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9 Towards a Common European Asylum Policy Forced Migration, Collective Security, and Burden Sharing

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Introduction

Forced migration to Europe differs significantly from that to the U.S. Most persons arriving in the U.S. for humanitarian reasons do so as resettled refugees, which allows for considerable control over numbers and for the pre-screening of those admitted. In Europe, in contrast, individuals claiming persecution arrive almost exclusively as (spontaneous) asylum seekers at the border and the decision as to whether or not they qualify for protection is therefore taken while the claimants are already on a state's territory. The security challenges resulting from spontaneous asylum seekers are therefore potentially greater than those of resettled refugees.

Asylum seekers have long been regarded as constituting a variety of security challenges for European states. They constitute a large category of foreign arrivals—the largest in some countries (such as in Germany in 1992). These challenges are often closely related to the massive fluctuations in asylum seekers and the limited effectiveness of receiving states to control such flows. As such, the events surrounding September 11 reinforced a pre-existing European security agenda vis-à-vis asylum seekers in Europe (Bigo 1994; Guild 2003; Huysman 2000) and strengthened a belief in the necessity for closer cooperation among the EU Member States on border-control issues more generally. Although the Members devoted the first EU Justice and Home Affairs (JHA) Council meeting following the U.S. 9/11 attacks exclusively to the EU response on security and other measures to combat terrorism, the specific measures adopted focused on wider security issues (judicial cooperation, cooperation between policy and intelligence services, cooperation with the U.S. and joint measures at the EU's external borders) but did not make an explicit link between terrorist attacks and the inflow of asylum seekers into Europe (JHA Council 2001).

Hence, unlike in the U.S. where September 11 had quite a wide-ranging impact on U.S. immigration law, the terrorist attacks in New York, Madrid, and London were seen in Europe as again highlighting the need to consolidate efforts to achieve more effective border controls through enhanced EU cooperation in the wider JHA area. The major driving force behind

developments in EU-JHA matters in general, and moves towards a common European asylum policy in particular, were therefore not a response to particular terrorist incidences such as those of September 11 but the result of broader security implications (perceived and real) of the European integration process itself (Byrne, Noll, and Vedsted-Hansen 2002; Guiraudon 2000; Lavenex and Uçarer 2002; Stetter 2000).

Two developments are particularly important here. First, the removal of internal borders as part of the single market program and the Schengen process meant that once inside one Member State, foreigners could move quite easily onto other Member States. Second, the process of enlargement meant that over time the external borders of the EU have faced poorer and more volatile neighbors while the capacity of the new Member States to effectively control their (and hence the EU's) borders is considerably lower than that of the old Member States.

The security concerns related to these developments have been heightened by the highly varied attractiveness among the EU Member States as destination countries for asylum seekers, leading to the fear that asylum inflows may overburden some states and that unilateral restrictive efforts to gain control over such flows might result in highly undesirable consequences for the other Member States, asylum seekers, and the wider integration process itself. Recent developments towards a common asylum policy in Europe have therefore been closely linked with the perceived need for "burden-" or "responsibility-sharing" in this area (Noll 2000; Suhrke 1998; Thielemann 2003). The Member States' commitment in this regard was perhaps most clearly stated at the Brussels European Council meeting in November 2004. In their final declaration, EU leaders stressed that the development of a common policy in the field of asylum, migration, and borders "should be based on solidarity and fair sharing of responsibility including its financial implications and closer practical co-operation between member states" (European Council 2004). The United Nations High Commissioner for Refugees (UNHCR) echoes this concern because "burden-sharing is a key to the protection of refugees and the resolution of the refugee problem" (UNHCR 2001). In 2005, the then UN High Commissioner Lubbers stated:

There is a need for responsibility and burden-sharing within the EU . . . I fear that high protection standards will be difficult to maintain in a system which shifts responsibility to states located on the external border of the EU, many of which have limited asylum capacity. (Lubbers 2005)

However, despite of a lot of legislative activity, the EU's refugee burden-sharing initiatives have not been fully effective. Some of the recent measures introduced even appear to have reinforced the observable imbalances in responsibilities. As such, the EU has arguably undermined its own burden-sharing

objectives with security implications for individuals inside and outside the Member States.

To substantiate this argument, this chapter will first discuss the extent and causes of unequal asylum and refugee burdens. An analysis of the various types of burden-sharing initiatives available in this area will follow. Finally, there will be an analysis of the specific refugee burden-sharing instruments developed within the EU's emerging asylum system and a discussion of why their effectiveness has been limited and sometimes counterproductive.

How (Un)Equal is the Distribution of Refugee Burdens?

When comparing their relative contributions to refugee protection, states are likely to disagree about how such contributions should be assessed. However, by looking at some of the most directly linked responsibilities associated with international refugee flows, it is possible to arrive at some approximations of relative responsibilities that countries face or are prepared to accept. Table 9.1 overleaf tries to do just that. It presents UNHCR data on asylum and resettlement for a selection of 15 member countries of the Organization for Economic Co-operation and Development (OECD) for the period 1994–2002.

Column 1 shows the average number of asylum applications received in each country over the time period and column 2 indicates what percentage of these arrivals were given permanent or temporary protection status by the state in question. Column 3 lists the number of refugees who arrived via resettlement programs (i.e., not as "spontaneous" asylum seekers). The final column combines the numbers of "recognised" asylum seekers (i.e., those who have been granted some form of protection status) with the average number of resettled refugees and puts the combined total in relation to a country's population size (as a measure of absorption capacity). This provides the average accepted asylum/refugee burden for each state, relative to a country's size. This "relative" figure is arguably a more appropriate measure of "burdens" or "responsibilities" than comparing absolute numbers of asylum seekers/refugees that do not take account of vast differences in countries' size and hence absorption capacity. One finds strong variation not just among OECD states but also among EU countries—states such as the Netherlands, Denmark, and Sweden face significantly higher asylum and refugee related responsibilities than do other Member States.

Why are Refugee Burdens Unequally Distributed?

When trying to account for the current distribution of refugee burdens among countries, three principal explanations have been suggested. These relate to free-riding opportunities, state interests, and variation in pull factors.

Table 9.1 Average accepted protection burden (1994–2002)

Country	1 Average annual number of asylum applications*	2 Average recognition rate (%)**	3 Average resettlement arrivals	4 Average accepted protection burden***
Netherlands	35,345	62.7	308	1.399
Switzerland	25,208	39.3	0	1.376
Denmark	8,312	61.6	1,034	1.181
Sweden	15,556	45.1	1,945	1.031
Norway	7,836	35	1,494	0.967
Canada	29,755	59.8	10,898	0.959
Belgium	21,532	32.3	0	0.678
Australia	9,086	18.1	10,222	0.636
United States	75,484	29.7	76,243	0.369
United Kingdom	61,077	36.1	39	0.362
Germany	100,844	15.7	0	0.188
France	30,595	18.4	0	0.092
Italy	9,223	24.6	0	0.049
Spain	7,552	24	0	0.048
Japan	187	13.5	162	0.001

Notes

* Figures generally refer to the number of persons who applied for asylum. The figures used here are generally first instance ("new") applications only. Source: Governments, UNHCR. Compiled by UNHCR (Population Data Unit). See also: <http://www.unhcr.ch> (Statistics).
 ** Total recognition rates in industrialized countries (first instance). Includes persons recognized (under Geneva Convention) and those "allowed to remain" (on the basis of subsidiary protection) divided by the total of recognized, allowed to remain and rejected. Source: UNHCR Statistical Yearbooks.

*** Number of asylum seekers given permanent or temporary protection status combined with number of resettlement arrivals per 1,000 of population per year.

Free-Riding Opportunities in the Provision of Collective Security

Similar to the NATO burden-sharing debate, there have been protests and free-riding accusations from the main receiving countries of asylum seekers as well as threats by some states to opt out of the Geneva Convention for the Protection of Refugees to which all OECD countries are signatories. A number of scholars, most prominently Suhrke (1998), have suggested that refugee protection has (at least in part) important "public good" characteristics. Suhrke argues that the reception of displaced persons can be regarded as an international public good from which all states benefit. In her view, increased security is the principal (non-excludable and non-rival) benefit, as the accommodation of displaced persons may reduce the risk of their fueling and spreading the conflict from which they are fleeing.

As with the provision of other international public goods, such as collective defense, one might therefore expect substantial free-riding opportunities with regard to refugee protection. While empirical evidence suggests that small

countries exploit larger countries with regard to the NATO burden-sharing debate (Olson and Zeckhauser 1966), analysis of the refugee reception burden suggests the opposite. Figure 9.1 suggests that, in the case of the reception of refugees by OECD countries, smaller states appear to shoulder disproportionate burdens.

States' Security Interests and Normative Preferences

Another way to try to explain the unequal distribution of refugee burdens is to analyze specific state interests and countries' normative preferences in this area. Some economists have developed a refined version of Olson's public goods approach, one that is based on the so-called "joint product" model (Sandler 1992).¹ This model suggests that what might appear as a pure public good in fact often brings excludable (private) benefits to a country. Based on this "joint product model," we would expect that a country's contributions to the provision of a particular collective good (which has both public and private characteristics) will be positively related to the proportion of excludable benefits accruing to that country. It seems reasonable to assume that one country's efforts in the area of refugee protection will have some positive spillover effects on other countries in the region. However, refugee protection arguably provides a spectrum of outputs ranging from purely public to private or country-specific outputs. This means that refugee protection provides more than the single output of "security" implied by the pure public goods model: it also provides country-specific benefits such as status enhancement or the achievement of ideological goals (such as when the West was keen to accept political refugees from behind the Iron Curtain during the Cold War). Moreover, we can also expect relatively more benefits from refugee protection measures accruing to countries closer to a refugee-generating conflict.² In other words, what is often regarded as a public good has in fact excludable (private) benefits to a country. The "joint product model" therefore suggests that a country's contributions to the provision of refugee protection (with its public and private characteristics) will be positively related to the proportion of excludable benefits accruing to that country.

From a norm-based perspective, patterns of burden-sharing can be explained with reference to the observed variation in states' commitment to norms that are related to the particular burden in question. From this perspective, the burden that a state is prepared to accept will be linked to the strengths of a state's preferences on safeguarding certain norms (such as general human rights standards or norms of distributive justice). It has been shown that states' willingness to shoulder protection burdens are positively correlated with their relative commitment to the norm of solidarity with people in need; countries that accept a disproportionate number of protection seekers are also the ones with a strong commitment to domestic redistribution (extensive welfare states) and above average foreign aid contributions (Thielemann 2003). A state's greater willingness to accept burdens (for whatever of the above

reasons) often means that it will adopt a relatively lenient policy regime (more access, more attractive reception/integration package, etc.). Overall, however, there are reasons to expect that structural determinants are more important than policy-related factors for attempts to explain the relative distribution of asylum burdens among OECD countries.

Structural Pull Factors

As shown above, "spontaneous" asylum seekers constitute the majority of those arriving in Europe stating humanitarian reasons. Under the current international refugee protection regime, states of first asylum are obliged to determine the status of asylum seekers (i.e., assess whether they qualify as refugees under the 1951 Geneva Convention). Differences in structural pull factors (i.e., non-policy-related factors that make some host countries more attractive than others) have a very strong effect on the relative distribution of asylum seekers.³ Table 9.2 (column 1) ranks Western European countries according to the average number of asylum applications per thousand of population. Table 9.2 also ranks those countries with regard to six indicators (columns 2-7) that stand for potential determinants or "pull factors" for an asylum seeker's choice of preferred host country. The correlation coefficient in the bottom row of the table indicates how closely each of the six indicators (explanatory variables) listed correlates with countries' relative asylum burden (in column 1).⁴

In this table, we find that the relative number of asylum applications is very highly and positively correlated with countries' prosperity ranking and one finds a negative and still quite strong correlation with unemployment rates. In other words, this suggests that countries that are relatively rich and possess relatively favorable labor market opportunities tend to receive relatively high numbers of asylum applications.

The third indicator relates to historical ties (colonial links, language ties, cultural networks, etc.) between countries of origin and destination that often have led to transport, trade, and communication links between such countries; these links tend to facilitate the movement of people from one country to the other (Massey et al. 1993: 445-447). One possible way to study the strength of such ties is to estimate the number of current or former citizens of a particular country of origin who reside in different destination countries. Drawing on this, Table 9.2 shows that high asylum burdens correlate strongly (and positively) with historical links between countries of origin and countries of destination. Host countries in which immigrant communities have become well established are likely to be countries confronted with relatively high asylum burdens.

The fourth indicator is more political in nature and seeks to capture the reputation that a particular country of destination enjoys abroad, especially in the developing world from which a large majority of asylum seekers originate. It is natural for asylum seekers to be concerned about personal security and the difficulties they might face regarding their acceptance into a new host society.

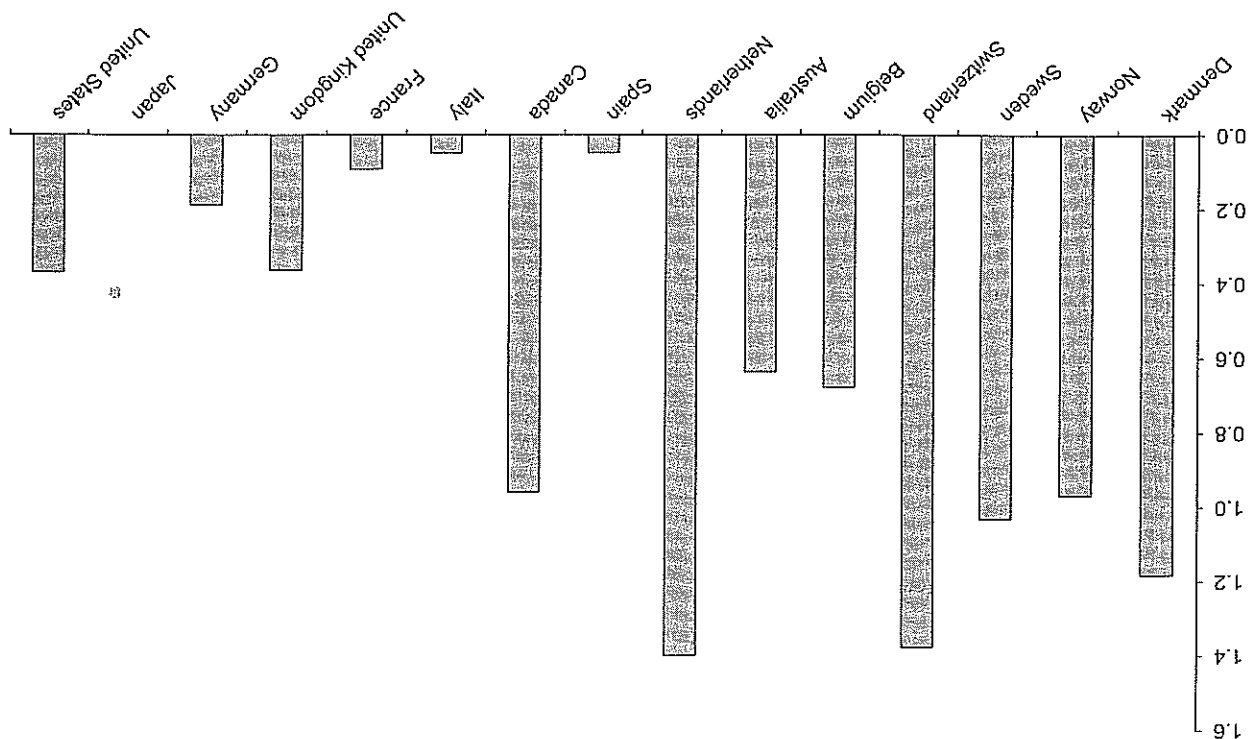


Figure 9.1 Average accepted protection burden^a (by ascending GNP size), 1994-2002.

Note
^a Number of asylum seekers given permanent or temporary protection status combined with number of resettlement arrivals per 1,000 of population per year.

Here, we try to capture the reputation of a country in terms of its "liberal credentials" and concern for foreigners by analyzing countries' track records in the area of overseas development aid. The assumption is that countries that spend relatively more of their Gross Domestic Product (GDP) on aid to the Third World will tend to have a more caring reputation. Table 9.2 finds quite a strong and positive correlation between relative asylum burdens and host countries' reputation measured in this way. Host countries that spend a relatively high proportion of their GDP on overseas development aid tend to attract a relatively high share of asylum applications.

Fifth, although perhaps less important than in previous years due to technological advancements, geographic distance between countries of origin and destination can still be regarded as an important proxy for the cost of movement between countries. With regard to the role of geographical factors, we find a negative, albeit weaker, correlation between relative asylum burdens and the average distance between countries of destination and the five most important countries of origin in any particular year. In other words, those countries that are more closely situated in geographic terms to important countries of origin are more likely to encounter a disproportionate share of asylum applications.

Finally, the data show a weak (and positive!) correlation between relative asylum burdens and policy-related deterrence measures. Despite quite substantial variation in countries' average deterrence index⁵ for the time period under investigation, we find little evidence for the claim that countries with stricter asylum regimes are the ones that find themselves with relatively smaller burdens in comparison to those that (on average) have operated more lenient regimes.⁶ On the contrary, we find that some of the countries (such as Germany, Switzerland, and Austria), despite having put in place some of the most restrictive asylum policy regimes, nonetheless are among the most popular destinations for asylum applicants. Structural, not policy-related, pull factors therefore appear to constitute the most critical factors in explaining the unequal distribution of refugee burdens.

The Relationship between Security and Burden-Sharing

There are two security-related motivations for refugee burden-sharing. One derives from a traditional state perspective; the other looks at the issue from the perspective of an individual protection seeker. With regard to the first, states can be assumed to have an interest to contribute to regional or global refugee protection efforts, as the uncontrolled mass movement of displaced persons across international borders undermines the security objectives of countries in the region of destination. Moreover, a number of scholars, most prominently Suhrke (1998: 399–400), have suggested that refugee protection has important "international public good" characteristics which means that receiving countries are faced with significant collective action problems. Suhrke (1998) argues that, by granting refuge to displaced persons, host countries provide a public good from which all states benefit. She underlines the positive

Table 9.2 Determinants of relative asylum burdens (averages 1985–2000)

Policy-related determinants	Economic		Historical		Political		Geographic		Deterrence-policy					
	Relative asylum burdens	GDP per capita	Unemployment rate	Foreign (born) population	ODA	Distance (km)	Distance (km)	Deterrence index	Correlation coefficient					
1	CHE	3.8	LUX	0.033	ESP	19.5	AUT	60.9	NOR	1.02	PRT	4.886	DEU	4.5
2	SWE	2.6	CHE	0.032	IRE	14.4	DEU	41.6	SWE	0.92	ESP	4.461	CHE	4.0
3	DEU	2.0	NOR	0.028	BEL	12.1	DNK	29.6	DNK	0.86	IRE	4.355	AUT	3.0
4	DNK	1.8	DNK	0.026	ITA	11.2	NLD	26.8	CHE	0.68	NOR	4.224	PRT	2.9
5	AUT	1.7	SWE	0.025	FRA	10.6	CHE	21.8	DEU	0.51	GBR	4.043	GRC	2.8
6	NLD	1.7	DEU	0.023	FIN	9.4	SWE	16.4	FIN	0.41	FRA	3.918	FRA	2.5
7	BEL	1.6	FIN	0.022	DNK	9.0	NOR	9.7	AUT	0.40	BEL	3.805	ITA	2.5
8	NOR	1.3	AUT	0.021	GRC	8.1	BEL	9.6	FRA	0.36	NLD	3.783	ESP	2.2
9	LUX	0.9	FRA	0.021	GBR	7.9	FRA	7.4	LUX	0.36	LUX	3.718	NLD	1.8
10	FRA	0.6	NLD	0.020	DEU	7.9	ITA	5.3	NLD	0.36	CHE	3.642	LUX	1.6
11	GBR	0.5	BEL	0.020	MLD	7.0	FIN	3.9	BEL	0.34	FIN	3.612	DNK	1.5
12	IRE	0.5	GBR	0.018	AUT	6.0	GBR	1.3	IRE	0.27	DNK	3.502	IRE	1.5
13	GRC	0.3	ITA	0.018	PRT	5.9	GRC	—	ITA	0.26	SWE	3.473	BEL	0.9
14	FIN	0.3	IRE	0.016	SWE	4.5	IRE	—	ESP	0.22	ITA	3.409	NOR	0.9
15	ESP	0.2	ESP	0.012	NOR	4.1	LUX	—	GBR	0.21	DEU	3.380	GBR	0.8
16	ITA	0.2	GRC	0.009	CHE	2.5	PRT	—	PRT	0.18	AUT	3.166	GBR	0.8
17	PRT	0.0	PRT	0.008	LUX	2.2	ESP	—	GRC	0.14	GRC	2.929	FIN	0.8
18	CHE	1.00	LUX	0.70	ESP	-0.52	AUT	0.63	NOR	0.43	PRT	-0.37	DEU	0.21

Notes: AUT: Austria; BEL: Belgium; CHE: Switzerland; DEU: Germany; DNK: Denmark; ESP: Spain; FIN: Finland; FRA: France; GBR: Great Britain; GRC: Greece; IRE: Ireland; ITA: Italy; LUX: Luxembourg; MLD: Netherlands; NOR: Norway; PRT: Portugal; SWE: Sweden. ODA: Overseas Development Aid

externalities (spill-ins) resulting from one country's refugee protection effort to another and writes: "If one state admits refugees, others will benefit from the greater international order that ensues regardless of their own admissions" (1998: 400). From this perspective, enhanced security and stability can be regarded as the principal collective benefit that is accruing to countries in the region of destination, as an accommodation of displaced persons (in particular, in the case of mass influx) can be expected to reduce the risk of them fueling and spreading the conflict refugees are fleeing from. However, countries have an incentive to hope for positive spill-ins and try to conceal their true preferences as to the extent to which they would like to see refugee issues be addressed. This is because they hope to be able to free-ride on the efforts of others, and hence refugee protection contributions can be expected to be provided at suboptimal levels. There are powerful incentives for individual states to avoid contributing resources to international collective goods. As they fear that the expression of willingness to contribute might mean that they will also be the ones who end up footing the bill, collective goods such as refugee protection are undersupplied and security goals of destination states regarding the effective management of the international movement of displaced persons will be compromised.

Arguably even more compromised as a result of collective action problems, however, are the security interests of individual protection seekers. Attempts by states to escape disproportionate burdens in this area have frequently led to burden-shifting dynamics in the wake of which established protection standards have been undermined. There is a widespread belief among host countries that states with relatively more lenient asylum and refugee policies will come to be regarded as a "soft touch" and will consequently have to cope with a disproportionately high number of refugees. To counter this, destination countries which have been concerned about their reception capacities, have engaged in attempts to outperform each other when it comes to the introduction of new restrictive policy measures. The aim of these efforts has been to make a country's asylum rules more restrictive relative to other potential host countries and ultimately to deter displaced persons from applying in a particular country. As countries have sought to copy deterrence measures introduced by other states, the result has been a "race to the bottom" in protection standards that has fundamentally challenged and in some cases undermined the security interests of forced migrants. Institutionalized EU burden-sharing initiatives have thus been developed to help overcome collective action problems, curtail free-riding opportunities and halt the decline in protection standards. In doing so, Member States hoped to address the security concerns of both states and individual protection seekers.

Types of International Burden-Sharing Regimes

What instruments are available to states seeking to equalize burdens or responsibilities? One can distinguish two substantively different types of

Table 9.3 Types of international burden-sharing mechanisms

Dimensionality		
One-dimensional		Multi-dimensional
Distribution rule	Hard	Binding rules
	Soft	Voluntary pledging
		Explicit compensation
		Implicit trade

international burden-sharing regimes and four principal burden-sharing mechanisms (Table 9.3). First, there are *one-dimensional* burden-sharing regimes that aim to equalize states' efforts on one particular contribution dimension, usually by seeking to equalize the number of asylum seekers and refugees that states have to deal with. This tends to be done in two ways—through binding rules or through voluntary pledging mechanisms. Policy harmonization would be an example of the former method, as it is based on the assumption that agreeing on a common set of rules will overcome burden inequalities. By obliging states to harmonize their policies or to comply with a set of common international rules, we may expect that individual countries will face converging burdens. The core idea of such a mechanism is that common rules will reduce the need for corrective action. Redistributive quotas are also classic examples of such "binding rules" mechanisms, as they try to equalize observed imbalances/inequities in burdens through some agreed distribution key (which is usually based on one or several fairness principles such as responsibility, capacity, benefit, or cost).⁷ Germany, for example, operates such a quota regime for asylum seekers on its territory. Individuals who seek refugee status in Germany are initially processed in centralized reception centers, before they get distributed across the 16 Länder of the Federal Republic according to the Länder's population size (a capacity-based distribution key).

A second type of "one-dimensional burden-sharing mechanisms" are those which are based on non-binding "pledging" mechanisms. If states cannot agree on a binding distribution key, they can make appeals which ask states with smaller responsibilities to alleviate some of the high burdens that other states are being faced with. During the Kosovo crisis in 1999, the UNHCR operated such a system through which it encouraged countries to alleviate the burdens of bordering countries, such as Macedonia, by agreeing to resettle refugees in their territory.

Multi-dimensional burden-sharing regimes are those that do not seek to equalize burdens/responsibilities on one particular contribution dimension alone, but instead operate across several contribution dimensions. On the one hand, some multi-dimensional regimes are based on an explicit compensation logic. In these cases, a country's disproportionate efforts in one contribution dimension are recognized and that country gets compensated (through benefits or cost reductions) on other dimensions. An example of this

is Schuck's proposal for a market-based refugee sharing system (1997) which is similar to the Kyoto emission trading scheme. According to this model, an international agency would assign a refugee protection quota to each participating state, on the basis of which states would then be allowed to trade their quota by paying others (with money or in kind) to take over their protection obligations.

A second type of a multi-dimensional burden-sharing mechanism is based on an implicit trading logic which recognizes that states contribute to international collective goods such as refugee protection in different ways (see Thielemann and Torun 2006). In the refugee context, these include what might be called *pro-active* measures, which attempt to halt the escalation of potential refugee problems by, for instance, sending peacekeeping troops to a region in order to prevent or contain forced migration. Another set of contributions are those which can be called *reactive* measures. The latter measures deal with the consequences of refugee problems once they have occurred, in particular by admitting protection seekers to a host country's territory. During the negotiations of recent EU refugee burden-sharing initiatives, the British and French governments expressed their wishes that their participation in peacekeeping operations should be taken into account when assessing the burdens borne by individual Member States.⁸ This suggestion, however, has not been followed up in the more recent EU discussions.

Refugee Burden-Sharing Regimes in the EU

It has been argued that the unequal distribution of asylum and refugee burdens can threaten the collective security interests of Member States, by imposing disproportionate responsibilities on some of those Member States which are least equipped to effectively deal with the challenges posed by situations of "mass influx." What types of burden-sharing initiatives has the EU then pursued in an attempt to equalize Member States' responsibilities in this area? When reviewing European legislative initiatives in this area, one finds that Member States have developed initiatives that are based on the first three of the four burden-sharing mechanisms discussed above.

Since the mid-1980s, the EU has worked towards the convergence of Member States' laws on forced migration. What started with initially non-binding intergovernmental instruments has since been followed by developments in Community law. Most noteworthy here are several directives that have aimed to level the asylum playing field and to lay the foundations for a Common European Asylum System.⁹ The 2003 *Reception Conditions Directive* guarantees minimum standards for the reception of asylum seekers, including housing, education, and health. The 2004 *Qualification Directive* contains a clear set of criteria for qualifying either for refugee or subsidiary protection status and sets out what rights are attached to each status. The 2005 *Asylum Procedures Directive* seeks to ensure that, throughout the EU, all procedures at first instance are subject to the same minimum standards.

The significance of these initiatives notwithstanding, policy harmonization can of course only address imbalances due to differences in domestic legislation in the first place. As discussed above, policy differences are only one of several determinants for a protection seeker's choice of host country, with structural factors such as historic networks, employment opportunities, geography, or a host country's reputation being at least equally, if not more, important. If structural pull factors are indeed so crucial, then policy harmonization might actually do more harm than good to the EU's efforts to achieve a more equitable distribution of asylum seekers across the Member States. EU policy harmonization curtails Member States' ability to use national asylum policy to counterbalance their country's unique structural pull factors (language, colonial ties, etc.). This is why policy harmonization might undermine efforts to achieve more equitable responsibility-sharing (Thielemann 2004).

The most prominent EU burden-sharing regime that relies on a "voluntary pledging" mechanism is the 2001 Council Directive on Temporary Protection in the Case of Mass Influx.¹⁰ The directive develops a range of non-binding mechanisms based on the principle of "double voluntarism": the agreement of both the recipient state and the individual protection seeker is required before protection seekers can be moved from one country to another. Under this instrument, Member States are expected, in spirit of "European solidarity," to indicate their reception capacity and to justify their offers for resettlement. These pledges are to be made in public, allowing for mechanisms of peer pressure or "naming and shaming." The Directive has not yet been used and therefore the effectiveness of this new instrument of "soft" coordination still remains to be tested in practice.

In the EU, the most developed multi-dimensional refugee burden-sharing regime based on the idea of "explicit compensation" is the European Refugee Fund (ERF), which aims "to promote a 'balance of efforts' in receiving and bearing the consequences of displaced persons" in order "to demonstrate solidarity between the Member States" in their efforts to promote the social and economic integration of displaced persons.¹¹ To do this, the ERF allocates common European funds based on the comparative numbers of asylum seekers and refugees in each Member State. In operation since 2000, the ERF aims to financially compensate those Member States faced with disproportionate responsibilities by supporting States' actions that promote the social and economic integration of asylum seekers as well as their return to their countries of origin.

The most obvious problem with the ERF has to do with the Fund's limited size (initially €216 million over five years), which pales into insignificance compared to national expenditures in the area of reception, integration, and return of asylum seekers and refugees. Including administrative costs, legal bills, accommodation, and subsistence, Britain spent just under €30,000 per asylum seeker in 2002 according to U.K. Home Office estimates. According to figures from the ERF's mid-term review, the U.K. was the second largest recipient of the Fund in 2002, receiving approximately €100 per asylum

application. One can therefore conclude that the overall effect of the ERF up to now has been more important in symbolic terms than it has been in terms of its substantive effect in promoting a balance of efforts between the Member States. Even with the recently agreed tripling of the Fund for the 2005–10 funding period, revenues from the ERF are highly unlikely to alleviate Member States' concerns about the economic (and social) costs associated with refugees and enhance their willingness to provide refuge to displaced persons. In addition, the analysis of ERF allocation shows that the Fund's principal beneficiaries have been destination countries with the largest absolute number of asylum seekers and refugees, even though these countries arguably were not facing the largest burdens in this area (Table 9.4).

The Fund, hence, does not take relative absorption capacity into account. This means that for any given number of displaced persons a country like Luxembourg receives the same financial help as Germany, irrespective of the two countries' fundamental differences in terms of population or geographic size, etc. The underlying assumption appears to be that a particular number of protection seekers require the same amount of effort, no matter whether the receiving State is small or large, rich or poor, etc. This is clearly not the case, as a small country receiving the same number of protection seekers will require greater efforts than a large one. In other words, the Fund's redistributive element currently compensates Member States according to the absolute

Table 9.4 The redistributive impact of the European Refugee Fund

Rank	Country	Number of asylum applications per 1,000 of population	Country	Percentage of ERF contributions to Member States
1	Belgium	4.2	Germany	20.05
2	Ireland	2.9	United Kingdom	19.11
3	Netherlands	2.8	France	11.50
4	Denmark	2.3	Netherlands	9.46
5	Austria	2.2	Sweden	8.37
6	Sweden	1.8	Italy	8.06
7	United Kingdom	1.7	Belgium	5.73
8	Luxembourg	1.4	Austria	5.06
9	Germany	0.9	Ireland	2.69
10	Finland	0.6	Spain	2.59
11	France	0.6	Finland	2.35
12	Greece	0.3	Greece	2.35
13	Italy	0.3	Portugal	1.77
14	Spain	0.2	Luxembourg	1.12
15	Portugal	0.02	Denmark*	
	Correlation coefficient	1		0.06

* Denmark has an opt-out of EU asylum policy and is therefore not a beneficiary of the ERF.

numbers of protection seekers received, rather than according to the relative responsibilities or burdens that Member States face. The Fund's redistributive impact consequently remains very limited, and therefore, from a solidarity or burden-sharing perspective, the ERF's current arrangements appear sub-optimal.¹² Ultimately, neither the ERF, nor the other instruments described above, can be said to effectively contribute to the goal of responsibility sharing among Member States.

Given the limitations of the existing EU refugee-sharing initiatives, it might be time to further explore the fourth burden-sharing mechanism discussed above: trade. The Member States have not yet used this mechanism in their burden-sharing efforts. Several objections can be made against a Kyoto-style refugee burden-sharing regime based on the idea of "explicit trading," therefore raising legitimate unease about treating refugees as commodities in inter-state transactions (Anker, Fitzpatrick, and Schacknove 1998; Schuck 1997: 289–297).

An alternative "implicit trade" model suggests that countries can be expected to specialize according to their comparative advantage as to the type and level of contribution they make to international collective goods. Applied to the area of forced migration, Thielemann and Dewan (2006) have suggested that countries can contribute to refugee protection in two principal ways: proactively through peacekeeping/making, and reactively through providing protection for displaced persons. With some countries making disproportionate contributions to "pro-active" refugee protection contributions (such as through peacekeeping efforts) and other countries contributing disproportionately with "reactive" measures related to refugee reception, it appears that some implicit trading in refugee protection contributions is already taking place.

Moreover, such apparent specialization in countries' contributions has potentially important implications for attempts to develop multilateral burden-sharing initiatives that are perceived to advance States' interests in providing more equitable, efficient, and effective refugee protection. First, evidence of inter-country specialization suggests that overall refugee protection contributions are perhaps not as inequitable as often assumed. Second, it is possible that burden-sharing initiatives that attempt to force all nations to increase contributions in any one category of provision are likely to be counter-productive to the efficient provision of collective goods such as refugee protection. It can then be argued that the provision of this collective good is closer to optimum when countries are able to specialize with regard to their contributions.

The existence of country-specific benefits from refugee protection combined with tendencies for specialization in States' contributions helps to raise the efficiency of refugee protection efforts. When looking only at reactive protection contributions (as most burden-sharing models do), it is tempting to suggest that some (larger) countries should contribute more in this area. Similarly, equalizing reactive contributions also appears to be the general

thrust of recent European policy initiatives. However, any attempt to impose quotas or other similar methods should be considered a hindrance towards greater specialization and trade with adverse overall effects. Burden-sharing initiatives, if they are to strengthen refugee protection, need to be aware of variations in States' preferences and need to recognize the comparative advantages individual States possess in this area. If they do not, they risk undermining the search for more effective refugee protection solutions.

Conclusion: Providing Security—Towards a Comprehensive Burden-Sharing Approach

This chapter has argued that border security in the EU's single market is one of the major driving forces behind recent steps to develop a common European asylum policy. Unlike in the U.S., where terrorist attacks have had a direct impact on developments in U.S. immigration law, developments in EU asylum and refugee policy have continued to be dominated by the security implications of the processes related to the EU's ongoing "deepening" and "widening." This chapter shows that the distribution of refugee burdens in Europe is highly unequal and that efforts to achieve a more "equitable balance of efforts" in this area have dominated legislative developments on asylum in the EU over recent years. It has been argued here that the shortcomings of existing EU burden-sharing initiatives have undermined refugee protection contributions and have done little to address Member States' security concerns in situations of mass influx. To address these concerns more effectively, the chapter has made the case for the development of more comprehensive refugee burden-sharing regimes. Against the background of continuing concerns about how to secure the EU's external borders while providing effective safeguards for refugees that overcome prevalent collection actions problems, the need to explore new options for a more equitable, efficient, and effective refugee burden-sharing regime in Europe is more urgent now than ever.

Notes

- 1 For an attempt to apply the join-product model to refugee protection, see Betts (2003).
- 2 However, empirical tests on this in the area of refugee protection have produced mixed results. During the Kosovo conflict, Greek sensibilities concerning its minority in the north of Greece meant that Greece accepted a lot fewer Kosovo refugees than one would have expected on the basis of geographic proximity (Thielemann 2003a).
- 3 This section draws on Thielemann (2004).
- 4 A correlation describes the strength of an association between variables. For a set of variable pairs, the correlation coefficient gives the strength of the association. The correlation coefficient is a number between 0 and 1. If there is no relationship between the predicted values and the actual values, the correlation coefficient is 0 or very low (the predicted values are no better than random numbers). As the strength of the relationship between the predicted

values and actual values increases, so does the correlation coefficient. A perfect fit gives a coefficient of 1.0. A negative coefficient signifies an inverse relationship.

- 5 This index seeks to capture the relative restrictiveness of a country's asylum policy regime. Due to limitations in the available data, it is impossible to include all restrictive measures in the calculation of such an index. However, by focusing on five key deterrence measures that capture all three principal deterrence dimensions (access, determination, and integration), it is possible to arrive at a reasonable approximation of such a ranking. The five indicators are: 1) existence of "safe third country" provisions; 2) below average recognition rate; 3) residence restrictions; 4) restrictions on access to cash welfare payments; and 5) work restrictions. For each measure I created a dummy variable that takes the value 1 for each year that a particular measure was in operation in a particular country and the value 0 for all other years. This leaves me with an index ranging from between 0 (lowest deterrent effect) to 5 (highest deterrent effect) for each country in each year. For a more detailed discussion of this index, see Thielemann (2004, 2006).
- 6 With the use of more advanced statistical techniques and the use of lagged independent variables, it can be shown that, while newly introduced deterrence measures can have a significant effect on the relative distribution of asylum burden, this effect tends to be short-lived due to copy-cat strategies by other countries which swiftly cancel out the desired effect of such measures (Thielemann 2006).
- 7 The "responsibility" principle is commonly used in environmental regimes and also known as the "polluter pays" principle. The "capacity" principle refers to a state's "ability to pay" (and is often linked to relative GDP). The "benefit" principle proposes that states should contribute to a particular regime in relation to the benefit they gain from it and the "cost" principle suggests that states' relative costs in making certain contributions should be taken into account when establishing burden-sharing regimes.
- 8 JHA (Justice and Home Affairs) Council resolution of 25 September 1995 "on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis" (OJ No. C 262/1, October 7, 1995).
- 9 JHA Council Directive 2003/9/EC of January 27, 2003; JHA Council Directive 2004/83/EC of April 29, 2004; and JHA Council Directive 2005/85/EC of December 1, 2005.
- 10 JHA Council Directive 2001/55/EC of July 20, 2001, OJ L 212, August 7, 2001.
- 11 JHA Council Decision of September 28, 2000 (2000/596/EC), L252/12 of October 6, 2000.
- 12 For a more extended discussion of the ERF, see Thielemann (2005).

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Immigration Policy and Security is a thought-provoking, intellectually balanced, and impressively comprehensive take on the security implications of immigration in a post-September 11th world, for serious students of the subject. Its appearance could not be timelier or its contributions more welcome.

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Immigration Policy and Security offers thoughtful analyses of how national security concerns that emerged after the September 11, 2001 attacks have shaped immigration and asylum policies in Western democracies. The strengths of the volume are several. Most importantly, it is broadly comparative. The authors are also attentive to changes and continuities in immigration policies in light of newer national security concerns, they provide a rich, textured analysis on the debate over the seriousness of the threat to national security posed by immigration, and they are attentive to varied national origin and legal compositions of migrations to different countries, and the degree to which these differences shape national policies. *Immigration Policy and Security* is particularly attentive to national responses to Muslim immigrants, but also to unauthorized migrants who are to some degree outside the state's regulatory regime.

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U.S., European,
and Commonwealth
Perspectives

IMMIGRATION POLICY
and SECURITY

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