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Not in My Backyard: On the Morality of Responsibility-Sharing in Refugee Law

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I. Introduction

Dawid is an asylum seeker from Eritrea who fled his country of nationality, the country where he was born and raised and in whose army he served. Dawid inarguably meets the definition of refugee, given the particular merits of his case, which include evidence of a well-founded fear of being persecuted because of his membership in a religious minority and of his experience suffering extreme human rights violations in Eritrea. Like most of the tens of thousands of Eritrean asylum seekers, Dawid migrated from Eritrea to Sudan. Conflict stricken, impoverished and torn-up Sudan is both the country of origin of many refugees and a country of asylum for others. In Sudan, Dawid could expect to acquire a refugee status that is virtually meaningless: he would be expected to live in poverty in a refugee camp or elsewhere;

1 Hauser Research Scholar, New York University School of Law, 2008/9. Lecturer at Tel Aviv University School of Law. Fox International Fellow, Yale University, 2006/7. I wish to thank the many people with whom I discussed this paper, for their valuable comments: Prof. Eyal Benvenisti, Prof. Peter Schuck, Prof. Stephen Wizner, Prof. Hanoch Dagan, and Prof. James Hathaway. I would also like to express my gratitude to the participants of the Fox Fellows Workshop in Yale Center for International and Aerial Studies and the participants of the Exercise of Public Authority by International Institutions Workshop from the Max Planck Institute and Tel Aviv University.

2 Interview with Dawid, Tel Aviv, June 26th, 2008. Dawid eventually left Sudan for Egypt and then to Israel and is now seeking asylum in Israel, like a few thousand other Eritreans who escaped political or religious persecution, as well as draft evaders. I met Dawid in the course of my work in the Refugee Rights Clinic in the Tel Aviv University School of Law. Dawid is just one of many examples of the problem described and discussed in this article.

all-too rarely to find undocumented employment; to face restrictions preventing him from practicing his religious beliefs; and eventually to be under risk of refoulement to Eritrea. Close to 200,000 Eritrean asylum seekers were faced with a difficult decision of where to flee. For many morally-arbitrary and practical reasons, having to do with geographical proximity and with the fact that the Sudanese border is easier to cross, most of them ended up go to Sudan. Many of the other asylum seekers head to Ethiopia, a destitute neighboring country against whom Eritrea is waging a long and on-going ethnic conflict. A small minority flees to Italy, the former colonizer of Eritrea and a far wealthier option.

In other words, Dawid, like most asylum seekers, is likely to seek refuge in a neighboring country which is the least likely place for him to find substantive protection and the ability to exercise his human rights. Only a small percentage of refugees manage to get to countries which are sufficiently well-off to be in a position to provide them with adequate protection.

The story of Dawid exemplifies one of the most important questions in the context of refugees’ rights: when refugees leave their country of nationality, which country is responsible for protecting them and providing for them? It is generally undisputed that refugees are legally and morally entitled to at least some rights and that states have a legal and moral obligation to protect these rights. Despite this agreement, states generally prefer that refugees will seek asylum, rather than having refugees “in their backyard”. In other words, the disagreement begins when we ask the question, which state will be allocated responsibility, whose budget will bear the costs of protection and provision of socio-economic rights for refugees, and whose state will be asked to divert resources from securing the rights of its nationals in order to secure the rights of refugees.


5 According to UNHCR statistics, about 20,000 Eritrean refugees were living in Ethiopia in the end of 2007. See supra note 3.

6 About 7000 Eritrean refugees were present in Italy at the end of 2007, according to UNHCR statistics. See Supra note 3.
In a different context, David Miller discusses a comparable situation in which a person has collapsed on the street. Miller argues that the collapsed person is more likely to receive assistance if there is a single person, rather than several persons, passing by. This is true for several reasons, the most important of which, according to Miller, is that if there are several persons passing by, there is no clear allocation of responsibility, and it will not be the fault of any one person in particular if the collapsed person dies. The same is true with regard to refugees: while it is possible to provide explanations as to why State A has a moral responsibility to the refugees fleeing from State B, in a world multiple states, it is harder to account for and to allocate this responsibility. In a world of multiple states, State A would typically not be any more responsible for the flight of the refugees from State B than would States C or D.

There are three main reasons to consider the roles of States C and D, rather than just to assume that State A is responsible for providing for refugees, as noted by Daniel Steinbock:

First, refugees do not move evenly around the globe, both because refugee-producing events are concentrated in particular countries or regions, and also because most refugees cannot seek sanctuary far from their countries of origin. Second, despite the benefits individual refugees might ultimately bring, refugee-receiving countries regard refugees as an unwanted burden in just about every way imaginable. Third, countries vary widely in their ability to cope with refugees in their territory.

In this article I wish to examine the roles that States A, B, C and D should play in the refugees’ protection scheme. I will assume that the legal and moral obligations of states to refugees are substantiated.

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1 David Miller, Paper Presented to the International Symposium on Justice, Legitimacy, and Public International Law at the University of Bern: The Responsibility to Protect Human Rights (Dec. 15-17, 2006).
2 Id. at 4-5.
4 Id. at 985.
enough and will not elaborate on their moral\textsuperscript{11} and legal basis.\textsuperscript{12} The term refugee will be used loosely, and refer both to persons who are defined as refugees in the Convention and Protocol, as well as persons in refugee-like situations. In Section II, I will start by explaining why the protection and provision of assistance to refugees is a responsibility-sharing problem. In Sections III and IV I will turn to discussing the moral considerations which should lead to responsibility-sharing efforts in the context of refugee migration and then offer specific criteria to govern the allocation of responsibility to each country. In Section V I will attempt to explain the basis of responsibility-sharing in international law and international relations. I will also suggest, in Section VI, some theoretical models of how this responsibility-sharing

\textsuperscript{11} There are innumerable discussions of the nature and the source of the duty of states towards refugees, mostly from a distributive justice theory point of view, but also from a utilitarian perspective, a critical race theory perspective or a feminist point of view. See, for example, MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY 35-48 (1983); David Miller, Justice and Global Inequality, in INEQUALITY, GLOBALIZATION AND WORLD POLITICS 187, 188 (Andrew Hurrell and Ngaire Woods eds., 1999); Jules L. Coleman & Sarah K. Harding, Citizenship, the Demand of Justice and the Moral Relevance of Political Borders, in JUSTICE IN IMMIGRATION 18, 38 (Warren F. Schwartz ed., 1995); Joseph Carens, Immigration, Welfare and Justice, in Justice in Immigration 1 (1995); Joseph Carens, Aliens and Citizens: The Case for Open Borders, 49 REVIEW OF POLITICS 2; THOMAS POGGE, WORLD POVERTY AND HUMAN RIGHTS: COSMOPOLITAN RESPONSIBILITIES AND REFORMS 104 ff. (2002); Howard F. Chang, The Economics of International Labor Migration and the Case for Global Distributive Justice in Liberal Political Theory, 40 CORNELL INTERNATIONAL LAW JOURNAL 12-17 (2007); etc. I will elaborate on these discussions in part III of this article.

can be conducted. Finally, I will discuss the institutional aspect of responsibility-sharing, explaining which institutions could play a role in regulating responsibility-sharing and what their potential role could be.

II. Protecting and Providing for Refugees: a Problem of International Responsibility-sharing

The immigration of refugees imposes a responsibility on host societies. This type of immigration is uninvited, often unwelcome and carries a high price. Refugees require the state that is allowing their immigration to expend resources on them, which is necessary when admitting new immigrants and ensuring their assimilation (providing them with housing, jobs, education etc.).

The states from which refugees originate are essentially creating an externality that is borne by the states that allow the immigrants to enter their borders. When citizens cannot be provided for in their home states, they seek to be provided for elsewhere. Therefore, the policies or natural conditions of the home states of refugees create a cost that is not internalized by the state itself, but rather is borne by other states. Unlike other externalities produced by states, this externality has critical long-term social consequences for the countries baring it. These consequences serve as a justification for the urgent need to solve the problem of the externality or, at the very least, to minimize its burdens.

Usually, there is no particular moral justification as to why State A – and not States C or D – should bear the externality of the refugees of State B. This is, of course, after we have established the fact that States A, C, and D, as part of the international community, hold a

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13 In most of the existing discussions about this issue in the context of refugees or immigrants, the term that is used is not “responsibility-sharing,” but rather “burden sharing.” I chose not to use the latter term as I find it potentially offensive to refugees and immigrants, as it reduces them and their migration to the level of a burden. For a discussion of this term, see Gregor Noll, Risky Games? A Theoretical Approach to Burden Sharing in the Asylum Field, 161 Refugee Stud. 236, 237 (2003).
duty to assist the members of State B when State B cannot do so by itself. However, more often than not, most refugees from State B will end up migrating to State A rather than States C or D for a number of reasons: it is easier to immigrate to State A; State A is closer to State B and, therefore, requires less in terms of transportation expenses; there is already an existing community of State B’s immigrants in State A, which might assist in the immigration; there is a cultural, religious, lingual, or other link that connects State B’s refugees to State A, and so on.\footnote{16}

In a sense, it is often accurate to state that State A is forced to allow the immigration of the refugees of State B due to an externality of States C and D. States C and D implement a policy, either intentionally or unintentionally, which does not allow the entry of or does not attract immigrants from State B, causing them to seek entry into State A.

Another way to frame the dynamics between States A, C, and D is a “chicken game.”\footnote{17} As immigration occurs throughout the world, most states hope that other states will allow entry to the immigrants and provide for them. The second best option for most states is that all the states will cooperate and distribute responsibility for the immigrants in a fair manner. The least preferable option for most states is that the state will have to bear responsibility for the immigrants by itself. In this “chicken game,” State A, which is usually the preferred destination of the immigrants, is likely to try to signal the other states that it has no intention of providing for the immigrants, through restricting entry and refraining from supplying provisions. This could potentially, in turn, lead to “a race to the bottom,” and create incentives for States C and D to apply more restrictive measures.\footnote{18}

Interestingly, on many occasions, State A is not much better off


\footnote{18 It should be noted that there may be circumstances in which states do not have such incentives. For example, states may not have such incentives if they wish to obtain or maintain a reputation of adhering to the principles of human rights.}
than State B, and, even more often, State A is not in better shape than States C or D. Most refugees immigrate to poor and unstable neighboring countries, imposing an additional burden on their politics and economies. This burden could be potentially devastating to the economic and political systems of some countries, especially given the fact that refugee crises may arise suddenly but are vast in scope. For example, crises in Africa, Asia, and Latin America resulted in a mass influx of immigrants from one poor country in turmoil to another poor country in turmoil. The result is that the least economically and politically capable countries have to provide for the neediest immigrants and to share the greatest part of the responsibility with respect to them. This trend is coupled with the trend of Western countries to toughen their immigration and asylum laws.

Immigration of refugees to impoverished countries carry a societal and political price. Uneasy feelings, which may amount to xenophobia, sometimes arise among the citizens of the host states because of the uneven distribution of the responsibility. Additionally, immigration of refugees sometimes raises security concerns in the host states and has a negative impact on both the countries and the refugees, who are unable to enjoy sufficient access to resources or to realize their rights. Perhaps one of the most striking examples of such a case is the immigration of hundreds of thousands of people from Rwanda to Tanzania, causing much political instability and additional poverty, and raising security concerns in Tanzania.

19 However, this situation could change in the future as globalization is spreading and as it gets easier and cheaper to move from one place to the other.


23 Suhrke, supra note 15 at 397. Suhrke argues that by toughening their immigration laws, Western countries are actually free-riders. (pg. 400 ff.)


Under the current legal regime, it is almost impossible to “correct” the unevenness of the responsibilities imposed by initial refugee flight patterns and to improve one’s situation through secondary movements. Refugees are expected to find refuge and to settle in the first country to which they move. The motivation behind this policy is to prevent refugees from “asylum shopping,” with the underlying assumption being that “shopping” for one’s favorite country is inconsistent with the notion of fleeing out of fear for one’s life and that a person fleeing for her life would go to the first available state to ask for asylum. Also, this mechanism was used to contain refugees in neighboring countries to their countries of origin, which are in most cases developing countries, and to prevent them from imposing on developed countries. Refugees who move to a third country may be questioned as to why they did not find refuge in the last country, and they may risk rejection of their request for asylum in that third country. Therefore, although immigrants might end up in State A for no morally compelling reason, States C and D are likely not to perceive themselves as responsible in any way for the well being of the immigrants. Responsibility will be placed on State A, which will be forced to engage in a relationship with the people of State B, while States C and D will be left out of the responsibility-sharing obligation.

I would like to argue that the responsibility of protecting and providing for refugees must be solved through the cooperation rather than become the problem a more than just a few random states. Responsibility for the well being of refugees must be internationally shared. Sharing responsibility is not only more fair and just, but it would also be beneficial to world order and would help states plan their immigration policies. Also, refugees would benefit from this planning.

http://www.rsc.ox.ac.uk/PDFs/workingpaper4.pdf (last visited February 7, 2007). Other current examples are the flight of Sudanese refugees to Chad, which resulted in the spillage of the conflict from Sudan into Chad and devastated Chad’s economy.


as it is likely to achieve a more organized system of protection for them, and offer them a more substantial protection. In the following sections I will describe the relevant moral and legal basis for this argument.

III. The Morality of Responsibility-sharing Between States in the Context of Refugee Migration

Despite the fact that there are innumerable moral discussions about the duty of states towards immigrants, there are relatively few and brief discussions about the morality of responsibility-sharing between different states in the context of immigration. Responsibility-sharing between states has been dealt with mostly in economic terms, as a collective action problem or a public goods distribution problem.\(^{28}\) It seems that there are two reasons for the lack of moral discussion about this issue: first, it is almost too obvious to assert that it is morally better and more fair for states to cooperate and share burdens and not just to impose burdens on certain states in an arbitrary way; second, it is unlikely that states would be willing to formalize a responsibility-sharing mechanism,\(^{29}\) and, therefore, the discussion of the morality of responsibility-sharing is expected to have relatively little effect. Consequently, most of the schools of thought and scholars that contributed to the discussion of justice in immigration, have not deal with the question of this responsibility. However, it is possible to extrapolate from their general position what their stance on this issue would be. I will attempt to explain the moral foundations of responsibility-sharing, according to a few schools of thought,


\(^{29}\) See, e.g., Miller’s claim that “the best we can hope for is that informal mechanisms will continue to evolve which make all refugees the special responsibility of one state or another” in David Miller, Immigration: The Case for Limits, in CONTEMPORARY DEBATES IN APPLIED ETHICS, 193, 203 (Andrew I. Cohen & Christopher Heath Wellman eds., 2005).
I: Feminist Critique of International Law and Ethics of Care

The notions of the feminist critique of international law shed light on the issue of responsibility-sharing in refugee law. The basic argument of the feminist critique is that international law concepts that appear unrelated to gender and overall neutral, such as states, boundaries, and sovereignty, are actually very male-oriented and have a serious impact on women. As Charlesworth, Chinkin, and Shelley Wright note,

A feminist account of international law suggests that we inhabit a world in which men of all nations have used the statist system to establish economic and nationalist priorities to serve made elites, while basic human, social and economic needs are not met. International institutions currently echo these same priorities.  

Although the feminist critique of international law encompasses a wide variety of views, I will refer specifically to the ethics of care approach, as it is the most relevant to this point. The ethics of care approach is based on psychological research performed by Carol Gilligan, who analyzed the problem-solving attitudes of women and men in the hopes of determining whether women have a different “voice” – or approach – than men. Gilligan concluded that females apply an ethics of care approach and perceive things in terms of relationships, responsibility, caring, context, and communication. Males, however, apply an ethics of rights or an ethics of justice approach, which leads them to perceive things in binary terms of right and wrong, fairness, logic, rationality, and winners and losers, without taking into account context and relationships.

While the ethics of care approach seeks to improve our understanding of the problem-solving attitudes and “voices” of women, it has also served as a basis for the promotion of women’s interests. Additionally, the ethics of care approach has served as a call to

31 Carol Gilligan, In a Different Voice: Psychological Theory and Women’s Development (1982).
32 Id. at 64-74.
recognize the validity and potential of that “different voice,” as the ethics of care approach is often more appropriate and more moral than the ethics of rights approach. In the context of international law, the general promotion of the ethics of care approach has far-reaching consequences with respect to women, including refugee women, but also with respect to other subordinate groups and international law and its fundamental concepts. Indeed, this approach has been used to critique and analyze various phenomena in international law and international relations such as the treatment of third world countries, colonialism, sovereignty, transnational institutions, international norms and norm-making processes, and so on.  

In the context of immigration, the ethics of care approach supports a view that diminishes the male-like “us” and “them” binary distinction between citizens and aliens. This approach also rejects a strong understanding of sovereignty and nationalism and points to the fact that the countries of the world are interrelated and interconnected. Instead, the ethics of care embraces a more humanist-oriented approach. Consequently, this approach supports a “relational” attitude to immigrants, objects criminalizing most kinds of immigrants, and requires offering them protection, especially when it comes to vulnerable immigrants, such as refugees and persons in refugee-like situations. The ethics of care approach supports these positions both as a general policy recommendation and because women constitute a large – and often unheard and undocumented – group of immigrants. The ethics of care approach acknowledges the fact that much like no child can survive without care, some immigrants also cannot

33 For an overview of the “ethics of care” approach to international relations, see Fiona Robinson, Methods of Feminist Normative Theory: A Political Ethic of Care for International Relations, in FEMINIST METHODOLOGY FOR INTERNATIONAL RELATIONS 221 (2006).
34 ANN TICKNER, GENDER IN INTERNATIONAL RELATIONS 64-65 (1992).
35 On the need for further protection of women in refugee law, see e.g., Amy M. Lighter Steill, Incorporating the Realities of Gender and Power into U.S. Asylum Law Jurisprudence, 1 TENN. J. L. & POL’Y 445 (2005).
36 Saskia Sassen, Is This the Way To Go? – Handling Immigration in a Global Era, 4 STAN. AGORA 1 (2003). Although Sassen does not refer specifically to the “ethics of care” approach, it can be inferred that she uses this approach. On the role of women in immigration law, see Nancy Ann Root & Sharyn A. Tejani, Undocumented: The Roles of Women in Immigration Law, 83 GEO. L.J. 605 (1994).
survive without care in some circumstances. In so doing, this approach challenges myths of self-sufficiency. From this conclusion derived the responsibility of states to protect refugees and provide for them.

Feminist theorists of the ethics of care approach would perceive the responsibility-sharing debate to be erroneous in the context of refugees in that it maintains the “us” versus “them” binary distinction, rather than looking at the responsibilities of all states for the world’s immigrants. Rather, it argues for a “softer” perception of states as units for the redistribution of wealth. In fact, these feminists would claim that this discussion distances countries that receive immigrants, the Northern sphere, from the immigrants’ countries of origin, the problematic South, without acknowledging the North’s large share of responsibility for the environmental, economic, and political destabilization of the poorer states in the South. The responsibility, they would argue, need not be divided between states in a mathematical manner using harsh criteria, but rather it should be shared by states in a more generous and flexible manner.

2. Utilitarianism

Additional insights regarding the importance of responsibility-sharing could be reached from a utilitarian perspective. The utilitarian point of view measures the moral value according to whether it increases – or decreases – the total amount of utility. According to this school of thought, utility is likely to increase in the most significant manner if states cooperate. In other words, cooperation could lead to a responsibility-sharing regime under which the responsibility for each refugee would be borne by the state whose utility declines by the least as a result. Generally speaking, due to the cost declining marginal benefit principle, accumulative utility will, in

37 Although not in the context of immigration, this issue is explored in Virginia Held, Draft Paper in Yale Legal Theory Workshop on Terrorism and Military Intervention (Feb. 1, 2007).
38 Robinson, supra note 33 at 221.
40 Thielemann, supra note 28.
fact, increase due to a fairer regime of responsibility-sharing in refugee protection.\textsuperscript{41} This is also, as Joseph Carens puts it, due to “the utilitarian commitment to moral equality is reflected in the assumption that everyone is to count for one and no one for more than one when utility is calculated.”\textsuperscript{42}

From a utilitarian point of view, one potential problem with immigration is “the tragedy of the commons” problem. If responsibility for protection of refugees is shared, then a country’s incentives to improve its economic situation will be affected, as such improvement may entail having to shoulder a more significant portion of the responsibility for refugees. This might affect incentives of individuals to contribute to their state, which might, in turn, affect the utility.\textsuperscript{43}

However, research has demonstrated that states should have incentives to agree to increase their share of the responsibility, for reasons related to income increases. Even without considering the income increase of new immigrants, there is reason to expect an income increase for the natives of the state to which these immigrants arrive.\textsuperscript{44}

\textsuperscript{41} Economic research has been inconclusive regarding the economic effects of immigration. See George J. Borjas, Issues in the Economics of Immigration 2 ff. (2000). It seems that if we take other factors that are not strictly economic in nature into account, then we will reach the same inconclusive results.

\textsuperscript{42} Carens, Aliens and Citizens, supra note 11 at 263. This commitment to principles of equality leads Howard F. Chang to the conclusion that discrimination between non-citizens and citizens is as morally unjust as, for example, discrimination between African-Americans and whites. Howard F. Chang, The Economics of International Labor Migration and the Case for Global Distributive Justice in Liberal Political Theory, 40 CORNELL INTERNATIONAL LAW JOURNAL 12-17 (2007).

\textsuperscript{43} This is comparable to similar efficiency arguments that are made in the context of property law theory and particularly with regards to domestic takings law. In the context of takings law, it has been argued that full compensation is crucial for providing incentives for owners to invest in their property. The concern is that giving people a share of someone else’s property through takings law without fully compensating the property owner will discourage people from investing in their private property as they will fear losing it to others (who, in turn, did not invest). However, research shows that full compensation does not provide as much of an incentive as a progressive compensation regime does. Hanoch Dagan, Takings and Distributive Justice, 85 VA. L. REV. 741, 749 ff. (1999). Compare also Ronald Dworkin, Sovereign Virtue 328-330 (2000).

\textsuperscript{44} Chang, supra note 42 at 4-5; Chandran Kukathas, The Case for Open Immigration, in Contemporary Debates in Applied Ethics 207, 212 (Andrew I. Cohen & Christopher Heath Wellman eds., 2005).
The only negative effects of immigration are on the income of low-wage native employees, and these negative effects can be corrected through distributive measures, such as taxation.\textsuperscript{45}

It should be noted, however, that although maximizing utility is an important consideration in immigration debates,\textsuperscript{46} I believe that other political and moral considerations should also be taken into account when forming immigration policies.

\textbf{3. Distributive Justice Theory}

Finally, a more complex analysis of the significance of responsibility-sharing in the context of refugees is likely to arise in discussions led by distributive justice theorists. Since there are countless discussions on immigration and distributive justice, I will focus on the analyses that are most complex and highly relevant to responsibility-sharing.\textsuperscript{47}

One interesting approach would be that of the \textit{cosmopolitan egalitarianism}. The roots of cosmopolitan egalitarianism can be traced back to the writings of John Rawls. Rawls puts forth an original position in which the foundations of just social institutions are formed. These social institutions are characterized by the fact that their decisions are made in “a fair procedure so that any principles agreed to will be just.”\textsuperscript{48} According to Rawls, parties should be situated behind

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\item[\textsuperscript{45}] A comprehensive discussion of the measures of the redistribution of income and other profits between high-wage native employees, immigrants, and the low-wage native employees is beyond the scope of this paper. For such a discussion, see Howard F. Chang, \textit{Liberalized Immigration as Free Trade: Economic Welfare and the Optimal Immigration Policy} 145 U. PA. REV. 1147 (1997). The concern that is sometimes raised that increasing the share of responsibility and admitting more immigrants will impose a greater burden of taxation can be refuted by the fact that immigrants will also be taxed on their income as soon as they are employed in their state of immigration. Additionally, the burden of taxation does not have to be increased if immigrants are not fully integrated into the welfare system of the state.
\item[\textsuperscript{47}] For additional discussions on distributive justice aspects of immigration, which coincidentally touch upon responsibility-sharing issues, see also, e.g., Walzer, \textit{Supra} note 11 at 46-48; Coleman & Harding, \textit{Supra} note 11 at 38; Seyla Benhabib, \textit{The Rights of Others: Aliens, Residents and Citizens} 9-10 (2004).
\item[\textsuperscript{48}] John Rawls, \textit{A Theory of Justice} 136 ff. (1972).
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“the veil of ignorance,” unaware of their own traits, so that they cannot be biased by self-interest when deciding which option is more just. The parties have no knowledge of morally arbitrary factors, such as class, status, ability, political situation, and so on. However, they do have a basic knowledge about the key characteristics of the society and culture (but no knowledge about the implications of those on themselves). Rawls claims that these conditions would guarantee just resolutions as they screen out all the morally arbitrary elements from the decision-making process. When choosing between alternatives in the original position, parties that are behind the veil of ignorance are expected to apply the “maximin rule for choice under uncertainty.” In other words, parties will “adopt the alternative the worst outcome of which is superior to the worst outcome of others.”

In this original position put forth by Rawls, two principles of justice are bound to be constituted. The first position is that “each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.” The second position is that “social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”

Although Rawls did not mean for this notion of justice to be applied internationally, his ideas were developed by the cosmopolitan

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49 Id. at 152 ff.
50 Id. at 60 ff.
51 Rawls applies his principles of justice within a “self contained national community”, meaning a national community which is territorially defined by borders and is self-sufficient. Id. at 457 ff. Rawls tries to distinguish states from peoples in a manner that I find rather unconvincing, which I do not want to dwell upon. It should be noted that Rawls seems to think that “peoples have a duty to assist other peoples living under unfavorable conditions that prevent their having a just or decent political and social regime.” Rawls, id. at 37. Thus, well-ordered societies have the duty to help burdened societies in their attempt to become well ordered. However, it does not appear as though Rawls believes that a transfer of wealth from wealthier societies to poorer societies should take place. For a detailed critique of Rawls’ position, see e.g., Wilfried Hinsch, Global Distributive Justice in GLOBAL JUSTICE 54, 62 (Thomas W. Pogge ed., 2001). Other philosophers support the above-mentioned conclusion that there is no justification for applying standards of justice in the global sphere given the absence of global governance. Nevertheless, much like Rawls, they maintain that this should not be interpreted as supporting “ethical egoism,” and they do support offering some form of humanitarian assistance (whether provided by governments or by international NGOs) to minimize global poverty, regardless of questions of our conception of justice. See:
egalitarianists, who argue it can serve as the basis for a claim that since nationality is a morally arbitrary trait behind the veil of ignorance, states have the same compelling duty towards non-citizens as they have towards their own citizens. This theoretical paradigm can also serve as the basis for a claim for open borders and cosmopolitan egalitarianism. They claim that states interact in the most significant ways, especially in terms of economy and commerce. If states are not perceived as “self-contained” as Rawls puts it, then there is some justification for thinking of an international original position, which is similar to the one described by Rawls above in which the same principles of justice apply. Therefore, wealth should be distributed in the international sphere in a manner that maximizes the benefit of the least well-off persons and states. As such, this point of view is a sophisticated twist on egalitarianism, protecting substantial, rather than formal, equality.

In the context of responsibility-sharing, the cosmopolitan egalitarianists would support a responsibility-sharing regime that works to the advantage of the least well-off countries and the least well-off refugees. According to this school of thought, which identifies a “veil of ignorance,” states which are not aware of the risk that they will be forced to deal with the consequences of disasters in another state will likely promote and contribute to responsibility-sharing.

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52 I refer in the following paragraphs mostly to the ideas of two of the most prominent scholars within this school of thought, Charles Beitz and Thomas Pogge. For others discussions of the application of distributive justice in the global sphere, see e.g., Joseph Carens, *Immigration, Welfare and Justice, in Justice in Immigration* 1 (1995); Joseph Carens, *Aliens and Citizens: The Case for Open Borders, 49 Review of Politics 2.*


55 Compare this with the idea of insurance introduced by Dworkin, *supra* note 43 at 331-340. Dworkin discusses the possibility of insurance as a substitute for welfare policies, although his discussion is entirely unconnected to immigration. The decision to take out insurance is made without awareness of the actual risk to one’s employment, only with respect to one’s fears and willingness to take risks. The idea of insurance can be applied at the international level – each country will decide how willing it is to face the risk of a mass influx of immigrants, but it will not know whether there is any chance
David Miller offers a rather different take on responsibility-sharing as a distributive justice problem. His discussion of responsibility-sharing is general and not in the specific context of immigration, but offers rather concrete guidelines to responsibility-sharing. He calls this a problem of remedial responsibility and argues that:

[A]gents should be held remediary responsible for situations when, and to the extent, that they were responsible for bringing those situations about. … [W]e look to the past to see how the deprivation and suffering that concern us arose, and as we establish that, we are then able to assign remedial responsibility.

Miller believes that the moral responsibility, rather than the causal responsibility, of the agent for the deprivation and suffering should affect the assignment of remedial responsibility. For example, a specific state should assist refugees if it contributed to their situation, either actively or by refraining from taking positive action.

Additionally, Miller believes that remedial responsibility should be assigned to a specific agent based on the capacity criterion, which entails assigning responsibility for ending a morally concerning situation to the agent that can best bring it to an end. In the context of refugees, Miller would therefore argue that the most appropriate state to bear the responsibility of assisting these immigrants is the one that has the best capacity to do so. Since the capacity criterion is both complex and problematic in the way in which it creates incentives, Miller

of this risk actualizing. Japan, which values its social homogeneity, likely will be willing to pay more to insure itself against migrants. Israel, which values its Jewish character, might do the same. Other countries might not. For other discussions on the concept of insurance in the context of responsibility-sharing see, e.g. Thielemann, supra note 28.

56 The rationales behind the principle of remedial responsibility are somewhat similar to those of tort law. David Miller, Distributing Responsibilities, 9(4) J. OF POL. PHILO. 453, 455 (2001).
57 Miller explains that moral responsibility is a concept that is sometimes narrower and sometimes broader than causal responsibility. See id. at 457.
58 Often it is difficult to draw the line as to what constitutes moral responsibility. See id. at 457-459.
59 Id. at 460-461.
60 Id. at 460-462.
suggests applying this principle only after identifying those agents that have a special responsibility for the suffering, in order to determine who would ultimately bear the responsibility.\footnote{Id. at 462.}

Miller also offers an additional principle according to which responsibility should be assigned to a particular state. Under the communitarian principle, Miller assumes that agents feel a greater sense of responsibility towards those with whom they share communal ties, as compared to those with whom they do not share communal ties.\footnote{Id.} In the refugees context, Miller recognizes that this principle cannot be used for all responsibility-distribution purposes because there may be occasions in which no specific agent has communal ties with the entity suffering from deprivation and suffering, and there may be occasions in which an agent with no communal ties may be the only one in a position to assist. Additionally, this principle does not help in determining who is in the best position in a community to be held responsible.\footnote{Id. at 463.}

In order to determine which agent or agents should bear the remedial responsibility, Miller suggests that, in any specific situation, we should weigh the various above-mentioned considerations in order to determine which carries more weight.\footnote{Id. at 468.}

\section*{IV. Criteria to Determine the Division of the Responsibility}

Following the above-mentioned moral considerations, and in particular those mentioned by David Miller, the question before us is: how should the responsibility be apportioned between states? Several criteria are relevant to this determination. In the section below, I will review the main criteria, explaining why I believe these are the central considerations for responsibility-sharing. Interestingly, these considerations are very similar to the considerations that affect the scope of the duty of the state to accept immigrants mentioned in Chapter One.

Perhaps the most important criterion in determining
Responsibility-sharing is what I would like to call the country’s absorption capacities, which is, by and large, a socio-economic criterion. By absorption capacity I mean the ability to endure additional responsibility, in a way which, from a functionalist point of few, will not stir the state and will not radically or dramatically influence its economy. This is an umbrella term that can be measured using an accumulation of indicators such as the Gross National Product (GNP) or average life expectancy; demand for employment; land reserves; etc. A country that lacks financial resources, widespread unemployment or scarcity in land resources – as could be measured by the above-mentioned indicators – is likely to be unable to provide for its own citizens, and obviously will not be able to provide for additional persons.

In many cases, it is possible to draw a correlation between the general willingness of states to allow immigration or to extend foreign aid and their absorption capacity. Countries such as Canada or Australia, whose absorption capacities are high given a multitude of land reserves, a demand for labor and a high GNP, have demonstrated interested in receipt of additional immigrants. Accordingly, they can be assigned a large share of the responsibility for the protection of refugees.

It should be noted that using a country’s absorption capacity as a consideration for responsibility-sharing follows the same logic as the implementation of a relative or progressive taxation system.

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65 This consideration relates well to David Miller’s capacity criterion, because a state’s capacity to take in immigrants is closely connected to its economic capabilities. See the discussion about the capacity criterion in Section III.3, above. In some cases, this may also be connected to the moral responsibility criterion if the GNP has risen as a result of the exploitation of the states of origin of the refugees in a way that resulted in their immigration. See also the discussion about the moral responsibility criterion in Section III.3, above.

66 These are the two economic criteria that are often mentioned in the scholarly writing in the context of factors according to which responsibility-sharing should be determined. However, these are not the only factors that can be thought of. Other examples of economic criteria are population density and the quality of the environmental infrastructure. See Jonathan Seglow, The Ethics of Immigration, 3 POL. STU. REV. 317, 330 (2005).

67 Grahl-Madsen referred to this as the “refugee per GNP” criterion. Atle Grahl-Madsen, Ways and Prospects, 21/30 AWR BULL. 278 (1983). See also Noll, supra note 13.
A consideration that dominates today the answer to the question which country should bear the responsibility of providing for refugees is geographical proximity. Currently, geographical proximity largely influences the distribution of the responsibility of providing for refugees. A geographically proximate country is likely to be the first country of asylum, and, as such, it is likely to have to provide for many refugees who arrive at its borders. This practice in itself is not sufficiently morally justifiable. Geographical proximity is only a viable consideration if we assume that neighboring countries generally tend to have some sort of special solidarity bonds between them. This assumption is oftentimes true, since in many cases neighboring countries are members in regional organizations and parties to regional covenants.68 This connects well with Miller’s above-mentioned communitarian principle.69 However, it is not always the case.

However, the underlying logic behind this criterion should not be geographical proximity, but rather special solidarity bonds. Special solidarity bonds do not always exist between neighboring countries and may exist between geographically distant states. For example, these bonds may exist between post-colonial governing countries and their colonies,70 states with strong financial or cultural ties, and countries that are otherwise in an alliance.

68 As I will demonstrate in the following Sections of this Chapter, the geographical proximity consideration is a main consideration for the proposal made by James C. Hathaway & R. Alexander Neve in Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection, 10 HARV. HUM. RTS. J. 115. It should be taken into consideration that in many cases neighboring countries in no way share a bond of solidarity. For example, the State of Israel is surrounded by enemy countries and does not belong to any of the regional bodies or covenants. In such cases, the mere fact of geographical proximity should not be a consideration to impose responsibility on the state.

69 See the discussion about the communitarian principle in Section III.3, above.

70 Jurgen Habermas argues in his article Struggles for Recognition in the Democratic and Constitutional State in MULTICULTURALISM 107, 141 (A. Gutmann ed., 1997), that First World states have an obligation to absorb Third World immigrants as a way of making up for the evils of colonialism. This also connects to Miller’s moral responsibility criterion (see Section III.3, above), to the extent that the occupying states are morally responsible for the immigration of refugees. The special connection of asylum seekers and the former colonizer is also apparent from the example given in the introduction to this article: many Eritreans flee to Italy, which colonized Eritrea in the past.
An additional criterion for determining which country should bear all or a large part of the responsibility of providing for refugees is whether the country has any responsibility for their immigration. Responsibility may be attributed to a state when it has a special exploitative relationship with the state of origin of the refugees. For example, if one state uses the natural resources or work-power of another state in an exploitative manner, which results in the immigration of refugees. Such a case would connect with Miller’s moral responsibility and causal responsibility criteria. This way, the exploiting state would internalize the costs of its exploitation. Furthermore, if a state is responsible in some other way for the immigration of refugees, then it should also bear the responsibility of providing for them. This could happen when, for instance, a state negligently pollutes the air, water, or land of another state and causes the immigration of persons in a refugee-like situation due to the ecological damages. Much like in the case of exploitation, the state should bear the costs of its actions and provide for the refugees.

It should be noted that this consideration could be applied to impose responsibility on states of origin, when their oppressive, harmful or negligent policies are the cause of the immigration of refugees to other countries.

In this context, it is also important consider the effect of the responsibility-sharing regime on the incentives of countries of origin. For example, more generous protection policies (which might be the outcome of a better responsibility-sharing regime) could, in some socio-political circumstances, create incentives that fall short of encouraging State B from deploying more efficient policies or more just rules of resource distribution. Similarly, it could be argued that policy-makers should take into consideration the effects of responsibility-sharing modalities among receiving states on the incentives and behavior of the state of origin. For example, these modalities could try to incorporate the state of origin as one of the states shouldering part of the costs and burdens involved. I will deal with this concern in section VI.5. of this article, below. We might consider a related scenario, in which, under a generous protection regime, states of origin might create policies

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71 Miller, supra note 11 at 204-209.
72 See the discussion about causal/moral responsibility in Section III.3, above.
designed to cause mass flight, as a means of putting pressure on the receiving state(s). Responsibility-sharing mechanisms should create incentives to prevent such behaviors.

Other criteria have to do with cultural and ethnic considerations. Some countries might claim that they are so culturally distinct, maintain a specifically-intended demographic structure or are so homogenous that they have a low assimilation rate for foreigners or that their special cultural or ethnic characteristics should be protected from foreigners. This set of criteria is connected to Miller’s capacity criterion,\(^{73}\) as the cultural and demographical profile of a state is closely related to its ability to assimilate immigrating refugees. However, it is difficult to compare the capacities of different states since these are very abstract considerations, and, accordingly, it is difficult to form policy recommendations based on this set of criteria. A theory should be developed as to when a country’s cultural claim is justified and when it should be rejected;\(^{74}\) however, this is beyond the scope of this project.\(^{75}\)

On the other hand, if a specific group of refugees has some ethnic or cultural affinity towards a particular state, then it might be justifiable to require that state to take a larger share of the responsibility.\(^{76}\)

To sum up, it seems that a fairer responsibility-sharing system of criteria should replace the current arbitrary distribution of responsibility. As I mention above, in the majority of cases, the most important criterion according to which responsibility should be distributed is wealth-related, since providing for refugees is perceived mainly as a serious economic burden. Yet wealth is not the only consideration. I attempted to offer a concise list of criteria that should

\(^{73}\) See the discussion about the capacity criterion in Section III.3, above.

\(^{74}\) It should also be noted that this set of criteria might contradict with the egalitarian cosmopolitan approach. See Section III.3, above.

\(^{75}\) Peter H. Schuck uses the example of Japan in his writing, without judging the moral force of the Japanese tendency to close its borders to refugees. See Schuck, supra note 21 at 270 ff. The immigration policy of Israel, which allows almost only Jewish people to immigrate, was subject to much theoretical debate. See, e.g., CHAIM GANG, THE LIMITS OF NATIONALISM (2004). See also Dworkin, supra note 43.

\(^{76}\) Matthew Gibney mentions that in cases of ethnic affinity between the state and the immigrants, the state will not be too reluctant to allow the immigrants to enter, even if it will have to bear some economic price. See Gibney, supra note 24 at 216-19.
be considered when a responsibility-sharing regime is formed, elaborating on Miller’s general criteria. Over all, wealthier countries with a stronger absorption ability should bear more of the responsibility than poorer countries; countries that have a specific bond of solidarity with the countries of origin of the immigrants should bear more of the responsibility than those who do not; and countries that are responsible for the immigration should be required to internalize at least some (if not all) of the costs of providing for the immigrants. As Miller concludes, the different considerations should be applied simultaneously and weighed and balanced one against the other. Criteria should be applied in a flexible manner and generous, through negotiation and discussion, rather than in a mathematical, strict or imposed way. 77

V. Responsibility-sharing in International Law and International Relations

Let us move from the discussion of moral aspects of responsibility-sharing to the more legal and practical aspects of the problem. Although moral discussions on the issue of responsibility-sharing are rare, international law does deal with it to some extent, albeit in rather general terms. The need for responsibility-sharing was addressed in several international law contexts, including pollution, climate change, security and peace-keeping, and even specifically in the context of immigration. 78 The international law norms dealing with responsibility-sharing determine its general principles, but almost always refrain from outlining the specifics of the responsibility-sharing regime, leaving it to the states to determine the important considerations and responsibility-sharing mechanisms.

The general notion of responsibility-sharing as a fundamental principle in international relations that is necessary for promoting economic improvement conforms to Articles 55 and 56 of the Charter

77 See Section III.1. above.
of the United Nations. Article 55 specifies the commitment of the member states to the promotion of “higher standards of living, full employment and conditions of economic and social progress and development.” Article 56 includes the pledge of the member states “to take joint and separate action in co-operation with the organization” in order to achieve this end. These principles have been further elaborated on in the Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations, 79 the International Convention on Economic, Social and Cultural Rights, 1966, 80 and in the Declaration on the Right to Development, 1986.81

The importance of international responsibility-sharing was recognized with respect to refugees in the preamble to the 1951 Convention Relating to the Status of Refugees.82 The key principle of the Convention, the principle of non-refoulement,83 prevents states from deporting persons to other countries where their lives, physical safety, or freedom would be at risk. This principle could, in fact, be viewed as forcing negotiations on responsibility-sharing because it puts states in a situation in which they are unable to “dump” refugees in another country.84 Some additional efforts were made to promote agreements on responsibility-sharing regarding specific refugee crises, however they were unsuccessful as there were not enough incentives to cooperate and the agreements were not enforced.85 This seems to be the result of the fact that some countries would oftentimes prefer to have stricter asylum laws, which would lower the responsibility for assisting refugees that is

82 189 U.N.T.S. 150, entered into force April 22, 1954 ("Convention").
85 Schuck, supra note 21 at 272.
placed on them (and increase the responsibility on another country), instead of cooperating with other states and sharing that responsibility.

Currently, despite the rhetoric of many governments and international organizations, in spite of the general norms of international laws which display a prima facie commitment to responsibility-sharing and the many discussions on the need to share the responsibility in the press, the responsibility of providing for refugees is unequally distributed. Some countries try to avoid accepting refugees in the hopes that other countries will assist them instead. Ad-hoc international responsibility-sharing efforts have taken place in the past, but they have been only sporadically successful throughout history, as they were not accompanied by a strong moral sense of duty. Regional instruments that were established, while playing a significant role in their region, did not manage to offer a comprehensive resolution to the problem of responsibility-sharing. Therefore, mechanisms of international responsibility-sharing according to the principles of need and equity should be established.

VI. Mechanisms of Responsibility-sharing

Given the fact that international law refrains from defining the specifics of responsibility-sharing, the task of forming the mechanisms of responsibility-sharing is left up to the states to negotiate. The idea behind forming such mechanisms is that they will assist in allocating responsibility to the different states by assigning the responsibility to specific countries, as Miller puts it.

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86 Hathaway & Neve, _supra_ note 68 at 117.
87 Two recent examples of discussions of the need to share the responsibility of providing for refugees are: “EU ‘must share burden of asylum’,” BBC, June 6, 2007 (http://news.bbc.co.uk/2/hi/europe/6727637.stm, last visited June 27, 2007), in which the issue of assistance to countries like Malta and Spain who bear a disproportionate burden was discussed; “Sri Lanka: Australia, US sign pact agreeing to swap asylum seekers,” Sibernews, April 19, 2007 (http://www.sibernews.com/news/sri-lanka-200704198214/, last visited June 27, 2007), regarding a resettlement plan for refugees from Australia in the United States.
88 Cook, _supra_ note 22 at 342-343.
89 Suhrke, _supra_ note 15 at 397; Cook, _supra_ note 22 at 340-341.
90 The most notable regional instrument which regulates responsibility-sharing is the European Dublin Accord, Official Journal C 254, 19.08.1997.
91 See the discussion about assigning responsibility in Section III.3, above.
Developing an agreed mechanism of responsibility-sharing is a difficult task, mostly because the states that presently are not bearing their share of responsibility have little incentive to participate in a fairer regime of responsibility distribution. The task is particularly difficult since the countries that are bearing a lesser part of the responsibility are the developed countries, which tend to have significant influence on the establishment of international institutes and regimes.

Several types of international responsibility-sharing mechanisms are possible. Generally, these mechanisms seek to promote a more just distribution of responsibility according to the moral principles outlined in section III and IV of this article, above. Some mechanisms also aim to decrease the burden on the host states by decreasing the number of refugees. In the following pages, I will first describe six responsibility-sharing mechanisms. Then, I will discuss how they interrelate.

1: Quotas Per Country

The first mechanism of responsibility-sharing is for states to have quotas for refugees. This means that States C and D will have to absorb some of the refugees from State of B who have reached State A. Under this responsibility-sharing regime, States A, C, and D will predetermine the specific percentage of refugees that each of the states will allow in, irrespective of the tendency of the immigrants to mainly move to State A. Essentially, this solution physically redistributes the immigrants between the different countries in a fairer way.

To some extent, this mechanism has already been implemented. Some countries allow the resettlement of refugees coming from a different first state of asylum. However, these countries are few and far between, and they do so merely due to their sense of responsibility or for reasons related to their self-interest, and not due to any formal arrangement.

However, this solution is also somewhat problematic. It requires uprooting persons from the countries to which they fled and

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92 See the discussion about liability of the state in Section IV.5, below, and the discussion about addressing the core of the problem in Section IV.6, below.
93 Grahl-Madsen, supra note 67.
94 Suhrke, supra note 15 at 397.
exposing them to the trauma of a second immigration. In fact, when systematically and bureaucratically applied, this mechanism could end up supporting the violation of human rights in the form of institutionalized, large-scale forced migration. Because this solution focuses on the ability of governments to allocate the duty to protect refugees, James Hathaway is concerned that this solution could be dangerous as it allows moving persons from one state to another without regard to the quality of protection they might receive. This solution is also destructive to the immigrants’ communities, which provide a huge source of comfort and assistance. These communities are shattered when the immigrants are distributed between different countries.

Additionally, it is unclear whether this solution will eventually lead to an even distribution of responsibility. For example, although State C receives a proportionate number of refugees from State B, in relation to the number of refugees that State A received, but the immigrants accepted in State C may have special traits that enable them to actually be beneficial to and contribute to the country, rather than to exhaust its resources, as did the refugees taken by State A. To the degree that it is possible, the distribution of immigrants should take into consideration the special characteristics of the persons and countries in a way that minimizes the responsibility and maximizes the efficiency. However, this optimization might be too complicated to actually be applicable.

2: Group or Regional Responsibility-sharing Solutions

Hathaway and Neve find regional or group arrangements for responsibility-sharing to be the most effective solution. They believe that the pattern of cooperation should be “common but differentiated responsibility.” Under this mechanism, each group of states will …agree in advance to contribute to protect refugees who arrive at the territory of any state member of the group. States will

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96 Hathaway & Neve, *supra* note 68 at 143-146.
97 It seems that under this regime special efforts should be made not to separate family members from each other.
cooperate in a manner akin to participation in an insurance scheme \ldots [and] will minimize their particularized risks by joining with others to make protection feasible throughout the territories of all interest-convergence group member states.\footnote{This solution is offered by Hathaway and Neve with respect to the question of international responsibility-sharing of temporary protection, which they believe should be promoted. However, regardless of the scheme of protection, this mechanism is worth considering. For a detailed explanation on the link between responsibility-sharing and temporary protection, see Thorburn, supra note 95.}

Hathaway and Neve believe that regional or group mechanisms would allow states to honestly contribute to the responsibility-sharing efforts as much as they can, given their own constraints and resources. Within such groups, cooperation could be achieved more easily than in international arrangements, mostly because smaller groups will find it easier to coordinate their efforts and they have a bigger incentive to do so. Also, this mechanism will be the most efficient manner of dissociating the site of arrival from the place of asylum, and a way for states to have an incentive to take an interest in the treatment of refugees in other states.\footnote{Hathaway & Neve, supra note 68 at 150-151.}

It should be noted that this burden-sharing mechanism is already being used in Europe. In 2000, the European Refugee Fund (ERF) was formed to offer assistance in responsibility-sharing to the European states.\footnote{Council Decision of 28 September 2000 Establishing a European Refugee Fund (2000/596/EC), http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/L_252/L_25220001006en00120018.pdf (last visited February 6, 2007).} Also, the Dublin Accord regulates responsibility-sharing among members of European Union.\footnote{Supra note 90.}

It seems, however, that although groups of states or neighbouring states will sometimes have more incentive to cooperate regarding refugees, Hathaway and Neve are unable to provide an explanation as to why states would be willing to form these collective arrangements for responsibility-sharing.\footnote{Deborah Anker, Joan Fitzpatrick & Andrew Shacknove, Crisis and Cure: A Reply to Hathaway/Neve and Schuck, 11 HARV. HUM. RTS. J. 295, 300-303 (1998).} Moreover, Hathaway and Neve themselves criticize this mechanism for imposing additional burdens on developing states. Therefore, it seems that this mechanism...
is not likely to redistribute the responsibility more fairly, but rather it might even result in an institutionalized unfair redistribution of responsibility. The European example just illustrates that some countries might be willing to form responsibility-sharing group mechanisms with countries with similar economic abilities that encounter a similar risk of having to protect and provide for refugees. However, we can anticipate that most countries will be reluctant to join group mechanisms with countries face a larger risk or have lesser socio-economic abilities.

3: Funding Assistance or Global Taxation

An alternative mechanism of international responsibility-sharing accepts and does not try to change the fact that immigrants tend to favor certain countries. Instead, this mechanism requires a fairer division of the costs and responsibilities associated with refugees by transferring funds from one state to another. One way of implementing this idea is by arranging that the states that are bearing a disproportionately small amount of the responsibility will proportionally compensate the states that are bearing a disproportionately large amount of the responsibility. This solution requires states to participate in covering the costs of providing for refugees even if they did not receive any immigrants. Essentially, this is a mechanism of distributing the costs of providing for refugees through global taxation.

The calculation of costs is somewhat complex, as it should not only take into account the out-of-pocket money spent on needy migrants. Rather, the calculation should be more sophisticated and take into account some of the social costs and indirect burdens, which include long-term and short-term costs as well as the benefits the host country will enjoy as a result of the immigration of the refugee. Otherwise, overcompensation or under-compensation might occur. Due to the complexity of the compensation regime, it seems somewhat impractical.

103 Id. at 304 ff.
104 Cook, supra note 22 at 337-338.
Another critique of this mechanism offered by Schuck is that assistance to refugee-hosting countries should not just be in the form of monetary contribution, but rather it should include political assistance, transference of commodities, and so on.\footnote{Schuck, \textit{supra} note 21 at 284.}

\textbf{4: Trading of Quotas}

Prof. Peter Schuck offers yet another possible mechanism of responsibility-sharing, which, in a way, is a combination of a few of the above-mentioned solutions.\footnote{\textit{Id}.} This mechanism seems to be inspired by the Coase Theorem.\footnote{See the “Coase Theorem” in Ronald H. Coase, \textit{The Problem of Social Cost}, 3 J. LAW & ECON. 1 (1960).} The principles of the mechanism, as described by Schuck, are as follows:

(1) Agreement by states in a region on a strong norm that all ought to bear a share of temporary protection and permanent resettlement needs proportionate to their responsibility-bearing capacity; (2) a process for determining the number of those who need such protection; (3) a set of criteria for allocating this responsibility among states in the form of quotas; (4) a market in which states can purchase and sell quota compliance obligations; and (5) an international authority to administer the quota system and regulate this market.\footnote{\textit{Id}. at 270-271.}

The idea is that countries will determine proportional refugee quotas between them, and if they are unable or unwilling to take their share of the responsibility, then they can trade it to another country. Under this regime, countries that highly value cultural homogeneity, for example, might prefer not to accept refugees, but rather they would prefer to financially support the immigrants getting asylum somewhere else. Schuck argues that countries are already doing this to some extent, since in some refugee crises states that do not wish to accept refugees support the countries of first asylum instead.

The critics of this option, namely Anker, Fitzpatrick, and
Shacknove, claim that it is not feasible or viable. Furthermore, critics argue that this is yet another means of confining refugees to the developing states, rather than a meaningful opportunity for responsibility-sharing. The idea that states will be able to bargain effectively over quotas seems unrealistic due to the imbalance of powers between states. Finally, this solution can be criticized for treating refugees like commodities, as well as for being derived from a utilitarian, rather than a distributive justice point of view. Although the above-mentioned critiques have been rejected or dealt with by Schuck, he admits that his proposal is somewhat problematic and that it should be given more thought.

5: Liability of the State of Origin

Another mechanism of responsibility-sharing suggests, the states of origin should be held liable for their externality, in the sense that the host countries of the refugees could demand compensation from them. This mechanism goes back to the idea of primary responsibility of the state towards its nationals, which is a fundamental idea of international law, with hosting states expected to provide only surrogate protection.

The need to hold states liable for their creation of refugees was recognized in the past by some scholars and experts in refugee law, who thought that refugees should be able to receive compensation from their countries of origin. Unfortunately, this idea was contemplated mainly during the 1980s and early 1990s, and it has received little scholarly attention since. At first, this idea was linked exclusively to the idea of the refugee to repatriate. Eventually, it was also understood to

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109 Anker, Fitzpatrick & Shacknove, supra note 102 at 300-303.
110 For this critique and additional economic critique, see Cook, supra note 22 at 349 ff.
111 Anker, Fitzpatrick & Shacknove, supra note 102 at 304 ff.
114 Id. at 533-536.
be a notion derived from human rights norms in domestic and international law.¹¹⁵

This notion materialized as the International Law Association drafted the Cairo Declaration of Principles of International Law on Compensation to Refugees in 1992.¹¹⁶ One of the principles of the declaration stipulates that “[a] State is obligated to compensate its own nationals forced to leave their homes to the same extent as it is obligated by international law to compensate an alien.”¹¹⁷ Under the Cairo Declaration, a state is liable to its nationals, and refugees should be compensated. The framers were concerned with the possibility that if refugees were given the right to claim compensation from their states of origin, then host states would be reluctant to assist them. Therefore, another principle of the declaration specifies that:

The possibility that refugees or UNHCR may one day successfully claim compensation from the country of origin should not serve as a pretext for withholding humanitarian assistance to refugees or refusing to join in international responsibility-sharing meant to meet the needs of refugees or otherwise to provide durable solutions, including mediation to facilitate voluntary repatriation in dignity and security, thereby removing or reducing the necessity to pay compensation.¹¹⁸

The idea that the liability of the state exists also towards other states that provide for its nationals compliments the aims of the Cairo Declaration to protect all refugees and removes the above-mentioned risk that host states may be reluctant to assist the immigrants. The rationale behind this is that states of origin have a duty to refrain from acts that would cause injury or damage to persons or property situated in the territory of other states (in this case, the host state).¹¹⁹ Naturally, the states of origin should not be unfairly burdened, thus they should not have to compensate both the host states and the refugees for the

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¹¹⁵ Id. at 538-546.
¹¹⁷ Cairo Declaration of Principles of International Law on Compensation to Refugees, Principle 4.
¹¹⁸ Id., Principle 8.
¹¹⁹ Lee, supra note 113 at 553-554.
same damages.

The idea of state of origin liability was implemented in the context of the Geneva Accord, a model Israeli-Palestinian peace agreement. Article 7(3) of the Geneva Accord asserts that “[t]he Parties recognize the right of states that have hosted Palestinian refugees to remuneration.”

Typically, in refugee producing events, the state of origin is often liable for the externality, if it fails to protect the refugee. However, there might be refugee and refugee-like producing situation, it might be that the state of origin cannot be “blamed” for the externality, but rather that the immigration is the result of a force majeure (for example, a natural disaster), outside coercion or aggression (for example, war or occupation) or something that the state is unable to protect from.

Generally speaking, however, the liability of the state of origin to the host state can be justified for several reasons. First, the country of origin is breaching the sovereignty of the host state by forcing it, so to speak, to accept its nationals, as well as disrupting the “order” of nationality in the world. Second, it is possible to claim that a quasi-contractual relationship exists between the host state and the state of origin, which establishes grounds for compensation.

Through a liability rule, the state of origin will internalize the cost of its externality, which is not accomplished through any of the other mechanisms. It should be stressed that in this context a liability

120 See Geneva Accord, http://www.geneva-accord.org/Accord.aspx?FolderID=33&lang=en. Note that according to Article 7(2), “[r]efugees shall be entitled to compensation for their refugeehood and for loss of property. This shall not prejudice or be prejudiced by the refugee’s permanent place of residence.”

121 This is accomplished through the “well-founded fear of being persecuted” requirement in the Convention. See Section 3.5.2.


124 Lee, supra note 113 at 555-556.

125 Id. at 556-558.
rule is necessary, and any other property rights allocation rules would be insufficient since the transaction costs are immense and the parties are not necessarily rational.\(^{126}\)

State of origin liability has several positive and negative aspects. If one were to generalize its positive aspects, state of origin liability creates incentives for both host states and states of origin, thereby optimizing the protection of the rights of refugees. It seems that this mechanism will create the proper \textit{ex-ante} incentives for states of origin to prevent the flight of refugees. This could be positively translated into increased efforts by states to promote the just distribution of resources and to achieve economic growth in order to provide for and to ensure the adequate living conditions of their citizens in an effort to encourage them not to emigrate. Hence, if applied correctly, the liability rule may not only distribute the responsibility of providing for refugees more fairly, but it may also decrease the number of refugees in the world.

It is important to stress that, under this compensation regime, states of origin could not excuse themselves from compensating host states by claiming that the host states could have applied stricter immigration policies. Such reasoning does not conform to the basic principles of human rights.\(^{127}\)

There is a risk that, in some cases, this mechanism could lead to states imposing restrictions on the freedom of movement, in order to restrict the ability of some individuals to emigrate. Consequently, this mechanism should be applied only if the right to exit a country is protected and there are serious sanctions for states that restrict the freedom of persons to emigrate in order to avoid liability.\(^{128}\)

\(^{126}\) \textit{Supra} note 107.

\(^{127}\) \textit{Lee, supra} note 113 at 554-555.

\(^{128}\) Although some of the totalitarian regimes in the early twentieth century infringed on this right, it seems that currently the right to leave a country is relatively protected. Many international treaties and declarations include the recognition of the right to leave one’s state. For example, Article 13(2) of the Universal Declaration on Human Rights, 1948 says that “[e]veryone has a right to leave any country, including his own.” This right was also included in the International Covenant of Civil and Political Rights, 1966. This right is also perceived as a part of the international customary law. Yaffa Zilbershats, \textit{The Right to Leave a Country} 17-26 (1991) (Ph.D. dissertation, Bar-Ilan University). Of course, the right is not absolute, and it is subject to some restrictions.
Furthermore, applying this idea might be complicated. This mechanism may be ineffective since countries that produce refugees may be reluctant to be held liable. The ability to collect compensation from developing impoverished countries is problematic, although there may be ways around this problem.

Additionally, this compensation system could, in fact, serve as a means of the unjust distribution of wealth, as the countries of origin of refugees will have to pay money to the host countries, which are sometimes better off. The financial obligations of the countries of origin could cause their domestic situations to deteriorate further, which, in turn, could cause an additional mass influx. Therefore, this compensation mechanism should only be applied with care and after close consideration of the country of origin’s special situation and capabilities.

6: Addressing the Core of the Problem

The final mechanism of responsibility-sharing would be to address the problems in the countries of origin that are causing the immigration of refugees and to offer assistance in solving them. This could be accomplished in various ways, including by offering financial assistance, transferring knowledge, providing military assistance, or supplying humanitarian intervention. Of course, these measures carry the risk of intervention in a country’s sovereignty, but at times this might be more effective than other ex-post attempts to regain control over a situation after it has deteriorated. As these measures can be

129 Luke T. Lee offers an extensive description of how this liability regime should be applied. First, he believes that the host country should protest the fact that it has to deal with the immigrants of the state of origin. If protesting fails to provide a solution to the problem, then peaceful solutions under Chapter VI of the Charter of the United Nations should be sought, including negotiations or International Court proceedings. Finally, if all else fails, sanctions should be applied. Lee, supra note 113 at 560-565.

130 For example, if a country of origin is unwilling to compensate the host state of its refugees, its assets in foreign institutes could be confiscated, support could be withheld, and so on.

131 This is obviously due to the fact that internalization of the costs of the immigrants coming from a specific country of origin is in its nature not a mechanism of redistribution.

132 Gibney, supra note 24 at 247-249.
costly, they too need to be borne by the different countries in a proportionate manner.\textsuperscript{133}

Additionally, countries can shield themselves from the responsibility of providing for refugees by assisting their countries of origin. Therefore, responsibility-sharing can have a twofold effect: various countries will share the responsibility of caring for the states of origin, and those countries that invest a lot into the states of origin will be able to share a smaller portion of responsibility for the refugees.

Thielemann and Dewan suggest that this mechanism is most effective in the sense that it utilizes each country’s competitive advantage. For example, a country with a strong military force could engage in military intervention or peacekeeping, whereas a country with a great deal of vacant land and a small population could absorb many immigrants, and a country with many resources for investment could assist the country of origin in development and investments.\textsuperscript{134}

While it may be desirable to address the root causes and to solve the problems that cause immigration, this is often very difficult. While this discussion is complex and is beyond the scope of this article, it suffices to say that, unfortunately, states have been relatively reluctant to offer foreign aid to countries of origin and any aid that has been offered has seldom been helpful.\textsuperscript{135} Also, it is unclear whether the improvement of conditions in the states of origin will have an impact on the immigration figures, both in the short-term and long-term.\textsuperscript{136} Therefore, although foreign aid is generally morally commendable, it may not always efficiently serve as a means of responsibility-sharing regarding refugees.

\textbf{7: Choosing Between Mechanisms}

The above-described mechanisms of responsibility-sharing

\textsuperscript{133} Suhrke, \textit{supra} note 15 at 401-402.
\textsuperscript{134} Thielemann & Dewan, \textit{supra} note 78.
\textsuperscript{135} On the limited ability of aid, in its various forms, to solve problems in states of origin, \textit{see} \textit{AID IN PLACE OF MIGRATION? SELECTED CONTRIBUTIONS TO AN ILO-UNHCR MEETING} (W.R. Bohning & M.L. Schloeter Paredes eds., 1994).
\textsuperscript{136} In fact, some research shows the opposite. \textit{See} Helena Gaytan-Fregoso & Sajal Lahiri, \textit{Foreign aid and illegal immigration}, 63(2) \textit{J. OF DEVELOPMENT ECONOMICS} 515 (2000).
each have costs and benefits. Ideally, a number of criteria must be considered in choosing between these mechanisms.

The first, and probably most important, consideration should be which mechanism states are willing to accept and apply. Plausibility is an important factor in this area. The states’ willingness to support one mechanism over another may change over time, according to various constraints and preferences. Therefore, there should be some flexibility in switching between the different mechanisms, due to massive support for one mechanism over the others.

Another consideration should be the extent to which the chosen mechanism protects the human rights of the refugees. Again, the ability of a certain mechanism to protect the rights of the immigrants may vary over time. As a result, the chosen mechanism should be periodically reevaluated.

Finally, the chosen mechanism should be the one that better reflects the moral criteria of responsibility-sharing, which I elaborated on in sections III and IV of this article. Responsibility should be assigned in a manner that is sensitive to the weight of the different and often contradicting moral considerations.

8: Applying Several Responsibility-Sharing Mechanisms

It is possible to apply more than one responsibility-sharing mechanism at a time. For instance, in some parts of the world the one mechanism may provide the answer to the responsibility-sharing problem, whereas in other parts of the world another mechanism might be preferable. Furthermore, mechanisms can, to some extent, overlap. For example, there could be a general mechanism of liability of the state of origin, combined with another mechanism of responsibility-sharing, which serves as a “back up” in the cases in which the state of origin cannot be held liable. Again, the key in combining the different mechanisms should be plausibility as well as the human rights of the refugees.

It seems that rather than establishing one mechanism to fit all immigration crises, it may be advisable to develop a general understanding that there is an international responsibility to solve these crises through cooperation and to fit the particular responsibility-sharing mechanism or mechanisms to the specific characteristics of the
refugee crisis. This is also supported by the notion of some scholars that states are weary of long-term cooperation regimes.\textsuperscript{137}

We should, however, keep in mind that the disadvantages of tailoring a specific responsibility-sharing mechanism to a specific immigration crisis are that it would require substantial transaction costs and that it will take time, since it requires studying the patterns of migration and their causes and estimating the costs of the protection of refugees. As mentioned above, the duty of non-refoulement allows time to evaluate the situation and come up with an appropriate burden-sharing mechanism.\textsuperscript{138} Nevertheless, due to the complexity of the crises of refugees, it is inevitable to tailor a specific solution to a specific crisis, while taking into account the criteria mentioned in sections III and IV above and weighing them against each other. For example, when a new refugee crisis has or is about to arise, there is a need to determine which countries with sufficient wealth have some kind of a bond with the state of crisis, as well as which countries are responsible for the crisis.

VII. Coordinating the Efforts of International Responsibility-sharing

Who should choose and implement the chosen mechanism(s) of responsibility-sharing? Efforts to coordinate responsibility-sharing tend to be complicated and costly. While states play an important role in negotiating and tailoring them, they are not likely to willingly take upon themselves further liabilities and responsibilities. As we cannot rely on individual states to voluntarily switch to a more just responsibility-sharing regime, it is important that this effort is coordinated by an international organization such as one of the organizations of the United Nations.\textsuperscript{139}

The United Nations and its subordinate organizations are the most appropriate bodies to determine which of the above-mentioned mechanisms of responsibility-sharing better fulfills the above-

\textsuperscript{137} Suhrke, \textit{supra} note 15 at 402.

\textsuperscript{138} Neuman, \textit{supra} note 84 at 505.

\textsuperscript{139} On the importance of non-state actors in the context of responsibility-sharing and immigration, \textit{see} Noll, \textit{supra} note 13 at 237.
mentioned moral considerations. The United Nations is comprised of all the states with their different interests and constraints, and, therefore, it constitutes the most suitable forum in which to make such decisions. In addition, the United Nations is the appropriate forum to monitor the application of burden-sharing mechanisms. This is true for a number of reasons, including, as mentioned above, because the United Nations has embraced the idea of international assistance to promote economic stability and to improve the economic situation in several legal documents.\textsuperscript{140} If the United Nations were in charge of coordinating responsibility-sharing, then states would have a duty to comply with responsibility-sharing efforts as a part of their duty to support and cooperate in good faith with the actions of the United Nations.\textsuperscript{141}

In fact, the United Nations High Commissioner for Refugees (UNHCR) is already working to facilitate responsibility-sharing in the context of the immigration of refugees and persons in refugee-like situations. The UNHCR is collecting donations from states and private donors and using these resources to provide for refugees and other types of immigrants in different parts of the world, thus implementing responsibility-sharing.

Out of all the United Nations affiliated bodies, the UNHCR seems to be the most appropriate entity to be accountable for the distribution of responsibility. This is because the UNHCR is defined, according to its statute, as having a non-political, humanitarian, and social character.\textsuperscript{142} Even if we remain skeptical about the ability of the UNHCR, which is comprised of representatives of different states, to be apolitical and strictly humanitarian, there are still reasons to believe that it is capable of conducting responsibility-sharing efforts. Since all states are represented in the UNHCR, including those who have an interest in reaching a fairer responsibility-sharing regime, it seems rather likely that the UNHCR will in fact be able to pursue solutions along this line.

It should be noted, that currently the UNHCR’s distribution of resources does not necessarily resolve the unfairness of the current

\textsuperscript{140} See the discussion about the UN Charter, Declaration, and ICESCR in Section V, above.

\textsuperscript{141} Fonteyne, supra note 27 at 180.

responsibility-sharing situation. In fact, a disproportionate amount of resources is used for assisting refugees in the European countries, which are usually better off and receive fewer refugees than the African and Asian countries.\(^{143}\) The UNHCR itself expressed concern on several occasions that the responsibility is currently not fairly distributed,\(^{144}\) and it has participated in efforts to harmonize immigration norms, which might increase cooperation.\(^{145}\) Nonetheless, discussions within the UNHCR about responsibility-sharing did not take into account moral considerations in a conscientious manner.

Some scholars have proposed increasing UNHCR involvement to the degree that refugees would only be able to find asylum in “international territories of asylum,” which are areas that do not belong to any specific country but rather are leased by the UNHCR.\(^{146}\) Although this proposal may spare us from some of the difficulty involved in the assimilation of refugees to specific states, it seems like a highly problematic form of involvement. It is likely that the UNHCR will not be able to provide a territory of asylum that is accessible to all immigrants, and this solution runs the risk of creating “ghettos” of refugees in the world.

In applying the above-mentioned responsibility-sharing mechanisms, the UNHCR will have to play a number of different roles. Generally, with respect to all the mechanisms, the UNHCR will have to facilitate the process of weighing the different considerations, which I outlined in sections III and IV of this article, to determine which responsibility-sharing mechanism is most appropriate, delineate its specifics, and see that countries adhere to what was arranged. With respect to the first options mentioned above, setting quotas and establishing regional agreements or trading quotas, the UNHCR will have to facilitate the process of setting quotas and see that countries adhere to what was arranged. If the options of trading quotas, taxation, or compensation are preferred, then the UNHCR will have to assist in determining the appropriate amount of money that should be transferred. With respect to the last option of holding countries of origin

\(^{143}\) Hathaway & Neve, supra note 68 at 131.

\(^{144}\) Legomsky, supra note 26 at 588.

\(^{145}\) Id. at 603-606.

liable to compensate host countries, it seems that the efforts to retrieve the compensation could be made either directly by the host country or through the UNHCR.  

No matter what role the UNHCR plays in a future responsibility-sharing regime, it will have to develop a stronger role in international relations in order to establish and enforce the mechanism. In order to be effective, the UNHCR will have to gather information about the needs of asylum seekers, the capabilities of states, the degrees of compliance of states, and so on. These issues fall well within the area of expertise of the UNHCR. Moreover, the UNHCR also needs to have the power and authority to enforce the agreed-upon norms to play an effective role in the responsibility-distribution system.

In addition to the UNHCR, international and domestic courts could play a significant role in coordinating and supervising responsibility sharing. They can do so, first of all, by examining states’ restrictive migration policies against the broader context of migration trends in the world, rather than viewing the immigration of socio-economic refugees to their country as an isolated event. Evidence of the willingness of some courts to take general migration patterns into consideration can be found in court decisions already handed down.

Secondly, domestic and international court could engage in judicial review over responsibility-sharing agreements between states. Because the responsibility-sharing agreements touch heavily upon human rights issues and constitutional subjects, courts in jurisdictions

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147 In the International Law Association suggestion that refugees would have the right to compensation from their countries of origin, the United Nations was supposed to have played a large role as well. For example, Principle 6 of the declaration set out by the ILA stipulates that “[i]n implementing the right of refugees to compensation, States shall, directly or through the United Nations and intergovernmental organizations, tie the granting of economic or developmental assistance to countries of origin to their fulfillment of this right.” Principle 7 holds that “[t]he United Nations may, in the discharge of its role as guardian of the interests of refugees, claim and administer compensation funds for refugees” The same notion could be applied to the current suggestion, under which host countries are eligible for compensation from the country of origin. See also Lee, supra note 113 at 563-565.

148 Schuck, supra note 21 at 284.

149 See, for example, the Israeli case HCJ 4542/02 Kav Laoved V. The Government of Israel, ILDC 354 (IL 2002), in which the Israeli Supreme Court weighed into its considerations of Israel’s immigration policy general information about migration patterns, costs and risks.
versed in these subjects may be well-equipped to consider these agreements.

Finally, as Eyal Benvenisti recently noted in a different context, domestic courts might be willing to “join forces to offer meaningful judicial review of government action, even intergovernmental action”. In other words, courts would work together to provide coordinated judicial review over questions of responsibility sharing that are brought before the court, by looking at each others decisions and unifying standards accordingly. Despite the substantive difficulties in coordinating the actions of courts, hints that courts might be willing to resist their own states’ policies can already be found in several decisions on refugee law.

VIII. Conclusion

Host countries must allocate resources to provide for refugees. There is no moral justification for these costs to be disproportionately borne by some countries and not others. Yet somehow, to date, there have not been enough incentives for states to create mechanisms of fair responsibility-sharing. This is mostly due to the fact that the countries that bear most of the burden are not very politically influential, and they have not managed to force other countries to take part in the responsibility-sharing. In this chapter, I have mentioned a few different mechanisms of responsibility-sharing. While there is no perfect solution for the problem of responsibility-sharing, it seems that one or more of these mechanisms should be applied, albeit with an awareness of the risks that each carries. Since all of the responsibility-sharing mechanisms are imperfect, and there is no solution that achieves just distribution in all potential refugee crises, there is a need for additional research on this point.

It should be noted that in no time during the history of mankind

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151 In the context of refugees, the importance of coordinating judicial policy – along with promoting independent judicial review over refugee law matters – was recognized, resulting, among other things, in the establishment of the International Association of Refugee Law Judges. For this and for examples of well-coordinated national courts decisions about refugee law issues see id. at 262-267.
have we been more technologically equipped to apply mechanisms of responsibility-sharing; today we have better technology than ever before for communicating, meeting, solving problems, monitoring, and acquiring information. Given the moral duty and the physical ability to carry out responsibility-sharing plans, it is reasonable today to aim for fairer responsibility-sharing mechanisms.

However, without discarding the significance of international responsibility-sharing and the urgent need to establish such mechanisms for immigration crises, the moral obligations of states nevertheless exist in those situations in which mechanisms of responsibility-sharing are not formed or do not operate. In other words, states cannot excuse themselves from fulfilling their moral obligations towards needy migrants merely because other states are not fulfilling their duties. Therefore, even in today's world, which is lacking in efficient responsibility-sharing mechanisms, there is a morally compelling reason for states to feel obligated towards refugees.