A Fair Share:
Refugees and Responsibility-Sharing

This Delmi report focuses on the unequal sharing of responsibility for refugees between states. Globally, just 10 countries host 60 percent of the world's refugees. This recognition has led to calls for more 'equitable and predictable responsibility-sharing', including through the UN Global Compact on Refugees and a reform of regional frameworks like the Common European Asylum System (CEAS).

Definitional Dilemmas

In its broadest sense, responsibility-sharing relates to the distribution of costs and benefits between states for addressing a particular global challenge. In the refugee-context, there are challenges of defining scope. Does it just include refugees, or other displaced populations? Does it also include broader contributions to humanitarian assistance and development, or to peacekeeping and peacebuilding? Even if delimited to the refugee context, does it relate to all forms of support to refugees, including asylum, financial assistance, and resettlement? While acknowledging these dilemmas, a working definition of responsibility-sharing in the refugee context might be 'the contribution of states towards supporting refugees who are on the territory of another state through the redistribution of money or people'.

Understanding the Cooperation Problem

Refugee protection can be conceived as a global public good, albeit one that is asymmetrically distributed. Global public goods have two main properties: 1) non-rivalry (one actor's consumption does not reduce the quantity available to other actors); 2) non-excludability (it is impossible to prevent anyone else using the good). In the case of refugees, all states benefit from the improved human rights and security outcomes resulting from another state's contribution, irrespective of their own contribution. Because of these properties, there will be strong incentives for free-riding in the absence of robust institutional mechanisms to coordinate provision.

This challenge is exacerbated by the power asymmetry created by a combination of geography and policy.
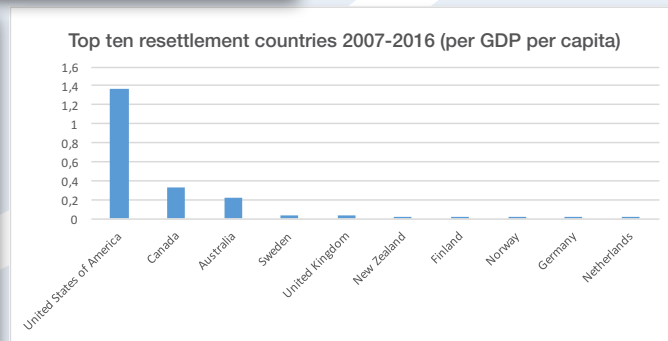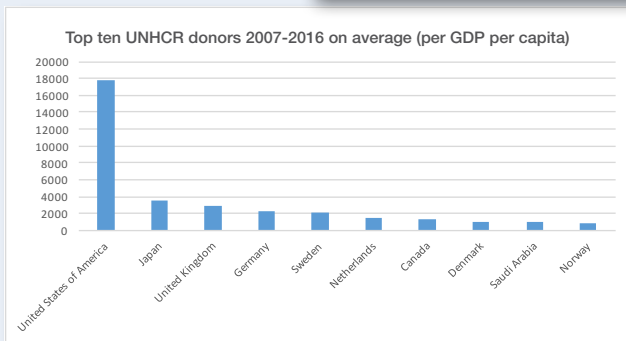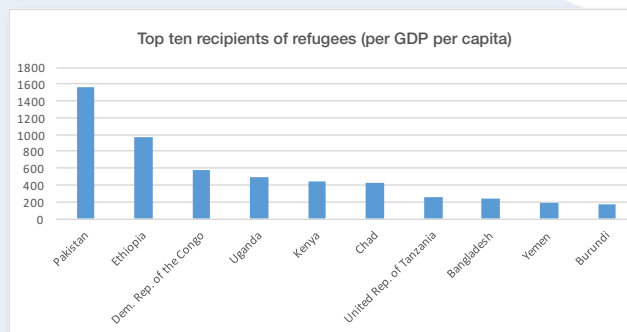
Geography – whether on a global or regional level – defines the structural position occupied by states in the refugee regime. States proximate to conflict and crisis face very little alternative other than to open their borders to refugees. Richer states further afield face only a discretionary duty to contribute through responsibility-sharing, assuming that their access barriers work and they are able to prevent refugees from arriving spontaneously. This asymmetry is replicated on a regional level, in which proximity to an influx often leaves states on a weaker bargaining position. Historically, this has meant that the challenge for inter-national institutions has been how to persuade distant states to voluntarily support more proximate states.

Measurement Challenges

Any attempt to measure responsibility-sharing first requires us to determine which forms of contribution we measure – asylum, resettlement, financial commitments, for example. A second more challenging question, though, is to consider the equivalence of different types of contribution: how many resettlement places are equal to a $10,000 contribution to humanitarian assistance? Furthermore, it makes a significant difference

Top ten contributors considering different factors

Top ten recipients of refugees (per GDP per capita)

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

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

(UNHCR 2017)

to any measure of responsibility-sharing if we make contributions relative to GDP and population. The three graphs below illustrate the top ten contributors to each of these three areas per GDP per capita based on the average contribution between 2007 and 2016

There is an important emerging discussion about how to create a 'responsibility-sharing index' as a means to measure and thereby influence states' contributions. To be effective such an index would need to overcome challenges of 1) legitimacy – being compiled and adjudicated by an authoritative body based on widely accepted methods; 2) equivalence – establishing weightings for different types of contribution; 3) scope – working out how to account for other positive and negative contributions in adjacent policy fields, from peacebuilding to immigration control.

Global

The search for equitable and predictable responsibility-sharing is not new: it reflects a systemic and longstanding gap in the international refugee regime. In contrast to the principle of asylum, for which there are relatively strong institutionalised norms at the global level, the normative framework governing responsibility-sharing is relatively weak. The main source of normative obligation to engage in burden-sharing can be found in paragraph 4 of the Preamble to the 1951 Convention on the Status of Refugees.

Three archetypal models of responsibility-sharing are available: ad hoc, centralised, or hybrid systems. The different models provide solutions for different situations:

Model 1: Ad Hoc

Under the status quo, refugee responsibility-sharing at the global level is mainly governed by ad hoc structures. On a general level, both financial responsibility-sharing and resettlement, allocated through the UN system, are undertaken on an ad hoc and voluntary basis. States exercise almost total discretion in setting the amount of their annual voluntary contributions to UNHCR or to resettlement places. In addition to being discretionary, such contributions are often heavily earmarked, enabling states to direct them towards regions or populations that relate to their strategic priorities. In the past, a range of ad hoc initiatives have contributed to responsibility-sharing for mass influx or protracted refugee situations; they offer important lessons for the present, including the Comprehensive Plans of Action for Indochinese Refugees (CPA) and The International Conference on Refugees in Central America (CIREFCA), both of 1989.

Model 2: Centralised

There is currently no centralised model of coordinated responsibility-sharing at the global level. However, a number of proposals for centralised models have been advanced. These include proposals for 1) quotas; 2) tradeable quotas; 3) preference matching schemes, all based on agreed distribution keys, perhaps based on capacity, as measured by, for example, GDP and population. Some schemes propose using 'common-but-differentiated responsibility-sharing' (CBDRS) as a basis for enabling certain states to specialise in forms of provision in which they have a greater comparative advan-

tage. One of the challenges of such models is that they usually rely upon an authoritative centralised broker to allocate and enforce the implementation of quotas.

Model 3: Hybrid

In contrast to the underlying assumptions of the *ad hoc* or the centralised models, this model considers refugee protection neither a purely private good nor a purely public good. Instead, there is evidence that refugee protection and assistance are impure public goods with asymmetrically distributed benefits. The implication is that the optimum institutional design will contain a means to balance centralised coordination with situation-specific responses. Many of the current proposals at the UN level implicitly offer such a hybrid model.

Europe

The Dublin system purports to be the main instrument for the allocation of responsibility for asylum seekers across the EU (and associated states). It implies that first arrival states must process applications of asylum seekers that enter their territory and receive back those who moved on to another Member State. However, since its inception, the system has been characterised by low levels of compliance (by both states and asylum seekers), and the system is not designed to deal with large-scale movements, as in the 1990s with the Bosnian and Kosovan influxes and more recently with the Syrian crisis. During all three episodes, attempts to negotiate more equitable responsibility-sharing have been politically thwarted.

In the aftermath of the Syrian crisis, a number of models might be available for EU responsibility-sharing. These include:

Model 1: Free Choice / Dublin without coercion

The Dublin system is dysfunctional. The majority of asylum seekers who arrive in Europe do not claim asylum in their country of arrival, but rather move onwards, sometimes clandestinely. If the Dublin first arrival rule was suspended, and replaced with a system of free choice or preference matching, asylum seekers could be encouraged to consider the range of countries of asylum available. Depending on the institutional mechanisms put in place, our current understanding of the determinants of refugee decision-making suggest refugees' preferences are not fixed. Well-designed non-coercive incentive structures could be used to encourage asylum seekers to seek protection in Member States which currently receive fewer refugees.

Model 2: An EU Migration, Asylum and Protection Agency

A centralised EU Migration, Asylum and Protection Agency charged with decision-making power over asylum claims could be an important contribution to responsibility-sharing. This agency could also monitor the conditions of reception facilities and ensure equal standards for applicants during the asylum procedure and perhaps even after status recognition. With central decision-making, refugee status is usually assumed to be an EU-wide status which allows refugees to move freely within the Schengen area. Thus, Member States

should incentivise refugees to stay and could theoretically be 'punished' if they are unable to do so.

Model 3: Distribution keys

In recent years, a number of variations of the idea of a distribution key have been advanced in academic and policy debates. For example, the EU relocation policy of 2015 entailed a distribution key based on a standing quota system. The key reflected both the absorption capacity and the integration capacity of the Member States. The two major factors are: 1) the size of the population (40%): the larger the population, the easier it is for the Member States to absorb and integrate refugees; 2) the total GDP (40%): large economies are considered better equipped to shoulder more refugees. There are two corrective factors which reduce the allocation, including the 1) the number of the asylum applications received and resettlement places already offered in the past 5 years (10%); and 2) the unemployment rate (10%).

Policy Recommendations

The requirements for responsibility-sharing are likely to differ between global and regional levels. At the global level, however, effective responsibility-sharing is unlikely to be achieved through the creation of a single legal mechanism or centralised allocation system. Rather, it requires a range of complementary mechanisms – analytical, political, and operational – to overcome the collective action failure that has historically beset the refugee system. It is at least as much about leadership, analysis and political facilitation as about rules and binding agreements.

1)   New Metrics

Despite methodological challenges, it is possible to imagine a responsibility-sharing index for refugees. Indexes offer not only a means to measure state contributions, but also a source of normative influence over state behaviour. Indexes can change state behaviour precisely because of the normative influence of ranking performance, and hence creating incentives for improved performance. Indexes have been used effectively in a range of other policy fields. Transparency International's International Corruption Index, for example, offers an implicit 'naming and shaming' function and hence provides a source of normative influence. The challenge with developing a public index is that it would need to have legitimacy in order to have the authority to influence state behaviour.

2)   Basic Principles

Responsibility-sharing needs to be principled yet pragmatic. Even if formal norms are elusive at the global level, shared understandings might be developed and agreed upon through, for instance, the Global Compact on Refugees. Among those principles, it will be important to: 1) Recognise the potential contributions of refugees themselves – designing responsibility-sharing mechanisms, policy-makers should consider how refugees can be reframed as a 'benefit' to societies rather than an inevitable cost or 'burden'; 2) Recognise the appropriate balance between 'ad hoc' and centralised initiatives – centralisation is not inherently superior to ad hoc mechanisms for responsibility-sharing; both have a role to play; 3) Beware of 'Janus-faced'

responsibility-sharing – to be described as responsibility-sharing, contributions must enhance refugees' access to protection, assistance, or solutions.

3) Organisational Capacities

Effective responsibility-sharing needs context-specific facilitation. It requires that an international organisation can identify areas of mutual gain among states and set out a vision for resolving a particular 'refugee crisis' through collaboration and coordination. In the past UNHCR has sometimes offered this type of brokership on responsibility-sharing. The Indochinese CPA and CIREFCA are important examples. There is far greater likelihood today of success for ad hoc or soft law-based responsibility-sharing mechanisms than highly centralised approaches, political analysis and political facilitation skills are especially important in order to make responsibility-sharing work in practice.

4) Operational Approaches

A range of emerging operational tools can be central to improving the effectiveness and efficiency of responsibility-sharing. These include: 1) Preference matching – as a means to match refugees' profiles with national and local host needs; 2) development-based approaches – as a means to empower refugees and host communities; 3) alternative legal pathways, including the use of education visas, labour migration channels, and family reunification – as a means to reduce the need for dangerous journeys and expand resettlement.