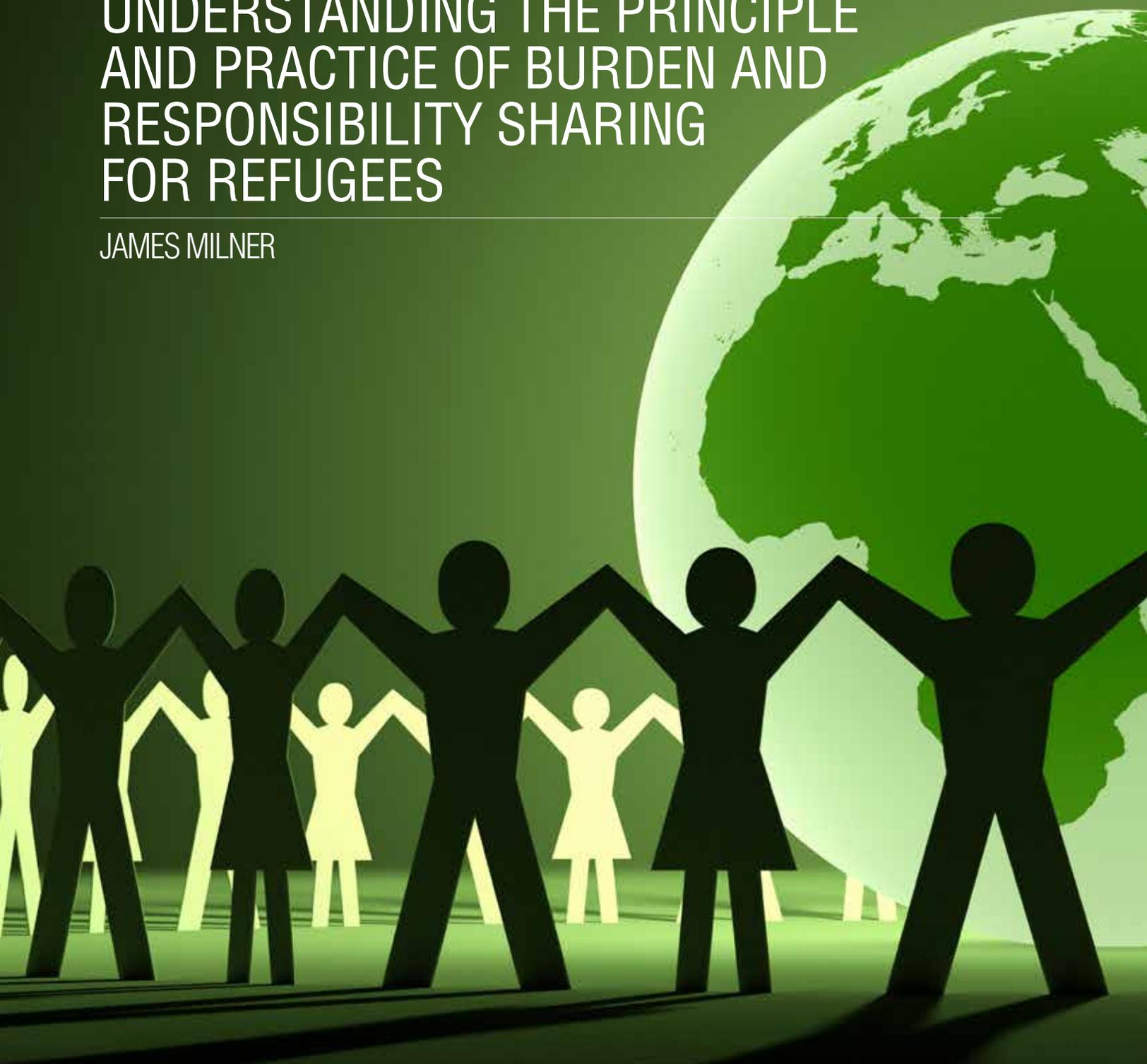




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WHEN NORMS ARE NOT ENOUGH UNDERSTANDING THE PRINCIPLE AND PRACTICE OF BURDEN AND RESPONSIBILITY SHARING FOR REFUGEES

JAMES MILNER



**WHEN NORMS ARE NOT ENOUGH: UNDERSTANDING THE PRINCIPLE
AND PRACTICE OF BURDEN AND RESPONSIBILITY
SHARING FOR REFUGEES**

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67 Erb Street West
Waterloo, Ontario N2L 6C2
Canada
tel +1 519 885 2444 fax +1 519 885 5450
www.cigionline.org

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GLOBAL LEADERSHIP AND COOPERATION FOR REFUGEES: ABOUT THE PROJECT

There are 65 million refugees and displaced persons in the world, with numbers increasing each year. The crisis has brought out the worst in many countries, with several states restricting or blocking entry to those most in need of protection and other countries shouldering a disproportionate share of responsibility. The current refugee system is unpredictable, piecemeal and unsustainable. Unaddressed, it will impact the world for generations to come. Yet, with greater international cooperation, this challenge would be manageable — the world's refugees account for less than 0.3 percent of the global population. As a result, the UN Secretary-General has called for the creation of a Global Compact on predictable and equitable responsibility sharing to respond to large-scale refugee movements. To address this challenge, the Global Security & Politics Program at the Centre for International Governance Innovation (CIGI) has launched the Global Leadership and Cooperation for Refugees project to develop and advance ideas for a new system of international cooperation that is capable of anticipating mass movements of people and managing them in a way that is politically viable, fair for all states and properly funded, as well as to consider ways in which Canada can provide international leadership on this crucial issue.

ABOUT THE AUTHOR



James Milner is associate professor in the Department of Political Science at Carleton University in Ottawa, Canada. His research examines the politics of the global refugee regime, the history of the United Nations High Commissioner for Refugees (UNHCR), protracted refugee situations and the politics of asylum in the Global South. He has worked as a consultant for the UNHCR in India, Cameroon and Guinea and at its Geneva headquarters. He is author of *Refugees, the State and the Politics of Asylum in Africa* (Palgrave Macmillan, 2009), co-author (with Alexander Betts and Gil Loescher) of *UNHCR: The Politics and Practice of Refugee Protection* (Routledge, 2012) and co-editor of *Protracted Refugee Situations: Political, Human Rights and Security Implications* (UN University Press, 2008).

EXECUTIVE SUMMARY

For more than 60 years, states have agreed that international cooperation is required to ensure effective responses to the needs of refugees. In the absence of binding commitments from states to share the costs associated with the granting of asylum, however, contributions remain discretionary — resulting in recurring gaps relating to the scope, scale and predictability of burden and responsibility sharing. The UN General Assembly’s High-Level Meeting on Refugees and Migrants in September 2016 should launch a process that seeks support from UN member states for new arrangements that would address these gaps and develop new approaches to ensure more predictable and appropriate levels of international cooperation when responding to the protection and solutions needs of refugees.

This paper recommends that this process should build from the clear support for the norm of burden sharing, while addressing the gap created by the discretionary nature of contributions from states. The process should be premised on a disaggregated understanding of the impact of refugees on host states and communities, including an assessment of both the negative and the positive impacts that the presence of refugees might have, with a view to mitigating the negative consequences of hosting refugees and building on the potential contributions of refugees and refugee assistance programs. The process should be state led, but also include the active participation of a broad range of actors from the humanitarian, development and peace-building sectors, while considering the diverse forms of burden sharing that could be pursued.

INTRODUCTION

Recent events in Europe have again highlighted the core deficiency of the global refugee regime: while countries of first asylum have an international obligation not to forcibly return refugees to a country where they fear persecution, there is no binding obligation on other states to share the costs associated with the provision of asylum (Betts, Loescher and Milner 2012, 82–103). Due to “accidents of geography” (Hathaway and Neve 1997, 141), states in regions of refugee origin consequently host the vast majority of the world’s refugees, while a limited number of other states predictably contribute to the needs of refugees. The resulting inequity can be summarized in three statistics:

- 60 percent of the world’s refugees are hosted by 10 states in the Global South;¹
- 10 donors account for more than 75 percent of all financial contributions to the Office of the United Nations High Commissioner for Refugees (UNHCR);² and
- three states account for 85 percent of global refugee resettlement efforts.³

In response to the implications of this inequity, the former UN High Commissioner for Refugees António Guterres (2015) noted that “if there is one Protocol that is yet to be drafted to complement the 1951 Convention, it is one on international solidarity and burden sharing.”

Despite the lack of a binding obligation, there has been significant agreement on the principle of burden and responsibility sharing as articulated in the Preamble (UNHCR 2010b, 13) to the 1951 Convention relating to the Status of Refugees (1951 Convention), and in many conclusions of the UNHCR’s Executive Committee and resolutions of the UN General Assembly. While the *principle* of international cooperation and burden sharing is widely accepted, the past 65 years have seen recurring debates on the *practice* of burden sharing. These debates have revolved around three questions:

- What is the refugee “burden” and how is it measured?
- What are the mechanisms through which this burden can be shared?
- How can international cooperation be made more predictable?

This paper begins by outlining the principle and significance of burden and responsibility sharing before addressing these three questions in turn and making recommendations for

1 There were 58 million “persons of concern” to the UNHCR in 2015, of which 14.4 million were refugees. The top 10 refugee-hosting countries (with respect to the number of refugees hosted) were Turkey (1,828,848), Pakistan (1,540,854), Lebanon (1,172,388), Iran (979,441), Ethiopia (702,467), Jordan (664,102), Kenya (552,272), Uganda (428,397), Chad (420,774) and Sudan (322,638) (UNHCR 2015a).

2 Of the US\$2.271 billion contributed to the UNHCR in 2012, the top 10 donors (and their contributions as a percentage of total contributions) were the United States (35 percent), Japan (eight percent), the European Union (seven percent), Sweden (five percent), the Netherlands (4.5 percent), the United Kingdom (4.3 percent), Norway (3.7 percent), Germany (three percent), Canada (2.8 percent) and Denmark (2.5 percent). The remaining 23 percent of contributions came from 66 states, seven international organizations, 16 UN funds, and more than 50 private donors (UNHCR 2013).

3 Of the 73,331 UNHCR-referred refugees to be resettled in 2014, 48,911 (66.6 percent) were resettled to the United States, 7,234 (9.8 percent) were resettled to Canada and 6,162 (8.4 percent) were resettled to Australia (UNHCR 2015b).

future policy discussions on enhancing the scope, scale and predictability of international cooperation and burden sharing for refugees.

THE PRINCIPLE AND SIGNIFICANCE OF BURDEN SHARING

In the context of refugees, burden sharing is “the principle through which the diverse costs of granting asylum assumed by the host state are more equitably divided among a greater number of states” (Milner 2005, 56).

The importance of burden sharing, also referred to as international solidarity and responsibility sharing, has been articulated in a range of documents since the creation of the global refugee regime. The Preamble of the 1951 Convention notes that “the grant of asylum may place unduly heavy burdens on certain countries, and...a satisfactory solution...cannot therefore be achieved without international cooperation” (UNHCR 2010b, 13). Similar statements have been included in more than 30 conclusions of the UNHCR’s Executive Committee over the past 35 years (UNHCR 2014, 42–69) and as many UN General Assembly resolutions.

One of the clearest articulations of the principle can be found in the 2001 Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees: “respect by States for their protection responsibilities towards refugees is strengthened by international solidarity involving all members of the international community and...the refugee protection regime is enhanced through committed international cooperation in a spirit of solidarity and effective responsibility and burden-sharing among all States...” (UNHCR 2002a, 2).

While these statements illustrate that there is broad agreement by states on the principle of burden and responsibility sharing, they do not constitute binding obligations on states. In fact, international law, by custom or treaty, does not include a duty to engage in burden sharing (Hathaway and Neve 1997; Goodwin-Gill 1996). Any burden or responsibility-sharing activities by states are consequently discretionary.

In contrast, states are bound by the principle of *non-refoulement*: the prohibition on the expelling or returning of a refugee “in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened” (1951 Convention, article 33(1)). This prohibition has become a principle of customary international law, and is consequently binding on all states in the international system (Goodwin-Gill 1996, 167–71). States are therefore understood to have a duty to offer, at minimum, temporary protection to refugees entering their territory. As a result, there is an uneven distribution of refugees between countries with “some countries bearing a disproportionate

share of the refugee burden, while others bear little or none of these responsibilities” (Rutinwa 1999, 6).

As noted by Gaim Kibreab (1991, 31), the drafters of the 1951 Convention understood that “if the burden became too much to bear, countries of asylum may be forced not to respect the principle of *non-refoulement*.” Indeed, a perceived lack of burden sharing has been cited by many states in the Global South as a justification for placing limits on the quantity and quality of asylum they offer refugees (Milner 2009, 39–60). Similar concerns have been highlighted by European states as grounds for closing their borders to asylum seekers in the context of the recent refugee and migration crisis. It is for this reason that issues relating to international cooperation and burden sharing have long been identified as the most critical recurring issue of global refugee policy.

Recommendation One: The central objective of future discussions on international cooperation should build from the clear support for the norm of international cooperation while addressing the gap created by the discretionary nature of contributions from states.

MEASURING A REFUGEE BURDEN

If there is agreement that the burdens associated with the hosting of refugees *should* be shared, what are the costs associated with the granting of asylum and how can they be measured?

These questions have also long confounded scholars and practitioners. Initiatives in the 1980s found that while it was widely assumed that the presence of large refugee populations in poorer host states resulted in a range of burdens, the nature of these burdens was “almost impossible to verify with hard data” (Gorman 1987, 30). In response, a number of indicators have been used to measure the relative burden borne by various countries:

- total number of refugees in a host country;
- number of refugees relative to the national population (refugees per capita); and
- number of refugees relative to the wealth of the country (refugees per capita GDP).

While some efforts have been made to refine these measures (Czaika 2005; World Bank 2010), these indicators remain the most widely used to rank countries according to the scale of their refugee burden. For example, the UNHCR (2015a) reported that Lebanon hosted the highest number of refugees per capita in 2015, with 209 refugees per 1,000 inhabitants, followed by Jordan (90 per 1,000) and Nauru (51 per 1,000). Using the measure of number of refugees per US\$1 GDP (purchasing power parity) per capita in 2015, Ethiopia was the most “burdened” with 469 refugees per US\$1 GDP per capita, followed by Pakistan (322) and Uganda (216).

Such measures, however, provide a highly simplified representation of the refugee burden in any one country, because these figures do not indicate how the presence of large refugee populations might have a differentiated impact on different parts of a host country or whether the presence of refugees has a negative impact on particular aspects of a country's economy, environment, social services system or security.

Moreover, these figures do not consider the extent to which the presence of refugees constitutes a burden or a benefit. In fact, research over the past 30 years (Chambers 1986; Kibreab 1991; Jacobsen 2002; Milner 2009; Betts et al. 2014) has illustrated that there are three ways that the presence of refugees can have a positive economic impact on the refugee-populated area:

- As a result of the presence of a large refugee program, additional services, facilities and economic and employment opportunities can be made available to the local population.
- Many refugee operations include specific programs to benefit the local population, both to alleviate local burdens and to foster good relations with the local population. In this way, local water sources, schools and hospitals can be rehabilitated.
- In situations where refugees are allowed to engage in wage-earning employment, they can significantly contribute to agricultural production and the local economy.

Recommendation Two: Future discussions should be premised on a disaggregated understanding of the impact of refugees on host states and communities, including an assessment of both the negative and the positive impacts that the presence of refugees might have, with a view to mitigating the negative consequences of hosting refugees and building on the potential contributions of refugees and refugee assistance programs.

HOW ARE BURDENS SHARED?

There are essentially two ways that third countries can share the refugee burden of the country of first asylum.⁴ First, states may engage in *financial burden sharing* by “providing financial assistance for countries of asylum... to help them with the care and maintenance of refugees” (Boswell 2003, 1). Second, states may engage in *physical burden sharing*, involving the “dispersal of refugees among

states” (ibid.). While this dichotomy raises important questions of equivalency (how can the value of the resettlement of a refugee compare to financial contributions to the UNHCR?) and substitution (can states engage in financial burden sharing at the expense of physical burden sharing?), this characterization of forms of burden sharing provides a useful start in understanding mechanisms.

Financial Burden Sharing

Donor states may engage in financial burden sharing with countries of first asylum in several ways, including through bilateral assistance or multilaterally through contributions to international organizations, such as the World Bank or the UNHCR, or non-governmental organizations, such as CARE or Oxfam. Given that the UNHCR has received billions of dollars in voluntary contributions for its work in the past decade, for example, it may be concluded that substantial financial burden sharing does, in fact, take place. What remains critical is the scale and conditionality of these contributions.

According to chapter III (20) of the UNHCR's Statute, “no expenditure other than administrative expenditures relating to the functioning of the Office of the High Commissioner shall be borne on the budget of the United Nations and all other expenditures relating to the activities of the High Commissioner shall be financed by voluntary contributions” (UNHCR 2010a, 12). As a result, and given the dramatic increase in the organization's operational activities over the past 50 years, contributions from the United Nations' regular budget now account for less than three percent of the UNHCR's annual budget. As a result, the UNHCR is substantially dependent on voluntary contributions.

This dependence is compounded by the fact that 10 donors account for more than 75 percent of all contributions to the UNHCR, as outlined above. When considering aggregate funding to the UNHCR over the period 1990 to 2012, three donors have been responsible for over 50 percent of all contributions to the UNHCR: the United States (28.4 percent), the European Commission (13.2 percent) and Japan (12.1 percent). These donors exercise additional control over the UNHCR by “earmarking” their contributions. In 2012, 100 percent of contributions from the United States and the European Commission to the UNHCR were earmarked, compared with 91 percent of contributions from Japan. In fact, only 20 percent of all funding to the UNHCR in 2012 was unrestricted. Through earmarking of voluntary contributions, donors exercise considerable influence over the work of the UNHCR. As a result, programs considered to be important by key donors receive substantial support, while those deemed less important receive less support.

⁴ It is generally understood that three types of states are involved in refugee situations. “Countries of origin” are the states from which refugees flee. “Countries of first asylum” are the countries to which refugees immediately flee, which are typically — but not always — states that neighbour the country of origin. “Third countries” are all other countries engaged in responding to the refugee situation, but that are neither a country of origin nor a country of first asylum.

Recommendation Three: Discussions on burden sharing should build from Core Responsibility 5 of the Report of the United Nations Secretary-General for the World Humanitarian Summit to “reduce the funding gap for humanitarian needs”⁵ and to increase unrestricted contributions to humanitarian agencies.

Physical Burden Sharing

The second form of burden sharing is physical burden sharing, primarily through resettlement to a third country, defined as “the making available in a third country, on a voluntary basis, permanent residence to a refugee who is in another country, in a manner where the resettled person enjoys...rights similar to nationals” (UNHCR 2003). While no state is legally obliged to resettle refugees, refugee resettlement has increasingly been recognized as “a tangible expression of international solidarity” that allows states to “help share each other’s burdens” (UNHCR 2002b, 5).

Resettlement has long been a feature of the international response to refugee crises. During the Cold War, Western governments, led by the United States, used resettlement not only as a tool of protection for those in need, but also as an extension of the anti-Communist foreign policy (Loescher and Scanlan 1986). While the end of the Cold War removed many of these foreign policy motivations, domestic pressures have sustained global resettlement programs, and made resettlement activities more geographically diverse.

That said, global resettlement activities consistently fall below the level of need identified by the UNHCR. In 2015, for example, the UNHCR announced that it found 1.1 million refugees to be in need of resettlement, but only had the capacity to process resettlement submissions for 59,563 refugees. At the same time, the UNHCR reported that there were some 7.2 million refugees in a protracted refugee situation, meaning that they have been in exile for five or more years without the prospect of a durable solution. These refugees are all eligible for resettlement given the UNHCR’s resettlement criteria. Based on 2015 resettlement commitments from states, it would take more than 87 years to address the resettlement needs of all refugees who are currently eligible for resettlement.

Recommendation Four: Any future agreement on burden and responsibility sharing should include a substantial increase in global resettlement efforts.

The Scope of Burden Sharing

Discussion on the scope of burden-sharing activities and the range of actors involved has grown in recent months, highlighting how the provision of technical assistance and

capacity building may constitute a third form of burden sharing with countries of first asylum. There is also a growing consensus that traditional approaches to burden sharing do not effectively address the range of burdens borne by countries of asylum and that comprehensive approaches must include consideration of the potential role of broader development, peacekeeping and peace-building activities. For example, Jordan’s commitment in April 2016 to increase access to employment for Syrian refugees is widely seen to have been encouraged by the “World Bank’s commitment to provide Jordan with near zero per cent loans of US\$300–500 million tied to indicators like the granting of work permits to Syrian refugees” (UNHCR 2016).

Recommendation Five: Future discussions should include the active participation of a broad range of actors from the humanitarian, development and peace-building sectors, while considering the broader range of forms of burden sharing that might be pursued.

ENHANCING THE PREDICTABILITY OF BURDEN AND RESPONSIBILITY SHARING

Since the 1980s, several scholars have proposed more structured approaches to burden and responsibility sharing. At the core of early proposals (Fonteyne 1980; Grahl-Madsen 1980; and Grahl-Madsen 1983) was a common understanding that “collective action would strengthen protection for refugees by reducing inequities among recipient states” (Suhrke 1998, 2).

Arguably the most recent comprehensive proposal was published by James C. Hathaway and Alexander Neve in 1997, following the six-year *Toward the Reformulation of International Refugee Law* research project (Reformulation Project) conducted at York University’s Centre for Refugee Studies. The Reformulation Project proposed a mechanism to ensure the dependability of burden sharing based on four principles:

- Refugee protection should actively seek solutions in line with state interests.
- Refugee law should adopt a more “robust” concept of temporary protection according to the logic that “if the protection of refugees is...respectful of human dignity, it need not be permanent” (Hathaway 1997, xxiii).
- There is no need to assume that every state will play an identical role; instead, states may have “common but differentiated responsibilities” (ibid., xxiv).
- The institutions of the international refugee regime need to be “retooled” to “promote and coordinate a process of collectivized responsibility,” thereby

5 See <http://sgreport.worldhumanitariansummit.org/>.

ensuring confidence among states that a more systematized and coordinated approach to burden sharing would result in a more dependable response (ibid.).

The Reformulation Project concluded that burden sharing would be more effectively administered if it took place in the context of pre-negotiated responsibilities.

Academics and practitioners were generally critical of such an approach (Anker, Fitzpatrick and Shacknove 1998; Suhrke 1998), arguing that these proposals capitulated to the state interests at the expense of the rights of refugees, commodified refugees and overlooked the tendency of states to engage in “burden shifting,” not burden sharing.

Proposals for more formalized burden-sharing arrangements have also been resisted by states. For example, the 1998 meeting of the UNHCR’s Executive Committee adopted “International Solidarity and Burden Sharing in all its Aspects” as its annual theme. The chairman’s summary of the debate recognized that while there was widespread support for the concept of burden sharing, there was no support for new burden-sharing mechanisms or obligations in addition to those of the 1951 Convention. While there was endorsement for increased “institutional collaboration at the operational, advocacy and fundraising levels,” there was “less support for global mechanisms” (UNHCR 1998, 25).

It is also important to understand the contrasting positions of large donor states, such as the United States, and refugee-hosting states, such as Tanzania, during the meeting. The US delegation encouraged all participants, especially host states in the Global South, to not characterize refugees only as a burden, arguing that “many countries — East and West, North and South — have benefited from the intellectual and economic contributions of individual refugees” (United States 1998, 2-3). The US delegation also argued that burden sharing must be focused on solutions, reflecting the donors’ reluctance to keep funding long-term refugee programs, and that the donor community “should be seen as more than just the handful of nations who contribute the bulk of the cash and commodities to UNHCR” (ibid., 3).

In contrast, the Tanzanian delegation noted that “countries of asylum are to a large extent left to bear the brunt of the burden of hosting the refugees they admit onto their territories” (Tanzania 1998, 2). In the absence of a global mechanism to apportion responsibility for refugees, Tanzania argued that “whatever resources that are made available to the countries of asylum remains a matter of

charity, left to the discretion of individual [donor] states” (ibid., 3). Crucially, Tanzania noted that “the recipient countries who bear the brunt of the burden of hosting refugees do not have much say in determining the extent to which they should be assisted by the international community” (ibid., 5).

A number of key lessons can be derived from the burden-sharing debates of the late 1990s.

First, states were unwilling to assume additional commitments. This reluctance existed despite the clear agreement on the importance of burden and responsibility sharing, the detail in proposals from the academic community and the fact that principles of international solidarity and cooperation were foundations of the global refugee regime.

Recommendation Six: Future discussions on burden sharing need to engage with the diverse interests of both donor and refugee-hosting states and to work to develop new approaches that leverage these interests.

Second, a clear North-South divide emerged in the perceptions of the purpose of the debate, the capacities and interests of both sets of states and the characterization of the issue as “burden sharing” or “responsibility sharing.” These differences remain entrenched in multilateral discussions on burden and responsibility sharing within the global refugee regime.

Recommendation Seven: Future discussion on international cooperation should strive to overcome the past tensions between states in the Global North and Global South by engaging a broad range of states from the outset; identifying champions in the Global North and South; and focusing on the concept of “international cooperation” to avoid being characterized as representing the interests of a particular group of states.

Third, international cooperation in the global refugee regime remains deeply political. This makes a resolution of the issue potentially beyond the scope of the UNHCR acting on its own. Given the discretionary nature of contributions from states, the UNHCR has few means by which to compel states to provide essential support to the global refugee regime. Instead, the UNHCR has had to recognize and engage with states’ interests, not all of which are within the area of refugees but instead relate to broader political, economic or strategic interests. The process of enhancing international cooperation for refugees will, therefore, likely be most successful if it is led by a group of states from the Global South and North, and strongly supported from the highest levels within the UN system.

Recommendation Eight: Future discussions should include the UNHCR but be led by a group of states from the Global South and North who are able to engage with the broad range of states and issues necessary to achieve agreement on a more predictable response to international cooperation for refugees.

Fourth, consensus on new approaches to burden and responsibility sharing is difficult to reach in the context of a single meeting, especially in a tense international environment. Instead, new binding agreements will most likely result from a state-led process that is able to unfold over time, allowing for consultation with a wide range of states and discussion of proposed mechanisms in diverse regional contexts. This lesson is especially important following the September 2016 UN General Assembly's High-Level Meeting on Refugees and Migrants and the beginning of a process leading to a new Global Compact on refugees, to be delivered in 2018.

Recommendation Nine: The development of a Global Compact on refugees should include a state-led process to engage with issues beyond the mandate of UNHCR yet central to designing approaches and mechanisms capable of providing more predictable and appropriate levels of international cooperation in response to the needs of refugees.

CONCLUSION

While the principle of international cooperation has been accepted since the origins of the global refugee regime, significant gaps remain in practice. In the absence of binding commitments from states to share the costs associated with the granting of asylum, contributions remain discretionary. As a result, challenges relating to the scope, scale and predictability of burden and responsibility sharing persist.

In light of an understanding of the principle of burden and responsibility and its significance, this paper considered how the costs associated with the granting of asylum are measured, as well as the mechanisms through which these costs are shared.

A resolution of this recurring gap in the global refugee regime can likely only be addressed through a state-led process, one that seeks to learn from past discussions and build consensus among a wide range of refugee-hosting states and donor and resettlement countries. This process and its participants will need to create new mechanisms that would change the nature of contributions from the current discretionary system to one in which member states and other actors share the broad range of costs associated with protection and solutions for refugees in a way that is more predictable, equitable and effective.

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67 Erb Street West
Waterloo, Ontario N2L 6C2, Canada
tel +1 519 885 2444 fax +1 519 885 5450
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