JIMMA UNIVERSITY

COLLEGE OF LAW AND GOVERNANCE

SCHOOL OF LAW

A RESEARCH PAPER SUBMITTED FOR THE PARTIAL FULFILLMENT OF THE REQUIREMENTS OF MASTERS OF LAWS DEGREE IN HUMAN RIGHTS AND CRIMINAL LAW

THE ADEQUACY OF THE PRINCIPLE OF RESPONSBLITY SHARING IN ADDRESSING THE GLOBAL REFUGEE CRISIS

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JUNE, 2018

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Declaration

I hereby declare that, this paper prepared for the partial fulfillment of the requirements for LL.M Degree in Human Rights and Criminal Law entitled 'The adequacy of the principle of responsibility sharing in addressing the global refugee crisis' is my own work and sources used are duly acknowledged.

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Acknowledgements

"Now Christ is the visible expression of the invisible God...
In fact, every single thing was created through, and for him…Life from nothing began through him and life from the dead began through him and he is, therefore, justly called the lord of all."

First of all, let the name of my almighty Jesus be magnified and exalted. He makes all things possible. My greatest gratitude is to the Jesus the son of God. Without him, I would not have been able to achieve my accomplishments. Besides, life he gave me this opportunity and success. Secondly, I would like to thank my supervisor Getahun Alemayehu (Fellow PhD), who has guided me in the right direction and has provided me with valuable insights that have ultimately defined the nature of this paper. I owe greatest debt to him for his encouragement, understanding and guidance as my supervisor. I would also like to thank my co-supervisor Mr. Kibrome mekonnen (head of school of law) for his guidance during my work with this paper. Thirdly, I give my deepest thanks to my wife, Banchiyamiral Abiy with whose affection, support and love, I was able to complete this work. Your love give me courage through this study, I love you my wife! Furthermore, I would like to express my gratitude to my Younger brother Abiy Tadesse whose support and encouragement in every stage of this study was invaluable. I would also like to thank my family for all their support throughout my studies. Fourthly, my thanks also go to Mr. Gizawu Dilamo the President of the high court of Sheka Zone who creates the environment for this study and provides me invaluable support throughout the study. Furthermore, I want to thank all my classmates and friends who have functioned as my family during my study.

Abstract

Today, the number of refugees worldwide is at historically high levels. The UNHCR estimates that as of 2016 there are 65.6 million displaced persons globally, with 22.3 million of these being refugees. The brunt of the responsibilities of hosting and protecting these refugees is borne by a few poor and developing countries, ill-equipped to handle large number of refugees in need of protection and assistance. Contrariwise, in an attempt to keep refugee away from their border, most developed countries across the world have introduced different restrictive measures. This situation leads the lives of millions of refugees to be trapped in camps in protracted refugee situations in hosting states and impacts the international refugee regime negatively. The refugee problem is just as critical as environmental, advancing human rights and other related problems of this world. It is a problem of the world community and not only concerns the host countries. Therefore, aimed to search way out this thesis explores the adequacy of the principle of responsibility sharing in addressing the global refugee crisis. The fundamental finding of the thesis is that although the principle of responsibility sharing is relevant in today's growing international problems which require a collective action from international community, it is not adequate under international refugee law to address the current global refugee crisis. As international refugee law stands today the distribution of the refugee responsibility usually depends on geographical position of countries. Consequently, the thesis concluded that international refugee law lacks a clear and positive obligation, in ensuring a fair distribution of refugee responsibilities between the signatory states. Based on this finding, the author argues that the need for legally binding refugee responsibility sharing treaty among states given the current global refugee crisis is necessary in order to create a more equitable refugee regime, to find durable solution for the global refugee plight and to enhance global peace and stability.

Key words

Geneva Convention for the status of refugees, UN charter, international environmental law, international human rights law, refugees, responsibility sharing, international cooperation, equitable sharing of refugee responsibilities, hosting states, developed states

Acronyms

Art	Article
CBDRRC	Common but differentiated responsibilities and respective capabilities
CRC	convention on the rights of child
CESCR	Committee on economic, social and cultural rights
CRPD	Convention on the rights of peoples with disabilities
DRC	Democratic Republic of Congo
Excom	United Nations Higher Commissions for Refugees Executive Committee
ICRC	International Commission for the Red Cross
ICCPR	International Covenant on Civil and Political Rights
ICESCR	international covenants on economic, social and cultural rights
ILA	International law association
OAU	Organization of African unity
UNHCR	United Nations higher commissioner for refugees
UN	United Nations
UNFCCC	United Nations frame work convention on climate changes
USA	United States of America

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Chapter One

Introduction

1.1 Background of the Study

The world is witnessing the worst humanitarian crisis since the end of the Second World War. Beginning from this historical period, the world has experienced severe human rights abuses and many conflicts that turned into violence, which consequently produced massive refugee flows.[1] currently, internal conflicts, persecution, lack of political stability and other similar human rights violations in most part of the world causes a large number of people to move from their home country seeking international protection and causes refugee crisis worldwide. The term "refugee" has defined meaning under international law. The 1951 Convention, as amended by the 1967 Protocol, provides the definition of a refugee as:

> a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[2]

In addition to this refugee law, the 1969 OAU Convention governing the Specific aspects of refugee problems in Africa provided another wider definition by stating, "the term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek

[1] Susan Martin,Sanjula Weerasinghe and Abbie Taylor, 'Crisis Migration' (2013) 20, Brown Journal World Affairs 123. According to these authors situations like 'armed conflicts, political instability and other similar human rights violations in Somalia, Iraq, Syria, Afghanistan, Mali, Cotedivoire, South Sudan and Democratic republic of Congo are some of recent instances of the events which leads to humanitarian crisis in this era.'

[2] Adopted by the general assembly of United Nations on 28 July 1951 and entered in to force on 22 April 1954, art 1.The convention is the first multilateral treaty that provides definition for refugees and outlines the rights entitled to those who are granted asylum and the responsibility of host states. Before, classification as a refugee a person seeking refuge in other countries is called asylum seekers. The convention treats refugee different from asylum seeker. According to UNHCR an asylum seeker is someone who has left his or her home country for fear of persecution, has applied for asylum in another and is waiting for his or her request to be processed.

refuge in another place outside his country of origin or nationality."[3]This definition reflects most dominant circumstances those currently forces peoples to left their common abode in seeking a substitute international protection. It provided numerous parameters in defining the term refugee in comparison to the 1951 convention related to the status of refugees. Since, it includes a broader category of forced people of this era this paper will utilize the definition employed by both the 1951 Convention and the OAU Convention Governing the Specific Aspects of Refugee problems in Africa

It is common to see in international refugee history a new phase of protracted refugee people while old problem remain unsolved.[4] For instances, the tragedy of the Second World War had caused some 19 million people to be displaced in Europe.[5] In 1960s and 1970s a rebel against colonialism and conflicts which is a legacy of colonialism generated a large number of refugees in Africa and Asia.[6] Later in 1980s and 1990s long-term struggles, civil wars, political instability and other events generated millions of refugees fleeing conflict in Africa, Asia and Latin America.[7] These scenarios marked the recurrent nature of the global refugee crisis and lack of durable solution.

Currently, the extent of forced displacement which causes refugee crisis has continued and is at an all time high. Bagaric has stated that, "the most pressing and compelling human rights crisis of our time is the massive increase in displaced people over the past decade."[8] Accordingly, at the end of 2015, the number of globally displaced people was 65.3 million from which 21.3 million persons were refugees and 3.2 million asylum seekers.[9] As of the end of

[3] Adopted by the assembly of the heads of states and government of organization of African union on 10 September 1969 and entered in to force on June 1974, art 2

[4] Gil Loescher, *Beyond charity: international cooperation and the global refugee crisis* (oxford university 1993)3

[5] Andrzej Bolesta(ed),*Forced migration and the contemporary world: challenges to the international system*(Bialystok,2003)21

[6] Gil Loescher, *Beyond charity: international cooperation and the global refugee crisis* (oxford university 1993)75

[7] Andrzej Bolesta(ed),*Forced migration and the contemporary world: challenges to the international system*(Bialystok,2003) 22

[8] Brienna Bagaric, 'Revisiting the Definition of Particular Social Group in the Refugee Convention and Increasing the Refugee Quota as a Means of Ameliorating the International Displaced Person's Crisis(2017)69 (121), South Carolina Law Review 131

[9]UNHCR, 'global trends: forced displacement' (2015) 5 available at http://www.unhcr.org/576408cd7.pdf last accessed on 26 January 2018 at 5. During this period the United Nations high commissioner has also

2016, UNHCR reported that the number of forcibly displaced person worldwide as a result of persecution, conflict, violence or other human rights violation was at historically high level.[10] At the end of the same year situations in Syria alone causes the Syrian continued to be the largest forcibly displaced population with 12 million people flee their home from which refugee counts for 5.5 million people.[11]

Edwards has rightly stated that, 'the continuing crisis all over the world will displace most people to move across international boundary and the others internally for pursuit of international protection.'[12]The world is currently experiencing an extremely serious problem associated with refugee flow across the globe. The rate of increase at which the displaced population in general and refugee in particular is growing for each year marked a clear instance of international refugee crisis which is characterized by absence of durable global solution.[13]On the top of this problem, developing regions continued to shoulder disproportionately large responsibility for hosting these refugees. Currently, less developed countries are home to majority of world's refugees. While developed countries have a poor record in sharing responsibilities towards addressing this problem.[14]

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announced the rate of increase at which the displaced population in general and refugee in particular is growing for consecutive year since 2011.Accordingly, 42.5 million forcibly displaced people was recorded at 2011 and these numbers has go up each year from 45.2 million in 2012 to 51.2 million in 2013 and 59.5 million in 2014.

[10] The commissioner has reported that the total number of forcible or involuntary displacement in this year is totaling 65.6 million and the trends of growth in number of forcibly displaced people in each year is also apparent in this particular year. UNHCR, 'global trends: forced displacement' (2016) 2 available at http://www.unhcr.org/5943e8a34.pdf , last accessed on 25 January 2018. This figure broadly consist different categories of people mainly a refugee who counts for 22.5 million displaced peoples, asylum seekers counts for 2.8 million and 40.3 million internally displaced people.

[11] Ibid 6, the remain 6.3 million people are internally displaced person and asylum seekers

[12] Alice Edwards, 'A Numbers Game: Counting Refugees and International Burden-Sharing'(2013)32 (1),University of Tasmania Law Review 6

[13] Brienna Bagaric, 'Revisiting the Definition of Particular Social Group in the Refugee Convention &Increasing the Refugee Quota as a Means of Ameliorating the International Displaced Person's Crisis(2017)69 (121), South Carolina Law Review 131

[14]Amnesty international, 'tackling the global refugee crisis from shirking to sharing responsibility'(2016) available at file:///C:/Users/Guest/Downloads/POL4049052016ENGLISH%20(3).PDF ,last accessed on 23 January 2018

Under traditional international law paradigm States' responsibility in international law in general and human rights law in particular confined to their territorial limits.[15] An underlying assumption in this paradigm is that states have the resources necessary to protect those within their own borders, and that the international community holds governments accountable if they fail to fulfill their responsibility.[16] However, some matters like environmental pollution its impact inherently trans-boundary in nature and global in scope that one state could not find a solution alone leaves very large problems on global community. An issue of this nature requires each nation to act transcending their political boundary and to share responsibility in addressing problems of this kind for the good of the entire world.

International law cites the need for responsibility sharing in addressing the problems of climate change, pollution, security and other similar global problems requires a collective action.[17]In terms of concepts, understanding responsibility sharing relies on understanding concepts relating to international cooperation. To this end, Suhrke has stated that 'International cooperation is a broadest level concept encompassing all forms of coordinated and collaborative actions undertaken by states and used in different contexts.[18] Moreover, it has been stated that, responsibility sharing can be understood as particular forms of international cooperation or a subset of international cooperation.[19] Accordingly, different scholars have stated that at its core,

[15]see, e.g., International Covenant on Civil and Political Rights (ICCPR) adopted by the general assembly of the UN on 16 December 1966 and entered in to force on 23 March 1976 art.2(1)

[16]Lindsey N. Kingston and Saheli Datta, 'Strengthening the Norms of Global Responsibility: Structural Violence in Relation to Internal Displacement and Statelessness' (2012) 4, Global Resp. Protect 477

[17]Eiko R. Thielemann and Torun Dewan, 'Why States Don't Defect: Refugee Protection and Implicit Burden-Sharing' (2004) paper prepared for presentation at European Consortium for Political Research's Joint Session of Workshops, Uppsala, Sweden 2,available at http://www.essex.ac.uk/ecpr/events/jointsessions/paperarchive/uppsala/wsl6/Thielemann.pdf ,accessed on May 13 2018

[18] Astri Suhrke, 'Burden-Sharing during Refugee Emergencies: The Logic of Collective versus National Action'(1998) 11, JRS 399–402

[19] Kathleen Newland, 'Cooperative Arrangements to Share Burdens and Responsibilities in Refugee Situations short of Mass Influx'(2011) Migration Policy Institute, Discussion Paper prepared for a UNHCR Expert Meeting on International Cooperation to Share Burdens and Responsibilities Amman, Jordan 1

the concept of responsibility sharing derives from the overarching norm of international cooperation.[20]

For instance, the UN charter provides that, "achieving international cooperation in Solving international problems of an economic, social, cultural, or humanitarian character, and Promoting and encouraging respect for human Rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion"[21] is among the fundamental principles underlying the purpose of the united nations. Besides, States duty to cooperate in economic and social affairs is also expressed in articles 55 of the UN charter and by virtue of article 56 of the Charter, all Member States pledge to "take joint and separate action in co-operation with the UN in order to achieve defined goals, including the resolution of international economic, social, and related problems." All member states of the UN are pledged to take joint and separate actions to achieve the underlined purposes of the organization.[22] Therefore, responsibility sharing is an element of co-operation and it is a legal principle derives from the norm that requires state to cooperate in addressing problems of global character.

In addition to the UN charter, the principle has also gained popularity in different fields of public international law regime to solve problems which require collective action. For instance, environmental protection is one of the international issue that face problems of collective action. Consequently, the UNFCCC which is premised on coordinated international action has adopted in order to address collective action problem in this area.[23] The importance of the joint action as opposite to separate undertaking is also emphasized in some international human rights law instruments. For example, the ICESCR states that: "Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation to

[20]Tally Kritzman-Amir, 'Not In My Backyard: On the Morality of Responsibility Sharing in Refugee Law' (2009)34, Brook. J. Int'l L.376, Alex Catalan Flores, 'Reconceiving Burden-Sharing in International Refugee'(2016)7, Law, 7 King's Student L. Rev. 43

[21] United Nations charter adopted on 26 June 1945 and entered into force 24 October 1945, art 1/3

[22] Volker Türk and Madeline Garlick, 'From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees'(2016) 28 (4), International Journal of Refugee Law 658

[23] UN framework convention on climate change adopted by the general assembly of the UN on 9 may 1992 and entered in to force on 21 march 1994

achieve progressively the full realization of the Covenant's rights."[24] Hence, the principle of responsibility sharing is such a vital principle having its origins from legal duty to cooperate in general international law. It has been said that this principle is "first prominently used in the context of debate about NATO contribution in the early 1950s in relation to military cooperation."[25]

In the context of refugee issue, it is clear that international cooperation to share refugee responsibility is the only way to successfully deal with refugee problems, that one state could not find a solution alone. Similar to those environmental and other issues that concern the international community as a whole, the global character of refugee issues, its international scope, and related concerns that affect the international community as a whole was recognized by the United Nations general assembly. [26] Moreover, the UN General assembly has acknowledged a commitment to responsibility sharing in several of its resolutions in this respect.[27]

In the area of refugee scholarship, the terms 'burden-sharing' and 'responsibility-sharing' both continue to be used by scholars and different actors to refer to similar ideas.[28] For instance, writing in the European Union context, Thielemann has stated that attempts to replace the term burden sharing with a call for responsibility sharing between the Member States have had little impact on the way the public debate has been led.[29] According to Milner burden sharing in the context of refugee is, "the principle through which the diverse costs of granting asylum assumed

[24] International Covenant on economic, social and cultural rights adopted by the General assembly of the UN on 16 December 1966 and entered in to force on 23 March 1976,art.2(1)
[25]Eiko R Thielemann, 'Editorial Introduction: Special Issue on European Burden-Sharing and Forced Migration' (2003) 16 JRS 225
[26] UN General Assembly res A/45,adopted on 12 February 1946
[27] See, e.g., UN General Assembly res 62/124,adopted on 24 Jan 2008
[28] Astri Suhrke, 'Burden-sharing during Refugee Emergencies: The Logic of Collective versus National Action' (1998) 11, J. Refugee Stud. 399.(she has noted that, "the policy and academic discussion on 'burden-sharing'-often used interchangeably with 'responsibility-sharing.";see also, New York Declaration for Refugees and Migrants, UN Doc A/RES/71/1 adopted on 3 October 2016
Para 68(it states that States committed to 'a more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees."), UNHCR,Excom has also referred to 'burden-sharing' in several of its conclusion.(see for example, Executive Committee Conclusion No 80 (XLVII)(1996); Executive Committee Conclusion No 85 (XLIX) (1998)
[29] Eiko R. Thielemann, 'Between Interests and Norms: Explaining Burden-Sharing in the European Union (2003) 16, JRS 225

by the host state are more equitably divided among a greater number of States."[30] Thielemann characterizes international burden sharing as, "the question how the costs of providing collective goods or common initiatives should be shared between states."[31] However, many scholars have criticized that the term burden sharing implies refugee constitutes a burden for their host countries. In this regard it has been argued that, "burden suggests that asylum seekers have lost all human value and have become negotiable and transferable commodities leaving the individual with no will or say."[32]

Türk and Garlick have opined that discomfort with this approach has prompted the increasing use of the term 'responsibility-sharing', wording favored by UNHCR and civil society.[33] According to these authors, 'responsibility-sharing' casts refugees in a more favorable light, as potential contributors and assets for their host societies and as the holders of rights that create correlating responsibilities for States. States bearing 'burdens' may see themselves as passive recipients of those arriving and seeking protection; while 'responsibility' can be seen to imply legal obligations and a requirement to take positive action.'[34]

Accordingly, the term responsibility sharing is used in the title of this paper and referred in the introductory part to emphasize this commitment to the principle of human rights. Though a clear emphasis is made using the term responsibility sharing explicitly, the mentioned alternative term may be referenced throughout the thesis for completeness of the work and to avoid confusion.

The recognition for the international cooperation to share the burdens and responsibilities for refugees appears in the preamble of the 1951 convention on the refugees.[35] In spite of this mention, the convention does not provide a legal definition to the terms. As per, Newland responsibility sharing which is also called burden sharing in the context of refugee is the

[30] James Milner, *Refugees, the State and the Politics of Asylum in Africa* (Palgrave Macmillan 2009) 39
[31] Eiko R. Thielemann, 'Between Interests and Norms: Explaining Burden-Sharing in the European Union (2003) 16, JRS 225
[32]Eggli Anne Vibeke, *Mass Refugee Influx and the Limits of Public International Law*(Martinus Nijhoff Publishers 2002) 36
[33] Volker Türk and Madeline Garlick, 'From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees' (2016)28(4), International Journal of Refugee Law 664
[34] Ibid 665
[35] Adopted by the general assembly of United Nations on 28 July 1951 and entered in to force on 22 April 1954,preamble Para 4

mechanism "in which States take on responsibility for refugees who, in terms of international refugee law, would fall under the protection of other States or assist other States in fulfilling their responsibilities."[36]

Some writers have argue that with regard to refugees issue responsibility sharing among states is premised on: first the refugee is a person of concern to the international community and second, States have to share the responsibility of finding durable solutions for the people who have been deprived of a community.[37] However, it has been argued that where as the physical presence of refugees in a certain state certainly triggers the jurisdiction of that state, the distribution of refugee protection obligations is often unfair.[38] While the 1951 Convention afford refugees protection in the territories of asylum states, the responsibilities of other signatory states to assist each other in the case of refugee crisis is less clear. Though the convention expresses a clear recognition of the burden which the granting of asylum to refugees signifies to the asylum State more often than not, it is the developing state, the poor state, and the state in the unstable region that is left with the overwhelming responsibility of dealing with refugee flows. If, States were to share refugee responsibilities equitably, the crisis of today would arguably be less overwhelming and manageable.

The central question at this stage is the adequacy of the principle of reasonability sharing in addressing the global refugee crisis. Therefore, this research is aimed at examining the adequacy of this principle under international refugee law in addressing the global refugee crisis.

[36] Kathleen Newland, 'Cooperative Arrangements to Share Burdens and Responsibilities in Refugee Situations short of Mass Influx'(2011) Migration Policy Institute 1

[37] Guy Martin, 'International Solidarity and Co-Operation in Assistance to African Refugees: Burden-Sharing or Burden-Shifting'(1995) 7, Int'l J. Refugee L.253,see also, Savitri Taylor, 'The Pacific Solution or a Pacific Nightmare: The Difference between Burden Shifting and Responsibility Sharing'(2005) 6, APLPJ 37 (he "stated that If large number of refugees are deflected to countries with less capacity to absorb them, any adverse impact on hosting states will eventually flow through to others.If they cause extreme social upheaval in those countries that too will have an international ripple effect.")

[38] James L. Carlin, 'Significant Refugee Crises since World War II and the Response of the International Community'(1996)3, Mich. Y.B. Int'l Legal Stud 13

1.2 Statement of the Problem

Recently, though the arrival of refugees and asylum seekers to Europe and other developed countries are substantial[39] in comparison to previous entry of the kind it is the developing and poor state that is left to shoulder with the high responsibility of hosting vast number of people who crossed their countries boundaries pursuing international protection. The UNHCR report show that currently nine of the top 10 refugee hosting countries are in developing regions with 84 per cent of all refugees living in these regions.[40] For instance, almost all of those who have fled Syrian crisis are now hosted in neighboring countries, specifically in Lebanon, Turkey, Jordan, and Iraq.[41] Currently, Turkey alone hosts 2.8 million Syrian refugees which represent more than 98 per cent of the entire refugee population.[42]However, the trend of developing and poor countries overburdened with large responsibility in hosting forcibly displaced people is not only limited in relation to Syrian refugees but it has continued to be a norm to the entire refugees across the globe.[43] To make things worse, the least developed countries, such as Cameroon, Chad, the Democratic Republic of the Congo, Ethiopia, Kenya, Sudan, and Uganda, hosted 28 per cent of the global total refugee population.[44] For example, according to Amnesty international in 2016, the total refugee and asylum seeker population in Australia are 58,000 compared to 740,000 in Ethiopia. As per, this organization such unequal sharing of responsibility is at the root of the global refugee crisis.[45]This in turn imposes an additional burden on those countries politics and economies that could be potentially "devastating to some countries."[46]Developing countries lack the resources to cope with both the economic and socio

[39] See, Euro stat 'Asylum Statistics' (2017), available at http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics , last accessed on 25 January 2018

[40] UNHCR, 'Global Trends: Forced Displacement' (2016) 2, available at http://www.unhcr.org/5943e8a34.pdf , last accessed on 25 January 2018.

[41]Michael Kagan, 'Must Israel Accept Syrian Refugees?'(2014) 50 Texas International law journal of refugee

[42] Ibid

[43] Brienna Bagaric, 'Revisiting the Definition of Particular Social Group in the Refugee Convention and Increasing the Refugee Quota as a Means of Ameliorating the International Displaced Person's Crisis(2017)69 (121) South Carolina Law Review

[44] UNHCR, 'global trends: forced displacement' (2016) 20

[45]Amnesty international, 'talking the global refugee crisis: from shirking to sharing responsibility' (2016) available at, https://www.amnesty-international.be/sites/default/files/bijlagen/pol1025522016english.pdf ,accessed on 23 January 2018,4

[46] Peter H. Schuck, 'Refugee Burden-Sharing: A Modest Proposal' (1997)22 YALEJ. INT'LL.273

political consequences of protecting large number of refugees and asylum seekers which put the current global refugee crisis at perspective.

To the contrary, most developed states in the world are refused to relieve these overburdened states by implementing non entree practices that prevent refugee from even reaching their territories.[47] In developed states there is increasingly xenophobic and racist response to refugee.[48] Furthermore, many developed countries have already started to tighten their asylum regulations. Consequently, in developing countries refugee lives are confined in camps. This would results in refugee rights violations including the right to physical security, denial of the right to work, access to education and other refugee rights outlined in the refugee convention.[49] Military attacks on refugee camps, recruitment of children's in an armed conflict, rape of women and children, arbitrary detention are also the common problems of refugees in this era.[50]Smuggling, trafficking, security's and refugees contributions to the overall global economy are also serious concern in the absence of refugee responsibility sharing scheme.[51] The current refugee crisis is also a potential threats to regional and global, security and stability.[52]

Generally, the current global refugee's problem is almost incalculable in magnitude and characterized by the absence of clear and obvious global solution. The distribution of refugees across the globe is imbalanced with the vast majority hosted by the poor and developing countries. The major international refugee law is premised on the understanding that individual host States will provide protection to refugees on behalf of the international community. When refugees flow into other countries even in mass influx situation, it is then the responsibility of the receiving state to protect them, based on the principle of non-refoulement and other rights granted in the 1951 Convention. Under international refugee law while countries that receive refugees have certain legal obligations to assist and protect them, the legal duties of other States

[47] James C.Hathaway and R.Alexander Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection (1997) 10 Harvard human rights journal 120
[48] Patryk Kugiel, 'the Refugee Crisis in Europe: True Causes, False Solutions'(2016)25 (4),Polish Quarterly International Affairs
[49] Jeannie Rose C. Field, 'Bridging the Gap between Refugee Rights and Reality: A Proposal for Developing International Duties in the Refugee Context'(2010)22, International journal of refugee law 523
[50] Ibid
[51] Ibid
[52] Ibid 552

to step in and help relieve this burden is less clear.[53] Moreover, though states have clearly specified obligations to provide asylum to refugees within their territory or jurisdiction responsibility sharing, in terms of supporting refugees who are on the territory of another state, is generally regarded by states as a discretionary act.[54] Consequently, for geographical reasons, states proximate to the source of a conflict or crisis tend to receive disproportionately large numbers of refugees and the obligations of more geographically distant states, whether through providing money or accepting people is less clear.[55]

The current context of the world refugee crisis demonstrate that the responsibility to host and protect refugees falls disproportionately on a small number of surrounding poor and developing states hosting 84 per cent of the world's refugees as at the end of 2016.The number of refugees had continued to increase over the years while the heavy weight of the responsibility increasingly shifting towards the developing and poor countries. Hence, this study is aimed at examining the adequacy of the principle of responsibility sharing under international refugee law to overcome the problems that the world has faced in relation with the contemporary global refugee crisis.

1.3. Objective of the Study

1.3.1 General Objectives

The objective of this research is to explore the gaps in the existing international refugee law in addressing the worldwide refugee crisis and to come up with possible recommendation for improvement.

1.3.2 Specific Objectives

The specific objectives of this study are the following

[53] E. Tendayi Achiume, 'Syria, Cost-Sharing, and the Responsibility to Protect Refugees'(2015) 100, Minnesota Law Review 690;James C. Hathaway and Alexander R. Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection'(1997) 10, Harv Hum Rts J 141

[54] Savitri Taylor, 'The Pacific Solution or a Pacific Nightmare: The Difference between Burden Shifting and Responsibility Sharing'(2005) 6, APLPJ 6

[55] Ibid

1. To explore basic principles and concepts which are necessary for refugee protection under refugee law and to examine their effectiveness in addressing the global refugee crisis.
2. To identify the shortcoming of the existing international refugee law in addressing the global refugee crisis and to recommend way out.
3. To explore the place of responsibility sharing in general international law.
4. To explore extent and limitations of responsibility sharing under the existing international refugee law.

1.4. Research Questions

The research will answer the following research questions

1. What are the gaps in the existing international refugee law in ensuring the compliance of states with their obligation under the same?
2. What are the norms and principles governing the protection of refugee under international law and the challenges facing their effectiveness in addressing the global refugee crisis?
3. What is the place of responsibility sharing in international law? In particular, is it adequate to address the current global refugee crisis?

1.5. Significance of the Study

The theme of this study gains importance in light of the increase in recent years of the number of refugees across the globe as a result of different events taking place in most part of the world. This research is important in understanding the adequacy of responsibility sharing under existing international refugee law in addressing the global refugee crisis. In general, the academic significance of the research is to broaden the knowledge of international refugee law. The study may also serve a valuable resource for UNHCR, humanitarian workers, on governmental refugee advocates and academics alike in their various efforts toward the common goal of strengthen refugee protection to address the problem. The study may assist not only in meeting changing realities in the field, but also in setting the bases of future refugee law. It also helps to ensure the protection of human rights of refugee population and to maintain international peace and security.

1.6. Scope of the Study

As a study in international law, the thesis focuses exclusively on responsibility sharing at the international level rather than in regional arrangements. Accordingly, the study shall be international with a few case examples of how various states have applied the international refugee law. Furthermore, the issue of refugee protection from international law perspective is very complex that cannot be sufficiently addressed in this thesis. As a result, this thesis doesn't include complementary refugee protection under international human rights law in exploring the refugee responsibility sharing and limited only to primary refugee protection aspect in international refugee law.

1.7. Research Methodology

In order to address the issues identified above, the study is conducted with doctrinal research method. To this end I will primarily examine both primary and secondary sources. Primary sources including international and regional instruments devoted to the protection of refugees, cases and conclusions given by international organizations particularly by the Executive Committees of the United Nations high commissioners for refugees will be used. The primary source of law will thus be the 1951 convention and 1967 protocol relating to the status of refugees. Books, journals or scholarly articles, websites and reports will be consulted as secondary sources.

1.8. Literature Review

Some studies were conducted by different scholars on the subject matter of the research questions. Even though, much of them find the gaps under international refugee law in this regard they failed to justify solidly why responsibility sharing is important in addressing the global refugee crisis and don't clearly hold the position taken in the present study.

We may refer to the articles by Alex Catalan Flores titled, "*Reconceiving burden sharing in international refugee law."*[56] While the article revolve around the lack of effective burden sharing and thus effective protection in the current refugee regime its contact point to the specific questions of this research is limited and failed to hold a clear stand on the necessity of legal

[56] Alex Catalan Flores, 'Reconceiving Burden-Sharing in International Refugee Law' (2016) 7 King's Student Law Review

solution to the problem by expressing his doubt as to the acceptability of such overhaul of the existing international refugee law given the existing political environment.

Tally Kritzman Amir in her article titled *"Not in my backyard: on the morality of responsibility sharing in refugee law"*[57] finds the absence of binding law in international refugee regime imposing extraterritorial obligation on states to assist the hosting countries in refugee protection endeavor. However, rather than suggesting for the adoption of binding international frame work in this regard he simply tries to argue states obligation to share responsibility on the basis of moral ground. The study explores three schools of thought such as, the feminist critique of international law and ethics of care, utilitarianism and distributive justice theory to explain the moral foundations of responsibility in substantiating her main argument. In general the study doesn't comprehensively rationalize the necessity of responsibility sharing in addressing the existing inequities among states in hosting and protecting refugees. Furthermore it does not provide legal proposals in addressing the issues rather than calling states to adhere to moral principles of responsibility sharing.

Additionally, we may consider another works by Volker Türk and Madeline Garlick, "*From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees"*[58] and article by Shucks titled, *"Refugee Burden-Sharing: A Modest Proposal."* [59] While these articles argue that the sharing of responsibilities among States is necessary for the adequate protection of the world's refugees, they proposed different solutions to how such responsibility sharing should occur.

In similar manner, Professor James C.Hathaway and R.Alexander Neve in their article *"making international refugee law relevant again: a proposal for collectivized and solution oriented protection"*[60] Clearly finds the gaps in international refugee law regime in relation to imposing extraterritorial obligation on states. They designed an approach to promote burden sharing

[57] Tally Kritzman Amir, 'Not In My Backyard: On the Morality of Responsibility Sharing in Refugee Law'(2009)34 (2), Brook Journal of International Law

[58] Volker Türk and Madeline Garlick, From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees (2016)28(4), International Journal of Refugee Law

[59] Peter H. Schuck, 'Refugee Burden-Sharing: A Modest Proposal' (1997) 22, Yale J. Int'l L.

[60] James C.Hathaway and R.Alexander Neve, Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection (1997) 10 Harvard human rights journal

among groups of states they termed as "interest convergence groups."[61] They identified four tiers of membership with these groups. "Inner core", are states "with the strongest reason of their shared vulnerability to refugee flow."[62] According to them these states share responsibility for the provision of temporary protection for refugees. The second is the "outer core", and are states their involvement includes financial support and more managed form of responsibility sharing like resettlement in the case of special need.[63] the third is situation specific involvement which refers to the states conduct of offering assistance in some specific cases including the instances where the states identifies a connection to the refugee population based on ethnicity or religion.[64] The final membership to the interest convergence group according to them is the involvement of nongovernmental organizations. As a whole, these authors argues that the sharing of responsibilities among states is necessary for the adequate protection of the worlds refugees, while proposing slightly different solutions to how such cooperation should come out and they opt toward offering policy option to the existing problem than suggesting a binding legal solution.

However, the materials listed above provide, a solid point of departure for further research to this particular thesis and all the above and other related researches will be used as inputs in the course of the working of the thesis.

1.9. Limitations of the Study

Exploring the adequacy of the principle of responsibility sharing in addressing the current worldwide refugee crisis is wide concept which needs sufficient time and resources to study each and every details of the concept. There may be a shortage of time and resource which will inhibits looking the concepts from different perspective. Therefore, lack of sufficient time and resource are expected to create considerable impact on the outcome of the research.

1.10. Structure of the Study

In order to answer the issue raised in the research questions this thesis contains five chapters as follows:

[61] Ibid 143
[62] Ibid 191
[63] Ibid 192
[64] ibid 195

Chapter one is an introduction which contains the proposal of the thesis. Chapter two explores fundamental principles and concepts for refugee protection under international refugee law and their effectiveness in addressing the global refugee crisis. Under this topic the principle of non-refoulement, immunity against penalization and the concept of asylum, their scope, content and limitations will be discussed. Chapter three of the thesis discuss about the place of the responsibility sharing under general international law in addressing the collective action problems. This chapter shall contain a brief examination of the principle under UN chapter, UN General Assembly Declaration on the friendly relation among states, international environmental law and human rights law. Chapter four of the thesis will show justifications why responsibility sharing matters in addressing the global refugee crisis, examine whether the principle is adequate under international refugee law in addressing the problem and proposes a way forward based on the finding. Chapter five of the thesis shall contain the conclusions and recommendations of the research.

2. Chapter Two

Fundamental Principles Governing the Protection of Refugees under International Law and Their Effectiveness in Addressing the Global Refugee Crisis

2.1Introduction

The most important instrument under international law dealing with the issue of refugee today is the 1951 Geneva Convention relating to the status of refugees.[65] It is the first multilateral treaty that provides a definition for refugee, and outlines the rights entitled to those who are granted asylum and the responsibilities of the host state. The convention included a time frame as well as for geographic limitations on those who could be considered a refugee.[66]As the number of refugees continued to increase, in Asia, Africa, and Latin America the 1967 protocol which supplements the convention removed this timeframe as well as geographic restrictions.[67] As a result, the rights and responsibilities outlined by the convention have become universal. The convention together with the protocol remains the primary refugee instrument with international applicability. The convention defined who should be considered as a refugee and spelled out what rights these people would have. Both the convention and its subsequent protocol specify a variety of rights for the treatment of persons that are considered to falling within this category of refugees. Currently, they are ratified by 147 states, and therefore become the most ratified international instruments.[68]

Despite this wide ratification of the 1951 convention relating to the status of refugee and its subsequent protocol only the few asylum countries are often forced to assume most

[65] Adopted by the general assembly of United Nations on 28 July 1951 and entered in to force on 22 April 1954
[66] Ibid,art.1
[67] Adopted by the general assembly of United Nations on 31 January and entered in to force on 4 October 1967
[68] UNHCR, 'States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol' (2011), available on http://www.unhcr.org/3b73b0d63.html, , last accessed on 26 January 2018

responsibilities related to global refugee crisis. Currently, it has become the sole responsibility of host states to host and protect refugees with their territories. Even though, the convention is a legally binding international treaty there has been cases where most states in the world resorted to create restrictive legislations such as a tighter visa polices, tougher refugee recognition procedures and pushing refugees away.[69]

The UNHCR has claimed that refugee protection is grounded in various principles and norms derived from the well known sources of international instruments concerned with refugee protection and the 1951 refugee convention incorporates the most important principles of refugee protection that were relevant at the time it came into force and continue to be so in contemporary times.[70] Moreover, outside the context of international refugee law, the principles governing the protection of refugees are also present in international human rights law.

Therefore, this chapter will discuss the principle of non-refoulement, the right to asylum and prohibition for states to impose penalty on refugees who entered the territory without authorization among other principles. The core question will be addressed in this chapter is the scope and limitations of these principles and concepts for refugee protection. In order to tackle the issue the chapter will explore those principle and concepts under the 1951 convention relating to the status of refugee in more details. In addition to the international refugee law, it is also worth to highlight the most important international human rights provisions that deals with principles governing the refugee protection. Furthermore, the chapter will also explore different concerns in the convention regarding these principles and their effectiveness in addressing the current global refugee crisis.

2.2 The Principle of Non- Refoulement

This section addresses the specifics of one of the major principles of refugee protection: the principle of non-refoulement. The principle is often referred to as the foundation of international refugee law. It was originally developed in international refugee regime and prohibits states to send refugees back to their country of origin in which they could be persecuted. The most prominent provision on the principle of non-refoulement in international refugee law today is

[69] Eiko R. Thielemann, 'Why Asylum Policy Harmonization Undermines Refugee Burden Sharing'(2004)6, European Journal of Migration and Law 54

[70] Jens Vedsted-Hansen(ed),*´´The refugee law reader"* (7th eds,Hungarian Helsinki Committee,2015)47

incorporated in the 1951 convention relating to the status of refugees.[71] The principle of non refoulement formulated in article 33(1) of the refugee convention read as:

> No Contracting State shall expel or return "refouler" a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

As it is explicitly stated in article 42(1) of the convention no reservation to this article are permitted. The 1951 convention related to the status of refugee is the most widely accepted treaties in the world.[72] Consequently, the principle of non-refoulement can be considered as the most universally accepted conventional obligations of refugee law. Various regional instruments subsequent to the 1951 Convention clearly include regional state party's obligation of non-refoulement in their respective document.[73]

The principle of non-refoulement can be also found in a number of other international human rights instruments. Of the fundamental international human rights treaties, the Convention against Torture[74] is the only one that contains an explicit provision on this principle. Article 3(1) of the convention stipulates that: "no state party shall expel, return or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture."[75]Unlike to the Article 33 of the 1951 refugee Convention, this provision doesn't allow for exceptions to the prohibition of refoulement. The ICCPR does not contain a specific article on the principle. However, the human rights committee commenting on article (6) the right to life and article (7), the prohibition of torture, cruel, inhuman or degrading treatment or punishment stated that, "States parties must not expose individuals to the danger of conduct contrary to Article 7 and that they should indicate in their reports what measures they

[71]Adopted by the general assembly of United Nations on 28 July 1951 and entered in to force on 22 April 1954

[72] A. Duffy, 'Expulsion to Face Torture? Non-refoulement in International Law'(2008) 20, Int'l J. Refugee L.374

[73]See, OAU convention adopted by the assembly of the heads of states and government of organization of African union on 10 September 1969 and entered in to force on June 1974, art.2 (3) "No person shall be subjected by a Member State to measures such as rejection at the frontier, return or expulsion, which would compel him to return or remain in a territory where his life, physical integrity or liberty would be threatened."This treaty indicates precisely the scope of application of non refoulement principle. However, the instruments application is limited only to regional member states and it binds a small number of states compared with 1951 refugee convention.

[74] Adopted by the UN General Assembly in resolution 39/46 on 10 December 1984 and entered into force on 26 June 1987

[75] Ibid

have adopted to that end."[76] Moreover, Article 37 of the Convention on the Rights of the Child prohibits the return or the refoulement of children to places where they would be at risk of being tortured.[77]

Some scholars are arguing that this principle attains customary international norm status and applies not only to the state parties that have signed and ratified the convention but also to non signatory states.[78] Hence, the significance of the principle in protecting refugees is not debatable. However, the principle of non refoulement in refugee law is strongly connected with the refugee definition and its scope of application is not explicitly delineated by the conventions' provision. These and other debatable issues which impede the proper functioning of the principle in addressing the contemporary refugee crisis further discussed in the following sections.

2.2.1 Extraterritorial Application of the Non- Refoulement Principle

The refugee who finds himself physically in the territory of another state should be protected by the principle of non-refoulement. Although the principle of non refoulement is widely accepted as the fundamental of the international refugee law[79] there has been more discussion on the extraterritorial applicability of the principle. Instances where a refugee has been intercepted outside the border of a territory or on the border of the state on his way into the country where he wants to apply for protection raise debate among states, scholars and concerned organizations. Moreover, the wording of international refugee law treaties is not clear regarding extraterritorial application of the principle. With regard to the extraterritorial application of the principle of non-refoulement there is no uniform interpretation of the scope of obligations encompassed under the convention.[80]The lack of clarity in the Article 33(1) of the 1951 Convention relating to the status of refugee result to two contrary views, the one who claims for the expansive reading of the

[76] Human right committee, General Comment No. 20(1992) article 7 replaces general comment no. 7 concerning prohibition of torture and cruel treatment or punishment human rights committees, paragraph 9

[77] adopted by the UN General Assembly in resolution 44/25 on 20 November 1989 and entered into force on 2 September 1990,art.37

[78] Sigit Riyanto, 'The Refoulement Principle and Its Relevance in the International Law System'(2010) 7, Indonesian J. Int'l L699

[79] Silja Klepp, 'A Contested Asylum System: The European Union between Refugee Protection and Border Control in the Mediterranean Sea'(2011)12, Eur. J. Migration and L 9

[80] Ellen F. D'Angelo, 'Non-Refoulement: The Search for a Consistent Interpretation of Article 33' (2009) 42, Vand. J. Transnat'l L.285

provision and the others argue against.[81] There exists disagreement among states and scholar between the expansive and restrictive interpretation of the Article 33 of the Convention to determine its scope of application.

A restrictive reading of Article 33 suggests that non refoulement would be limited to those who have already entered the territory of a receiving state. Some States as well as a number of scholars argue that the principle does not apply extraterritorially. The proponents of this reading contend that restrictive reading is consistent with the text of the 1951 Convention, based on the drafters' choice to use the key words 'expel' or 'return' and these words implies that only refugees within the territory of the receiving state cannot be subject to refoulement.[82] Early commentators in the field of refugee law like Robinson also argued that, "article 33 concerns refugees who have gained entry into the territory of a Contracting State, legally or illegally, but not to refugees who seek entrance into this territory. In other words, Article 33 lays down the principle that once a refugee has gained asylum (legally or illegally) from persecution, he cannot be deprived of it by ordering him to leave for, or forcibly returning him to, the place where he was threatened with persecution, or by sending him to another place where that threat exists, but that no Contracting State is prevented from refusing entry in this territory to refugees at the frontier. In other words, if a refugee has succeeded in eluding the frontier guards, he is safe; if he has not, it is his hard luck."[83]

A number of authors also believe that the principle does not apply extraterritorially since the rights of refugees under the provisions of the 1951 refugee Convention are not guaranteed beyond territorial boundaries.[84] It has been argued that refugee law, including non-refoulement obligation, is derived from the premise that states have no duty under international

[81] Ibid
[82] Guy S. Goodwin-Gill, The Refugee International Law (2d ed.Clarendon,1996)119
[83] Nehemiah Robinson, *convention relating to the status of refugees: its history, content and interpretation*(Institute of Jewish affairs, 1953)162-3
[84]Mary Crock and Kate Bones, 'Australian Exceptionalism: Temporary Protection and the Rights of Refugees' (2015)16 (1) Melb J Intl Law 3; see also, Bjarte Vandvik, 'Extraterritorial Border Controls and Responsibility to Protect: A View from ECRE' (2008) 1 Amsterdam Law Forum; Vadislava Stoyanova, 'The Principle of Non-Refoulement and the Right of Asylum-Seekers to Enter State Territory' (2008)1Interdisc. J. Hum. Rts. L 2

law to admit refugees at their borders.[85] D'Angelo rightly pointed out that, following the restrictive interpretation of article 33 of the convention, states have devised a variety of approaches to keep refugees outside their borders declaring that such practices are consistent with their obligations under the 1951 Convention.[86]Under human rights treaties in general and the Convention against torture in particular the extraterritorial application of this principle is not clearly stated. Though a number of articles allow for extraterritorial application under the Convention against torture, Article 3 of the Convention which contain the principle lacks extraterritorial application.[87]

State mechanisms such as visa controls and agreements with other states to divert the passage of refugees, keep refugees from reaching state borders and are used to exert control over territorial integrity as a sovereign right.[88] As a result of this restrictive interpretation of the non refoulement obligation some states challenges the extraterritorial application of the principle and various mechanisms are devised to avoid assuming responsibility for refugees. In *Sale v. Haitian Centers Council* case the United States Supreme Court Stated that Article 33(1) of the 1951 Refugee Convention does not have an extraterritorial effect.[89] The court argued that a physical presence in the territory of the State is necessary and stated that "It is more reasonable to assume that the coverage of article 33(2) of the convention was limited to those already in the country because it was understood that 33(1) obligated the signatory state only with respect to aliens within its territory."[90] The court further stated that the term 'expulsion' in the text of the convention would refer to a 'refugee already admitted into a country' and that 'return' would refer to a 'refugee already within the territory but not yet resident there.' Thus, the Protocol was not intended to govern parties' conduct outside of their national borders."[91] Therefore, according to the argument made by the US Supreme Court, the exception to the article 33(1) entails a territorial limitation of the non-refoulement principle.

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[85] Ellen F. D'Angelo, ´Non-Refoulement: The Search for a Consistent Interpretation of Article 33' (2009)42, Vand. J. Transnat'l L 286
[86] Ibid
[87] See, article 3 of the convention on the one hand and article2, 5, 7...of the convention against torture which is adopted by the UN General Assembly in resolution 39/46 on 10 December 1984 and entered into force on 26 June 1987
[88] Ibid
[89] *Sale v. Haitian Ctr. Council*, 509 U.S. 155, (1993)187
[90] Ibid 180
[91] Ibid

The U.S government confirms the courts position and argues that the U.S action in the high seas in this particular case is a matter of national policy and not contrary to its international obligation.[92].British case law adopts this line of interpretation in the European Roma case.[93] In this case the court reasoned that the focus of the convention was on the treatment of refugees within receiving state and like most international conventions it represented a compromise between competing interest between the needs to ensure human treatment of the victims of oppression and the wish of sovereign states to maintain control over those seeking entry to their territory.[94] The court concluded that the prohibition for refoulement doesn't forbid states to regulate the entrance of aligns in their territory.[95]

On the other hand, the supporter of expansive interpretation of non refoulement obligation argued that the legal principle of non-refoulement is the cornerstone of the international refugee law and 'its duty has ordinarily been understood to constrain not simply ejection from within a state's territory, but also non admittance at its frontiers.'[96] Hathaway notes that article 33 of the convention amounts to a defacto duty to admit because it could be the only means of avoiding the consequences from risky exposure.[97] Furthermore, the UNHR on its note on the principle argue that, "since the purpose of the principle of non-refoulement is to ensure that refugees are protected against forcible return to situations of danger it applies both within a State's territory, to rejection at its borders and wherever States act."[98] Likewise, UNHR

[92] U.S. observations on UNCHR Advisory Opinion on Extraterritorial Application of Non-Refoulement Obligations (Dec. 28, 2007), available at :http://2001-2009.State.gov/s/l/2007/112631.htm, last accessed on 2 February 2018

[93] *Regina. v. Immigration Officer at Prague Airport et al, ex parte European Roma Rights Center et al,* (2004) UIKHL 55 (UK UL, 9 Dec. 2004)para.15

[94] Ibid 19

[95] Ibid

[96] Elihu Lauterpacht and Daniel Bethlehem 'The Scope and Content of the Principle of Non-Refoulement' (2001)UNHCR Global Consultations Para. 253;see also, Alice Farmer, 'Non-Refoulement and Jus Cogens: Limiting Anti- Terror Measures that Threaten Refugee Protection' (2009)23(1), Georgetown immigration law journal

[97] James Hathaway, *The Rights Of Refugees Under International Law* (Cambridge University Press, 2005)301

[98] UNHCR, 'Note on the Principle of Non-Refoulement'(1997),available at http://www.refworld.org, last accessed on 5 February 2018

Executive Committee Conclusions have stressed the importance of the application of the non-refoulement principle at the border and within the territory of States.[99]

Even though, the principle of non refoulement is the corner stone of refugee Convention the debate regarding the scope of obligations of states under Article 33 of the convention leaves the door open for states to evade their obligation. There is no convincing answer that appears from the wording of the article 33 and relevant human rights instruments concerning the issue. This legal uncertainty in the area affords States a legal vacuum to avoid their responsibilities of hosting and protecting refugees. According to D'Angelo, much of the binding force of the principle is undermined by the inconsistency of Article 33 interpretations that results in more onerous burden for some states of providing asylum as the direct result of another state's choice of interpretation.[100]Debate continues to surround the issue of whether or not a refugee must be inside the state in order for the right to accrue to them. Hence there is no consensus in the literature or state practice on the application of the principle of non refoulement extraterritorially. Since, most developed states are followed restrictive line of interpretation systematically to avoid their obligation the worlds developing and neighbor countries of refugee generating states are overburdened by the most refugee responsibilities. As a result, the principle of non refoulement has failed to address the global refugee crisis.

2.2.2 Who is protected by the Prohibition of Non- Refoulement?

The 1951 Convention links the principle of non-refoulement to the determination of refugee status. Article 33 of the 1951 refugee convention clearly refers to a refugee as a subject of the protection granted by the provision. The refugee definition on the other hand is provided for in the article 1 of the 1951 convention.[101] However, article 33(1) of the 1951 convention explicitly mentions refugees as persons who should be protected from refoulement and it makes no reference to asylum seekers. The point is whether the protection granted from non refoulement is

[99] UNHCR, Excom, Conclusion No.15 (XXX) 1979; Conclusion No. 6 (XXVII) 1977

[100] Ellen F. D'Angelo, 'Non-Refoulement: The Search for a Consistent Interpretation of Article 33' (2009) 42, Vand. J. Transnat'l L 315

[101] Article 1(2) of the 1951 refugee convention as it is amended by the 1967 protocol defined refugee as "a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

extends to asylum seekers as well or not. As mentioned above, article 33(1) itself refers only to refugees and it doesn't clearly answer the issue. Though it is not binding the UNHCR handbook on procedures and criteria for determing refugee status provides that,

> A person is a refugee within the meaning of the 1951 Convention as soon as he fulfills the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.[102]

This work of UNHCR suggests that article 33 of the convention applies to all refugees, whether or not they fit the prescribed definition. However, some states considered article 33 of the convention is intrinsically linked to the determination of refugee status. According to Gallagher, "these restrictive definitional efforts were motivated to keep the numbers down"[103] which heighten the current global refugee crisis.

Indeed, it is important also to note that for individuals to being granted a refugee status there is only one motive that is provided by the convention namely "a well founded fear of persecution." However, it is not clear that which forms of actions at home state would be considered as persecution. This terms on which the definition of the term refugee based neither defined anywhere in the convention. It has been stated that the term persecution is a fluid concept which is open and depends on the details of a particular case.[104] Hence, there is no universally agreed definition for the term persecution in the refugee conventions and the non refoulement principle is expressed in abstract and general terms without specific and clear content.[105] According to Pirjola,

> The principle of non-refoulement contains a paradox. While states have committed to respecting the principle by joining the 1951 Refugee Convention and key human rights conventions, its content is not established in international law. In other words, states have committed to a principle the content of which is indeterminate. Since no common definition exists, in practice, national and international bodies have

[102] UNHCR, 'handbook and guideline on procedures and criteria for determing refugee status under the 1951 convention and the 1961 protocol relating to the status of refugees' (Geneva 2011) Para 28
[103] D. Gallagher, 'The Evolution of the International Refugee System, in'(1989)23, International Migration Review 581
[104] Jari Pirjola, 'Shadows in Paradise – Exploring Non-Refoulement as an Open Concept'(2007) 19, Int'l J. RefugeeL.639.According to this author, the meaning of non-refoulement for an individual depends on the content the state parties give these concepts in particular cases.
[105] Ibid

> extensive powers of discretion to give content to the terms 'persecution', 'torture', 'degrading' or 'cruel' treatment.[106]

Although, the principle of non-refoulement as the cornerstone provision contained in the 1951 Refugee Convention, all the above ambiguity surrounding the definitional elements of the term refugees pose challenges to the effectiveness of the principle in achieving its underlined purposes. As a result, states could basically circumvent the protective regime established by refugee convention through postponing or refusing refugee status altogether which exacerbates the existing global refugee crisis.

2.2.3 Limitation to the Principle of Non-Refoulement

In principle under the 1951convention relating to the status of refugees no reservation can be made to the article 33.[107] However, protection granted by the principle of non refoulement is not absolute since article 33(2) of the convention provides for exceptions. The second paragraph of the provision stipulates that:

> The benefit of the present provision may not, however, be claimed by refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particular serious crime, constitute a danger to the community of that country.

This provision defines the categories of refugees excluded from protection on the grounds mentioned in the provision. Those exceptions are clearly formulated as expected threats to the national security or danger to the community of the nation. The provision doesn't specify the type of acts that form a threat to the national security nor does it specify what should be considered as a particular serious crime.

Though it has been argued that the person must be convicted for crime of high gravity by courts final judgment all appeal mechanisms being exhausted and provided the criminal proceeding have been conducted with full observance of the law of the place the wording of this provision leaves up to states discretion to define what constitutes danger either to national security or the

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[106] Ibid

[107] See, the 1951convention relating to the status of refugee which is adopted by the general assembly of United Nations on 28 July 1951 and entered in to force on 22 April 1954, article .42(1).Article 42(1) declares that "at the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16(1), 33, 36-46"

community.[108] The same author succinctly argues that, "the impacts of the exceptions provided for in article 33(2) should certainly not be underestimated, since it allows for asylum country to expel or return even refugees who face the risk of extremely serious form of persecutions."[109]

Since the attacks on the World Trade Center on September 11 2001, terrorism and external threats to the national security of states has become increasing concern of the most states in the world.[110] Following this particular incidence, there is great potential for refugee receiving states to rely heavily on the exception to the non refoulement in enacting anti-terrorism polices to the determent of refugee protection.[111] For instance, "the United States currently rely heavily on the language of the national security exception in Article 33(2) to exclude the right to non-refoulement with regard to refugees who are suspected to have links to terrorism."[112] Therefore, the determination of such a security threat lies first and foremost in the hands of states. Lack of clarity in the convention allows contracting states a certain room to use this national security exception to evade their responsibilities. Most of the worlds developed states have adopted mechanisms limiting refugee flows to their territories. Due to this currently refugees choose to cross and seek protection in the developing and poor states which are closed to refugee generating countries.

2.3 The Right to Asylum

In 1998, Executive committee of UNHCR notes that "the institution of asylum, which derives directly from the right to seek and enjoy asylum set out in Article 14(1) of the 1948 Universal declaration of Human Rights, is among the most basic mechanisms for the international protection of refugees."[113] The concept asylum is important in international refugee regime because it represents an institution through which human personality and values can be

[108] James Hathaway, *The Rights Of Refugees Under International Law* (Cambridge University 2005)350-351

[109] Ibid 354

[110] Alice Farmer, 'on refoulement and jus cogens: limiting anti terror measures that threaten refugee protection'(2009)23(1),Georgetown immigration law journal 13;see also, Erika Feller, 'asylum, migration and refugee protection: realities, myths and the promise of things to come'(2006) 18(3), International journal of refugee law 514

[111] ibid

[112] Ibid 37

[113] UNHCR, Exec. Comm., right to seek asylum, No. 85 (XLIX) 1998,available at, http://www.refworld.org/docid/4f50cfbb2.html ,last accessed on 6 February 2018

protected.[114] This prominent concept which is inextricably linked with international refugee regime lacks universally agreed definition under international refugee regime. The concept, also, doesn't find explicit expression under the 1951 refugee convention and the convention recognizes it impliedly.[115]To fill this lacuna, the Institute of International Law did define it as follows: "asylum means the protection which a State grants on its territory or in some other place under the control of certain of its organs to a person who comes to seek it."[116]

Edward noted that in spite of the above effort, in today's climate of heightened security concerns arguments revolving around State sovereignty are gaining renewed force as the ultimate right of States to patrol their borders and to reject asylum-seekers at their frontiers.[117] Many developed countries in the world have resorted to implement restrictive asylum policies and practices in order to deter and to prevent asylum-seekers from seeking refuge on their territory. To this end, states use different measures like interdiction, visa controls, carrier sanctions, safe third country arrangements and others.[118] The question is whether an individual have the right to be granted asylum in the current climate of states restrictive and non-entrée polices to address the global refugee crisis. To address this and similar issues the following section scrutinizes different components of the wider concept of right to asylum as follows.

2.3.1. The Right of State to Grant Asylum/State Sovereignty

> International protection is about secure entry into a territory in which refugees are sheltered from the risk of being persecuted or in other ways treated in a prohibited manner, or in a way that is inhumane or degrading. The challenge is to reconcile this universal protection concern with the fact that all of the Earth´s territory is in controlled or claimed by governments, who to a greater or lesser extent restrict access to non-citizens.[119]

The concept of Sovereignty implies that, nation states have the sole control over its territory and therefore have the right to determine which people are allowed to enter their geographical

[114] Cristiano D'Orsi, 'The AU Convention on Refugees and the Concept of Asylum'(2012)Pace Int'l L. Rev. Online Companion 225
[115] Ibid
[116] Institute of International Law: Resolutions Adopted at its Bath Session, September, 1950, The American Journal of International Law,Vol. 45, No. 2, Supplement: Official Documents (Apr., 1951)15
[117] Alice Edwards, Human Rights, Refugees, and the Right to Enjoy Asylum, 17 Int'l J. Refugee L. 293
[118] Matthew J. Gibney, 'The state of asylum: democratization, judicialization and the evolution of refugee policy in Europe'(2001) New Issues in Refugee Research: Working Paper No. 50,1,available at http://www.unhcr.org/research/working/3bf102204/state-asylum-democratization-judicialization-evolution-refugee-policy-europe.html ,last accessed on 10 February 2018
[119] Jari Pirjola, ´European Asylum Policy – Inclusions and Exclusions under the Surface of Universal Human Rights Language'(2009) 11, European Journal of Migration and Law 347

borders.[120] Under classical international law, granting asylum has been viewed as the right of a state, rather than the right of an individual.[121] It has been further stated that asylum is viewed as the right of each sovereign State to freely decide to grant protection within its jurisdiction and no obligation could be drawn from international law in this respect.[122] The Declaration on Territorial Asylum strengthens this position and provides that, "asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights shall be respected by all other States."[123] Further, article 1(3) of this declaration vests the state of asylum with the authority "to evaluate the grounds for the grant of asylum."

Similarly, regional instruments reinforce the existence of norms under international refugee law in favor of states right to grant asylum. For example, the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa provides, that member state of the Organization of African Unity "shall use their best endeavors consistent with their respective legislations to receive refugees."[124] The Asian-African Legal Consultative Organization's Bangkok Principles on the Status and Treatment of Refugees indirectly strengthened this concept, by stating that "a State has the sovereign right to grant or to refuse asylum in its territory to a refugee."[125] Thus, the right of a state to grant asylum follows from the principle that every sovereign state has exclusive control over its territory and also over the people within their territory. States decide who is allowed to enter and stay in their territory as a refugee.[126] In the 1950 *Asylum Case,* the International Court of Justice decision reflects this prevailing norm emphasizing that each State

[120]Thomas Gammeltoft-Hansen*, "Access to Asylum: International Refugee Law and the Globalization of Migration Control "*(Cambridge: Cambridge University Press, 2011)21

[121]Paul Weis, 'Legal Aspects of the Convention of 25 July 1951 Relating to the Status of Refugees' (1953) BRIT. Y.B. INT'L L 481.See also; Felice Morgenstern, 'The Right of Asylum' (1949) BRrr. Y.B. INT'L L 327.this author contend that according to general international law as at present constituted, the so-called right of asylum is a right of States, not of the individual.

[122] Salvatore Fabio Nicolosi,'Re-Conceptualizing the Right to Seek and Obtain Asylum in International Law' (2015) 4 Int'l Hum. Rts. L. Rev 304

[123]Adopted by the general assembly of United Nations on December 1967, A/RES/2312(XXII),article 1(1) ,available at http://www.refworld.org/docid/3b00f05a2c.html, last accessed on February 15 2018

[124]Adopted by the general assembly of the heads of states and government of organization of African union on September 1969 and entered in to force on June 1974.

[125]Asian-African Legal Consultative Organization,'Bangkok Principles on the Status and Treatment of Refugees' (1966), art. 2(2) available at, http://www.refworld.org/docid/3de5f2d52.html, last accessed on 21 February 2018

[126]Flora A.N.J.goudapple and Helena S.Raulus(eds), *The future of asylum in the European union: problems, proposals and human rights* (T.M.C. Asser press,2011)2

holds a full competence to grant or deny asylum within its jurisdiction. The Court states that, 'the decision to grant or refuse asylum in no way derogates from the sovereignty of that State.'[127] From this also follows that every sovereign state has the right to grant or deny asylum to the people within their territory.[128]

According to Mirkos and Jhon, states utilize this right frequently by placing restrictions over their borders of who can enter and remain in the territory and increasing their migration control. [129] States have retained their sovereignty in interpretation and application of the Convention obligations which often practiced by states weighing the interest of the state against the interest of refugee. However, States may be under a moral obligation to admit asylum seekers to their territories and to grant them asylum therein and in the municipal law States may even have assumed a legal obligation to do so.

2.3.2 The Right of Individual to Seek Asylum

The second aspect of the right of asylum is the right of an individual to seek asylum. This is an individual right that an asylum-seeker has in relation to his state of origin.[130] It is the right of an individual to leave his country of residence in pursuit of asylum. For a person to benefit from international protection, he/she needs to be able to lodge a claim for asylum. The right to seek and enjoy asylum was first given universal recognition in the Universal Declaration of Human Rights.[131] Article 14 of the Declaration stipulates that, "Everyone has the right to seek and to enjoy in other countries asylum from persecution." However, unlike to other subsequent human rights instruments this document lacks binding forces. After the adoption of this Declaration the discussion on the right to asylum continued, and resulted in the Declaration

[127] *Colombian-Peruvian Asylum Case* (Colombia v Peru),Judgment,ICJ Reports 1950, 266 at 274,available at http://www.icj-cij.org/files/case-related/7/007-19501120-JUD-01-00-EN.pdf, last accessed on 22 February 2018

[128]Roman Boed, 'The State of the Right of Asylum in International Law'(1994) 5, Duke J. Comp. & Int'l L. 3

[129]Bagaric, Mirko and Morss, John, ´State Sovereignty and Migration Control: The Ultimate Act of Discrimination?' (2005-2006) 1(25), Journal of Migration and Refugee 26

[130] Roman Boed, ´The State of the Right of Asylum in International Law'(1994) 5, Duke J. Comp. & Int'l L.7

[131]Adopted by the general assembly of United Nations on December 1948, GA Res 217A (III), UN Doc A/810

on Territorial Asylum.[132] Similar to the UDHR this particular Declaration neither resulted in a binding document. Moreover, the Refugee Convention does not mention a right to seek asylum explicitly. Aside from being expressed in various non binding documents those are related with refugee protection, individual's right to seek asylum is not explicitly incorporated under international refugee law.

2.3.3 The Right of an Individual to be granted Asylum

According to Edward, the 1951Convention and its 1967 Protocol 'clarify the minimum standards implicit in the application of Article 14 of the Universal Declaration of human rights. And place a duty on States parties to grant, at a minimum, access to asylum procedures for the purpose of refugee status determination.'[133] However, due to the notion of state sovereignty, international community's failed to come up with international norm that obliges states to grant asylum and consequently accept refugees into their territories.[134] Although article 14(1) of the Universal Declaration of Human Rights proclaims the right of an individual "to seek and to enjoy in other countries of asylum from persecution," there is no explicit mention of a right to be granted asylum. As it is noted by Kuruk, Article 14 of the Declaration was based on the concept of asylum as a right of the state to grant asylum, rather than as right of the individual to be granted asylum.[135] Besides, the 1967 UN Declaration on Territorial Asylum doesn't make change to existing international law with respect to an individual's right to receive asylum in a particular state. No obligation to grant asylum is laid down in this particular declaration.[136]

Although the 1951 Convention relating to the status of refugees and its 1967 additional Protocol have the apparent purpose to give protection to refugees, they don't provide a right to be granted asylum.[137] The Convention lefts granting asylum to state discretion and doesn't establish

[132]Adopted by the general assembly of United Nations on December 1967, A/RES/2312(XXII),article 1(1) available at http://www.refworld.org/docid/3b00f05a2c.html, last accessed on 23 February 2018

[133]Alice Edwards, ´Human Rights, Refugees, and the Right To Enjoy Asylum'(2005)17, Int'l J.Refugee L.302

[134]Vadislava Stoyanova,´The Principle of Non-Refoulement and the Right of Asylum-Seekers to Enter State Territory' (2008) 3, Interdisc. J. Hum. Rts. L.5

[135]Paul Kuruk, 'Asylum and the Non Refoulement of Refugees: The Case of the Missing Shipload of Liberian Refugees' (1999) 35, STAN. J. INT'L L.321

[136] Patricia Hyndman, ´Asylum and Non-Refoulement – Are These Obligations Owed to Refugees under International Law'(1982) 57, Phil. L.J.54

[137]Christian Tomuschat, 'A Right to Asylum in Europe' (1992) 13, HUM.RTS.LJ.258);see also, Patricia Hyndman, ´Asylum and Non-Refoulement – Are These Obligations Owed to Refugees under

a legal obligation for the states to admit asylum seekers into their territory. The United Nations High Commissioner for Refugees explains in the Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees that, "the granting of asylum is not dealt with in the 1951 Convention or the 1967 Protocol." [138] Thus, as with other international instruments concerned with refugee protection discussed above, this fundamental refugee instrument doesn't vest an individual with a right to be granted asylum. Moreover, regional refugee specific instruments also do not provide for an individual's right to be granted asylum.[139] Furthermore, Gil Bazo affirms that there is no international recognition of the right to be granted asylum of universal scope.[140]

Contrariwise, Edward points out that "access to asylum procedures are an implied right under the 1951 Convention, without which obligations of non-refoulement, including rejection at the frontier, could be infringed."[141] Furthermore, Nicolosi argue that the discretion of states is not unfettered and State sovereignty has to be counterweighted by human rights.[142] No adjudicative mechanism at the international level appears in the field of asylum and refugee for the better understanding of this issue. However, some of the regional human Courts judgments try to disconnect asylum from the absolute sovereignty of the state.[143] In this regard, Stoyanova points

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International Law'(1982) 57, Phil. L.J (This writer argues that 'The position under the 1951 Convention is that, although it does comprise the most comprehensive code of the 'basic rights of refugees'- contained in any international instrument, it' lays down no stated obligation to provide asylum for refugees. Asylum is not even inferred to in the main body of the text, though it is mentioned in the Preamble and also in the Final Act, but not in terms imposing a duty on up contracting states to grant asylum to refugees.'

[138] UNHCR, 'Handbook on procedures and criteria for determining refugee status under the 1951 convention and the 1967 protocol relating to the status of refugees' (2011)para25

[139] See, for example the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, art.II (1) which states that ´´member states shall use their best endeavors consistent with their respective legislations to receive refugees."

[140] Maria-Teresa Gil Bazo, 'Refugee Status, Subsidiary Protection, and the Right to be Granted Asylum under EU Law, New issues in Refugee Research'(2006) UNHCR Research paper No.136, 7.Greig also contend that as international law stands today, States have no international legal duty to admit asylum seekers who present themselves at their frontier and ask for asylum and to grant asylum .D.W.J Grieg, ´The protection of refugees and customary international law´, available at http://www.austlil.edu.au/au/Jounals/auy/brbkintlaw/1978/4.htm, last accessed on February 13 2018

[141] Alice Edwards, 'Tampering with Refugee Protection: The Case of Australia'(2003) 15, Int'l J.Refugee L. 198

[142] Salvatore Fabio Nicolosi, 'Re-Conceptualizing the Right to Seek and Obtain Asylum in International Law' (2015) 4, International Human Rights Law Review 329

[143] Ibid 330

out that the European Court of Human Rights judgment in *Vilvarajah and others v. United Kingdom case* implies the prerogatives of states to control entrance, residence, and deportations of aliens are subject to certain human rights obligations. [144] Furthermore, the right has been also noted in the Vienna Declaration and program of action. [145]

However, the question remains as to who exactly is obliged to then provide this right. According to Costello, states continue to dispute the existence of an individual right to asylum in a country of one´s choosing and continue to develop policies to deflect asylum seekers elsewhere.[146]Due to this gap within the 1951 convention and in the international human rights treaties there have been cases where states have even resorted towards shifting the responsibility onto others, by creating restrictive legislation such as tighter visa policies and tougher refugee recognition procedures, and in some, even pushing refugees away. [147] As a result, the countries of first asylum most often developing and poor are forced to bear the brunt of the cost of hosting and protecting large numbers refugees. Currently, due to these restrictive measures implemented by most developed states majority of refugee hosting countries are generally unable or unwilling to respect the 1951 Convention and refugees are often confined to camps, denied the rights granted to them as refugees and their human rights violations. [148] Generally, it is unclear under international law in general and refugee law in particular the extent to which individual has the right to enter and reside in other countries. In most cases this ambiguity forces countries which are poor, developing or with liberal asylum policies to assume more responsibility related to refugees which worsen the contemporary global refugee crisis.

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[144]Vadislava Stoyanova,'The Principle of Non-Refoulement and the Right of Asylum-Seekers to Enter State Territory' (2008) 3, Interdisc. J. Hum. Rts. L. 2

[145]Vienna Declaration and Program of Action adopted by the World Conference on Human Rights on 25 June 1993, UN Doc. A/C ONF./57/23, Part I (23)

[146]Cathryn Costello, 'The Asylum Procedures Directive and the Proliferation of Safe Country Practices: Deterrence, Deflection and the Dismantling of International Protection?'(2005)7, European Journal of Migration and Law 35

[147] Eiko R. Thielemann, ´Why Asylum Policy Harmonization Undermines Refugee Burden Sharing'(2004)6, European Journal of Migration and Law 54

[148] Elizabeth Holzer, ´What Happens to Law in a Refugee Camp' (2013) 47, Law and Soc'y Rev. 837 (2013); see also, James Hathaway, 'A global solution to a global refugee crisis, Global Rights, Debate on the future of refugee protection' (2016).He asserts that a number of people's right to life is maintained but a number of their most fundamental rights (such as to work, to move freely, to receive asylum are suspended.

2.4 Immunity against Prosecution

As it is clearly discussed in the previous section states obligation to grant asylum for those who seeking protection from persecution is not clearly stipulated under international refugees and human rights law. Additionally, the Current state practices revels that most countries in the world are not willing to offer refugees legal admission to their territories. Several countries have responded to the contemporary global refugee flows by introducing domestic deterrent mechanisms including mandatory detention policies as a result of which refugees are resorted to take irregular journey and border crossing.[149] In the middle of this contemporary state practices, there exists, however, international refugee norms which forbids penalization of refugees for their illegal entry. Therefore, in the following section the elements of this norm under international refugee convention as well as its effectiveness in serving its underlying promise will be discussed.

2.4.1 With respect to Illegal Entry or Presence

Illegal entry would include securing entry in to the territory of other states through the use of different mechanisms without receiving the authorization of the refuge state. The Refugee Convention specifically provides that states may not penalize asylum seekers for their unauthorized entry or presence in a foreign territory. Article 31(1) of the convention stipulates that:

> The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

Hathaway considers that Article 31 denies governments the right to subject refugees to any detriment for reason of their unauthorized entry or presence in the asylum country.[150]Under this basic principles, the right to liberty and security of the person in general and refugee in particular requires states to treat refugees with liberty and may not detain asylum seekers based solely on their illegal entry. This is an acknowledgment of the fact that "the refugees frequently have no time for immigration formalities since the conditions that force them to leave their home states

[149]Thomas Gammeltoft-Hansen; and Nikolas Feith Tan, ´Beyond the Deterrence Paradigm in Global Refugee Policy'(2016) 39, Suffolk Transnat'l L. Rev.638

[150] James Hathaway, *The Rights Of Refugees Under International Law* (Cambridge University Press, 2005)410

do not allow to them do."[151] However, in presence of this norm, there exist some controversial points associated with the application of the principle eroding its protective scope in the contemporary refugee situations as discussed in the following sub sections.

2.4.1.1 Scope of Protection

In the same way that protection against refoulement formulated under the 1951 refugee convention, the benefit of immunity from penalty under article 31(1) of the refugee convention for illegal entry extends to refugees. A refugee is defined under article 1(A) 2 of the Refugee Convention. Once an individual satisfies the criteria within this definition they are entitled to the protections and rights guaranteed under the Refugee Convention.[152]As it is discussed above in the section dealing with the non refoulement principle the refugee convention doesn't deal expressly with the rights of asylum seekers. However, the UNHCR contends that although expressed in terms of refugee the protection in article 31 would be devoid of all effect unless it also not extended to asylum seekers.[153] The 2001 Expert Roundtable Summary Conclusions provided that,

> The effective implementation of Article 31 requires that it applies also to any person who claims to be in need of international protection; consequently, that person is presumptively entitled to receive the provisional benefit of the no penalties obligation in Article 31 until she/he is found not to be in need of international protection in a final decision following a fair procedure.[154]

Similarly, Hathaway argues that Article 31 requires no more than physical presence, therefore, the provisional benefit must be granted to all persons claiming refugee status until they are finally determined not to be Convention refugees.[155] However, it has been stated that nowadays the definition of a refugee has been strictly interpreted based on the Convention and has been used by many states to refuse to take in refugees.[156]Even though, the purposive

[151]Guy S. Goodwin-Gill, ´The Detention of Non-Nationals, with Particular Reference to Refugees and Asylum-Seekers'(1986) 9, In Defense of the Alien 142

[152] James Hathaway, 'What's in a label?'(2003) European Journal of Migration and Law 5

[153] UNHCR, 'handbook and guideline on procedures and criteria for determing refugee status under the 1951 convention and the 1961 protocol relating to the status of refugees' (Geneva 2011) Para 28

[154] Experts Roundtable Summary Conclusions organized by the United Nations High Commissioner for Refugees and the Graduate Institute of International Studies, Geneva,Switzerland,8–9November(2001) Para 10(g)

[155] James Hathaway, *The Rights Of Refugees Under International Law* (Cambridge University Press, 2005)389

[156]Jackson Ivor. 'The 1951 Convention Relating to the Status of Refugees: A Universal Basis for Protection.'(1991) 3, Int'l J. Refugee L. 403

reading of the article 31(1) supports the argument offered by the above organization and scholars the proliferation of restrictive asylum polices in most part of the world blurred the full operation of the principle to the asylum seekers.

2.4.1.2 The Condition of Immunity

Refugee who flees from risk of being persecuted may invoke article 31 of the convention to avoid penalties for their entry or presence. However, convention puts conditions which must be satisfied before invoking the entitlement provided. These qualifying conditions reflect a notion of good faith on the part of the refugee and Only refugees who come forward of their own initiative their by demonstrating their good faith are immune from penalization for breach of immigration laws.[157]Firstly, refugees will not be penalized for unauthorized entry or stay, but this is subject to the qualifying condition that they must come forward to the authorities promptly once in the State.[158] They must do so in a particular manner, namely 'without delay'. According to Costello, by doing so, the drafters take in to account for the States' interest in the early identification.[159] Given the personal circumstance and special situation of asylum seekers, there is no time limit which can be mechanically applied or associated with the expression without delay. As a result, some states interpret this requirement too restrictively.[160]

Secondly, article 31 of the convention requires refugees to come directly to be accorded with conventions protection. It has been argued that the expression coming directly incorporated in the provision is not requires refugee to come directly from their country of origin. The expression is not only refers to coming from the country of origin or residence, but also includes coming from any 'territory' where the refugees' life or freedom is threatened.[161] In addition, the Excom in its conclusion stated that, 'there is no obligation under international law for a person to seek international protection at the first effective opportunity' and that the intentions of the asylum-seeker as regards the country in which he wishes to request

[157] Ibid 390
[158] Cathryn Costello, 'article 31 of the 1951 convention relating to the status of refugees' (2017) UNHCR legal and protective policy research serious, available at http://www.refworld.org/pdfid/59ad55c24.pdf. last accessed on 26 February 2018
[159] ibid
[160] ibid35
[161] ibid 23

asylum should as far as possible be taken into account. Regard should be had to the concept that asylum should not be refused solely on the ground that it could be sought from another State.'[162] According to this committee, refugees are not required to have come directly from their country of origin. However, this criterion is the most contentious element of article 31 of the convention and some jurisdictions interpret the expression coming directly restrictively. For instance, Costello stated that "in Hungary, courts have found asylum-seekers in Hungary not to have come directly when they entered from Serbia, simply on the basis that Serbia was designated as safe by government decree."[163] Therefore, on the basis of this interpretative freedom most states in the world are devised different measures to deflect and contain refugees in countries and region of first destination which currently increases the responsibility of the major refugee hosting states.

Thirdly, the 1951 convention Article 31(1) requires that refugees who can entry the country without permission should show a good cause. However, the notion of good cause has been a source of difficulty and some have agreed that flight from risk of being persecuted is good cause in itself for illegal entry. The 2001 Expert Roundtable Summary Conclusions provide that, 'having a well-founded fear of persecution is recognized in itself as good cause for illegal entry. To come directly from such country via another country or countries in which she/he is at risk or in which generally no protection is available, is also accepted as good cause for illegal entry. There may, in addition, be other factual circumstances which constitute good cause.'[164]

2.4.1.3 The Nature of Immunity

Article 31 of the refugee convention proscribes state penalization of refugee who enters a territory to escape threats on their lives, even if the refugee enters without authorization. Even though the right not to be penalized for method of arrival is fundamental norms of the refugee

[162]UNHCR Executive committee, refugee without an asylum country: Conclusion No 15 (XXX) (1979)

[163] Cathryn Costello, 'article 31 of the 1951 convention relating to the status of refugees'(2017) UNHCR legal and protective policy research serious 28, available at http://www.refworld.org/pdfid/59ad55c24.pdf. last accessed on March 3 2018

[164] Expert Roundtable Summary Conclusions organized by the United Nations High Commissioner for Refugees and the Graduate Institute of International Studies, Geneva,Switzerland,8–9November(2001) Para 10(e)

convention[165] the term penalties is not defined in article 31. As Guy Goodwin-Gill has noted, the term penalty include measures, which creates unnecessary limitation to the full enjoyment of rights granted to refugees under international refugee law applied by States against refugees and the drafters appear to have had in mind measures such as prosecution, fine and imprisonment.[166] As the object of the provision is to prevent punishment for illegal entry, Goodwin-Gill adopts a broad interpretation of 'penalty' to encompass detention.[167] Therefore, the broader interpretation of the provision at hand suggests refugee should not be subjected to punitive detention condition. However, many states deviate from this line of interpretation and deprive the freedom of refugees.

2.4.2 Exceptions to the Principle of Immunity against Penalization

As it is discussed above, once refugees enter the territory, states are prohibited from taking measures that penalize them for their presence or entry. Basic human rights are recognized by refugee law such as freedom of movement and the right to liberty and security of person.[168] However, the Convention recognizes that, in certain circumstances, States may impose restrictions on freedom of refugees. Article 31(2) of the convention stated that:

> The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

States are not allowed to impose restrictions in the freedom of movement of refugees other than those that are necessary. But the convention doesn't provide criteria as to what constitutes necessary. The refugee convention doesn't address the procedure to be followed by states to ensure a balance is maintained between the rights of refugees and the legitimate interest of the

[165]von Sternberg, ´Reconfiguring the Law of Non-Refoulement: Procedural and Substantive Barriers for Those Seeking to Access Surrogate International Human Rights Protection'(2014) 2, J Migration & Hum Sec 330

[166]Guy S. Goodwin-Gill, 'Article 31 of the 1951Convention relating to the Status of Refugees: Non-penalization, Detention, and Protection'(2001) a paper prepared at the request of the Department of International Protection for the UNHCR Global Consultations, available at http://www.unhcr.org/3bcfdf164.pdf , last accessed on 5 March 2018

[167] Guy S. Goodwin-Gill, ´The Detention of Non-Nationals, with Particular Reference to Refugees and Asylum-Seekers'(1986) 9, In Defense of the Alien142

[168] See, for example article 26 of the 1951 refugee convention

state.[169] Besides, the lack of enforcement mechanisms or judicial/quasi judicial body to rule on the interpretation, scope and right stipulated in the refugee convention gives a state a wide margin of appreciation in interpreting the words.[170] Currently, the absence of procedures to be followed or lack of any mechanisms for the interpretation or enforcement of the rights in the convention and the ambiguity of words leads state to use the loophole to subject refugees to detention and other coercive measures.

2.4.3 The Current Climate of Detention of Refugees and the Protection Gap

The 1951Convention has directed that refugees who are coming directly from danger should get immunity from such penalties including detention. As it is pointed in the previous section, though article 31(2) of the convention provides for the narrow exception, it gives a margin of discretion to the state parties to define and apply as to what constitutes necessary reasons to deprive refugee's rights. The practice of detaining refugee is still considered as a manifestation of state sovereignty.[171] As a result, many refugees across the globe who are searching for protection from their plight are now facing detention and states use it as a means of reducing the number of applicants.[172]

The UNHCR at various occasions argued that a deterrence policy is in contravention with the goal of refugee protection. This organization Concerned with wide state practices in this regard, has issued guidelines on the detention of asylum seekers. The guideline clearly state that the use of "detention that is imposed in order to deter future asylum-seekers, or to dissuade those who have commenced their claims from pursuing them, is inconsistent with international norms."[173] The guidelines also reiterate that states must not use detention as a punitive or disciplinary measure or as a means of discouraging refugees from applying for asylum and detention of

[169]E Arboleda and I Hoy, 'The Convention Refugee Definition in the West: Disharmony of Interpretation and Application' (1993) 5, International Journal of Refugee Law

[170] James Hathaway, 'A Forum for the Transnational Development of Refugee Law: The IARLJ's Advanced Refugee Law Workshop' (2003) 15, International Journal of Refugee Law

[171]Ian Bryan and Peter Langford, 'The Lawful Detention of Unauthorized Aliens under the European System for the Protection of Human Rights'(2011)80(2), Nordic Journal of International Law 195-210

[172]Guy S. Goodwin-Gill, 'The Detention of Non-Nationals, with Particular Reference to Refugees and Asylum-Seekers'(1986) 9 In Defense of the Alien139

[173]UN High Commissioner for Refugees (UNHCR), Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012)Para 32, available at http://www.refworld.org/docid/503489533b8.html, last accessed on 6 March 2018

asylum seekers in police cells is not deemed appropriate.[174]Noting with the deep concern, the executive committee stated that,

> while the detention of such persons who do not possess identity papers or use false ones is used as a basis for mandatory detention in several countries, states need to bear in mind that making a quick decision to escape persecution in one´s home country can inevitably lead to leaving behind important personal belongings and documents; thus asylum-seekers should generally not be detained on this basis alone.[175]

Despite the above organization work, state practice all over the world reveals that the detention policy and detention of refugees in practices becoming a routine activity. A large numbers of refugees in different parts of the world are currently the subject of detention. Almost all the countries of Europe, the US, Canada, and Australia do exercise a detention policy towards refugees and asylum seekers. As per O'Nions, competitive restrictionism among states are developed, and "each state wants to out-do the other in the restrictions it applies to incoming asylum seekers, so as not to end up a favorite destination state."[176] Many European states have taken recourse to detaining asylum seekers when they arrive in their territories, often on the basis of having false or no travel documents or if they have entered the country illegally.[177] Hathaway noted that almost all Member States of the European Union have enacted legislation which provides for the detention of asylum seekers that ranges from exceptional to detentions which is systematically applied to all those who enter the country illegally.[178] For instance, Lithuania has legislation that provides for criminal sanctions for illegal entry.[179] Accordingly, refugees that enter Lithuania illegally can be detained directly on criminal grounds. On the top of this the conditions of the detention facilities in some member states of European Union are not conducive which raises another human rights concern of refugees. For example, it has been stated that "in Greece the detaining condition is appalling at which the refugees and asylum seekers had been locked in a small room with twenty other people, had not been let out in the

[174] Ibid
[175] UNHCR Executive Committee of the High Commissioner´s Program Standing Committee, 15th Meeting – Detention of Asylum-Seekers and Refugees: The Framework, the Problem and Recommended Practice(1999)11, International Journal of Refugee Law, paragraph 15
[176] Helen O´Nions, 'The Detention of Asylum Seekers for Administrative Convenience'(2008)10(2) European Journal of Migration and Law151-153
[177] Kay Hailbronner, Detention of Asylum Seekers(2007)9 (2), European Journal of Migration and Law 160
[178] James Hathaway, *The Rights Of Refugees Under International Law* (Cambridge University Press, 2005)
[179] Kay Hailbronner, Detention of Asylum Seekers(2007)9 (2), European Journal of Migration and Law 163

open air, had only been allowed to the toilet at the discretion of the guards, was given very little to eat and had to sleep on a dirty mattress."[180]

In USA detaining asylum seekers is also used as a deterrent to discourage refugees to arrive in the country. Johnson has stated that in the USA, asylum seekers could perceive the detention system in place as penalizing them for trying to seek refuge in the United States; prison- like conditions and being treated like a criminal certainly adds to this perception, and might, from the government´s point of view, act as an effective deterrent for other asylum seekers.[181] In the UK, the Oakington detention center was opened that was specially designed to contain incoming asylum seekers which are used to deter future flows.[182] Similarly, increasing number of refugees and asylum seekers in Australia are detained in the absence of evidence that they pose a danger or that they may abscond.[183]According to O'Nions, the use of detention measure against refugees and asylum seekers transmit a double signal - warning other asylum seekers to take a detour to another country and luring voters who wish to take a tough stand against the other. [184] This leads to the rising populisms in most part of the world as a threat to the present refugee protection regime. For instance, Europe has seen the rise of populism and discrimination against refugees, out of fear not only that they threaten the cultural makeup of those countries, but also out of fear of terrorism.[185] As a result, refugees are often forced to remain in countries of first asylum.

2.4.4 Conclusion

This chapter has brought out three major principle and concepts of refugee protection under international refugee and human rights law. The chapter examines the principle of non refoulement, immunity against penalization and the right to asylum under international law and

[180]P.Mallia, ´Case of M.S.S. v. Belgium and Greece: A Catalyst in the Re-Thinking of the Dublin II Regulation'(2011) 30 (3), Refugee Survey Quarterly 117-118
[181]Kristen M. Jarvis Johnson, 'Fearing the United States: Rethinking Mandatory Detention of Asylum Seekers'(2007) 59 Administrative Law Review 591-605
[182]Lisa Hassan, 'Deterrence Measures and the Preservation of Asylum in the United Kingdom and United States'(2000)13(2), Journal of Refugee Studies188-189
[183] Helen O'Nions,´No Right to Liberty: The Detention of Asylum Seekers for Administrative Convenience' (2008) 10, Eur.J. Migration & L.150
[184] Ibid
[185] Judith Sunderland, "Fear and Loathing of Refugees in Europe," Human Rights Watch, 8 February 2016, https://www.hrw.org/news/2016/02/08/fear-and-loathing-refugees-europe, last accessed 10 March 2018

their effectiveness in addressing the global refugee crisis. These principles and concepts are of outmost importance for all refugees and unquestionably the cornerstone of international refugee protection.

The central purposes of the principle of non-refoulement is the prohibition of the return, in any manner whatsoever, of refugees to countries where they may face persecution. This principle is enshrined in various international refugees and human rights instruments. States have a duty not to send back individuals to a state where they would face persecution. However, the 1951 refugee convention which is the primary international refugee instrument suggests that only refugees in the meaning of the refugee Convention can enjoy the protection. With regard to the ambits of the extraterritorial application of the principle of non-refoulement the wording of the Article 33 of the Refugee Convention fails to consider the current context of the provision and its current practice. Hence, the effectiveness of the principle in addressing the global refugee crisis requires interpreting the article in according to its current context and practice.

With regard to immunity against penalization the Refugee Convention specifically provides that states may not penalize asylum seekers and refugees for their unauthorized entry or presence in a foreign territory. However, there exist some controversial points associated with the application of the principle eroding its protective scope in the contemporary refugee situations.

The right to asylum is an important concept with the pending contemporary refugee crisis. The Universal Declaration of Human Rights recognizes the right to seek and enjoy asylum as a basic human right. Without this right the fundamental rights recognized under international refugee laws would be meaningless. However, concerning this right there is difference among scholars. As international stands today, it is unclear in international law the extent to which individuals has the right to enter and reside in other countries.

Despite their importance in refugee protection, these principle and concepts are formulated in the refugee convention and human rights law in a way that they allow states a certain margin of interpretation and room to maneuver. Consequently, majority of developed country tended to use these loopholes in the convention and implement policies and followed sophisticated methods of avoiding refugee responsibilities. As a result, refugees are often forced to remain in countries of first asylum. Today only small numbers of states in the world are confronted with refugee

responsibilities. Therefore, in presence of these principles refugee protection is not guaranteed on a global level and the crisis is not mitigated.

Chapter Three

The Concept of Responsibility Sharing Under International Law

3.1 Introduction

The previous chapter has concluded that the principle of non-refoulement, immunity against prosecution and the right to asylum those considered as pillars of refugee regime are formulated in the refugee convention in a way that they allow states a certain margin of interpretation and room to maneuver. Because of this only small numbers of states in the world are shouldered with heavy refugee responsibilities. Bearing this in mind this thesis aims to search for the other principle called responsibility sharing in relation to the global refugee problems. Before examining the main research question that is the adequacy of the principle of responsibility sharing under international refugee law this chapter shall examine this principle under international general international law. Accordingly, the chapter will research in to the root of the principle under international law and its place in general international law in addressing issues requiring collective action from international community.

Under traditional international law, states are the primary agent of responsibility and it is only an international wrongful act that generates legal responsibility of states. This Classical international law which consists principally of a negative set of rules of abstention which is designed to ensure the peaceful coexistence of all sovereign states is very insufficient for international relations in which states have other shared aims.[186] According to Bernhardt, "for contemporary society responsibility is a key category of self reflection which therein seeks reassurance after the loss of metaphysics and the end of utopian expectations of social progress." [187] Accordingly, in the modern international law context broader debate invoke responsibility in the sense of fundamental obligation of states for the purpose of fundamental human rights and on other similar issues concerning global community as a whole.[188]

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[186]Rudolf Bernhardt, *International relations and legal cooperation in general diplomacy and consular relations in encyclopedia of public international law* (Elsevier science Publishers B.V 1986)194

[187] Ibid

[188] Monica Hakimi, 'state bystander responsibility'(2010)European journal of international law 341;Theresa Reinold , 'states weakness, irregular warfare and the right to self defense post 9/11'(2011) American journal of international law 244

Contrary to the traditional individualistic approach contemporary international law makes a range of uses of the term responsibility in wide range of meaning. Concepts such as a responsibility to protect, common but differentiated responsibility and others have found their ways in different fields of international law. Thus, it is worthwhile to remember that international responsibility of states can be either negative or positive. In this regard, Murphy has succinctly stated that "we have to consider not just breaches of negative duties such as a duty not to harm, but also breaches of positive obligations such as a duty to benefit others or promote justice or just institutions."[189]Consequently, transnational issues that are of international concern has been put forward as a foundation for international human rights protection in general and in other areas of international law which call states to act beyond traditional paradigm of responsibility.[190]

International law cites the need for responsibility sharing in addressing the problems of climate change, pollution, security and other similar global problems.[191] In this context, responsibility sharing is defined as the "distribution of costs and benefits between states for addressing a particular global challenge."[192] Hence, at the outset, it is necessary to inform that the term "responsibility" used in this thesis does not mean the legal consequences of international wrongful acts. Instead, responsibility in this thesis should be understood to signify that something is imposed upon States towards solving common international problems.

Therefore, understanding responsibility sharing relies on understanding concepts relating to international cooperation.[193] 'International cooperation is a broadest level concept encompassing

[189] Liam Murphy, *International responsibility, in Samantha Besson and Jhon Tasioulas (eds), the philosophy of international law* (oxford university press 2010)304

[190]Laura Horn, 'The Implications of the Concept of Common Concern of a Human Kind on a Human Right to a Healthy Environment'(2004)1, Macquarie Journal of International and Comparative Environmental Law 236

[191]Eiko R. Thielemann and Torun Dewan, 'Why States Don't Defect: Refugee Protection and Implicit Burden-Sharing' (2004) paper prepared for presentation at European Consortium for Political Research's Joint Session of Workshops, Uppsala, Sweden 2,available at http://www.essex.ac.uk/ecpr/events/jointsessions/paperarchive/uppsala/wsl6/Thielemann.pdf ,accessed on May 13 2018

[192] Susan F. Martin and others, 'International Responsibility-Sharing for Refugees'(2018) KNOMAD Working paper 32 at 4;see also, Alexander Betts, Cathryn Costello and Natascha Zaun, 'A Fair Share: Refugees and Responsibility-Sharing'(2017) Delmi report, Stockholm 20

[193] Alexander Betts, Cathryn Costello and Natascha Zaun, 'A Fair Share: Refugees and Responsibility-Sharing'(2017) Delmi report, Stockholm 20

all forms of coordinated and collaborative actions undertaken by states and used in different contexts.'[194] According to Bernhardt, international cooperation means the obligation to enter into such coordinated action so as to serve specific objective.[195] This international law of cooperation had emerged as a new international order between the first and the second world wars of the 20th century.[196]

Cooperation in international law can be manifested in many forms. Accordingly, it has been stated that, responsibility sharing can be understood as particular forms or a subset of international cooperation.[197] Moreover, different scholars have opined that at its core, the concept of responsibility sharing derives from the overarching norm of international cooperation.[198] The principle of responsibility sharing which is the focus of this thesis in general and of this chapter in particular is rooted in and derives from this overarching concept of international law. This rule of international law that calls on states to cooperate and share responsibility on matters concerning international community is incorporated in different instruments of international law. But this research will focus on UN charter, 1970 UN friendly Declaration on Principle of International Law Concerning Friendly Relations, on international environmental law and international human rights law in discussing the places of responsibility sharing in international law.

The UN charter is chosen because of the universal nature of the document; and the UN Declaration on Friendly Relation because it specifically deals with cooperation among states;and

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[194]Astri Suhrke, 'Burden-Sharing during Refugee Emergencies: The Logic of Collective versus National Action'(1998) 11, JRS 399–402

[195]Rudolf Bernhardt, *International relations and legal cooperation in general diplomacy and consular relations in encyclopedia of public international law* (Elsevier science Publishers B.V 1986)193

[196]Wolfgang Friedmann, *The changing structure of international law*(Columbia university press,1964)62

[197]Kathleen Newland, 'Cooperative Arrangements to Share Burdens and Responsibilities in Refugee Situations short of Mass Influx'(2011) Migration Policy Institute, Discussion Paper prepared for a UNHCR Expert Meeting on International Cooperation to Share Burdens and Responsibilities Amman, Jordan 11 2011

[198]Tally Kritzman-Amir, 'Not In My Backyard: On the Morality of Responsibility Sharing in Refugee Law' (2009)34, Brook. J. Int'l L.376, Volker Türk and Madeline Garlick, From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees(2016)28(4), International Journal of Refugee Law 658; Alex Catalan Flores, 'Reconceiving Burden-Sharing in International Refugee'(2016)7, Law, 7 King's Student L. Rev. 43; Agnés Hurwitz, 'The 1990 Dublin Convention: A Comprehensive Assessment'(2009)11(4),International Journal of Refugee Law 8

finally, international environmental and human rights laws are selected because these regimes of international law incorporate this principle in binding form. Therefore, this chapter briefly introduces how this principle to cooperate which contains the principle of responsibility sharing is incorporated in the above regimes of international law. Hence, the concept international cooperation is used in this chapter to mean that international cooperation to share the responsibility for addressing the common international problems.

3.2 The United Nations Charter

The United Nations charter[199] which is the foundation of modern international law established different principles of international law. It has been argued that this significant international instrument stipulated principles of international law whose enforcement should not only prevent the outbreak of war but also designed to further social, economic and cultural cooperation.[200]The Charter emphasizes the need for cooperation among states in order for the aims of the organization to be achieved. It further addressed the importance of international cooperation in both economic and social spheres. The Charter contains different provisions those applicable to the principle of cooperation. Among others article 1(3) of the Charter provides that one of the objective and guiding principle of the UN is:

> To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion

It has been stated that this provision has been used in enhancement of international cooperation in different areas of international relations and particularly in the area of human rights.[201] Additionally, it is argued that those principle listed in Article 1 of the Charter including the need for cooperation among states in economic and social spheres are all expressions of community interests and values which the United Nation members pledge to pursue and which cannot be

[199] Charter of the United Nations adopted on 26 June 1945 and entered into force 24 October 1945 1 UNTS XVI

[200]Rudolf Bernhardt, *International relations and legal cooperation in general diplomacy and consular relations in encyclopedia of public international law* (Elsevier science Publishers B.V 1986)195;Article 1 of the Charter enumerates four purposes of the organization, namely maintenance of international peace and security, development of friendly relations, achievement of international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and creation of a center for harmonizing the actions of nations. See, Karl Loewenstein, 'Sovereignty and International Co-Operation' (1954)48, Am. J. Int'l L.224

[201] Chulu Simma Bruno and others (eds),*The Charter of the United Nations, a Commentary*(3rd ed. Vol 1, Oxford: Oxford University Press. 2012) 107

attained by unilateral efforts of lone competing sovereigns.[202]However, it is still a matter of controversy whether the purposes as set forth in Article 1 of the Charter are legally binding. But, most scholars have of the opinion that, since the Charter is "the world's constitution the moral as well as legal strength of the Charter as the only comprehensive covenant common to the universality of States is undoubted."[203]

Furthermore, Chapter 9 of the Charter is fully devoted to international economic and social cooperation and the Economic and Social Council is put in place as a principal organ of the United Nations equal in importance with the Security Council and the General Assembly of the organization.[204] For instance, article 56 of the Charter states that states "pledge" themselves to cooperate in achievement of objectives mentioned in article 55 of the Charter. It has been stated that, "responsibility sharing as a general fundamental principle in international law is reflected in Articles 55 and 56 of the Charter of the United Nations."[205]However, the UN Charter refrains from providing the means by which it practically be achieved in this area leaving it to the States to determine the important considerations and responsibility sharing mechanisms.[206]

Although the means by which it may practically be achieved in this area has not been elaborated those provisions devoted for this principle under the charter all signify the importance of cooperation to share responsibilities in international arena among states in both economic and social spheres. The United Nations Charter laid down the principle of cooperation from which the principle of responsibility sharing is derives. Further, it has been stated that international cooperation embedded in the UN Charter and the long list of trans-boundary issues including environmental preservation, economic globalization, financial crises, migration and refugee,

[202] Edmunds Broks, 'protection of interests of the international community in the law of state responsibility' (doctoral thesis, university of Latvia 2014)
[203]Ronald Macdonald, 'Charter of the United Nations in Constitutional Perspective'(1999) 20, Aust. Year Book of Int'l Law230.see also,Bardo Fassbender, The United Nations charter as constitution of the international community(1998) 36 Columbia journal of transnational law
[204]Karl Loewenstein, 'Sovereignty and International Co-Operation'(1954) 48, Am. J. Int'l L. 224
[205] Tally Kritzman-Amir, 'Not In My Backyard: On the Morality of Responsibility Sharing in Refugee Law' (2009)34, Brook. J. Int'l L.376
[206] Tally Kritzman-Amir, 'Not In My Backyard: On the Morality of Responsibility Sharing in Refugee Law' (2009)34, Brook. J. Int'l L.376, Volker Türk and Madeline Garlick, From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees(2016)28(4), International Journal of Refugee Law 658

terrorism and security, or the control of nuclear weapons brings the relevance and necessity of this principle nowadays.[207]

3.3 The United Nations Declaration on Principles of International Law Concerning Friendly Relations

The principle of international cooperation is further elaborated in the 1970 Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations.[208] The duty of States to cooperate is outlined in the declaration and it states that:

> States have the duty to cooperate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international cooperation free from discrimination based on such differences.[209]

Since it was adopted in the form of UN resolution the Declaration is not a legally binding document. However, some scholars attach more weight to this particular document than other general assembly's resolution. Robert Rosenstock one of the proponent of this position has argued that, 'the principles involved in the declaration, however, are acknowledged by all member states to be principles of the Charter without a 'dissenting vote' and by accepting the respective texts states have acknowledged that the principles represent their interpretations of the obligations of the Charter that makes difficult to deny the legal weight and authority of the declaration.'[210] The declaration enumerates obligations of States following from the principle of cooperation.[211] Hence, the 1970 friendly declaration serves as an important source for the

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[207] Heloise Daste,'The Role of the Bretton Woods Institutions in Development Cooperation' (2016)3, BLR 64

[208] The Declaration on Principles of International Law concerning Friendly Relations and Co-Operation among States in accordance with the Charter of the United Nation, adopted by the general assembly of the United Nations on 24 October 1970, A/RES/25/2625(XXV)

[209] Ibid Principle 4(1)

[210] Robert Rosenstock, 'The Declaration of Principles of International Law Concerning Friendly Relations: A Survey'(1971)65, Am. J. Int'l L. 715

[211] To this end article (4) of the declaration enumerates states obligations arise from duty to cooperate. For instance, "States shall co-operate with other States in the maintenance of international peace and security"(art 4(2)a; "States Members of the United Nations have the duty to take joint and separate action in co-operation with the United Nations in accordance with the relevant provisions of the Charter"(art 4(2)d; "States should co-operate in the economic, social and cultural fields"(art 4(3).

principle of responsibility sharing and the scope of States' obligations derived from the principle of cooperation are further elaborated in this particular document.

3.4 International Environmental law

Environmental pollution is a trans-boundary phenomenon that concerns the entire international community and becoming a global problem. It is clearly witnessed that activities undertaken on a state territory can have damaging effects on the territory of another state or in the areas that are not under the jurisdiction of any state.[212] To this effect states realized early that unilateral action alone doesn't confine the problem.[213] As a result, the international community has deployed various principles in order to bring together different States into international environmental regime to confront this common global problem. The concept of cooperation to share responsibility in the environmental field can be seen in several instruments that have been put in place for the protection of environment.

For instance, principle 24 of the Stockholm Declaration stipulates that 'international matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries, big and small, on an equal footing.'[214]Later on, the historical UN summit on human environment and development which was held at Rio de Janeiro in 1992 produced a number of instruments including Rio Declaration that also contains the above concept.[215] Principle 7 of this Declaration stated that 'States shall cooperate in the spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem.' Scholars have argued that the most significant contribution of this declaration could be that it highlighted the global concern of environmental degradation and its complex trans-boundary nature.[216]

Even though these Declarations are soft law by their nature they laid the foundation for the next discussions on the issue. The concept of international cooperation to share responsibilities has

[212] Philippe Sands, *principles of international environmental law* (2nd ed, Cambridge university press,2003)4

[213] Elli louka, *International environmental law, fairness, effectiveness and world order* (Cambridge university press, 2006) 11

[214]Adopted by the United Nations general assembly on 16 June 1972 A/CONF.48/14. The Conference was held in Stockholm on 5–16 June 1972, and a declaration containing twenty-six Principles.

[215] Adopted by the United Nations General assembly on 13 June 1992

[216] David Wirth, 'The Rio Declaration on Environment and Development: Two Steps Forward and One Back or Vice Versa'(1995) 29, Georgia Law Review 599

played important role in States' efforts to address common environmental problems and the resulting development of international environmental law to control, prevent, reduce and eliminate the adverse impacts of human activities conducted in all spheres.'[217]

International cooperation to share responsibility is especially important in the context of climate change regime because it is evident that states with the least ability to adapt to or mitigate climate change bear the greatest burden of its harmful effects.[218] Today, the international community has recognized climate change as a global problem. The 2030 UN Agenda for Sustainable development affirms that, the global nature of climate change calls for the widest possible international cooperation aimed at accelerating the reduction of global greenhouse gas emissions and addressing adaptation to the adverse impacts of climate change.[219] Thus, it is accepted that climate change is a common global problem and that all states shall cooperate to share responsibilities to address this problem.[220] It is worth to cite Knox John's view on the role of international cooperation in the climate change context: "Because greenhouse gases emitted anywhere on the planet contribute to global warming everywhere on the planet, it is impossible to effectively mitigate climate change without coordinated international action. In this instance, international cooperation must take the primary, rather than the secondary, role."[221] Moreover, it has been argued that the regime broadly reflects the idea that the widest possible cooperation to share responsibilities by all countries is needed to combat climate change and the adverse effects.[222]

The UNFCCC, which is among the product of the 1992 UN conference on environment and development is a framework instrument for the development of the duty to cooperate which

[217] Adopted by the United Nations general assembly on 16 June 1972 A/CONF.48/14, principle 24

[218] Siobham McInerney-Lankford, 'Climate Change and Human Rights: an Introduction to Legal Issues'(2009) Harvard Environmental Law Review 431

[219] Transforming Our World: The 2030 Agenda for Sustainable Development, A Res 70/1(2015)Para 31.available at https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf accessed on May 13,2018

[220] International law association, 'Legal principles relating to climate change'(2014) paper presented at the 76th conference of the ILA, Washington D.C art 8

[221] Knox John 'Climate change and human rights law'(2009)50(1), VJIL 213

[222] Pieter Pauw and others, 'Different Perspectives on Differentiated Responsibilities: A State-of-the Art Review of the Notion of Common but Differentiated Responsibilities in International Negotiations'(2014) Discussion Paper, German Development Institute, 1

embraces responsibility sharing under this regime.[223]Furthermore, the expert document on the legal principles relating to climate change developed by International Law Association, on the legal Principles relating to Climate Change states that, "international cooperation describes the effort of States to accomplish an objective by joint action, where the actions of a single State cannot achieve the same result."[224] The ILA commentary on principle of cooperation further reiterates that cooperation is the underlying general legal principles of international law that provides normative direction to states and played an important role in states effort to address common problems in global climate change regime.[225] In the climate change context, the principle of cooperation 'underpins almost all aspects of State efforts to deal with a common concern of humankind.'[226]

The objective of international cooperation mainly in climate change regime is based on the idea that reducing global emission is a common responsibility of states for the good of entire world. According to the ILA commentary on legal principles relating to climate change, to make this general objective a real the principle is subjected to and shaped by other concept called CBDR which is developed and used under international environmental law regime as one aspects of responsibility sharing to address collective action problems.[227] This concept which found its root in international environment law particularly in climate change regime plays a prominent role to the development of responsibility sharing principle in the international arena in addressing trans-boundary issues. Hence, the next section will introduce how this mechanism of responsibility sharing is employed and used under international climate change regime to avert a mutual risk.

3.4.1Common but Differentiated Responsibility

The Principle of common but differentiated responsibilities is one of the most central concept devised in the international environmental law in general and climate change regime in particular to address a common global problem in this regime. It has been argued that the principle has, from the beginning, underpinned the international efforts to address climate change and become a defining feature of the regime given that it recognizes state parties vary both in

[223] Adopted by United Nations general assembly on 9 May 1992 and entered in to force in 1994
[224] International Law Association, 'Legal Principles Relating to Climate Change'(2014) Paper presented at the 76th Conference of the International Law Association, Washington 362
[225] Ibid 364
[226] Ibid
[227] Ibid

their levels of responsibility for climate change and in their capacities to take remedial measures.[228] The principle not only enshrined State responsibilities but also recognizes that all States should participate in a common effort of protecting environment.

The principle has been described as ‘‘the bedrock of the responsibility sharing arrangements crafted in the new generation of environmental treaties’’.[229] It has also significant normative value in indicating how such responsibilities are to be allocated, and it allows for different standards for developing states. By doing so, it boosts their performance by obliging developed states to provide international assistance and support to their own commitment.[230] Its origin dates from 1992 world conference on earth and environment and the Rio Declaration of 1992 in its Principle 7 states that: "In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities."[231] At the same time, the UNFCCC uses similar languages and includes explicitly the aforementioned principle. For instance, article 3(1) of the convention reads:

> The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.[232]

Scholars argue that the addition of the term ‘respective capabilities’ in the UNFCCC which was not a case in the Rio Declaration infers that there are two bases for differentiation of responsibilities in the climate change regime one based on capability and another based on the contribution to environmental harm. [233] This principle is also mentioned in article 4(1) of the Convention.

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[228]Lavanya Rajamani, ´Differentiation in the Emerging Climate Regime´(2013)14(1), Theoretical Inquiries in Law 158

[229] International Law Association, ‘Legal Principles Relating to Climate Change’(2014) Paper presented at the 76th Conference of the International Law Association, Washington

[230] Patricia Birnie, Alan Boyle and Catherine Redgwell, *International Law and the Environment* (3rd ed, Oxford University Press, 2009) 133

[231] Adopted by United Nations general assembly on 9 May 1992 and entered in to force in 1994

[232] United Nations framework convention on climate change ,adopted 20 June 1992 and entered in to force 21 March 1994

[233] Harald Winkler and Lavanya Rajamani, ‘CBDR&RC in a regime applicable to all’(2013)14(1), Climate Policy

In addition to this framework instrument, Rajamani also hints that the principle was the basis for the burden-sharing disposition under the Kyoto Protocol.[234] Boyte further stated that the principle is reaffirmed in the Kyoto Protocol, with article 10 of the Protocol stating that implementation is to take place with Parties "taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances."[235] Thus, the principle recognizes that in reducing mutual risks regarding climate change all states should cooperate to share responsibilities and it charges developed countries to carry a greater share of the responsibility due to their capacity to avert the risk.

As its name suggests, the principle contains two fundamental elements: First, the responsibilities are common; and second, they are differentiated. According to Duncan French this "twin notions of the principle implies that the global environmental problems require the participation of all (common responsibilities), but that the nature and extent of that participation is dependent on certain variables (differentiated responsibilities)".[236]The principal idea of CBDR is to call attention of every states in addressing the common problem and while doing so, also distinguishing between each country's respective capabilities to take remedial measures. These two constitutive elements of the principle are discussed below as follows.

3.4.1.1Common Responsibilities

As it is mentioned earlier, common responsibility of states form the first basis of the principle of common but differentiated responsibilities and respective capabilities.[237] Boyte again argues that this first element of the principle evolves from the notion of "common concern" and "common heritage of mankind."[238]However, Common responsibility in its general meaning suggests that, certain risks affect and is affected by every nation on earth not only limited to environmental concerns but to all risk related global public goods, including peace, public health, terrorism and

[234] Lavanya Rajamani, ´Differentiation in the Emerging Climate Regime´(2013)14(1), Theoretical Inquiries in Law156,seealso,Keyoto Protocol to UNFCCC adopted 11 December 1997,entered in to force 16 February 2005

[235] Rachel Boyte, 'Common but Differentiated Responsibilities: Adjusting the Developing/Developed Dichotomy in International Environmental Law' (2010), 14 N.Z.J. Envtl. L. 69

[236] Duncan French, 'Developing States and International Environmental Law: The Importance of Differentiated Responsibilities'(2000)49 Int'l & Comp. L.Q.46

[237] Edith Brown Weiss, 'Common but Differentiated Responsibilities in Perspective'(2002) 96 Am. Soc'y Int'l L.367

[238] Rachel Boyte, 'Common but Differentiated Responsibilities: Adjusting the Developing/Developed Dichotomy in International Environmental Law' (2010) 14 N.Z.J. Envtl. L.66

others.[239] While, the context of the circumstance in which they were adopted differs, these attributions of commonality do share common consequences and accordingly attaches certain legal responsibilities to all states towards the common problem at issue.[240]

In environmental law context, Matsui has rightly stated that "because of the recognition of the global nature of environmental problems, the protection of the global environment has come to be seen as the common concern of humankind, and not solely a matter of domestic jurisdiction of each individual State."[241] In this regard, the common responsibility primarily involves an obligation to cooperate to conserve, protect and restore the health and integrity of Earth's ecosystem and it implies the sharing of responsibility in achieving the pursued goals.[242] Hence, Common responsibility describes responsibility sharing among States towards the protection of a particular environmental resource. A common responsibility which is manifestation of responsibility sharing is provided for in many international instruments in the fields of the environmental law notably in climate change regime.

The 1992 UNFCCC echoes this common responsibility clearly and forcefully. It stipulates that the Parties to this Convention, acknowledging that change in the Earth's climate and its adverse effects are a common concern of humankind.[243] The concept is also found in operational provisions of the convention in addition to this preambles paragraph and also reiterated in the preamble of the Kyoto protocol.[244]Accordingly, "the word common requires that all states participate in addressing climate change because climate change and its adverse effects are a common problem of humankind''[245] By doing so, the UNFCCC make clear that a global agreement to address the problem of climate change must necessarily apportion responsibility among states. And it requires both developing and developed states to take their share of

[239]Christopher D. Stone, 'Common but Differentiated Responsibilities in International Law'(2004) 98 Am. J. Int'l L. 276

[240]Philippe Sand and Jacqueline Peel, *Principles of international environmental law*(3rd ed, Cambridge university press,2012)233

[241] Yoshiro Matsui, 'Some Aspects of the Principle of Common but Differentiated Responsibilities(2002)2(2) International Environmental Agreements: Politics, Law and Economics 153

[242] Ibid

[243] United Nations framework convention on climate ,adopted 20 June 1992 and entered in to force 21 March 1994 para1

[244] Ibid art 3(1),4(1);see also, Kyoto Protocol to UNFCCC adopted 11 December 1997,entered in to force 16 February 2005 preamble

[245]Philippe Sand and Jacqueline Peel, *Principles of international environmental law*(3rd ed, Cambridge university press,2012)234

responsibility. Therefore, it clearly represents responsibility sharing aspects of the CBDRRC principle in addressing this trans-national issue.

Hence, in climate change regime states have common responsibility to achieve the objective of the regime. Besides, attributing responsibility to all the principle of CBDR also based on difference relating to different levels of development among states. This in turn leads us to the other element of the principle called differentiated responsibility which is discussed in the next section.

3.4.1.2 Differentiated Responsibilities

Though certain problems are global in character and require a collective action still the international community encounters increasing disparities between and within states. This disparity clearly manifested in terms of economic developments between nations of the world that puts significant obstacle on world communities to come up with a common legal ground for environmental measures in general and climate change in particular.[246] As a result, the principle of CBDR which lies at the heart of the climate change regime premised on the notion that, "since States have differing historical, current and future contributions to climate change, differing technological, financial and infrastructural capabilities, as well as diverse economic fortunes and other national circumstances, States have differentiated responsibilities to address climate change and its adverse effects."[247] This clearly reflected under the UNFCCC and its subsequent instruments. Consequently, there is general agreement that states common responsibility to protect climate falls differently on different states.[248]

The CBDR principle recognizes that common responsibilities are differentiated among states. In this regard Rajamani argues that "the notion of differentiated responsibility drives from both the differing contributions of States to climate change and the differing capacities of States to

[246]For example, the UNFCCC stipulates this concern in its operative provision. See, United Nations framework convention on climate change adopted 20 June 1992 and entered in to force 21 March 1994 art 4(7).

[247]International Law Association, 'Legal Principles Relating to Climate Change'(2014) Paper presented at the 76th Conference of the International Law Association, Washington 347

[248] See, for example, United Nations framework convention on climate change adopted 20 June 1992 and entered in to force 21 March 1994 art 3(1), 4(2).

take remedial measures"[249] Likewise, Matsui posited that, contribution to green house gas emissions and the resources countries posses to tackle the problem are two criteria those helps to differentiate responsibilities among states and developed countries posses more resources to take remedial measures.[250] Hence, differentiated responsibility places different standard on various states particularly tacking in to account the circumstances and respective capacity of developing states.

Accordingly, the principle of CBDR by recognizing the different needs and circumstances of developing countries fosters partnership and cooperation among states and promotes effective implementation of agreements.[251] Sand clearly opined that, 'the rationale to the differentiated responsibility in general is to ensure that developing countries can come into compliance with particular legal rules over time thereby strengthening the regime in the long term.'[252] As it is discussed above, capacity to take remedial measures to this transnational problem is one of the main criteria for differentiating responsibilities under the CBDRRC principle. As per, ILA commentary responsibility sharing in the climate change context is characterized by the responsibility of industrialized countries to shoulder a large share of the burden as well as take the lead.[253] Following this, some scholars have contended that the legal basis for the transfer of technology and financial resources from the industrial to developing countries under climate change regime is a legal duty.[254]

Generally, differentiated responsibility in international environmental law notably in climate change regime aims to increase the ability of developing countries to comply with their commitments toward their common responsibilities. To this end, climate change regime is based on different types of differentiated responsibilities. Among others, the next section will hint the

[249] Lavanya Rajamani, 'Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics' (2016) 65 International & Comparative Law Quarterly 493

[250] Yoshiro Matsui, 'Some Aspects of the Principle of Common but Differentiated Responsibilities'(2002)2(2) International Environmental Agreements: Politics, Law and Economics 154

[251] Duncan French, 'Developing States and International Environmental Law: The Importance of Differentiated Responsibilities' (2000) 49 INT'L & COMP. L.Q. 35; see, also, Christopher D. Stone, 'Common but Differentiated Responsibilities in International Law' (2004) 98 A.J.I.L.

[252] Philippe Sands, *Principles of International Environmental Law* (2nd ed, Cambridge Univ. Press 2003)218

[253] Legal Principles Relating to Climate Change, 76 Int'lL. Ass'n Rep. Conf. 330 (2014)363,available at Hein online

[254] Duncan French, 'Developing States and International Environmental Law: The Importance of Differentiated Responsibilities'(2000) 49 Int'l & Comp. L.Q. 35

provision of international assistance to developing states as an example of differentiated responsibilities of developed states under climate change regime.

3.4.1.2.1 Provision of International Assistance

According to some scholars, "differentiation of responsibilities is one aspect of an emerging shared compact between developed and developing countries, with the latter conditioning their participation in global environmental agreements on assistance from the former."[255] Under CBDR principle, differentiated responsibility of developed states encapsulate a wide range of activities which are extending to an obligation to take the lead in addressing environmental problems, and to assist developing states through different mechanisms.[256] Hence, the international cooperation on climate change shall reflect the responsibility of developed countries to assist developing countries.[257] The underlying rationale for the provision of assistance under the principle of CBDR is to promote distributive equity between developing and developed countries.[258] It acts as an incentive for developing countries' compliance with their obligations under a given international instrument.[259] The purpose of provision of international assistance in the climate change context is to increase the ability of developing countries to comply with and implement their common responsibilities.[260] This obligation has been incorporated in to different legal instruments and various forms of assistance are provided under the climate change regime based on the principle of CBDR.

The assistance envisaged under the climate change regime includes: financial assistance, technology transfer, capacity building and the like. For example, UNFCCC obliges developed countries to provide financial resources, transfer technology and to support capacity building to

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[255] Mark A.Drumbl,'Poverty, wealth, and obligation in International Law' (2002) 76 TUL. L. REV.843

[256] Rachel Boyte, 'Common but Differentiated Responsibilities: Adjusting the Developing/Developed Dichotomy in International Environmental Law' (2010) 14 N.Z.J. Envtl. L. 63

[257] International law association, 'Legal principles relating to climate change' (2014) paper presented at the 76th conference of the ILA, Washington D.C, art 8(3), 5(3).

[258] Jarrod Hepburn and Imran Ahmad, 'The Principle of Common but Differentiated Responsibilities' A Legal Working Paper in the CISDL "Recent Developments in International Law Related to Sustainable Development Series. available at: http://www.cisdl.org/pdf/sdl/SDL_Common_but_Diff.pdf .accessed on May 15,2018

[259] Ibid

[260] Daniel Bodansky, 'The Legal Character of the Paris Agreement' (2016) 25 Review of European Community &International Environmental Law 142

developing countries to enable them to meet their own commitment.[261] This also includes a specific obligation to assist developing countries with the costs of adaptation.[262] Furthermore, the Paris agreement acknowledges the need to support developing country Parties for the effective implementation of the agreement.[263] It contains similar obligations requiring developed countries to provide financial resources to assist developing countries with mitigation and adaptation.[264] Generally, the provision of international assistance to developing countries under the UNFCCC or climate change regime is an obligation not an act of charity. Incontrovertibly, this provides an incentive for developing countries to comply with and discharge their international commitment properly in addressing the common global problem.

3.5 International Human Rights Law

Human rights are a legitimate concern of the international community since the establishment of UN Charter in 1945.[265] Human rights issue was envisioned within the broader agenda of the UN charter to secure the global protection of human beings.[266] Further, these human rights objectives of the United Nations were grown in the different international human rights instruments. Those human rights instruments are based on the assumption that, whereas the enjoyment of rights of recognized therein will be primarily secured by domestic arrangements, there is a collective obligation on the part of international community for the proper implementation of those rights. Accordingly, international cooperation has been entrenched in most human rights treaties. Several human rights treaties establish binding obligations for international cooperation. It has been stated that the ultimate aim of a human rights approach to international cooperation is to assist the state parties in implementing its treaty obligations.[267] Hence, in this increasingly interdependent and globalized world, the realization of human rights at the national level is

[261] See example, United Nations framework convention on climate change adopted 20 June 1992 and entered in to force 21 March 1994 art 4(1)(c), 4(3), 4(5)).
[262] Ibid art 4(4).).
[263] Paris agreement adopted 12 December 2015, entered in to force 4 November 2016 art 3, 4/5.
[264] Ibid art 9(1), 13(9).
[265]Heloise Daste,'The Role of the Bretton Woods Institutions in Development Cooperation' (2016)3, BLR 64
[266] Ibid
[267]Magdalena Sepulveda,'Obligations of International Assistance and Cooperation in an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights' (2006) 24, Neth. Q. Hum. Rts.289

intrinsically related to international cooperation.[268] This inextricable link, between the duty to international cooperation and the realization of human rights are clearly stipulated in various international human rights instruments. This section will discuss this link among others, in the provisions of international convention on economic, social and cultural rights, convention on the rights of child and conventions on the rights of people with disabilities since the majority of references to this respect are found in these instruments.

3.5.1 The Convention on the Economic, Social and Cultural Rights (ICESCR)

The ICESCR[269] is the universal human rights instrument which deals entirely with economic, social and cultural rights. In contrast to the ICCPR,[270] ICESCR doesn't provide any provision on territorial applicability of the covenant. As it is noted by Daste, 'International cooperation is an essential element in the realization of economic and social rights at the international level and its contemporary relevance is reinforced in the light of the adverse effects of globalization on developing countries and their population' [271] Accordingly, the covenant confirms the importance of international cooperation and contains explicit reference to this effect in its operative parts of provisions for the realization of the rights contained in it. The primary basis for the international cooperation under the ICESCR is article 2(1) which provides that:

> Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means.

This provision refers to general obligations of states under the Covenant. The Committee on ESCR notes that, "Article 2 is of particular importance to a full understanding of the Covenant and must be seen as having a dynamic relationship with all of the other provisions of the Covenant."[272] In its interpretation of article 2(1) of the covenant, the Committee had stated that,

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[268] Heloise Daste,'The Role of the Bretton Woods Institutions in Development Cooperation(2016)3, BLR63

[269] Adopted by the UN General Assembly in resolution 2200 A (XXI) on16 December 1966 and entered into force 3 January 1976

[270] Adopted by the UN General Assembly in resolution 2200 A (XXI) on 16 December 1966 and entered into force on 23 March 1976

[271] Heloise Daste,'The Role of the Bretton Woods Institutions in Development Cooperation' (2016) 3 BLR62.

[272] Committee on ESCR, General Comment No. 3(1990) on Article 2,the Nature of States Parties Obligations, Paragraph 1.

"The Committee wishes to emphasize that in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international co-operation for development and thus for the realization of economic, social and cultural rights is an obligation of all States. It is particularly incumbent upon those States which are in a position to assist others in this regard. It emphasizes that in the absence of an active program of international assistance and cooperation on the part of all those States that are in a position to undertake one, the full realization of economic, social and cultural rights will remain an unfulfilled aspiration in many countries."[273] According to this Committee, the obligation for States parties to take steps to the 'maximum of their available resources' in this particular provision refers both to the resources existing within a country and those available from the international community through international cooperation and assistance.[274]

The Committee further emphasis that the 'obligations related to international cooperation is particularly incumbent on States parties in a position to assist to provide 'international assistance and cooperation, especially economic and technical to enable developing countries to fulfill their core obligations.'[275] Commenting on the general implementing provision of the covenant the committee again stated that, States are required to identify in their reports any particular needs that they may have for technical assistance or development cooperation.[276]Hence, according to the committee international cooperation is inextricably linked to the obligations to comply with the 'core obligations' under the covenant.

It is important to note that in addition to article 2(1) of ICESCR, reference to international cooperation is also included in other substantive provisions of the covenant. For instance, as set out in article 11(2) ICESCR, "the States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs, which are needed." In this

[273] Ibid paragraph14
[274] Ibid Paragraph 13
[275]Committee on ESCR, General Comment No.14(2000) on Article 12,The right to the highest attainable standard of health, Paragraph 45; Committee on ESCR, General Comment No. 15(2003) on Article 11 and 12,The right to water, Paragrapgh38.
[276]Committee on ESCR, General comment No.2 (1990) on Article 22, International technical assistance measures, Paragraph 10.

regard, the CESCR noted that international cooperation plays an essential role in achieving full realization of the right to food. It recommends that states "should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required."[277] Thus, state parties to the ICESCR have extraterritorial obligations to cooperate each other which overlap with the obligations of global character as set out in the United Nations charter.[278]

The legal implications of the commitment to the international cooperation contained in the ICESCR have been further developed by the Committee on economic, social and cultural rights. The Committee developed the three level human rights obligations for states: obligations to respect, to protect and to fulfill.[279] Accordingly, in addition to the obligations to respect and protect states extraterritorial obligation to fulfill human rights is also imposed on states. In this regard the committee in its General comments No.18 on the right to work states that "States parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to work. States parties should, through international agreements where appropriate, ensure that the right to work, as set forth in articles 6, 7 and 8 of the Covenant is given due attention."[280] In sum, ICESCR imposes obligations upon all state parties to the covenant for the international cooperation to comply with the core of the rights. It reiterates the duty to cooperate for the effective implementation of the rights recognized therein. Therefore, obligations of international cooperation in the ICESCR form part of the general legal obligations in that covenant.

3.5.2 The Convention on the Rights of Child (CRC)

The ICESCR is not a unique human rights instrument in including an international corporation as a legal duty. In a similar way, the Convention on the rights of the child CRC,[281] also relies largely on the language of international cooperation. Articles 4 of the Convention on the Rights

[277]Committee on ESCR, General Comment No. 12(1999) on Article 11, The right to adequate food, Paragraph 36.
[278]Heloise Daste, 'The Role of the Bretton Woods Institutions in Development Cooperation'(2016) 3, BLR 72
[279] Committee on ESCR, General Comment No. 12(1999) on Article 11,The right to adequate food,Paragrapgh15; General Comment No. 15(2003) on Article 11 and 12,The right to water, Paragrapgh20.
[280] Committee on ESCR, General Comment No. 18,On the right to work, Paragraph 29
[281]Adopted by the UN General Assembly in resolution 44/25 on 20 November 1989 and entered into force on 2 September 1990

of the Child, among other provisions, refer to international cooperation for the realization of economic, social and cultural rights of children. It states that:

> States parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present convention. With regard to economic, social and cultural rights, states parties shall undertake such measures to the maximum extent, where needed, within the framework of international cooperation.

The Committee on the Rights of the Child has sought to clarify the legal basis and scope of external obligations of states in this respect. Interpreting Article 4 of the Convention on the rights of child the committee has argued that the text of this article assigns both domestic and external obligations to all states parties to ensure its universal implementation. The committee further state that, "article 4 of the convention emphasizes that implementation of the Convention is a cooperative exercise for the States of the world. This article and others in the Convention highlight the need for international cooperation."[282] Further, the Committee noted that "When States ratify the Convention; they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation." [283] The phrase international cooperation is also appears in the different provisions of the convention on the right of child.[284]Therefore, international cooperation is at the heart of the convention on the rights of child.

In addition, the first two Optional Protocols to the Convention on the Rights of the Child oblige states to cooperate in order to prevent and punish the sale of children, child prostitution, child pornography, and the involvement of children in armed conflict.[285] The two protocols require states to assist victims and, if they are in a position to do so, to provide financial and technical assistance for this purposes. For instance, Article 7 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict reads: 'States Parties

[282]Committee on the Rights of the Child, General Comment No.5 (2003)on Article 4,42 and 44, General measures of implementation of the Convention on the Rights of the Child ,Paragraph 60.
[283] Ibid
[284] See forexample,Art.17(b),23(4),24(4) of the CRC, which is Adopted by the UN General Assembly in resolution 44/25 on 20 November 1989 and entered into force on 2 September 1990
[285]Optional protocol to the convention on the right of child on the involvement of children in armed conflict, adopted by General Assembly resolution A/RES/54/263 on 25 May 2000 and entered into force on 12 February 2002 and Optional protocol to the convention on the right of child on the sale of children, child prostitution and child pornography adopted and by General Assembly resolution A/RES/54/263 on 25 May 2000 and entered into force on 18 January 2002

shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance.' Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.[286] The CRC and its additional protocols seek to give significant attention to international cooperation. They all emphasize in different ways the international cooperation is important for the effective implementation of the rights therein.

3.5.3 Convention on the Rights of Persons with Disabilities (CRPD)

Extraterritorial obligations of international cooperation are also contained in the Convention on the Rights of Persons with Disabilities.[287] International cooperation is stipulated in CRPD in number of provisions. For instance, Article 4(2) of the Convention states that, 'With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.' Moreover, the importance of international co-operation to national implementation efforts of the convention is also recognized in Article 32 of the Covenant. This article entitled as international cooperation states that:

> States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities.[288]

According to some authors, the inclusion of Article 32 in the CRPD is recognized for "the first time as standalone provision has appeared on international cooperation in an international treaty."[289] The CRPD asserts that international cooperation has a role in support of national

[286]Adopted by General Assembly resolution A/RES/54/263 on 25 May 2000 and entered into force on 12 February 2002

[287]Adopted by the UN General Assembly Res. 61/106 on 13 Dec2006 and entered into force 3 May 2008

[288] Ibid

[289] Schulze M, 'the UN convention on the rights of persons with disabilities in human rights'(2007)1,Journal for disability and international development13

efforts for the realization of the purpose and objective of the convention. Accordingly, much attention has been paid in the Convention to international cooperation for the realization of the rights of persons with disabilities. Therefore, the CRPD clarifies existing international and human rights obligations to cooperate on countries within a disability context.

Conclusion

In conclusion, this chapter has sought to find the place of the principle of responsibility sharing under international law. Consequently, the chapter has revealed that the principle of responsibility sharing is contained in the general principle of international law that requires state to cooperate. The principle is embedded in Charter of UN which is considered as the foundation of modern international law. In this respect, the Charter acknowledged that international cooperation to share responsibility would be of particular relevance in solving economic and social matters, and in the areas of human rights protection. It has above seen that the principle is developed as a tool under international environmental law, notably, in climate change regime to tackle a collective action problem in this regime. Environmental protection is one of the issues that face problems of collective action. It is a trans-boundary phenomenon that concerns the entire international community and becoming a global problem. In this regard, "all states have an interest in resolution of environmental issues, but no states can resolve them individually." Therefore, the problem can only be addressed by collective international action. Accordingly, the objective of international cooperation to share responsibilities in the area of environmental law particularly in climate change regime is to reduce environmental damage or global emissions for the benefit of the entire world.

Moreover, international cooperation has been also developed within the international human rights framework. Though, "human rights obligations rely primarily on the domestic states, it should be emphasized that their realization is intrinsically interrelated with the international system." International cooperation is indeed a powerful tool to advance human rights. Its entrenchment in different binding treaties provides an international law basis for international obligations of states to contribute to the universal protections of human rights. The ultimate aim of a human rights approach to international cooperation is to assist the state parties in implementing its treaty obligations. In general, environmental problem is a transnational issue

that are of international concern which no states can resolve them by acting alone. Likewise, advancing human rights at domestic level cannot be separated from the wider global environment.

The duty to cooperate has also featured in the United Nations General Assembly Declarations Concerning Friendly Relations which, in turn, play a pivotal role on the development of the principle. Therefore, responsibility sharing which is a subset of international cooperation is established as an overarching principle under the UN charter and other regimes of international law. It is relevant in today's growing international problem which needs a collective action. With this background, the next chapter will examine the adequacy of this principle under international refugee regime in addressing the problems posed by refugees which bears a number of striking resemblances with environmental protections problem and realization of human rights concern.

Chapter Four

The Adequacy of Responsibility Sharing in Addressing the Global Refugee Crisis

4.1 Introduction

As it has already been indicated in the earlier chapter the principle of responsibility sharing is contained in the international norm that requires state to cooperate in solving common problems. The places of the principle under international law are established in this chapter. Furthermore, the manner how this principle is incorporated in some binding international environmental and human rights law as states response in addressing the common problem in their respective regime is ascertained.

This chapter now explores the main question of this thesis: the adequacy of the principle of responsibility sharing in addressing the global refugee crisis. The chapter discuses why the principle of responsibility sharing does matter and what it entails in international refugee context before examining the content of the principle under international refugee law. In the first section the chapter focuses on some underlying rationales why responsibility sharing is important in addressing the global refugee crisis. The second section then introduces its implications in refugee protection context and examines its content in the existing international refugee law. Finally, the third section offers a proposal regarding steps that should be taken in order to solve the problem at hand.

4.2 Why does Responsibility Sharing Matter in the Protection of Refugees?

Today, the world is confronting its worst refugee crisis since World War II. Facing political turmoil, violence, and war, over 65 million people have fled their homes in search of substitute international protection. This figure indicates that asylum state alone cannot find a solution. Though it is not intended to be exhaustive this section will discuss some of the major reasons why a strong international norm in international refugee law concerning responsibility sharing is decisive in addressing the global refugee crisis.

4.2.1 Insufficiency of International Response in Addressing the Root cause of Refugee Flow

Refugee movements have complex and different causes. Usually, the root cause of refugee flow is the gross human rights violations in their home country. The root causes of refugee flows

include civil and international war, communal violence, the repression of military and other dictatorial governments, and others.[290] It has been stated that eliminating the root causes of refugee flows at their home countries in the first place is the most attractive approach by far.[291] In its earlier work, the Executive Committee of the UNHCR emphasized on the importance of joint international efforts to deal with causes of flows of asylum-seekers and refugees in order to avert new flows.[292]

However, some scholars are contended that the root cause strategy is difficult to execute. Accordingly, Schuck has stated that "one must be able to identify accurately the conditions ultimately prompting flight and then be able to rectify those conditions. Both identification and rectification are daunting obstacles."[293] In most cases, the root cause strategy is constrained by the strong norm of national sovereignty in international law and politics.[294] Sometimes, it is impossible to change the root cause in the short period of time and according to the above author 'the failure of UN in dealing with refugee producing atrocities committed in the former Yugoslavia is a particularly telling and grim example.'[295] Further, it has been argued that, though prevention or resolution of armed conflicts that threaten international peace and security, falls within the mandate of the United Nations with the ending of the Cold War, the prospects for the United Nations' assumption of a lead role in promoting the peaceful settlement of disputes-both international and internal have never been brighter.[296] Since the inception of the UN, the root causes of refugee flows couldn't be prevented or eliminated and that it follows that refugees still

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[290] Geoff Gilbert, 'Root Causes and International Law: Refugee Flows in the 1990's' (1993) 11, Neth. Q. Hum. Rts.417

[291]Peter H. Schuck, 'Refugee Burden-Sharing: A Modest Proposal'(1997) 22, Yale J. Int'l L. 261

[292] UNHCR Executive Committee, 'on the International Protection of Refugees' No. 56(1990), see also, committee's conclusion No. 40(1985) paragraph (c). (The conclusion stated that "the aspect of causes is critical to the issue of solution and international efforts should also be directed to the removal of causes of refugee movements.")

[293]Peter H. Schuck, 'Refugee Burden-Sharing: A Modest Proposal'(1997) 22 Yale J. Int'l L.261

[294] Ibid 262

[295] Ibid 263

[296] Luke T. Lee, 'The Preventive Approach to the Refugee Problem'(1992) 28, Willamette L. Rev. 822

continue to be a major problem.[297]Additionally, Kritzman-Amir has clearly pointed that although desirable; it is often very difficult to address the root causes of refugee flows.[298]

Several recent instances have shown that there is formidable limitation on ability of UN in addressing the root causes in refugee generating countries. For instance, although, it has been 8 years already since the beginning of the disturbance, there is still no accomplished result delivered in regards of solving the Syrian crisis. Consequently, scholars are arguing that "Syria has become the symbol of an international crisis that seems unsolvable"[299] The crisis in this country alone forces millions of human beings those take the road in a hope for a new life found elsewhere. According to Hanne and David, "While the international community continued to be disunited over its response to the armed conflict, the latter's scope and intensity, as well as its humanitarian consequences, reached unprecedented level"[300] As it is also opined by Hathaway and Neve, there is no evidence to date of an international commitment to intervene against the root causes of refugee flows.[301] Oftentimes, the reason behind the movement of refugees is not resolved. This failure of international response has brought other concerns related to the issue and forces someone to think the value of cooperation to share responsibilities in addressing the global refugee crisis.

4.2.2 Introduction of Restrictive Measures

Currently, most developed countries across the world have introduced different restrictive measures to keep refugee away from their border.[302] The common purpose of these policies is to prevent refugees from accessing asylum.[303] Consequently, most refugees are routinely denied access to asylum in developed countries and they flows to developing and poor neighboring

[297] Peter H. Schuck, 'Refugee Burden-Sharing: A Modest Proposal'(1997) 22, Yale J. Int'l L. 262
[298] Tally Kritzman-Amir, 'Not In My Backyard: On the Morality of Responsibility Sharing in Refugee Law' (2009) 34, Brook. J. Int'l L.387
[299]Cuykens Hanne and Criekemans David,'Towards a Solution for the Syrian Crisis?'(2013) available at, http://www.vvn.be/wp-content/uploads/2013/01/Towards-a-Solution-for-the-Syrian-Crisis.pdf accessed on 25 May 2015
[300] Ibid
[301] James C. Hathaway and Alexander Neve, Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection' (1997)10,Harv. Hum. Rts. J .134
[302]Thomas Gammeltoft-Hansen, 'International Refugee Law and Refugee Policy: The Case of Deterrence Policies'(2014) 27, J.Refugee Stud.576
[303] Thomas Gammeltoft-Hansen and Nikolas F. Tan, 'The End of the Deterrence Paradigm - Future Directions for Global Refugee Policy (2017) 5, J. on Migration & Hum. Sec.34

countries.[304] According to some authors, the practice represents the current response of the developed world to rising numbers of asylum seekers and refugees.[305] In an attempt to limit the number of asylum seekers and refugees, the governments of the developed states have follows different tactics. For instance, it has been stated that the European Union response to the recent Syrian refugee crisis has been many focused on strengthening national border to reduce the number of refugees able to enter from non European Union member states.[306] With the rising number of Syrian asylum applications within Europe, the European Union and its member states have taken various measures to similantaneously maintain and secure European boarders from Syrian.[307]

Furthermore, different scholars have contend that 'most developed states impose a visa requirement on the nationals of refugee producing states, and carrier sanctions on transportation companies for bringing unauthorized refugees into their territories.'[308] For example, it has been stated that in 2016 Sweden impose "carrier sanctions to train and ferry companies operating inside the Schengen area as a means to restrict the otherwise free movement of refugees towards the country."[309] Moreover, multilateral burden-shifting arrangements and bilateral readmission treaties are also common form of restrictive measures practiced by most developed countries.[310] For instances, recently the European Union reach an agreement with Turkey to reduce or which enables European Union member states to repatriate all refugee arriving in member states to Turkey in exchange of money and reopening of accession talk.[311] At the same time, countries like Australia and USA have been interdicted asylum seekers at sea and turn to

[304] Ibid 28
[305] Ibid
[306] Democratic Progress Institute, 'The Syrian refugee crisis :refugee, conflict and international law' (DPI 2016)75
[307] Philp Fargues and Chiristine Fandrich, the European response to the Syrian refugee crisis: what next? research report (Mpc 2012/14)17
[308] James C. H Hathaway and R. Alexander Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection' (1997)10, Harv. Hum. Rts. J .120
[309] Thomas Gammeltoft-Hansen and Nikolas F. Tan, 'The End of the Deterrence Paradigm - Future Directions for Global Refugee Policy (2017) 5 J. on Migration & Hum. Sec.36
[310] James C. H Hathaway and R. Alexander Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection' (1997)10, Harv. Hum. Rts. J .120
[311] Democratic Progress Institute, 'The Syrian refugee crisis :refugee, conflict and international law' (DPI 2016)76

the country of origin.[312] For example, in 2015, Rohingya minority members fleeing Myanmar were trapped in boats as country after country refused them asylum.[313]

Additionally, it has been stated that certain states have established detention centers at international airports. For example, France detains asylum seekers "in artificially designated international zones of its airports, in which it has claimed to be free from the constraints of either domestic or international law."[314] In general an increasing number of measures have been taken by developed states to extend controls along every step of prospective refugees journey. To this end, "developed states have enlisted the help of both private companies and authorities in origin and transit countries."[315] Private security companies and other contractors have been increasingly employed by developed states to carry out refugee flow control. Currently, the above mentioned and other strategies are adopted by developed states to elude protection responsibilities that shift responsibility on to developing and poor states. These measures taken by developed states clearly make worse the current refugee crisis and put the brunt of refugee responsibility up on hosting states. Besides, it has lot of consequences and some of it will be discussed in the following sub-section.

4.2.2.1 Restrictive Measure leads to Poor Refugee Protection Problems

Restrictive measures taken by states have far reaching repercussions for the refugees.[316] Due to the restrictive measures taken by the developed states not only are developing countries left with a disproportionate burden, but the refugees themselves also suffer a lot. As it is discussed previously, the vast majority of protection seekers are in developing countries where "economic resources are already scarce and those states stretched to their limits simply cannot provide the

[312]Benjamin Cook, 'Method in Its Madness: The Endowment Effect in an Analysis of Refugee Burden-Sharing and a Proposed Refugee Market' (2004) 19, Geo. Immigr. L.J.343

[313] Amnesty international, 'tackling the global refugee crisis from shirking to sharing responsibility'(2016)16 available at file:///C:/Users/Guest/Downloads/POL4049052016ENGLISH%20(3).PDF ,last accessed on 23 January 2018

[314]Benjamin Cook, 'Method in Its Madness: The Endowment Effect in an Analysis of Refugee Burden-Sharing and a Proposed Refugee Market' (2004) 19, Geo. Immigr. L.J.343

[315]Thomas Gammeltoft- Hansen and James C. Hathaway,'Non-refoulement in a World of Cooperative Deterrence' (2015) 53(2), Columbia Journal of Transnational law.

[316] Benjamin Cook, 'Method in Its Madness: The Endowment Effect in an Analysis of Refugee Burden-Sharing and a Proposed Refugee Market' (2004) 19, Geo. Immigr. L.J.344

resources needed for adequate protection."[317] Accordingly, it has been argued that that disproportionate burden sharing has led to quality of refugee protection problems.[318]For most of refugees in the developing countries there is no simple solution to their difficulty. Most often, refugees in host countries are confined to camps. Due to lack of solutions, their situations can become long term and come into protracted refugee situations.[319] According to UNHCR, a refugee crisis becomes a protracted refugee situation when "refugee populations of 25,000 persons or more have been in exile for five or more years in developing countries."[320] Because, of the declining interests from developed countries and increase in refugee producing events the number of protracted refugee situations grows each year, representing 41% of refugees under the UNHCR's mandate in 2015.[321]For example, it has been stated that until recently the Dadaab refugee camp in northeastern Kenya is the largest in the world, hosting more than 450,000 refugees.[322] The life span of this camp counts for more than two decades.[323] Moreover, according to Long Kathy in 2011, more than 7.2 million refugees were trapped in protracted refugee situations.[324]

There have been serious concerns about the vulnerability of refugees in these protracted situations and the results of protracted refugee situations are always distress. As per Aleinikoff and Poellot, among the harm results from this situation: 'children growing up in refugee camps, inadequate health care, and poor sanitary conditions, lost educational opportunities, risks to physical safety, psychological impact, the recruitment of child soldier, tensions and conflict

[317]Ibid, see also, James C. H Hathaway and R. Alexander Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection' (1997)10, Harv. Hum. Rts. J .127. ('While Southern states have traditionally been less likely than Northern governments to block access to asylum altogether, refugee life in much of the less developed world is marked by insecurity and the inability to meet even basic needs.'

[318] Benjamin Cook, 'Method in Its Madness: The Endowment Effect in an Analysis of Refugee Burden-Sharing and a Proposed Refugee Market' (2004) 19, Geo. Immigr. L.J.344

[319] T. Alexander Aleinikoff and Stephen Poellot, 'The Responsibility to Solve: The International Community and Protracted Refugee Situations'(2014) 54, Va. J. Int'l L.198

[320] UNHCR, 'Protracted Refugee Situations'(2004) 2 EC/54/SC/CRP.14, http://www.refworld.org/docid/4a54bc00d.html ,accessed at 24 May 2018

[321] United Nations high commissioner for refugees (UNHCR), global trends: forced displacement (2015) ,available at http://www.unhcr.org/576408cd7.pdf ,last accessed on 26 January 2018 at 20

[322] T. Alexander Aleinikoff and Stephen Poellot, 'The Responsibility to Solve: The International Community and Protracted Refugee Situations,'(2014)54, Va. J. Int'l L.196

[323] Ibid

[324] LONG Kathy, 'In search of sanctuary: border closures, safe' zones and refugee protection'(2012),Journal of Refugee Studies

between refugees and host communities, security concerns for states of asylum can be mentioned.[325] Therefore, without addressing the inequity problems existing currently because of the restrictive measures adopted by developed states and overflow of refugees to developing states host countries are faced with the long-term burden of protracted refugee situations. Life goes on in camps and as a result, second and third generations of refugees are born, contributing to the growing number.

4.2.2.2 Restrictive Measures Undermine International Refugee Law Framework

Currently, because of the restrictive policy choice of the developed countries toward the global refugee crisis the world's developing countries feel that they are expected to bear too great a responsibility for the world's refugees. Therefore, it is argued that the decision by one state to grant or deny a refugee to enter its territory has consequences to change the behavior of the other state.[326] Based on the current unequal distribution of refugee responsibility, some writer's have emphasized that this unequal distribution of refugee protection responsibilities threatens to undermine the entire international refugee law framework.[327] Developing countries starts close their borders to refugees by justifying their actions referring to the conduct set by the developed countries. Therefore, restrictive policies are directly challenged the core principles of international refugee law.[328]

Scholars have also contend that "there exists real risk that states hosting the bulk of the world's refugees will choose to turn their back on the regime, absent the availability of mechanisms to release the pressure from overburdened states."[329] For example, Tanzania is among the leading refugee hosting nations in Africa. Thomson has stated that in 1972 over 200,000 Burundians fled into Tanzania to escape ethnic persecution by the government.[330] Further, in the year 1993 a large number of refugees from Burundi, Rwanda and the DRC, as

[325] T. Alexander Aleinikoff and Stephen Poellot, 'The Responsibility to Solve: The International Community and Protracted Refugee Situations'(2014) 54, Va. J. Int'l L.201

[326] Tally Kritzman-Amir, 'Not in my Backyard: On the Morality of Responsibility Sharing in Refugee Law' (2009) 34, Brooklyn Journal Of International Law 355

[327] Ibid

[328] Thomas Gammeltoft-Hansen and Nikolas Feith Tan, 'Beyond the Deterrence Paradigm in Global Refugee Policy'(2016) 39Suffolk Transnat'l L. Rev.642

[329] Thomas Gammeltoft-Hansen and Nikolas F. Tan, 'The End of the Deterrence Paradigm - Future Directions for Global Refugee Policy'(2017) 5, J. on Migration & Hum. Sec.43

[330] Jessie Thomson, 'Durable Solutions for Burundian Refugees in Tanzania'(2009) Forced Migration Review 35

approximately 1.5 million refugees streamed into the same state(Tanzania) being the first problem unsolved.[331] It has been said that "under President Julius Nyerere, Tanzania enjoyed over two decades of an open door policy for refugees inspired by the principles of humanism placing special emphasis on the dignity of refugees." [332] Latter, because of economic and political tensions faced the country Tanzania's policy reverted to confining refugees to "geographically isolated and socially segregated makeshift camps" that served only the basic needs of refugees and were supported by international aid.[333] Beginning in the early 1990s, Tanzania's refugee policy became increasingly hostile, as Rwandan refugees were given an ultimatum to repatriate in 1996, and 1993 Burundian refugees were forced to return between 1997 and 2001.[334]Further, the above author has stated that the beginning of the 21st century saw greater securitization globally and Tanzania was no exception. The perception of refugees as "threats to national security" has colored Tanzania's policies.[335]There have been greater restrictions placed on refugees and they have placed a greater emphasis on repatriating refugees quickly. Consequently, Tanzania forced hundreds of thousands of Rwandans to return to Rwanda involuntarily in 1996, despite fears of persecution.[336]

This example is an indication of most developing countries response for the absence of the scheme that relives their refugee burden. Developing countries by adopting restrictive policies they directly challenges and eroding the international refugee law. Because of the fear of more refugee burdens developing countries also follow the footsteps of developed nations and start undermining the principles of refugee protection. The logic in this regard is that 'when developed countries responsible for establishing international refugee law begin to undermine its legal foundation by their act those developing and poor countries decided to follow in the same line.'

[331] Sreeram Sundar Chaulia, 'The Politics of Refugee Hosting in Tanzania: From Open Door to Un sustainability, Insecurity and Receding Receptivity'(2003)16(2), Journal of refugee studies 148
[332] Ibid 154-155
[333] Ibid 160
[334] Ibid
[335] Ibid
[336] Beth Elise Whitaker, 'Changing priorities in refugee protection: the Rwandan repatriation from Tanzania,'(2002) New Issues in Refugee Research, Working Paper No. 53 at 2

4.2.3 Unrestricted Refugee Movement across the Globe

As it is noted above many developed countries have already introduced different restrictive measures aiming to prevent refugees from reaching in their territory or from granting protection. However, some of the recent development puts a doubt on the sustainability of these practices without meaningful mechanisms to address the crisis.[337] It is true that refugees are no longer restricting movement to only nearby developing and poor countries. They are moving to places far away from their regions. For example, it has been asserted that in the earlier conflicts such as the Yugoslavia conflict, refugees were moving from former Yugoslavia to as far as the Middle East.[338]

Moreover, new routes, facilitated by cheap transportation and intricate social networks, are bringing refugees to Europe, to the United States and other developed states from Asia, Africa and other countries afield.[339] Thus, globalization entailed new patterns of refugee flight facilitated by various cheap transportation and human smugglers specialized in avoiding traditional forms of border control.[340] For instance, it has been stated that in the current global refugee crisis there are strong human trafficking networks in Turkey, Libya, Europe and elsewhere, and these made the massive exodus to Europe in 2015.[341] As a result, "no state is immune; even island nations like Japan and Australia are vulnerable to spasmodic in-migration from the mainland."[342] For instance, though different restrictive measures are put in place by European states in 2015, more than a million refugees entered the EU in the largest exodus to Europe in the last few decades.[343]

According to Kugiel, control measures at the European Union's external borders did not prevent the sharp increase in numbers of asylum seekers in European countries in 2015

[337]Thomas Gammeltoft-Hansen and Nikolas F. Tan, 'The End of the Deterrence Paradigm - Future Directions for Global Refugee Policy'(2017) 5, J. on Migration & Hum. Sec.
[338]De Jong Cornelius, 'Elements for a More Effective European Union Response to Situations of Mass Influx.' (1996) 8 Int'l J. Refugee L.164
[339]Peter H. Schuck, 'Refugee Burden-Sharing: A Modest Proposal'(1997) 22, Yale J. Int'l L. 245
[340]Thomas Gammeltoft-Hansen, 'International Refugee Law and Refugee Policy: The Case of Deterrence Policies'(2014) 27, J.Refugee Stud.576
[341]Patryk Kugiel, 'The Refugee Crisis in Europe: True Causes, False Solutions'(2016) 25, Pol. Q. Int'l Aff.50
[342] Peter H. Schuck, 'Refugee Burden-Sharing: A Modest Proposal'(1997) 22, Yale J. Int'l L.274
[343]Patryk Kugiel, 'The Refugee Crisis in Europe: True Causes, False Solutions'(2016) 25, Pol. Q. Int'l Aff.41

and preceding years.[344] Although in the recent Syrian refugee crisis Syrian refugees have pushed onwards by using other means the head towards the safe Europe. According to the UNHCR, between April 2011 and August 2016, just over 1.1 million Syrians applied for asylum in European countries.[345]

To makes things worse, "geography also means that the maritime border is much harder to control and makes any solutions such as physical barriers (fences and walls) almost impossible to implement."[346] It has also argued that restrictive measures of developed countries are moreover challenged by "the growing amount of resources available to human smugglers and the constant innovation and adaption that this industry exhibits."[347] Therefore, smuggling techniques and displacement of refugee flows towards alternative routes often significantly undermine the effect of restrictive measure over time.

Hence, without cooperation to share responsibility towards the problem among states the global refugee crises will continue to escalate. The developed world cannot avoid its share of the responsibility forever, as evidenced by the flow of refugees into Europe from the Middle East and Africa. Therefore, responsibility sharing among state is necessary to address refugee crisis before they become impossible to control.

4.2.4 The Impacts of Global Refugee Crisis on Hosting States

The mass flow of refugees in hosting countries imposes most responsibility on host societies. Kritzman-Amir has asserted that the policies of the government or other situations in home states that forces refugee to flow create a cost on refugee hosting countries.[348] Different from other externalities produced by home states these externalities has a long term social, economic and other impacts for the hosting states and justifies the urgent need to resolve the inequity problems

[344] Ibid 50
[345] UNHCR, 'Syria Regional Refugee Response: Inter-agency Information Sharing Portal – Europe: Syrian Asylum Applications,"(2016) available at http://data.unhcr.org/syrianrefugees/asylum.php. accessed at 26 May 2018
[346] Patryk Kugiel, 'The Refugee Crisis in Europe: True Causes, False Solutions'(2016) 25, Pol. Q. Int'l Aff.48
[347] Thomas Gammeltoft-Hansen and Nikolas F. Tan, 'The End of the Deterrence Paradigm - Future Directions for Global Refugee Policy'(2017)5, J. on Migration & Hum. Sec. 43
[348] Tally Kritzman-Amir, 'Not In My Backyard: On the Morality of Responsibility Sharing in Refugee Law' (2009) 34(2), Brook. J. Int'l L.359

in this regard.[349] Therefore, the movement of refugees particularly when it involves mass movement poses particular challenges for the hosting country.

Currently, most refugees flow to poor and unstable neighboring countries. Consequently, "the least politically and economically capable countries are forced to provide for the neediest refugees and to share the greatest part of the responsibility in caring for them."[350] This huge numbers could impose an additional challenge for state economies and security or public order among other things.[351] According to some scholars, Sometime this challenge could be "devastating to some countries."[352] For instance, it has been said that the contemporary Syrian refugee crisis has placed an additional and excessive burden upon major refugee hosting countries like Turkey, Lebanon, and Jordan.[353]

Related to the financial burden, large flow of refugees may negatively affect income, livelihoods, health care and education in the host states.[354] Refugee need water, food, fuel, and land and require social services beyond those provided by international agencies, which also bring negative economic consequences.[355]Refugees can strain the services systems of host countries. When they compete for jobs, refugees drive wages down, and when they compete for scarce goods they create inflation.[356] The quality of a specific service may go down as it becomes strained to accommodate more people.[357] For example, it has been stated that in Turkey increases in Syrian refugees have been associated with declines in quality of education and healthcare services.[358] The environmental impact may be also devastating. Further, overcrowding can lead to environmental degradation, which has become a serious concern in areas faced with a large

[349]Ibid

[350]Ibid 361

[351]James L. Carlin, 'Significant Refugee Crises since World War II and the Response of the International Community' (1982) 3, MICH. Y.B. INT'L LEGAL STUD.14

[352] Peter H.Schuck, 'Refugee Burden-Sharing: A Modest Proposal' (1997) 22, YALE J. INT'L L.273

[353] E. Tendayi Achiume, 'Syria, Cost-Sharing, and the Responsibility to Protect Refugees'(2015) 100, Minn. L. Rev.

[354] Ibid 698

[355] Alan Dowty and Gil Loescher, 'refugee flows as grounds for international action(1996)21(1), International Security, The MIT Press 47

[356] Ibid

[357] Öztürkler Harun and Türkmen Göksel, 'the economic effects of Syrian refugees on Turkey: a synthetic modeling.'(2015) ORSAM 196, available at https://data2.unhcr.org/en/documents/details/57033 , accessed at 27 May 2018

[358] Ibid

flow of refugees.[359] Thus, the cost falls disproportionately on nations least able to afford it, where the presence of large impoverished refugee populations further strains resources and perpetuates the poverty of the host nation.[360] Additionally, the flow of refugees may raise security concerns in host States as conflicts cross borders along with refugee movements. [361]For instance, Milliner has stated that "flows of hundreds of thousands of people from Rwanda to Tanzania has caused much political instability and additional poverty, and raised security concerns in Tanzania."[362]

Currently, despite their poor economy, states in close proximity to refugee situations have greater pressure to house refugees and overburdened by refugee responsibilities. This in turn imposes an additional burden on their politics and economies. On the other hand, most developed countries prefer to adopt restrictive measures which lower their responsibility for protecting refugees. Inequality especially in the form of developed-developing countries flourishes in this environment.[363] Therefore, the responsibility that developing countries have shouldered currently in protecting and housing large number of refugees is seen as inequitable. Equity demands equitable approaches to address this problem. And, in this situation, responsibility sharing is a means of reducing inequities among states.[364] Therefore, in this context redistributive instrument, that is responsibility sharing, is important to achieve a certain level of equity between states.

4.2.5 Providing Effective Protection for Refugees Enhances Global Stability and Security

Very often, it is instability and egregious human rights violations in their home country that generates refugee flow. Of course, people are supposed to be under the protection within the

[359]Smith, Jayna M. 'The Refugee Crisis: Evaluating the Effects of Displaced Populations on the World's Environment.'(2016)available at.https://web.stanford.edu/class/e297c/trade_environment/health/hrefugee.html,accessed on 28 May 2018

[360] Alan Dowty and Gil Loescher, 'refugee flows as grounds for international action(1996)21(1) International Security, The MIT Press 47

[361]James Milner, 'Sharing the Security Burden: Towards the Convergence of Refugee Protection and State Security'(200)Refugee Studies Cent., Working Paper No. 4,available at http://www.rsc.ox.ac.uk/PDFs/workingpaper4.pdf ,accessed at 27 May 2018

[362] Ibid

[363]Alexander Betts, *Protection by Persuasion: International Cooperation in the Refugee Regime*(Cornell University press 2009)2

[364]Astri Suhrke 'Burden-sharing during Refugee Emergencies: The Logic of Collective versus National Action.'(1998)11(4) Journal of Refugee Studies 398

boundaries of their own state, if this bond is broken any large and uncontrolled movement of people beyond their borders threatens international security and stability.[365]For instance, it has been stated that the profound impact of refugee movements on regional and international politics and security has been displayed during the Great Lakes crisis of 1993-1997 when the cross-border movement of refugees between Eastern Zaire and Rwanda including soldiers and militia posing as refugees contributed to a major regional crisis, the overthrow of a government and the emergence of the Democratic Republic of Congo. As a result, the politics of Central Africa have been transformed.[366]It has also argued that if state's refused to protect refugees or make an efforts to divert refugee flows onto other countries this can be expected to lead to increased instability and heightened insecurity as a result of tensions at the border, irregular onward movements and tensions with other states which might end up being the new target countries for such migrants as a result of such restrictive policies by other states.[367]

Hence, the movement of refugees especially in large numbers is a matter of concern to more than one state and creates problems with regard to international security and stability. Though, initially the receiving state the one that is primarily affected, particularly, in the event of mass movement, this becomes unable to control the situation and the refugees end up crossing to states.[368] Furthermore, in this interconnected and globalized world refugees and asylum-seekers are no longer limited to neighboring states and they appear at the doorstep of distant states.[369] For instance, currently conflict in Syria has resulted in movements of refugees to countries such as Greece, France, all the way in Europe.[370]

Moreover, since the protection of the individual from egregious human rights violation is necessary condition of international peace and security there is increasing recognition by the international community that massive refugee flows do in fact constitute a threat to international

[365] Alan Dowty and Gil Loescher, 'refugee flows as grounds for international action(1996)21(1), International Security, The MIT Press 47
[366] Jeremy Ginifer, 'Protecting Displaced Persons through Disarmament' (1998)40(2), Survival l62
[367] EIKO THIELEMANN, 'Why Refugee Burden-Sharing Initiatives Fail: Public Goods, Free-Riding and Symbolic Solidarity in the EU' (2018)56(1)56(1), JCMS 70
[368] Ibid
[369] Ibid 50
[370]Stephanie Fitzgerald, 'State interests and Migrant Rights: A Legal Dilemma?'(2011/2012)2, Interstate Journal of International Affairs

peace and security.[371] According to Dowty and Loescher, the UN Security Council's has identified refugee issue as the integral parts of the Security Council's efforts to maintain international peace and security."[372] As it is noted by other writers, "these expanded notions of what constitute threats to international or national security have important implications for the issue of forced migration: they make it easier to classify forced migration flows or the presence of forced migrants in a host country as security threats."[373] From this perspective, large flows of refugees to neighboring countries threaten international peace and security which is not an internal matter that hosting state must bear its cost alone.

Accordingly, Thielemann points that the reception of refugees creates a situation in which all states, including those who contribute and those who do not profit from this contribution.[374]Likewise, Suhrke argues that refugee protection can be seen as "an international public good from which all states benefit".[375] According to Betts, "a public good distinguishes itself from a private good by its properties of non-excludability and non-rivalry between actors."[376] In refugee context, it has been argued that refugee protection efforts produce public goods, largely in the form of 'enhanced stability and increased security.'[377]

As per the same author, increased security is the principal benefit which is non excludable and non rivalry as the accommodation of displaced persons may reduce the risk of their fuelling and spreading the conflict from which they are fleeing.[378] Providing protection opportunities by one state "reduces the incentives and/or necessity to engage in secondary movement for asylum

[371] Alan Dowty and Gil Loescher, 'refugee flows as grounds for international action(1996)21(1), International Security, The MIT Press 59
[372]Ibid
[373]Ibid
[374]Eiko R. Thielemann, 'Toward a Common Asylum Policy Public Goods Theory and Refugee Burden-Sharing"(2006) Paper at the Third Pan-European Conference, European Consortium for Political Research Standing Group on EU Politics, Istanbul,4
[375]Astri Suhrke 'Burden-sharing during Refugee Emergencies: The Logic of Collective versus National Action'(1998)11(4),Journal of Refugee Studies 399
[376]Alexander Betts, 'Public Goods Theory and the Provision of Refugee Protection: The Role of the Joint-Product Model in Burden-Sharing Theory'(2003)16, J. Refugee Stud.275
[377]Eiko R. Thielemann, 'Why Refugee Burden-Sharing Initiatives Fail: Public Goods, Free-Riding and Symbolic Solidarity in the EU(2018)56(1), JCMS 64
[378]Eiko R Thielemann and Nadine El-Enany, 'European Refugee Policy from a Global Perspective: Is the EU Shirking its Responsibilities?'(2010) Paper to be presented at the Fifth Pan European Conference on EU Politics of the European Consortium for Political Research (ECPR) Porto, Portugal, 2

seekers and limits the destabilizing effects that such movements can entail."[379] Thus, greater stability and security that states create when housing refugees in to their territory will benefits all countries.

In general, protections extended by certain states 'reduces instability and risks associated with large movements of refugees particularly instability and insecurity as a result of tensions at the border, irregular onward movements and tensions with other states which might end up being the new target countries for such migrants as a result of such restrictive policies by other states.'[380] Thus, refugee crises are not merely humanitarian disasters but have real global security implications that need international community to act.[381] Unless managed properly the problem of refugees breeds further instability and security concerns. Accordingly, Suhrke asserts that the collective action in this regard serves the interests of all states and it strengthens international order and stability.[382] This implies that no state will be alone to handle the refugee responsibility particularly, when there is large flow of refugees. Currently, although the entire international community ought to shoulder the burdens of dealing with massive refugee flows, only a relatively small number of nations and regions actually do so.[383] Therefore, addressing the global refugee crisis is not only a matter of a random refugee hosting states; there is strong reason for other states to cooperate to maintain international peace and stability.

4.3. Responsibility Sharing and the International Refugee Law

4.3.1 Introduction

This section explores as to what responsibility sharing entails in refugee protection context and thereby tries to answer the main research question. The section explores the content of the principle of responsibility sharing in international refugee law. The 1951 Refugee Convention and its protocols, the treaty regime pertaining specifically to refugee protections under international law form the major source of refugee rights and sates duties in the refugee context.

[379]Eiko R. Thielemann, 'Why Refugee Burden-Sharing Initiatives Fail: Public Goods, Free-Riding and Symbolic Solidarity in the EU(2018)56(1), JCMS 64
[380]Ibid 70
[381]Peter. Schuck, 'Refugee Burden-Sharing: A Modest Proposal'(1997) 22, Yale J. Int'l L. 252
[382]Astri Suhrke, 'Burden-sharing during Refugee Emergencies: The Logic of Collective versus National Action'(1998)11(4), Journal of Refugee Studies 412
[383]Peter H. Schuck, 'Refugee Burden-Sharing: A Modest Proposal'(1997) 22, Yale J. Int'l L. 253

These instruments can be regarded as the centerpiece of international refugee protection. Hence, this section explores the content of the principle specifically in the 1951 Refugee convention. Before delving in to this issue, the section first examines as to what responsibility sharing implies in the refugee protection context.

4.3.2 What Does Responsibility Sharing Entail with Respect to Refugee Protection

The rationale behind having responsibility sharing scheme with respect to refugee protection is that it will assist in allocating responsibility among different States.[384]Responsibility sharing with respect to refugee protection is many and it has been stated that financial transfers of money from one state to the state experiencing the refugee problem, physical relocation of refugees to the territories of various states, provision of technical assistances are among others.[385] As per the outcome document of meeting of experts on international cooperation to share burdens and responsibilities for refugees which is facilitated by UNHCR, international cooperation to share refugee responsibility "can be manifested in many forms, including material, technical or financial assistance, as well as physical relocation of asylum-seekers and refugees."[386] Generally, different scholars have divided international cooperation to share refugee responsibility into two main categories: the provision of financial and other assistance to host countries, and the physical relocation of refugees, most commonly through resettlement.[387]

According to Betts, the former entails providing humanitarian aid and other assistance, most often in financial terms, to the refugees in the areas nearby their country of origin and the latter refers to the actual provision of temporary or permanent asylum, or other forms of complimentary protection.[388] However, responsibility sharing with respect to refugee protection does not only mean providing financial assistance and participating in physical relocation. It has

[384]Tally Kritzman-Amir, 'Not In My Backyard: On the Morality of Responsibility Sharing in Refugee Law' (2009) 34, Brook. J. Int'l L.378

[385]Kathleen Newland, 'Cooperative Arrangements to Share Burdens and Responsibilities in Refugee Situations short of Mass Influx'(2011) Migration Policy Institute, Discussion Paper prepared for a UNHCR Expert Meeting on International Cooperation to Share Burdens and Responsibilities, Amman, Jordan,4

[386] Expert Meeting- Amman, Jordan, 27-28 June 2011, 'on International Cooperation to Share Burdens and Responsibilities'(2012) 24, Int'l J. Refugee L.472

[387] Alexander Betts, 'International Cooperation in the Global Refugee Regime'(2008) Global Economic Governance Program, Oxford, Working Paper 2008/44, 5

[388] Alexander Betts, 'What Does 'Efficiency' Mean in the Context of the Global Refugee Regime?'(2006)8(2), The British Journal of Politics & International Relations148-173

been stated that the concept needs to extend to all phases of refugee flows, including preventing and finding durable solutions to refugee plight. For example, some writers have called for responsibility sharing to improve the political, economic, democratic development of countries where refugees are generated from to address the root causes of refugee flow.[389] In this context, for example, Thielemann and Dewan have stated that, "a country with a strong military force could undertake military intervention or peacekeeping, whereas a country with a great deal of vacant land and a small population could absorb many immigrants, while a country with many investment resources could assist the country of origin in furthering development."[390] Therefore, responsibility sharing with respect to refugee protection could be accomplished in various ways. However, because of their practicability, most writers call for increased refugee responsibility sharing in the form of financial assistance and physical relocation.[391] These two main sorts of refugee responsibility sharing will be discussed in the following sub section.

4.3.2.1 Provision of Financial Assistance

This element of refugee responsibility sharing refers to providing financial assistance for countries of asylum usually developing countries to support overburdened host countries and help them with the care and maintenance of refugees predominantly through donations to UNHCR.[392] Especially, for the developed countries it is the easiest form of responsibility sharing. Provision of financial assistance to refugee hosting countries is often supported by argument of efficiency and described as the most convenient way for responsibility sharing to be effected.[393]According to Noll, one of the presumptions behind provision of financial assistance is to "have the States that bear a disproportionately small amount of the responsibility

[389]Philippe Fargues and Christine Fandrich, 'Migration after the Arab Spring' (2012) Migration Policy Center Research Report, 5

[390]Eiko R. Thielemann and Torun Dewan, 'Why States Don't Defect: Refugee Protection and Implicit Burden-Sharing'(2004) paper prepared for presentation at European Consortium for Political Research's Joint Session of Workshops, Uppsala, Sweden,3 available at,http://www.essex.ac.uk/ecpr/events/jointsessions/paperarchive/uppsala/wsl6/Thielemann.pdf accessed on 23 May 2018

[391]Alexander Betts, 'International Cooperation in the Global Refugee Regime'(2008)Global Economic Governance Program, Oxford, Working Paper 2008/44, 5

[392] Christina Boswell 'Burden Sharing in the New Age of Immigration' (2003) available at, http://www.migrationpolicy.org/article/burden-sharing-new-age-immigration ,accessed on May 12 2018

[393] Alexander Betts, 'What Does 'Efficiency' Mean in the Context of the Global Refugee Regime?'(2006)8(2), The British Journal of Politics International Relations148-173

proportionally compensate the States that bear a disproportionately large percentage of the responsibility."[394]

Furthermore, it has been argued that provision of financial assistance must also include assistance to minimize the adverse impact of refugee inflows on hosting countries. Accordingly, In addition to financial support, this element of refugee responsibility sharing can include technical assistance and capacity-building measures.[395] For instance, developing countries that are overcrowded by refugee flows may lack the infrastructure and administrative capacity to adjudicate asylum claims and provide care to refugees and asylum-seekers. In this situation developed states should provide technical assistance to reinforce or create this capacity.[396] Therefore, in addition to financial support responsibility sharing in the form of technical assistance and capacity building facilitates a fairer division of responsibilities associated with refugees.[397]

4.3.2.2 Refugee Resettlement

Physical relocation or resettlement of refugees is an important form of refugee responsibility sharing. It is considered as a durable solution for refugees problems. This durable solution includes voluntary repatriation, resettlement in a third country or local resettlement.[398] Essentially, it is important tools for the inclusion of developed states in physical responsibility sharing and provides effective protection.

local integration, implies "the gradual permanent integration of refugees into their host societies, as opposed to 'temporary' camps."[399] It allows refugees to create new lives for

[394] Gregor Noll, 'Risky Games? : A Theoretical Approach to Burden Sharing in the Asylum Field'(2003)16, J. REFUGEE STUD 239-40

[395]Tally Kritzman-Amir and Yonatan Berman, 'Responsibility sharing and The Rights of refugees: The case of Israel'(2010) 630,The Geo. Wash. Int'l L. Rev.630

[396]Kathleen Newland, 'Cooperative Arrangements to Share Burdens and Responsibilities in Refugee Situations short of Mass Influx'(2011) Migration Policy Institute, Discussion Paper prepared for a UNHCR Expert Meeting on International Cooperation to Share Burdens and Responsibilities, Amman, Jordan,4

[397]Tally Kritzman-Amir, 'Not In My Backyard: On the Morality of Responsibility Sharing in Refugee Law' (2009) 34, Brook. J. Int'l L. 379

[398]JPL Fonteyne, 'Burden Sharing: An Analysis of the Nature and Function of International Solidarity in Cases of Mass Influx of Refugees.' (1978-1980) 8, Aust. YBIL 167

[399]Karen Jacobsen, 'The Forgotten Solution: local integration for refugees in developing countries'(2001) UNHCR New Issues in Refugee Research, Working Paper No. 45,: Geneva 7-8

themselves in their host countries.[400]Additionally, responsibility sharing with respect to refugee protection should allow refugees to return to their country of origin or to resettle in other countries during refugee crisis situation. Accordingly, voluntary repatriation applied when the refugees make the decision to return to their country of origin.[401] But, when there is a lack of opportunities for voluntary repatriation and local integration, resettlement becomes a demanding solution. In particular Resettlement is one of the responsibility sharing tools to assist refugee hosting states in dealing with the high refugee responsibilities. The UNHCR defined it as the "transfer of refugees from an asylum country to another State that has agreed to admit them and ultimately grant them permanent settlement."[402]

4.3.3 Examining the Content of the Principle of Responsibility Sharing under International Refugee Law

The 1951 UN Convention relating to the Status of Refugee together with its preceding protocol and other international instruments specific to refugee protections have repeatedly provides that international cooperation to share refugee responsibility is important in the achievement of a satisfactory solution of refugee problem. The Convention's Preamble, specifically recognized the need for international cooperation in the case of refugee crisis and encourages states to act. Accordingly, state parties to the convention recognized that:

> The grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation.[403]

The principle of responsibility sharing is also expressed in the Final Act adopted by the 1951 United Nations conference of plenipotentiaries on the Status of Refugees and Stateless Persons. The Conference "Recommends that Governments continue to receive refugees in

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[400] Ibid

[401]UNHCR, 'Voluntary Repatriation' available at, http://www.unhcr.org/voluntary-repatriation-49c3646cfe.html ,accessed on May 26 2018

[402]UNHCR, 'Resettlement'(2015) available at, http://www.unhcr.org/pages/4a16b1676.html ,accessed on 23 May 2018

[403]Adopted by the general assembly of United Nations on 28 July 1951 and entered in to force on 22 April 1954, Preamble 4

their territories and that they act in concert in a true spirit of international co-operation in order that these refugees may find asylum and the possibility of resettlement."[404]

In addition to the Refugee Convention some of the United Nations Declarations and UNHCR executive committee conclusions explicitly address the importance of this principle. Accordingly, article 2(2) of the 1967 UN Declaration provides: "Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State."[405] More recently, the New York Declaration for Refugees and Migrants of 2016, contain political commitment for refugee responsibility sharing and governments held that:

> We underline the centrality of international cooperation to the refugee protection regime. We recognize the burdens that large movements of refugees place on national resources, especially in the case of developing countries. To address the needs of refugees and receiving States, we commit to a more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees, while taking account of existing contributions and the differing capacities and resources among States.[406]

In addition to these UN Declarations, the Executive Committee of UNHCR has also endorsed a number of conclusions on international responsibility sharing in refugee protection. For example, the UNHCR' Executive Committee meeting in 2004 provided a conclusion on "the importance of international burden and responsibility sharing in reducing the burdens of host countries, particularly developing countries.'[407] This and the other conclusions of the committee have highlights and stress the importance of the principle. Therefore, the significance of the principle of responsibility sharing in addressing the global refugee crisis is recognized in the preamble of the UN convention relating to the status of refugee, in various UN declarations and by several UNHCR executive committees' conclusion. Incontrovertibly, international refugee law proclaims cooperation among states to achieve a fair sharing of refugee responsibilities which results in better protection of refugee.

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[404]Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (25 July 1951)IV(D)available at http://www.unhcr.org/en-us/protection/travaux/40a8a7394/final-act-united-nations-conference-plenipotentiaries-status-refugees-stateless.html last accessed on 26 May 2018

[405]Adopted by the general assembly of United Nations on December 1967, A/RES/2312(XXII),article 1(1) ,available at http://www.refworld.org/docid/3b00f05a2c.html

[406] Adopted by the general assembly of United Nations UNGA res 71/1 (19 September 2016) par.68

[407] UNHCR, Executive committee, 'International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations' No 100 (LV) 2004; see also Conclusion No. 102 in 2005,available at, http://www.refworld.org/docid/4f50cfbb2.html

Despite of this recognitions and the vital importance of international cooperation for the protection of refugees, neither the convention nor the protocol or other relevant international instruments imposes any substantive obligation upon States to share the responsibility.[408] To begin with, the convention, the preamble to the Refugee Convention states that the grant of asylum may place a heavier burden on certain states and a solution to the problem cannot be achieved without international cooperation. Consequently, the 1951 Convention urges states to act according to the true spirit of international cooperation. But, there is no binding obligation for states to act beyond their territory in the event of a refugee crisis under the convention. The preamble is merely a tool for interpreting the Convention and is not legally binding, unlike the text of the Convention, which is legally binding international law.[409]Thus, the preamble does not automatically create legal obligations up on state parties.

Besides, this provision in the preamble, Article 35 of the 1951 Convention urges States Parties to cooperate with UNHCR in the exercise of its functions and in particular to facilitate its duty of supervising the application of the Convention itself.[410]However, according to Fontayne, this provision "encompasses a somewhat imprecise undertaking on the part of the Contracting States to co-operate with the Office of the United Nations High Commissioner for Refugees in the exercise of its functions."[411]As a result, any fiscal assistance received from state parties to the convention is 'a matter of charity, not of obligation.'[412] Additionally, Noll argued that "in spite

[408]Tristan Harley, 'Regional Cooperation and Refugee Protection in Latin America: A 'South South' approach'(2014)26(1),International Journal of Refugee Law 28

[409] Paul Weis, The Refugee Convention, 1951: The Travaux Preparatoires Analyzed with a Commentary by Dr Paul Weis(Research Centre for International Law, University of Cambridge 1995)32; Tallykritzman-amir and Yonatan Berman, 'responsibility sharing and the rights of refugees: the case of Israel' (2010) The Geo. Wash. Int'l L. Rev.630.(The preamble of the convention merely reflects recognition of a certain state of affairs; it does not set specific rules as to how to allocate the duty to protect.); Alex Catalan Flores, 'Reconceiving Burden-Sharing in International Refugee Law'(2016) 7 King's Student L. Rev. 45.(The Convention's preamble, however, does not in itself create a binding obligation on its signatories. Instead, it serves to illuminate the context in which the Convention is to be interpreted.)

[410]Adopted by the general assembly of United Nations on 28 July 1951 and entered in to force on 22 April 1954,Article 35

[411]J.-P.L. Fonteyne, 'Burden-Sharing: An Analysis of the Nature and Function of International Solidarity in Cases of Mass Influx of Refugees'(1978-1980) 8, Aust. YBIL 179

[412]James C. H Hathaway and R. Alexander Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection' (1997)10, Harv. Hum. Rts. J .141

of the pressing need for regulation the international cooperation required for sharing the burden of refugees was, however, not the subject of the Convention."[413]

Nevertheless, debate regarding states obligation to share responsibility under customary international law in case of refugee crisis. Based on the inclusions of the principle in those above mentioned international refugee instruments and in the statement of Executive committee, some scholars have argued that international cooperation to share refugee responsibility is a legal principle.[414] Other authors have also opined that the principle has obtained customary law status by virtue of the fact that it is present in different pieces of international refugee instruments and it is persistently used to help states in the case of mass refugee movement.[415]

However, according to Noll this assumption falls short because there is no binding instrument under international law explicitly stipulate that, and state practice during crisis show inconsistence.[416] Moreover, as it is seen in the preceding section of this chapter most states in the world are resorted to employ different restrictive measures as a response to the global refugee crisis. Hence, states practice in this regard is not consistence as it is evidenced in contemporary states response to the global refugee crisis, notably in recent Syrian refugee case. Therefore, the argument in favor of the existence of this obligation under customary international law is not convincing.

As it is noted above, several conclusions of UNHCR executive committee and different United Nations Declarations highlight and stress the importance of the principle of responsibility sharing. Since these documents that contain the principle of responsibility sharing are declarations and conclusions; therefore they are not supposed to be legally binding. In this regard

[413]Gregor Noll, 'Prisoners' Dilemma in Fortress Europe: On the Prospects for Equitable Burden-Sharing in the European Union'(1997) 40, German Y.B. Int'l L. 408

[414]BS Chimni, International Refugee Law: A Reader (Sage Publications 2000) 146.See also; Benjamin Cook, 'Method in Its Madness: The Endowment Effect in an Analysis of Refugee Burden-Sharing and a Proposed Refugee Market' (2004) 19 Georgetown Immigration Law Journa337–38

[415]J.-P.L. Fonteyne, 'Burden-Sharing: An Analysis of the Nature and Function of International Solidarity in Cases of Mass Influx of Refugees'(1978-1980) 8 Aust. YBIL178–84

[416]Gregor Noll, 'Prisoners' Dilemma in Fortress Europe: On the Prospects for Equitable Burden-Sharing in the European Union' (1997) 40, German Y.B. Int'l L.

it has been argued that because of the 'softness' of these international law instruments they lack, binding force as does the preamble to the Refugee Convention.[417]

Generally, as it is discussed in chapter three of this paper, international cooperation to share responsibility in addressing international problem is a fundamental principle of international law. The principle is embedded in the Charter of UN and in other regimes of international law with the aim to solve a common problem. For example, as it is shown in the previous chapter, this principle is used as a tool by international environmental law to solve trans-boundary environmental problems and to reduce environmental damage for the benefit of entire world. The principle is also entrenched in the binding treaties on human rights as a means to promote universal human rights protection with the ultimate aim of assisting the state parties in implementing its treaty obligations. In general the principle responsibility sharing which is an element of international cooperation is relevant in today's growing international problems which need a collective action.

As it is understood from the previous discussion of this chapter, there are some legitimate reasons for international communities to cooperate to share refugee responsibilities in order to respond for the growing global refugee crisis. It is noted while international law does recognizes the principle of responsibility sharing, states obligations in international refugee law is generally confined to territorial limits. Despite the pressing needs for states to cooperate to share refugee responsibilities in order to address the inequity problem in the regime, to maintain global peace and security, for the sustainability of the international refugee regimes and for other reasons discussed the above discussion reveals that there is no binding obligation to share the responsibility of refugee in international refugee law.

The principal instrument for the protection of refugees worldwide, the Convention Relating to the Status of Refugees requires states to extend protection to refugees within their jurisdiction.[418] The binding obligation toward the refugees only comes into effect if refugees cross into a states' territory. As countries are not legally required to care for refugees until they are within their borders, 'efforts to exclude refugees altogether are an effective means to avoid

[417]Tally kritzman-amir and Yonatan Berman, 'responsibility sharing and the rights of refugees: the case of Israel' (2010) The Geo. Wash. Int'l L. Rev 630

[418]E. Tendayi Achiume, Syria, Cost-Sharing, and the Responsibility to Protect Refugees,(2015) 100, Minn.L. Rev. 690

the duty to provide protection.'[419] It has been argued that Primary territorial and jurisdictional responsibility for refugee protection is designated to the states that are unable for various reasons to fulfill refugee related duties under it.[420] According to Achiume in practice the world's poorest countries are legally required to meet the needs of most refugees.[421] As per Hathaway and Neve this, "chaotic distribution of the responsibility to provide refugee protection is not offset by any mechanism to ensure adequate compensation to those governments that take on a disproportionate share of protective responsibilities."[422] According to Rose, this fundamental failure demonstrates how the paradigm of territorial duties is insufficient to achieve the aims of international refugee law.[423] Likewise, different writers contend that responsibility is allocated between states "quite arbitrarily by an amorphous principle of accident of geography."[424]

It is obvious that in the absence of binding international norm for state to cooperation for sharing refugee responsibilities unequal distribution of refugee responsibilities threatens to undermine the entire international refugee law framework.[425] It has been argued that in the absence of a clear normative and legal framework governing international responsibility sharing on refugee protection, responsibility sharing efforts undertaken in the past was conceived as an ad hoc

[419] James C. H Hathaway and R. Alexander Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection' (1997)10, Harv. Hum. Rts. J .119

[420] Jeannie Rose C. Field, 'Bridging the Gap between Refugee Rights and Reality: A Proposal for Developing International Duties in the Refugee Context' (2010) 22, Int'lJ. Refugee L. 514

[421] E. Tendayi Achiume, Syria, Cost-Sharing, and the Responsibility to Protect Refugees,(2015) 100, Minn.L. Rev. 690

[422] James C. H Hathaway and R. Alexander Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection' (1997)10, Harv. Hum. Rts. J .11

[423] Jeannie Rose C. Field, 'Bridging the Gap between Refugee Rights and Reality: A Proposal for Developing International Duties in the Refugee Context' (2010) 22, Int'lJ. Refugee L. 516

[424] Tally kritzman-amir and Yonatan Berman, 'responsibility sharing and the rights of refugees: the case of Israel' (2010) The Geo. Wash. Int'l L. Rev 630.see also; Peter H. Schuck, 'Refugee Burden-Sharing: A Modest Proposal'(1997)22, Yale J. Int'l L. 253; Alexander Betts, *Protection by Persuasion: International Cooperation in the Refugee Regime* (Cornell University Press 2009) 12.(he argues "the norm of burden-sharing is subject to a very weak legal and normative framework"; James C. H Hathaway and R. Alexander Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection' (1997)10, Harv. Hum. Rts. J .117(They argues that, "the basic problem of the international refugee regime is that the responsibilities of states under the 1951 Geneva Convention are limited to those asylum seekers that arrive on their territory."

[425] Tally Kritzman-Amir, 'Not in my Backyard: On the Morality of Responsibility Sharing in Refugee Law' (2009) 34, Brooklyn Journal Of International Law

bargaining and they have only been sporadically successful because these efforts were not tied to a strong moral sense of duty.[426]

Hence, similar to the problems in other regimes of international law the importance of cooperation to achieve equitable responsibility sharing in addressing the contemporary refugee crisis is undisputable. Suhrke has clearly stated that the refugee regime has historically been characterized by 'collective action failure.' Further, she argues that "the provision of refugee protection constitutes a global public good. As with the provision of street lighting at a domestic level or international action against climate change, all actors will benefit from one state providing refugee protection and so, in the absence of binding institutional mechanisms for burden-sharing, states will 'free ride' on the provision of other states."[427]

According to Thielemann and El-Enany, the lack of binding international norm concerning responsibility sharing under international refugee law provides states with an incentive to use restrictive policies in an attempt to limit the number of asylum seekers that are able to access their territories and indirectly, to encourage them to seek protection in another country or region.[428] This gives rise to 'a free rider problem' and gives incentive to states to erect physical, legal and other barriers to deter refugees from seeking asylum in their territory.[429]

In sum, the principle of responsibility sharing is not adequate under international refugee law in addressing the global refugee crisis. As international refugee law stands today the distribution of the refugee responsibility usually depends on unfortunate geographical position of countries.[430]

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[426] Tally Kritzman-Amir, 'Not In My Backyard: On the Morality of Responsibility Sharing in Refugee Law' (2009)34Brook. J. Int'l L.378.see also; Alexander Betts, 'International Cooperation in the Global Refugee Regime' (2008) Global Economic Governance Program Working Paper 2008/44, 2

[427] Astri Suhrke, 'Burden-sharing during Refugee Emergencies: The Logic of Collective versus National Action' (1998) 11(4), J. Refugees Stud.

[428] Eiko Thielemann and Nadine El-Enany, 'European Refugee Policy from a Global Perspective: Is the EU Shirking its Responsibilities?'(2010) Paper to be presented at the Fifth Pan European Conference on EU Politics of the European Consortium for Political Research (ECPR), 23-26 June 2010, Porto, Portugal

[429] Benjamin Cook, 'Method in Its Madness: The Endowment Effect in an Analysis of Refugee Burden-Sharing and a Proposed Refugee Market' (2004) 19, Geo. Immigr. L.J. 342.See also, Peter H Schuck, 'Refugee Burden-Sharing: A Modest Proposal' (1997) 22, Yale Journal of International Law 243, E. Tendayi Achiume, 'Syria, Cost-Sharing, and the Responsibility to Protect Refugees'(2015) 100, Minn. L. Rev.701

[430] James C. H Hathaway and R. Alexander Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection' (1997)10, Harv. Hum. Rts. J .119

As a result, it is the developing state, the poor state, and the state in the unstable region that is left with the overwhelming responsibility of dealing with refugee flows.

4.3.3 Interim Conclusion

In concluding the discussions so far under this chapter, I have sought these sections have sought to explore the underlying rationales why responsibility sharing is important for international refugee law, its implications and the adequacy of this principle under international refugee law regime in addressing the global refugee crisis. The first section started by posing a question why does responsibility sharing matter in refugee context. This section has revealed that there are several reasons why does this principle matter in addressing the global refugee crisis. Among others the section has indicated that the root causes of refugee flows cannot be prevented or eliminated. Thus, in the event that all efforts to prevent a situation of unrest fail the expectation is that there will be a flow of refugees. Consequently, there is a large flow of refugee across the world nowadays.

On the top of this, currently, developed states have put into place measures that make entry less attractive to refugees. During the recent years, they have been erecting physical, legal and policy barriers to curbing new arrivals and to prevent refugees from accessing asylum. As a result, refugees are flowing to the poor neighboring countries and the responsibilities associated with their protection are distributed among states in inequitable manner. This situation has led the lives of millions of refugees to be trapped in camps in protracted refugee situations in hosting states. It has also threatened to undermine the entire international refugee law since developing and poor countries are required to observe responsibilities which the developed states themselves no longer attempt to respect.

As it is also shown in this section, refugees are no longer restricting movement to only nearby countries. It has been argued that globalization entailed new patterns of refugee flight facilitated by various cheap transportation and human smugglers specialized in avoiding traditional forms of border control which highlights the importance of responsibility sharing scheme in present global refugee situations. The section also illuminated that the huge numbers of refugees could impose an additional challenge for hosting states economies and security or public order among other things. Additionally, this section has shown that the movement of refugees; especially in

large numbers is a matter of concern to more than one state and creates problems with regard to international security and stability. It has been argued that refugee protection efforts produce public goods, largely in the form of enhanced stability and increased security. Different scholars have an opinion for which I submitted that the reception and protection of refugees creates a situation in which all states, including those who contribute and those who do not, profit from this contribution. As a result, it is not only a matter of a random refugee hosting states to bear brunt of refugee responsibilities, there is strong reason for other states to cooperate in this regard to maintain international security and stability.

The second section of this chapter starts by exploring the implications of the responsibility sharing with respect to refugee protection. Accordingly, international cooperation to share refugee responsibilities can be manifested in many forms. However, many scholars in the area divided responsibility sharing with respect to refugee protection in to two broad categories: the provision of financial assistance to host countries and physical relocation of refugees. Furthermore, this section tries to answer the main research question of the paper and examined the adequacy of the principle of responsibility sharing under international refugee law in addressing the global refugee crisis. This sub section begins by exploring the principle under principal refugee laws in international law namely, the 1951 refugee convention and 1967 protocol.

The examination has revealed that there is however, no binding provision in those instruments that specifically states this principle and also the preamble does not automatically create legal obligations. The section has shown that the debate regarding states obligation to share responsibility under customary international law is not convincing because states practice during the crisis show inconsistence. Furthermore, because of their 'softness', the Declarations of United Nations and conclusions by UNHCR Executive committee, which contain the principle of responsibility sharing, are not supposed to be legally binding. Finally, the section found that despite the principle being of normative significance under international law, it is not embedded in international refugee law in the form of binding norm and it is not adequate to address the global refugee crisis. There is no principled basis for the current distribution of the responsibilities associated with refugees under international refugee law in addressing the global refugee crisis.

Due to this lacuna, despite the legally binding nature of the 1951 Convention and its preceding protocol, the reality does not meet the expectations and as such the law failed to respond to the global refugee crisis in an efficient manner. Because countries are not legally required to care for refugees until they are within their borders, developed countries have used the power they have to prevent refugees from becoming their responsibility. Accordingly, in the current global refugee crisis, most of states that are "most capable of incurring refugee responsibilities have stood on the sidelines watching." conversely, the responsibility to host and protect refugees often falls disproportionately onto a small number of surrounding states. Due to the inequitable division of the refugee responsibility, most countries of first asylum are unable or unwilling to observe their obligations under international refugee law. As a consequence, 'the unequal distribution of refugee protection responsibilities threatens to undermine the entire international refugee law framework.'

4.4 The Way Forward: a Proposal for Binding International Treaty

> As long as a State could not hermetically seal off its borders and as long as a redistribution scheme for the exoneration of heavily burdened States did not exist, one would have to live with an uneven distribution of refugees and asylum-seekers.[431]

In the foregoing, we have seen that uneven distribution of responsibility for hosting and protecting global refugees are a major challenge that confronts the current refugee regime. Refugee crisis have been around the world for a long time and still continue to be on the rise. The recent Syrian crisis has shown that this is a current issue of concern. In the previous two sections, I have tried to offer the rationales as to responsibility sharing matter and I have also attempted to show the inadequacy of this principle in existing international refugee law in addressing the global refugee crisis. In these sections, I also referred to emerging state practices and tendencies of shifting refugee responsibilities as a response to the contemporary refugee crisis. Due to these emerging practices, the majority of the world's refugee populations are concentrated in underdeveloped states. The examination in the section two of this chapter has also shown that this problem is the direct result of flaws in the current international refugee law.

One thing that has come out clearly from the previous discussion is that, although the 1951 Convention provides set of rights to refugees vis- a- vis hosting states, its primary shortcoming is

[431]Gregor Noll, 'Prisoners' Dilemma in Fortress Europe: On the Prospects for Equitable Burden-Sharing in the European Union'(1997) 40, German Y.B. Int'l L.407

the lack of clear and positive obligations which ensure a fair distribution of the responsibilities of refugees between the States parties. There are no binding legal provisions that are specific to responsibility sharing under international refugee law. The General Assembly has on numerous occasions stated that the flows of refugees that are released by a single country affect the international community as a whole.[432]

Hence, acceptance and accommodation of refugees is by itself challenging, and the challenge is even more aggravated when there is a large flow of refugees.[433] According to Rose, "applying a territory-based paradigm of state duties to inherently trans-border phenomena such as refugee movements, global in scope and in impact, leaves enormous problems for which no state bears responsibility."[434] Likewise, Hathaway and Neve also argued that the current system of unilateral, undifferentiated obligations is unfair and ultimately unsustainable.[435] According to Loescher the current international refugee law is ill equipped to address this problems related with uneven distribution of refugees.[436] As a result, the need to find more effective ways to implement the 1951 Convention to protect refugees and to address the inequity problem has clearly become more pressing than ever.[437] The best way to solve the problem of refugee's crisis in this regard is to fix the root cause of their flight. However, as it is shown above in the first section of this chapter this alternative is inefficient to solve this mounting problem for decades.

Therefore, the logical response to this increasing problem would then be to adopt effective responsibility sharing mechanisms to find solutions for the problem which is tested and become effective in addressing the common global problems of social, environmental, and human rights in their character under different international law regimes. Hence, the responsibility of protecting and providing for refugees must be solved through cooperation rather than allowing it

[432]See example, United Nations General Assemblies Resolution adopted on 12 February 1946, by UNGA res A/45
[433]JPL Fonteyne, 'Burden Sharing: An Analysis of the Nature and Function of International Solidarity in Cases of Mass Influx of Refugees' (1980) 8, Aust. YBIL 162 At page 166
[434]Jeannie Rose C. Field, 'Bridging the Gap between Refugee Rights and Reality: A Proposal for Developing International Duties in the Refugee Context' (2010) 22, Int'lJ. Refugee L. 512
[435]James C. H Hathaway and R. Alexander Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection' (1997)10, Harv. Hum. Rts. J .143
[436]Gil Loescher, *beyond charity: International Cooperation and the Global Refugee Crisis*(Oxford University 1993)129
[437] Volker Türk, 'Prospects for Responsibility Sharing in the Refugee Context'(2016)4(3), JMHS 54

to become the problem of a few random States.[438] Further, it should be understood that global cooperation to share refugee responsibilities for refugee protection is not only fair and just, but also would be beneficial to world order and global security and help States to better plan their immigration policies.[439]It is also argued that "there can be little doubt that not only the world's refugees but also states would greatly benefit from a more open and coordinated response to the global refugee crisis."[440] Currently, the lack of sufficient responsibility sharing mechanisms under international refugee law exposes refugees to poor quality of protection, permits economically, politically and socially weak states to shoulder the brunt of refugee responsibilities and it threats to affect global peace and stability. Therefore, without sharing responsibility for refugees' international refugee crises will continue to escalate. According to Achiume in the absence of a frame work for facilitating the requisite international cooperation the result is unreliable mechanism for ensuring international cooperation.[441] Hence, the crux of any cooperation to share refugee responsibility should be to create predictability and predictability is dependent on the distribution that is agreed upon before a refugee crisis materializes.

Moreover, it has been argued that "where there is law and principle, so there is strength and the capacity to oppose. Where there are merely policies and guidelines, everything, including protection, is negotiable, and that includes refugees"[442] Additionally, binding norm regarding responsibility sharing not only addresses the inequity problem but also make the efficient use of the existing international refugee law. For instance, according to Fonteyne, responsibility sharing is "a virtual sine qua non for the effective operation of a comprehensive non-refoulement policy intended to ensure safe havens for all refugees."[443] Hence, despite the gravity of the refugee

[438] Tally Kritzman-Amir, 'Not In My Backyard: On the Morality of Responsibility Sharing in Refugee Law' (2009) 34, Brook. J. Int'l L.362
[439] Ibid

[440]Thomas Gammeltoft-Hansen and Nikolas Feith Tan, 'Beyond the Deterrence Paradigm in Global Refugee Policy'(2016) 39, Suffolk Transnat'l L. Rev.644
[441]E. Tendayi Achiume, 'Syria, Cost-Sharing, and the Responsibility to Protect Refugees(2015) 100, Minn. L. Rev.691
[442]Thomas Gammeltoft-Hansen, 'International Refugee Law and Refugee Policy: The Case of Deterrence Policies'(2014) 27, J.Refugee Stud.574
[443]JPL Fonteyne, 'Burden Sharing: An Analysis of the Nature and Function of International Solidarity in Cases of Mass Influx of Refugees' (1980) 8, Aust. YBIL 175.see also, Benjamin Cook, 'Method in Its Madness: The Endowment Effect in an Analysis of Refugee Burden-Sharing and a Proposed Refugee

crisis if there was a strong norm for more equitable approach to responsibility sharing among states internationally refugee protection could be improved substantially and the inequity problem could be gradually addressed.

Therefore, addressing the global refugee crisis and efficient use of the existing international refugee laws can be achieved after binding legal documents have been agreed to by states. Consequently, I argue that one way to solve the global refugee crisis problem is for states to formulate binding rules to share responsibility regarding protecting and hosting the world refugees. This is because, without a direct and binding norm mandating their undeviating participation in protection, states have been growing more and more reluctant to host and protect refugees. [444] Therefore, binding frame work for sharing responsibility helps international community to respond to global refugee's crisis more effectively.

For effective methods of responsibility sharing, there is a need for clear definition as to what constitutes to responsibility sharing in refugee context. This adoption of comprehensive approach to determine the criteria to the whole issue of responsibility sharing should be decided by the state parties to the negotiation. Hence, the objective of this section is not to offer the comprehensive proposal as to what should the new framework for refugee responsibility sharing look like. Questions about how responsibilities would be divided and how implementation would be carried out remain to be addressed by the states to the negotiation. Though it is not intended to be exhaustive the next sub section will introduce some of the issues regarding the newly proposed instruments.

4.3.1 The proposed framework should be complementary to the existing international refugee law

The 1951 Convention and its 1967 Protocol is the centerpiece of the international refugee protection and still widely acknowledged as the main legal tool that we have at hand for saving lives.[445] It has been argued that this fundamental international refugee law designed from the start to protect individuals at risk for a variety of reasons, including persons fleeing armed

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Market'(2004) 19, Geo. Immigr. L.J.346.(he argues the principle of non-refoulement is part of a sacred trust, but the principle does not stand alone; it is, indeed, closely connected with the principle of 'burden sharing' between nations.)

[444] See, discussion above in section one of this chapter

[445]Volker Türk, 'Prospects for Responsibility Sharing in the Refugee Context'(2016)4(3), JMHS 54

conflict and other situations of violence that may accompany changes in political systems.[446] As a consequence, some writers express their doubt as to the feasibility of proposing new framework, given the political-legal environment in which international refugee law exists.[447] They contend that such a project which aims to overhaul the existing international refugee law will undermines the entire refugee protection system. For instance, Turk has argued that there are "certain risks in such an exercise, as reopening this discussion could inadvertently result in many of the hard-won advances made in negotiating international refugee protection being undermined."[448] Sharing this concern with those authors, I argue that the newly proposed international law for refugee responsibility sharing should be formulated with caution as not to undermine a well established framework of norms and rules in existing international refugee law. Accordingly, the proposed refugee responsibility sharing instrument should take the form of protocol which has independent existence to complement the existing international refugee law. However, it is the international community who must decide how responsibility sharing of hosting and protecting refugees should occur a newly proposed international instrument must consider the following as part of its components.

4.3.1.1Responsibility Sharing

All states must benefit from predictability and stability from this newly proposed international law. According to Kritzman-Amir the promise behind crafting responsibility sharing mechanisms is that it will assist in allocating responsibility among the different States.[449] Both developed and poorer states would benefit from such new international law provisions which will allocate responsibilities for refugees.[450] Further, it has been argued that for some states, the costs of participating in a new international agreement may also be less than their current costs of managing migration and the new scheme will attract most states in the world.[451] Thus, the new refugee responsibility sharing instrument must spread responsibility for refugees across home states, host states and to the other states parties to the instrument to various degrees.

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[446] Ibid

[447] Alex Catalan Flores, Reconceiving Burden-Sharing in International Refugee Law,(2016) 7, King's Student L. Rev. 40

[448]Volker Türk, 'Prospects for Responsibility Sharing in the Refugee Context'(2016)4(3), JMHS 54

[449]Tally Kritzman-Amir, 'Not In My Backyard: On the Morality of Responsibility Sharing in Refugee Law' (2009)34, Brook. J. Int'l L.378

[450] Jill I. Goldenziel, 'Displaced: A Proposal for an International Agreement to Protect Refugees, Migrants, and States'(2017) 35(1), Berkeley J. Int'l L.85

[451] Ibid

4.3.1.1.1 Home State responsibilities

In the global refugee crisis, the practice has shown that it is not the country of origin but the neighboring developing countries that are bearing the brunt of refugee's responsibilities and are expected to search for solutions.[452] Under international law in general and human rights law in particular, states are required to care for their own people.[453] It has been argued that this assignation of responsibility "springs from the fact of control over territory and inhabitants."[454]

The new instrument should obligate home states to work on the root causes of the refugee flight. Accordingly, under a new law home states should be required to implement various strategies to observe other international human rights standard to respect and protect human rights in their respective territories. The proposed instrument should also require home state to make refugees return possible after disappearance of the root cause in its territory. The new international law primarily regulate policy externalities of the home states and hold states accountable for their activities of human rights violations that causes refugee flows and the sanction should be effective.

4.3.1.1.2 Host State Responsibilities

Because refugees are in the territory of hosting states, it should bear the primary responsibility in implementing the new instrument. Hosting states must continue to obey standard of treatment and its obligations enumerated in the Refugee Convention and its preceding protocol particularly it should strictly obey the principle of non refoulement. Similarly, each host state should take the lead in ensuring that humanitarian aid is distributed to the people who have fled into its territory in the case of refugee emergence situations. The new instrument must oblige host state to give access for international community's or for other concerned bodies to provide assistance for refugees in its territories in the case where there is refugee emergency situations. Additionally, the instrument should outline host state obligations to give temporary protection in the case of large movement of refugees until international community will act.

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[452] Michèle Morel, 'The lack of refugee burden-sharing in Tanzania: tragic effects'(2009)22, Africa focus110

[453] Goodwin-Gil Guy S and Jane McAdam, *The Refugee in International Law* (3ed, Oxford University Press, 2007)3-4

[454] Ibid

4.3.1.1.3 International Cooperation and Assistance

The home and host states should not have to shoulder the responsibility of refugee alone. Cooperation and assistance from international community is necessary to make the newly proposed instrument effective. International community's obligations under the newly proposed law should go beyond promoting human rights to providing humanitarian aid. Refugee hosting states in the existing context the Poorer and developing states must benefit from the assurance that they will receive financial assistance to host large numbers of refugees.[455] Since most of the world's refugees are hosted by developing countries, to redress the inequity problem the new refugee responsibility sharing protocol should lay out the principle of cooperation and assistance mechanisms regarding international cooperation and assistance to strengthen the host countries capacity.[456] The newly proposed refugee responsibility sharing instrument must use economic assistance as a major response to refugee flows in order to persuade developing countries to retain refugees and confine the refugee problem within a region. It should also articulate those capacity building measures considered to enable developing countries to effectively respond for the refugee crisis.[457] International environmental law should give a lesson to this proposed law concerning how to provide international cooperation and assistance in this case.

4.3.1.2 Common Fund

The new refugee responsibility sharing protocol should establish a common fund to manage the provision of international assistance. It has been argued that any well-crafted international agreement must provide assurances to wealthier and poorer states that they will benefit from agreement.[458] "By pooling all states' resources, the world will be better able to address the global refugee crisis."[459]

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[455] Jill I. Goldenziel, 'Displaced: A Proposal for an International Agreement to Protect Refugees, Migrants, and States'(2017) 35(1), Berkeley J. Int'l L.85

[456] Savitri Taylor, 'The Pacific Solution or a Pacific Nightmare: The Difference between Burden Shifting and Responsibility Sharing'(2005) 6(1), APLPJ 41

[457] Ibid

[458] Jill I. Goldenziel, 'Displaced: A Proposal for an International Agreement to Protect Refugees, Migrants, and States'(2017) 35(1), Berkeley J. Int'l L.85

[459] Ibid

Therefore, this new international law should ensure that states hosting a large numbers of refugees can rely on financial assistance from international communities.[460] The new instrument should determine the amount of states parties' contribution. In this regard the instrument should use international climate change regime as a precedent.[461] Accordingly, the instrument should allocate international contributions for the common fund according to states' common but differentiated responsibilities and respective capabilities.[462] Hence, states should pay different amounts for global refugee protection based on their respective capabilities and their refugee burden.

4.3.1.3 Supervisory Administrative Body

The new instrument should also establish a supervisory body to implement the instrument in a fair and efficient manner and to administer the fund. The question at this point is that whether the existing supervisory body of the 1951 convention relating to the status of refugee (UNHCR), or another supervisory body should be assigned to administer the instrument and a common fund. Since the aim of the proposed instrument is to complement the existing regime the creation of new international supervisory body tasked with the above role is not a right choice. As i have argued above this newly proposed instrument is a complementary to the existing law and it is a means to effective use of the regime. Therefore, other than duplicating institutions it is sound to give this mandate to the already existing supervisory body of the refugee protection. Hence, the new instrument in this respect must outline the roles and mandates of this body and the procedures to be followed while administrating the common fund.

[460] Ibid

[461] United Nations framework convention on climate adopted 20 June 1992 and entered in to force 21 March 1994 arts. 11, 21(3)

[462] Ibid art 3,see also, chapter three of this paper for the detailed discussion on the principle of "common but differentiated and respective capabilities"

Chapter Five

Conclusion and Recommendations

5.1 Conclusion

One of the global challenges of the 21st century is the increase in refugee population worldwide. Despite the majority of the members of states committing to the refugee protection principles under international law, only poor and developed countries are often forced to assume for most responsibilities related to refugee crisis. These countries have been made to host the majority of refugees and to shoulder most refugee responsibilities. The Refugee Convention and its additional protocol which can be regarded as the centerpiece of international refugee protection are underpinned by several fundamental principles for refugee protections including the principles of non-refoulement, immunity against penalization and asylum. This thesis has examined the scopes of these principles under international law and their limitations in addressing the global refugee crisis. Accordingly, the principle of non-refoulement which is regarded as the cornerstone of international refugee protection is incorporated under several international law instruments. However, it has been asserted that despite of its significance in international refugee protection there is no consensus with respect to extraterritorial application of this principle. There is a legal uncertainty of the application of the principle of non refoulement principle extraterritorially in international law and also States make use of the non refoulement exceptions contained in the refugee convention.

Furthermore, this thesis has shown that the right to asylum is also an important concept regarding the current global refugee crisis. However, states continue to dispute the existence of an individual right to asylum and continue to develop policies to shift their responsibilities toward the others. As it is shown in this thesis the norms that prohibit states from taking measures that penalize refugees for their illegal entry or presence in their territory is one of the established norms under international refugee law. Nevertheless, the Convention recognizes that in certain circumstances States may impose restrictions on freedom of refugees without prescribing the mechanisms and procedures to be followed in this regard. As a result, the absence of procedures to be followed or lack of any mechanisms for the interpretation or enforcement of the rights in the convention leads state to use the loophole to subject refugees to detention and other coercive

measures to deter other asylum seekers. In this regard, the finding of the thesis is that, though international refugee protection is grounded on these fundamental principles and norms of refugee protection the above areas of legal ambiguities and uncertainty afford States a legal vacuum to avoid their responsibilities to protect refugees which exacerbated the global refugee crisis.

Additionally, the thesis has shown that there exists under general international law a norm that requires state to cooperate in solving international problems "of an economic, social, cultural, or humanitarian character."The thesis has revealed that the principle of international cooperation which is established as an underlying principle under the charter of UN and embedded in international environmental law and human rights law in binding form is relevant in today's growing international problem which needs a collective action. The principle of responsibility sharing which is the subject of this study that requires States to participate in international response measures aimed at addressing global problems is contained in this general principle of international law that requires state to cooperate in addressing the global problem. Furthermore, the thesis has shown that this principle is incorporated under international environmental and human rights treaties in binding form. Consequently, the thesis disclosed that environmental pollution is regarded as a trans-boundary phenomenon to which states have common responsibilities to protect the environment. As a response, international cooperation to share responsibility is developed as a tool in this regime of international law in binding form, notably in climate change regime to tackle the collective action problem in this area. In this regard, it has also shown that the objective of international cooperation in international environmental law is to reduce environmental damage or global emissions for the benefit of the entire world. Additionally, international cooperation has been extensively developed within the international human rights framework. Protection and realization of human rights at international level become the common concern of international community. Thus, in this thesis has indicated that the ultimate aim of a human rights approach to international cooperation is to assist the state parties in implementing its international obligation.

The main argument of the thesis is that the problems posed by global refugee crisis bears a number of resemblances with international environmental problems and realization of human rights concerns at international level. In this regard, the thesis provides a number of reasons why

responsibility sharing does matters in international refugee protection context. Accordingly, it has shown that international community is failed in addressing the root causes of refugee flows over the decades. As a result, there is a large flow of refugee across the world nowadays. These refugee movements are not restricted geographically and refugees are moves across the globe facilitated by cheap transportation and human smugglers. It has also disclosed that the current state practices which threaten to undermine the entire international refugee laws and that forces millions of refugees to live in protracted refugee situations in developing states is also an other reasons which needs attentions of international community towards a solution. In this thesis it has also argued that that refugee protection effort produces public goods in the form of "enhanced global stability and increased security" which brings a global refugee crisis concern to an international level.

After providing the rationales why refugee crisis should be regarded as an international problem that needs collective action by international community, the paper has examined the adequacy of the principle of responsibility sharing in international law specifically in international refugee law in addressing this collective action problem. The conclusion arrived at in this thesis is that despite the principle being of normative significance under general international law and used as a tool by different regimes in addressing the collective action problems, it is not embedded in international refugee law in the form of binding norm and it is not adequate to address the current global refugee crisis. Countries are not legally required to share responsibilities for refugees until they are within their borders. As a result, developed countries have used the power they have to prevent refugees from becoming their responsibility which exacerbated the global refugee crisis.

Based on this finding, the thesis argues that one way to solve the global refugee crisis is for states to formulate binding laws to share responsibility concerning refugee protection in order to relieve countries of first asylum, to sustain the existing international refugee law, to improve the quality of refugee protections and to strengthen international peace and stability. This is because, without a direct and binding norm mandating their undeviating participation in protection, states have been growing more and more reluctant to host and protect refugees. Therefore, binding international treaty for sharing refugee responsibility helps international community to respond to global refugee's crisis more effectively.

5.2 Recommendations

Based on the discussions made and the conclusion arrived at in this thesis, I recommend the following for filling the gaps in the current situation of the global refugee crisis:

A. United Nation's member states should agree to a specific binding treaty for refugee responsibility sharing to address the global refugee crisis. This instrument should take the form of protocol which has independent existence from the 1951 refugee convention and its 1967 refugee protocol in order to complement these existing international refugee laws. In doing so, UN member states must clearly define the objectives of and what constitutes responsibility sharing in refugee context. Questions about how responsibilities would be spread and how implementation would be carried out should be addressed by the states to the negotiation. Among others the UN member states in adopting the new instrument concerning refugee responsibility sharing must consider the following as centers:

   - The instrument must spread the responsibility for refugees to the member states based on equity consideration to alleviate the existing inequalities problem. It must address the problem of contemporary disproportionate share of refugee responsibilities on host countries and communities.
   - The new instrument for refugee responsibility sharing should strongly discourage responsibility shifting strategies in order to serve its underlying purposes.
   - The new law must include provisions of durable solution for the plight of refugee across the world.
   - This instrument for refugee responsibility sharing should also include compliance mechanisms and sanctions in the case that states don't comply.
   - It should also encompass humanitarian aid for refugees during emergence situations.
   - The instrument in question should strengthen the principle of non refoulement and the scope of this principle should be further clarified under this new law.
   - It must recognize and indicate the roles of other non state stakeholders like, development institutions, civil society organizations, faith based groups and others.

B. Consistent with its mandate and past practice, I recommend the UNHCR to work with states, international organizations, civil society organizations, faith based groups, academics and other partners to lead discussions about the adoption of new treaty for refugee responsibility sharing and to influence the UN member states to that effect.
C. I recommend the office of UNHCR to continually work on the issue until the UN member states agree on the binding instrument on refugee responsibility sharing.
D. I recommend the developed nations to replace their contemporary deterrence strategies with refugee responsibility sharing solutions and to agree on binding instruments. This is because the option creates positive incentives for developing countries not to take similar deterrence and restrictive measures which in turn gives developed nations a better policy direction in return for assistance and other incentive under the instrument. Finally, it alleviates tension between states and contributes for the entire world's peace and stability.
E. I recommend the developing nations to participate in the agreement for binding instrument on refugee responsibility sharing, because, it alleviate pressure on them by equitably spreading the responsibility for refugees, the new instrument will afford them opportunity to get development assistance to ensure the self sufficiency of refugees and to benefit their communities for hosting large number of refuge population. It also enable them to respond to large flows of refugees more effectively

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