**AFRICAN INSTUTUTE FOR PROJECT MANAGEMENT**

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**COURSE STUDY: FORCED MIGRATION STUDY**

**POST GRADUATE DIPLOMA**

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| **COURSE ASSIGNMENT ONE [1]:**  **INTRODUCTION TO REFUGEES AND FORCED MIGRATION**  **ATTEMPT QUESTION FOUR [4]:**  **HOW SHOULD DUTIES TO REFUGEES BE ALLOCATED BETWEEN STATES? CITING DIFFERENT STATUTES AND EVEN PRACTICAL EXAMPLES?**  **SUBMITTED BY:**  **OKETA DOMINIC LABOKE**  **ADMISSION NO: 256/003/2019**  **SUBMITTED TO:**  **MODERATOR: \_\_\_\_\_\_\_/\_\_\_\_\_\_ 2019.**  **SUBMISSION DATE: 04/05/2019; SIGNATURE:** |

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| **Introduction:**  The Declaration recognized that in 2015 alone, the number of migrants had surpassed 244 million, in addition to roughly 65 million forcibly displaced persons, including more than 21 million refugees, 3 million asylum seekers and over 40 million internally displaced persons. The states parties in endorsing the 90-paragraph Declaration, Member States agreed to a set of commitments, among them acknowledging a shared responsibility to manage large movements of refugees and migrants in a humane, sensitive, compassionate and people-centred manner.  They agreed to do so through international cooperation, while recognizing the varying national capacities and resources in responding to those movements. Also by the Declaration, the Assembly underlined the importance of working collectively and, in particular, with origin, transit and destination countries, noting that “win-win” cooperation in that area would have profound benefits for humanity.  The declaration’s two annexes outlined a global compact for safe, orderly and regular migration, as well as a comprehensive refugee response framework. The 1951 Convention, establishes the principle that refugees should not be forcibly returned to a territory where their lives or freedom would be threatened: The principle of non‑refoulement, sets out the duties of refugees and States’ responsibilities toward them. For example Uganda had an open-door policy on migrants or refugee and the duties to refugees:-  The allocation of duties to refugees protection concern is quite lies upon the state where the refugees seeks for protection. Definitions matter because normative theorists see states as having responsibilities to refugees, including duties to grant them entrance or even membership which may clash with (what they adjudge to be) the legitimate expectations or rights of citizens. If one defines a refugee narrowly, the global pool of refugees is likely to be limited, and the duties of states to admit these individuals will not greatly impair their right to control borders; if the definition is broad, however, the pool will be large, and states might have onerous responsibilities that could dramatically impact upon a community’s ‘way of life’ (Walzer 1983; Gibney 2004). But just how does a state incur responsibilities to any particular refugee and what are the limits of these responsibilities? As in the case of the refugee definition, International Law provides a starting point for considering how responsibilities to refugees are incurred and what these might involve (see Goodwin-Gill, this volume). The cornerstone of legal refugee protection is the principle of non-refoulement, the requirement not to send back refugees to territories where their lives or fundamental freedoms would be at risk.  Allocating Responsibilities to Protect Refugees by the state; the duty to protect refugees through the finding of durable solutions is a collective duty of states. Unfortunately, it is not regulated by the 1951 Refugee Convention. Fifty years on, there is no formal, or even informal, mechanism to allocate responsibilities to protect refugees. The only indirect reference to burden-sharing or responsibility-sharing contained in any international legal instrument can be found in the preamble of the 1951 Refugee Convention in which state parties acknowledge that “the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem cannot therefore be achieved without international co-operation” (emphasis added). Unfortunately, this means that the so-called principle of responsibility-sharing has a weak legal basis and unilateral state conduct can only be criticised on the basis that it violates the spirit, rather than the letter of the 1951 Refugee Convention. It must be noted from the outset that the expression ‘responsibility-sharing’ should be preferred to ‘burden-sharing’ which suggests that refugees are a burden on the community of states. This duty is effectively distributed on the basis of location (a state has a duty to those refugees who arrive at or in its territory) (Gibney 2000). Michael Walzer (1983) follows this approach, arguing that states have a duty not to expel refugees who arrive in their territory, in part because such people have already made their escape and sending them back would involve using force against desperate and helpless people, which is morally unacceptable (Walzer 1983: 49–51). But most normative theorists have been more skeptical of the location principle for two reasons. First, it tends to privilege in practice those refugees with access to the resources and ability to move in search of asylum (like young men), leaving many people endangered in their country of origin (Gibney 2004). This has led Singer 35 and Singer to argue that states should offer asylum to those refugees most in danger, regardless of where they are located (Singer and Singer 1988). Walzer’s position, they reason, unjustifiably privileges location over need, and acts (using force to expel refugees) over omissions (failing to save refugees in other countries when this is possible) (1988: 119–20). Growing international focus on internal displacement in the past two decades might be seen to reflect this concern. A second worry is that the location principle leads to unjust distributions in refugee ‘burdens’ between states (Gibney 2007; Miller 2007; Owen 2012). States located near displacement generating states, typically poorer countries in the global South, tend to find themselves with the highest proportion of refugee claimants because they are the easiest to access. The resulting inequalities between states mock the idea of refugee protection as a common responsibility of the ‘international society of states’ (Owen 2012). In response, a number of theorists have argued that a just distribution needs to be more sensitive to the integrative abilities of particular states (e.g. level of GDP, size, political stability, etc.) (Gibney 2007; Miller 2007; Carens 2013).  The result would be an allocation of refugees across states quite different from the current one, which, as already noted, is skewed towards poorer states. The problem with this conclusion is that it is unclear what to do with it. To shuffle refugees between states for the sake of international justice would probably require riding roughshod over the choices of refugees themselves. Redistributing refugees runs the risk of reducing these people to mere commodities, especially if states are allowed to trade their refugee quotas as is proposed in some market systems (Schuck 1997; Anker, Fitzpatrick, and Shacknove 1998; Gibney 2007; Sandel 2012). While states could redistribute resources instead of refugees (financially compensating poorer states with their higher burdens), this is also morally dubious because it smacks of richer countries buying themselves out of asylum (Anker, Fitzpatrick, and Shacknove 1998). There appears to be a profound tension between doing justice to refugees and achieving justice between states (Gibney 2007).  Another way of distributing responsibilities internationally is to take into account the special responsibilities that particular states have to specific groups of refugees. The idea that states have a duty to refugees generated by wars they have initiated or participated in (e.g. Vietnam or Kosovo or Iraq), for example, is not new. But only recently has the idea of harm as a basis for asylum been systematically developed through the conceptualization of asylum as a form of reparation for injustice inflicted on refugees by third countries as a result of military aggression, supplying arms that stoke civil wars, and even support for human rights violating 36 regimes (Souter 2013). That said, important challenges still remain in terms of identifying the kinds of harms that ought to give rise to a duty to grant asylum and in determining how these duties should be weighed against the more general humanitarian responsibilities of states to provide asylum.  Some scholars argued that, the duties to refugees be allocated between states; for examples, Hathaway & Foster reject the reasonableness test in favour of a commitment to assess the sufficiency of the protection duties of the state which is accessible to the asylum seeker there in the proposed alternative location. Indeed there are elements of reasonableness in Hathaway and Foster’s proposed four steps. For instance, does the return of someone to anunniahabitable desert represent return to a location where the minimum standards of affirmative state protection are not met or is it simply unreasonable? Hathaway and Foster themselves suggest that the result is much the same. Yet there remains a significant difference between the two approaches. Indeed requiring assessment whether the state is able and willing to provide protection to the individual concerned in every case, as in the Michigan Guidelines, effectively adds an additional criterion to the refugee definition. As mentioned above, it is rather in cases involving non-State agents of persecution that a need to examine whether there is a lack of protection arises.  Perhaps the difficulties in defining reasonableness exist because conditions in the country of origin and asylum may differ radically. These differences go to the Core of global inequities resulting from instability and conflict, economic inequalities, the imperfect realization of human rights norms, and varying cultural expectations indifferent parts of the world. Fundamental human rights norms are nevertheless an important yardstick in any assessment of reasonableness, both of whether a well-founded fear would subsist in the alternative location and of whether relocation is practically sustainable in economic and social terms. The reasonableness test contrasts with the fourth step set out by Hathaway and Foster in their paper. The latter views it as sufficient for the purposes of relocation that the minimum standards of affirmative State protection as set out in Articles 2–33 of the 1951 Convention are deemed to be upheld.  In effect, the Hathaway & Foster approach seems to equate the responsibility of States to guarantee and safeguard the rights and freedoms of their own citizens, and in particular those who are forcibly displaced within their territories, with the concept of international refugee protection. Recognizing the potential for misunderstanding different notions of protection and it sensing dangers, the drafters of the Guiding Principles on Internal Displacement were mindful of the need to ensure that there be no specific status attached to Internally displaced persons (IDPs).While parallels to refugee law were drawn in certain respects, the drafters were aware of the danger that confining IDPs to a closed status could potentially undermine the exercise of their human rights in a broader sense.  However, Countries in regions of origin cannot be expected to provide durable solutions to all refugees. The responsibility to create opportunities for local integration obviously rests upon them, but other states should again provide support in order to increase these opportunities. All states share the responsibility to create the conditions for voluntary repatriation. This is a broadly defined responsibility which should involve conflict-resolution efforts in the country of origin, peacekeeping and peacemaking initiatives, information campaigns among refugee populations, technical assistance for return, monitoring of return routes and areas, etc. UNHCR obviously plays a crucial role in assisting states in fulfilling these responsibilities.  Aside from local integration and repatriation, resettlement is the third durable solution.  Until now, resettlement opportunities have remained fairly limited since they were offered to only 1% of the world’s refugees. The number of resettlement programmes should clearly be expanded. In addition, resettlement should focus on the protection needs of refugees, rather than on selecting the most qualified refugees and/or those most likely to integrate successfully within the host society. Indeed, some refugees may have special protection needs: they may have a mental or physical disability, they may suffer from post-traumatic stress disorder, they may be unaccompanied minors, etc. Such protection needs can be addressed only in countries with the appropriate facilities and these refugees should be considered a priority for resettlement.  As can be seen from the above analysis, the allocation of responsibilities to protect refugees is a complex exercise. There are various stages which should be considered: the receipt and processing of claims, the assessment of the merits of the claims, the provision of protection pending durable solutions and the provision of durable solutions. At each stage, one state will assume primary responsibility to protect the refugee, but other states are also responsible for assisting that state in providing such protection and one needs to identify what contributions they can and should make.  The Ad hoc arrangements to share the responsibility to protect a particular caseload of refugees have been made. The most famous of such arrangements is the Comprehensive Plan of Action (CPA) for Indo-Chinese refugees. One formal and permanent system of allocation of responsibilities was set up in the European Union under the Dublin Convention which has now been replaced by an EU Regulation. Many resources and efforts have gone into implementing this instrument, but it would be much more useful to establish a system of allocation of responsibilities between countries of first asylum and other countries further afield.  Until relatively recently, it was considered that states would assume responsibility for the refugees who reach their territory and make a claim for protection there. The ‘allocation’ of responsibilities is largely predicated on the nature of refugee movements and the intentions of the refugees. The only exceptions to this is resettlement and the transfer of responsibility to ‘safe third countries’. Resettlement involves the selection of refugees in a country of first asylum and their organized transfer to the resettlement country. In the case of ‘safe third countries’, the refugee may have transited there, but not lodged an asylum application.  Under UNHCR, recent discussions about possible allocations of responsibilities have taken place in two specific contexts. **Firstly**, part of the ‘third track’ of the Global Consultations on International Protection organized by UNHCR was devoted to responsibility-sharing in situations of mass influx. However, debates failed to lead to the adoption of practical measures for responsibility-sharing. **Secondly**, responsibility-sharing is now being discussed in the ‘Convention Plus’ process the aim of which is to facilitate the resolution of refugee problems through multilateral special agreements. Three areas of cooperation in which such agreements could be reached were identified: resettlement, targeting development assistance, and irregular secondary movements of refugees and asylum-seekers. The objective of the discussions is to devise means to clarify the responsibilities of states in each area. It remains to be seen whether the debates will lead to the adoption of concrete measures on responsibility-sharing.  There have been many academic proposals as to how to allocate responsibilities among states. Amongst the most high-profile is Schuck’s proposal to establish refugee quotas for states according to their ‘protection’ capacities. More influential have been the proposals made by Hathaway and Neve who essentially suggest that the primary responsibility to provide physical protection to refugees should rest/remain with countries of first asylum, while industrialized countries should assume the financial responsibility to support and improve protection capacities in the former countries. In this regard, it should be noted that the proposals which have been recently suggested by the European Commission focus on the improvement of protection capacities in regions of origin.  A clear system of allocation of responsibilities would be in the interests of both states and refugees. It would ensure that the international response to the protection needs of refugees is predictable and comprehensive. Countries which are situated in regions of origin are more likely to keep their borders open to refugees where they have a guarantee that other states will share the responsibility to protect these refugees. Countries which are further afield would also benefit from a clearer allocation of responsibilities to the extent that where improved protection is afforded in countries of first asylum, refugees should be less likely to travel, often in an irregular manner, to countries outside the region of origin.  However to some extend there are problems that arise in allocating duties to protection of refugees in this context; **Firstly** the immediate problem raised by the lack of responsibility-sharing is that countries in regions of origin bear the overwhelming responsibility to protect the majority of the world’s refugees who cannot and may not want to seek protection in other countries. In this regard, it was even suggested that “the overall primary responsibility [should] in fact fall on the first country of refuge, but experience in South East Asia, Central America, Western Asia, Africa and Europe, where so many states declined to allow refugees to regularize their status or otherwise remain within their borders, has served to emphasize the international dimension to burden-sharing.”  **The second** problem raised by the current arrangement, or lack thereof, is that it does not ensure that protection will be provided to a refugee, when no state assumes responsibility for providing such protection to him. The present international refugee regime thus appears to be inefficient and inequitable. Nevertheless, while states may all agree on the importance of and the need to adopt measures for responsibility-sharing, they have so far failed to agree on the principles upon which the allocation of responsibilities should be based.  **Conclusion;**  The international refugee protection system, which is firmly based on the 1951 Refugee Convention, suffers from a fundamental problem highlighted in this paper, namely the lack of clear identification of the respective responsibilities of states towards refugees (and also towards other states). Under the Convention, states have a duty of non-refoulement (article 33) and the duty to grant to refugees who are on their territory a range of legal rights (articles 2 to 32). Beyond that, the Convention says nothing about which state should protect, at which stage, which refugee. Issues of state responsibility for protecting refugees go well beyond the granting of asylum/admission: even where a refugee has found physical safety in one state, other states are not exonerated from their responsibility to contribute to his legal and material security in the country of first asylum and to find durable solutions. In sum, state responsibility in the context of refugee protection is not just concerned with the geographical location of the refugee.  There is a clear link between the deficiencies of the international refugee regime to provide protection and the lack of a clear allocation of responsibilities among states. Some basic principles can be identified, but states have, as usual, been fairly reluctant to accept more specific responsibilities towards refugees (and other states). One must ask whether it is at all desirable and possible to adopt a universal model of allocation of responsibilities. Each refugee situation is different and may require a different strategy. In any case, it may still be useful to identify some general principles of responsibility-sharing which can then be used in each refugee situation.  The approach adopted by UNHCR’s Convention Plus process is to produce agreements on clear principles of responsibility-sharing in specific areas of cooperation. It is hoped that such agreements will form the basis of more comprehensive plans of action to deal with a specific situation or caseload of refugees. Although the discussions on resettlement have led to the adoption of a multilateral framework of understandings, no such agreements have been reached with regard to irregular secondary movements and targeted development assistance. It remains to be seen whether the Convention Plus process will lead to the identification of concrete principles of responsibility-sharing.   |  | | --- | | Bibliography \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  See UN GA/11820 General Assembly Adopts Declaration for Refugees and Migrants, as United Nations, International Organization for Migration  See Convention Relating to the Status of Refugees, 189 UNTS 150 (hereinafter the 1951 Refugee Convention), amended by the Protocol Relating to the Status of Refugees, 606 UNTS 267.  See Universal Declaration of Human Rights, GA Res. 217 A (III), 10 December 1948.  See the EU Charter of Fundamental Rights which is part of the Treaty establishing a Constitution for Europe (article II-78). However, this right is only guaranteed in accordance with the 1951 Convention and its Protocol, and the Constitution itself.  See G. 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