

Burden-sharing as a Sustainable Tool to alleviate the Global Plight of Refugees

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Abstract

This paper examines the plight of refugees in the absence of a workable implementation mechanism on burden sharing as an easement tool for developing countries. It argues that this core concept is conspicuously missing in many key legal frameworks on refugees and should be thus included for proper implementation. This paper is divided into four parts.

Part One of this paper explores the current plight of refugees globally.

Part Two briefly discusses conceptual framework of burden sharing.

Part Three ventures into analyzing the International and Regional Framework or lack thereof of Burden sharing.

Part Four provides recommendations on how burden sharing can be implemented in order to alleviate economically burdened states.

Key Words: Refugees, Burden Sharing, UNHCR, Asylum, Proportionate, Developed Countries, Host Countries

I. Introduction

As of 2020, there were over 82.4 million refugees globally.² These are populations that have been forced to escape their resident countries due to conflict which often results into grave human rights violations.³ Many of the refugees flee to neighboring developing countries for safety. Approximately

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² Global Trends Forced Displacement in 2020, UNHCR Report.

³ Amnesty International, Tackling the Global Refugee Crisis: From Shirking to Sharing Responsibility, 4 October 2016, available at: <http://www.refworld.org/docid/57f3d8f94.html> accessed 16/8/2021.

86% of the current number of refugees reside in least developed states.⁴ In Africa, as of 2020, Uganda had the highest number of refugees with a growing figure of over 1.4 million refugees. Sudan is the second highest refugee hosting country with a figure of over 1 million refugees. Other developing countries with an increasing number of refugee population in Africa include: Ethiopia, DR Congo, Chad, Kenya, Cameroon, South Sudan, Niger and Tanzania.⁵

While this is the dire situation in most developing countries, many developed states are minimally affected. They take in a restricted number of refugees into their fiercely guarded borders. For instance, the UK has accepted approximately 132,349 refugees as at 2020 with 77, 245 pending asylum cases by the same year.⁶ In 2020, US only welcomed 11, 814 refugees, a significant drop of up to 86% from the previous admissions running as far back to 2016.⁷ This is negligible in comparison to 740,000 refugees in states like Ethiopia or the growing numbers in Kenya.⁸

This paper examines burden sharing as a potentially successful mechanism for addressing such situations facing developing countries that experience a mass influx of refugees.⁹

II. Burden Sharing as A Sustainable Tool for Alleviating the Plight of Refugees

Burden Sharing refers to taking proportional responsibility for refugees according to one's resources and socio-economic capabilities or assisting other states to cater for their refugee population.¹⁰ The term in this context

⁴<https://www.unhcr.org/refugee-statistics/> accessed 16/8/2021.

⁵<https://www.statista.com/statistics/1232812/african-countries-hosting-most-refugees/> accessed 16/8/2021.

⁶ <https://www.unhcr.org/uk/asylum-in-the-uk.html> accessed 7/9/2021.

⁷ <https://www.hrw.org/news/2020/10/21/us-australia-hit-new-lows-refugee-resettlement> accessed 7/9/2021.

⁸ Ibid (n3).

⁹ Martin G, 'International Solidarity and Co-Operation in Assistance to African Refugees: Burden-Sharing or Burden-Shifting.' (1995) 7(Special Issue) Int'l J Refugee L 250.

¹⁰ Kathleen Newland, *Cooperative Arrangements to Share Burdens and Responsibilities in Refugee Situations short of Mass Influx* UNHCR Migration Policy Institute, 2011

refers to situations where developing countries experience mass influx of refugees.¹¹ This concept posits that the burden of hosting refugees should be equitably distributed amongst states and thus relieving developing nations of the difficulties faced in providing adequately for refugees.¹²

Burden sharing acknowledges that granting asylum may create difficulties for some states. Industrialized countries are occasionally called upon to voluntarily accept into admittance refugees according to a certain quota based on the population of the country and the Gross Domestic Product.¹³ This is in contrast to the larger refugee populations that developing countries accept within their borders.

Burden sharing recognizes the effects of refugee migration into host countries and as such include aspects such as: economic, environmental, socio-political as well as matters pertaining to peace and security.¹⁴

- a) *Economic*: The presence of large refugee populations often leads to substantial demands on food, energy, transportation, employment and public services such as education, health and water facilities. The financial costs have to be viewed in the context of structural adjustment programs being carried out simultaneously in many of the developing countries such as Kenya. The refugee camps need to be set up and maintained even in the face already dire economic situations.
- b) *Environmental*: An increase in refugee populations usually leads to serious, uncontrolled environmental imbalances which can affect entire eco-systems. Refugees also often create an unexpected and massive demand for scarce natural resources such as land, fuel,

¹¹<http://www.migrationpolicy.org/article/burden-sharing-new-age-immigration>. accessed 14/8/2021.

¹² Grahl-Madsen, "Plan for distributing asylum seekers," Nordisk Tidskrift for International Ref 35 (1965) p.175 ff.

¹³ Robinson W, 'The Comprehensive Plan of Actions for Indochinese Refugees, 1989-1997: Sharing the Burden and Passing the Buck.' (2004) 17(3) J Refugee Stud 319.

¹⁴ Ibid n 10.

water, food and shelter materials, with long-term implications for their sustainable regeneration.¹⁵

- c) *Social-political*: The impact is notably felt when refugees are from different cultural, ethnic, religious, or linguistic groups from the host population, leading to an exacerbation of social tensions. Most of these are thus looked down upon as 2nd class citizens undeserving of government services.
- d) *Peace and security*: The presence of large refugee populations can have serious implications for internal security, particularly in situations where the ratio of these populations to the local populations is high. For example, in Kenya, the unprecedented increase in terrorist attacks has cast more suspicion on the refugees in various camps.¹⁶

In Africa, there has been massive inter-country influx of refugees. This large population has been a result of the prevalent civil conflicts in the immediate postcolonial period. Political instability has also proved a major driving force for the increase in the number of refugees. Countries such as Ethiopia have an open-door policy in its reception of refugees and thus have easily become overwhelmed socio economically as it also struggles to provide adequately for its population.¹⁷

Unfortunately, the concept of burden sharing does not constitute binding obligations on states. Essentially, the duty under international law to engage in burden sharing is nonexistent.¹⁸ Any activities undertaken in this regard are purely discretionary. As a result, developing countries are usually left to a large extent to bear the brunt of hosting refugees admitted into their territories. Contextually, the non-codification of the burden sharing concept

¹⁵ https://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/rcp/APC/2000-Discussion-Paper-UNHCR-submission-5th-plenary.pdf. accessed 16/8/2021.

¹⁶ https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/2014Somali%20Refugees%20in%20Kenya.pdf. Accessed 16/8/2021.

¹⁷ UNHCR Ethiopia 2020-2021 Country Refugee Response Plan.

¹⁸ Hathaway, James C. and Alexander Neve, "Making International Refugee Law Relevant Again: A proposal for collectivized and solution-oriented protection." *Harvard Human Rights Journal* (1997) 10:115-211.

under international law relating to refugees has had a huge bearing in the current crisis of overflow of refugees.¹⁹

III. International and Regional Legal Framework on Refugees

i. International Legal Framework on Refugees.

The major reigning international convention on refugee law is the 1951 Convention relating to the Status of Refugees²⁰ and its 1967 Optional Protocol relating to the Status of Refugees.²¹ Both were drafted in the wake of the Second World War. The 1951 Convention establishes the definition of a refugee as well as the principle of non-refoulement and the rights afforded to those granted refugee status.²²

Burden sharing is alluded to in the Preamble of the 1951 Convention Relating to the Status of Refugees which affirms that the UN endeavors to assure refugees the widest possible exercise of fundamental rights and freedoms considering that the grant of asylum may place unduly heavy burdens on certain countries and this requires international cooperation to tackle.

The Protocol relating to the Status of Refugees was opened for signature on 31st January 1967²³, thus doing away with the gaping limitations of the “refugee” definition in the 1951 Convention.²⁴

¹⁹Göran Melander, *The International Migration Review*, Vol. 15, No. 1/2, Refugees Today (Spring - Summer, 1981), pp. 35-41.

²⁰ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://www.refworld.org/docid/3be01b964.html> [accessed 16 August 2021]

²¹ UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <https://www.refworld.org/docid/3ae6b3ae4.html> [accessed 16 August 2021]

²²Ibid n15.

²³Grahl-Madsen, “International Refugee Law Today and Tomorrow.” *Archiv Des Völkerrechts*, vol. 20, no. 4, 1982, pp. 411–467. JSTOR, JSTOR, www.jstor.org/stable/40798007.

²⁴ Ibid n 16.

The year 1967 also saw the adoption of the Declaration on Territorial Asylum by the General Assembly of the United Nations.²⁵ The Declaration gives expression to the notion of international solidarity in the solution of refugee problems and restates the rule of non-refoulement as a general principle, to be respected by all States. Additionally, under the human rights regime, article 14(1) of the UDHR,²⁶ guarantees individuals the right to seek and enjoy asylum in other countries.

In the above major refugee conventions, burden sharing has not been explicitly explored as a tool for alleviating the plight of refugees. This is despite the obvious and unique challenges that developing countries face in catering for refugees compared to their developed countries counterparts.

ii. The New York Declaration 2016

In a more deliberate and recent attempt to highlight the need for burden sharing, states participated in the making of the UN New York declaration 2016. It was unanimously adopted on September 19th 2016.

According to the UN High Commissioner for Refugees, Filippo Grandi, the New York Declaration represents significant political commitment that seeks to fill in the burden sharing gap in the international protection of refugees.²⁷ It deals with both refugees and immigrants. This step came in the wake of several people reported to be dying at western borders or capsizing in boats in a bid to reach peaceful borders. The West has been notorious for reinforcing its borders against refugees in a move that is ascribed to general social phobia within local communities.²⁸

²⁵ UN General Assembly, *Declaration on Territorial Asylum*, 14 December 1967, A/RES/2312(XXII), available at:

<https://www.refworld.org/docid/3b00f05a2c.html> [accessed 16 August 2021]

²⁶ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at:

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²⁷ <https://www.unhcr.org/new-york-declaration-for-refugees-and-migrants.html> accessed 7/9/2021.

²⁸ Cuttitta, P. & Last, T. *Border Deaths: Causes, Dynamics and Consequences of Migration-Related Mortality*. Amsterdam: Amsterdam University Press, 2020.

The New York declaration has thus paved the way for states to fully respect the human rights of refugees and immigrants.²⁹ In the celebrated document, it is further agreed that protecting refugees and supporting countries that shelter them are shared international responsibilities and must be borne equitably and predictably. In expressing their commitment, countries pledged robust support to those states which are affected by large movements of refugees across their borders.

The Declaration contains 4 key objectives of a Comprehensive Refugee Response Framework which are:

1. To ease the pressure of host countries and communities. This will also reduce conflict between the refugees and locals over scarcely available resources.
2. Enhance refugee self-reliance by absorbing them into the country's economy.
3. Expanding 3rd country solutions. Adopting different approaches in tackling influxes of refugees into developing countries.
4. Supporting conditions in countries of origin for return in safety and dignity. This deals with the root cause of displacement and seeks to also facilitate smooth and voluntary refugee repatriation.³⁰

The New York Declaration is a sure step in the right direction with regard to formulating a concrete and global burden sharing mechanism

iii. Regional Human Rights Regime on Refugees

Regional human rights instruments have also placed emphasis on the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions. Such instruments

²⁹ UN General Assembly, *New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly*, 3 October 2016, A/RES/71/1, available at: <https://www.refworld.org/docid/57ceb74a4.html> [accessed 16 August 2021]

³⁰ V Turk and M Garlick, 'From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees' 28 *International Journal of Refugee Law* 656 (2016).

include: The American Convention on Human Rights³¹ and the Banjul Charter.³²

In the African context, the Organization of African Unity adopted an OAU Convention governing the Specific Aspects of Refugee Problems in Africa in 1969.³³ Two of the renowned regional frameworks on refugees are briefly explored below:

a. The 1969 OAU Convention Governing the Specific aspects of Refugee Problem in Africa.

Under this instrument, where a Member State finds difficulty in continuing to grant asylum to refugees, such a Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international cooperation take appropriate measures to lighten the burden of the Member State granting asylum.³⁴

b. 1987 Addendum to the 1966 Bangkok Principles Concerning the Treatment of Refugees

The concept of burden sharing was included in Paragraph III of the Bangkok Principles Concerning the Treatment of Refugees, adopted by the Asian-African Legal Consultative Committee (AALCC).³⁵ It verily provides that the principle of international solidarity and burden-sharing should be seen as applying to all aspects of the refugee situation, including the development and strengthening of standards of treatment of refugees, support to States in protecting and assisting refugees, the provision of durable solutions and the

³¹ Article 22(7).

³² Article 12(3).

³³ Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa ("OAU Convention"), 10 September 1969, 1001 U.N.T.S. 45, available at: <https://www.refworld.org/docid/3ae6b36018.html> [accessed 16 August 2021].

³⁴ Article II (4).

³⁵ Asian-African Legal Consultative Organization (AALCO), *Bangkok Principles on the Status and Treatment of Refugees* ("Bangkok Principles"), 31 December 1966, available at: <https://www.refworld.org/docid/3de5f2d52.html> [accessed 16 August 2021].

support of International bodies with responsibilities for the protection and assistance of refugees.

There are various bodies of law that are geared towards addressing refugees' concerns. However, there is a gap in the consolidation of the concept of burden sharing mainly because it is challenging to get developed countries to unwaveringly support the plight of refugees in developed countries. Socio economic concerns as well as political interplay have contributed much to the restrictionist principles adopted by western countries.

IV. Recommendations and Conclusion

The concept of burden sharing is one that has been lightly voiced since the inception of the UNHCR. It has to be recognized that the scope and nature of this concept cannot be achieved without international cooperation.

The adoption of the New York Declaration for Refugees and Immigrants in 2016 has been the most recent milestone in committing states to an equitable sharing of the burden and responsibility of hosting refugees.

Unfortunately, burden sharing is highly politicized within the international regime governing refugees. It is most difficult to achieve owing to claims of state sovereignty and social phobia in conservative environments. This notwithstanding, it is one whose adoption and implementation cannot be dispensed with in view of the growing refugee population globally.

It is obvious that a solid practical regime on state responsibility concerning refugees is missing within the International and Regional framework and that this has brought about immense confusion on how to handle refugees. The results have been dire, with hundreds losing their lives and thousands living in deplorable conditions within camps in developing countries.

There is need for a more sustainable plan in handling refugee affairs in developing countries through a workable burden sharing regime. This includes sustainable structural and financial support from developed countries to alleviate the plight of refugees in developing countries.

Ultimately, the success of such a regime is highly dependent on international political good will and the commitment of states to alleviating the plight of refugees.

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