept of responsibility-sharing. It revealed that the concept is rooted in the principle of solidarity and international cooperation. Having understood the need for and origins of responsibility-sharing, the chapter discussed the existing framework of responsibility-sharing under the refugee law regime. To this end, the chapter analysed the conventional framework under the 1951 Refugee Convention by doing an in-depth analysis of the provisions related to responsibility-sharing. Extra-conventional mechanisms such as UNHCR's Executive Committee and the latest addition to the framework, i.e., The Global Compact on Refugees were also discussed. The Chapter then delved into understanding the nature and the different types in which states contribute to the responsibility-sharing frameworks. Tools such as funding and donating to the host states, providing humanitarian assistance and development assistance, using preventative diplomacy and early warning mechanisms to prevent displacement, hosting and granting asylum, working towards long-term and durable solutions, capacity building etc were discussed.

The second chapter dealt with recognising the gaps, challenges and shortcoming of the existing responsibility framework. The first section of this chapter dealt with the challenges that plagued the implementation of the existing framework. Under this, the challenge of sovereignty which prevents application of tools of preventative diplomacy, early warning mechanisms, peacebuilding and peacekeeping mechanism to solve the refugee crisis were discussed. The another major challenge of the principle of responsibility-sharing being voluntary in nature was also discussed. It is up to each state to decide whether it wants to share the burdens of refugee influxes, which tool it wants to use to do the same, to what extent and measure it intends to

extend its support, all depend on a state's goodwill. The Chapter then discussed what are the shortcomings of the existing refugee framework, i.e., how the current framework falls short of addressing equitable distribution of burdens of refugee protection. Under this section, the study looked towards the experiences of refugees residing in Middle Eastern and North African Region. The section also discusses how responsibility-sharing tool of providing fiscal assistance has been used strategically by the Global North to contain the locus of refugees in the Global South by using sophisticated contracts such as the EU-Turkey deal etc. Further, the chapter analysed the conditions and circumstances living in MENA region, particularly with respect to the thematic areas of livelihood, education and legal protection etc.

Having understood the challenges and shortcomings of the existing mechanisms of burden-sharing, the third chapter analyses various methods by which burden-sharing mechanisms can be made more equitable and fair. The chapter discussed how an integrated approach of a mix of developmental and humanitarian aid would look like. Shifting the refugee protection framework from a purely humanitarian approach to an integrated model would not only better equip host states to cater to their populations as well as the refugees, but it will also increase self-sufficiency amongst refugees, thus making them effective contributors to the economy. In the next section, the concept of Common but Differentiated Responsibility and Resource Capacity is discussed in the context of international environmental law. Taking a cue from the application of the CBDRRC principle in the climate change regime, the chapter envisions how the same could be adapted to the refugee regime to make burden-sharing more predictable and equitable. To this end, the study makes an attempt to visualise an additional protocol to the Refugee Convention which would deal exclusively with burden sharing. The study concludes with listing down the features of such a protocol that would encourage participation from the states of Global South as well as the Global North and would make the responsibility-sharing mechanisms more effective, fair and equitable.

Thus, the hypothesis that there is a need for changing the present nature and scheme of the obligation of responsibility-sharing in times of refugee crisis since the same has failed to provide an equitable and holistic distribution of responsibilities among various nation states which has in

turn resulted in hardships and uncertainty for refugees and overburdening of developing host nations stands proved.

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