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Responsibility-Sharing in Refugee Protection: Lessons from Climate Governance

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Abstract

The international governance of asylum requires states to cooperate to provide the public good of humanitarian protection. The need to establish responsibility-sharing resembles the collective action problem in climate change mitigation. While there is a general consensus on the differentiation of state responsibilities in most environmental agreements, states continuously fail to progress on responsibility-sharing in asylum governance. In this article, we compare the collective-action challenges in asylum to those in climate governance and identify the similarities and differences in their characteristics as public goods. We then discuss the principle of ‘common but differentiated responsibilities’ that guides global climate change mitigation and demonstrate how equity principles can be applied to differentiate state responsibilities in the context of humanitarian protection. The subsequent analysis of recent efforts to establish effective responsibility-sharing reveals the trade-offs involved in the design of an allocation mechanism for refugee protection. Our findings provide important lessons for the prospects and limits of responsibility-sharing in asylum governance.

Introduction

The world faces a record number of people seeking humanitarian protection across international borders. The admission of refugees has become a major challenge in international politics. Western democracies have internationally committed themselves to fairly assess requests for asylum and grant protection to those people who qualify as refugees. They are nevertheless reluctant to accept refugees to their countries and seek to prevent them from reaching their territories (FitzGerald 2019; Gammeltoft-Hansen 2011; Lavenex 2018). This paradox of asylum policy can be explained by viewing the humanitarian protection of refugees as a public good that poses a collective action problem of state cooperation (Lutz, Kaufmann, and Stünzi 2020; Thielemann and Armstrong 2013). The surge of refugees has repeatedly sparked conflicts between countries regarding their protection responsibilities. During the so-called ‘refugee crisis’ of 2015, European states failed to establish effective responsibility-sharing and were mainly concerned about minimizing their own refugee intakes (Trauner 2016). The distributional mechanism for refugees adopted by the European Union in 2015 has hardly been implemented due to states’ reluctance to relocate refugees. On a global scale, the number of refugees greatly exceeds the number of resettlement places that receiving states are willing to offer. The most recent effort in the context of the Global Compact on Refugees signed in 2018 has failed to establish any binding commitments in this regard. States are reluctant to agree on the allocation of protection responsibilities and to provide humanitarian protection to people in need.

Currently, the only binding principle for allocating responsibilities is the ‘non-refoulement’ rule in international law, which forbids countries receiving asylum seekers to return them to a country in which they would be likely to be subjected to persecution (note that this norm is frequently evaded and violated by states, see for example Coen 2019).¹ As a result, geographic proximity and the self-relocation of refugees are most relevant in determining protection responsibilities. Not only does this undermine the normative principle of solidarity and any notion of a ‘fair share’ by exacerbating the unequal distribution of responsibilities, but it also counteracts effective refugee protection by incentivizing states to deter refugees from reaching their territories (FitzGerald 2019; Gibney 2015; Bauböck 2018). Overcoming such disparities and establishing an effective responsibility-sharing would require international cooperation to allocate protection responsibilities among states in a fair and equitable manner.² In this article, we provide a comprehensive overview of conceivable criteria for such a distribution of responsibilities.

Even though international cooperation in providing humanitarian protection is constantly plagued by political challenges, responsibility-allocation criteria have only gained limited attention in the literature on asylum policy. Scholars have instead focused on the means of responsibility-sharing (Noll 2003), on policy instruments (Thielemann 2018) or on measuring states’ admission capacity (Angeloni 2019; Czaika 2005). These contributions provide important insights into various aspects of responsibility-

¹ The non-refoulement principle is based on states’ obligation towards individual asylum seekers and is therefore not about allocating responsibility for the provision of a public good. It prioritizes the responsibility to protect individual refugees over determining states’ ‘fair share’ of humanitarian protection.

² The asylum policy literature often uses the term ‘burden-sharing’ interchangeably with ‘responsibility-sharing’. Throughout this article we refer to responsibility-sharing as a less normatively loaded concept. We also prefer responsibility-sharing because it employs a broader concept of public good contributions that go beyond the narrow idea of a ‘refugee burden.’

sharing. However, we lack a systematic assessment of the criteria for allocating state responsibilities that are necessary to make responsibility-sharing operational. Not only does the international asylum governance continually fail to establish effective responsibility-sharing, but we also lack a theoretical understanding of responsibility-allocation criteria and the measurement of state responsibility. We therefore seek to address the gap between the abstract legal norm of responsibility-sharing in asylum governance and its practical implementation.

For that purpose, we borrow from the literature on climate change mitigation, which deals with a similar collective action problem in the provision of an international public good. Climate change threatens global ecosystems, livelihoods and economic growth (IPCC 2018). States have come to realize that reducing the emission of damaging greenhouse gases requires common efforts. The international community commits to fight global warming by sharing the responsibilities of climate change mitigation among states. The 2015 Paris Agreement - a major breakthrough in climate governance - embraces the principle of 'common but differentiated responsibilities' (CBDR):³ All countries shall contribute according to their capacities, which implies equitable and not equal efforts (see Mattoo and Subramanian 2012).⁴ Determining a 'fair share' of responsibilities is left to the states, but each has to explain to the public why its contribution is fair. The area of climate change mitigation may therefore offer valuable lessons relevant to responsibility-sharing in asylum governance (Dowd and McAdam 2017; Eckersley 2015; Hathaway and Neve 1997). We argue that both the acknowledgment of CBDR in international climate governance and the extensive literature on fair responsibility-sharing makes climate governance an ideal comparison case to assess the prospects (and limits) of a fair and equitable allocation of humanitarian protection responsibilities.

This article makes three main contributions. First, we draw an analogy between humanitarian protection and climate change mitigation using the framework of collective action problems. The comparative perspective allows for a better understanding of the policy-specific challenges. Second, we provide a systematic mapping and discussion of responsibility allocation criteria in asylum governance based on equity principles applied in international climate governance. Third, we discuss existing governance instruments and derive implications for the design of responsibility-sharing mechanisms in the sphere of refugee protection.

Refugee Protection and Climate Change Mitigation: Common but Differentiated Challenges

Many important challenges in international politics entail the provision of international public goods that require collective action. Public goods are non-rivalrous and non-excludable. All states benefit from the provision of such goods regardless of their own contribution and they cannot be excluded from these benefits. In the following, we discuss international asylum and climate governance as collective action problems in the framework of the public goods theory. We lay out the structural similarities and the differences between the two policy challenges and elaborate on their characteristics

³ Some scholars use the longer notation "common but differentiated responsibilities and respective capabilities" (CBDR-RC) (e.g. Voigt and Ferreira 2016). In the following we use the abbreviation CBDR.

⁴ We use the term "equity" to describe a fair responsibility-sharing which reflects the CBDR principle.

as public goods. This conceptual comparison allows us to subsequently derive insights relevant to asylum governance from states' experience with climate governance.

International asylum governance is characterized by the paradox that liberal democracies commit to human rights and the humanitarian protection of refugees while they also continually restrict the access to these rights and make an effort to deter refugees from reaching their territories (FitzGerald 2019; Gammeltoft-Hansen 2011; Lavenex 2018). This paradox can be explained by a collective action dilemma where humanitarian protection is understood as an international public good (Betts 2003; Lutz, Kaufmann, and Stünzi 2020; Suhrke 1998; Thielemann and Armstrong 2013). Providing humanitarian protection to refugees makes it possible to uphold public order and stability, enhances security, secures human rights norms and avoids unilateral deterrence efforts directing refugees from one country to another. These are public benefits enjoyed by everyone within their range. These benefits are positive transnational externalities since states benefit from them regardless of their own contributions (Suhrke 1998). When they do not admit refugees, states produce negative externalities for neighboring countries because the latter have to bear a larger share of the protection obligations (Thielemann, Williams, and Boswell 2010, 15-16). The costs of providing the public good are only borne by those states admitting refugees, while the benefits are enjoyed by all states. Because states often fear political and economic costs resulting from admitting refugees, they aim to minimize their own contributions and free-ride on other states' efforts. In principle, liberal democracies have agreed on the desirability of humanitarian protection but establishing the effective responsibility-sharing that is necessary for the latter's provision faces severe challenges. International asylum governance is therefore a typical example of the problem of allocating state responsibilities.

Another major challenge in international governance and an excellent example of a 'tragedy of the commons' is climate change mitigation (Hardin 1968; Nordhaus 2019; Dietz, Ostrom, and Stern 2003; Ostrom 1990).⁵ The emission of greenhouse gases affects global climate and contributes to global warming. A stable climate is non-excludable since everyone can benefit from it. The benefits of one country do not go at the expense of the benefits of other countries. A stable climate is therefore non-rival in its consumption. On the other hand, any state's emissions contribute to global warming. A collective reduction of greenhouse gas emissions therefore results in a public good. No state has the capacity to achieve effective mitigation on its own; nor does it have any incentives to act unless other states also take action, because it would bear larger relative costs. Rather, states have an incentive to free-ride on other states' reduction efforts. Similar to the logic of a 'prisoner's dilemma,' the participation of all states is necessary for realizing the optimal outcome. The international community has recognized climate change mitigation as a common obligation and has agreed on a global treaty that commits all states to reduce their greenhouse gas emissions.

⁵ Some scholars differ between a stable climate as a public good and the remaining global emission budget to stay within the 2° target as a common pool resource, since the latter is rivalrous in consumption.

Table 1: Classification of public goods in asylum and climate governance

Policy area	Critical activity	Common bad	Provision	Public good
<i>Asylum</i>	<i>People fleeing existential threats due to the failing protection of their states</i>	<i>Buck passing of responsibility, public disorder, human suffering</i>	<i>Admission of refugees to a safe country</i>	<i>Humanitarian protection</i>
<i>Climate</i>	<i>Emission of greenhouse gases</i>	<i>Pollution of the atmosphere, damage by global warming</i>	<i>Reduction of greenhouse gas emissions</i>	<i>Stable climate</i>

The discussion above has demonstrated that the challenges of humanitarian protection and climate change mitigation share some important public good characteristics. In both policy areas, states have incentives to free-ride on other states' contributions to the public good. International cooperation is therefore required to avoid a *common bad* - the costs of failed responsibility-sharing (see Table 1). Failure to protect refugees and to prevent climate change harms states regardless of their contribution to the problem. The externalities of the critical activity and of states' contributions to the public good spill over international borders. Admitting refugees and reducing greenhouse gas emissions generate international public goods.

Nevertheless, countries may be able to extract private benefits from their contributions to the public good. When countries admit refugees, they can enhance their international reputation, achieve ideological and foreign policy goals or gain additional labor force and human capital (Adamson and Tsourapas 2019; Betts 2003; Micinski 2018; Roper and Barria 2010). When countries invest in climate change mitigation, they can gain economic benefits from the returns on their investment into future technologies and markets (Rübbelke 2003; Trancik 2014; Schmidt and Huenteler 2016). Therefore, in both policy areas, we can speak of *impure public goods*. Furthermore, in both cases countries differ significantly in how (much) they engage in the harmful behavior, how affected they are by the common bad, and how much they can contribute to the public good. Only some states fail to protect their populations forcing people to flee. Likewise, some states produce more greenhouse gas emissions than others. Finally, countries vary in their consumption benefits and in their provision costs. In climate governance, some countries have a stronger interest in the public good than others (e.g. small-island developing states). In asylum governance, asymmetries stem from countries' geographical location, their attractiveness as destination countries and the varying costs of admitting refugees (Czaika 2009; Trauner 2016). Therefore, both policy areas are characterized by pronounced *asymmetries* in countries' contributions to the common bad and to the public good.

We now turn to the differences between asylum and climate governance in terms of their public good characteristics. First, the two areas differ in the *range of their spillover effects*. While climate change is a public good at a global scale, humanitarian protection has a more limited range and has been described by scholars as a regional public good (e.g. Lutz, Kaufmann, and Stünzi 2020). The main determinant of states' exposure to refugee arrivals is their geographic proximity to humanitarian crises and the spillover effects of asylum policies primarily bear on neighboring countries (Barthel and Neumayer 2015; Hatton 2009).

Second, there is a difference in the *contingency* of countries' exposure to the common bad. Whereas without systemic change greenhouse gas emissions gradually worsen the common bad, humanitarian crises are often short-lived and ad hoc responses can help overcome them. While refugee emergencies can be considered events that revert to a pre-crisis mean, climate change has a slow on-set and does not revert to a previous mean. Moreover, whereas in the case of climate governance the individuals adversely affected by a country's failure to provide the public good are also its own citizens, in asylum governance, refugees are (by definition) citizens of other countries. A strategy of failing-forward and muddling-through might therefore seem much less costly for refugee protection than for climate change mitigation.

Third, the two public goods differ in the *mode of their provision*. Climate governance requires an 'aggregate effort' where the provision of the public good depends on the combined efforts of all states. Meanwhile, in asylum governance, 'single best efforts' suffice with a single or a handful of states providing humanitarian protection (see Barrett 2007).⁶ A refugee receives protection from a single state, whereas ensuring a stable climate involves all states.

Fourth, an important difference between the two policy areas exists in states' *contributions* to the common bad and the public good. In climate governance, countries are both polluters and mitigators. In asylum governance, states generally either produce refugees or they provide protection - but not both.⁷ All countries contribute to the common bad of global warming by emitting greenhouse gases but only a limited number of countries produce refugees. Most countries have (and perceive) a causal responsibility only for climate change but not for refugees.

Fifth, the *regulation targets* in the two policy areas are largely different in nature: in climate governance, greenhouse gas diffuses globally as a physical object, while in asylum governance, the targets are refugees - human beings who exert agency (see Bauböck 2018, 4-5). Unlike greenhouse gas emissions, refugees make strategic decisions and actively seek the provision of the public good because they are its main beneficiaries. These structural differences require different policy instruments in order to establish effective regulation.

This comparison demonstrates two things. On the one hand, the two policy areas face similar challenges: the provision of an international public good (and the avoidance of a common bad) requires the collective action of states addressing the main policy challenge. On the other hand, the specific nature of their governance problems generates important differences in their characteristics as public goods. In the remainder of this article, we discuss the implications of these structural characteristics for the allocation of responsibilities among states.

Responsibility-Sharing in Climate Change Mitigation

Over the past few years, there has been some progress in international governance addressing global warming. From its very beginning of climate governance, equity considerations and responsibility-sharing have played an important role in the negotiation process (Honkonen 2009). This section briefly

⁶ Indeed, only a few countries host most of the global refugee population (UNHCR - Figures at glance, online <https://www.unhcr.org/figures-at-a-glance.html> [accessed 15.09.2020]).

⁷ In practice, there are exceptions to this rule as some countries both create and host refugees. However, we can generally assume that if a state fails to provide protection to its own residents, it is unlikely to provide protection to refugees from other countries. Only very few countries are simultaneously country of origin and receiving country (Fransen and de Haas 2019, 16).

outlines the different interpretation of responsibility-sharing in the two major agreements in international climate negotiations (for a more detailed analysis, see Brunnée and Streck 2013 or Voigt and Ferreira 2016). We then describe the main principles discussed to determine the allocation of state responsibilities.

The foundation of the United Nations Framework on Climate Change Convention (UNFCCC) in 1992 set the ground for international climate governance and the acknowledgement of the CBDR principle. Based on the Rio Declaration on Environmental Degradation, the UNFCCC's preamble acknowledged "that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions, ..." (UNFCCC 1992).⁸ However, the signatories' interpretation of responsibility-sharing varied over time, which is reflected in the different design of the following international agreements. With the Kyoto protocol of 1997, developed countries - the main emitters of greenhouse gas emissions at the time - agreed to mutual emission reduction targets. Developing countries were exempt from any binding mitigation commitments. Thus, there was a clear bifurcation of responsibilities for action, interpreting the CBDR based on each country's assignment to one of the Annexes to the 1992 UNFCCC convention. With rising global emissions and in particular from developing countries, a new agreement had to refine the interpretation of the CBDR principle. The Paris Agreement (2015) elides the previous bifurcation but still refers to CBDR: each country's contribution is based on individually defined national contributions (NDCs) and countries commit to their own emission reduction (or stabilization) targets (mitigation) and adaptation measures. The differentiation between developed and developing countries is still relevant but not formally defined anymore and the reference to CBDR is of a general character and open to change (Voigt and Ferreira 2016).

The literature of economics and political science suggests various ways of translating the idea of differentiated state responsibilities into practice. The following paragraphs discuss six prominent equity principles to allocate climate responsibilities among asymmetric states (for an extensive literature review see Mattoo and Subramanian 2012).

The most intuitive principle is the *Egalitarian principle* (e.g. Bode 2004). It postulates an equal distribution of carbon emissions per capita on a global level. Accordingly, every person has a right to the same quantity of pollution. Those who have already generated a lot of emissions will have to reduce their imprint, while those who have not can do so to a lesser degree or even continue to emit. While this principle looks simple in theory, its implementation is not clear-cut: in particular it is not clear whether and how past and future populations should be included. Furthermore, countries' different needs and capacities might undermine the efficiency of an exact per capita allowance as well as the incentives of those who have not yet used all their allowances to keep their emissions low (Bretschger 2013).

⁸ The concept of CBDR is reflected in the majority of international environmental agreements (Honkonen 2009).

The most frequently applied principles are the *Capacity principle* (or *Ability to Pay principle*) and the *Polluter Pays principle* (see Mattoo and Subramanian 2012). The former stipulates a higher policy contribution for those with a higher economic ability. Multiple tax schemes worldwide follow this principle, which dates back to Adam Smith, who notes that wealthier people should contribute more (Smith 1776). In turn, the latter determines each country's share of responsibility according to the actual emissions it generates. Those who pollute more also have to contribute more to the mitigation efforts. The two principles are naturally interconnected if one assumes that economic growth (and thus a higher capacity) has been achieved (inter alia) through the use of fossil fuels (and hence pollution). Scholars, civil society, and policy-makers continue to discuss the start date of this historic responsibility, i.e., the moment in time in which countries become responsible for their emissions (e.g. Cooper 2008).

The *Cost Sharing principle* aims for equity in mitigation costs (e.g. Blanchard, Criqui, Trommetter, and Viguier 2001). New technologies cause lower emissions and it is thus cheaper to reduce or not produce emissions today than it used to be earlier. Developing countries could, for example, skip dirty energy-producing technologies because cost-efficient renewable energy alternatives are already available. To account for this, the distribution of emission rights is often designed to be proportional to current pollution levels, a method also called "grandfathering." For example, in the EU Emission Trading Scheme (ETS), high-emission industries receive more emission allowances than low-emitters, because high-emitters face higher costs to reduce their emissions.

The *Right to Development principle* highlights the prioritization of needs (e.g. Jacoby, Babiker, Paltsev, and Reilly 2008). The UNFCCC (1992) puts forward the legitimate objective to eradicate poverty and achieve economic growth in developing countries, which potentially opposes emission reduction efforts. The Right to Development principle may lose significance if the availability and accessibility of new technologies allow developing countries to "leap-frog" climate-damaging technologies. Several states have handed in partly or fully conditional NDC's, binding their mitigation efforts to international support with respect to finance, technology and capacity building.

Finally, the backward-looking *Merit principle* entails rewarding (any) efforts to mitigate climate change (e.g. Konow 2003). As such, it benefits actors who have already taken steps to either reduce emissions or not further increase emissions (compared to a business-as-usual scenario).

These six principles lead to very different distributions of responsibility. Therefore, it is not surprising that governments have different preferences for equity principles. While high historic emitters prefer a focus on current emission levels, developing and emerging economies point to their right to development. These differing positions and the related bifurcation defined in the Kyoto protocol have resulted in a stalemate preventing meaningful mitigation (Voigt and Ferreria 2016, 291). In contrast, the bottom-up design of the Paris Agreement leaves the interpretation of CBDR and the derivation of an individually fair contribution to the states. Most countries indeed use aspects of the CBDR and individual principles to justify their NDCs, but these individual fairness evaluations are neither very comprehensive, nor do they systematically compare to other countries' efforts (Winkler et al. 2016).

Nevertheless, even though the Paris Agreement's success in effectively reducing emission has so far been very limited,⁹ it seems safe to say that adhering to and simultaneously reinterpreting the CBDR principle has helped to bring all countries to the negotiation table and to conclude the Paris Agreement.

The CBDR Principle: From Climate to Asylum

In contrast to climate governance and the Paris Agreement, states have not agreed on a comparable treaty on responsibility-sharing in asylum matters. In the following, we assess the applicability of the climate equity principles based on the idea of a 'common but differentiated responsibility' to the area of asylum. This approach is motivated by the fact that both climate change mitigation and asylum protection are international public goods whose provision is marred by systematic asymmetries among states. The term of responsibility is thereby understood as humanitarian protection in a broad sense. The aim of responsibility allocation is to determine to what degree different states should contribute to the public good, while determining the means of contributing is a secondary consideration.¹⁰ Hence, a 'fair share' does not necessarily entail a corresponding distribution of refugees across countries, but could include compensating states for refugee admission through financial or in-kind assistance (see Noll 2003). This is relevant because the disregard of refugees' preferences not only threatens their agency (Gibney 2015), but may also undermine the effective provision of the public good (see Lutz, Kaufmann, and Stünzi 2020). We now analyze the various operationalizations of responsibility-sharing in refugee protection based on the logic of equity in climate change mitigation. First, we assess the conceptual applicability of each principle to the area of asylum. Second, we evaluate the practical applicability of these principles based on whether they can be empirically measured on a reliable scale.

The *Egalitarian principle* postulates an equal per-capita distribution of greenhouse gas emissions at a global level. The principle derives from the idea that all human beings have equal rights and dignity. Applied to asylum, it implies that each individual has the same prima facie right to protection and, reciprocally, the same prima facie duty to assist those in need. It therefore stipulates an equal per-capita distribution of protection responsibility at a global level. So conceived, responsibility-sharing among states becomes a function of states' population size - a simple and objective operationalization. Taking egalitarianism at the state level, another interpretation of the principle would mandate that all states beyond a certain size take in roughly the same number of refugees (Chimni cited in Hathaway and Neve 1997, 203-204). The Egalitarian principle is thus both conceptually applicable to asylum governance and easy to measure.

The *Capacity principle* stipulates that states' share of responsibility for the reduction of greenhouse gas emissions should be based on their economic ability. If we apply this logic to asylum governance, responsibilities should be distributed based on states' economic capacity to protect refugees. This capacity can be generally conceptualized as each country's wealth and the level of human development, or more specifically as its capacity to accommodate refugees and provide them with economic

⁹ Note that the cumulative effort of the current pledges is not sufficient to achieve even the upper bar 2°-scenario (IPCC, 2018).

¹⁰ However, as any kind of contribution other than receiving refugees (such as financial, in-kind, or on-site) risks resulting in further deterring refugees and states 'buying their way out' (and thus shirking responsibility), such contributions need careful assessment to determine whether they actually contribute to the public good of humanitarian protection (cf. footnote 14).

opportunities. These concepts can be measured in different ways. Economic capacity can be operationalized through states' GDPs, or, alternatively, their per-capita GDPs or an aggregate index of human development (e.g. Eckersley 2015, 491). States' accommodation capacity could be measured using the availability of arable land, their population density (Czaika 2005), or by the availability of relevant infrastructure, such as housing. The opportunities available to refugees could be captured by the unemployment rate (as a proxy for a countries' ability to provide employment). This overview shows that the concept of capacity allows for a range of different operationalizations that could be applied to asylum governance.

Some authors have defined capacities more broadly in terms of the "functional compatibility between refugees and their potential host communities" and "cultural harmony" (Hathaway and Neve 1997, 204) or in terms of socio-cultural stability, referring to a "homogeneous ethnic, linguistic, and religious structure" (Czaika 2005, 109). Not only are such factors complicated to operationalize and to measure reliably, but they also express social and political *willingness* to contribute, rather than actual *capacity* to contribute. The level of public sympathy for refugees might hinder or facilitate a country's contribution to refugee protection, but does not determine its actual protection capacity (Gibney 2015). Hence, the Capacity principle is both applicable and measurable as long as we focus on states' economic capacity and exclude notions tied to political willingness.

The *Polluter Pays principle* attributes responsibility according to states' actual contribution to the common bad, and is thus based on the idea of causal responsibility. In climate governance, this responsibility is attributed to emitters of greenhouse gases. In asylum governance, the (directly) responsible states would be those that fail to provide protection to the people within their territories - or make them refugees to begin with. However, the causes of protection failures, such as authoritarian regimes, failed states, or countries in civil war, are the very reason behind the need for humanitarian protection in the first place. Those who fail to provide protection to their citizens are obviously not able (and/or not willing) to contribute to the international public good of humanitarian protection. Some scholars have proposed to seize assets of persecuting regimes (Doyle 2018), to seek compensation (Lee 1986), or to hold refugee-producing countries financially liable through sanctions (Goodwin-Gill and Sazak 2015; Owen 2020). Nevertheless, the mere existence of refugees, defined as human beings fleeing their country of origin, requires safe third states to take responsibility and provide protection.

If we interpret the Polluter Pays principle in a broader sense, we could think of all countries as part of the international community as 'polluters' if they fail to prevent, or actively contribute to, humanitarian crises in other countries. One could argue that the political circumstances producing refugees are a failure of the international community to fulfill the norm of the 'responsibility to protect' (RtoP), and thus a failure of every single state (Coen 2017). The common protection responsibility of the international community does not, however, provide a direct criterion for allocating responsibility among states. This raises the question of how a state's past (foreign) policy decisions might shape its responsibility to protect refugees. As Zolberg, Suhrke, and Aguayo (1989, 264) succinctly summarize, "external parties by action or inaction can significantly influence the processes that generate refugees. Refugees do not simply appear because they are persecuted by government X or victimized by

brutalizing rulers in weak states; such governments exist within a necessary structure of international support". Refugees are thus often the result of external support for oppressive regimes, international institutions that create or exacerbate international poverty and domestic restructuring, global warming and direct military interventions, or the supply of military equipment (Gibney 2015, 460). In this sense, all states are 'polluters,' but some may deserve more culpability than others based on their contribution to protection failures. A specific, historic culpability can be derived from the legacy of the colonial period, which 'set the stage' for many post-independence refugee movements through the political instability, oppressive regimes, and internal conflicts it established (Eckersley 2015, 486; Souter 2014). In this sense, contributing to humanitarian protection constitutes a form of reparation for harm caused by states' past (in)action(s) or injustice. Similarly, states with a 'specific bond' such as the connection between former colonial powers and former colonies, between states with strong financial ties or, relatedly, between states in an exploitative relationship based on natural resources, for example, should arguably bear greater responsibility (Kritzman-Amir 2009).

As far as measurement is concerned, the complex causality of the protection failures and past injustices that created refugees makes it difficult to attribute responsibility to particular states, let alone determine states' 'fair share.' While a certain culpability and thus responsibility might be relatively easy to attribute in some cases (for example to the US in the case of Syrian and Iraqi refugees, see Coen 2017), the issue is less clear-cut in the cases of colonial injustices and global inequalities. Finally, note that taking foreign policy actions and historical legacies into account - what Souter (2014) calls a 'diachronic approach' - requires fixing a rather arbitrary point in time when this responsibility starts (similar to climate governance, as we discussed above). Notwithstanding these uncertainties, the approaches based on the Polluter Pays principle support an understanding of the CBDR principle that integrates "both culpability and capability as important elements for orchestrating responsibility-sharing" (Coen 2017, 78). Overall, the Polluter Pays principle is not applicable to asylum governance in its narrow sense and is often not reliably measurable in its broader sense. Nevertheless, the principle has inspired a discussion on asylum responsibilities that goes beyond egalitarianism and states' capacities.

The *Cost Sharing principle* holds that the states with the lowest costs of reducing greenhouse gas emissions should contribute proportionally more, so that costs are equally shared. In asylum, this would mean that responsibilities for humanitarian protection should be distributed among states so that each state bears the same (per-capita) costs. This entails that states with low costs should bear a proportionally higher share of responsibility than states with high costs. As far as measurement is concerned, there exist different concepts of costs related to the provision of humanitarian protection. Besides the direct financial costs of the processing and accommodation of refugees, there might be long-term economic and political or social costs (as well as corresponding benefits). Some states may face lower costs when they accommodate or resettle refugees in general or for specific refugees in particular. Moreover, states with an established reception infrastructure have a higher procedural capacity and can accommodate refugees at a lower cost than states who would first have to invest in such infrastructure. While the direct financial costs of humanitarian protection can be measured through short-term public expenses, a more comprehensive long-term notion of costs and benefits is more

difficult to operationalize. Thus, the Cost Sharing principle is both conceptually applicable to asylum governance and measurable as long as it is constrained to short-term costs.

The *Right to Development principle* highlights the prioritization of needs and developing countries' goal to eradicate poverty. In climate policy, greenhouse gas emissions are historically linked to countries' development opportunities. In asylum governance, this principle could imply that responsibilities should be distributed in a way that does not disadvantage receiving countries' development potential.¹¹ According to such a scenario, refugees should be accommodated by the state(s) in which their development contribution is maximized or proportionally to the effect of refugee admission on the receiving country's development prospects.¹² However, such an approach risks reinforcing perceptions tying refugees' deservingness of protection to their utility for the host country and thereby crowds out humanitarian (or reparative) concerns and the norm of responsibility-sharing itself (see Blake 2018). Leaving the common perception of asylum as a (short-term) burden on states aside, the (long-term) effect of refugee admission on receiving countries' development is difficult to assess, and even more difficult to compare across states. Refugees tend to contribute to receiving countries' economies and societies over the long term, and thus contribute to their development (see d'Albis, Boubtane, and Coulibaly 2018; Jacobsen 2002). Therefore, the idea that states' contributions to the public good are detrimental to their development does not travel well from the sphere of climate change mitigation to the area of asylum governance. In the rare cases when refugee protection threatens a state's immediate stability and potential to protect human rights, one could argue for a lower share of responsibility (see Barutciski and Suhrke 2001). Overall, the Right to Development principle has no equivalent application to asylum governance.

The *Merit principle* distributes responsibilities according to states' prior contributions to the public good. The more a state has already contributed to the public good, the smaller its share of current responsibility. Merit is understood as any contribution to humanitarian protection regardless of whether the contribution is voluntary (e.g. in resettlement cases) or involuntary (e.g. due to 'responsibility by proximity' (Doyle 2018, 619) or to the non-refoulement principle).¹³ Proactive contributions and preventive efforts, such as diplomacy or peace-making and -keeping, can also be conceived as merit-based contributions to responsibility-sharing (Thielemann 2006).¹⁴ While the number of refugee admissions or financial assistance to humanitarian protection can be empirically measured, general foreign policy contributions to prevent or resolve protection failures are more difficult to account for. We conclude that the Merit principle is applicable to the distribution of protection responsibilities and offers various empirical measures.

¹¹ Recent international initiatives have sought to support refugee-hosting countries by seeking to enhance their development opportunities (e.g. EU compacts). Such instruments do not however provide a criteria on how to distribute responsibilities in the first place.

¹² Note that, from a more individualistic perspective, considering development might point to a resettlement that maximizes the personal development of the refugee. According to Gibney, "states also have a duty to look for ways to settle refugees in countries where they are likely to flourish" (Gibney 2015, 460).

¹³ Regarding the temporal and geographic contingency of refugee crises, it seems arbitrary to qualitatively distinguish between the two types of merit, as for example between Canada (resettlement) and Lebanon (proximity).

¹⁴ Note that deterrence efforts and financial assistance to prevent secondary movements that result in the undermining of humanitarian protection rather than strengthening its provision should not be counted as merit. Responsibility-sharing rests on the axiom that international cooperation will maximize the provision of refugee protection.

Table 2: Summary of equity principles in asylum governance

Equity principle	Applicability (conceptual)	Measurability (empirical)
Egalitarian principle	✓ per capita responsibility	✓ population size
Capacity principle	✓ economic capacity ✗ political willingness	✓ wealth, human development, unemployment
Polluter Pays principle	✓ failed responsibility to protect by the international community ✓ specific culpability of a given state ✗ refugee-producing state (not capable/willing to provide protection)	✓ specific state (in)action that can be linked to protection failures ✗ complex causality of most refugee-producing events
Cost Sharing principle	✓ costs of refugee admission	✓ short-term expenses for asylum procedure and refugee accommodation ✗ long-term costs/benefits
Right to Development principle	✗ humanitarian protection not necessarily an impediment to development	✗
Merit principle	✓ prior contributions to humanitarian protection	✓ refugee intakes, financial or in-kind assistance to refugee-hosting countries

We have shown that several equity principles reflecting the idea of common but differentiated responsibilities in climate change mitigation are applicable to the area of humanitarian protection both conceptually and empirically (summarized in Table 2). Either one of these principles or a combination of several principles could serve as the basis for a mechanism to equitably and predictably allocate responsibilities among states. However, the selection and combination of different criteria also come with challenges. Like in the CBDR principle’s application to the allocation of emission reduction responsibilities, the different equity principles result in largely different conclusions regarding the size of a ‘fair share’ of refugee protection obligations of specific countries (see Wagner and Kraler 2014). Such differences create trade-offs in the design of a responsibility-sharing regime, as they call for decisions about the relative weight of each equity principle. Which (bundle of) principle(s) best represents a fair and equitable allocation remains subjective and open to interpretation. While the equity principles offer different ways of operationalizing responsibility-sharing based on empirical factors, their consolidation into an allocation mechanism still requires difficult political choices of how responsibilities should be differentiated.

Asylum Governance in the Light of the CBDR Principle

The discussion above has demonstrated how the differentiation of state responsibilities can be applied to international asylum governance. How do existing attempts at responsibility-sharing in asylum governance represent the idea of common but differentiated responsibilities? We discuss two

prominent cases whereby states sought to provide humanitarian protection by sharing responsibility: First, we look at the European Union's 'distribution key' used to calculate every member state's share of refugees. The European Union has the most advanced regime of regional responsibility-sharing in asylum governance and offers the best conditions for an effective regional refugee protection regime (Bauböck 2018, 142). Second, we assess the Global Compact on Refugees under the umbrella of the United Nations, which represents the most comprehensive and ambitious attempt to establish global responsibility-sharing.¹⁵

Since the early 1990s, European countries have expressed concerns about the asymmetric distribution of asylum seekers across the European Union (Boswell 2003). However, only during the so-called 'refugee crisis' of 2015 did the idea of a 'distribution key' gain broad political support. The EU Commission proposed to assign refugee shares to its member states on a more fair and equitable basis following objective, quantifiable, and verifiable criteria reflecting member states' capacities.¹⁶ To our knowledge, this is the first systematic and binding operationalization of international responsibility-sharing.¹⁷ The distribution key is a formula based on four factors, which are weighted differently, namely: population size (40% weight), GDP (40% weight), the average per capita number of asylum applications received over the previous five years (10% weight), and a country's level of unemployment (10% weight).¹⁸ Does this distribution key represent the principle of common but differentiated responsibilities? The formula does indeed recognize humanitarian protection as a common European responsibility as well as European countries' unequal circumstances. It therefore assigns responsibility based on countries' specific characteristics. Population size represents the Egalitarian principle since responsibility is distributed per capita. The wealth of a country measured by its GDP represents the Capacity principle and assigns a larger share of responsibility to those states that have more economic resources. Previous refugee intake accounts for the Merit principle based on the idea of past contributions to the public good. Finally, the unemployment rate represents another element of the Capacity principle - it is a proxy for countries' capacity to integrate refugees into their labor market. The formula uses indicators that are easy to measure and difficult to manipulate for political purposes. By placing a greater weight on the factors that are more stable over time, the distribution key provides states with a high level of predictability. We conclude that despite the lack of an official reference, the EU distribution key reflects the main idea behind the CBDR principle and employs a combination of different equity criteria that allow for a predictable allocation of asylum responsibilities.

How successful has this allocation scheme been in praxis? Compliance with the key has varied significantly across states and the relocation target of 120,000 refugees has clearly failed to materialize. Moreover, developed as a temporary policy instrument during a major policy crisis, it has failed to garner sufficient support among member states so as to be installed as a permanent allocation scheme.

¹⁵ Other proposed policy models for differentiated responsibilities operationalize refugee shares based on countries' capacity (Czaika 2005; Thielemann, Williams and Boswell 2010; UNHCR 2002). None of these elaborate models have been implemented.

¹⁶ Commission Recommendation (EU) 2015/914 of 8 June 2015 on a European resettlement scheme, available online: <http://data.europa.eu/eli/reco/2015/914/oj>, accessed 11.11.2019.

¹⁷ There have been earlier proposals for a European distribution key, e.g. a 1986 proposal by Denmark based on population size and GDP (IGC 1998, 32) or a 1994 proposal by Germany based on population size, GDP and land mass (Ripoll Servent 2018, 88). These proposals have, however, never been implemented.

¹⁸ The corrective allocation mechanism presented in 2016 only contains the country's population size and GDP, both weighted at 50%. However, this key is intended to be used in addition to the main distribution key.

The opposition primarily by Eastern European countries is directed neither at the allocation criteria nor at their weighting; rather, it has to do with how binding the assigned responsibilities are.¹⁹ Several national governments have insisted that responsibility-sharing should be voluntary and that binding criteria ran against their national sovereignty (Grech 2017). The Hungarian Prime Minister Orban explicitly stated that the admission of refugees is a 'German problem' instead of a European one.²⁰ The Visegrad countries' counter-proposal pledged for 'flexible solidarity' whereby member states decided on specific forms of contribution, taking into account their experience and potential, but without binding commitment. Even though subsequent discussions took place during a crisis and had high political stakes, all efforts to establish a permanent distribution key have failed.²¹ The European Union continues to lack an effective mechanism of responsibility-sharing among its member states.

Governance tools for effective responsibility-sharing are not well established at the global level, either. This is the case even though the Geneva Convention recommended international cooperation to enable a fair and equitable sharing of responsibilities as early as 1951 (UNHCR 2011, 13). The most ambitious attempt to operationalize such responsibility-sharing is the Global Compact on Refugees adopted by the General Assembly of the United Nations in 2018. The Compact's objective is to strengthen international cooperation in asylum governance, and it was initially thought to be primarily about equitable responsibility-sharing.²² The zero agreement of 2016 intended to establish mechanisms for an effective response to humanitarian crises where countries take responsibilities based on their capacity to contribute to the public good. It contained a provision that called on states to resettle 10 percent of the global refugee population each year. However, this goal was substantially attenuated during the negotiation process and states did not accept additional legal commitments or specific targets for responsibility-sharing (see Down and McAdam 2017). In particular, developed countries with the highest capacity are the parties most reluctant to accept binding commitments to refugee intakes. Instead, the Compact is built around voluntary contributions by states and private actors. The non-binding character of the agreement with only voluntary contributions made it possible for states to agree to it.

How does this result reflect the idea of common but differentiated responsibilities? The New York Declaration for Refugees and Migrants, which paved the way for the Compact, declares that states will seek '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.'²³ This statement reflects the idea of common but differentiated responsibilities and explicitly refers to the Merit principle of existing contributions. The Compact's Programme of Action establishes a mechanism for the implementation of this aim, whereby actors make their pledges and contributions transparent. The 'Global Refugee Forum' reviews every four years to what extent pledges

¹⁹ See https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/dublin_reform_proposal_en.pdf, accessed 11.01.2021.

²⁰ See <https://www.bbc.com/news/world-europe-34136823>, accessed 11.01.2021.

²¹ The idea of a fixed distribution key was abandoned by the EU Commission when it introduced a new pact on migration and asylum in September 2020 (Press release EU Commission, https://ec.europa.eu/info/strategy/priorities-2019-2024/promoting-our-european-way-life/new-pact-migration-and-asylum_en, accessed 11.01.2021).

²² <https://www.unhcr.org/events/conferences/578369114/zero-draft-global-compact-responsibility-sharing-refugees.html>, accessed 11.11.2019.

²³ United Nations, New York Declaration, *op.cit.*, para. 68.

have been fulfilled. This instrument builds on the power of peer-pressure in the hope to increase the collective efforts in refugee protection. While this bottom-up process allows for inclusiveness and flexibility in the implementation of the Compact, it does not operationalize the CBDR principle since pledges are based on specific contributions, rather than on countries' share of responsibility. Thus, it focuses on how countries contribute, rather than on their 'fair share.' What an equitable allocation of overall responsibilities should look like remains undetermined. Nevertheless, the new institutional mechanism of self-committed contributions to refugee protection is considered a hallmark of global asylum governance. The new approach seems to be inspired by the CBDR principle and has successfully created a governance institution meant to establish global responsibility-sharing. However, the initial outcomes have been meager and attracted criticism for selling out refugees (Mourad and Norman 2019). To what an extent the Compact will indeed enhance refugee protection and strengthen an equitable sharing of responsibilities is thus to be evaluated.

These two cases represent different ways of addressing international responsibility-sharing. The EU distribution key is a binding instrument (hard law) with a top-down determination of states' 'fair shares.' The Global Compact on Refugees is a non-binding instrument (soft law) that determines states' contributions to the common responsibility from the bottom-up. While the EU distribution key provides a specific operationalization of the CBDR principle but has failed in its practical implementation, the Global Compact has been successfully adopted but lacks specificity on the actual allocation of protection responsibilities. These governance instruments reflect countries' experiences with climate governance: With the Kyoto protocol, states agreed on fixed reduction targets; however, multiple big emitters either refused to ratify the protocol (e.g. the United States) or left it after the first period (e.g. Canada). In the end, it only covered about 18% of global emissions.²⁴ Learning from this experience, the Paris Agreement contains a range of provisions varying in their legal character, including hard, soft, and non-obligations with no clear line between them (Rajamani 2016). Like in asylum governance, states are reluctant to agree on binding and specific commitments. However, they have agreed to binding obligations of how to prepare, communicate, and maintain contributions, and to a good-faith expectation that all parties intend, and will aim, to achieve the objectives of their contributions (Rajamani 2016). The elaboration of intended NDCs has advanced national climate policy-making, notably in developing countries, and the ratcheting-up structure of the agreement fosters higher ambitions (Höhne et al. 2017). Thus, the Paris Agreement represents an example of leaving sovereignty to the states in allowing them to choose effective reduction targets but still legally obliging them to do so. In sum, the recent advances in both climate and asylum governance are premised on the idea of a common but differentiated responsibility implemented through a bottom-up approach of flexible commitments designed to overcome states' reluctance to engage in international cooperation.

Conclusion

The protection of refugees remains an intractable policy challenge for the international community. While governments regularly declare their support for the norm of responsibility-sharing, we lack a

²⁴ See: https://ec.europa.eu/clima/policies/strategies/progress/kyoto_1_en, accessed 11.01.2021.

rule of action that would translate this commitment into specific duties. As a result, the implementation of responsibility-sharing continually fails to yield tangible results. This article has analyzed the principles of allocating state responsibilities that would allow operationalizing responsibility-sharing. To do so, it draws on a comparison with climate governance - a policy area that deals with a structurally similar policy challenge. We have shown that climate change mitigation and humanitarian protection share the characteristics of an international public good that requires states to share responsibilities in order to provide it effectively. The relative advance of international governance and the operationalization of responsibility-sharing in climate governance helps us gain insights into the policy challenge of international asylum governance.

We find that the principle of 'common but differentiated responsibilities' (CBDR) prevalent in environmental governance is conceptually applicable to refugee protection because the two policy areas face a largely similar collective action problem and asymmetries between states in regard to the provision of the public good. At the same time, the important differences between asylum and climate help us understand the different governance outcomes in the two policy areas. We have discussed six equity principles from climate governance and shown that several of them are both conceptually applicable to the area of humanitarian protection and empirically quantifiable. Responsibilities can be differentiated based on the Egalitarian, the Capacity, the Polluter Pays, the Cost Sharing and the Merit principles. In combination, these principles could constitute the basis for any mechanism of equitably and predictably allocating responsibilities between states. We have shown that the CBDR principle is also partially integrated into recent policy frameworks of the EU distribution key and the Global Compact on Refugees.

What implications do these findings have for effective responsibility-sharing in asylum governance? Responsibility-sharing requires states' recognition that humanitarian protection is a common responsibility and allocation criteria be perceived as fair and equitable. We identify structural characteristics that undermine the perception of a common responsibility - namely that the externalities of refugee emergencies are often geographically and temporally confined and often no direct causal responsibility can be determined. Unlike in climate governance, where states have reached a consensus on common responsibility, states perceive refugee admission primarily through the prism of national sovereignty (a view that is indeed enshrined in international refugee law) and do not see it as an international public good challenge (see also Carens 2013). States appear to lack the kind of common interest in humanitarian protection that might outweigh the short-term advantages of unilateral actions, ad-hoc solutions, and muddling-through. This continues being the case despite public opinion research that suggests that most European citizens view humanitarian protection as a common responsibility and support responsibility-sharing based on countries' capacities (Bansak, Hainmueller, and Hangartner 2017; Heinzmann and Ziller 2020). So far, governments are not willing to compromise their national sovereignty for more effective cooperation in asylum matters.

A second implication of our analysis is that the design of a mechanism for allocating responsibility entails a series of important trade-offs, which result from the structural characteristics of asylum governance. The effectiveness of an international agreement depends on the stringency of states'

commitments and their participation and compliance. Thus, the design of a responsibility-sharing mechanism should settle the trade-off between binding enforceable rules based on specific and predictable criteria and the flexibility to account for country-specific and time-varying circumstances:

- *Enforceability vs. likelihood of commitment*: If an allocation-mechanism is based on hard law and is therefore binding for the signing parties, it has the advantage of enforceability. However, binding commitments carry the risk that countries unwilling to comply screen out (Bernauer 2009), as the Kyoto protocol with its fixed reduction targets and the EU's distribution key for refugees have demonstrated. A voluntary mechanism based on soft law therefore increases the likelihood that states commit to international responsibility-sharing in the first place.
- *Predictability vs. flexibility*: If the criteria for responsibility-allocation are set in advance, actors gain predictability and insurance in the case of a refugee emergency in their country, a main advantage of international cooperation. However, an ad-hoc mechanism for responsibility-allocation allows for flexibility and a targeted response to the contingent circumstances of a refugee emergency.
- *Specificity vs. inclusiveness*: A mechanism that strictly specifies the allocation of responsibilities has the advantage of avoiding conflicts of interpretation through a precise common rule. A mechanism with broad criteria and strategic ambiguity allows for the inclusion of different fairness concepts. While specific criteria have the advantage of ensuring that all states apply responsibility in the same way, unspecific criteria provide states with the autonomy to determine their fair and equitable contribution but also with more room to shirk responsibility.

These trade-offs suggest that there is hardly a 'one-size-fits-all' solution to responsibility-allocation. A mechanism will be successful if it strikes a balance between the outlined trade-offs. The Paris Agreement may serve as a successful attempt for such a balance in climate governance: A legally binding agreement that allows for a bottom-up approach in defining states' contributions to responsibility-sharing combined with institutionalized peer-pressure and the requirement to justify one's differentiated commitments. Convincing states to enter international cooperation remains the main challenge to establishing responsibility-sharing in refugee protection. We have demonstrated that the nature of the policy challenge of humanitarian protection makes a flexible bottom-up approach the most realistic governance model. The equity criteria discussed in this article provide a tool for operationalizing the concept of common but differentiated responsibilities and can serve as a framework for building a mechanism that requires states to justify their 'fair share.' Both scholars and policy-makers can draw important insights from the comparison between asylum and climate governance and we hope to inspire more such endeavors.

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