

EXPERTS INITIATIVE ON THE GLOBAL COMPACT ON REFUGEES

On October 2-3, 2017, the Zolberg Institute on Migration and Mobility of The New School convened a meeting of experts on refugee law and policy to deliberate on, and to make concrete recommendations for, the Global Compact on Refugees (GCR). The meeting was convened with support from the Open Society Policy Center and held at the offices of the Open Society Foundations in New York City.

The following is a working paper prepared for the Experts Group.

MICHAEL DOYLE AND AUDREY MACKLIN

Responsibility Sharing and the Global Compact on Refugees

(Prepared for the Experts Meeting on the Global Compact on Refugees,

Oct. 2-3, 2017)

Michael Doyle and Audrey Macklin

The Problem

Strengthening the Refugee Regime calls for enhancing responsibility sharing. Responsibility sharing was a central commitment in the New York Declaration for Refugees and Migrants.¹ It also is a key commitment in the preamble to the landmark 1951 Refugee Convention. Countries of first refuge are promised that their providing refuge will be met by “international cooperation,” though without specifying its content.² Yet, just as the 1951 Refugee Convention failed to define what international cooperation meant; so too the New York Declaration is – as was the Humanitarian Summit before it - long on principles; and short on specific commitments.

Today, therefore, responsibility sharing, as Peter Sutherland³ has so aptly characterized it, amounts to “Responsibility by Proximity.” Neighboring countries such as Syria’s neighbors, Turkey, Lebanon and Jordan overwhelmingly serve as the refuge for Syrians who have managed to flee its devastating civil war. This means that globally the developing world, both relatively poor and home to so many of the world’s armed conflicts, also serves as the refuge for 86% of the world’s refugees ... and it does so without adequate international funding (only 40% of the UNHCR appeal for the region was met in 2016).

¹ NY Declaration for Refugees and Migrants (14 Sep 2016, Annex 1; para 1).

² UN Convention Relating to the Status of Refugees (1951).

³ Former United Nations Special Representative of the Secretary-General for Migration and Development.

Strengthening Cooperative Responsibility

Asylum and a guarantee that refugees will not be expelled to countries in which they will be subject to renewed persecution is vital. But the first border crossed cannot be the exclusive principle of responsibility. The Refugee Regime needs genuine responsibility: responsibility by culpability and responsibility by capability.

FIRST, CULPABILITY.

We should hold the perpetrators liable.⁴ The Syrian Government and terrorist groups such as Daesh and al Nusra are victimizing the people of Syria. Salva Kiir and Riek Machar in South Sudan allowed a personal battle to displace more than a million citizens, sending several hundred thousand refugees to neighboring states.

Culpability reflects the straightforward norm that, while our positive cosmopolitan duties of reciprocal assistance may be poorly defined in an international order of sovereign states, there are clear principles that impose a duty not to inflict certain harms on fellow human beings.⁵ Clearly, these include genocide, war crimes, crimes against humanity and ethnic cleansing. Forced expulsion is a crime against humanity, whether ethnically driven or not.⁶ All four of these crimes were condemned unanimously at the 2005 Summit of the UN General Assembly as crimes no state should commit and, should a state do so, crimes that the international community recognizes as warranting international sanction by the UN Security Council.⁷

Moreover, some of this conduct may qualify for referral to the International Criminal Court, but in the interim, the UN Security Council would be justified in seizing the overseas financial assets of the Syrian state and any terrorist group with seizeable assets and using them to pay for the support of refugees on the Syrian border. No one should underestimate how politically difficult this will be to apply in many crises, including in the case of Syria. But this may be an effective tool in dealing with crises created by perpetrators without super-power patrons.

⁴ Guy Goodwin-Gill and Selim Sazak, "Footing the Bill: Refugee Creating States' Responsibility to Pay," *ForeignAffairs.com*, July 29, 2015.

⁵ Thomas Pogge, "World Poverty and Human Rights," *Ethics and International Affairs* 19, no. 1 (2005).

⁶ See Article 7 "arbitrary deportation and forcible transfer of population" of the Rome Statute of the International Criminal Court.

⁷ See, for example, Michael Doyle, "Libya, The Responsibility to Protect and the New Moral Minimum," chapter 4 of *The Question of Intervention* (New Haven: Yale Univ. Press, 2015) pp.109-146.

SECOND, CAPABILITY.

In an ideal world of solidarity and integration -- we could apply the EU formula to the 40 richest countries, and determine each country's share of the global responsibility to protect refugees. The EU formula for responsibility sharing sets out four criteria—population, GDP, unemployment, and past refugee loads—which would be appropriate criteria in determining each country's responsibility.⁸ (Adjustments could be made to ensure that the outsized populations of China and India do not produce outsized responsibility.) Such a system could result in a broader and fairer distribution of the responsibility of hosting refugees. For example, together with Steven Nam, a colleague in the Global Policy Initiative and professor of law at UC Davis, we have calculated that the U.S. share of the 480,000 Syrian refugees that the UNHCR has identified as in need of resettlement⁹ would be 29,000 individuals. China would have a quota of 26,000 and Japan, 15,300. All completely manageable numbers.

But following its collapse in the EU, this plan for responsibility sharing will not happen globally. The global community lacks sufficient solidarity and those individual countries that do choose to meet global responsibilities lack assured partners, giving rise to collective action problems. Other more modest proposals, however, may be politically viable and offer a step by step, iterative solution that makes more adequate collective solutions someday viable through a process of learning.

Two such proposals are embedded in the Model International Mobility Convention (2017) sponsored by Columbia University and developed by a commission of thirty-plus international experts.¹⁰ One proposal is something closer to the current climate model embodied in the Paris Agreement. Under current practice, each year UNHCR identifies the number of refugees in dire need of resettlement, and about two dozen countries let UNHCR know how many refugees they intend to resettle. This process needs to be formalized and expanded, perhaps by way of an agreement among states. Countries of potential resettlement would commit to pledging the share of the identified need they will cover, choosing either to offer a visa that brings a refugee family for resettlement or a cash voucher that would cover a refugee family for say ten years in a country of first settlement. (In Jordan or Lebanon, a Syrian family needs approximately \$7,500 per year.) As with climate targets, each country would set its own level of responsibility, with the constraint

⁸ The formula was established in 2015 in the wake of the large influx of refugees and migrants, but never implemented in practice.

⁹ UNHCR Projected 2018 – Global resettlement needs (June 2017).

¹⁰ [Model International Mobility Convention \(2017\)](#).

that no country meets its responsibility solely by resettlement or solely by financing. Its sole commitment would be to set a level of responsibility and then explain why it chose that level of responsibility each year, in a summit before its peers, the UN's member states.¹¹ The key driver here is peer pressure. But learning and normative change through deliberative engagement may also become a factor that induces solidarity.

Another proposal—which has been discussed over the past year—is to identify pathways other than the formal resettlement process currently in existence for refugees to gain residence in third countries. For example, countries could make their family, labor and student visas more readily available to refugees, by giving priority to refugees and forced migrants who meet the skill and other criteria for the award of those visas.

We include extracts from the Model International Mobility Convention to suggest draft language for both of these.

Capability can also be enhanced by mobilizing the private sector. At the Private Sector Summit on September 20, 2016, organized by a team from Columbia University and Concordia in cooperation with UNHCR, IOM, the UN Special Adviser on the Summit on Refugees and Migrants Karen AbuZayd, the Open Society Foundations and the Swiss Agency for Development and Cooperation (SDC), participants from the private sector presented numerous actionable reforms to meet the needs of refugees and vulnerable migrants. Many of these would supplement national responsibilities for refugees and vulnerable migrants.

Measures include:

- 1.) Private sponsorship of refugee resettlement as is now being championed by Canada. Private persons, religious groups and other civil society actors identify particular refugee families or kinds of recipients that they want to support for resettlement. This potentially provides better outcomes for refugee integration, supplements the public budget, and improves local attitudes toward refugees.¹²
- 2.) Improvements in connectivity for refugees by investing in cell phone technology and creating internet platforms that can help empower them to better protect themselves and identify opportunities for livelihood, education and productivity.

¹¹ We do not address asylum seeking as a component of the refugee regime. The proposal regarding responsibility sharing does not entail or presume the imposition or expansion of formal restrictions on access to asylum.

¹² Jennifer Hyndman, "Research Summary on Resettled Refugee Integration in Canada" (Centre for Refugee Studies, York University, Toronto, May 2, 2011)

- 3.) Engaging in matching refugees with job opportunities through the creation of virtual platforms that link employers with refugees looking for jobs. The same idea can be extended to a platform allowing municipalities to identify the number of immigrants they want and the skills they are looking for and allowing refugees can list their preferences for the kinds of communities in which they want to live (where they might have relatives etc.). A sophisticated algorithm can match the preferences and much improve satisfaction all around.
- 4.) Lastly, private investment supported by risk sharing can address problems created in countries of first asylum by providing entrepreneurship opportunities and employment for both refugees and locals.¹³

All of these proposals seek to remedy a shortcoming in the 1951 Refugee Convention: the lack of binding commitments for responsibility sharing. Over the past 65 years, the world has from time to time relied upon ad hoc arrangements to meet dramatic challenges—such as the Comprehensive Plan of Action, which resettled more than 1 million Vietnamese in the 1980s and 90s. But the time is long overdue for the international community to establish a formal system for collective action.

This expanded commitment to responsibility sharing will require a more proactive Treaty Body/Council with more accountability and wider representation (such as is discussed in the Accountability paper prepared for this meeting). Such a body might also include a global platform for humanitarian and development actors, the private sector, and civil society, backed by substantial stand-by funding from donor states, the World Bank and foundations. It might also benefit from crowd-sourcing that allows individuals to make a direct contribution.¹⁴ The central task would be to provide incentives for comprehensive planning and implementation and to establish action groups of states committed to solving protracted refugee situations. (The latter task, inexplicably, has not yet been taken up by states or UN agencies in dealing with the Syrian crisis.) As described by Alex Aleinikoff in another paper, the platform might take on additional functions as well. It could create an impartial research organization, on the model of the International Panel on Climate Change, with the credibility to assess the effects of migration flows and recommend well-supported measures to protect refugees and promote orderly migration. It could also sponsor an international “clearinghouse” that could match the needs of refugees and

¹³ Alexander Betts and Paul Collier, “Jordan’s Refugee Experiment: A New Model for Helping the Displaced,” *Foreign Affairs*, April 28, 2016.

¹⁴ A suggestion offered by Garrett Brown.

humanitarian organizations with innovators and entrepreneurs interested in helping, but having no avenue for putting good ideas into practice.

If refugees and vulnerable migrants are to recover lives of dignity, self reliance, and productivity; if the communities that host them are going to thrive, then the Treaty Body of the UN Refugee Regime must be strengthened. New models of operation to share responsibility, provide assistance and empower refugees and the communities that shelter them must be found.

Draft Text for Responsibility Sharing:

*RESPONSIBILITY SHARING*¹⁵

1. The Office of the United Nations High Commissioner for Refugees will be invited to issue an annual report documenting the number of recognized refugees and forced migrants and their current location of asylum and costs per person of that asylum.
2. The Committee in conjunction with UNHCR will host an annual meeting for all States Parties at which UNHCR will publish the “responsibility shares” of each State Party. At the first such meeting these shares shall be a combined function of 40% of the size of the population, 40% of GDP, 10% of the average number of refugee and forced migrant asylum applications in the previous year, and 10% of the unemployment rate.¹⁶ To avoid excessive shares occasioned by a single factor, such as large population, each factor of the top five States will be capped at the level of the fifth in rank order. In subsequent years, the States Parties by a two thirds vote of the Committee will set as it sees fit the appropriate proportions of the responsibility sharing formula.
3. Each State Party will pledge the number of resettlement visas for refugees and forced migrants and the amount of funding that it will provide in the coming year, explaining how it meets its responsible share of the global commitment to cooperate to assist refugees and forced migrants. No State Party will meet its responsible share solely by resettlement or solely by funding.

¹⁵ Model International Mobility Convention (June 2017), Article 211.

¹⁶ Based on European Commission (2015b) COM(2015) 450 final. 2015/0208 (COD). *Proposal for a Regulation of the European Parliament and of the Council. Brussels: European Commission*

4. UNHCR will be requested to monitor these pledges, reflect upon their collective sufficiency, report on the fulfillment by each State Party of its responsible share of resettlement and funding and publish those assessments in each subsequent annual report on responsibility sharing.
5. States Parties will encourage the formation of bilateral and multilateral capacity-building networks aimed at
 - (a) facilitating contact and exchange of international protection know-how between States Parties; and
 - (b) refining and promoting best practices for accommodating refugees received via responsibility sharing.¹⁷

*MOBILITY VISA CLEARING HOUSE*¹⁸

1. The Committee shall establish a “Mobility Visa Clearing House” web platform accessible by States Parties, corporations, nongovernmental organizations and individuals to facilitate the safe, orderly and regular migration of individuals.¹⁹
2. All States Parties to the present convention will list the number and kind of labor and investor visas they propose to offer for the following year and provide links to the government websites that provide visa application forms and information regarding application requirements to all and links to online visa application processes through which individuals may apply or employers may petition governments on behalf of prospective employees from abroad.
 - (a) The Committee shall assist state parties that do not have government website with visa application forms and information by requesting technical assistance from fellow state parties that do have such websites.

¹⁷ This subparagraph is a suggestion from Steven Nam.

¹⁸ Model International Mobility Convention (June 2017), Article 209.

¹⁹ United Nations, Report of the Special Representative of the Secretary-General for Migration, Recommendation 6: Improve access to information and visa facilitation (February 2017). Paragraph 2 draws on Rey Koslowski. “Shifts in selective migration policy models: A comparison of Australia, Canada, and the US” in Mathias Czaika, ed. High-Skilled Migration: Drivers, Dynamics and Policies (Oxford University Press, forthcoming).

- (b) State parties are further encouraged to establish online visa application processes in order to expedite and facilitate safe, orderly and regular migration.
 - (c) State parties that already have online visa application processes are encouraged to consider developing web platforms that enable prospective visa applicants to post “expressions of interest” detailing those individuals’ skills and qualifications and enable employers to view these expressions of interest and contact prospective employees whose work visa petitions they may choose to sponsor
3. The International Labor Organization will be invited to specify the skills classifications for these visas and assist States Parties in certifying the information needed to meet the classifications.
 4. Individuals and sponsoring nongovernmental organizations, corporations, local governments and States Parties can propose candidates for those visas, including the requested documentation.
 5. States Parties issuing the visas retain the discretion to accept or reject the credentialing guidelines provided by the International Labor Organization and determining whether a specific individual meets its criteria.
 6. At the minimum States Parties will take measures to give preference to refugees and forced migrants in the allocation of at least 10% of all annual labor visas. This shall be met on the basis of States’ participation in the Mobility Visa Clearing House or, prior to implementation, as part of States Parties domestic immigration programs and policies. The award of these preferential labor visas does not subtract from or substitute for any of the protections granted to refugees and forced migrants on the basis of their protected status.
 7. In allocating labor migration visas to persons covered in paragraph 6 due consideration will be given to the resettlement and mobility interests of refugees and to the circumstances of their current host communities.