

# Why States Don't Defect: Refugee Protection and Implicit Burden-Sharing

**Eiko R. Thielemann**

Department of Government & European Institute

LSE

[E.Thielemann@lse.ac.uk](mailto:E.Thielemann@lse.ac.uk)

&

**Torun Dewan**

Department of Government

LSE

[t.dewan@lse.ac.uk](mailto:t.dewan@lse.ac.uk)

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**Abstract:**

Why do states accept what appears to be disproportionate and inequitable burdens in the provision of international collective goods? Traditional burdens-sharing models emphasise free-riding opportunities of small countries at the expense of larger ones. An alternative model suggests that countries specialise according to their comparative advantage as to the type and level of contribution they make to international collective goods. We apply this model to forced migration and suggest that countries can contribute to refugee protection in two principal ways: *proactively*, through peace-keeping/making and *reactively*, by providing protection for displaced persons. While the existing literature on peace-keeping provides evidence for the 'exploitation of the big by the small', our analysis of UNHCR data on 15 OECD countries for the period 1994-2002 balances this view by showing that reactive burdens are disproportionately borne by smaller states. We also show that EU asylum policy initiatives aimed at refugee burden-sharing aim at equalising particular dimensions of states' contributions to refugee protection. By doing so, they might opportunities for specialisation and risk consolidating a sub-optimal provision of international refugee protection.

# Why States Don't Defect: Refugee Protection and Implicit Burden-Sharing

## Introduction

The efforts made by countries to provide international collective goods often appear to be highly inequitable. Burden-sharing debates have long been prevalent in areas such as international security, defence and peace-keeping, but are becoming increasingly important in areas such as climate change and refugee protection (Olson and Zeckhauser 1966; Oneal 1990a, 1990b; Sandler 1992). What is surprising is not so much that some countries appear to carry disproportionate burdens in providing for collective goods but that these inequitable distributions appear stable over time, with states accepting or being unable to change the pattern of burden-distribution. The question why some states put up with bearing larger burdens in the provision of collective goods has sparked strong academic interest. There are different ways one can think about the observed stability of unequal burdens and the provision of collective goods.<sup>1</sup> The dominant view in the theoretical literature of alliances is that of Olson and Zeckhauser (1966). The key insight of this work is that larger countries are exploited by small countries in the provision of collective goods- the latter free-ride on the commitments of the former. Boyer (1989) presents an alternative view based on the idea that countries have a comparative advantage in providing certain types of collective goods over others. One implication of Boyer's argument is that, whilst we may see evidence of the "exploitation hypothesis" on some dimension of collective goods provision, the overall picture may be less inequitable.

The paper outlines these different theoretical frameworks for assessing burden-sharing and analyses their applicability in the case of forced migration an area which

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<sup>1</sup> The goods and services that governments provide in the common interest of all individuals are often called collective or public goods. Such goods are assumed to have to one or both of the following characteristics: (1) *non-excludability*: if the collective good is provided for, everyone automatically benefits, or, in others words, non-contributors cannot be kept from benefiting from that good, and (2) *non-rivalry*: if the good is available to any one person/state, it is available to others at little or no additional cost.

has received little attention in the burden-sharing literature.<sup>2</sup> Developing Boyer's argument we consider that there are a number of ways in which countries can contribute to the provision of refugee protection.<sup>3</sup> We think of *pro-active* measures, such as sending peace-keeping troops to a region in order to prevent or contain forced migration, as attempts to stop an escalation of a potential refugee problem. We think of *reactive* measures, such as admitting protection seekers to a territory, as attempts to deal with the consequences of the refugee problem once it has occurred.

Thinking about the problem in this way allows us to reassess some recent empirical findings offered by the burden-sharing literature (in particular Shimizu and Sandler 2002). In their analysis of peace-keeping commitments they find evidence that larger countries contribute a disproportionate number of troops, thus indicating support for the "exploitation" hypothesis. We balance this view, by looking at the acceptance of asylum seekers within a state's borders. Using UNHCR data on 15 OECD countries for the period 1994-2002 we find that a disproportionate asylum and refugee burden is borne by smaller states.

### **Theoretical Perspectives**

For a collectively provided good, countries receive benefits through the overall supply of the good which is a combination of their own contribution and that of others. Olson and Zeckhauser (1966) suggest that the burden for the provision of collective goods will be shared unevenly among states. Each country allocates some of its income

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<sup>2</sup> The adoption of this terminology in the context of forced migration is of course not unproblematic. However, despite its potentially prejudicial connotation in a human rights context in which one might wish the language of costs and benefits to be absent, the term 'burden-sharing' is used here to reflect the way the debate about the perceived and real inequalities in the distribution of displaced persons and refugees has been conducted in Europe over recent years. Attempts to replace the term in this area with a call for responsibility-sharing or the 'equal balance of efforts' between the Member States have had little impact on the way the public debate has been led.

<sup>3</sup> A word on the terminology used in this paper. The term "refugee" is used here in its broadest sense to characterize individuals who have left their country in the belief that they cannot or should not return to it in the near future, although they might hope to do so if conditions permit. In this usage, the category includes those recognised under the Geneva Convention but also those who have applied for refugee (or a subsidiary) protection status. We use the terms displaced persons, forced migrants and protection seekers as interchangeably with the term refugee. We take the term asylum seeker to refer to persons who move across international borders in search of protection or who have applied for protection as a refugee under the 1951 Geneva Convention and are awaiting the determination of their status. We use the term Geneva Convention refugee for persons who have been granted protection under the 1951 Convention on the Status of Refugees.

toward the supply of the public good. By definition of a public good, no other country can be excluded from benefiting from this contribution nor does consumption of the public good reduce the amount available for consumption by others. In the representation by Olson and Arce (2004), countries also allocate income to the purchase of a private good which is consumed only by its own citizens.<sup>4</sup> The solution to this problem entails each country choosing an optimal level of contribution to the public good subject to its budget constraint. Some countries will choose to make no contribution at all. These countries can fill their requirement entirely from the contributions of other countries. Non contributors, who free-ride on the contributions of other countries, are thus free to spend their income on the private good. As shown formally by Olson and Arce (2004), in the case of a non-zero level of contribution the actual contribution made is increasing in a country's income. Thus, all in all, countries with a larger income bear a larger proportional share of the burden. This is what Olsen calls the 'exploitation of the big by the small' (1965: 29). As a result of such free-riding opportunities, output for such collective goods will be at sub-optimal levels.<sup>5</sup> Some writers have offered extensions to this model. They argue that pure collective goods are a rare phenomenon. The extent of free-riding is dependent on the degree of publicness of the good in question (Sandler 1977; Sandler and Forbes 1980; Sandler and Hartley 2001). For instance, in the defence context an ally might build up its arsenal not only to enhance regional security but also to maintain control over colonies, use defence procurement as a form of regional aid that guarantees employment, or maintain a large army for status enhancement. In this context, public benefits accrue to the nation's population, but there is little, if any, spill over to the nation's ally. Such benefits are thus excludable and rival among allies and hence partly private (or impurely public). According to the 'joint product model' developed on the basis of these considerations, defence spending can be purely public, purely private or impurely public among allies (Sandler 1992: 459).

A number of empirical studies in the area of collective defense have analysed the correlation of defense spending and Gross National Product and have offered support for the 'exploitation hypothesis' in the NATO context. These studies (Olson and Zeckhauser, Oneal 1990a, 1990b; Sandler and Hartley 1999, 2001; Hartley and

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<sup>4</sup> This private good may of course be a public good at the national level.

<sup>5</sup> For limitations and inconsistencies with this general argument see Boyer (1989: 715).

Sandler 1999) have shown that for decades the United States and other large NATO Member States, have contributed a disproportionately large share of the burden to NATO's collective defense effort and that resource allocation has remained below pareto-optimal levels.

An alternative framework to explain international burden-sharing is proposed by Boyer (1989) who focuses on trade in public goods, building on the Ricardian theory of comparative advantage (see also Wong 1991). This model broadens the scope of analyses of security burden-sharing within the Western alliance system beyond the narrow military approach taken by the Olsen and Zeckhauser framework. In contrast to that work, Boyer's analysis opens up the possibility of international burden-sharing across issue areas. Boyer hypothesises that states will specialize in the production of those collective goods (economic, political and military) for which they possess a comparative advantage. Such specialisation allows implicit trades to be made. One country which has a comparative advantage in one area of public goods provision can trade with a country with a comparative advantage in another area of provision. Thus higher expenditure by a country in an area of collective provision where it has a comparative advantage will be matched by lower expenditures in areas where it has no such advantage.

Of course it is likely that, if one looks across enough issue dimensions, one will find issue dimensions where contributions correlate negatively. However, the illustrative example used in Boyer's paper is revealing. He shows that countries which spend disproportionate amounts on military defence tend to 'under-spend' with regard to foreign aid. From this Boyer suggests that countries specialise by contributing to international peace and stability either primarily through military expenditure *or* through foreign aid payments. Military expenditure and foreign aid can thus be seen as substitutes. If Boyer is correct, focussing on one dimension of international security by assessing the optimality of alliance contribution only in military terms misses important aspects of the overall picture. Other forms of non-military security contributions made by members of the alliance should be taken into account when analysing disparities in international security burdens.

The 'policy trade model' shows how cross-issue burden sharing might develop among allies, and more generally, how burdens might be shared among members of any group dealing with multiple public goods. In contrast to the predictions made by free-riding models, size discrepancies in the context of the multiple public goods setting will not necessarily lead to the free-rider behaviour hypothesised by Olson and Zeckhauser (1966). There is no general incentive for the small to exploit the large. Small nations may well make contributions to the alliance effort that are commensurate to their size and in accordance with the comparative advantages they possess in the production of certain goods. Moreover, Boyer's model has important policy implications. The effects of trade are welfare enhancing. Any attempt to equalise burdens in specific burden categories thus acts as a form of regulation which curtails specialisation and therefore undermines countries' comparative advantage. This will, of course, lead to a reduction in overall contributions. The following section will examine to what extent these two models can help to explain the extent and stability of apparent burden disparities in the context of refugee protection.

## **Explaining Refugee Burden-Sharing**

There has been increasing dissatisfaction with the system of international refugee protection which, in the eyes of some, suffers from substantial burden-sharing problems (Barutciski and Suhrke 2001; Fonteyne 1983; Noll 1997; Hathaway 1997; Schuck 1997). Some states appear to be bearing an inequitable share of the burden of international refugee protection, with some countries granting protection to a disproportionately large number of displaced persons in relation to other states (see table below). Similar to the NATO burden-sharing debate, there has been (albeit more muted) protest and free-riding accusations from the main receiving countries as well as threats by some states to opt out of the 1951 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 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 can be regarded as the principal benefit, as an

accommodation of displaced persons can be expected to reduce the risk of them fuelling and spreading the conflict they are fleeing from.

It is interesting to see then whether the pattern of provision in the field of refugee protection fits with the theories of public goods provision outlined above. Building on Boyer's (1989) ideas we suggest that the provision for a collective good can be broken down into tradable components. In the refugee protection context, one feasible component is the provision of protection opportunities for displaced persons. We call this a *reactive* contribution since it deals with the problem once people have already been displaced. Other forms of contribution such as engagement in unilateral and multilateral peace-keeping/making operations are termed *proactive* contributions since they aim to prevent refugee flows before they occur. Peace-keeping/enforcement can be viewed as an alternative way to contribute to security by preventing or limiting uncontrolled population flows. Like the acceptance of displaced persons, peacekeeping also possesses key elements of an international public good. If intrastate and interstate conflicts have negative consequences on other countries in terms of unchecked migration flows, then peacekeeping efforts to end such wars represent a trans-national public good. The peace and security provided by keeping migration flows in check through peacekeeping/making operations thus give rise to non-excludable and non-rival benefits.

An empirical analysis of peacekeeping burden-sharing for the period 1994-2000 confirms that (having adjusted for countries' ability to pay) there is some evidence of peacekeeping burdens being shouldered disproportionately by large countries (Shimizu and Sandler 2002).<sup>6</sup> Their study analyses two sets of countries: NATO allies and a broader sample of supporters of peacekeeping missions and covers both UN-led peacekeeping missions and also non-UN-led missions (for example the Implementation Force in Bosnia, the Kosovo Forces). They conclude that the post-Cold War years of large peacekeeping efforts imply that the larger countries are carrying more of the burden of these operations. This suggests a return to an era of hegemony, where the hegemon is the USA and some wealthy EU nations. If peacekeeping continues to increase in importance, then it is anticipated that this trend

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<sup>6</sup> See Jyoti, Sandler and Shimizu (1998) for the period 1976-1996.

toward disproportionate burden-sharing will increase (Shimizu and Sandler 2002: 663-4).

One might then ask, is similar evidence available when analysing the refugee burden? It is generally accepted that some countries more generously provide refuge for refugees than others, despite the fact that the international legal obligations are the same for the 141 signatories of the 1951 Geneva Convention on the Status of Refugees. The Refugee Convention and its accompanying 1967 Protocol, form the foundation of the modern international legal system designed to protect people who flee their countries for reasons such as their political or religious beliefs, or membership of a particular ethnic or social group.<sup>7</sup> Two principal obligations on signatory states can be identified. First, allowing a displaced person to apply for asylum in order to gain refugee status under the Convention. Second, the obligation of 'non-refoulement', i.e. the prohibition not to return refugees in any manner whatsoever to territories where their life or freedom would be threatened.

Columns 1 and 2 of Table 1 below presents UNHCR data on the absolute number of asylum applications and resettled refugees<sup>8</sup> for 15 OECD countries for the period 1994-2002. Columns 3 and 4 present countries' relative burdens on the basis of asylum applications received and resettlement cases accepted (controlling for different population size of host countries). Switzerland, the Netherlands and Belgium have had the largest relative numbers of asylum applications over that period, while Australia, Canada and Norway accepted the largest number of resettled refugees relative to their population size. States have a substantial degree of discretion in how they deal with asylum seekers on their territory. They generally

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<sup>7</sup> According to the official text, the Convention applies to people who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.'

<sup>8</sup> While asylum seekers tend to arrive 'spontaneously' in a host country to file an application for Geneva refugee status, resettled refugees are those whose determination process has been conducted, usually through the United Nations High Commissioner for Refugees (UNHCR) place in their region of origin and for whom host countries have expressed their willingness to the UNHCR to accept the resettlement of these refugees to their territory. Whereas in the case of asylum seekers, states have only limited control as to the numbers of asylum seekers they might have to deal with at any particular point in time on the basis of their obligation under the Geneva Convention, states are in full control as to how many resettled refugees they accept.



three options: (1) Recognising their asylum claims, i.e. granting them refugee status under the Geneva Convention; (2) giving them some other protection status (such as 'exceptional leave to remain') that allows them to legally live and (usually) work in the country, and (3) to reject an asylum claim and send the applicant back to their home country.<sup>9</sup> Column 6 in the table shows a substantial degree of variation in states' willingness to award asylum-seekers in their territory some form of temporary or permanent protection status (Convention or subsidiary protection status). On average, the Netherlands, Denmark and Canada been the most generous host countries, while Japan, Germany and Australia were the toughest countries when handling requests for protection.

It is of course much easier for a country with small relative asylum inflows to operate a generous determination process than it is for a country faced with large inflows. Indeed previous studies have shown an inverse relationship between asylum applications and recognition rates (Neumayer 2005). Column 7 provides an approximation of host countries' willingness to accept burdens resulting from 'spontaneous' refugees (i.e. non-resettlement refugees) by combining the relative number of asylum applications they have received with countries' average recognition rates. The results reported in that column suggest that (relative to their population size) Netherlands, Switzerland and Denmark are on the top of the list of countries which have disproportionately contributed to refugee protection by accepting displaced persons in their territory, while Japan, Spain and Italy have contributed least in this way. Some countries with relatively small numbers of 'spontaneous' asylum applications take in considerable numbers of resettled refugees under a system whereby refugees with a particularly urgent or intractable problem in their first

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<sup>9</sup> The question who actually gets recognized as a refugee is still a real issue among the EU Member States. The premise is often that an applicant will have the same chance of finding protection as a refugee in all EU countries. But this is not the case. In the Slovak Republic, for example, many of the asylum seekers are Chechens – a group that, for good reason, has a recognition rate of well over 50 percent in several EU countries – yet by 30 September 2004 only two people had been granted asylum in the Slovak Republic out of 1,081 cases examined that year. In Greece, even when Saddam Hussein was still in power, less than 1 percent of Iraqi applicants were given refugee status, and the overall recognition rate fell last year to 0.6 per cent. It is not surprising that many asylum seekers move to countries where they think they have a better chance of having their claims recognized. Ruud Lubbers (2004) EU should share asylum responsibilities, not shift them, UNHCR News, 5 November, 2004. In a recent speech Lubbers stressed: 'We need to improve the quality and consistency in asylum decision-making in Europe. It seems unacceptable to me that the same asylum seeker – a Chechen for example – has virtually zero chance of finding protection in one Member State, a 50% chance in another and close to 100% in a third. 'United Nations High Commissioner for Refugees, Mr. Ruud Lubbers, Talking Points for the Informal Justice and Home Affairs Council (Luxembourg, 29 January 2005).

asylum country are transported to a another third country.<sup>10</sup> Taking account of both 'spontaneous' and resettlement inflows, Column 8 presents a ranking of average accepted protection burdens. When comparing the rankings in column 7 (spontaneous only) and column 8 (including resettlement), one sees that the inclusion of resettlement figures does make some difference in the relative ranking of some countries such as Norway, Canada and Australia without changing the overall picture significantly. While the rankings arrived here can be criticised on a number of grounds, not least the comparability of figures that national authorities report to the UNHCR, they do arguably give a burden approximation (with countries such as Netherlands and Switzerland at the top and Japan at the bottom) which appears to be broadly in line with the intuition of experts in the field.

**Table 1: Average Accepted Protection Burden (1994-2002)**

Country	1 Average annual number of asylum applications*	2 Average resettlement arrivals	3 Average population size (thousands)	4	5 Average Number of resettlement arrivals (per 1000 of population)	6 Average Recognition Rate (in percent)**	7	8
				(1)/(3)*1000			(4)*(6)	(5)+(7)
Netherlands	35345	308	15735	2.2	0.020	62.7	1.379	1.399
Switzerland	25208		7131	3.5	0.000	39.3	1.376	1.376
Denmark	8312	1034	5297	1.6	0.195	61.6	0.986	1.181
Sweden	15556	1945	8855	1.8	0.220	45.1	0.812	1.031
Norway	7836	1494	4435	1.8	0.337	35	0.630	0.967
Canada	29755	10898	30214	1	0.361	59.8	0.598	0.959
Belgium	21532		10212	2.1	0.000	32.3	0.678	0.678
Australia	9086	10222	18740	0.5	0.545	18.1	0.091	0.636
United States	75484	76243	272181	0.3	0.280	29.7	0.089	0.369

<sup>10</sup> It has often been emphasised, that the traditional "countries of immigration" (Australia, Canada, New Zealand and the United States) offered resettlement places for up to 100,000 refugees in 2004, whereas Europe as a whole only made 4,700 places available. United Nations High Commissioner for Refugees, Mr. Ruud Lubbers, Talking Points for the Informal Justice and Home Affairs Council (Luxembourg, 29 January 2005)

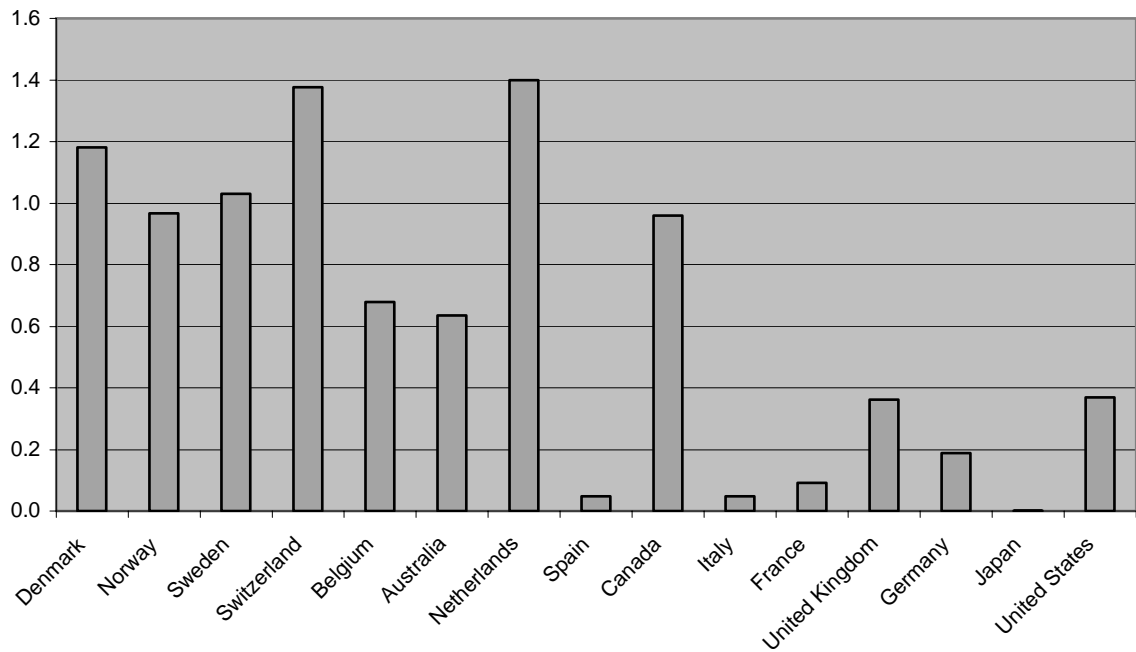
United Kingdom	61077	39	59040	1	0.001	36.1	0.361	0.362
Germany	100844		82002	1.2	0.000	15.7	0.188	0.188
France	30595		58481	0.5	0.000	18.4	0.092	0.092
Italy	9223		57029	0.2	0.000	24.6	0.049	0.049
Spain	7352		39669	0.2	0.000	24	0.048	0.048
Japan	187	162	126383	0	0.001	13.5	0.000	0.001

\* 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 industrialised 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.

We present these figures in a bar graph in Figure 1 below where, on the x-axis, we have arranged the countries according to GNP in ascending order. There appears to be no evidence of a systematic exploitation of the big by the small as expected by the Olson and Zeckhauser model. Quite on the contrary, we find that larger contributions tend to be made by the smaller countries such as the Scandinavian and Benelux countries. By contrast, much smaller contributions are made by the larger countries such as the US, Japan, Germany, France and Italy.

Figure 1: Average Accepted Protection Burden (by ascending GNP size), 1994-2002



One reason why the Olson and Zeckhauser model does not explain the variation we observe may have to do with the characteristics of refugee protection as a collective good. It seems reasonable to assume that one country's efforts in the area of refugee protection will have some positive spill over effects to other countries in the region. However, an important requirement of the 'exploitation hypothesis' is that the collective good analysed must have strong 'non-private' characteristics. As discussed above, a public good is defined by its properties of non-excludability and non-rivalry. It is these properties which set it apart from a private good. The provision of a public good, such as the additional security provided by refugee protection, benefits not only countries which contribute to the protection of displaced persons but these benefits are also extended to other actors at no marginal cost. 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 West during the cold war was keen to accept political refugees from behind the Iron Curtain). In other words what is often regarded as a public good has in fact excludable (private) benefits to a country. Moreover, we can

also expect relatively more benefits from refugee protection measures accruing to countries closer to a refugee generating conflict .

The ‘joint product model’ 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. However, empirical tests of this in the area of refugee protection have produced mixed results. During the Kosovo conflict, Greek sensibilities concerning its Macedonian minority meant that Greece accepted a lot fewer Kosovo refugees than one would have expected on the basis of geographic proximity. Other studies have shown that states’ willingness to shoulder protection burdens are positively correlated with their relative commitment to the norm of solidarity with people in need and that countries which accept a disproportionate number of protection seekers are also the ones with strong domestic redistribution (extensive welfare states) and above average foreign aid contributions (Thielemann 2003a).

Whether the existence of private benefits and variation in host countries’ commitment to human rights can fully explain disparities in this area, remains somewhat questionable, given the scale and apparent stability of disparities we could observe above. What we can say however is that , whilst empirical evidence suggests that in the area of peace-keeping the larger countries are being exploited by the small, no such picture emerges when analysing the asylum-burden. In fact, the evidence suggests that in this regard it is the small who are being exploited by the large. It is tempting then to suggest that larger countries should accept a larger burden when it comes to the protection of asylum-seekers. Indeed, as will be shown below, this sentiment is clearly expressed in recent European policy initiatives aimed at tackling the issue of inequitable burdens in this policy area.

## **European Refugee Burden-Sharing Initiatives**

At least since the Bosnian war refugee burden-sharing has been an issue for EU policy makers. Public attention was first drawn to this in 1992 when Germany received over 438.000 asylum applications, which constituted 66 percent of all applications

registered in the territory which now make up the European Union.<sup>11</sup> Since then, the EU has developed ambitions for a more ‘equitable balance of efforts’ in this area. These ambitions for a more comprehensive EU burden-sharing system in this area were made most explicit in the text of the Amsterdam Treaty of October 1997, Article 63 (ex 73k) of which states that the Council shall adopt measures ‘promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons’. In other EU documents we find even more concrete calls for solidarity and fairness in this area. A recent Commission document states that ‘the implementation of such a [EU asylum] policy should be based on solidarity between member States and requires the existence of mechanisms intended to promote a balance in the efforts made by the Member States in receiving and bearing the consequences of receiving refugees and displaced persons’. As a result of such pledges, there have been numerous European burden-sharing initiatives in this area. Following Noll’s (2000) categorization, there are essentially three ways to address the unequal distribution of protection seekers that states are faced with: (1) financial burden-sharing (sharing money), (2) physical burden-sharing (sharing people) and (3) harmonizing of asylum legislation (sharing policy). Concrete EU efforts in each of these three areas will be analysed in more detail below.<sup>12</sup> In each case it will be asked to what extent these initiatives have been effective in achieving a more equitable distribution of burdens in this area.

### Sharing Money

One way to address disparities is through the payment of financial compensation to the most popular destination countries. In the EU, explicit financial burden-sharing in this area has been taking place since the establishment of the European Refugee Fund (ERF) which was put in place to support and encourage efforts of the Member States in receiving and bearing the consequences of receiving refugees and displaced persons (for an in depth analysis, see Thielemann 2005). The Fund owes its origin to the Council meeting of Justice and Home Affairs ministers in Tampere in October 1999, which called for the establishment of a financial reserve for the implementation of emergency measures to provide temporary protection in the event of a mass influx of protection seekers (European Council 2000). The resulting Council Decision of 28

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<sup>11</sup> Figures provided in the UNHCR’s Statistical Yearbook.

<sup>12</sup> Parts of this overview are based on Thielemann (2003).

September 2000 established the European Refugee Fund (ERF)(OJ L 252/12 of 6 October 2000). Created on the basis of Article 63(2)(b) of the Treaty establishing the European Community, the ERF is to allocate resources proportionately to the burden on each Member State by reason of their efforts in receiving refugees and displaced persons. This Fund, which is jointly financed by the Member States, seeks to support special projects for the reception, integration and repatriation of refugees and displaced persons. Despite its rather modest budget, in financial terms it is by far the largest EU programme on asylum and immigration. Its rationale is 'to demonstrate solidarity between Member States by achieving a balance in the efforts made by those Member States'. The decision's text also explicitly states that 'it is fair to allocate [EU] resources proportionately to the burden on each Member State by reason of its efforts in receiving refugees and displaced persons.'<sup>13</sup>

By 31 December 2004 (when its first funding cycle had come to an end), the ERF will have sought to distribute a total of Euro 216 million (i.e. ca. Euro 40 million per year) according to two elements, a fixed and a proportional one. While the fixed element, is likely to have played an important role in getting overall agreement on the principle of the Fund (as every Member State did receive something from the Fund), it has been ineffective regarding the Fund's 'balance of effort' objective. If each Member State receives the same amount from this fixed element of the Fund, no progress in terms of burden-sharing will be made. This appears to have been recognised as the Decision establishing the Fund prescribes a scaling down of this element over the Fund's five year period. It is often argued that in terms of the Fund's solidarity objective, the fixed element has played an important role, as it has supported Member States with less developed protection systems irrespective of the number of displaced persons they received. However, it of course has also supported Member States with well developed asylum systems and small numbers of protection seekers in equal measure. It is hard to argue therefore that the Fund's fixed element is an effective expression of Community solidarity. If the objective of the Fund is to help particular Member States to develop their asylum institutions, then there must be better ways of doing this than by giving each Member State the same amount.

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<sup>13</sup> (OJ L 252/12 of 6 October 2000 (para 11)).

Regarding the Fund's proportional element, it can be argued that the redistributive effect achieved here also remains sub-optimal. Currently that part of the Fund is distributed on the basis of the absolute number of displaced persons received in a Member State. This means that a particular number of protection seekers triggers the same amount of money through this mechanism irrespective of the receiving country concerned. This has led to the result that countries with large absolute numbers have benefited disproportionately. Relative to their population or size of GDP, or any other measure of absorption capacity, other countries have been faced with much greater relative burdens or responsibilities but have benefited less. The underlying assumption regarding this allocation key appears to be that a particular number of protection seekers received, 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 certain number of protection seekers received will require greater efforts by a small country than a large one. In other words, the Fund's redistributive element currently compensates Member States according to the absolute numbers of protection seekers received rather than according to the relative responsibilities or burdens that Member States are faced with. From a solidarity or burden-sharing perspective this appears sub-optimal.

Even if the Fund was distributing its resources in an optimal manner, its overall impact would still be rather limited, given its relatively small size. According to UK home office estimates, Britain spent just under 30,000 Euro per asylum seeker in 2002, if one includes administrative costs, legal bills, accommodation and subsistence. According to figures from the Fund's mid-term review (DG Justice and Home Affairs 2003), the UK was the second largest recipient of the Fund in 2002, and received just over 100 Euro ERF money per asylum application received that year. It therefore seems that the overall effect of the ERF during the first funding period was more important in symbolic terms, than in terms of its substantive effect in promoting a balance of efforts between the Member States.

On 12 February 2004, the European Commission adopted a proposal for an extension of the ERF for the period 2005-2010. The proposal was adopted in virtually



unchanged form by the Council in December 2004.<sup>14</sup> While the overall size of the Fund has been roughly tripled to a proposed EURO 684 million (pending the new budgetary perspective), the main principles underlying the Fund's allocation rules have virtually stayed unchanged. According to Article 17 of the Decision, each Member State shall receive a fixed amount of EUR 300 000 from the Fund's annual allocation, with a special arrangement for the new Member States which will receive EUR 500 000 per annum for 2005, 2006 and 2007. The principal shortcomings of the Funds allocation rules in terms of its redistributive capacity therefore remain. Even with the substantial increase in the size of the Fund, revenues from the ERF are unlikely to significantly influence Member States' decisions as to the way they contribute to refugee protection. The ERF therefore cannot be seen as an instrument that encourages specialisation in refugee protection measures.

### Sharing People

The idea of 'people sharing', i.e. the redistribution of protection seekers from one host territory to another on the basis of some measure of reception capacity, is a third method to address disparities in refugee burdens and also the most controversial one. Advocates of such policies argue that this is the only way to effectively equalize the costs incurred by host territories, as such measures capture not only costs linked to reception and determination but also those less quantifiable costs related to the integration of protection seekers. Those who are opposed to such measures emphasize the risks to both the individual (related to a secondary uprooting) and to the new host territories, which might lack the social support networks of the protection seekers' initial destination and which therefore might ultimately lead to higher total costs for the group of host countries operating such a scheme.

In the EU, the first explicit references to physical burden-sharing ambitions were made by EU ministers responsible for asylum and immigration at their meeting of 30 November and 1 December 1992 (not published in the Official Journal of the European Union (OJ) but reprinted in UNHCR 1995). These deliberations led to a German Presidency Draft Council Resolution on Burden-sharing in July 1994

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<sup>14</sup> Council Decision of 2 December 2004 (2004/904/EC; OJ381/52 of 28/12/2004).

(Council Document 7773/94 ASIM 124). This proposal foresaw the reception of refugees according to a key which was based on three criteria which were given equal weight (population size, size of Member State territory and GDP). The form of the suggested redistributive mechanism followed the example of German domestic legislation, which stipulates a similar key for the distribution of asylum seekers among the German Länder.<sup>15</sup> The centrepiece of the German draft foresaw the introduction of a compulsory resettlement mechanism that relied on the above distributive key and reads as follows:

Where the numbers admitted by a Member State exceed its indicative figure [...], other Member States which have not yet reached their indicative figure [...] will accept persons from the first State.

Perhaps unsurprisingly, however, this proposal did not find the necessary support in the Council.<sup>6</sup> In particular the UK, which had received a lot fewer asylum seekers than Germany until that point, was strongly opposed to such a scheme.<sup>16</sup> Other Council members were opposed to this proposed 'physical' burden-sharing regime as they saw the transfer of displaced persons without their consent as a potential violation of those persons' human rights. Consensus among the Member States emerged only much later during the French Presidency for the much watered down 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 262/1,7 October 1995). In it, no more mention is made of compulsory redistributive mechanism or indicative figures. Instead, it offers a number of 'soft' (i.e. non-binding) principles to guide states in the event of a mass influx of protection seekers, including 'the spirit of solidarity', 'equity of distribution' and 'harmonization of response'. It takes account of British and French wishes, in recognizing that participation in peace-keeping operations can be counted against the admission of displaced persons when assessing the equity of burdens carried by individual Member States. This non-binding resolution was complemented by a Council decision of 4 March 'on alert and emergency procedure on burden-sharing with regard to the

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<sup>15</sup> Ssee section 45 of the German Asylum Procedure Act (Asylverfahrensgesetz).

<sup>16</sup> See BMI (1994); Frankfurter Allgemeine Zeitung 27 January 1995:2; BT-Drs.13/1070, 55; Integrationsbericht, p.92).

admission and residence of displaced persons on a temporary basis'.<sup>17</sup> Together, these two decisions poured cold water on the idea of facilitating a quick and automatic burden-sharing response in the case of a mass influx of displaced persons. One has to agree with Suhrke, who states that 'evidently, a voluntary and ad hoc commitment to share in the spirit of solidarity represented the limits of the possible' (1998: 411). The ineffectiveness of these instruments became evident during the Kosovo crisis when neither of the two instruments were called upon by the Member States.

While these initiatives had limited concrete effects, other EU activities in this area such as the coming into force of the Dublin Convention had some quite paradoxical consequences on the distribution of burdens across the Member States. The Dublin Convention, often regarded as the flagship of the EU's asylum acquis, not only affects individual asylum-seekers but also the protection responsibilities of each Member State. The Dublin Convention provides the rule that the 'Member State of first entry' is the one responsible for dealing with a particular asylum claim. Asylum seekers who move to another Member State as a secondary movement can be sent back to the 'state of first entry' (for an overview of the Dublin Convention see e.g. Hurwitz 1999).<sup>18</sup> Despite often being hailed as a responsibility sharing instrument, neither the Dublin Convention nor its successor ('Dublin II') should be regarded as an effective burden-sharing mechanism, as it merely shifts responsibility back to the geographically more exposed Member States.

Other more recent EU initiatives based on the idea of people-sharing have been influenced not only by the recent experience with the refugee crises in Bosnia and Kosovo but also by people-sharing arrangements one finds in the refugee regimes of several Member States (Boswell 2003). Particularly noteworthy in this context is the 2001 Council Directive on Temporary Protection in the Case of Mass Influx (Council Directive 2001/55/EC of 20 July 2001, OJ L 212, 7 August 2001). As the Member States were unable to agree on a fixed distribution key for protection seekers, the directive develops a range of ultimately non-binding mechanisms based on the principle of 'double voluntarism' which means that the agreement of both the

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<sup>17</sup> Council Decision on an alert and emergency procedure for burden-sharing (4 March 1996), (OJ No L63/10, 13 March 1996) and (96/198/JHA).

<sup>18</sup> For recent developments see also the Dublin II Regulation on the state responsible for examining an asylum application (L50/1 of 25.2.2003)

recipient state and the individuals concerned is required before protection seekers can be moved from one country to another. Being fundamentally different from the original 1994 German proposals for a physical European refugee-sharing system (reprinted in UNHCR 1995), the effectiveness of such new methods of 'soft' co-ordination and burden-sharing in this area still remains to be tested in practice.

Overall this means that physical burden-sharing initiatives have encountered strong resistance and that measures that Member States have been able to agree on are unlikely to contribute significantly to a more equitable balance of efforts among the Member States. From an implicit burden-sharing perspective, the British and French opposition of formal distribution scheme proposed by Germany could be seen in a more favorable light than has usually been done, as the German scheme might have discouraged specialization and led to a less efficient overall European refugee protection regime.

### Sharing Policy

A third possible approach to achieve a more equitable distribution of burdens in this area is to take a common policy approach through either multilateral action or the harmonizing of domestic refugee legislation. The 1951 Geneva Convention and its reference to inter-state solidarity can be seen as an example of the former, as can the 1967 UN declaration on Territorial Asylum which stated that 'where a State finds itself in difficulty in granting or continuing to grant asylum, states individually or jointly through the UN shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State' (UN 1967: article 2.2). The EU has worked towards the convergence of Member States' laws on forced migration since the mid 1980s. What started with initially non-binding intergovernmental instruments has since then been followed by developments in Community law. Important steps have been the 1995 Resolution on Minimum Guarantees for Asylum Procedures (Council Resolution of 20 June 1995, OJ C 274), the 1999 Amsterdam Treaty establishing a Common European Asylum System (for an overview see Guild and Harlow 2001), the 2002 political agreement at the Brussels JHA Council regarding a common definition for persons eligible for refugee and subsidiary protection status, the 2003 directive on common reception conditions (OJ L/2003/31/18), the September 2003 Directive on family reunification (OJ L 251 of

03.10.2003), the Dublin II Regulation (L50/1 of 25.2.2003) and the recent commitments made in the November 2004 Hague Programme (COM(2005)184 final).

Policy harmonization can of course only address imbalances which are due to differences in domestic legislation in the first place. It has become increasingly accepted that policy differences are only one of several determinants for a protection seeker's choice of host country, with other structural factors such as historic networks, employment opportunities and a host country's reputation being equally, if not more, important (Thielemann forthcoming). If structural pull factors are indeed so important, then policy harmonization might do more harm than good in the EU's attempt to achieve a more equitable distribution of asylum seekers across the Member States. Not only do harmonized policies mean that inequalities due to structural factors will remain. More importantly, policy harmonization curtails states' ability to use decisions on the relative restrictiveness or openness of their asylum policies to choose their country's most efficient mix of reactive and proactive contributions to refugee protection. Like some of the other formal EU burden-sharing initiatives discussed above, policy harmonization is therefore more likely to undermine than to facilitate opportunities for implicit burden-sharing in this area.

The implicit burden-sharing model outlined above potentially has important implications for our assessment of the quality of refugee protection currently provided. It can be argued that the provision of this collective good is closer to optimality when countries are allowed to specialize with regard to their contributions. Moreover, evidence of inter-country specialisation also suggests that refugee provision is perhaps not as inequitable as often assumed by those who examine countries' willingness to accept displaced persons on its own. Recognising the existence of country-specific benefits from refugee protection and the possibility of specialisation in states' contributions can both help to raise the efficiency of refugee protection efforts.

It is possible that burden-sharing initiatives that attempt to force all nations to increase contributions in a particular category of provision are likely to be counterproductive for the efficient provision of collective goods. Recent European initiatives to harmonise Member States' asylum policies and recent proposals for formal burden-

sharing criteria in this area, are not only politically highly divisive but may also be questionable with respect to efficiency considerations. Burden-sharing initiatives, if they are to strengthen refugee protection, need to be aware of variations in states' preferences in this area and need to recognise comparative advantages possessed by individual states. If they do not, they risk to undermine the search for more effective refugee protection efforts.

## **Conclusions**

We have looked at the area of international refugee protection in light of theories of public goods provision in international alliances. We have suggested that the area of international refugee protection can be broken down into two components. Proactive contributions consist of contributions made at source, involving the sending of peacekeepers to international areas of crisis. Reactive contributions involve the acceptance of asylum-seekers fleeing from such areas of international crisis. The literature on peacekeeping contributions offers strong support for the hypothesis of exploitation of the large by the small. With the larger countries bearing a disproportionately large share of the peacekeeping burden. On the basis of the evidence presented here, no such exploitation exists with regard to reactive refugee burdens. If anything, it is the smaller countries which bear a larger share of the responsibilities of accepting refugees. It is tempting on the basis of this evidence to suggest that larger countries should be contributing more in this area. As we have shown, the general thrust of recent European policy initiatives appear to have this aim in mind. However, the analysis presented here suggests a note of caution. Amongst the drawbacks of any attempts to harmonise policy in this area is the possibility that any increase in a country's contribution to receiving refugees is matched by a reduction in its contribution to peacekeeping. If Boyer's arguments can be applied to this area, and we believe that they can, the imposition of quotas and suchlike should be seen as a hindrance toward greater specialisation and trade, with adverse overall effects. This is of course a very tentative conclusion, but one which at the very least calls for more empirical work on the relationship between peacekeeping commitments and asylum policy and the implicit trade of states' contributions to international public goods more generally.

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