

THE COMMON EUROPEAN ASYLUM SYSTEM – THE ROLE OF BURDEN-SHARING

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The recent asylum crisis in Europe has rekindled the debate on so-called burden-sharing, also referred to as responsibility sharing. As in the past, this has been stimulated by the very uneven distribution of asylum applications across EU countries. In this contribution I briefly outline the recent trends in asylum applications and the discussion that this has generated. I subsequently make a case for joint action in asylum policy, based on the notion that refugee hosting can be viewed as a public good. Finally I consider policy developments up to and including the present refugee crisis. I suggest that greater progress could be made by shifting away from spontaneous asylum seeking towards a substantial joint programme for resettling refugees from countries of first asylum.

Asylum applications and asylum policies

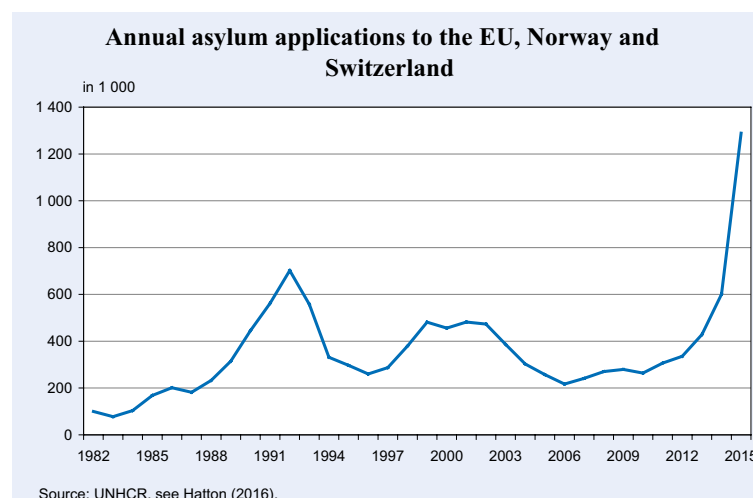
The last three decades have witnessed an unprecedented number of people arriving in European countries or at their borders in order to apply for asylum. Over that period the average number of applications received in the EU has been nearly 400,000 per year. Some individuals arrived with visitor visas, but many gained unauthorised entry by land or sea. As Figure 1 shows, the figure has fluctuated over time. The sharp peak in the early 1990s was associated with the

fall of the Berlin wall and the dissolution of the Soviet Union, which led to a surge in applications from the former communist countries, but also opened up transit routes for those from further afield. The early 2000s saw a rise in applications due to the disintegration of Yugoslavia, as well as a rise in conflicts elsewhere in the world. By far the greatest surge, however, has been seen over the last few years. Events following the Arab Spring, and most importantly the war in Syria and Iraq, have led to a steep rise in applications, which reached 1.3 million in 2015. Each of these peaks in asylum applications has prompted a wide-ranging policy debate in the EU, as well as a round of reforms.

The foundation of asylum law is the 1951 Refugee Convention. This provides the definition of a refugee as a person who has a “well-founded fear of persecution” from a specified set of causes. Each claim must be judged on its individual merits and asylum applicants must not be returned to a situation where their life or freedom would be threatened. Unauthorised entry into a country does not prejudice the outcome of an asylum claim. So, in principle, there is no limit to the number that a destination country could receive. The Convention, however, is short on detail as to how applications are to be dealt with and there is considerable latitude for policies that deter or deflect potential asylum applicants. These can be divided into three types. First, there are policies that



Figure 1



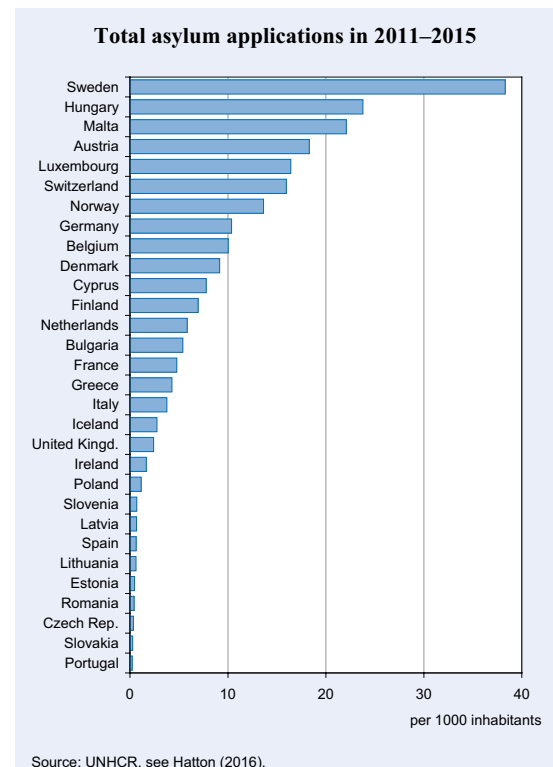
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limit or prevent access to a country's territory, which is necessary to establish a claim to asylum. Second, there are degrees of toughness in assessing whether or not an applicant qualifies as a refugee or should be allowed to stay on other humanitarian grounds. And third, there are policies relating to the rights and conditions accorded to asylum seekers during and after the assessment of their claims.

Following the Amsterdam Treaty, effective as of 1999, competence in asylum policy was passed to the EU. In the development of the EU-led Common European Asylum System (CEAS) the main objective was to harmonise the way in which asylum policies are implemented by member states. Among the key measures were directives covering the criteria for granting asylum (the Qualification Directive), the procedures used in adjudicating asylum claims (the Asylum Procedures Directive) and the rights and conditions afforded to asylum seekers (the Reception Conditions Directive). These directives have been revised and upgraded in each of the three phases of the CEAS. And while they have led to a degree of convergence in policy, differences remain between countries in their implementation. One of the earliest agreements was the so-called Dublin Regulation, which has also gone through several rounds of revision. In order to prevent 'asylum shopping', this agreement provides that an asylum application be dealt with by one member state, normally the first country of entry into the EU. Other measures include an integrated fingerprint database (EURODAC), cooperation over border controls with the establishment of FRONTEX, and rolling out the biometric visa system (VIS) in the Schengen states.

The CEAS has concentrated on harmonising rules and procedures with the aim of ensuring that an asylum seeker receives approximately the same treatment in each member state. By contrast, much less emphasis has been placed on sharing out the burdens (or responsibilities) across member states. In the aftermath of the Kosovo crisis the EU established the European refugee fund now renamed the Asylum, Migration and Integration Fund (AMIF), which is a common financial pool to support refugee integration and provide resources to member states facing a mass influx of refugees. Shortly afterwards, the Temporary Protection Directive was introduced to relocate refugees from countries under exceptional pressure in the event of a mass influx. But it lacked a formal triggering mechanism or a formula for redistribution. Despite pressure from some countries (Italy, Malta, Greece), it has never been invoked

Figure 2



and seems likely to be abolished. In 2010 the European Asylum Support Office was established in Malta with the aim of disseminating best-practice methods and supporting states facing exceptional asylum pressures. While the office is also expected to assist in the relocation of recognised refugees, this is only on an agreed basis between member states and with the consent of the individuals concerned.

Burden-sharing would not be an issue if asylum applications were fairly evenly distributed across European countries. But they are not. As Figure 2 shows, total applications in the five years 2011–15 per 1000 of the host country population varied massively. While countries like Sweden, Hungary, Malta and Austria received a high level of applications, others in the Baltic and Iberian regions and some in Eastern Europe received comparatively few. Previous years would show a slightly different country ranking, but a similar degree of inequality. One reason for these disparities is that asylum-seeker preferences are clearly skewed towards some countries based on language and cultural affinity. This is often reflected by the size of the existing diaspora and the 'pull' effects that it generates. Another factor is ease of access to the territory, which is a particular issue for member states on the EU's external border

and which is exacerbated by the operation of the Dublin Regulation. EU policy has done little to even out the refugee burden between countries. Indeed, by constraining countries facing the largest numbers of applications from implementing tougher policies of deterrence, it may have added to these imbalances. But recent events have raised the pressure to share this burden, a point that I will deal with later.

A case for cooperation?

In democratic countries governments must pay heed to the will of their electors. Immigration policies are often framed in a way that serves the interests of host populations, either of specific individuals, as in the case of family reunification, or of the wider economy, as in the case of skill-selective labour migration. But asylum is different: refugees are admitted on the grounds of the benefit to *them* of escaping persecution, rather than on grounds of direct benefit to the host society or specific members of it. Such humanitarian motives are widespread in society and those sentiments seem to be gaining ground. That means helping those that are persecuted, even if the economic cost outweighs the economic benefit.

Hosting refugees can be interpreted as a public good (Hatton 2015). The satisfaction that one individual gets from knowing that refugees are given a safe haven does not diminish the satisfaction that accrues to other individuals from seeing the same refugees saved from persecution. Nor can any host-country person be denied that satisfaction. Thus the benefit to host-country individuals is non-rival and non-excludable – the characteristics of a public good. The same applies across countries. If one country accepts refugees, then the citizens of another country benefit from the knowledge that those refugees have found safety. But the costs fall only on the country providing sanctuary. If each country sets its policy independently such as to balance the costs and benefits to its citizens, then it will fail to take account of the benefits flowing to the residents of other countries. In such a case the public good will be underprovided. A benevolent social planner would set policies that take the externality into account. In the present context that would be the EU.

In a setting where the ‘demand’ for asylum places differs across countries, non-cooperative policies will also differ between countries. Those countries receiving a disproportionate number of claims will have tougher policies in order to deter enough applicants to get to the

desired level. If the policies of different countries were to be set by the social planner, more refugees would be admitted, but policies would still differ between countries because they face different levels of demand. If, on the other hand, a central authority were to impose the same policy on all countries then, relative to the social optimum, some could have too many refugees and some would have too few. Thus the social optimum would not be reached.

If, as in the CEAS, policy seeks to set common standards for border control, for the adjudication of asylum claims, and for the reception conditions that asylum seekers face, then some other mechanism must be found in order to reach the social optimum for each country. One possibility is to establish a common fund in order to compensate, with a subsidy, those countries hosting a disproportionate number of refugees. This is essentially what the AMIF does, although the scale of such transfers, even in the newly beefed-up version, seems inadequate compensation. An alternative is to first set a policy to obtain what would be the optimal number for all countries taken together, and then to reallocate them to get the ‘right’ number for each country.

This vision of asylum policy has its flaws. One is that it is hard to determine what the overall number of refugees should be, not least because that would require some knowledge of the value of the externality. Another is the difficulty of reaching agreement in the absence of an all-powerful social planner, when individual countries have an incentive to free-ride (Facchini, Lorz and Willmann 2006). Related to that, how can the differences between countries in preferences for providing humanitarian assistance be taken into account? One possibility would be to introduce a quota trading scheme, along the lines of emissions trading schemes. The preferences of applicants for destination countries and the preferences of countries for certain types of applicants could be equilibrated by an appropriate matching mechanism (Fernández-Huertas Moraga and Rapoport 2015). But nevertheless, the uncontrolled arrival of widely fluctuating numbers in different countries is likely to present practical problems, as explored in greater detail below.

Recent events and possible reforms

As with other elements of asylum policy, political debate over burden-sharing has ebbed and flowed. In the mid-1990s a proposal from Germany to distribute in-

dividuals coming from the east fell on deaf ears. The debate was resurrected a decade later, by which time the issue had fallen under the purview of the EU. Several options were examined that proposed a distribution key, which would reflect the refugee-hosting capacity of different EU member states, and as a result, what proportion of all asylum claims would need to be transferred from one country to another. Depending on the measure of refugee-hosting capacity used, and the benchmark year chosen, the equalising share of asylum applications transferred between countries could be between 11 and 40 percent of the EU total (see Hatton 2015, 618). But the idea of implementing a redistribution scheme failed to gain traction at that time, only to be revived again by the recent migration crisis.

As the Syrian crisis unfolded, with a rising number of people crossing the Mediterranean and the Aegean in the hope of gaining asylum, the pressure for redistribution returned. In March 2015 the EU issued a draft distribution key; and in August 2015 an ‘agreement’ was reached to redistribute a total of 160,000 asylum applicants from Italy and Greece to other member states. It met with considerable resistance, particularly from countries in Eastern Europe. The Hungarian Prime Minister Viktor Orbán led the outcry, commenting on state radio that: “This is not solidarity. It is an unfair, unrighteous proposal which we cannot accept.... It is a crazy idea for someone to let refugees into their own country, not defend their own borders, and then say: ‘Now I will distribute them among you, who did not want to let anyone in.’” (Associated Press 5/8/15).² Partly as a result of this resistance, even a year later, only about 3,000 have been transferred.

Recent experience suggests that burden-sharing in the form of redistribution of asylum applicants is doomed to failure. But the theory described above suggests that there would be some optimum number for the EU as a whole; and it seems likely that this has been far exceeded by the surge of migrants seeking asylum in 2015. It is not surprising, then, that some countries facing a steep upsurge in their own asylum applications would resist taking more from other countries. In 2015 Hungary received 174,000 asylum applications – over four times the average of the previous year and 13 times the average over the five years 2010–14. Orbán’s comment also points to failures of border controls in some member states as a divisive issue. What this suggests is not that

² In the Hungarian referendum of 2nd October 2016 on whether or not to reject the EU distribution scheme, an overwhelming majority voted to reject. But it was boycotted by opposition parties and rendered invalid by the low turnout.

the quest for a more even distribution must be abandoned forever, but that the scale of the recent asylum crisis has made agreement on distribution all the more difficult.

It might be argued that, even if (some) governments, wishing to be seen on the world stage as upholding humanitarian values, were willing to expand their asylum seeker admissions, those that elect them are not. Yet the evidence from the European Social Survey indicates that the populations of most countries have become more favourable to refugees. The 18-country average share of respondents disagreeing with the statement “the government should be generous in judging people’s applications for refugee status” declined by 14.7 percentage points between 2002 and 2014 (Hatton 2016, Table 8). However, European citizens are overwhelmingly opposed to illegal immigration and, for that reason alone, the migration crisis that in 2015 witnessed 1.82 million unauthorised crossings into the EU seems to have soured opinion. The fact that over half of asylum applicants fail to gain some form of humanitarian recognition only serves to strengthen that sentiment (Hatton 2016).

One alternative would be to shift away from the existing system of spontaneous asylum seeking in which migrants embark on risky passages in order to gain access to an uncertain prospect of getting asylum. That would involve eliminating, or radically reducing, the incentive for unauthorised entry into the EU, something that is already occurring. The agreement on 18 March 2016 between the EU and Turkey that allowed unrecognised migrants to be returned in exchange for recognised refugees has been effective in reducing unauthorised maritime arrivals to a small fraction of previous year’s numbers. But tough border controls, if implemented on all the major migration routes, would deny access, not only to those with doubtful claims to asylum, but also to genuine refugees. Such policies therefore need to be accompanied by a comprehensive resettlement programme, and that requires an agreement on burden-sharing.

Resettlement programmes have existed for decades. Developed countries set quotas and refugees, whose claims to refugee status have been verified in advance by agencies such as the UNHCR, are transferred directly from camps in countries of first asylum, thus avoiding the vagaries of unauthorised migration. But the total number of resettlements is only about 100,000 per annum – a pitifully small number; and most of these are admitted by the United States, Australia and Canada. In

2012 the EU launched a programme of resettlement, but as of 2014 the total number of places amounted to just 10,000, of which one third were offered by Germany. Nevertheless the fact that 18 countries were willing to participate suggests that resettlement is firmly on the agenda. And while the extent of public support for resettlement is unclear, there is considerable support for EU-level decision-making on immigration and asylum (Hatton 2016, Table 11). Indeed, resettlement programmes have the advantage that they directly target those with the most urgent and pressing claims for transfer as refugees to the developed world. They also avoid the spectre of unauthorised migration with the concomitant exploitation, injury and death. For these reasons resettlement programmes are likely to receive greater public support. By avoiding the logistical challenges associated with spontaneous asylum seeking, they should also be easier for governments to agree upon.

In May 2015 the European Commission proposed 20,000 resettlement places over two years and in July resettlement places were pledged for 72,500 Syrians, allocated according to a distribution key. The deepening crisis also prompted a United Nations summit on 19 September 2016. Participants were expected to commit to resettling ten percent of the world's 16 million refugees, but that resolution failed to emerge. And while the communique pledged cooperation on a "global compact on responsibility sharing for refugees" the details were left to be worked out at a further summit in 2018 (UN General Assembly 2016). That was followed the next day by a summit of world leaders at which commitments were made to increase financial support for refugees and to double the number of resettlement places offered by developed countries. Much, however, remains to be done and that can only be achieved by an authority with the legislative power to act as a social planner. Given that the refugee crisis has unfolded on Europe's doorstep, the EU and its associated states are best placed to take the lead.

Conclusion

There is strong case for burden-sharing in order to boost Europe's humanitarian efforts and achieve a more equitable distribution of refugees. However, there are practical and political impediments to making progress under the present system of spontaneous asylum seeking. A joint resettlement programme is more likely to meet with success, but there is a long way to go and the EU must take the lead.

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