

The European Union's Responsibility-sharing in Refugee Protection: An Empty Bottle?

By
Csongor Kiss

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Abstract

The underlying principle of international cooperation in refugee protection is responsibility-sharing. States mainly share the responsibility through financial contributions or participation in the resettlement of refugees. Looking at the latest data published by UNHCR on resettlement, European Union Member States – conceivably some of the wealthiest countries in the world – significantly lag behind states such as the USA, Canada or Australia in terms of refugees resettled. While there is ample academic research available on internal-responsibility-sharing (among Member States) in the EU, the literature on external-responsibility-sharing (at the global level) is rather scarce. Employing qualitative analysis, the work examines the EU institutional discourse and then contrasts two examples of Member State practice in resettlement; Sweden and Belgium. This work argues that EU practice is not in accordance with the principle of responsibility-sharing, furthermore there is a bias towards intra-EU responsibility-sharing that hampers its development at the global level. The main problem identified is that the current voluntary framework for EU responsibility-sharing, especially in resettlement, leaves a high degree of discretion to Member States to decide whether to contribute. Therefore, the thesis advocates a binding quota-based framework to resettle refugees in accordance with fair, adequate and effective responsibility-sharing which would consequently increase EU activities at the global level.

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Introduction

In 2014, the overall number of people forcibly displaced exceeded 50 million, which is the highest in numbers in the post-World War II era, and among these people the number of refugees¹ is estimated to be over 16 million.² Refugees are explicit and immediate manifestations of – usually violent – changes in state politics and due to their international character (as refugees cross borders) are part of international relations. Loescher and Betts argue that there is a close link between world politics and the causes, consequences and responses to refugees and other forms of forced migration.³ Furthermore, as Betts argues forced migration has enormous relevance for international relations, touching upon issues relating to human rights, international cooperation, globalization, North-South relations, international organizations and security.⁴

In general, sovereign states are responsible for guaranteeing the human rights of their citizens, however in the case of refugees, defined by the *1951 Convention Relating to the Status of Refugees*, this relationship between the state and the citizen has collapsed due to the inability or unwillingness of the state to guarantee these rights.⁵ Therefore, refugees are in need of

¹ For the sake of consistency the term ‘refugee’ is used throughout the work, even though there is strong distinction in practice between recognized refugees and asylum-seekers in terms of rights and entitlements. As the UNHCR Handbook states, ‘a person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.’ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (1979, reedited 1992), paragraph 28, accessed May 10, 2015, <http://www.unhcr.org/4d93528a9.pdf>.

² UNHCR, *Global Trends Report 2013* (2014), 2-3, accessed January 10, 2015, <http://www.unhcr.org/5399a14f9.html>.

³ Alexander Betts and Gil Loescher, “Refugees in International Relations,” in *Refugees in International Relations*, eds. Alexander Betts and Gil Loescher (Oxford: Oxford University Press, 2011), 11-12.

⁴ Alexander Betts, “International Relations and Forced Migration,” in *The Oxford Handbook of Refugee and Forced Migration Studies*, eds. Elena Fiddian-Qasimiyeh et al. (Oxford: Oxford University Press, 2014), 61.

⁵ A refugee is a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.” 1951 Convention Relating to the Status of Refugees Article 1 A (2).

international protection. States can mainly contribute to refugee protection by admitting asylum-seekers into their territories and according them rights (asylum), or by supporting refugees on the territory of another state (responsibility-sharing).⁶ States may share the burden/responsibility⁷ through financial contributions or participation in the resettlement⁸ of refugees.⁹

Therefore, the underlying principle of international cooperation in refugee protection is responsibility-sharing. There is an extensive amount of literature available on the principle of responsibility-sharing in refugee protection as seen by international relations and normative theory. From the lenses of international relations, scholars mainly explain the reasons and motives of states to overcome cooperation problems that exist in world politics.¹⁰ On the other hand, normative theorists generally seek to address responsibility-sharing through ethical scrutiny, bringing together the claims of both host communities and refugees.¹¹ While normative thinkers and scholars of international relations inherently offer different lines of argumentation

⁶ Alexander Betts, "International Relations and Forced Migration," 66.

⁷ The terms 'burden-sharing and 'responsibility-sharing' are equally used in the literature, and they are attributed the same meaning. Consequently, they can be used interchangeably. However, as Martin Gottwald suggests, humanitarian organizations tend to emphasize a more positive image of refugees and a stronger framework for international cooperation, therefore they prefer to use the term 'responsibility-sharing.' For this reason, this particular work prefers to use the term 'responsibility-sharing' as well. Martin Gottwald, "Burden Sharing and Refugee Protection," in *The Oxford Handbook of Refugee and Forced Migration Studies*, eds. Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long and Nando Sigona (Oxford: Oxford University Press, 2014), 525.

⁸ There are three durable solutions which are intended to bring refugees' exile to an end: repatriation (return to the country of origin), local integration (permanent settlement in the first country of asylum), and resettlement (ordered migration to a third country). See in particular, Katy Long, "Rethinking Durable Solutions," in *The Oxford Handbook of Refugee and Forced Migration Studies*, eds. Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long and Nando Sigona (Oxford: Oxford University Press, 2014).

⁹ Betts, "International Relations and Forced Migration," 66.

¹⁰ See for example, Alexander Betts, *Protection by Persuasion: International cooperation in the Refugee Regime* (Ithaca, NY: Cornell University Press, 2009); Alexander Betts and Jean-François Durieux, "Convention Plus as a Norm-Setting Exercise," *Journal of Refugee Studies* Vol 20 No 3 (2007); Astri Suhrke. "Burden-sharing During Refugee Emergencies: The Logic of Collective versus National Action," *Journal of Refugee Studies* Vol 11 Issue 4 (1998); Eiko R. Thielemann, "Between Interest and Norms: Explaining Burden-Sharing in the European Union," *Journal of Refugee Studies* Vol. 16, No. 3 (2003); Peter Schuck, "Refugee Burden-Sharing: A Modest Proposal," *Yale Journal of International Law, Faculty Scholarship Series* (1997).

¹¹ See in particular, David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007); Joseph H. Carens, *The Ethics of Immigration* (New York: Oxford University Press, 2013); Matthew Gibney, *The Ethics and Politics of Asylum* (Cambridge: Cambridge University Press, 2004).

and explanation for responsibility-sharing, they generally come to the same conclusion: states should share the responsibility.

Looking at the latest data published by the Office of the United Nations High Commissioner for Refugees (UNHCR) on resettlement, one may find it puzzling why European Union Member States – conceivably some of the wealthiest countries in the world – lag so harshly behind states such as the USA, Canada or Australia in terms of refugees resettled.¹² Although some EU Member States are among the largest resettlement countries in the world, yet the overall EU practice is still very modest in terms of numbers.¹³ Consequently, the research seeks to provide answers to the question to what extent the principle of responsibility-sharing is reflected in the European Union’s practice in cooperating in refugee protection.

However, in the EU context the concept is twofold, and there is a need to distinguish between internal (among Member States) and external (on the global level) responsibility-sharing. While there is ample academic research available on internal-responsibility-sharing in the EU, the literature on external-responsibility-sharing is rather scarce.¹⁴ Even if academics address internal and external responsibility-sharing concurrently, they generally fail to devote

¹² In 2013, the EU accounted for less than eight per cent of all resettlement departures in the world. UNHCR, *EU Resettlement Fact Sheet* (2014), accessed January 10, 2015, <http://www.resettlement.eu/sites/icmc.ttp.eu/files/UNHCR%20EU%20Resettlement%20Fact%20Sheet%2024.07.14.pdf>.

¹³ In particular, Denmark, Finland, the Netherlands, Sweden and the United Kingdom generally resettle a relatively high number of refugees each year. UNHCR, *Projected Global Resettlement Needs 2015* (2014), 61, accessed January 10, 2015, <http://www.unhcr.org/543408c4fda.html>.

¹⁴ See in particular, Eiko R. Thielemann, *Towards a Common EU Asylum Policy: The Political Economy of Refugee Burden-sharing*, Center for Comparative Immigration Studies Working Paper 134 (2006), accessed March 25, 2015, https://www.utexas.edu/cola/centers/european_studies/_files/PDF/immigration-policy-conference/thielemann.pdf; Eiko R. Thielemann, *What System of Burden-sharing Between Member States for the Reception of Asylum Seekers?* European Parliament, Directorate-General for Internal Policies (2010), accessed January 9, 2015, [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/419620/IPOL-LIBE_ET\(2010\)419620_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/419620/IPOL-LIBE_ET(2010)419620_EN.pdf); Elspeth Guild et al., *New Approaches, Alternative Avenues and Means of Access to Asylum Procedures for Persons Seeking International Protection*, European Parliament, Directorate-General for Internal Policies (2014), accessed May 10, 2015, http://www.europarl.europa.eu/RegData/etudes/STUD/2014/509989/IPOL_STU%282014%29509989_EN.pdf; Madeline Garlick, *Strengthening Refugee Protection and Meeting Challenges: The European Union’s Next Steps on Asylum*. Migration Policy Institute (2014), accessed April 25, 2015, <http://www.migrationpolicy.org/research/strengthening-refugee-protection-and-meeting-challenges-european-unions-next-steps-asylum>.

equal attention to the latter concept. Furthermore, there is a visible gap in the literature as scholars generally neglect the importance of contrasting the concepts of internal and external responsibility-sharing. Filling this gap would conceivably shed light on some of the serious shortcomings of EU policymaking in the area of migration and asylum.

In order to address this gap, the work employs qualitative analysis. As there is an extensive literature available on the principle of responsibility-sharing, the most prominent and influential works in international relations and normative literature are selected and discussed, and therefore provide the theoretical framework of the research. Furthermore, as this particular work critically examines the EU practice in responsibility-sharing, it analyses key EU legal and policy documents. The EU discourse is mainly comprised of Council conclusions, Commission communications and Parliament resolutions that are equally examined. Moreover, a wide range of NGO and EU commissioned reports and studies are readily available on the topic, which were also used in conducting the research.

However, there are certain limitations that should be noted. While financial assistance and resettlement are two different forms of responsibility-sharing, the research mainly focuses on the latter. Not only academic literature and statistical data are more available on resettlement, financial assistance can plausibly be condemned as a tool to contain refugee movements in regions of origin, rather than being an effective measure to provide solutions for refugees' plight. In the EU context some other conceptual forms of responsibility-sharing have developed, such as the extraterritorial processing of asylum claims (examining asylum claims supported or undertaken by the European Union outside its territory). However, as Garlick argues, recent proposals for this form of protection have been rather deficient, failing to address concerns about inadequate guarantees against *refoulement* and the lack of access to effective legal

remedy in case of a negative decision.¹⁵ While acknowledging the potential of both extraterritorial processing and financial assistance for protecting refugees, these can be plausibly judged as forms of *non-entrée* mechanisms aimed at containing refugees in regions of origin and preventing access to protection in the EU. Therefore, there is an intentional bias in the research in favour of resettlement – which provides meaningful protection to refugees in the EU – contrary to EU Regional Protection Programmes (encompassing a range of practical measures through EU financing in regions of transit and origin) and extraterritorial processing of asylum claims (often labelled as Protected Entry Procedures in the EU).

Therefore, this particular work argues that the EU practice is not in accordance with the principle of responsibility-sharing, furthermore there is a bias towards intra-EU responsibility-sharing that hampers the development of EU responsibility-sharing at the global level. The main finding of the thesis is that the current voluntary framework for EU responsibility-sharing, especially in resettlement, leaves a high degree of discretion to Member States to decide whether to contribute. Therefore, this particular work advocates a binding quota-based framework to resettle refugees in accordance with fair, adequate and effective responsibility-sharing which would consequently increase EU activities at the global level. Moreover, there is a need for more nuanced research to address the intra-EU responsibility-sharing bias which may potentially inform the current inward-looking EU policymaking, so that the European Union could step up as a more credible global actor in refugee protection.

In terms of structure, the first chapter shows that there is a strong normative and institutional framework to granting asylum, contrary to responsibility-sharing. Consequently, in the absence of a binding regime, there is a debate in both international relations and normative

¹⁵ Madeline Garlick, *The Potential and Pitfalls of Extraterritorial Processing of Asylum Claims*, accessed May 30, 2015, <http://www.migrationpolicy.org/news/potential-and-pitfalls-extraterritorial-processing-asylum-claims>.

literature on the question of why and how to share responsibility. Therefore, the first chapter seeks to establish the theoretical framework of the analysis and highlights common elements in the diverse literature on what constitutes fair, adequate and effective responsibility-sharing for further analysis.

The second chapter scrutinizes the principle of responsibility-sharing within the EU context and shows that the principle of responsibility-sharing is not reflected in the EU practice in refugee protection. First, the research discusses the development of the Common European Asylum System (CEAS) with regard to the incorporation of the principles of responsibility-sharing and solidarity in the legal and political framework of the EU immigration and asylum policy. Second, it contrasts the internal and external dimensions of EU responsibility-sharing. The analysis demonstrates that Member States seek to share responsibilities among themselves, rather than focusing on responsibility-sharing at the global level, hence the bias towards internal responsibility-sharing. Finally, this chapter examines the current EU institutional discourse with regard to recent events in the Mediterranean, and it shows that responsibility-sharing is seemingly highly valued in the European Union, yet the latest proposals still fell short of meeting a fair, adequate and effective share of responsibility.

Notwithstanding these shortcomings, some of the EU Member States are among the largest resettlement countries in the world. Therefore, the aim of the third chapter is to examine why some EU Member States resettle relatively more refugees – and hence take a larger share of responsibility – while others do relatively less or not at all. It provides a brief preliminary discussion of the development of resettlement among EU Member States. Furthermore, it compares two examples of Member State resettlement practice; Sweden and Belgium are contrasted. The main finding of this comparative test confirms the hypothesis that the traditions in resettlement result in great differences in terms of refugees resettled. Consequently, this

chapter suggests that even if Member States recognize responsibility-sharing as a highly valued principle and show the political will to resettle, the current voluntary responsibility-sharing framework of the EU leaves a large degree of discretion to Member States to decide whether to contribute, therefore a binding quota-based framework in accordance with fair, adequate and effective responsibility-sharing would greatly increase EU activities at the global level.

1. The concept of responsibility-sharing

Sovereign states are usually responsible for guaranteeing the human rights of their citizens, however in the case of refugees, this relationship between the state and the citizen has collapsed, and consequently refugees are in need of international protection. States can mainly contribute to refugee protection by granting asylum or responsibility-sharing.

Before establishing the theoretical framework for responsibility-sharing, the broader question of refugee protection is discussed. This chapter demonstrates that even though there are differing philosophical arguments on the question why to protect refugees, there is consensus that states should contribute to refugee protection. Furthermore, it shows that there is a strong normative and institutional framework to granting asylum, contrary to responsibility-sharing. Consequently, in the absence of a binding regime, there is a debate in both international relations and normative literature on the question of why and how to share responsibility. Without aiming to establish exhaustive criteria as to what constitutes fair, adequate and effective responsibility-sharing, some common elements are highlighted based on the relevant academic literature that can inform the question of to what extent the principle of responsibility-sharing is reflected in the European Union's practice in cooperating in refugee protection.

1.1 The politics of refugee protection

This section addresses the broader question of refugee protection. First, it discusses normative arguments to protect refugees and demonstrates that there is little justification for states to adopt exclusionary, restrictive asylum policies. Second, it discusses how states protect refugees and it highlights the shortcomings of states in resettlement.

1.1.1 Why to protect refugees

States have clearly defined obligations to protect refugees stemming from universal instruments,¹⁶ customary international law, regional refugee rights regimes¹⁷ and national legislation. Nevertheless, the analysis of the legal framework of refugee protection falls outside the scope and the theme of this particular work.¹⁸ Notwithstanding the legal dimension of refugee protection, there is an extensive amount of extra-legal literature on the complex question of why states protect refugees, particularly in international relations and normative theories.¹⁹

There is general consensus that normative theory has important implications for the politics of refugee protection if it does so in a manner that equally addresses what is ethically desirable and what is politically feasible. As Gibney argues, integrating ethics and pragmatism, states could provide better protection for refugees.²⁰ Therefore, he proposes the principle of humanitarianism as a meaningful common standard for protecting refugees that holds states responsible for protecting refugees in great need when the costs of doing so are low.²¹ Similarly, Boswell aims to develop an alternative ethical foundation for protecting refugees while also criticizing current liberal political thinking.²²

¹⁶ These are the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.

¹⁷ See in particular, the 1969 Convention on the Specific Aspects of Refugee Problems in Africa, the (non-binding) Cartagena Declaration of 1984, the 1950 European Convention on Human Rights, and the relevant European asylum *acquis*. On the regional refugee rights regimes see, Guy Goodwin-Gill, "International Law of Refugee Protection," in *The Oxford Handbook of Refugee and Forced Migration Studies*, eds. Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long and Nando Sigona (Oxford: Oxford University Press, 2014), 41-42.

¹⁸ For a comprehensive discussion of the legal dimension of refugee protection, see Guy Goodwin-Gill and James McAdam, *The Refugee in International Law*, 3rd ed. (Oxford: Oxford University Press, 2007); James Hathaway, *The Rights of Refugees Under International Law* (Cambridge: Cambridge University Press, 2005).

¹⁹ See in particular, Alexander Betts, *Protection by Persuasion*; Matthew Gibney, *The Ethics and Politics of Asylum* (Cambridge: Cambridge University Press, 2004).

²⁰ Gibney, *The Ethics and Politics of Asylum*, 21.

²¹ Gibney, *The Ethics and Politics of Asylum*, 229-260.

²² Christina Boswell, *The Ethics of Refugee Policy* (Aldgate: Ashgate Publishing Company, 2005).

Contrary to Gibney and Boswell, who aim to establish a general normative principle to protect refugees in a non-ideal world, Nagy argues that when a choice arises between admitting and excluding refugees, the former is to be preferred.²³ By offering a set of ten arguments (six identity focused, a utilitarian, a rational choice, a responsibility-based argument, and finally one related to non-refoulement as understood in its broader sense), he demonstrates that there exists a justifiable “pre- or meta-legal” foundation for protecting refugees.²⁴ These arguments provide a strong answer for the question why to protect refugees, and consequently diminish the claims of states invoking state sovereignty to defend their exclusionary policies. Therefore, Nagy’s conclusion seems very valid: if one decides to turn away refugees, then that person has ‘no historical memory, blindly believes in stability and is a realist in the international relations sense,’ the latter entailing the willingness to breach legal and moral obligations.²⁵

1.1.2 How to protect refugees

As previously noted, states protect refugees in two common ways. These are granting asylum and sharing responsibility. As Betts convincingly argues, contrary to the highly institutionalized norm of granting asylum, states do not have a legal obligation to contribute to responsibility-sharing,²⁶ and therefore their motives differ in many ways when they decide to participate in the protection of refugees.²⁷ As he further argues, granting asylum is governed by a strict normative and legal framework, while in contrast responsibility-sharing is characterized by a weak normative and legal framework, therefore it is in the discretion of states to participate in the

²³ Boldizsar Nagy, “Indeed: Why? Thoughts on the Reasons and Motivations for Protecting Refugees,” in *Protecting the Rights of Others*, eds. Thomas Gammeltoft-Hansen et al. (Copenhagen: Djoef Publishing, 2013), 585.

²⁴ Nagy, “Indeed: Why?” 586-606.

²⁵ Nagy, “Indeed: Why?” 606-607.

²⁶ However, it is demonstrated below that in the European context the principles of responsibility-sharing and solidarity are indivisible in the asylum context. Furthermore, EU legislative documents widely refer to these principles, such as Article 80 of the Treaty of Lisbon and the Temporary Protection directive.

²⁷ Alexander Betts, “International Cooperation in the Refugee Regime,” in *Refugees in International Relations*, eds. Alexander Betts and Gil Loescher (Oxford: Oxford University Press, 2011), 57.

protection of refugees who are on the territory of another state.²⁸ Conceivably, this shortcoming of the international refugee regime implies serious consequences for people in need of international protection, which will be discussed in the next section.

Generally, states opt to share the responsibility mostly through financial contributions, which Suhrke condemns as the easiest form of sharing.²⁹ This critique may be well-justified, considering that states may be perceived as preferring to transfer financial assistance over taking a share in the resettlement of refugees in over-burdened countries of asylum. Conceivably the reason behind this is their intention to buy out themselves from having to offer meaningful physical protection and contain refugees in regions of origin.

In contrast, resettlement implies several positive consequences from both the perspective of participating states and refugee populations. As Van Selm argues, states may be better able to ‘manage the image’ of asylum arrivals and reconcile general public hostility towards refugees through an active participation in resettlement, while in addition, – and most importantly – resettlement offers a permanent status, hence a path to a new life for refugees.³⁰ Nevertheless, despite these clearly positive consequences, UNHCR demonstrates that states generally fail to participate in resettlement programmes to a satisfactory degree, and despite the 860,000 projected resettlement needs for 2013,³¹ commitments were only made for a marginal portion of this number (71,000 persons).³² Furthermore, the increase of this number to 960,000 in 2015 signals an alarming period for persons in need of resettlement if states fail to increase

²⁸ Betts, “International Cooperation in the Refugee Regime,” 57.

²⁹ Suhrke. “Burden-sharing During Refugee Emergencies.”

³⁰ Joanne van Selm, “Refugee Resettlement,” in *The Oxford Handbook of Refugee and Forced Migration Studies*, eds. Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long and Nando Sigona (Oxford: Oxford University Press, 2014), 517.

³¹ UNHCR, *Projected Global Resettlement Needs 2013* (2012), 10, accessed January 10, 2015, <http://www.unhcr.org/5006aff49.html>.

³² UNHCR, *Projected Global Resettlement Needs 2015*, 8.

their reception capacities.³³ Therefore, it is crucial to explore how states could better contribute to responsibility-sharing through the resettlement of refugees or other means.³⁴

1.2 The political philosophy of responsibility-sharing

As previously noted, responsibility-sharing is characterized by a weak normative and legal framework. Consequently, there is a high level of discretion on behalf of states to share the ‘burden.’ As the majority of refugees are in the global South, – there is a geographically unequal distribution of refugees in the world – Betts rightly suggests that Northern states generally try to contain refugees in regions of origin in order to avoid their legal obligations to provide asylum when a refugee reaches their territory. He refers to this phenomenon as the ‘North-South impasse.’³⁵ However, this phenomenon is not new in the politics of refugee protection and several scholars have already taken note of this cooperation problem that exists along a North-South divide.³⁶ Nevertheless, the question arises why states – Northern and Southern alike – want to share the responsibility after all.

There is ample academic research available through the lenses of international relations on the reasons and motives of states to overcome the North-South cooperation problem. These are generally interest-driven, contrary to the mostly norm-driven explanations of normative theory, which will be discussed as well.

³³ UNHCR, *Projected Global Resettlement Needs 2015*, 9.

³⁴ As previously noted, some other forms have developed in the European Union to share responsibility, such as Protected Entry Procedures (PEP), which are extensions of asylum procedures to countries of origin or transit and access to a protective territory. See further, Gregor Noll, *From “protective passports” to protected entry procedures? The legacy of Raoul Wallenberg in the contemporary asylum debate*, UNHCR, Evaluation and Policy Analysis Unit (2003), accessed May 17, 2015, <http://www.refworld.org/pdfid/4ff2acca2.pdf>.

³⁵ Betts, *Protection by Persuasion*, 12-13.

³⁶ See Suhrke, “Burden-sharing During Refugee Emergencies”; Gottwald, “Burden Sharing and Refugee Protection”; Thielemann, “Between Interest and Norms: Explaining Burden-Sharing in the European Union”; James Hathaway and Alexander Neve, “Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection,” *Harvard Human Rights Journal* Vol 10 (1997); B.S. Chimni, “The Geopolitics of Refugee Studies: A View from the South,” *Journal of Refugee Studies* Vol 11 No 4 (1998).

Neo-realists and liberal institutionalists generally agree that responsibility-sharing can be seen as a ‘public good,’ that results in collective action failure. However, their theoretic explanations to overcome this cooperation problem differ significantly. From a neo-realist perspective, Suhrke demonstrates that states customarily do not commit themselves to bearing the costs of uncertain sharing schemes. Furthermore, she argues that such a system invites the so-called ‘free riders,’ who seek to shift responsibility to other states. Suhrke further argues that the reason for this is that participating in responsibility-sharing is a non-excludable and non-rivalrous public good which benefits the whole system of refugee protection. Therefore, she suggests that states have little incentive to cooperate. She demonstrates that this implies a collective action failure that can be explained by the game theoretic model of the prisoner’s dilemma. The model asserts that states are better off acting unilaterally, however she demonstrates that collective action failure in recent history has been successfully overcome by a hegemon that pressured or persuaded other states to participate in responsibility-sharing.³⁷ While Suhrke’s arguments and historical examples suggest that states generally contribute to responsibility-sharing driven by their self-interest, Plaut believes that self-interest and political calculation are not the only motives for states to share responsibility, as morality plays an equally important role in a ‘response to a humanitarian impulse.’³⁸

Contrary to Suhrke, Betts explains responsibility-sharing through liberal institutionalist lenses and argues that the game theoretic model of a suasion game³⁹ better captures the essence of collective action failure in responsibility-sharing.⁴⁰ As he further argues, in the present system of international relations and in the absence of a hegemon, the Office of United Nations

³⁷ Suhrke, “Burden-sharing During Refugee Emergencies,” 399-413.

³⁸ Gunther Plaut, *Asylum – A Moral Dilemma* (Wesport: Praeger, 1995), 56-57.

³⁹ For a comprehensive discussion of the game theoretic model of a suasion game see further, Andreas Hasenclever, Peter Mayer and Volker Rittberger, *Theories of International Regimes* (New York: Cambridge University Press, 1997).

⁴⁰ Betts, *Protection by Persuasion*, 32.

High Commissioner for Refugees (UNHCR) has been able to reconcile the concerns of free-riding states and managed to persuade them, employing cross-issue linkages, to contribute to responsibility-sharing under two cooperation schemes, particularly under the International Conference on Refugees in Central America (CIREFCA) and the Indochinese Comprehensive Plan of Action (CPA), both in 1989.⁴¹

Therefore, it may be conceived that both liberal institutionalist and neo-realist theories are helpful in explaining why states participate in responsibility-sharing. Although the two theories inherently provide differing argumentations, they both suggest self-interest as the primary motive for cooperation. Despite self-interest plausibly plays a major role in states' decisions whether to share the responsibility, drawing on Plaut's remarks and from the political philosophical discussion of refugee protection above, normative theory may also offer valuable theoretic standpoints for responsibility-sharing. Furthermore, international relations theory generally explains cooperation in the refugee regime in descriptive terms, therefore normative theory has the potential to provide a theoretical framework that can complement the questions why states share responsibility, and what constitutes an adequate, effective and fair responsibility-sharing.

Although modern normative thinkers have addressed the question of refugees,⁴² the academic literature focusing on or addressing responsibility-sharing is not extensive. However, there is a general agreement that normative theories relevant to international topics can be categorized into two major approaches: communitarian and cosmopolitan. Brown sums up the communitarian-cosmopolitan divide in terms of the moral value attributed to citizens as

⁴¹ Betts, *Protection by Persuasion*, 41.

⁴² See in particular, Carens, *The Ethics of Immigration*; Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983); Peter Singer and Renata Singer, "The Ethics of Refugee Policy," in Mark Gibney, *Open Borders? Closed Societies? The Ethical and Political Issues* (New York: Greenwood Press, 1988); Joseph Carens, "Refugees and the Limits of Obligation," *Public Affairs Quarterly* Vol 6 No 1 (1992).

opposed to humanity as a whole.⁴³ Furthermore, there is consensus in the norm-based literature that states contribute to responsibility-sharing when the perceived political and social consequences on the host society and the financial costs are low. However, when such consequences and costs are low, there is little justification for acquiescence.

While Brown does not address the question of responsibility and rather provides an overview of existing arguments in normative literature on the cosmopolitan-communitarian debate over refugees, Gibney calls for more nuanced theorizing. He evaluates the duality in the existing debate on normative thinking, which he describes as ‘partiality’ (based on communitarian, conservative and nationalist arguments) and ‘impartiality’ (based on global liberalism and utilitarianism).⁴⁴ Reconciling the two opposing theories, Gibney comes to the conclusion that Western states should equally consider the claims of citizens and refugees, therefore states should accept as many refugees as possible without undermining the civil, political and social rights of the host community.⁴⁵ However, when defining what undermines these rights of citizens, it may be perceived that states have a rather large degree of discretion through which they could easily justify exclusionary asylum policies, as they do today. Nevertheless, being one of the first scholars to address the ethical dimension of forced migration in a single piece of work, Gibney may provide valuable tools for both decision-makers and academics to get engaged in theorizing an effective and adequate responsibility-sharing framework, free from restrictive and deterrent state policies.

While not a normative theorist himself, Thielemann argues from a utilitarian perspective that in a ‘norm-based’ approach the primary motivations of states to overcome collective action failure in responsibility-sharing stems from the existence of solidarity among states. As he

⁴³ Chris Brown, “The Only Thinkable Figure?” in *Refugees in International Relations*, eds. Alexander Betts and Gil Loescher (Oxford: Oxford University Press, 2011), 154.

⁴⁴ See Gibney, *The Ethics and Politics of Asylum*, Chapters 1 and 2.

⁴⁵ Gibney, *The Ethics and Politics of Asylum*, 230.

demonstrates, solidarity entails a commitment from states as members of a group to adhere to their collective decisions, and a commitment to promote the well-being of the members of the group. While he equally addresses the ‘cost-benefit’ approach that mainly explains responsibility-sharing in terms of positive sum benefits, he suggests quite convincingly that norm-guided behavior may also provide a complementary or even an alternative explanation to the dominant cost-benefit approach in the academic literature.⁴⁶

Being one of the most prominent scholars of the ethical dimension of immigration, Carens strongly advocates for reallocating responsibilities among states in terms of refugee protection. As he argues, liberal democratic states have a moral duty to provide refugees with a safe place in the short-term and a new home in the long run if they are unable to return home in a reasonable time. However, Carens identifies two problems that seriously undermine the current refugee regime. As he argues, the majority of refugees seek protection in neighbouring states that consequently pose an ‘unfair burden’ on them. The second problem concerns refugees’ choices to seek asylum in Western liberal states which they are unable to access due to the exclusionary policies of these states.⁴⁷ It may be perceived that his arguments strengthen the concept of a North-South impasse that exists between first countries of asylum and the primary target countries of refugees. Even though Carens does not state explicitly why states should share the responsibility, – other than out of a general moral duty – he provides two notable solutions to overcome the problems inherent in the current refugee regime – and consequently the North-South impasse – which will be discussed below.

To sum up, it is conceivable that despite the predominant interest-driven literature on responsibility-sharing in refugee protection, normative thinking has equal potential to provide

⁴⁶ Thielemann, “Between Interest and Norms,” 257-258.

⁴⁷ Carens, *The Ethics of Immigration*, 213-224.

answers to the question why states share the responsibility. The next section discusses several theoretical suggestions concerning how states share and should share the responsibility in refugee protection.

1.3 Sharing the responsibility

Although the 1951 Geneva Convention takes note of the ‘unduly heavy burden’ posed on certain states and calls for international cooperation,⁴⁸ it does not mention how states should achieve it,⁴⁹ hence the weak normative and institutional framework for responsibility-sharing. Notwithstanding this implicit reference to responsibility-sharing, the Executive Committee (ExCom) of UNHCR⁵⁰ regularly affirms the need for greater solidarity and responsibility-sharing in refugee protection.⁵¹ However, as ExCom conclusions do not have any binding character, they can only be considered as ‘soft law’ documents as opposed to binding international treaties. Furthermore, the ExCom normally fails to define concrete measures to be implemented and only endorses the need for international cooperation in responsibility-sharing in a general wording.⁵² Notwithstanding this shortcoming of the ExCom discourse on responsibility-sharing, there is an extensive amount of academic literature that seeks to provide

⁴⁸ 1951 Convention Relating to the Status of Refugees, Preamble, Paragraph 4, Article D.

⁴⁹ The recital of international cooperation was proposed by France during the wording of the 1951 Geneva Convention. Despite their initial proposal received opposition in the ECOSOC Social Committee, the ECOSOC finally adopted a modified recital due to the strong French persistence. The recital of international cooperation therefore points out that when states are under ‘unduly heavy burdens,’ the solution is international cooperation. It is equally important to note that neither the Convention, nor the drafting history suggest that states proposed to close borders or to limit the rights of refugees in order to overcome asylum pressures. Andreas Zimmerman, Jonas Dörschner and Felix Machts, *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol: A Commentary* (Oxford: Oxford University Press, 2011), 236-238.

⁵⁰ The Executive Committee was set up as an advisory body of UNHCR on matters of international assistance to refugees, whose conclusions constitute the ‘soft law’ dimension of refugee protection. See further, Guy Goodwin-Gill, *The Refugee in International Law*. 2nd edition (Oxford: Oxford University Press, 1996), Chapter 6.

⁵¹ For a comprehensive list of ExCom conclusions on responsibility-sharing see further, UNHCR, *A Thematic Compilation of Executive Committee Conclusions*, 7th edition (June 2014), 42-69, accessed May 10, 2015, <http://www.unhcr.org/53b26db69.html>.

⁵² The ExCom generally ‘stresses,’ ‘reiterates,’ ‘reaffirms,’ ‘recognizes’ the need for greater solidarity and responsibility-sharing, yet it fails to develop a framework for such cooperation.

solutions for the question of how states should share responsibility, which will be discussed below. However, a comprehensive discussion of the existing literature⁵³ is beyond the scope of this particular work, therefore this section only highlights the most prominent proposals – one from international relations literature, one from an international legal perspective and one from normative theory. The aim of this section is to illustrate the diverse discursive field in the academia on responsibility-sharing.

Schuck suggests a consent-based system, where states determine their responsibility-sharing capacities in the form of quotas, governed by the allocating criteria of national wealth. Furthermore, he calls for an international market, where states can redistribute protection resources between each other, depending on who can host more refugees.⁵⁴ Even though establishing national wealth as the primary criteria for reallocating responsibilities seems a just argument, treating refugees as commodities, who may be sold and bought in an international market, renders it not only an inhumane mechanism, but also enables states to buy themselves out from refugee protection. Moreover, it is quite plausible that under Schuck's proposal, the protection of refugees would shift from a legal dimension to the sphere of political bargaining.⁵⁵ This – along with the voluntary character of the proposed system – consequently raises serious concerns about free-riding and enforceability, whether states would actually deliver on their commitments. Therefore, contrary to Schuck's intention to develop a framework based on fairness, broad participation and proportionality,⁵⁶ his proposal inherently implies the opposite outcome.

⁵³ See in addition, Betts and Durieux, "Convention Plus as a Norm-Setting Exercise," Miller, *National Responsibility and Global Justice*; Suhrke, "Burden-sharing During Refugee Emergencies."

⁵⁴ Peter Schuck, "Refugee Burden-Sharing: A Modest Proposal," *Yale Journal of International Law, Faculty Scholarship Series* (1997): 279-282.

⁵⁵ Deborah Anker, Joan Fitzpatrick and Andrew Shacknove, "Crisis and Cure: A Reply to Hathaway/Neve and Schuck," *Harvard Human Rights Journal* Vol 11 (1998): 305.

⁵⁶ Schuck, "Refugee Burden-Sharing," 276.

Contrary to a market-based system, Hathaway and Neve advocate for a shift to a solution-oriented temporary protection regime within a framework of a common but differentiated responsibility among states. As they argue, the governing criteria for such framework would be the physical security of refugees, the functional compatibility between refugees and host communities, cultural harmony and finally, geographical proximity. In contrast to Schuck's voluntary framework, Hathaway and Neve see fiscal cooperation as an obligation of Northern states.⁵⁷ Although Hathaway and Neve's proposal seems more nuanced that also considers the will of refugees in respect of where they want to apply for asylum, their framework for responsibility-sharing seems very biased in favor of containing refugees in their regions of origin.⁵⁸ The criterion of geographical proximity also fails to stand the test of time, since most of today's refugee conflicts are protracted,⁵⁹ carrying very little prospect for the vast majority of refugees to return home. If there existed an 'exile bias' in international refugee law,⁶⁰ Hathaway and Neve's geographical proximity criterion, which seeks to facilitate repatriation, undoubtedly suggests a 'return bias' that may imply serious consequences for refugees, such as premature, forced repatriation on behalf of heavily-burdened countries of asylum in the global South.⁶¹

From a normative perspective, Carens suggests a strict duty of resettlement and the extraterritorial processing of asylum claims to overcome the two problems inherent in the current refugee protection regime, which are the unfair burden on neighbouring states and the

⁵⁷ Hathaway and Neve, "Making International Refugee Law Relevant Again," 118-207.

⁵⁸ For a comprehensive critique of Schuck's and Hathaway and Neve's proposals and on the 'commodification' of refugees, see further Anker, Fitzpatrick and Shacknove, "Crisis and Cure."

⁵⁹ See James Milner, "Protracted Refugee Situations," in *The Oxford Handbook of Refugee and Forced Migration Studies*, eds. Elena Fiddian-Qasmiyeh et al. (Oxford: Oxford University Press, 2014).

⁶⁰ See Chimni, "The Geopolitics of Refugee Studies."

⁶¹ Considering the fact that almost 4 million Syrian refugees are hosted in neighbouring countries, mostly in Lebanon, Jordan and Turkey, the feasibility of this allocation criteria is clearly questionable. UNHCR, *Syria Regional Refugee Response: Inter-agency Information Sharing Portal*, accessed March 25, 2015, <http://data.unhcr.org/syrianrefugees/regional.php>.

incentives of refugees to seek asylum in Northern states. As he argues, a strict duty on resettlement and breaking the link between asylum claim and place would consequently contribute to fair responsibility-sharing and would also remove the need for exclusionary policies as well as expensive procedures of refugee status determination. Similarly to Hathaway and Neve, Carens emphasizes the importance of the will of refugees where they want to seek asylum and rightly argues that refugees are not only passive victims of violence but their agency deserves respect. Furthermore, in terms of resettlement, Carens identifies absorptive capacities, population density, economic capacity, cultural similarities/differences between refugees and host populations as relevant factors that should govern the scholar's international redistributive framework.⁶² In contrast to Schuck, Carens chooses not to consider an international body overseeing the regime as necessary, however this consequently implies several coercive and free-riding problems. Nevertheless, in overall, his proposal seems very valid. Such a framework would clearly tackle some of the problems inherent in the current refugee regime and would provide both fairer responsibility-sharing among states, and better access to asylum for refugees. However, even Carens admits that the likelihood of establishing such system is very low.⁶³ Nevertheless, it should clearly be an objective that is worth striving for.

To sum up, the purpose of this section was to demonstrate the diverse academic discourse arguing for a fairer and more effective distribution of responsibility in refugee protection and to illustrate how scholarship perceives such a concept. While it would be too far-fetched to draw conclusions based on the three theoretical frameworks on how states should actually share the responsibility, it can be seen that international relations and international law theorists generally propose what is politically and legally achievable in the current refugee

⁶² Carens, *The Ethics of Immigration*, 212-217.

⁶³ Carens, *The Ethics of Immigration*, 217.

regime. On the other hand, normative theorists seek to develop cooperation frameworks that are equally fair and morally just. Therefore, there is a trade-off between political feasibility and what is ethically desirable. Nevertheless, all discursive fields have some important elements to offer that are worth noting and keeping in mind when advocating for fair, adequate and effective responsibility-sharing in refugee protection.

Finally, without aiming to establish an exhaustive measure of *fair*, *effective* and *adequate* responsibility-sharing, it is now possible to highlight some of the common elements inherent in both international relations and normative literature that could inform the creation of such a system. Therefore, a *fair* responsibility-sharing takes into consideration some relevant criteria for allocation, such as a state's population, national wealth, integrative capacities and the number of refugees already enjoying protection as well as the refugees' choices. Furthermore, an *effective* responsibility-sharing regime sets up an obligatory system that could potentially prevent the negative phenomenon of free riding and such a system consequently entails an access to meaningful protection in host states. Lastly, an *adequate* system needs explicit pledges for resettling refugees in strong cooperation with UNHCR. Moreover, it also aims to strictly meet UNHCR's projected resettlement needs and significantly boosts resettlement with traditional resettlement states inviting others to join. Conceivably, such a system is clearly politically and practically plausible, as well as morally desirable, though not necessarily idealistic. Having highlighted these common elements, the analysis tests it in the next chapter within the context of the European Union.

2. Responsibility-sharing and the European Union

The aim of this chapter is to show that there is no fair, adequate and effective responsibility-sharing in the EU context, furthermore that there exists a bias towards internal responsibility-sharing in contrast to responsibility-sharing on the global level that greatly hampers the development of such a system. First, the development of the Common European Asylum System (CEAS) is discussed with regard to the incorporation of the principles of responsibility-sharing and solidarity in the legal and political framework of the EU immigration and asylum policy. Second, the internal and external dimensions of the EU responsibility-sharing are contrasted. The analysis demonstrates that Member States seek to share responsibilities among themselves, rather than focusing on responsibility-sharing at the global level. Finally, this chapter examines the current EU discourse with regard to recent events in the Mediterranean, and it shows that there are traces of increased efforts from Member States to contribute to responsibility-sharing on the global level, yet the latest proposals still fell short of meeting a fair share of responsibility. Furthermore, despite these limited positive outcomes, this chapter demonstrates that the direction of the EU discourse predominantly focuses on managing and tackling the root causes of forced migration and intercepting refugees and migrants at countries of transit and origin. Along with a bias in favour of internal-EU responsibility-sharing, this dwarves the development of a fair, effective and adequate responsibility-sharing system in the EU.

2.1 The development of the Common European Asylum System

This section provides a brief historical overview of the development of cooperation in migration and asylum in the European Union and the emerging Common European Asylum System (CEAS). This section demonstrates that the EU legislation in this area is still not harmonised, and that the principles of responsibility-sharing and solidarity do not have a clearly defined

meaning in EU legislation, which further hampers the EU's efforts to act in accordance with these seemingly highly valued principles.

Striving to create an internal market entailing the free movement of people, the Member States of the then-European Communities (EC) were confronted with the objectives of demolishing immigration controls on their citizens on the one hand, and strengthening immigration control on third-country⁶⁴ nationals on the other.⁶⁵ As Member States were unwilling to give up their sovereignty in the areas of migration and asylum, the first joint efforts have realized in the form of intergovernmental cooperation, outside the EC.⁶⁶ The outcome of these joint efforts were the conclusion of the Agreement of Schengen⁶⁷ between the Federal Republic of Germany, France and the Benelux states in 1985 and five years later the conclusion of the Schengen Implementing Convention (SIC).⁶⁸ The Schengen agreement provided for the abolishment of checks at common borders of the parties which consequently was an essential development for achieving the free movement of people within the EC.

Nevertheless, in parallel to the Schengen process, the twelve Member States adopted a convention relating to the determination of responsibility for examining asylum applications in one of the Member States, which became known as the Dublin Convention.⁶⁹ When the Dublin Convention entered into force on 1 September 1997, the similar provisions for allocating responsibility for the processing of asylum claims in the SIC were abolished.⁷⁰ As Boeles

⁶⁴ A third-country national is a person who is not a national of an EU Member State.

⁶⁵ Pieter Boeles, Maarten den Heijer, Gerrie Lodder and Kees Wouters, *European Migration Law*, 2nd edition (Cambridge: Intersentia, 2014), 32.

⁶⁶ Boeles et al., *European Migration Law*, 33.

⁶⁷ Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, adopted on 14 June 1985.

⁶⁸ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

⁶⁹ Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, adopted on 15 June 1990.

⁷⁰ Boeles et al., *European Migration Law*, 33-34.

suggests, the Dublin Convention had the advantage of being concluded by all of the Member States contrary to the five parties of the Schengen agreement, however the Dublin Convention was far less elaborate than the SIC.⁷¹

Since the 1990s, several important developments enhanced the absorption of immigration and asylum into the EC law. First of all, in 1992 the Maastricht Treaty designated immigration and asylum as matters of common interest.⁷² Second, in 1997, the Treaty of Amsterdam ended this process by moving immigration and asylum from the third (EU) to the first pillar (EC), as well as laying down a five year legislative programme for the Council.⁷³ In addition, the European Council drew conclusions from the Amsterdam Treaty and set out to create an area of freedom, security and justice in its Tampere conclusions in October 1999.⁷⁴ In terms of decision-making, the Treaty of Amsterdam mandated Member States to share the right of legislative initiative with the European Commission and required unanimous voting in the Council.⁷⁵ Furthermore, the European Parliament only had consultative rights at this point. In 2004, the European Council adopted the Hague Programme that set out the programme for the next five years seeking to develop a ‘comprehensive approach involving all stages of migration and asylum policy with respect to the root causes of migration, entry, and admission policies and integration and return policies.’⁷⁶ At this time, the first phase of harmonization of immigration and asylum laws was completed, therefore, as set out in the Treaty on European Union as amended by the Treaty of Amsterdam, decision-making automatically moved from

⁷¹ Boeles et al., *European Migration Law*, 33.

⁷² Treaty on European Union, Title VI, Article K.1.

⁷³ Boeles et al., *European Migration Law*, 34.

⁷⁴ Anneliese Baldaccini, Elspeth Guild and Helen Toner, *Whose Freedom, Security and Justice?* (Oxford: Hart Publishing, 2007), 3.

⁷⁵ Baldaccini et al., *Whose Freedom, Security and Justice?* 5.

⁷⁶ Baldaccini et al., *Whose Freedom, Security and Justice?* 18.

unanimous voting to qualified majority voting in the Council and the Parliament was empowered by the mechanism of co-decision in contrast to the rather modest consultative role.⁷⁷

Finally, the Treaty of Lisbon, which entered into force on 1 December 2009, brought together the policies of border checks, immigration and asylum as well as rendered the EU Charter of Fundamental Rights a legally binding instrument for all EU Member States. Furthermore, the Council defined its priorities to strengthen the area of freedom, security and justice in the Stockholm programme for the period 2010-2014. Boeles concludes that even though the Lisbon Treaty broadened the legal framework for further harmonisation in immigration and asylum matters, it failed to address the possibility that the United Kingdom, Ireland and Denmark can abstain from these matters.⁷⁸

As the historical overview of the legal framework that enables harmonisation in immigration and asylum matters is now provided, a short discussion of the development of the European Asylum *acquis* is possible. As noted above, the Treaty of Amsterdam laid down a five year legislative programme for the Council to implement measures related to asylum, refugees and displaced persons⁷⁹ and the Council decided in Tampere to ‘work towards establishing a Common European Asylum System (CEAS) based on the full and inclusive application of the Geneva Convention.’⁸⁰ Reneman notes that the CEAS agreed to ‘include a clear workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum applicant, and the approximation of rules on the recognition

⁷⁷ Baldaccini et al., *Whose Freedom, Security and Justice?* 19.

⁷⁸ Boeles et al., *European Migration Law*, 35-36.

⁷⁹ Treaty of Amsterdam, amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, Title IV, Article 63.

⁸⁰ Presidency Conclusions, Tampere European Council of 15 and 16 October 1999, Chapter 2, Paragraph 13.

of and content of refugee status.⁷⁸¹ Therefore, the EU adopted the first phase measures, notably the Temporary Protection Directive,⁸² the Reception Conditions Directive,⁸³ the Dublin Regulation,⁸⁴ the Qualification Directive,⁸⁵ and the Procedures Directive,⁸⁶ which thus form the European asylum *acquis*. In the longer term, it was agreed that there should be a common asylum procedure and a uniform refugee and subsidiary protected status in the EU.⁸⁷ Moreover, the European Union reaffirmed all these objectives in the Hague Programme and the Stockholm Programme,⁸⁸ and consequently to meet these objectives, adopted the recasts of the Qualifications Directive,⁸⁹ the Procedures Directive,⁹⁰ the Reception Conditions Directive,⁹¹ and the Dublin Regulation.⁹² It is worth noting that the recasts do not refer to minimum standards but simply to standards which explicitly signals the EU's efforts to increase the quality of asylum measures. However, while it is evident that the recasts brought some positive

⁸¹ Marcelle Reneman, *EU Asylum Procedures and the Right to an Effective Remedy* (Oxford: Hart Publishing, 2014), 30.

⁸² 2001/55/EC, Council Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

⁸³ 2003/9/EC, Council Directive laying down minimum standards for the reception of asylum seekers.

⁸⁴ 2003/343/EC, Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

⁸⁵ 2004/83/EC, Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

⁸⁶ 2005/85/EC, Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status.

⁸⁷ Reneman, *EU Asylum Procedures*, 30.

⁸⁸ Reneman, *EU Asylum Procedures*, 30.

⁸⁹ 2011/95/EU, Directive of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

⁹⁰ 2013/32/EU, Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast).

⁹¹ 2013/33/EU, Directive of the European Parliament and of the Council on laying down standards for the reception of applicants for international protection (recast).

⁹² No 604/2013, Regulation of the European Parliament and of the Council on establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

developments in the quality of refugee protection,⁹³ a harmonized European asylum system is still not a reality.

In terms of responsibility-sharing, the Hague Programme referred to the principle for the first time,⁹⁴ and later the Lisbon Treaty explicitly incorporated it under Article 78(3) and 80.⁹⁵ However, a commentary on the interpretation of EU immigration and asylum law argues that Article 80 in itself is not a legal base, ‘but rather provides justification for the adoption of measures such as the European Refugee Fund, and possibly for non-financial measures concerning “burden-sharing” as well.’ The commentary further argues that Article 78(3), which refers to provisional measures in case of ‘sudden inflow of nationals of third countries,’ cannot be used to establish a temporary protection regime as long as the EU has one available for use, however it suggests that the ‘sudden influx power’ could be used to provide immediate financial assistance to Member States affected.⁹⁶ Therefore, these two articles comprise the primary legal reference to both internal and external responsibility-sharing in EU immigration and asylum law. In addition, the Stockholm Programme also dedicated a chapter to the sharing of responsibilities.⁹⁷

Furthermore, it should be noted that in the EU context responsibility-sharing is referred to in connection with solidarity, a principle that most of the above instruments refer to in terms of migration and asylum cooperation.⁹⁸ However, as Garlick rightly notes, these concepts are

⁹³ For a comprehensive discussion of the European asylum *acquis* see, Boeles et al., *European Migration Law*, Chapters 6, 7, 8.

⁹⁴ European Council, The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, 8.

⁹⁵ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, Articles 78(3) and 80.

⁹⁶ Steve Peers et al., *EU Immigration and Asylum Law (Text and Commentary)*, second revised edition (Leiden: Martinus Nijhoff Publishers, 2012), 14-15.

⁹⁷ European Council, The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens, Chapter 6.2.2.

⁹⁸ See for example, Presidency Conclusions, Tampere European Council, Paragraphs 4 and 16; European Council, The Hague Programme, 4 and 8; Treaty of Lisbon, Articles 67(2) and 80.

nowhere defined. Therefore, Garlick suggests that responsibility and solidarity in the area of migration and asylum broadly encompass Member States' willingness to fulfil their obligations before asking for support. To date support measures have mainly involved EU financial assistance, physical relocation of persons enjoying protection, EASO support and bilateral activities.⁹⁹

However, an important conclusion should be drawn here: the European Union mostly makes use of these principles in terms of cooperation 'between' and 'among' Member States, i.e. 'internal responsibility-sharing.' Conceivably, this internal responsibility-sharing bias shifts focus and resources from actively participating in responsibility-sharing at the global level in a fair, effective and adequate manner. In the next section, this bias is addressed.

2.2 Internal vs. external responsibility-sharing

Despite the EU's intention to distribute responsibilities more equitably, it should be stated that currently there does not exist a responsibility-sharing system within the European Union.

Today, the Dublin Regulation provides the legal framework for allocating responsibilities for asylum seekers among Member States based on several hierarchical criteria. The Dublin system aims to ensure that every asylum seeker in the EU has access to an examination procedure and that only one Member State is responsible for examining an asylum case. Consequently, as Boeles argues, the idea behind the Dublin system is to address the issue of 'refugees in orbit' and the perceived phenomenon of 'asylum shopping.'¹⁰⁰ However, several studies have already noted that the Dublin system fails to allocate responsibilities in a fair and equitable manner, as in practice Member States along the EU external borders tend to have

⁹⁹ Garlick, *Strengthening Refugee Protection and Meeting Challenges*, 5.

¹⁰⁰ Boeles et al., *European Migration Law*, 265.

more incoming than outgoing transfers.¹⁰¹ As a recent EU commissioned study demonstrates, this is due to the fact that generally the decisive criterion to allocate responsibilities – though hierarchically subordinate to some other criteria – is the Member State through which the asylum seeker entered the EU.¹⁰² Even if a transfer request is issued, asylum seekers tend to abscond in order to avoid being returned to Member States on the external border of the EU where the asylum systems are generally less generous and humane compared to the ones in traditional refugee receiving Member States, therefore they prefer to detain persons during the responsibility determining process.¹⁰³ However, as the study argues, the current system has enormous humane and financial costs, notwithstanding the fact that it poses an uneven distribution of these costs across Member States.¹⁰⁴ Furthermore, given the limited number of Dublin transfers compared to the overall number of take back and take charge requests, even for those who are able to reduce the responsibility for asylum seekers in terms of numbers under the Dublin system, the net gains are relatively small.¹⁰⁵ Consequently, the Dublin system is a costly, inefficient and irrational responsibility-shifting mechanism.

In addition, the previously-mentioned Temporary Protection directive that the EU adopted in order to ‘promote a balance of efforts between Member States’¹⁰⁶ in mass influx situations through emergency resettlement, in principle, forms another mechanism for internal responsibility-sharing. This directive is based on ‘double voluntarism’ (i.e. consent from both

¹⁰¹ See for example, Guild et al., *New Approaches*; Thielemann, *Towards a Common EU Asylum Policy*; Eiko R. Thielemann, *What System of Burden-sharing*.

¹⁰² Guild et al., *New Approaches*, 36.

¹⁰³ Boeles et al., *European Migration Law*, 276.

¹⁰⁴ While there is no comprehensive data on the costs of coercively transferring refugees within the EU, the academia tends to generally be in consensus with this argument. However, for a discussion on the costs of the Dublin system see the study further, Guild et al., *New Approaches*, 16-21.

¹⁰⁵ For example, a most recent EUROSTAT data shows that Germany received around 1,325 incoming transfers in contrast to 4,316 outgoing transfers in 2013. Furthermore, in the same time period, Sweden received around 579 incoming transfers compared to 2,869 outgoing transfers, EUROSTAT, *Dublin statistics on countries responsible for asylum application*, accessed May 30, 2015, http://ec.europa.eu/eurostat/statistics-explained/index.php/Dublin_statistics_on_countries_responsible_for_asylum_application.

¹⁰⁶ 2001/55/EC, Article 1.

the receiving Member State and the individual concerned).¹⁰⁷ However, this directive has not yet been invoked since its adoption in 2001, therefore its effectiveness is clearly doubtful.

Moreover, a voluntary *ad hoc* mechanism developed in 2008 when the European Union adopted the EU Pilot Project on Intra-EU Relocation from Malta (EUREMA).¹⁰⁸ The aim of this measure was to assist Malta experiencing a relatively large degree of pressure from refugee arrivals, and to provide an organised framework for preparing and implementing relocation of recognised beneficiaries of international protection based on solidarity and responsibility-sharing.¹⁰⁹ Since 2009, twelve Member States participated in the EUREMA I and II projects.¹¹⁰ As the fact finding report of the European Asylum Support Office (EASO) shows the number of persons relocated under the pilot projects is very modest. Nevertheless, an EU commissioned report demonstrates that the emergence of relocation has a negative impact on resettlement if Member States prefer it as a ‘soft’ option over the latter.¹¹¹ Therefore, the study suggests that relocation should complement resettlement in order avoid being detrimental to it.

Furthermore, there is an intense debate on how the EU should live up to the standards of a fair internal sharing of responsibility in the current academic discourse. However, academics generally agree that a redressed Dublin system should allocate responsibilities

¹⁰⁷ Eiko R. Thielemann, “How Effective are National and EU Policies in the Area of Forced Migration?” *Refugee Survey Quarterly* Vol. 31, No. 4 (2012): 35.

¹⁰⁸ Relocation is the placement of refugees from an EU Member State to another. Therefore, it should be separated from resettlement, which is ‘the transfer of refugees from the country in which they have sought asylum to another State that has agreed to admit them as refugees and to grant them permanent settlement and the opportunity for eventual citizenship.’ UNHCR, *UNHCR Resettlement Handbook*, revised in 2011, 36, accessed April 25, 2015, <http://www.unhcr.org/4a2ccf4c6.html>; The Commission clarified this distinction in its 2009 communication. It stated that resettlement of persons outside the EU to the territory of an EU Member State is a humanitarian measure and an expression of solidarity towards third countries, whereas relocation is primarily a burden-sharing mechanism between Member States. COM(2009) 456 final, Communication from the Commission to the European Parliament and the Council on the establishment of a Joint EU resettlement Programme, 3.

¹⁰⁹ EASO, *Fact Finding Report on Intra-EU Relocation Activities from Malta* (2012), 1-8, accessed May 17, 2015, <https://easo.europa.eu/wp-content/uploads/EUREMA-fact-finding-report-EASO1.pdf>.

¹¹⁰ EASO, *Fact Finding Report*, 1.

¹¹¹ Delphine Perrin and Frank McNamara, *Refugee Resettlement in the EU: Between Shared Standards and Diversity in Legal and Policy Frames*, Know Reset Research Report (2012): 40-41, accessed May 5, 2015, <http://www.migrationpolicycentre.eu/docs/Know-Reset-RR-2013-03.pdf>.

without coercion based on a free choice model that consequently takes into consideration the preferences of refugees.¹¹² While some envisage it in the better implementation of existing human rights standards and further policy harmonization,¹¹³ Rapoport, Moraga and Thielemann go further and suggest a market-based system in which Member States are able to trade refugee protection quotas with regard to their comparative advantages in order to contribute to responsibility-sharing in ways they find the most cost-efficient, while equally being mindful of the choice of refugees.¹¹⁴ This consequently invokes concerns about the ‘commodification’ of refugees, which was already noted with regard to Schuck’s proposal in the first chapter.¹¹⁵

Moreover, academics also converse on the question of policy harmonization. As the EU commissioned study demonstrates, the joint processing of asylum claims and the mutual recognition of refugee and subsidiary protected status has the potential to enhance asylum systems, particularly those under increased pressures, while equally being beneficial to refugees themselves.¹¹⁶ Similarly, Garlick argues that joint processing and a uniform status of asylum and subsidiary protection within the European Union can strengthen the capacity of the EU to coop with future challenges. However, in contrast to advocates of a rethought Dublin system, she suggests that the current mechanism provides for the measures to handle such challenges, provided that there is a common understanding of and an on-going commitment to solidarity and responsibility-sharing among Member States.¹¹⁷ In contrast, Thielemann casts doubts about

¹¹² Guild et al., *New Approaches*, 89; Thielemann, *What System of Burden-sharing*, 146; Hillel Rapoport and Jesús Fernández-Huertas Moraga, *Tradable Refugee-admission Quotas: A Policy Proposal to Reform the EU Asylum Policy*, Robert Schuman Center for Advanced Studies, Migration Policy Centre (2014): 11-13, accessed May 10, 2015, http://cadmus.eui.eu/bitstream/handle/1814/33097/RSCAS_2014_101.pdf.

¹¹³ Garlick, *Strengthening Refugee Protection and Meeting Challenges*, 8-9; Guild et al., *New Approaches*, 81.

¹¹⁴ Rapoport and Moraga, *Tradable Refugee-admission Quotas*, 1-2; Thielemann, *Towards a Common EU Asylum Policy*, 22-23.

¹¹⁵ However, for a set of non-utilitarian arguments against a market-based quota trading in the EU see, Mollie Gerver, “Refugee Quota Trading within the Context of EU-ENP Cooperation: Rational, Bounded Rational and Ethical Critiques,” *Journal of Contemporary European Research* Vol 9 Issue 1 (2013).

¹¹⁶ Guild et al., *New Approaches*, 79.

¹¹⁷ Garlick, *Strengthening Refugee Protection and Meeting Challenges*, 5-7.

the sole role of policy harmonization and argues that it has to be combined with a market-based quota trading mechanism, as discussed above, to contribute positively to responsibility-sharing.¹¹⁸

However, it is quite plausible that the joint processing of asylum claims and mutual recognition of refugee and subsidiary protected status would greatly enhance and facilitate EU efforts to explore a more effective, adequate and fair intra-EU responsibility-sharing system. Furthermore, it is evident that there is a need for a clearly defined and binding quota-based regime for allocating responsibilities among Member States. However, it should equally take into consideration the preferences of both Member States and refugees.

Having discussed EU internal responsibility-sharing, the analysis proceeds with the examination of its external dimension. There is modest academic attention in the literature on EU responsibility-sharing on the global level, however the efforts and tools of the European Union are even more limited in this area. Generally, the EU contributes to external responsibility-sharing through its Regional Protection Programmes and its Joint EU Resettlement Programme.¹¹⁹ These programmes correspond to the two most common methods of responsibility-sharing discussed in the first chapter, namely financial contributions and resettlement. The Regional Protection Programmes, first proposed by the Commission in 2004,¹²⁰ intend to strengthen refugee protection in countries of origin and transit mainly through enhancing durable solutions, improving reception conditions, providing financial contributions, capacity-building in refugee status determination and improving the general protection

¹¹⁸ Thielemann, *Towards a Common EU Asylum Policy*, 22.

¹¹⁹ See European Commission, *External Aspects*, accessed April 2, 2015, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/external-aspects/index_en.htm.

¹²⁰ COM(2004) 410 final, Communication from the Commission to the Council and the European Parliament on the Managed entry into the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin – Improving access to durable solutions.

environment.¹²¹ The first two programmes targeted Eastern Europe, including Belarus, the Republic of Moldova and Ukraine, as a region of transit and the African Great Lakes Region, particularly Tanzania, as a region of origin.¹²² The latest programmes since 2010 target the Horn of Africa (Kenya, Yemen and Djibouti) and Eastern North Africa (Egypt, Lybia and Tunisia).¹²³ However, as Banks suggests, these programmes primarily aim to reduce refugee flows into Europe without a significant impact on the protection situation in beneficiary states.¹²⁴ Even though there is an explicit reference to a ‘spirit of shared of responsibility’ and to a ‘more accessible, equitable and effective international protection system in partnership with third countries’ in the Commission’s proposal,¹²⁵ it is evident that the limited scope and financing of the Regional Protection Programmes fail to achieve these objectives and instead support Member States’ containment policies.

Furthermore, the practice of the EU in the resettlement of refugees has traditionally been mediocre and inadequate in terms of numbers and clearly did not meet even the lowest standards of a fair, effective and adequate share of responsibility. However, after three years of the initial proposal from the Commission in 2009,¹²⁶ Member States finally set up the Joint EU Resettlement Programme.¹²⁷ The mechanism works on a voluntary basis with Member States taking annual quotas for resettlement and the EU providing financial incentives for each person resettled. However, despite the fact that the Commission proposal and the Council decision strongly and explicitly reinforced the principles of solidarity and a fair sharing of

¹²¹ COM(2005) 388 final, Communication from the Commission to the Council and the European Parliament on Regional Protection Programmes, Paragraph 6.

¹²² European Commission, *External Aspects*.

¹²³ European Commission, *External Aspects*.

¹²⁴ Roland Bank, “Forced Migration in Europe,” in *The Oxford Handbook of Refugee and Forced Migration Studies*, eds. Elena Fiddian-Qasmiyeh et. al (Oxford: Oxford University Press, 2014), 696.

¹²⁵ COM(2005) 388 final, Paragraph 2.

¹²⁶ COM(2009) 456 final.

¹²⁷ 281/2012/EU, Decision of the European Parliament and of the Council of 29 March 2012 amending 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows.’

responsibility,¹²⁸ the Joint EU Resettlement Programme turned out to be highly inefficient and inadequate. As UNHCR demonstrates, contrary to the 860,000 projected annual resettlement needs in 2013, the European Union only resettled 5,449 persons in need of resettlement, less than eight per cent of the total number of refugees resettled in that year.¹²⁹ Therefore it may now be conceived that EU responsibility-sharing on the global scale does not meet the criteria of a fair, effective and adequate share of responsibility as: it does not have any established allocation criteria for resettling refugees among Member States and lacks a compulsory character; in practice, it fails to meet the projected resettlement needs of UNHCR and only resettles a relatively low number of refugees; and consequently the access to meaningful protection within the EU is relatively low.

To sum up, there is a bias towards intra-EU responsibility-sharing in contrast to responsibility-sharing on the global level in both EU policy documents and the academic literature. This is evident in the EU's efforts throughout its recent history, when it set up a comprehensive legal framework to implement the Dublin system. In contrast, the European Union's tools to participate in responsibility-sharing on the global scale are very limited and due to their voluntary character, are subject to a large degree of Member State discretion. Moreover, recent studies have shown that the current Dublin system is an inefficient, costly responsibility-shifting mechanism. Furthermore, the bias is also inherent in the academic discourse that generally offers a more nuanced research on a rethought Dublin mechanism based on a quota system and further policy harmonization.

However, further efforts to develop the Dublin system undoubtedly draw resources and policy and academic attention away from a more active EU participation on the global field of

¹²⁸ COM(2009) 456 final, 4 and 5; 281/2012/EU, Paragraph 2.

¹²⁹ UNHCR, *EU Resettlement Fact Sheet*.

international protection and greatly hamper the development of a fair, effective and adequate external responsibility-sharing practice. Nevertheless, the next section will discuss the current EU discourse with regard to responsibility-sharing and will demonstrate that there is a tendency to recognize the need for more EU involvement in responsibility-sharing on the global level, however, despite this more balanced approach, intra-EU responsibility-sharing is still the dominant direction of the EU institutional discursive field.

2.3 The current EU discourse on responsibility-sharing

In October 2013, following the tragic events near the coasts of the Italian island of Lampedusa,¹³⁰ the debate on migration and asylum reignited in the European Union. The Council urgently set up the Task Force Mediterranean, which was mandated to identify priorities to prevent further deaths at sea, chaired by the Commission and involving the relevant EU agencies, Member States and the European External Action Service (EEAS).¹³¹ In parallel, the Parliament recommended that the EU should develop a coordinated approach to prevent further loss of lives based on the principles of responsibility-sharing and solidarity.¹³² Later in 2013, the Commission proposed five lines of action for the Task Force to implement. With regard to responsibility-sharing, the Commission strongly emphasized that all EU action should be undertaken in accordance with the principles of responsibility-sharing and solidarity with a strong external component. While the Commission explicitly identified the importance of actions in cooperation with third countries and encouraged Member States to increase their resettlement commitments, the proposal rather focused on border control, the fight against

¹³⁰ On 3 October 2013, a boat with around 500 migrants sank near the coasts of Lampedusa. UNHCR, *Lampedusa boat tragedy – update*, accessed April 20, 2015, <http://www.unhcr.org/524e8d2d9.html>.

¹³¹ European Council, *Task Force Mediterranean*, accessed April 25, 2015, <http://www.consilium.europa.eu/en/policies/illegal-migration/task-force-mediterranean/>.

¹³² 2013/2827(RSP), European Parliament resolution of 23 October 2013 on migratory flows in the Mediterranean, with particular attention to the tragic events off Lampedusa.

smuggling networks and intra-EU responsibility-sharing.¹³³ Therefore, it is conceivable that even if the principles of responsibility-sharing and solidarity were referred to in the European discourse, the EU failed to take concrete measures and commitments with regard to strengthening external responsibility-sharing. Moreover, the emphasis was still on tackling and containing migration, and developing internal responsibility-sharing.

In March 2014, the same tendency continued when the Commission released a communication which identified the key priorities in migration and asylum. First of all, the Commission designated an individual section for responsibility-sharing and solidarity, however it only strengthened these principles in terms of alleviating pressures among Member States. Notwithstanding this shortcoming, the communication strongly encouraged boosting resettlement and thus ‘shouldering a greater share of responsibility.’¹³⁴ Although the Commission addressed the strategic use of resettlement, Protected Entry Procedures – aimed at complementing resettlement – and the further harmonization of the European asylum *acquis* by the mutual recognition of refugee and subsidiary protected status among Member States and the joint processing of asylum claims, the communication still lacked concrete measures, and only reiterated already existing commitments.

Furthermore, the Council and the Parliament were relatively inactive in the migration and asylum discourse at this time period. It was only in October 2014 that the Council confirmed the commitment to overcome the current polarization along the principles of responsibility and solidarity and urged the creation of a ‘credible number of resettlement

¹³³ COM(2013) 869 final, Communication from the Commission to the European Parliament and the Council on the work of the Task Force Mediterranean, 2-3.

¹³⁴ COM(2014) 154 final, Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an open and secure Europe: making it happen, 2-8.

places,' still on a voluntary basis, yet in a fair and balanced manner.¹³⁵ Moreover, the Parliament also reiterated the need for the EU to 'step up fair sharing of responsibility and solidarity towards Member States that receive the highest numbers of refugees and asylum seekers.'¹³⁶ In addition, the Parliament considered the need to increase voluntary resettlement and cooperation with third countries.¹³⁷ Therefore, these set of documents further confirm the existing bias towards intra-EU responsibility-sharing and a weak EU willingness to implement concrete measures on responsibility-sharing at a global level. However, it should be noted that the principles of responsibility-sharing and solidarity have been strongly present in the recent EU discourse on migration and asylum, and there is a tendency to call on increasing resettlement places in the EU.

Following the tragic events in the Mediterranean in April 2015,¹³⁸ an intense debate on migration and asylum erupted in Europe. The Council adopted a ten point plan of actions to be taken immediately in response to the crisis situation in the Mediterranean.¹³⁹ Even though the Council set out to reinforce the Joint Operation Triton¹⁴⁰ and considered an EU wide voluntary pilot project on resettlement, the ten point plan is evidently another step towards the adverse objectives of tackling and containing migration by focusing on fighting human trafficking,

¹³⁵ European Council. Council conclusions on "Taking action to better manage migratory flows," Justice and Home Affairs Council meeting, Luxembourg, 10 October 2014, 1-2.

¹³⁶ 2014/2907(RSP), European Parliament resolution of 17 December 2014 on the situation in the Mediterranean and the need for a holistic EU approach to migration.

¹³⁷ 2014/2907(RSP).

¹³⁸ In April 2015, a series of shipwrecks in the Mediterranean caused the deaths of around 1000 migrants. UNHCR, *Mediterranean boat capsizing: deadliest incident on record*, accessed April 21, 2015, <http://www.unhcr.org/cgi-bin/telex/vtx/search?page=search&docid=553652699&query=catania>.

¹³⁹ European Commission. *Joint Foreign and Home Affairs Council: Ten point action plan on migration*. http://europa.eu/rapid/press-release_IP-15-4813_en.htm, accessed April 20, 2015, http://europa.eu/rapid/press-release_IP-15-4813_en.htm.

¹⁴⁰ The European Union launched its operation on 1 November 2014 carried out by Frontex called 'Joint Operation Triton.' As Triton is intended to focus on border control and monitoring in a very limited geographical scope, it does not substitute or replace the previous large scale Italian efforts under the operation 'Mare Nostrum' in search and rescue, leaving refugees and migrants trying to find safety in Europe in an even more desperate situation. On the Joint Operation Triton see further, European Commission. *Frontex Joint Operation Triton – Concerted efforts to manage migration in the Central Mediterranean*, accessed April 20, 2015, http://europa.eu/rapid/press-release_MEMO-14-566_en.htm.

destroying smuggling vessels and on the return of irregular migrants. Furthermore, it may be perceived that the action plan is neither in accordance with the principles of solidarity and responsibility-sharing, nor is there a reference to it. On the contrary, the Parliament adopted a resolution that urged immediate action based on solidarity and fair sharing of responsibility, and called on the Commission to establish a binding quota on the distribution of asylum seekers within the EU.¹⁴¹ Moreover, the Parliament called on Member States to make a greater contribution to resettlement, and condemned those who have not contributed anything so far.¹⁴² It is evident that the Parliament took a firm position on responsibility-sharing and solidarity, however it remains to be seen whether the Commission takes note of the Parliament's suggestions and manages to come up with a meaningful plan with concrete measures in accordance with these principles.¹⁴³

To sum up, it is conceivable that despite the fact that the principles of responsibility-sharing and solidarity are widely referred to in EU documents, the bias still exists in favour of internal responsibility-sharing within the European Union. Nonetheless, a steady balancing is also visible as resettlement and other means of external responsibility-sharing are being more and more recognised. However, as this chapter demonstrates, the EU generally fails to come up with concrete, binding measures in terms of both intra- and external responsibility-sharing. Therefore, it may be concluded that despite these principles being present and seemingly highly valued in the European Union discourse, the EU practice is clearly not in accordance with responsibility-sharing and is certainly not fair, adequate and effective, which is mainly due to

¹⁴¹ 2015/2660(RSP), European Parliament resolution of xx April 2015 on the latest tragedies in the Mediterranean and EU migration and asylum policies.

¹⁴² Currently, there are only 14 Member States in the EU-28 that have a regular resettlement programme. For the latest data available see, UNHCR. *EU Resettlement Fact Sheet*.

¹⁴³ However, it should be noted that by the time this research was conducted, the Commission released its most recent proposal on the new agenda on migration and asylum in May 2015, which will be evaluated in the conclusion in order to keep the line of arguments.

the reluctance of Member States. Conversely, some of the EU Member States are among the largest resettlement countries in the world. Therefore, it is worth discovering whether the EU discourse is able to translate into some of these Member States' resettlement policies or they pursue their own agenda for responsibility-sharing. Addressing this question, the next section shows that the traditions in resettlement result in great differences in terms of refugees resettled. Furthermore, it suggests that even if Member States recognize responsibility-sharing as a highly valued principle and show the political will to resettle, the current voluntary responsibility-sharing framework of the EU leaves large degree of discretion to Member States to decide whether to contribute.

3. Resettlement and the European Union

As previously discussed, the principle of responsibility-sharing – which is seemingly highly valued in EU institutional discourse – is not reflected in EU practice in terms of both internal and external responsibility-sharing. Even though some of the EU Member States are among the largest resettlement countries in the world,¹⁴⁴ there are some Member States that do not participate in resettlement or only at a low level.¹⁴⁵ Therefore, the aim of this chapter is to examine why some EU Member States resettle relatively more refugees – and hence take a larger share of responsibility – while others do relatively less or not at all. The presumption is that this discrepancy in the numbers of refugees resettled is the result of Member States with long traditions of programmed resettlement performing relatively better, while those with *ad hoc* or recently established resettlement programmes generally offering few or no resettlement places.

Therefore, this chapter provides a brief preliminary discussion of the development of resettlement among EU Member States. Furthermore, it compares two examples of Member State resettlement practice; Sweden and Belgium are contrasted by employing the method of a most-similar case study. The main finding of this comparative test confirms the hypothesis that the traditions in resettlement result in great differences in terms of refugees resettled. Consequently, this chapter suggests that even if Member States recognize responsibility-sharing as a highly valued principle and show the political will to resettle, the current voluntary responsibility-sharing framework of the EU leaves large degree of discretion to Member States

¹⁴⁴ Sweden, Germany, Finland, the Netherlands and the United Kingdom rank high among resettlement countries in terms of departures. See further, UNHCR, *UNHCR Resettlement Handbook*, 61.

¹⁴⁵ For example Cyprus, Estonia, Latvia, and Lithuania have not participated in resettlement activities so far. See in particular, Know Reset, *Resettlement at EU level: tables and graphs*, accessed May 17, 2015, <http://know-reset.eu/?c=00476>.

to decide whether to contribute, therefore a binding quota-based framework in accordance with fair, adequate and effective responsibility-sharing would greatly increase EU activities at the global level.

3.1 The development of resettlement among EU Member States

Resettlement¹⁴⁶ practices and policies vary greatly among Member States. However, resettlement activities have somewhat increased since mid-2000 under joint EU efforts in response to major refugee crises.¹⁴⁷ Nevertheless, there is consensus that despite the efforts of the EU (under its *ad hoc* schemes¹⁴⁸ and the previously discussed Joint EU Resettlement Programme) to standardize and harmonise Member State policies, there still exists a large diversity in approaches to resettlement.

As two recent studies demonstrate, there were two major *ad hoc* schemes that led to the adoption of the Joint EU Resettlement Programme and to more cooperation between Member States in resettlement.¹⁴⁹ In 2008, the European Union committed to resettle 10,000 Iraqi refugees, which was the first combined EU effort in resettlement, even though the EU did not fully meet its pledge.¹⁵⁰ Later in 2011, in the wake of the Libyan crisis, the EU committed itself to the resettlement of another 5,000 refugees residing in Tunisia.¹⁵¹

¹⁴⁶ While the UNHCR definition of resettlement entails the right to permanent residence, the EU practice differs and many Member States do not grant the right to permanent residence to resettled refugees. Furthermore, many Member States generally offer humanitarian admission to vulnerable refugees on the basis of temporary protection. For the sake of simplicity, in this chapter, the term resettlement refers to both resettlement and humanitarian admission. European Resettlement Network, *Resettlement, relocation and humanitarian admission?! We explain the terminology...*, accessed May 17, 2015, <http://www.resettlement.eu/page/resettlement-relocation-or-humanitarian-admission-we-explain-terminology>.

¹⁴⁷ For a comprehensive discussion on the development of resettlement in the EU see, Perrin and McNamara, *Between Shared Standards*; Elona Bokshi, *Refugee Resettlement in the EU: The Capacity to Do it Better and to Do it More*, Know Reset Research Report (2013), accessed April 10, 2015, http://know-reset.eu/files/texts/00013_20140108160733_knowresetrr-2013-04.pdf.

¹⁴⁸ *Ad hoc* schemes refer to resettlement without a predefined quota.

¹⁴⁹ Bokshi, *The Capacity to Do it Better*, 1-2; Perrin and McNamara, *Between Shared Standards*, 4.

¹⁵⁰ Bokshi, *The Capacity to Do it Better*, 1-2.

¹⁵¹ Bokshi, *The Capacity to Do it Better*, 2-3.

However, as noted above, before the joint EU efforts, Member States carried out resettlement without much coordination and cooperation between themselves. Therefore, Bokshi distinguishes between traditional and non-traditional resettlement Member States. Traditional resettlement Member States (Denmark, Finland, the Netherlands and Sweden) have long-established resettlement programmes based on annual quotas, while non-traditional Member States historically contributed to resettlement on an *ad hoc* basis or not at all.¹⁵² In recent years, ten non-traditional Member States have adopted quota-based resettlement programmes.¹⁵³ As Perrin and McNamara suggests, these recent developments were mainly due to the EU call in 2008 to resettle Iraqi refugees and to the launch of the Joint EU Resettlement Programme in 2012. Furthermore, they demonstrate that there is a great diversity in Member State approaches to resettlement. They further argue that these discrepancies are mainly manifested in: 1) selection processes, 2) selection criteria (e.g. some Member States only accept ‘Convention Refugees,’ while some employ the highly discriminative criteria of ‘integration potential’), 3) rights and status granted (the primary concern here is mainly the right to permanent residency). Finally, Perrin and McNamara conclude that even though there were some positive changes in recent years in resettlement and the European Union aimed at standardizing Member States’ approaches, contribution to resettlement still remains a voluntary government act.¹⁵⁴ Similarly, Bokshi demonstrates that commitments to resettlement among Member States are subject to political will and EU funding.¹⁵⁵

Even if some Member States’ selection processes and selection criteria tend to restrict the number of refugees who may be considered for resettlement, they do not explain the

¹⁵² Bokshi, *The Capacity to Do it Better*, 6.

¹⁵³ The historically *ad hoc* resettlement Member States are Austria, Belgium France, Germany, Italy and Luxembourg. For a comprehensive list of Member State resettlement schemes see further, Know Reset, *Resettlement at EU level*.

¹⁵⁴ Perrin and McNamara, *Between Shared Standards*, 17-41.

¹⁵⁵ Bokshi, *The Capacity to Do it Better*, 45.

relatively low number of refugees resettled, since the EU resettlement system is a voluntary one. Consequently, Member States resettle as many refugees as they believe they can or want to. Furthermore, as Bokshi notes, the number of resettlement places did not increase in parallel to the number of Member States engaging in resettlement activities and suggests that new resettlement countries offer only a limited number of places due to their limited experience and resources (both human and financial).¹⁵⁶ This is quite plausible, therefore in the next section this claim informs the hypothesis to answer the question why some EU Member States resettle relatively more refugees – and hence take a larger share of responsibility – while others do relatively less or not at all.

3.2 Case study: Sweden and Belgium

This section therefore seeks to test Bokshi's claim, as discussed above. The hypothesis is quite simple: Member States with long traditions of programmed resettlement perform relatively better in resettlement, while those with *ad hoc* or recently established resettlement programmes generally provide few or no resettlement places. In terms of methodology, the analysis employs the method of most-similar case study based on John Gerring's *Case Study Research: Principles and Practices*. In a most-similar case, a chosen pair of cases is similar in all respects except the variable of theoretical interest and the outcome of interest.¹⁵⁷ The design of this case study is a confirmatory one, hence it seeks to test the hypothesis rather than generate a new one.

Therefore, the cases selected are Sweden and Belgium which seemingly fit in this case study. Sweden resettles a relatively high number of refugees, while Belgium resettles relatively

¹⁵⁶ Bokshi, *The Capacity to Do it Better*, 45.

¹⁵⁷ John Gerring, *Case Study Research: Principles and Practices* (New York: Cambridge University Press, 2007), 131-139.

few.¹⁵⁸ To explain these divergent outcomes, Gerring's two-step method is used.¹⁵⁹ The analysis first discusses possible causal factors that are 'held more or less constant' across the two cases. Second, the analysis identifies the 'differentiating cause,' which potentially explains the diverging outcomes. It should be noted that the method requires to code cases dichotomously (e.g. high/low), however the variables in this model are all continuous, except for the variables of theoretical interest (traditional/non-traditional). Nevertheless, this should not leave a caveat, since the score of the outcome is visibly different, and the control variables are more or less identical, as the analysis shows below.

The analysis begins with the discussion of several possible causal factors relevant to the number of refugees resettled. Some of these factors are the same as the common elements which inform fair responsibility-sharing, as these are undoubtedly relevant for states to determine the number of refugees they wish to resettle. Consequently, these are: population, GDP and the number of persons already enjoying protection. However, as the European Union equally provides protection based on Geneva Convention grounds, subsidiary protection, as well as authorization to stay for humanitarian reasons, these are all taken into account when determining the number of persons enjoying protection. Furthermore, the annual recognition rate in the EU tends to be relatively low and varies among Member States,¹⁶⁰ therefore both the annual number of asylum applications and the annual number of positive decisions (either on first instance or final) will be considered. These numbers therefore indicate the increase of asylum 'pressure' in a Member State in a given year. Having noted these considerations, the causal factors relevant to the outcome are: population, GDP, asylum applications lodged and

¹⁵⁸ As the latest UNHCR EU resettlement factsheet shows, in 2013, Sweden resettled 1,832 refugees, while in comparison Belgium resettled only 100. UNHCR, *EU Resettlement Fact Sheet*.

¹⁵⁹ Gerring, *Case Study Research*, 131-134.

¹⁶⁰ The rate of positive first instance decisions in the European Union was 34.34% in 2013. EUROSTAT, *Asylum in the EU* (2014), accessed May 17, 2015, http://ec.europa.eu/dgs/home-affairs/e-library/docs/infographics/asylum/infographic_asylum_en.pdf.

positive decisions. As EUROSTAT gathers reliable data on asylum since 2008, consequently the timeframe of the analysis is the period 2008-2014.

In terms of GDP and population the two Member States are quite similar. As EUROSTAT data shows, in the given time period, Belgium and Sweden were always among the top ten EU Member States with regard to total GDP, and generally near each other in the EU rankings.¹⁶¹ Furthermore, Belgium has a population just above 11 million, while Sweden has a population of more than 9.6 million.¹⁶² Moreover, the two Member States share relatively similar numbers in annual asylum applications since 2008 until 2011 (ranging between mostly 25,000 and 32,000).¹⁶³ However, statistics show that Sweden experienced a significant increase in asylum applications lodged since 2012 (reaching above 81,000 in 2014), while Belgium remained quite stable. Moreover, statistics on positive decisions in Sweden show a similar heightened pattern due to the increase of asylum applications lodged. Notwithstanding this widening gap between Belgium and Sweden, the two countries rank very high among EU Member States with regard to annual asylum applications lodged and annual positive first instance and positive final decisions.¹⁶⁴ To sum up, these similar data assert similar integrative capacities and ‘asylum pressures’ in both Member States, yet they differ significantly in terms of the number of refugees resettled.

Where Sweden and Belgium differ is their traditions in resettlement. As Sweden is one of the oldest resettlement countries in the world that has a resettlement programme since 1950, it is considered as a traditional resettlement country.¹⁶⁵ Since 2000, Sweden offered more than

¹⁶¹ For GDP statistics see, EUROSTAT, *National Accounts and GDP*, accessed May 15, 2015, http://ec.europa.eu/eurostat/statistics-explained/index.php/National_accounts_and_GDP.

¹⁶² For population statistics see, EUROSTAT, *Population and population change statistics*, Accessed May 15, 2015, http://ec.europa.eu/eurostat/statistics-explained/index.php/Population_and_population_change_statistics.

¹⁶³ EUROSTAT, *Asylum and new asylum applicants by citizenship, age and sex - Annual aggregated data (rounded)*, accessed May 15, 2015, http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics.

¹⁶⁴ EUROSTAT, *Asylum and new asylum applicants*.

¹⁶⁵ UNHCR, *Sweden*, in *UNHCR Resettlement Handbook*, revised in 2014, 1, accessed May 17, 2015, <http://www.unhcr.org/3c5e5a219.html>.

1000 places for resettlement each year, and in 2008, the Swedish parliament decided on increasing the yearly resettlement quota to 1,900.¹⁶⁶ Sweden is also one of the largest resettling countries in the world, along with Canada, Australia and the USA.¹⁶⁷

In contrast, Belgium is traditionally an *ad hoc* resettlement country. On an *ad hoc* basis it offered few resettlement places to refugees throughout the history, however from 2000 it remained inactive for a long period of time.¹⁶⁸ It was only in 2009 when it resumed its resettlement activities and provided resettlement to a modest number of refugees in 2009 and 2011.¹⁶⁹ However, in 2011 the Belgian government decided to set up a resettlement framework based on the positive experience from 2009 and 2011 and established its resettlement programme in 2013.¹⁷⁰ The Belgian government pledged to set up an initial quota of 100 persons for 2014 and 300 persons for 2015.¹⁷¹ However, it is clearly visible that these numbers are much lower than the resettlement places offered by Sweden. Nevertheless, it is worth noting that the actual number of refugees resettled and the resettlement quota generally differ, yet the difference between the Swedish and Belgian numbers still remains.

3.3 Findings

Therefore, it is conceivable that the differentiating cause between the numbers of refugees resettled is the tradition of Member States in resettlement. The test revealed with the method of a most-similar case study that Member States with long traditions of programmed resettlement are likely to perform better in resettlement, while those with *ad hoc* or recently established

¹⁶⁶ Alina Ostling and George Joseph, *Sweden*, Know Reset – Country Profiles (2013), 4, accessed May 17, 2015, http://know-reset.eu/files/texts/00169_20131031130601_knowresetcountryprofilessweden.pdf.

¹⁶⁷ UNHCR, *Projected Global Resettlement Needs 2015*, 61.

¹⁶⁸ Fenya Fischler and Salomé Phillmann, *Belgium*, Know Reset – Country Profile (2012), 4, accessed May 17, 2015, http://know-reset.eu/files/texts/00145_20130704132512_knowresetcountryprofilebelgium.pdf.

¹⁶⁹ Fischler and Phillmann, *Belgium*, 4.

¹⁷⁰ UNHCR, *Belgium*, in *UNHCR Resettlement Handbook*, revised in 2014, 2, accessed May 17, 2015, <http://www.unhcr.org/5278adfb9.html>.

¹⁷¹ UNHCR, *Belgium*, 2.

resettlement programmes are likely to provide few or no resettlement places. However, it is worth noting that Germany is a large outlier in the sample. Even though it is a non-traditional resettlement Member State with a relatively modest resettlement programme established in 2012 that has a quota of 300, Germany has been the largest resettlement country in the EU on an *ad hoc* basis in the last few years.¹⁷²

Nevertheless, Bokshi's claim seems valid: new resettlement countries tend to offer a limited number of places as they require more time and resources (both human and financial) to set up their resettlement capacity.¹⁷³ Notwithstanding this claim, one could argue that political will is a crucial factor determining contribution to resettlement. Conceivably, there are other determinants that could explain a country's participation in resettlement, and political will is certainly one of them. However, while the wide political support for resettlement in Sweden is somewhat evident, similarly there has been a strong commitment to resettlement in Belgium in recent years as well.¹⁷⁴ Moreover, as discussed above, the recent increase in resettlement to EU Member States suggests that the political will to resettle, as well as the commitment to responsibility-sharing towards third countries exist among the majority of EU Member States. Therefore, it is quite plausible that experience and knowledge in resettlement practice are more decisive when Member States decide on their resettlement quota in the current EU context. Moreover, Bokshi's recommendations also seem justified. She suggests a number of different measures aimed at increasing resettlement, including better and faster cooperation between EU

¹⁷² In 2009, Germany resettled 2,501 Iraqi refugees from Syria and Jordan. However, it should also be noted that Germany has been historically active in resettling refugees on an *ad hoc* basis, particularly in 1999 when it resettled 15,000 Kosovar refugees. Manuela Scharf and Margarete Misselwitz, *Germany, Know Reset – Country Profile* (2013), 5, accessed May 17, 2015, http://know-reset.eu/files/texts/00153_20130902162028_knowresetcountryprofilegermany.pdf. Additionally, since 2013 Germany has made pledges for the humanitarian admission of 20,000 and for individual sponsorship programmes for resettling 10,000 Syrian refugees. European Resettlement Network, *Focus on Syria* <http://www.resettlement.eu/news/focus-syria>, accessed May 18, 2015, <http://www.resettlement.eu/news/focus-syria>.

¹⁷³ Bokshi, *The Capacity to Do it Better*, 45.

¹⁷⁴ See in particular Ostling and Joseph, *Sweden*, 13; Fischler and Phillmann, *Belgium*, 10.

Member States, transfer of knowledge and experience in resettlement involving both Member States, UNHCR, relevant NGOs and municipalities.¹⁷⁵

In conclusion, this chapter intended to show why some EU Member States resettle relatively more refugees, while others do relatively less or not at all. Testing Bokshi's assumption that new resettlement countries tend to offer few resettlement places due to their limited knowledge and resources, the analysis revealed that Member States with long traditions of programmed resettlement are likely to perform better in resettlement, while those with *ad hoc* or recently established resettlement programmes are likely to provide few or no resettlement places. Notwithstanding the good practice of some EU Member States, the EU still falls short on resettlement at the global level. Therefore, it is evident that the European Union should increase its resettlement activities if it wants to live up to the seemingly highly valued principles of responsibility-sharing and solidarity *vis-à-vis* third countries by developing and supporting existing Member State resettlement programmes and involving those Member States which have not yet contributed to resettlement. Consequently, as suggested, there is a need to create a quota-based binding framework for resettlement, in accordance with the principle of fair, adequate and effective responsibility-sharing.

¹⁷⁵ Bokshi, *The Capacity to Do it Better*, 45.

Conclusion

This particular work argues that the EU practice is not in accordance with the principle of responsibility-sharing, furthermore it argues that there is a bias towards intra-EU responsibility-sharing that hampers the development of EU responsibility-sharing at the global level.

The research has discussed the diverse academic literature on the principle of responsibility-sharing and has highlighted some common elements, through the lenses of international relations and normative theories, how a *fair*, *adequate* and *effective* responsibility-sharing framework is perceived. Without aiming to establish an exhaustive measure of such system, the analysis has found that: a) *fair* responsibility-sharing takes into consideration some relevant criteria for allocation, such as a state's population, national wealth, integrative capacities and the number of refugees already enjoying protection as well as refugees' choices; b) an *effective* responsibility-sharing regime sets up an obligatory system that could potentially prevent the negative phenomenon of free riding and entails an access to meaningful protection in host states; c) an *adequate* system needs explicit pledges for resettling refugees in strong cooperation with UNHCR, aims to strictly meet UNHCR's projected resettlement needs and significantly boosts resettlement with traditional resettlement states inviting others to join.

Having highlighted these elements, the research examined it in the EU context and has found that the current EU practice is not in accordance with the principle. Through the analysis of the incorporation of the indivisible principles of responsibility-sharing and solidarity in the legal and political framework of the EU immigration and asylum policy, and by contrasting the internal and external dimensions of the EU responsibility-sharing, the research demonstrates that Member States seek to share responsibilities among themselves, rather than focusing on responsibility-sharing at the global level, hence the bias towards internal responsibility-sharing.

Furthermore, through the analysis of recent EU institutional discourse, it showed that these principles are highly valued in EU institutional discourse and that there have been increased Member State efforts to contribute to responsibility-sharing at the global level, yet the latest proposals still fell short of meeting a fair share of external responsibility, especially in resettlement. Therefore, the principal finding of the research in the EU context is that the direction of the EU discourse predominantly focuses on managing and tackling the root causes of forced migration and intercepting refugees and migrants at countries of transit and origin rather than on providing access to meaningful protection to refugees. Along with a bias in favour of internal-EU responsibility-sharing, this hampers the development of a fair, effective and adequate responsibility-sharing system in the European Union towards third countries.

Notwithstanding the modest EU resettlement activities, some Member States are among the largest resettlement countries in the world in terms of refugees resettled. Therefore, the research examined why some EU Member States resettle relatively more refugees – and hence take a larger share of responsibility – while others do relatively less or not at all. The most similar case study confirms the presumption that this discrepancy in the numbers of refugees resettled is the result of Member States with long traditions of programmed resettlement performing relatively better, while those with *ad hoc* or recently established resettlement programmes generally offering few or no resettlement places. Therefore, the research suggests that even if Member States recognize responsibility-sharing as a highly valued principle and show the political will to resettle, the current voluntary responsibility-sharing framework of the EU leaves large degree of discretion to Member States to decide whether to contribute.

This research therefore advocates a binding quota-based EU framework for resettlement in accordance with *fair*, *adequate* and *effective* responsibility-sharing. In order to achieve this, the research recommends that the EU should: a) develop a distribution framework among its Member States based on some relevant criteria, such as population, national wealth, integrative

capacities and the number of persons already enjoying protection as well as their choices; b) explicitly pledge for resettling refugees in strong cooperation with UNHCR; c) strictly aims to meet UNHCR's projected resettlement needs; d) enhance cooperation among its traditional and non-traditional resettlement Member States in terms of sharing resettlement experience and knowledge. Such a system should consequently enhance EU activities in resettlement which would undoubtedly result in the EU being a stronger global actor in refugee protection. However, as the research suggests, the development of a binding framework entails further policy harmonization of the EU asylum *acquis*, most importantly a uniform status of asylum within the EU, and mutual recognition of refugee and subsidiary protected status. Furthermore, addressing the gap in the academic literature that fails to contrast internal with external responsibility-sharing, the research suggests that the current focus on the former greatly hampers the development of the latter. However, there is a need for more nuanced research on the connection between these two activities, as at the moment it is conceivable that Member States make a choice between internal and external responsibility-sharing. More detailed research would quite plausibly shed light on how these two activities may complement and mutually reinforce each other. Therefore, the claim of this research is not one that recommends the EU to completely abandon its efforts to share the responsibility among its Member States. It is rather one that calls for a more balanced approach that not only recognises this principle, but also employs it in practice accordingly. This would certainly result in greater EU responsibility-sharing among Member States and towards third countries.

However, by the time this research was conducted, the Commission released its latest proposal in May 2015 related to migration and asylum, following the recent tragic events in the Mediterranean. This recent communication, which is beyond the scope of this analysis, further validates and strengthens the main findings of this thesis. In this proposal the Commission reinforce the principle of responsibility-sharing and calls for immediate actions in the areas of

migration and asylum. Among these actions, the Commission proposes to triple the budget for the EU joint-operations Triton and Poseidon and to expand their capacities to search and rescue operations. In terms of responsibility-sharing, the Commission proposes an obligatory quota system for both relocation and resettlement based on the following criteria covering all Member States¹⁷⁶: the size of population, total GDP, average number of spontaneous asylum applications and the number of resettled refugees per one million inhabitants over the period 2010-2014, and unemployment rate. Furthermore, the Commission makes recommendations for a single European pledge of 20,000 resettlement places.¹⁷⁷ This would – if adopted – greatly increase current EU efforts in resettlement activities (in 2014, EU Member States took pledges for 5,535 resettlement places).¹⁷⁸ Moreover, the Commission emphasises the need to examine a potential revision of the Dublin system and to further harmonise the asylum policies of Member States.¹⁷⁹ Therefore, it is noticeable that these points are in accordance with the findings and recommendations of this research.

While acknowledging the potentially positive impact of these proposals and the Commission's strong commitment to the principles of responsibility-sharing and solidarity among Member States and towards third countries, there are some dangerous caveats that are worth noting. First of all, the Commission's four-pillared proposal still puts the emphasis on addressing the root causes of irregular and forced displacement, the fight against smugglers and human trafficking, and border management. Second, the bias towards intra-EU responsibility-sharing also appears in the proposal (though to a much lesser extent than in previous EU

¹⁷⁶ However, as previously mentioned in chapter II.1, Denmark, Ireland and the United Kingdom may abstain from the proposed system due to their 'opt out' from EU policies on asylum, immigration, visa and external border controls.

¹⁷⁷ COM(2014) 154 final, Communication from the commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an open and secure Europe: making it happen, 2-14.

¹⁷⁸ UNHCR, *EU Resettlement Fact Sheet*.

¹⁷⁹ COM(2014) 154 final, 13-17.

institutional discourse). Notwithstanding this still inward-looking, exclusionary approach that focuses on tackling and preventing migration, rather than on providing better access to meaningful protection in Europe to those in need, it is conceivable that the communication proposes some crucial, potentially positive actions as well. However, it remains to be seen how the Council evaluates the communication in its meeting in June 2015. Creating a binding framework for the resettlement of refugees in the European Union in accordance with the principle of fair, adequate and effective responsibility-sharing should be a key priority for the EU to step up as a strong global actor in refugee protection. This research suggests that it is not only ethically desirable but it is politically feasible as well.

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