Burden-sharing during Refugee Emergencies: The Logic of Collective versus National Action

ASTRI SUHRKE
Chr. Michelsen Institute, Bergen, Norway and Carnegie Endowment for International Peace, Washington DC

Against the background of increasing restrictions worldwide on asylum in the 1990s, the old idea of ‘burden-sharing’ has been revived and has begun to gain currency. Such schemes are based on the premise that collective action might lead to better and more enduring resolution of crises than unilateral measures by individual nation states. But while such burden- or responsibility-sharing schemes have been developed with some success in sectors such as defence and the environment, achievements in the refugee arena have been much more modest. This paper explores why this should be the case by reviewing some past and current efforts at sharing refugees, and the lessons these experiences might hold for reform of the refugee regime.

The most dramatic feature of the refugee scene in the 1990s was the globalized restriction on asylum. In both the North and the South, the very institution of asylum seemed in danger. As a UNHCR official complained in 1997, ‘non-compliance with international treaty obligations for refugees is becoming something of a global norm’ (McNamara 1997:57). In this situation, the old idea of sharing schemes that would distribute refugees among recipient states was revived as a potential solution to the asylum crisis. The schemes were premised on the logic of collective action, as opposed to unilateral national measures. They resembled similar arrangements for sharing responsibilities and burdens that had been developed with some success in other sectors of public policy, notably defence and environmental affairs. Yet the achievements in the refugee sector have been very modest. This essay will explore the reasons why it seems more difficult to forge collective action of this kind with respect to refugees than to defence and the environment. What were the logic and the driving forces behind the only two major schemes for sharing refugees that were established during the last half century (displaced persons after World War II, and Indochinese refugees)? What are the equivalent characteristics of current efforts in Europe? A review of past practices may reveal possibilities for reform that accept the realities of state self-interest, yet are inspired by norms of justice and international refugee law.

Burden-sharing: Proposals and Premises

An early proposal for global sharing was promoted by legal scholars in the late 1970s. The idea was to assign refugees worldwide by matching refugee preferences with host countries ranked according to an index of wealth and population density. The concept of a ratio of ‘refugee per GNP’ paralleled the later UN target of foreign aid as a percentage of GNP (Grahl-Madsen 1983). A more elaborate initiative by experts and activists in the early 1990s sought to reformulate international refugee law so as to develop a global system of responsibility-sharing for refugees (Hathaway 1997). The idea that collective action would strengthen protection for refugees by reducing inequities among recipient states was at the core of both proposals. In the Western Hemisphere, the Haitian refugee crisis of 1994 prompted various proposals for sharing, including one developed by independent experts for the Caribbean region (Open Society Institute 1995).

States and international organizations have occasionally promoted similar ideas. The system established by UNHCR to resettle a small number of especially vulnerable refugees in third countries reflects in a modest way the principle of sharing responsibility. At present some 10 states—all in the North—participate regularly in the resettlement scheme, which involves some 30,000-50,000 ‘quota refugees’ annually (UNHCR 1995). When war in Yugoslavia in the early 1990s made hundreds of thousands of persons seek asylum elsewhere in Europe, the idea of a burden-sharing scheme was discussed in various intergovernmental fora and in UNHCR. At the time of the 1997 Albanian crisis, the Commission of the European Union was developing a proposal for responsibility-sharing in cases of mass influx of refugees, and the Council of Europe had twice affirmed the principle. In the Western Hemisphere, the United States had sought to ‘share’ Cubans with other states in the region when a large number of asylum seekers crowded into the US interest section in Havana in 1979. In 1994, the State Department scoured the region to find countries that would house some of the several thousand Haitian and Cuban asylum-seekers who were interred at the US Guantanamo base in Cuba. Subsequent to the crisis, the US Immigration and Naturalization Service was actively considering means of sharing, partly in the form of regional processing centres in Central America or the Caribbean.

The premises of these initiatives vary. Sharing proposals authored by states have typically come from governments trying to relieve what they perceive as a disproportionate influx on their own territory. To other states, sharing mostly appears as an added burden. States have been especially wary of institutionalized schemes that would commit them to take a certain proportion of future refugees flows of unknown frequency and magnitude. But the logic of sharing has an appeal above all and beyond such particularist
interest, and smaller states with a self-defined humanitarian foreign policy sometimes feel called upon to articulate it. Thus, Denmark has consistently since the late 1980s sought to move forward the discussion on sharing within Europe (IGC 1998).

Sharing schemes have primarily been discussed with reference to mass inflows of refugees, often in situations of generalized violence where the reasons for flight vary and some may not fall within a strict Convention definition. In addition, sharing has been promoted as a means of reducing inequities among regions. The assumption in the latter case is that weak and poor states in the South, which shoulder the largest proportion of the world’s refugees, will tend to restrict asylum if the rich states do not take their ‘fair share’ either by relaxing asylum procedures or increasing resettlement. The premise is open to question. While it is clear that some developing countries have ignored the principles of asylum, it is hardly due to global inequities. In the Great Lakes region for instance, immediate pressures and particularist state interests go a long way to explain the violations since 1994, although governments may seek to legitimate their actions by citing global inequities as well as restrictions on asylum in the North.

For states within a region that are likely to experience mass movements of people, however, sharing schemes have all the attractions of a good insurance scheme. By guaranteeing that a state will not alone face a refugee or migration emergency, the insurance scheme is also a reasonable guarantee that the institution of asylum will be kept intact since states are more likely to offer protection if they can share the burden.

In this context, arrangements that distribute refugees or asylum seekers according to principles of need and equity suggest benefits to all sides. Since most states at one time and at one level or other must deal with refugees, they have an overriding interest in developing common responses. In refugee matters, the logic of burden-sharing starts from the premise that helping refugees is a jointly held moral duty and obligation under international law. By institutionalizing the sharing in accordance with agreed principles of equity, states can discharge these obligations in a manner that simultaneously promotes national interests. Organized sharing means more predictable responses, greater international order, and lower transaction costs during a refugee/migration emergency—all of which are goods that states value, and which they seek to obtain through organized international cooperation (Levy et al. 1996). It was precisely for these reasons that states after World War II developed a progressively expanding international regime to assist refugees, which today covers a wide range of vulnerable persons.

For refugees, a sharing scheme implies more certainty and better protection and assistance, provided that the arrangement is based on international legal norms of refugee rights. From the perspective of refugees, the critical question is of course whether sharing would be wedded to liberal or narrow standards of rights. The critical weakness of sharing schemes is precisely that they may encourage collective action along restrictive lines, similar to the process of asylum harmonization in Europe, or permit involuntary relocation of refugees among states.

Forging collective action that genuinely benefits refugees obviously is difficult. Refugees constitute a special kind of ‘transborder flow’. Unlike capital, goods and services, and environmental effects that also cross national borders, refugees raise issues of social membership. Unless their stay is very short, they require some form of inclusion in the host society. Thus, not only territorial boundaries, but also those which define a community, are involved. Most importantly, the belief that membership involves costs which states in fact can avoid by unilateral action has encouraged governments to restrict asylum rather than enter into co-operative sharing schemes. The dynamic recalls the classic ‘Prisoner’s Dilemma’ where two parties try to save themselves through unilateral action rather than accepting the costs which accompany the benefits of co-operation (Noll 1997).

Yet the moral of the story of the ‘Prisoner’s Dilemma’ is that unilateral action in the end makes both parties worse off. The outcome contrasts with the promise of common benefits held out by the theory of collective action. Along with humanitarian concerns, these are the main reasons why the idea of sharing schemes for dealing with refugees refuses to go away.

The Logic of Collective versus National Action

The policy and academic discussion on ‘burden-sharing’—often used interchangeably with ‘responsibility-sharing’—has two distinct roots. One is in welfare economics and focuses on issues of public goods, including the question of who will pay. The other is related to military co-operation between the US and its allies in the 1970s, particularly the dispute between Washington and European states and Japan as to who would contribute what share of the defence burden. Both discourses invoked the logic of collective action as it had been developed in the social sciences (Olson 1965).

At first glance, there seem to be sufficient similarities between co-operation in the defence arena and refugee matters to suggest that insight can be gained from a comparative analysis. Writing on ‘responsibility sharing’ between the US and its Japanese and European allies for the Trilateral Commission almost two decades ago, Allison (1982) posed three central questions that are equally relevant to co-operation in refugee matters:

—What are the stakes in the partnership, i.e. what are the common interests, and can the interest of each actor be advanced more effectively by collective action than by going it alone?
—What is the scope of the partnership, i.e. how broad or narrow should it be, should there be sharing arrangements for only a limited number of issues while on the rest the actors agree to disagree?
—How should responsibilities be shared, i.e. are there criteria and procedures on which the governments can agree for allocating burdens and influence?
In a more recent publication, Acharya and Dewitt (1997) explicitly use the analogy from burden sharing in the defence sector to explore sharing of refugees among states.

The structural problems of co-operation are similar as well. Consider the key issue of ‘free riders’. Faced with mass inflows of refugees, potential receiving states have conflicting goals. They probably want to minimize the number of refugees on their own territory, but also to promote international stability and order—an objective that suggests joint regulation of the flow. If the states concerned are all potential receiving areas, the situation suggests co-operation among states to deal jointly with the problem. Assuming some respect for international norms, the most obvious co-operation would be to admit refugees according to an agreed formula for distribution. On the other hand, the ‘public good’ nature of the anticipated benefit will invite ‘free riders’. Since public good benefits are by definition indivisible, if one state admits refugees, others will benefit from the greater international order that ensues regardless of their own admissions. As a result, all will be tempted to cheat by letting ‘the other’ state do the job.

The same problem appears in many areas where states nevertheless manage to co-operate. Take for instance the case where states face the same potential enemy. The result is often a defence alliance with a built-in understanding of burden-sharing even though members have conflicting goals in this case as well. They want to co-operate to enhance national security and international order; they also want to minimize the cost assigned to them as individual members. As the tortuous discourse over burden-sharing in NATO demonstrates, all members have an incentive to cheat by taking a ‘free ride’ on the common security provided by states that carry the heavier load. But these enduring free rider problems did not prevent NATO from being established, maintained and even expanded. Why has it been so much more difficult to create regional ‘alliances’ to share responsibilities to care for refugees?

One answer may be the discrepancy between the up-front costs of sharing and the uncertainty of reciprocal benefits. Why, for instance, should France accept a larger share of Bosnian refugees to relieve Austria or Germany? Are there reasonable prospects that these states would help France in the case of, say, a large inflow of Algerian refugees? Clearly, there are no guarantees. But similar uncertainties about reciprocity are endemic to defence alliances as well. Even NATO’s iron-clad defence guarantee in Art.5 (‘an armed attack against one... shall be considered an attack against them all’) has never dispelled doubts about the willingness of members to aid each other, above all in situations of a nuclear conflict. A recurring question haunting NATO in the 1960s, for instance, was: is New York worth Berlin? Free rider problems are typical of all collective action and need not inhibit responsibility-sharing in asylum matters.

Larger obstacles lie in the nature of what is to be reciprocated and the ‘security threat’ itself. First, the equivalent of costs to be shared are not readily fungible across countries. Refugees may not wish to be ‘shared’ with countries where they have few cultural and social ties. Objections by refugees and human rights advocates are powerful arguments for reluctant states to avoid reciprocity (ECRE 1996). Secondly, what is the nature of the security threat posed by refugees? A military alliance is designed to protect against armed aggression. Increasingly, scholars writing on refugees have suggested that refugees are in the category of ‘extended security’ problems. While rarely a military threat, they can be perceived as threatening in numerous ways. As formulated most succinctly by Weiner (1996), the argument is that refugees can threaten a society’s political regime, cultural identity, socio-economic order and environment (at least locally if they arrive in large numbers), and national security (if they get militarily involved in the conflict from which they fled). Weiner suggests, for instance, that one regime may deliberately expel people in order to destabilize its neighbours.

However, the security analogy collapses because in some fundamental respects refugees do not threaten states. The point goes to the heart of why it is more difficult to share responsibility for asylum seekers than to co-operate for national defence. It will be recalled that the basic question is ‘Why share costs?’

The belief that co-operation produces positive-sum benefits creates the will to share costs in a defence alliance. Co-operation creates a level of security that individual states cannot attain on their own. Refugees, by contrast, rarely represent a threat that even a small and weak state cannot handle on its own by applying some military force—even when the asylum seekers arrive en masse. The ultimate weapon, of course, is denial of entry. Admittedly, states often have difficulties in controlling their borders. But that is rarely a reason why refugees have—or have not—entered. Refugees usually present themselves to request asylum, or are readily visible in the situations of mass inflows when sharing issues are most critical. As the recent Rwanda-Zairean case demonstrates, even the government of Mobutu’s Zaire exercised a policy choice in 1994 with respect to Rwandan refugees, who were first admitted, mainly for political reasons, and some of whom were returned by force a few months later, also for political reasons.

States with very unequal organizational capacity and military force have in recent years used military force to stop or reverse mass inflows. The limiting factor is not military power, but the political and moral costs of forceful interdiction or expulsion. Yet, states have been willing to do so when they deem it necessary. For instance, the Thai military at one stage of the 1979 refugee crisis pushed Khmer refugees across the border and over a cliff to Cambodia. The Malaysian navy and local police intermittently towed, or permitted towing of, refugee boats from Vietnam back to sea during the 1980s. The Italian Navy rammed and sank—accidentally or not—Albanian refugee ships in 1997. The US Coast Guard interdicted Haitian boats for most of the 1980s and into the 1990s. The cases underline the point that—unlike in matters of military defence—even weak states have very considerable capacity to meet the ‘security threat’ posed by refugees on their own and by unilateral action. As a result, the incentive to share costs and responsibility is inherently weak.
While the analogy between co-operation in defence and refugee matters breaks down at this point, it has served a purpose by highlighting the disincentives to collective action in asylum matters. A comparison with international environmental regimes is similarly useful by bringing out a critical difference. International environmental regimes typically address the causes of a problem, e.g. by regulating emissions of pollutants in the air and the sea, or restricting access to common resources (Haas et al. 1993). The present international refugee regime, by contrast, only deals with the consequences. States would have more incentives to accept responsibility-sharing schemes if they simultaneously had some assurance that they could control events that produce refugees. However, since refugees result from violent conflict, co-operation on causes would have to address issues of war and peace that are not easily controlled, nor within the jurisdiction of national ministries that deal with refugees (i.e. immigration, justice or home affairs). While there has been growing recognition for the last two decades that the underlying causes of refugee flows must be dealt with, and the notion of a 'comprehensive refugee policy' speaks to this very point, sharp institutional and policy distinctions remain between attempts to regulate conflict, and efforts to care for the victims.

Co-operation among states to share the responsibility for refugees in particular emergencies might well occur on an ad hoc basis. But states have shown themselves to be weary of long-term, institutionalized commitments where the rights of other states to draw on the institution—akin to the right to draw on a bank account—are uncertain or beyond their control. In this case 'drawing rights' would be the equivalent of requests that the participating states accept a certain share of refugees in the event of a mass inflow. Since the frequency and magnitude of these events are unknown, the cost implications of joining such schemes are highly uncertain. The lack of long-term, institutional arrangements, in turn, undermines the prospect for reciprocity and weakens the insurance logic which would make states join in the first place.

This analysis also suggests why the theorem of 'Prisoner's Dilemma' does not quite apply to refugees, and why the remedies it implies are unsuitable. In the game as originally constructed by Rappoport and Chammah (1965), two suspects who jointly committed a crime are imprisoned separately. They can communicate only with the prosecutor, not with each other. The prosecutor offers each prisoner a lower sentence if he will inform on the other, and both eventually do as mutual mistrust and the pursuit of the individual good prevail. As a result, sufficient evidence accumulates to convict both. By contrast, had the prisoners pursued their common good (acquittal for both) by not cooperating with the prosecutor, there would not have been evidence to convict either one. The implication for reform is that seeking the common good also enhances the individual good, and therefore constitutes the greater rationality. Mutual trust and communication are a means to that end.

Applied to state co-operation in refugee matters, the moral of the story is that the development of trust regarding reciprocity would enhance the common good by encouraging states to enter into sharing schemes for asylum seekers.

But the story starts in prison, it will be recalled, and is premised on a fundamental interdependence between the prisoners. If that assumption is relaxed, the conclusion must be modified as well. As suggested by the defence analogy developed above, states are rarely 'in prison' in refugee matters. There are two kinds of escapes:

— In regions where several states over time are likely to be major recipients of refugees: The prospect of common fate and reciprocity over time might encourage states to develop sharing schemes. However, states can escape from the dilemma by taking unilateral action to interdict or expel asylum seekers, or—less drastically—to impose stringent visa requirements and legal barriers as several European states did with respect to the Bosnian refugees. Co-operation to exclude or restrict is the likely outcome.

— In regions where the spontaneous distribution of refugee flows tends to be skewed towards one receiving area over time: Here states have less incentive to share for a start. In unipolar systems like the one formed by Central America—the Caribbean and the US, only a few states are 'in prison', the others are affected more indirectly by the flows.

Given the structural restraints on collective control of causes of refugee movements, and the seductive logic of unilateral action to deal with the consequences, it is difficult to see how sharing schemes permitting liberal admission of refugees could develop. Rather, these considerations suggest that if intergovernmental mechanisms were established for the purposes of sharing, they would be restrictive and exclusionary, whether by design or by the dynamic of downward harmonization seen in European asylum policies. As the European experience demonstrates, the result would be to shift the problem in a beggar-thy-neighbour manner rather than regulate it.

This is not to say that the options are limited to anarchy or restrictive harmonization. Historically speaking there have been two major cases of liberal responsibility-sharing, and the European Union was in the mid-1990s discussing the issue. In the two historical cases, sharing took the form of state-controlled resettlement; the EU discussion was with reference to sharing in the early stage of a mass inflow.

Case 1: Resettling Refugees after World War II

The development of an international refugee regime goes back to the Russian revolution and the League of Nations but did not accelerate until after World War II. The question of inequities among states in admitting refugees was not formally addressed until the 1938 international conference in Evian. The US called the meeting to discuss greater Western quotas for Jews fleeing from Germany and Austria; that is, sharing was thought to strengthen asylum. The effort collapsed, however, evidently crushed by the weight of national exclusionary tendencies hardened by economic depression and the approaching war.
After the war, the number of refugees and displaced persons was much larger, yet the conditions for helping them were more promising. When repatriation was discarded as a general solution, resettlement became the main alternative for the more than one million persons who remained in camps in the western zones of Europe. To carry this out, the West, led by the United States, established the International Refugee Organization (IRO), which in 1947–1950 oversaw the resettlement of 1.3 million refugees and displaced persons. Of these, the United States took almost one-third (31.7 per cent), Australia 17.5 per cent, Israel 12.7 per cent, Canada 11.9 per cent, Britain 8.3 per cent, other Western European states 6.8 per cent, and Latin America 6.5 per cent (Loescher 1994: 35–36). By the end of the 1940s, the most eligible had been picked, leaving about 410,000 who lingered in the camps for several years. The ‘hard core’, as they came to be called, were mostly old, diseased or injured by the war. Some resettlement countries such as Norway had special quotas for ‘hard core’ clients, but the numbers were extremely low.

While attentive to the ‘hard core’, the resettlement system functioned reasonably well in other respects. It permitted considerable convergence between the needs of the refugees and the interests of the host countries and, mainly for that reason, produced a durable solution. As refugees were resettled and incorporated in their new societies, the camps were eventually emptied.

What were the ingredients of success? First, the resettlement was strictly a European or Western affair in that it involved the movement of Europeans (broadly speaking), in the aftermath of a European-initiated war, to other European countries or to states governed by descendants of European immigrants. Some Latin American governments specifically recruited European immigrants to achieve a desired ethnic balance in society. Secondly, post-war reconstruction and the later post-war boom in industrialized states generated a significant demand for labour. Canada and Australia, in particular, recruited actively in the camps. Finally, but importantly, the refugees were the result of a world war that had engaged all the principal receiving countries and left a sense of obligation to care for its victims.

Within this context, something akin to a market mechanism functioned reasonably well in allocating state responsibility for most of the refugees. The IRO merely served as a facilitating agent and a clearing house. As in Evian a decade earlier, the issue of formal sharing criteria did not arise, but for a different reason. Before the war, no states came forward to take in refugees; after the war, enough came forward. In this process only the ‘hard core’ refugees missed out. These were also the most vulnerable and least able to survive in a marketplace of resettlement where the rules were largely determined by non-humanitarian considerations.

The conditions which made possible the collective effort to empty the camps clearly belong to that particular historical period, but the principles of action transcend time and place. Put in general terms, the participating states shared a sense of belonging to a larger community which carried associated obligations, and recognized that caring for the victims of war made macro-economic sense.

There was further a sense that emptying the camps of Europe was a one-time affair that would help to close a horrendous chapter in Western history.

Case 2: Resettling Vietnamese after 1975

The reactions of the international community to the massive outflows of Vietnamese in the 1970s and the 1980s constitute another case of collective action to solve a refugee problem through de facto sharing of responsibilities and costs, although the response became increasingly restrictive over time.

The Vietnamese case is unique. For the first, and so far last, time in modern history a large refugee population was systematically resettled from a developing county to industrialized states. Almost 700,000 persons were resettled during the 1980s and the early 1990s when the process came to an end; in addition, some 400,000 persons went directly from Vietnam to Western countries (mainly the US) under the Orderly Departures Program (UNHCR 1993: 23). A smaller number of Laotian and Khmer refugees were also resettled in this period, but to illustrate the process it is useful to focus on the Vietnamese.

The exodus from Vietnam was a flight from the rigours, political orientation and human rights violations of the communist regime, as well as the conflicts with its neighbours. The widely publicized plight of the ‘boat people’ underscored humanitarian imperatives to assist them, but there were also political considerations. In the countries of first asylum in Southeast Asia, sensitive social and ethnic issues produced restrictive actions against the Vietnamese. In the US and other Western countries, anti-communist foreign policies and the memory of the Vietnam war helped to create liberal admission policies (O’Connor Sutter 1990, Chan 1990). Japan was pressed to admit Vietnamese as well but only accepted a few. In what later became known as the Japanese solution, the government responded to burden-sharing demands primarily by increasing its financial contribution for camp facilities, maintenance and resettlement elsewhere.

Faced with a large and continuing influx, the governments of Malaysia, Thailand and Indonesia instituted policies of deterrence, or alternatively required guarantees from industrialized states to do their share in the form of resettlement. Principles to this effect were laid down at the Geneva Conference in 1979, which also requested Vietnam to halt outflows. The consequent resettlement programme lasted for about a decade. It was based on an explicit principle of responsibility-sharing in that the availability of first asylum in the region was made contingent on resettlement elsewhere.

An implicit sharing of responsibility developed among the resettlement countries as well. As in the case of the post-World War II resettlement, the distribution was made through a market system of sorts, shaped by immigration criteria, humanitarian concerns and political factors. Australia, Canada, the United States, and to some extent France, sent officials to camps in the first asylum areas to select and process candidates for resettlement.
While it lasted, the market system of resettlement succeeded in creating reasonable compatibility between the needs of the receiving countries and the refugees. However, the very openness of the resettlement policy eventually undermined it. By the second half of the 1980s, it seemed that new waves of Vietnamese asylum seekers appeared in a never-ending process (Thayer 1989). Western countries started to close their doors and question whether the Vietnamese qualified as refugees. As Western admissions went down, countries of first asylum reduced their intake as well. Thailand and Malaysia began to push back asylum seekers, and Hong Kong rejected new arrivals claiming they were illegal migrants.

As weaknesses in the programme developed, a collective response to shape new directions emerged. The Comprehensive Plan of Action (CPA) adopted by the Geneva meeting in 1989 incorporated return as a principal solution, and instituted a process of individual status determination for those who refused to go back. The plan effectively meant the end of large-scale resettlement, exactly a decade after it was formalized in the first Geneva meeting to deal with Indochinese refugees.

As in the case of Europeans after World War II, the large-scale resettlement of Vietnamese was also a product of its historical time. But—unlike the former—the process was dependent on the role of a hegemon in the sense developed in international relations theory (Keohane 1984). The program can only be understood in the aftermath of a devastating war in which the United States, for the first time, suffered a humiliating defeat. Seeking to rescue its erstwhile South Vietnamese allies, and people that refused to live under the new communist rulers, the US became the principal architect of the entire resettlement system. Throwing its considerable political weight behind the program, the US government established large admission quotas for its own part, urged other states to do likewise or, at least, to contribute financially, and pressured the countries of first asylum to keep their doors open. Even with the widely publicized plight of the 'boat people', it is doubtful that humanitarian imperatives alone would have sufficed to sustain a refugee programme of this magnitude. In the inter-regional sharing scheme that was bracketed by the two Geneva conferences (1979 and 1989), the US fulfilled critical leadership functions by ensuring that a) the issue remained high on the policy agenda of states concerned, b) key actors stayed engaged, and c) national policies were at least minimally consistent with the principal objective of the regime (i.e. to facilitate movement of refugees). The result was an informal responsibility-sharing guided by hegemonic pressure on individual actors to do more, but leaving each actor to define that share according to its own selection procedures and intake-criteria.

**Case 3: Burden-sharing in Europe in the 1990s**

Compared to earlier refugee crises, European responses to the refugee emergency created by the war in former Yugoslavia (1991–95) were extraordinarily restrictive. Economic and socio-cultural conditions no longer favoured receiving refugees; nor were there compelling foreign policy reasons to do so. UNHCR brokered the resettlement of a small number of 'vulnerable cases', but there was no collective action for large-scale resettlement, and most European states imposed visa restrictions to prevent direct entry. By 1993, some 600,000 persons from the former Yugoslavia had nevertheless entered the European Union or nearby countries directly, either before visa restrictions were imposed or by way of non-refugee entry categories. The uneven distribution of the refugees, and the prospect that more might come, led to a reconsideration of schemes to share the intake. States that had relatively few refugees had no interest in redistribution, however, and their opposition combined with uneasiness from other states to dilute the initiative. In the end, sharing mostly came to mean financial assistance to states most heavily affected by a refugee influx—that is, the easiest form of sharing.

The process started in February 1992 in the informal Intergovernmental Consultations on Asylum and Immigration held by the European and North American states and Australia (IGC). A series of meetings were also held with Bosnian, Croatian, Slovenian and Hungarian officials and culminated in the Vienna meeting in May 1992. As part of this process, the IGC Secretariat prepared a proposal designed to function as a continuous mechanism over a period of time. Sharing was to be based on fixed quotas offered by states, and key to certain socio-economic parameters denoting 'absorption capacity' to be determined through formal consultations. An ambitious scheme, it was essentially an advanced version of the system of resettlement quotas offered by states to UNHCR. The radical implication of the proposal, however, helped to kill it. Fearing that states would use the mechanism of formalized quotas by offering very low numbers, UNHCR opposed the idea. With no strong state backers, the IGC proposal quietly died, although elements reappeared elsewhere.

The ministerial meeting called by UNHCR on 29 July 1992 to develop a comprehensive response to the refugee crisis caused by the war in Yugoslavia brought out conflicting reactions. European Communities members declared bluntly that a just and lasting solution 'will not be assisted by movements of people outside the boundaries of the former Yugoslavia' (Noll 1997:6). A compromise emerged in the form of temporary protection—the EU could not ignore the masses of displaced on its doorstep, while UNHCR was willing to settle for less than full asylum if necessary—and with it the notion of a distribution of beneficiaries (Thorburn 1995; Joly 1997). Five months later, the principle of temporary protection was reluctantly affirmed by the EU Parliament, but nothing was yet said about burden-sharing. Anticipating a discussion, however, the London December 1992 meeting of European immigration ministers laid down principles that would apply to admissions outside the regular asylum process. EU members would admit 'in accordance with' national capabilities and 'in the context of co-ordinated action' by all member states. The reference to co-ordinated action and national capabilities
was hardly an effort to avoid the sharing issue, as Noll (1997) argues, but a statement of two important principles of sharing, if such were to be instituted.

During the following year, most European countries imposed visa restrictions on citizens of the former Yugoslavia, and the inflow slowed dramatically. By that time, the distribution of de facto refugees from ex-Yugoslavia enjoying various forms of legal protection were as follows: Austria, Sweden, Germany and Switzerland had the highest intake on a per capita basis, Germany also had the highest in absolute terms, equivalent to 58 per cent of all West European states or 63 per cent in the EU. Great Britain and France had the least in absolute terms. Not surprisingly, the states that carried the issue in European fora were those with the largest intake: Sweden, Austria and Germany.

The IGC proposal was picked up by Sweden and Austria. Not being EU members at the time, they turned to other organizations to which they belonged—the Conference on Security and Co-operation in Europe (CSCE), and the Council of Europe. The fact that Sweden at the time (1993) chaired the CSCE also explains why Sweden chose that forum.

The Swedish–Austrian proposal originated in the office of the Swedish Under-secretary of State in the Ministry of Culture and Immigration, and was discussed at a Council of Europe meeting of immigration ministers in Athens in November 1993. Germany signed up behind the draft resolution, as did Denmark, Norway and Switzerland. The list of sponsors tallied with the states most affected by the Yugoslav refugee crisis; the other Nordic states joined Sweden in a usual gesture of solidarity. The draft resolution simply stated in general and cautious terms that 'a more equal distribution' of de facto refugees from Yugoslavia would make it easier to provide protection, and proposed that states shelter and host the refugees 'on a more equitable basis' (Migration News Sheet 1993). But even this wording was too ambitious, especially for the United Kingdom and France. Faced with a virtual veto from the latter, the meeting took no action.

A more cautious version was adopted two months later, at the January 1994 meeting in Strasbourg. States should work together 'in a spirit of solidarity' to provide protection and humanitarian assistance to refugees from ex-Yugoslavia, 'taking into account the contributions already made' by individual states. The meeting also invoked the logic of an insurance scheme: 'given that population displacements may also occur elsewhere in Europe as a result of similar situations, collective co-operation should be encouraged' (cited in the Draft Resolution of the Presidency to the Council, 1 July 1994).

The discussion had revealed the narrow limits and slim possibilities for responsibility-sharing in asylum matters. To be legitimate, the very idea of sharing required participation by the major players. When two of the largest states in Europe seemed to be 'free riders', other states pulled back. Hence the UK and France effectively vetoed the process. France and the UK also raised the question of what was to be shared, arguing for equivalence in broad terms. Both had troops on the ground in Yugoslavia and asked that peace-keeping contributions be counted against refugee admissions. Only in this way would refugee policy become truly comprehensive, it was claimed.

It had also become evident that a retroactive shift of refugees was unrealistic. Low intake countries such as the UK and France would not help Germany by resettling refugees who had arrived there some time earlier. Nor might secondary moves benefit refugees, as advocates of refugees and human rights pointed out. The focus shifted accordingly to possibilities for establishing guidelines for early sharing in future refugee emergencies.

Discussing the matter in the forum of ministers of immigration was logical in terms of formal jurisdiction, but institutional orientations of exclusionary control or 'national absorption capacities' tended to narrow the ground. By holding out prospects for international co-operation and order, sharing schemes would be more attractive to ministries of foreign affairs. Subsequent progress was indeed made within a broader institutional framework.

Towards mid-decade the issue made its way to the work programme of the Council of Ministers of the European Union. On 30 November 1993, shortly after the abortive discussion of the Swedish–Austrian proposal in Athens, the Council decided to examine the question in detail and informed the national ministries of justice and home ministries accordingly. The sharing issue was also incorporated in the more comprehensive Communication from the EU Commission on asylum and immigration policies that was issued in February 1994 but had been in preparation for some time (Commission 1994). The operative paragraph relating to sharing was quite brief, but laid down important principles of policy. First, the Commission recognized that members would be guided by 'national absorption capacities' when responding to a refugee emergency. Second, eschewing a formal quota system, the Commission more modestly encouraged members to help those who for geographic or other reasons had received large inflows. Thirdly, the nature of help was not specified. Recalling that the European Parliament in 1987 had recommended financial sharing among member states that were differentially affected by mass inflows, the Commission noted that equitable measures could include financial transfers, possibly instead of moving refugees. Finally, the Commission recommended developing a system to monitor national absorption capacities, and creating a mechanism that governments could draw on if they wished to assist other member states faced with a mass influx.

In slightly stronger language, the European Parliament went on record in support of the Swedish–Austrian principle that was dividing the European immigration authorities. The Parliament's resolution on the General Principles of a European Refugee Policy, adopted in January 1994, called on the Commission to move forward by

drawing up plans for a European Fund for Refugees and ... an emergency plan for the reception of refugees which provides for them to be distributed evenly among the countries of the Community (OJ 1994:para 16).
There the matter rested until the second half of 1994, when Germany assumed the Presidency of the EU. Noting that the issue was formally on the work programme of the Council, Germany prepared a draft resolution on 1 July 1994. To keep the momentum, the Council of Ministers meeting in Essen in December called for further study of problems associated with mass influx of refugees and means of sharing the burden of humanitarian assistance. Over six months later, the process had reached a level of concreteness and consensus that enabled the Council to move from the German draft version to adopt a final resolution on 25 September 1995.

The draft resolution (European Union 1994) and the final text (OJ 1995) are a year apart in time, but much further in substance. From the one to the other, boldness of spirit has been erased and teeth removed. Incorporating ideas that have been aired since the late 1970s among experts, the ambitious draft resolution outlines what is effectively an insurance scheme. Members pay a premium, so to speak, in the form of a quota based on assumed national capacity to absorb refugees (as indicated by size, population and wealth), and commit themselves to long-term participation. As a generalized and established system of distribution, the scheme would go into effect whenever an emergency arose, thus also ensuring a quick response. More specifically, the draft version of the sharing scheme involved:

- agreement on joint admission measures by states and indicators for establishing national quotas for refugee admissions;
- indicators based on the size, population and GNP of member states giving the following distribution: the largest indicators of 21, 19, 15, 14 go to Germany, France, Italy and UK respectively, and the smallest to Luxembourg, Denmark and Portugal (0.1, 1 and 2 respectively). Thus for every refugee Denmark admits, France should take in 19, etc.
- review of the index every five years;
- adjustment among states after a given inflow so that those who exceed the number suggested by their indicative figure can offload to the others.

All these bold features have disappeared in the text of the final resolution. The 'Resolution on Burden-sharing with Regard to the Admission and Residence of Displaced Persons on a Temporary Basis' of September 1995 simply offers principles to guide states in the event of an emergency, including the spirit of solidarity, equity of distribution and harmonization of response. The reactions of members to refugee emergencies should ‘where circumstances so permit, be as far as possible the same’, and states should harmonize admission procedures in emergencies so as to reduce the differential effect on destination of flows. But there is no formula for distribution, and the responses and consultations are to be ad hoc, shaped by individual emergencies. There is no regime that binds members to particular procedures and reduces transaction costs. In the analogy of the insurance scheme, no premiums are to be paid in advance. While recognizing the need for a speedy and therefore 'precise framework' for admissions, the final resolution also notes the need to be flexible in this regard, and concludes that existing Council rules make it possible to 'arrive rapidly at a balanced sharing of the burden in a spirit of solidarity'.

Both the draft version and the final resolution recognize the principle of equivalence in broad terms: peace-keeping participation can be counted against refugee admissions. The criteria for obtaining protection are also the same in both versions. While not specifically referred to, Yugoslavia is clearly the model. Two categories of 'civil war refugees' are eligible for admissions outside the normal asylum procedures, i.e. on a temporary protection basis: a) those who come 'directly from combat zones'—a concept which lends itself to restrictive and literal interpretations, and b) those who in UNHCR terminology are particularly vulnerable and in the Yugoslav case were resettled in small numbers under a voluntary quota system (prisoners of war, victims of sexual assault, persons requiring special medical treatment, etc.).

In retrospect, the resolution appears as a watershed. It was passed in September 1995, more than three years after UNHCR had tried to energize the European governments to adopt a common response towards the Yugoslav refugee crisis, and two years after the burden-sharing question was put on the table of the Council of Europe's ministerial meetings. All European states had by this time adopted visa restrictions to prevent the entry of refugees from ex-Yugoslavia, and the unequal distribution of the 600,000 or so who had arrived earlier had stabilized. While the sharing issue by 1995 was no longer moved forward by the Balkan refugee emergency, no greater sharing had been possible at the height of the crisis. Evidently, a voluntary and ad hoc commitment to share in the spirit of solidarity represented the limits of the possible.

The 1995 resolution points as well to the counterproductive effects of proposing formalized sharing schemes to reluctant states. As in the case of the 1992 IGC proposal, some refugee advocates feared that conservative governments would use a formalized quota scheme to fix their commitments at low levels, or engage in a competitive search to ensure that each had no higher intake than the next state. If so, the insurance scheme that in theory would make everyone better off would end up as a regional exclusionary scheme, in effect, a beggar-thy-neighbour policy which benefited neither the broader international community nor the refugees. As a result, liberal forces and refugee advocates never gave the sharing scheme full backing, while in a traditional states' rights perspective it was suspect from the start.

Nevertheless, the Yugoslav conflict had underlined the challenges of a refugee emergency that could recur. With a large population in evident need of protection assembled at its doorstep, the EU could not simply ignore the problem, and a co-ordinated response in some form or other seemed appropriate. By early 1997, the EU Commission had defined this as 'a common approach' to temporary protection in response to mass influxes. The Commission's 'Proposal to the Council for a Joint Action'—which was to define the EU's further work towards responsibility-sharing—had three critical dimensions (Commission 1997):
— On the eve of a mass influx, member states will jointly decide whether or not to invoke a collective decision-making—i.e. whether to jointly include or exclude for a start. The key issue of when, or whether, to establish a temporary protection regime had earlier been broached by the Council in a 4 March 1996 ‘decision’. As Kerber points out, the ‘decision’ only gave member states the option of applying a collective decision-making framework. In the Albanian emergency, for instance, it was decided not to establish a temporary protection regime (Kerber, n.d.:4).

— If a temporary protection regime is established and de facto refugees are admitted, some harmonization of rights granted by member states (duration of stay, social conditions, work permits, family unification etc.) is necessary to minimize skewed distributions in the direction of flows.

— If a member state for geographic or ethnic reasons nevertheless receives a disproportionate number of refugees, other member states will consider ways of rendering assistance, particularly by financial contributions.

In this scheme, harmonization of rights rather than formal sharing of refugees is used as a distributive device. This constitutes an indirect rather than direct form of regulation; in market terms it would mean reducing systemic biases and other market imperfections. By equalizing the basic rights extended to refugees, states encourage an even distribution of flows and consequent responsibility-sharing in a given region. The system also offers refugees some freedom of choice as to where they will seek protection. Refugee preferences as well as other differences among states may in turn offset the equalizing tendency intended by harmonizing rights among states. Overall, however, the effects of the scheme would depend on whether the EU would decide to apply the collective mechanism, and what content to give that mechanism if it were applied. As currently formulated, the ‘common approach’ is only suggestive of the need to co-ordinate.

Conclusions

Concepts of burden- or responsibility-sharing have been central in the current search for reform to safeguard asylum. Initially proposed by liberal advocates, such schemes were designed to create greater equity in the asylum burden, thereby increasing the incentives of states to protect refugees. Sharing schemes were thought to function as an insurance: states would agree to accept a certain proportion of refugees during mass outflows, and no individual, participating state would therefore become sole host—and tempted to close its borders—in a refugee emergency. Better management of mass refugee flows would serve the interest of states, strengthen international order and stability, and simultaneously protect the rights of refugees.

Further reflection casts doubt on this fortuitous harmony of values. Sharing schemes may instead become a mechanism for states to fix their commitments at very low levels, thereby institutionalizing a burden-shift among regions and restricting the rights of refugees.

Game theorems from ‘the Prisoners’ Dilemma’, and analogies from international co-operation in defence and environmental affairs, help to explain the disincentives of states to take collective action in matters of asylum. Unlike situations which incline states to co-operate for defence, states have the capacity to ward off refugee ‘threats’ with unilateral action. Unlike international environmental regimes which typically address the causes of a problem, asylum regimes address only the symptoms. This makes the costs of participation in formalized sharing schemes over time uncertain and beyond the control of individual states. States are customarily reluctant to commit themselves to pay for developments over which they have no control; this may be particularly so in matters of population intake. The attitude of states towards paying assessed contributions to the United Nations reinforces the point. UN members have some power to decide which actions the organization will undertake—e.g. in peacekeeping—and for which they are assessed a fixed proportion. Yet the logic of an insurance scheme, and hence a reciprocity that sustains collective action, can only prevail if the scheme entails a steady commitment over time.

There are nevertheless two major success stories of state sharing during a refugee emergency. Both, it should be noted, were ad hoc and informal schemes. Sociologically speaking they are characterized by different dynamics. Resettlement of refugees and displaced persons in Europe after World War II was a mixed instrumental-communitarian model. Participating states shared a sense of values with, and obligation towards, the victims of the war. They also welcomed European immigrants for political or macro-economic reasons. Within this framework, sharing was done through light brokerage by common institutions (IRO and later UNHCR) and market mechanisms. In the resettlement of Vietnamese refugees after the second Vietnam war (1975 onwards) light brokerage was insufficient. One major actor, the United States, was moved by humanitarian and political reasons to put pressure on other states, set the rules for collective action, and took its own ‘fair share’. Within this essentially hegemonic scheme, the matching of refugees with recipient countries followed a market mechanism as well.

Whether formalized or not, both dynamics are relevant to contemporary emergencies. In the instrumental-communitarian model, states will share based on autonomous calculations of values and interests. In the hegemonic model, states will need to be persuaded or pressured by the hegemon. The two historical cases both involved inter-regional transfers, but in theory sharing is likely to be easier within than among regions (Hans and Suhrke 1997). States within a region are all likely to be affected by a given refugee flow and have a common interest in managing it. Moreover, existing patterns of co-operation within a region may involve trade-offs that facilitate collective action in refugee matters as well.

In contrast to the two historical cases, attempts in Europe to institute sharing mechanisms for admitting refugees from ex-Yugoslavia failed
miserably. Without a hegemon, or strong instrumental-communitarian reasons, the profound disincentives to collective action in asylum matters prevailed. Liberal advocates opposed formalized schemes as well, fearing that states would use them for restrictive purposes. By 1997, the EU continued its efforts to institute responsibility-sharing for temporary protection during cases of mass inflows, but focused on harmonization of rights rather than quotas as a distributive device, and financial aid.

The profound irony of the European experience is that a restrictive dynamic might easily occur whether states co-ordinate their responses or not. If they did not co-ordinate to distribute the protection function among themselves, a spontaneous competitive exclusionary effect could readily develop since no state would want to be more liberal than the next and act as a magnet. If the states chose to institute a sharing formula, the temptation would be to peg commitments at low admission levels and restrictive rights. Ambitious sharing schemes, particularly if they were institutionalized with long-term time-horizons, might encourage states to define a refugee flow out of existence by declaring it to consist of ‘migrants’.

The alternative to a formalized scheme is routinized response to individual emergencies. In isolation, it is not self-evident which of the two is least restrictive on refugees. Much depends on the socio-political context. In some cases, asylum would be best served by leaving states to face the full force of humanitarian imperatives as these are crystallized by individual crises and articulated by concerned groups or organizations.


