

# 1 Introduction\*

## 1.1 Resettlement in the EU context

The United Nations High Commissioner for Refugees (UNHCR) recognizes refugee resettlement as one of three 'durable solutions'. The durable solutions aim at achieving self-reliance of refugees.<sup>1</sup> The three durable solutions consist of (i) voluntary repatriation to the home country, (ii) integration within a country of (first) refuge, or (iii) resettlement to a third country, i.e. the receiving country. Refugees who cannot return to their home country and who cannot integrate into the country of (first) refuge, constitute the target group for resettlements to a receiving country.<sup>2</sup> Therefore, "*resettlement remains an important protection tool which addresses the special needs of refugees whose fundamental human rights are at risk in the country of refuge*".<sup>3</sup>

Plenty of obstacles have hindered the efficient use of resettlement.<sup>4</sup> The so-called resettlement gap between the number of persons in need of resettlement and the number of actual resettlements to committing third countries remains significant to date. The UNHCR 2021 resettlement data

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\* The text was prepared with due attention to gender neutrality and ethical principles. Any and all deviations from this policy are exclusively for the sake of improving the readability of the text or for the authentic replication of legal texts. The generic masculine chosen in this work refers simultaneously to male, female, and other gender identities (and *vice versa*).

1 See UNHCR, 'The 10-Point Plan', Chapter 7 Solutions, 186 <<https://www.unhcr.org/50a4c17f9.pdf>> accessed 24 June 2022. See also UNHCR, 'Framework for durable solutions for refugees and persons of concern' (2003) para. 10 <<https://www.unhcr.org/partners/partners/3f1408764/framework-durable-solutions-refugees-persons-concern.html>> accessed 24 June 2022: "*The basic criterion for a good programme is self-reliance*".

2 See Kristin Bergtora Sandvik, 'On the Social Life of International Organizations: Framing Accountability' in Jan Wouters et al (eds), *Accountability for Human Rights Violations* (Intersentia 2010) 287 (296).

3 Garry G Troeller, 'UNHCR Resettlement: Evolution and Future Direction' in (2002) 14 *International Journal of Refugee Law* 1, 85 (95).

4 See Margret AM Piper, Paul Power and Graham Thom, 'Refugee Resettlement: 2012 and Beyond', UNHCR Research Paper n°253 (February 2013) 17 <<https://www.unhcr.org/research/working/510bd3979/refugee-resettlement-2012-beyond-margaret-piper-paul-power-dr-graham-thom.html>> accessed 13 February 2021.

show that only 39,266 actual departures out of 63,190 UNHCR referrals took place.<sup>5</sup> This is exacerbated by the fact that resettlement needs are expected to rise up to 2 million refugees in 2023, which represents a 36% increase compared to the needs in 2022 of 1.47 million.<sup>6</sup> In its attempts to close the gap, the UNHCR considered Member States of the European Union (EUMS) to be *"the major sticking point when it comes to achieving a significant increase in resettlement capacity"*.<sup>7</sup>

In 2016, the European Union (EU) accounted for about 10% of resettlements globally.<sup>8</sup> The programs of the EUMS have remained small compared to the United States (US) or Canada. The past joint efforts<sup>9</sup> of EUMS were based on non-binding Commission communications, recommendations and European Council conclusions. Even though leaders have conveyed that migration and asylum issues need a European approach, *"actual policy and practice continue to be national in every way, including the migration decisions of those individuals arriving in the EU [...] as resettled refugees"*.<sup>10</sup> Thus, EUMS' national resettlement policies have remained divergent.

Traditional resettlement countries, such as Sweden, Finland, the Netherlands and Ireland, had been resettling persons in need for protection on a regular basis even before resettlement was anchored in their asylum

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5 See UNHCR, 'Resettlement Data' (as of 24 June 2022) <<https://www.unhcr.org/refugee-settlement-data.html>> accessed 24 June 2022.

6 See UNHCR, 'Projected Global Resettlement Needs 2023' (June 2022) <<https://www.unhcr.org/62b18e714>> accessed 24 June 2022.

7 Margret AM Piper, Paul Power and Graham Thom, 'Refugee Resettlement: 2012 and Beyond', UNHCR Research Paper n°253 (February 2013) 20.

8 See Lyra Jakulevičienė and Mantas Bileišis, 'EU refugee resettlement: Key challenges of expanding the practice into new Member States' in (2016) 9 *Baltic Journal of Law & Politics* 1, 93.

9 See Elona Bokshi, 'Refugee Resettlement in the EU: The capacity to do it better and to do it more', KNOW RESET Research Report 2013/04 (European University Institute 2013) 1 <[https://www.ecre.org/wp-content/uploads/2016/03/00\\_013\\_20140108160733\\_knowresetrr-2013-04.pdf](https://www.ecre.org/wp-content/uploads/2016/03/00_013_20140108160733_knowresetrr-2013-04.pdf)> accessed 13 February 2021; see also Commission, Communication 'Establishment of a joint EU resettlement programme', COM(2009) 447 final.

10 Joanne van Selm, 'Are asylum and immigration really a European Union issue?' in (2016) 51 *Forced Migration Review*, 60 (61).

legislation.<sup>11</sup> Other EUMS, for example, Italy, Luxembourg and Austria,<sup>12</sup> joined with *ad hoc* initiatives. In some EUMS there is no legal basis for resettlement in their respective national migration and/or asylum law. For instance, the Austrian Asylum Law does not expressly mention resettlement.<sup>13</sup>

Overall, heterogeneous policies make it difficult to objectively assess whether an EUMS has exhausted its full capacity to admit refugees ('inability' to contribute) or whether it deliberately holds back admissions ('unwillingness' to contribute).<sup>14</sup> This is reflected in the uneven resettlement contributions of EUMS. For example, between 2013 and 2015, EUMS had offered to resettle 38,000 refugees from third countries within their own territory, whereas Germany pledged 78% of the places, Sweden 7%, and the other EUMS just 14% in total.<sup>15</sup>

Against this backdrop, on 13 July 2016, the European Commission (Commission) proposed a Resettlement Framework Regulation "to achieve

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- 11 See Delphine Perrin and Frank McNamara, 'Refugee Resettlement in the EU: Between Shared Standards and Diversity in Legal and Policy Frames', KNOW RESET Research Report 2013/03 (European University Institute 2013) 4 <[https://cadmus.eui.eu/bitstream/handle/1814/29400/KnowReset\\_RR-2013\\_03.pdf](https://cadmus.eui.eu/bitstream/handle/1814/29400/KnowReset_RR-2013_03.pdf)> accessed 13 February 2021.
  - 12 A regular resettlement program for Austria was proposed by a working group of Caritas Austria, Diakonie Austria, the International Organization for Migration (IOM), the Red Cross Austria and UNHCR in July 2017; see ARBEITSGRUPPE CARITAS, DIAKONIE, IOM, ÖRK, UNHCR, 'Resettlement in Österreich' (revised July 2017) <[https://www.caritas.at/fileadmin/storage/global/pdf/Resettlement\\_Konzept\\_für\\_Ö\\_update\\_2017.pdf](https://www.caritas.at/fileadmin/storage/global/pdf/Resettlement_Konzept_für_Ö_update_2017.pdf)> accessed 13 February 2021.
  - 13 The only provision in Austrian Asylum Law that may be considered as basis for resettlement procedures is § 3a Austrian Asylum Law [Bundesgesetz über die Gewährung von Asyl (Asylgesetz 2005 - AsylG 2005), BGBl 100/2005], allowing to recognize status *ex officio* (without further procedure) in cases where Austria has committed itself under international law to do so. See Delphine Perrin and Frank McNamara, 'Refugee Resettlement in the EU: Between Shared Standards and Diversity in Legal and Policy Frames', KNOW RESET Research Report 2013/03, 16.
  - 14 See Philippe de Bruycker and Evangelia (Lilian) Tsourdi, 'In search of fairness in responsibility sharing' in (2016) 51 Forced Migration Review, 64.
  - 15 See Commission, 'Relocation & Resettlement' (27 May 2015) <[https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/relocation\\_and\\_resettlement\\_factsheet\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/relocation_and_resettlement_factsheet_en.pdf)> accessed 13 February 2021.

a degree of convergence for the resettlement practices and procedures".<sup>16</sup> At this point in time, the EU legislators have not adopted this Proposal. The Council of the EU and the European Parliament reached a partial and provisional agreement in June 2018, which, however, the Council did not endorse. The file was carried over to the Commission under *Ursula von der Leyen* in 2019,<sup>17</sup> who mentioned among the key actions in its New Pact on Migration and Asylum,<sup>18</sup> to "[c]onclude swiftly negotiations on the Framework Regulation on Resettlement and Humanitarian Admission".<sup>19</sup> According to the prevailing political view, the EU migration and asylum framework should not be reformed by a piecemeal adoption. While agreement on the whole package has been missing, progress in negotiations on parts of the reform package could be achieved.<sup>20</sup> In December 2022, the European Parliament and the Council reached an agreement on an updated text of the proposed EU Resettlement Framework Regulation.<sup>21</sup>

A common framework promises to open untapped resources of the EUMS. Receiving EUMS, in addition to resettlement beneficiaries, may benefit from increased quantity and quality of EU resettlement.<sup>22</sup>

In terms of quantity, recent commitments in response to the Afghan mass displacement following the take-over by the Taliban regime demonstrate that there is room for improvement. The pledges remained lopsided,

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16 Commission, Proposal for a Regulation establishing a Union Resettlement Framework and amending Regulation (EU) No 516/2014 of the European Parliament and the Council, COM(2016) 468 final 2016/0225 (COD) 7.

17 See European Parliament, 'Legislative Train Schedule: EU Resettlement Framework' (as of 5 May 2022) <<https://www.europarl.europa.eu/legislative-train/themes/towards-a-new-policy-on-migration/file-jd-eu-resettlement-framework>> accessed 24 June 2022.

18 Commission, Communication on a New Pact on Migration and Asylum, COM(2020) 609 final.

19 Ibid 24.

20 For example, the establishment of the EU Asylum Agency. See Jacopo Bariagazzi, 'Mediterranean countries give green light to deal on EU asylum agency' (*Politico*, 8 June 2021) <<https://www.politico.eu/article/mediterranean-countries-green-light-deal-eu-asylum-agency/>> accessed 16 June 2021. Regulation 2021/2303 (EU) on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010 [2021] OJ L468/1-54.

21 European Parliament, 'Asylum and migration: deal reached on new EU resettlement framework' (*Press release*, 15 December 2022) <<https://www.europarl.europa.eu/news/en/press-room/20221214IPR64717/asylum-and-migration-deal-reached-on-new-eu-resettlement-framework>>.

22 See Volker Türk, 'Prospects for Responsibility Sharing in the Refugee Context' in (2016) 4 *Journal on Migration and Human Security* 3, 45 (48).

and the total number of pledges of EUMS was low compared to the US or Canada (see 2.3.16).

In terms of quality, an EU resettlement framework offers the opportunity to foster compliance with international law and counter recent criticism. In 2018, the African Union expressed dissatisfaction with "EU's latest blueprint for stemming migration, claiming that it would breach international law by establishing 'de facto detention centres' on African soil, trampling over the rights of those being held".<sup>23</sup> Moreover, EU and EUMS officials and agents have been accused of crimes against humanity,<sup>24</sup> "committed as part of a premeditated policy to stem migration flows from Africa via the Central Mediterranean route, from 2014 to date".<sup>25</sup> This shows the need for a policy intended to accommodate international law in order to regain trust of countries of (first) refuge, and persuade these countries to open their borders and keep their borders open for refugees.<sup>26</sup>

## 1.2 US resettlement policy as point of reference

This monography considers 'best practice' and 'bad precedent' derived from the US Refugee Admissions Program (USRAP) to draw conclusions for EU resettlement *de lege ferenda*.

The USRAP has a long history, dating back to the aftermath of World War II.<sup>27</sup> Scholars described the US refugee resettlement program as a

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23 Daniel Boffey, 'African Union seeks to kill EU plan to process migrants in Africa' (*The Guardian*, 24 February 2019) <<https://www.theguardian.com/world/2019/feb/24/african-union-seeks-to-kill-eu-plan-to-process-migrants-in-africa>> accessed 13 February 2021.

24 See Owen Bowcott, 'ICC submission calls for prosecution of EU over migrant deaths' (*The Guardian*, 3 June 2019) <<https://www.theguardian.com/law/2019/jun/03/icc-submission-calls-for-prosecution-of-eu-over-migrant-deaths>> accessed 13 February 2021.

25 Omer Shatz and Juan Branco et al, 'EU Migration Policies in the Central Mediterranean and Libya (2014-2019)' (PSIA – Sciences Po 2017/2018, 2018/2019) <<https://www.statewatch.org/news/2019/jun/eu-icc-case-EU-Migration-Policies.pdf>> accessed 13 February 2021.

26 See Kathleen Newland, 'Legislative Developments and Refugee Resettlement in the Post-Cold War Era' in (1996) 19 *In Defense of the Alien*, 134 (138).

27 See Thomas Alexander Aleinikoff, David A Martin, Hiroshi Motomura, Maryellen Fullerton and Juliet P Stumpf, *Immigration and Citizenship: Process and Policy* (West Academic Publishing 8<sup>th</sup> ed 2016) 793.

long-term success.<sup>28</sup> In fact, the US has resettled more refugees than any other country in the world. This is confirmed, amongst others, by the UNHCR<sup>29</sup> and the Refugee Council of Australia.<sup>30</sup> Nevertheless, it is undeniable that US resettlement has faced serious difficulties. Following the events of 9/11, resettlements to the US stopped abruptly, but then slowly recovered. Terrorist attacks in France and Belgium compounded security concerns not only in Europe but also in the US, and several US states started to oppose admission.<sup>31</sup> Notably, figures from 2018 showed the lowest admission rate since the program's inception.<sup>32</sup> For the Fiscal Year 2021, President *Trump* determined a reduced ceiling of only 15,000.<sup>33</sup> President *Biden* raised this cap subsequently to 62,500.<sup>34</sup> He proclaimed

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- 28 See Stephen H Legomsky, 'Refugees, Asylum and the Rule of Law in the USA' in Susan Kneebone (ed), *Refugees, asylum seekers and the rule of law: comparative perspectives* (Cambridge University Press 2009) 122-270; for current information on the US offshore permanent resettlement program see US Department of State, 'Refugee Admissions' <<https://www.state.gov/status-of-the-u-s-refugee-admissions-program/>> accessed 23 March 2021; see also United States Committee for Refugees and Immigrants, 'World Refugee Survey 2009 – United States' (17 June 2009) <<http://www.refworld.org/docid/4a40d2b580.html>> accessed 13 February 2021; see also Donald Kerwin, 'The US Refugee Resettlement Program – A Return to First Principles: How Refugees Help to Define, Strengthen, and Revitalize the United States' in (2018) 6 *Journal on Migration and Human Security* 3, 205-225 <<https://journals.sagepub.com/doi/full/10.1177/2331502418787787>> accessed 13 February 2021.
- 29 See UNHCR, 'Global Trends: Forced Displacement in 2018' (20 June 2019) <<https://www.unhcr.org/5d08d7ee7.pdf>> accessed 13 February 2021.
- 30 "The United States has been by far the largest resettlement destination (828,128), followed by Canada (191,801), Australia (158,217), Sweden (24,649) and Norway (17,327). These five countries have been responsible for over 95% of all refugees resettled in that period. The United States alone has been responsible for nearly 65% of resettled refugees in this time", Refugee Council of Australia, 'Global resettlement statistics' (as of 2 August 2019) <<https://www.refugeecouncil.org.au/global-resettlement-statistics/>> accessed 13 February 2021.
- 31 See Kevin J Fandl, 'States' Rights and Refugee Resettlement' in (2017) 52 *Texas International Law Journal* 1, 71 (100f).
- 32 See UNHCR, 'Global Trends: Forced Displacement in 2018' (20 June 2019).
- 33 See US Department of State, Department of Homeland and Security, Department of Health and Human Services, 'Report to Congress on Proposed Refugee Admissions for Fiscal Year 2021' <<https://www.state.gov/wp-content/uploads/2020/10/FY21-USRAP-Report-to-Congress-FINAL-for-WEBSITE-102220-508.pdf>> accessed 13 February 2021.
- 34 See Maanvi Singh, 'Biden raises US refugee admissions cap to 62,500 after delay sparks anger' (*The Guardian*, 3 May 2021) <[https://www.theguardian.com/world/2021/may/03/biden-refugee-cap-us-immigration?utm\\_term=Autofeed&CMP=tw\\_](https://www.theguardian.com/world/2021/may/03/biden-refugee-cap-us-immigration?utm_term=Autofeed&CMP=tw_)

moral leadership, including the defense refugees and adherence to a rules based international order.<sup>35</sup> For the Fiscal Year of 2022, with the current displacements from Afghanistan and Ukraine, admission numbers are expected to further rise. President *Biden* set the 2022 admission ceiling at 125,000,<sup>36</sup> with further rises expected due to current mass displacements from Afghanistan and the Ukraine. The US' extensive resettlement experience is based on the exclusive competence of the federal government, which justifies a closer assessment. Such assessment is crucial in order to decide whether regulating resettlement at the EU level is necessary because resettlement targets cannot be sufficiently achieved at the national level, and the assessment could shed light on the issue of whether the EU can address currently untapped resources 'better' than national approaches.<sup>37</sup>

### 1.3 Relevance of the topic

A comprehensive research of the legal framework for EU resettlement – including US resettlement practice as a point of reference – fills a research gap. In general, there is scarce up to date literature on resettlement.<sup>38</sup>

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gu&utm\_medium&utm\_source=Twitter#Echobox=1620096721> accessed 5 May 2021.

- 35 See Kemal Kirişci and Fulya Memisoglu, 'Biden's decision to pull troops from Afghanistan risks a major refugee crisis' (26 April 2021) <<https://www.brookings.edu/articles/bidens-decision-to-pull-troops-from-afghanistan-risks-a-major-refugee-crisis/>> accessed 15 May 2022.
- 36 See US Department of State, Department of Homeland and Security, Department of Health and Human Services, 'Report to Congress on Proposed Refugee Admissions for Fiscal Year 2022' (20 September 2021) <<https://www.state.gov/report-to-congress-on-proposed-refugee-admissions-for-fiscal-year-2022/>> accessed 15 May 2022.
- 37 "The EU's principle of 'subsidiarity' says that there are three criteria for determining that EU-level intervention is desirable: Does the action have transnational aspects that cannot be resolved by Member States? Would national action or an absence of action be contrary to the requirements of the Treaty? Does action at European level have clear advantages?", Joanne van Selm, 'Are asylum and immigration really a European Union issue?' in (2016) 51 *Forced Migration Review*, 61.
- 38 See Hanna Schneider, 'Implementing the Refugee Resettlement Process: Diverging Objectives, Interdependencies and Power Relations' in (2021) *Frontiers in Political Science*, 1 <<https://www.frontiersin.org/articles/10.3389/fpos.2021.629675/full>> accessed 21 June 2021.

Already in 2002 Piper, Power and Thom regretted that since Troeller<sup>39</sup>, "with the exception of some limited circulation documents produced by the UNHCR, writing about this area has been scant and in most cases, references to resettlement have either been specific to a particular situation or secondary to the main focus of the piece".<sup>40</sup> By including the US perspective as well as EUMS practice in the analysis of the resettlement process, this monography responds to Nakashiba's<sup>41</sup> call for dedicating future research to a comparative analysis on resettlement practices. So far, research on resettlement has for the most part been done independently in Europe<sup>42</sup> and in the US.<sup>43</sup> One of the rare cross-border studies dealt with resettlement programs in the US, Canada, Norway and Sweden as representative for an EUMS.<sup>44</sup> This study confirmed that "[t]he size of the US resettlement program and the availability of data on refugee populations provide a unique opportunity to track outcomes for resettled refugees specifically".<sup>45</sup> The US, with its Refugee Act

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39 See Garry G Troeller, 'UNHCR Resettlement: Evolution and Future Direction' in (2002) 14 International Journal of Refugee Law 1, 85-95.

40 Margret AM Piper, Paul Power and Graham Thom, 'Refugee Resettlement: 2012 and Beyond', UNHCR Research Paper n°253 (February 2013) 1.

41 See Haruno Nakashiba, 'Clarifying UNHCR Resettlement: A few considerations from a legal perspective', UNHCR Research Paper n°264 (November 2013) 13 <<https://www.unhcr.org/research/working/528e0a139/clarifying-unhcr-resettlement-few-considerations-legal-perspective-haruno.html>> accessed 13 February 2021.

42 See Lyra Jakulevičienė and Mantas Bileišis, 'EU refugee resettlement: Key challenges of expanding the practice into new Member States' in (2016) 9 Baltic Journal of Law & Politics 1, 93-123; for relocation measures see Lars Carlsen, 'An Alternative View on Distribution Keys for the Possible Relocation of Refugees in the European Union' in (2017) 130 Social Indicators Research 3, 1147-1163; see also Commission Directorate-General Home Affairs, 'Study on the Feasibility of Establishing a Mechanism for a Relocation of Beneficiaries of International protection', JLX/2009/ERFX/PR/1005 (Final Report 2010) <[https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/pdf/final\\_report\\_relocation\\_of\\_refugees\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/pdf/final_report_relocation_of_refugees_en.pdf)> accessed 13 February 2021.

43 For development and improvement of resettlement in the US see e.g., Donald Kerwin, 'The US Refugee Resettlement Program – A Return to First Principles: How Refugees Help to Define, Strengthen, and Revitalize the United States' in (2018) 6 Journal on Migration and Human Security 3, 205-225; see also Anastasia Brown and Todd Scribner, 'Unfulfilled Promises, Future Possibilities: The Refugee Resettlement System in the United States' (2014) 2 Journal on Migration and Human Security 2, 101-120.

44 See Randy Capps et al, 'Integrating refugees in the United States: The successes and challenges of resettlement in a Global context' in (2015) Statistical Journal of the IAOS, 341 (344).

45 Ibid 342f.



of 1980, is not only a pioneer in legislating refugee resettlement but also in collecting resettlement-related data, which justifies the choice to refer to the US program in this thesis. A comparative analysis with Canada is beyond the scope of this thesis but remains an area for further research. Regarding EUMS domestic resettlement frameworks and policies, this thesis complements the 2013 comparative report of *Perrin and McNamara*<sup>46</sup> as it adds more recent data, such as updated country chapters to the *Resettlement Handbook*<sup>47</sup> and reports<sup>48</sup>. Furthermore, as opposed to the 2013 recommendations of *Bokshi*<sup>49</sup> focusing on the resettlement capacity of individual EUMS, this monography sheds light on the EU perspective. One recent research project from *Schneider* adopts a broader approach by highlighting the multiplicity of stakeholders and bringing together the multiple steps in the resettlement process. However, as opposed to this thesis, *Schneider* focuses on policy rather than legal questions, and she focuses on the analysis of two different programs conducted by Germany.<sup>50</sup>

The underlying legal questions of this monography comprise (i) whether there is a (binding) international legal basis for resettlement, (ii) which international legal obligations must be respected in the course of resettlements to the EU, (iii) where is the location of resettlement in EU's legal framework and to what extent can it be regulated at EU level.<sup>51</sup>

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46 See Delphine Perrin and Frank McNamara, 'Refugee Resettlement in the EU: Between Shared Standards and Diversity in Legal and Policy Frames', KNOW RESET Research Report 2013/03.

47 See Country Chapters to UNHCR *Resettlement Handbook* <<https://www.unhcr.org/protection/resettlement/4a2ccf4c6/unhcr-resettlement-handbook-country-chapters.html>> accessed 13 February 2021.

48 See Susan Fratzke and Lena Kainz, 'Preparing for the unknown: Designing effective predeparture orientation for resettling refugees' (May 2019) 1 <<https://www.migrationpolicy.org/research/designing-effective-predeparture-orientation-resettling-refugees>> accessed 13 February 2021.

49 See Elona Bokshi, 'Refugee Resettlement in the EU: The capacity to do it better and to do it more', KNOW RESET Research Report 2013/04.

50 See Hanna Schneider, 'Implementing the Refugee Resettlement Process: Diverging Objectives, Interdependencies and Power Relations' in (2021) *Frontiers in Political Science*, 2.

51 This monography provides a more extensive analysis than *Ziebritzki*'s contribution on resettlement within the EU's constitutional order as it complements EU law with a more holistic international law perspective. See Catharina Ziebritzki, 'The Objective of Resettlement in an EU Constitutional Perspective' in Marie-Claire Foblets and Luc Leboeuf (eds), *Humanitarian Admission to Europe: The Law between Promises and Constraints* (Hart/Nomos 2020) 285 (285ff).

1.4 Methodology and structure

Based on legal-dogmatic analysis, and the comparison with resettlement law and practice in the US, this monography comes up with recommendations for a future EU legal framework. This is accomplished through the following structure:

As a starting point, Chapter 2 clarifies the concept of resettlement. A better understanding of this concept is achieved by classifying resettlement as a responsibility-sharing mechanism, defining resettlement, putting it in the historical context, analyzing its functions, revealing the motives of states to engage in resettlement, as well as presenting the actors involved in the resettlement process. The main legal question of this Chapter is to reveal whether there is a (binding) international legal basis for resettlement.

Even though there might not be a binding obligation to resettle refugees, it is important to examine whether states must comply with obligations under international law when they carry out resettlement operations. Chapter 3 pursues this question by first examining the applicability of selected human rights and refugee law treaties in the resettlement process. Subsequently, substantive rights relevant throughout the resettlement process are discussed. Finally, it is shown whether the law of responsibility of states and international organizations for internationally wrongful conduct provides mechanisms to establish responsibility of the actors involved in the resettlement process for international law violations.

Chapter 4 is dedicated to the development and status of EU resettlement. This Chapter evaluates whether and to what extent resettlement has been regulated at the EU level. It elaborates on possibilities and barriers under EU's constitutional order for regulating resettlement and observes to what extent EU legal principles have been upheld in EU resettlement to date.

Eventually, Chapter 5 accounts for legal and practical issues throughout the resettlement process. It considers and compares European and US resettlement practice in the stages of selection, pre-departure and post-arrival orientation and placement, followed by long-term integration and naturalization. With a view to prospective EU legislation on resettlement, this Chapter identifies legal and practical issues demanding legal reform.

Against the backdrop of the findings, Chapter 6 concludes with a recap of the legal framework for resettlement to the EU with lessons from the US model.