Burden-Sharing - Discussion Paper Submitted By UNHCR Fifth Annual Plenary Meeting Of The APC

INTRODUCTION

The concept of international solidarity and burden-sharing in relation to refugees, has been present since the inception of UNHCR. Its documented origins are found in Paragraph 4 of the Preamble of the 1951 Convention relating to the Status of Refugees, which expressly acknowledges that "the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation."

Since that date, the international community has continuously stressed the fundamental importance of the above-mentioned concept. In recognition of the foregoing, the Asia-Pacific Inter-governmental Consultations on Refugees, Displaced Persons and Migrants (APC) has included this issue in its agenda for its Fifth Annual Plenary Meeting, and has requested a submission from UNHCR thereon. The paper examines the legal/normative basis for the concept, its various aspects, the implementation of this concept and precedents in this regard. Further, it proposes recommendations regarding this concept in the context of the Asia-Pacific region.

A. The legal basis for this concept

(i) The regional context: In addition to the reference to international co-operation that is included in the Preamble to the 1951 Convention, the concept of burden-sharing is included in many regional instruments as well. The phenomenon of large-scale influx of refugees in Africa, arising from the process of decolonization in the 60's, led to the first substantive regional formulation of this concept in the refugee context. Article II(4) of the 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of the Refugee Problem in Africa states that "where a Member State finds difficulty in continuing to grant asylum to refugees, such 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."

A number of European Union texts have also referred to the need for international solidarity and burden-sharing, such as the 1995 European Council Resolution on Burden-Sharing with Regard to the Admission and Residence of Displaced Persons.

With respect to the Asian region, this concept is included in Paragraph III of the 1987 Addendum to the 1966 Bangkok Principles Concerning the Treatment of Refugees, adopted by the Asian-African Legal Consultative Committee (AALCC). The Paragraph reads: "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 support of international bodies with responsibilities for the protection and assistance of refugees." This issue was also discussed at the seminar held in Manila in 1996, commemorating the thirtieth anniversary of the Bangkok Principles.

(ii) National responsibilities in refugee situations: Under the terms of international law, primary responsibility for protecting and assisting refugees lies with the host countries. This is clearly spelt out in the 1951 Convention and its 1967 Protocol. While regional and international burden-sharing initiatives may be needed to assist host States, this does not diminish their responsibility in regard to the refugees on their territory. Burden-sharing has three components: national, regional and international. The two latter components should support and complement national responsibilities. Even in situations where regional or international actors participate in burden-sharing activities, there should be full recognition of the heavy burden that is placed on host States, particularly during the initial emergency phase of large-scale influxes and refugees or returnees, or where refugee situations are prolonged.

B. The need for burden-sharing

(i) Rationale: The Executive Committee of the UNHCR Programme (ExCom) has elaborated several Conclusions, which either focus on, or draw attention to, the issue of burden-sharing. Amongst these, the ExCom Conclusion 22 (XXXII) of 1981 relating to the Protection of Asylum Seekers in Situations of Large-Scale Influx, is particularly important, inasmuch as it explains the need for this concept and provides certain parameters for the implementation thereof. It notes the following rationale for burden-sharing:

- A mass influx may place unduly heavy burdens on certain countries, and a satisfactory solution could not be achieved without international cooperation.
- States should, within the framework of international solidarity and burden-sharing, take all necessary measures to assist, at their request, states that have admitted a mass influx of refugees.

(ii) Consequences of refugee and returnee movements: Both mass influx as well as mass return may require international solidarity and burden-sharing arrangements to address the humanitarian consequences, and to enable the respective countries of asylum or origin to meet their obligations. However, it is important to recognize that the primary burden is usually borne by the host countries and communities. There is increasing recognition of the extent to which large refugee/returnee populations may impede or jeopardize the development efforts of developing nations. Some of the largest refugee/returnee concentrations are found in countries that already suffer from weak economies and poor infrastructure, as well as widespread poverty. National and local authorities in these countries are often compelled to divert considerable

resources and manpower to deal with issues relating to these populations, detracting from the pressing demands of their own development.

The impact of these populations is notably felt in four areas: economic, environmental, socio-political, and in the domain of peace and security.

Economic: The presence of large refugee/returnee populations 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 seen in the context of structural adjustment programmes being implemented simultaneously in many of the developing countries.

Environmental: Sudden influxes of large refugees populations often lead 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, water, food and shelter materials, with long-term implications for their sustainable regeneration.

Social-political: The impact in this domain is notably felt when refugees or returnees are from different cultural, ethnic, religious, or linguistic groups from the local population, leading to an exacerbation of social tensions.

Peace and security: The presence of large refugee/returnee populations can have serious implications for internal security, particularly in situations where the ratio of these populations to the local populations is high. It can also have implications for regional stability, as recent experiences in West Timor, Indonesia have shown. The problems of the politicisation and militarization of refugee camps and settlements are well known. As a result, substantial demands are often put on police and armed forces of countries of asylum and countries of origin in order to ensure the security and stability of areas affected by large refugee/returnee populations.

(iii) The phenomenon of irregular movement: It has also been noted that the phenomenon of irregular movements of refugees and asylum seekers is more likely to occur from countries which host large refugee populations or which face protracted refugee situations. Such movements generally cause problems for the irregular movers themselves as well as for the receiving countries, since they frequently indebt themselves to people smugglers and are often compelled to employ clandestine and sometimes dangerous methods of travel. Receiving countries that wish to return such persons to their countries of first asylum, often face difficulties in establishing readmission agreements. Countries of first asylum are, in general, reluctant to enter into such agreements in view of the large numbers of refugees that they already host on their territory.

C. Burden-sharing precedents in the Asia-Pacific region

(i) General: It is undeniable that the burden placed on countries by refugee and returnee populations has been borne primarily at the national level. However, there have been many examples of regional and international burden-sharing. While some burden-sharing arrangements have been limited to agreements between States in a particular region, there have been a number of comprehensive approaches, which

have included countries and international organizations from outside the region concerned. Illustrations of such comprehensive approaches are to be found, *inter alia*, in Africa (the 1981 and 1984 International Conferences on Assistance to Refugees), the Americas (the 1989 Plan of Action of the International Conference on Central American Refugees), the Balkans (the 1992 International Meeting on Humanitarian Aid for Victims of the Conflict of the Former Yugoslavia) and the CIS (the 1996 Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States).

(ii) The CPA: Notwithstanding the comprehensive approaches enumerated above, one of the earliest and most compelling examples of the success of the comprehensive approach to the resolution of refugee problems was implemented in the Asia-Pacific region. The 1989 International Conference on Indochinese Refugees which established the Comprehensive Plan of Action for Indochinese Refugees (CPA) represented a major multilateral effort to resolve the problem of the Vietnamese and Lao refugees. The objectives of the CPA were twofold: to protect refugees and to prevent a further outflow of non-refugees.

The Plan placed interlocking and mutually reinforcing obligations on the countries of origin of first asylum, and the major donor and resettlement States. Countries of asylum in the region agreed to admit the asylum seekers and to determine their refugee status, with the assistance of UNHCR. Those recognized as refugees were guaranteed resettlement by the principal resettlement countries. The countries of origin acknowledged their responsibility towards their own citizens, by agreeing to take back all non-refugees and to scrupulously observe their safety. UNHCR undertook the role of monitoring returnees in Vietnam and to bring about a climate conducive to return.

(iii) The example of Cambodia: The 1990 Paris Peace Accords went much further in terms of a comprehensive approach, paving the way for solving the Cambodian refugee problem as an integral part of the UN Transitional Authority for Cambodia (UNTAC) operation. In addition to its military component, UNTAC had a strong civilian arm focusing on institution-building, reconstruction and the organization of national elections. UNHCR was assigned the responsibility of repatriating 370,000 Cambodian refugees from Thailand, which was completed before the national elections.

(iv) Lessons learned: All these approaches shared certain common elements, including provision for close consultation and negotiated political consensus among concerned Governments, a well-defined and coordinated plan, inter-agency cooperation on the basis of complementarity of mandates and responsibilities, and a follow-up mechanism for monitoring and policy adjustment, as well as a coordinating lead agency. Burden-sharing arrangements were built into the schemes, tailored to the specifics of each caseload, and served as a guarantee of basic protection and respect for minimum rights in asylum, while at the same time permitting the achievement of durable solutions.

(v) A forum for regional cooperation: The above precedents clearly demonstrate the fact that, in order to achieve an integrated strategy based upon protection, solutions

and prevention, strong cooperative partnerships must be forged among regional actors. Instead of responding to events, the adoption of a common pro-active strategy could prevent the re-occurrence of humanitarian crises such as the Indochinese problem. A comprehensive approach to dealing with forced population movements requires the participation of all governments in the region. In recognition of this need, UNHCR initiated the Asia-Pacific Consultations in 1996, which serve as a regional consultative mechanism that provides an informal forum to discuss population movements in the region. In spite of their varying circumstances, all countries in the region have an interest in these issues, as they may also touch upon legitimate state concerns.

D. The implementation of the concept

(i) Parameters for the implementation of the concept: The wide range of legal and political instruments which stress the importance of international solidarity, burden-sharing, and responsibility-sharing on refugee-related issues, illustrates the commitment to cooperative partnerships which exists within the international community in general. There is, however, a need to identify practical ways of implementing these concepts and of achieving or enhancing such partnerships, notably in the Asia-Pacific region. As guidance in this regard, the ExCom Conclusion 22 provides certain parameters:

- Such action could be multilateral or bilateral, regional or, universal, and in cooperation with UNHCR, as appropriate.
- Similarly, such action should be adapted to the particular situation at hand, and be directed towards strengthening the capacity of host States to provide asylum, the facilitation of voluntary repatriation, promoting local settlement in the receiving country or providing resettlement opportunities in third countries as appropriate.
- Measures in the context of burden-sharing should also include, as necessary, the provision of emergency, financial and technical assistance, assistance in kind and advance pledging of future financial assistance or other assistance beyond the emergency phase until durable solutions could be found. Where voluntary repatriation could not be envisaged, the provision of resettlement possibilities in a cultural environment appropriate for the well being of the asylum seekers, should also be considered.
- States would also consider the strengthening of existing mechanisms or new arrangements, as appropriate, to ensure the necessary funds and other material and technical assistance are immediately available.
- Governments would seek to ensure that causes leading to large-scale influxes are removed, and, where such influxes had occurred, that conditions favourable to voluntary repatriation be established.

(ii) Forms of burden-sharing: Burden-sharing thus assumes different forms depending on the problem, ranging from contributions to agency programmes for bilateral assistance, provision of human resources, temporary admission of refugees or their resettlement. There is also an underlying assumption that while regional solutions depended principally on cooperation between countries most directly affected in the particular regions, a comprehensive approach should also be able to call on the assistance and cooperation of countries outside the region. This is exemplified by the

Humanitarian Evacuation Programme for Kosovar refugees, where third countries from both within and outside the region, agreed to accept Kosovar refugees from Macedonia, in an attempt to lighten the disproportionate burden faced by this country. It should be noted that, in the Asia-Pacific region, both Australia and New Zealand participated in this Programme.

(iii) Burden-sharing in mixed migration movements: The mixed movement of refugees and economic migrants calls for a new approach to burden-sharing. The irregular movement of large groups of people, some of who are refugees or asylum seekers in need of protection, while others are reacting to economic factors creates a new challenge for governments. Governments of countries of origin, transit and destination need to collaborate with international organizations in trying to address this complex problem, since these movements are cross-border by nature and, as such, require international cooperation. However, they have, thus far, been treated at the national level, as national security issues, due to the criminal element linked to the trafficking of human beings. This has resulted in more stringent border controls, which have, in turn, had the unintended effect of creating more business for the traffickers themselves, as more people employ the traffickers in order to circumvent the aforementioned controls. The fact that refugees are sometimes compelled to employ people smugglers does not diminish their need for international protection. This needs to be borne in mind when identifying solutions to deal with this issue.

CONCLUSIONS

Based on the above, UNHCR provides the following recommendations in regard to burden-sharing:

- Burden-sharing is a key to the protection of refugees and the resolution of the refugee problem. However, international solidarity and burden-sharing is not a pre-requisite for respecting the principles of *non-refoulement* and asylum.
- Particular regions and countries continue to host very large numbers of refugees despite enormous political, economic, environmental, and social problems. By addressing some of the political and financial costs of hosting refugees or rehabilitating returnees, burden-sharing mechanisms established by the regional/international communities, could contribute to alleviating the problems faced by these host countries, and could assist them to respect their international obligations in this regard.
- Either evacuation on a temporary basis or resettlement on a permanent basis can be a positive element in burden-sharing arrangements. In such situations, due consideration should be given to the lack of capacity of neighbouring countries to absorb refugees, and to the need for regular consultations with the countries of asylum most affected by the exodus, in order to assess and respond to their assistance requirements.
- Burden-sharing is an integral part of comprehensive solutions. Approaches to burden-sharing could be linked to political processes, development and environmental pro-grammes, and peace-keeping and peace-building activities, including reconciliation, rehabilitation, reconstruction and reintegration initiatives. This implies the promotion of regional and international understanding and cooperation, notably through such fora as the APC.

- Burden-sharing should be carried out in the context of national, regional and international responsibilities for refugees. Any regional burden-sharing arrangement should be complementary to, and not at the expense of, global burden-sharing efforts, such as contributing to UNHCR programmes and providing for resettlement of refugees.
- It is noted that formal burden-sharing arrangements have thus far been on an *ad hoc* basis, which have been rooted in the established framework of international burden-sharing, but have been tailored to specific situations. Any attempt to systematize burden-sharing arrangements should ensure that this flexibility, which is necessary to such mechanisms, is not lost.
- People trafficking/smuggling needs to be recognized as a new dimension to the concept of burden-sharing. Burden-sharing arrangements to deal with this problem would need to take into account the requirement to distinguish between *bona fide* asylum seekers and economic migrants, and to ensure the protection of the former. Comprehensive approaches to this phenomenon would involve responsibility-sharing between countries of origin, first asylum, transit and destination.