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**Refugee Protection: “Here” or “There”?**

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European University Institute

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## **Abstract**

Policymakers in states of the Global North are in the privileged position of having a genuine ethical choice concerning whether to devote their resources to providing refugee protection in their territory (for example, by enabling safe passage of refugees to their borders and offering generous resettlement opportunities) or to prioritize resourcing refugee protection in the Global South. For these policymakers the question 'Should we protect refugees here or there?' posed in this *global* context represents a real, and not merely a notional, ethical challenge. The primary focus on this paper is the ethical dilemma confronted by the conscientious policymaker in the Global North concerning where (and how) to support refugee protection. A secondary focus is the ethical dilemma faced by conscientious policymakers in the Global South in relation to the global context and the issues confronted both Northern and Southern policymakers in their distinct regional contexts.

## **Keywords**

Refugees, protection, asylum, development, responsibility.



## 1. Introduction\*

Even as the media focus has been on caravans to the U.S. border with Mexico and boats crossing the Mediterranean, it is widely acknowledged that the current default distribution of the global refugee population is preponderantly, and increasingly, to the Global South. The proportion of refugees hosted in the Global South has increased from 75% to 85% over the past decade or so.<sup>1</sup> The distribution within the Global South is itself very uneven, being concentrated in less than a dozen states. Uneven distribution also characterises the contribution of the Global North to refugee protection, with a small set of major donors to UNHCR and other international organizations and a yet smaller set of resettlement countries. In a context in which it is patently clear that a well-functioning system of refugee protection requires that responsibilities and burdens be shared in a reasonable manner by members of the international community, the current operation of the system falls far short of what is required.

But how should responsibilities and burdens be shared among states? For states of the Global South that are proximate to refugee-producing states, the combination of porous borders and the strong international norm of *non-refoulement* entails that there is no real ethical choice for conscientious policymakers but to admit refugees onto their territory. The main ethical dilemmas confronted by such Southern policymakers concern, first, the kind or level of protection they can provide to refugees that is compatible with discharging their obligations to their own citizens and, second, ways of encouraging other states to share responsibility for refugee protection without withdrawing protection from refugees in their care. By contrast, policymakers in states of the Global North are in the privileged position of having a genuine ethical choice concerning whether to devote their resources to providing refugee protection in their territory (for example, by enabling safe passage of refugees to their borders and offering generous resettlement opportunities) or to prioritize resourcing refugee protection in the Global South. For these policymakers the question ‘Should we protect refugees here or there?’ posed in this *global* context represents a real, and not merely a notional, ethical challenge.<sup>2</sup>

The primary focus of this paper concerns how ethically conscientious policymakers in the Global North should respond to this question, and we address this topic by critically investigating one response, powerfully articulated in recent debates, which argues that states of the Global North should primarily support protection in the regional context of the state from which people are forcibly displaced (i.e., neighbouring and proximate states), rather than through a wider global process of fair sharing of refugee presence to states capable of (and accountable for) providing such protection or through a system reflecting refugees’ own choices of destination. We address this response by considering the arguments made, perhaps most prominently by Betts and Collier (2017) but also echoed by Brock (2020), for

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<sup>1</sup> <https://www.unhcr.org/globaltrends2017/>, accessed 19<sup>th</sup> June 2021.

<sup>2</sup> “Here” and “There” are impure indexicals, and we use these terms not because we dismiss the perspective of the Global South (on the contrary), but because our paper addresses primarily the dilemmas faced by conscientious policy makers in the Global North for whom “here” refers to their own countries and “there” to the refugees’ countries of origin, and also because using these terms also allows, in the final section of this paper, to exploit their indexical character to shift the perspectives from global to regional contexts and from Global North to Global South perspectives.

focusing refugee protection *there*. Hence, for example, in the case of Syrian refugees, this view would recommend that protection be provided in states such as Egypt, Jordan, Lebanon and Turkey – rather than lament the fact that the vast majority of Syrian refugees are concentrated in these countries. We examine a range of objections to the form that this argument usually takes, and then consider possible adaptations to basic contours of the proposal that might suffice to make it more acceptable before considering further critical rejoinders. The authors of this paper adopt overlapping but distinct positions on some of these questions, and we will indicate those points at which the joint authorial voice is divided into separate contesting voices.

As we have noted, the skewed distribution of refugee protection is not only between the Global North and the Global South but also within each of these regional contexts. Thus, although the primary focus of our argument concerns the global distribution of refugee protection, the question ‘Should we protect refugees here or there?’ does not only arise in a global context but also within the North and the South as regional contexts – and here it poses a genuine ethical question for conscientious policymakers in both regional environments. In the final section of this paper, we also reflect on this secondary context.

## 2. The Case for Refugee Protection *There* as (Realistic Utopian) Ideal

In examining the argument for protection in neighbouring states, it is important to note the degree of ambiguity concerning the status of the argument being advanced: is it an argument that protection in neighbouring states represents the best overall regime of refugee protection under reasonably favourable circumstances (e.g., a general disposition of states to acknowledge binding duties to refugees) or the best achievable regime given current political, economic and cultural factors shaping states’ political dispositions towards refugee population? Under the second, non-ideal, framing, the argument is that this regime offers the best outcome in terms of maximizing ‘good enough’ protection under conditions where motivating compliance among reluctant actors is an important feature of system design. It is plausible that proponents of the ‘protection-there’ position believe that their approach represents the best option under both renderings<sup>3</sup>; but whether or not that is the case, we will treat the two possible forms of the argument as distinct. In the first two sections of this paper, we address the ethical choice of the Northern policymaker under ‘ideal’ conditions; in the following section, we take it up under ‘non-ideal’ conditions.

The core commitments of Betts and Collier’s argument for refugee protection comprise a normative ground, the humanitarian duty of rescue, which obliges us, insofar as it is feasible, to restore life ‘as closely as possible to pre-refuge conditions’ (2017: 107). This obligation is specified in terms of two normative goals: sustaining refugee autonomy (conceived in socio-economic terms) and an eventual way out of limbo (ideally through return to their home state). The central plank of their argument for ‘protection there’ is that well-designed and well-supported schemes of protection in ‘safe havens’ in neighbouring states that enable refugees to enjoy not just basic humanitarian protections (of the form that UNHCR endeavours to support in refugee camps) but access to education, training and work can be wins for refugees, for the proximate hosting states, for the distant donor states and for home states from which refugees have fled. This view stresses the reasonable point that the degree of social disorientation experienced by refugees is likely to be less stark in neighbouring states that share significant social and cultural features with the home state of the refugee and combines it with the presumption that enabling refugees to engage in labour markets, develop skills and build capacities, rather than being warehoused in camps or living precarious lives in urban or

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<sup>3</sup> Owen (2021) makes the case that this is so for Brock’s (2020) use of Betts and Collier’s argument.

peri-urban economies, is likely to support inclusion and integration while making it easier for refugees to sustain existing social networks.

For host states, refugee protection becomes a source of funding for development projects in which the labour and skills of refugees are mobilized to realize development goals for the state. For financing states, 'protection there' promises both economic and political value. Protection *there* is considerably less expensive in terms of costs per refugee as well as offering the prospect of reduced investment being required in financing the state's own border controls. Finally, it is also proposed that such a scheme can 'incubate recovery'. The claim is that an economically active refugee population that has access to education, entrepreneurial and practical skills development will be well-placed to engage in the work of post-conflict reconstruction. If, moreover, enterprises from Special Economic Zones (SEZs) in the hosting state move to, or expand into, the home state, the recovery can be supported in ways that are continuous with the protection process.

This looks, *prima facie*, to be an attractive vision – and its proponents are careful neither to propose that any single development practice (e.g., SEZs) would work in all contexts nor to claim that this mode of protection is exclusive. Thus they acknowledge two justifications for respecting 'spontaneous arrival' outside the region of origin: (1) 'as a symbolic commitment to reciprocity' and (2) 'as a last resort' (Betts & Collier, 2017: 136). They also acknowledge two main functions for resettlement, namely, removing the most vulnerable who may need special care and protection, and providing a long-term solution for those unable to return home or integrate locally after ten years of exile. These measures are primarily envisaged as supplements to the central form of protection proposed that may be required (however rarely) to deal with exceptional cases.<sup>4</sup>

### **3. Critique of 'Protection There' and Alternative Ideals**

It is not by chance or conscious design that most Syrian refugees reside primarily in Lebanon, Turkey and Jordan; Rohingya in Bangladesh; and Somalis in Ethiopia and Kenya. These are of course the countries that border a state that has, through conflict and persecution, forced its citizens to flee. There is thus a certain arbitrariness to a strategy directed at protecting refugees *there*—one not acknowledged by its proponents. It is based not on the best interests of the refugee nor the desires (or capacities) of hosting states; rather it is based primarily on propinquity. Closeness to home has its benefits, as we noted above. But we should ask more of an ideal version of refugee protection. We should ask that it seek to maximize interests all around. It seems highly implausible that this test will be met by a strategy devoted to keeping refugees in the first place they have reached when fleeing danger.

The obvious, and frequently mentioned, alternative is a fair system of 'burden sharing' among the nations of the world. The Preamble to the 1951 Geneva Convention rightly recognizes that 'the grant of asylum may place unduly heavy burdens on certain countries' and thus a 'satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation.' It might be argued that a state's duty to cooperate is not necessarily inconsistent with a 'protection there' strategy if the distant state can meet its fair share responsibility by supplying funds to hosting states. That is, if adequate funding were provided to neighbouring countries of asylum, and refugees' rights were guaranteed, the arbitrariness of maintaining the initial distribution of refugees might seem less troubling. Japan is a noteworthy example of a

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<sup>4</sup> Notably Betts (2021) moves a step away from this position in allowing more grounds and a greater role for resettlement, see p.25.

state that has generously supported funding for humanitarian organizations but resettled few refugees.

But we are not persuaded that a plurality of Japans supporting refugees in neighbouring hosting states is an ideal state of affairs. First, a system that promotes assistance in asylum countries is likely either to be coercive for the hosting states or to undermine the overall system of protection. It is likely to be coercive because states, acting on humanitarian principles, usually leave their borders open to refugees from neighbouring countries; but if there is no further movement of refugees to other states, then asylum states are effectively compelled to maintain refugee populations (so long as return home is not possible). At some point, the numbers may become overwhelming and states may legitimately close their borders to additional refugees, as Jordan and Lebanon have done for Syrian refugees. But at that point, our other concern arises: the refugee regime would have failed in its purpose by not offering safety to persons in danger and by not respecting the norm of *non-refoulement*.

Second, the process of restoring lives and re-establishing communities destroyed through forced displacement is not one that can be 'purchased' simply through socio-economic provisioning. As Matthew Gibney comments, to be a refugee

is not simply to be an individual who has lost the protection of her basic rights; it is to be someone deprived of her social world. It is to be someone who has been displaced from the communities, associations, relationships and cultural context that have shaped one's identity and around which one's life plan has hitherto been organised. (Gibney, 2015: 459)

To repair this situation means providing refugees with conditions under which they can reasonably experience themselves as effective social agents, as agents who can make choices and plans about their futures that are not simply driven by the urgent requirements of practical necessity and who have some ability to shape the social environment in which those choices and plans are made. In other words, the basic requirements of the standard of restoring life 'as closely as possible to pre-refuge conditions' include not only provision of access to housing, health and welfare systems to protect refugees from the overwhelming demands of practical necessity and access to opportunities for education, training or employment to enable refugees to make effective choices and plans about their lives, but also access to (at least) municipal political membership to enable refugees to experience themselves as having some say over the environment in which they are situated. An ideal in which treatment of refugees consists of one set of states that can simply pay and walk away and another set of states that act as sites of socio-economic opportunities without political rights or membership even at the local level does not adequately conceptualize refugee autonomy (i.e., securing their fundamental rights). Furthermore, in stressing the reasonable point that the degree of disorientation is likely to be less stark in neighbouring states that share significant social and cultural features with the home state of the refugee, the 'protection-there' ideal fails to acknowledge that more distant states containing established diasporas of the refugee-producing state are also well-placed to serve as socio-cultural sites of protection and may be better placed to offer the social, economic and political rights that enable re-nurturing ties of community, association and relationship.

In addition, a system that keeps refugees in their regions of origin denies states and communities elsewhere the benefits of resettled refugees. It may be hard to see this in the throes of the current political context, but there is persuasive evidence that refugees return with interest the investment that resettling states make in them and that refugees may also play an important role in bolstering diasporic (and other) communities. Refugees in diasporic communities and those communities as a whole can also play significant roles in 'incubating' post-conflict recovery.

So an ideal system would not opt for the kind of 'protection-there' strategy sketched above, and so far the authors are in full agreement. But it is at this point that their unity begins to fray.

For Owen, a humanitarian approach to refugees that sees our obligations to them purely in terms of a duty of rescue fails to acknowledge that the international refugee regime is best conceived as a legitimacy-repair mechanism for the international order of states; that is, that responsibilities for refugee protection can be derived directly from the conditions of legitimacy of the international state system (Owen, 2016, 2020; see also Carens 2013, Brock 2020). On this view, an ideal refugee regime combines a general obligation to refugees as persons for whom the international community (via the agency of states) acts *in loco civitatis* with a differentiation of refugees in terms of the reasons for their flight (or fear of return). Refugees are people for whom the international community must substitute for their own state, but what this relationship demands can vary according to whether refugees require asylum, sanctuary, or refuge. Asylum is exemplified by the case of people who have reasonable grounds to fear persecution by their home state (or by non-states actors from which their state is unwilling to offer protection). Today the Rohingya serve as one clear example of such persecution. Here we can endorse the view that a grant of asylum can be seen as expressing condemnation of the persecuting state (or the state not disposed to protect from persecution) and that central to asylum is the granting of a claim to membership. In a world in which state membership is the basic condition of political standing, it is a duty of the international order of states to ensure that all persons enjoy such standing; and when it is denied through persecution, states are obligated to provide protection in a way that re-affirms the right to such standing – and this is what the legal status of asylum as a distinctive type of refugee status should be conceived as providing.

Sanctuary is exemplified by the case of people fleeing generalized violence and the breakdown of civil order. Many of those fleeing the civil war in Syria may fall into this category (with many others falling into the first) as would many refugees encamped in African states such as Kenya and Uganda. The claim advanced against the states to which such persons flee as representatives of the international community is a claim to sanctuary conceived as a space where one is protected against the threats to one's basic security, liberty and welfare posed by generalized violence and the breakdown of public order in one's home state without fear of being returned to that state insofar as the relevant conditions persist. In this context, the primary responsibility of the state that adjudicates the status of sanctuary-seekers is to ensure that they are protected by the norm of non-refoulement and have access to the basic security, liberty and welfare that the protective and enabling functions of citizenship would normally provide.

Refuge is exemplified by the case of people fleeing specific state failures such as famine or natural disasters (where the line between 'state failure' and 'natural disaster' is typically blurred). The distinctiveness of the case of refuge is that it applies in the context of discrete and specific events where persons are so situated that they can secure themselves from the threat to their basic rights posed by the event in question by seeking immediate shelter across an international border and that this is their best reasonable option in the circumstances in which they find themselves. Grants of refuge thus act to acknowledge and express a commitment to the basic rights of persons in the face of circumstances beyond the immediate control of their home state, and repatriation as soon as reasonable is the appropriate response. Refuge here serves the same basic function as international emergency assistance to persons displaced by the relevant events within the state and is essentially part of the same emergency assistance policy tool-kit (Owen, 2019a & 2020).

From this perspective, an initial problem with the humanitarian 'protection-there' ideal is a failure to differentiate between the kinds of protection required to address the distinct positions of these three types of refugee. While what Owen calls 'sanctuary refugees' represent that vast

majority of contemporary refugees, that is not a good reason to treat all refugees as if they were members of this category. On the one hand, what is needed for asylum refugees is probably best construed as rapid resettlement and political membership of a new state. This is unlikely to be best provided by proximate states in which the very proximity to the persecuting state (or non-state agency) may be a reasonable source of fear for the asylum refugee. On the other hand, those granted (temporary) refuge are best addressed through short-term basic needs provision.

Even if we focus only on the case of sanctuary refugees though, on the legitimacy account the demands of an ideal regime would entail a duty to naturalise (after a certain time) in order to repair ‘the harm of political membership loss’ which ‘is precisely that an individual no longer has a community within which they can . . . claim their basic rights in a secure way’ (Buxton, 2021: 15-16). As Owen (2020) has it, refugees are owed integration into a political community on terms at least equal to those due to ‘ordinary immigrants’ given the potential vulnerability of refugees to public and private domination and their lack of the exit/return option enjoyed by other immigrants. But now recall the problem highlighted earlier that the ‘protection-there’ regime distributes refugees on the basis of proximity. The implication is that a ‘protection-there’ regime that acknowledges the importance of political membership would entail the involuntary transformation of the membership of hosting states while having no such effects on funding states. Rather than draw the conclusion that we should deny refugees access to political membership (which seems essentially the Betts and Collier view), this suggests that an ideal regime would involve a distribution of sanctuary refugees among states so that the effects on membership-composition are fairly shared. Since it is desirable that members of a state identify the conditions of their own autonomy and well-being with the conditions of autonomy and well-being of the political community, the use of mechanisms of allocation that ‘match’ the legitimate considered preferences of refugees and of states and thereby allow each to see their choices as having shaped their relationship can play a valuable role in such fair sharing.<sup>5</sup>

Aleinikoff takes a different view, focusing not just on what states must do to maintain systemic legitimacy. He believes that the current system of nation states is not and cannot be deemed legitimate without a radical redistribution of wealth, resources and power—and that whatever legitimacy is lent to the system by a well-functioning regime of refugee protection is but a peppercorn in the balance. This is not to say that dramatic and unconscionable global inequality must be remedied before one can speak of an ideal system of refugee protection. It is just to say that Aleinikoff would not frame the ideal case in systemic legitimacy terms.

For Aleinikoff, the ideal state of affairs would need to recognize the interests of refugees as defined by refugees. The central problem with the Betts and Collier approach is that the authors assume they know what refugees want. But there is ample evidence that many refugees do not seek to remain in countries of first asylum; rather they frequently seek to move to states where they can better provide for themselves and their families, to reunite with other family members, to pursue educational opportunities. Would not an ideal system need to have space for the pursuit of these (utterly human) goals?

Thus Aleinikoff would characterize the protection-there approach as arbitrary in two senses. It pushes burdens onto states that usually are not responsible for the conditions in a neighbouring state that produce refugee flight; and it ‘locks in’ refugees who believe they can better put their lives back together elsewhere.

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<sup>5</sup> See Jones and Teytelboym (2016) and also [http://www.europarl.europa.eu/cmsdata/109080/The\\_refugee\\_match.pdf](http://www.europarl.europa.eu/cmsdata/109080/The_refugee_match.pdf), accessed 19/06/2021 and Owen 2018: 36-40.

These considerations lead to an additional element in an ideal regime of refugee protection: freedom of movement. As Aleinikoff and Zamore (2019: 80-81) have noted, the 'Nansen Passport' of the early 20th century facilitated refugee movement among states in order to help displaced persons find new communities in which they could improve their lives. The Nansen Passport did not guarantee entry into another state, but by providing an identity document it supported such movement. YYY would recreate the Nansen Passport, but in an even stronger form. It would function as a ticket of admission to other states, one that would override state immigration laws and limits (but subject to exclusion on national security and other pressing grounds).

Free movement for refugees would have a number of benefits. As Aleinikoff and Zamore (p. 117) state,

[r]efugees are able to regain agency and attain self-reliance; hosting states and communities are benefited if refugees who are unable to find work there can find it in another state; and states of destination gain from having refugees link to employers who seek their labor.

Betts and Collier spend pages writing about refugee autonomy and access to economic activity, but these goods are to be sought, on their account, only in the country of first asylum. Their argument proceeds in a curious fashion. They lay out the three paramount goals for refugee protection as rescue, autonomy and ending the state of limbo. They then assert that a right of free movement is not necessary for rescue once a refugee is in a country of first asylum. But they never consider whether free movement might further the other two goals: that it can be both a constitutive aspect of autonomy and an instrumental way to enhance autonomy, and a possible route out of both long-term limbo and the general condition of limbo to which they assign refugees.

An ideal system might fail, one can suppose, if all the refugees in the world choose one state, or just a few states, for resettlement. So a well-functioning regime might permit quotas based on some rough fair shares per country. But even with these limits, the new Nansen Passport would open up opportunities for substantial refugee choice—something that neither the current system nor the help-them-there proposals do much to advance.

The freedom of movement argument suggests another possible tension between the authors focused on how central state membership need be to refugee protection. Owen centres his critique of 'protection there' on its shortcomings in guaranteeing immediate state membership for asylum refugees and state membership over time for sanctuary refugees. This follows from Owen's starting position of a world constituted by presumptively legitimate states to which persons are assigned for protection (and, hopefully, flourishing). If a state has breached its obligations of care and protection to its citizens, then the international community is duty bound to remedy that breach since it is the systemic agreement among states that has allocated a person to a particular state -- an allocation generally based on the arguably arbitrary criteria of birthplace and descent (Shachar 2009). The usual remedy is to find the affected persons a new place to live. Again, in a world of states, that necessarily means a location within another state, with state membership following so that the 'international filing system' (Brubaker 1992) of state and citizen can return to equilibrium.

By contrast, Aleinikoff notes that the arrival of new forms of subnational and transnational political arrangements are opening up new visions of membership in which Arendt's classic argument that protection of individual rights requires membership of a polity can potentially be satisfied through forms of non-state membership. To be sure, citizenship in the European Union is grounded, as a legal matter, in the citizenship of a member state; but EU citizens may

understand and experience their political identities in other terms. And crucial to those evolving notions is freedom of movement within the EU.<sup>6</sup>

All this is to say that Aleinikoff concludes that an ideal system of refugee protection should ensure that refugees are (a) guaranteed rights enshrined in the Refugee Convention and other international and regional instruments and (b) provided—perhaps within some limits—with freedom to move to the state in which they believe they can best pursue their life plans. With these elements guaranteed, the system would restore human agency, place less of a burden on countries of first asylum (which are most likely to face demands that membership be provided) and give less weight to the claim that membership must be reattached to states lest the legitimacy of the global order wobble.

These differences between the authors, while turning on fairly fundamental disagreements about the nature of the international system of states and the place of human beings within it, do not in any way detract from their shared view that the ‘protection-there’ approach is deeply flawed. Indeed, it seems to both authors that the case against ‘protection-there’ is only strengthened by the fact that it appears vulnerable from their two different perspectives.

#### **4. From Ideal to Non-Ideal Theory: The challenge of improving refugee protection in the real world**

It may seem an inopportune time to be writing about what an ideal system of refugee protection would look like when we are currently so far from it and the world is faced with seemingly overwhelming immediate challenges. The vast majority of refugees live lives in limbo in countries of first asylum. Unable to return safely home or to access legal ways to move elsewhere, they are also generally denied the right to work and access to social protection in hosting states. Together, these factors produce what UNHCR terms ‘protracted refugee situations’; Aleinikoff and Zamore have a bleaker name: ‘the second exile’. As we have seen in recent years, when this state of affairs becomes intolerable, refugees will cross borders, deserts, and great bodies of water in search of a better life. When they travel to the Global North, they are met with border guards and gun boats and then held behind barbed wire. These onward moving refugees become, in the eyes of politicians and much of the general public in developed states, illegal migrants and hence appropriately subject to the regular (and usually draconian) immigration laws and processes of the state that seeks to exclude them.

We have noted above the crucial role that ‘responsibility sharing’ must play in a well-functioning system of international protection. Yet everywhere—beyond states of first asylum—we see responsibility-shirking. Resettlement numbers which were already well below the levels required have plummeted, in part due to the COVID crisis but also to the installation of populist governments in the Global North. Developed states spend far more on enforcement than they provide to international organizations assisting the displaced; and development funding by some states has been reduced by the money it has spent on adjudicating asylum claims. Asylum-seekers who arrive spontaneously at state borders have been detained under inhumane conditions, pushed back, barred from qualifying for asylum in attempts to deter them from coming (irrespective of the strength of their claims for protection).

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<sup>6</sup> Here it turns out there is no tension, the authors are in agreement because Owen, like Aleinikoff, recognizes that mobility rights for refugees can be a key part of their settlement in states that belong to regional associations. Indeed, Owen(2019b) has argued that in the case of the EU, the best model for refugee protection is one that provides refugees with the free movement rights of EU citizens after a relatively short period (e.g., 3 years) and prior to attaining national citizenship (and hence EU citizenship) in a member state, for example, via a mechanism akin to the EU Directive 2003/109/EC awarding movement rights to long-term resident third country nationals.

These facts are as well-known as they are tragic. They paint a picture that probably should lead philosophers and practitioners to adopt a degree of realism—and perhaps a dose of humility—in proposing systemic fixes. And it is these kinds of considerations that seem to offer strong support for a ‘protection-there’ approach: since we cannot reasonably expect states of the Global North to adopt policies more open to the arrival of refugees, we can at least ask them to fund generously refugee protection in countries of asylum—and so much the better if the funding goes to projects that enhance refugee self-reliance rather than simply continuing to provide humanitarian assistance. It is a triple win given the political realities at play: refugees gain the means of taking care of themselves and the dignity that accompanies such activities; hosting states gain significant development funding that benefits their citizens as well as displaced populations; and developed states can feel good about what their dollars, pounds, yen and euros are doing for the displaced—without having to open their doors to the huddled masses. Maybe a dreamer can imagine a world where refugees are distributed to states based on refugee preferences and a calculation of fair share; but that world—at least at this historical juncture—exists in a solar system far from our own. Or so the non-ideal argument for ‘protection there’ (i.e., in the Global South) might run.

But the non-ideal argument for ‘protection there’ fares no better than the ideal argument, for a number of reasons. First, there is no evidence that rich states will be persuaded to provide massive new funding for development or humanitarian efforts to benefit displaced persons. Each year UNHCR constructs a ‘needs-based budget’ by examining the needs of displaced populations around the globe and then calculating the amount of money it would take to enable such populations to lead lives at minimum levels of health, welfare and dignity. Actual funding for UNHCR never approaches that level; in any given year, UNHCR raises about 50% of the ‘needs-based’ calculation. Likewise, the Office of the Coordination of Humanitarian Affairs publishes an annual ‘global appeal’ for funding necessary to respond to humanitarian emergencies; it too is dramatically underfunded each year. Data for 2020 showed global requirements at \$38.5 billion, with actual funding reaching only \$18.6 billion. Development funding exceeds humanitarian funding by an order of magnitude overall, but funding for refugee hosting states remains starkly inadequate. It generally runs to state treasuries not to beneficiaries. Ensuring that the money ends up in projects that assist refugees is a daunting task of international accountability—and one not adequately addressed by the academic supporters of ‘protection there’.

A second major concern is protection of refugee rights in hosting states. Looked at through a ‘real world’ lens, we see little reason to believe that a ‘protection-there’ strategy can adequately provide for the protection of the human rights of the displaced – rights that are far more likely to be robustly enforced in countries of resettlement should a refugee manage to gain entry to these states. States and international organizations have been hesitant to insist that countries of asylum respect human rights commitments (or to condition aid on respect for such rights) for the simple reason that hosting states, if they feel undue pressure from countries elsewhere in the world, have the power to send refugees home and close their borders to new arrivals (or to incentivize onward movement of refugees). There has thus been an unholy grand bargain at the heart of the international refugee regime: states of the Global South take refugees in so long as states of the Global North provide (albeit inadequate) financial support and don’t press human rights concerns. This is not to condemn hosting states. Most are trying to make the best of a bad situation: how to respect international obligations to leave their borders open to fleers from danger in a world where others neglect their responsibility to share the burden. But this is the real world. And a strategy that relegates refugees to such a system in the name of a promised better life for refugees seems quite widely off the mark.

At a slightly more theoretical level, the treatment of refugees as (often long-term) ‘temporary residents’ who can be denied both voice and exit, the two classic mechanisms for trying to

ensure that interests are acknowledged and addressed (Hirschman 1970), should concern us. It seems remarkably sanguine to assume both that one can conceive of persons as autonomous in the absence of exit and voice mechanisms and that we can be confident of such 'autonomy' being secured by other actors.

In response to these general concerns, proponents may point to flagship endeavours such as the Jordan Compact which has aimed to support the socio-economic participation of Syrian refugees in Jordanian development and address the educational needs of refugee children. While there may have been benefits for some Syrian refugees from the Jordan Compact, major lessons from the Compact include the difficulties of designing the kind of 'refugee-development' nexus proposed by 'protection-there' (Lenner & Turner, 2018) and the need for ongoing adjustments and clear accountability mechanisms (Huang & Gough, 2019) as well as the vulnerability of such schemes to local political and economic factors, the lack of sustained long-term donor commitments, declining rates of foreign direct investment and changes in the priorities of international actors. Thus, for example, it is widely recognized that the Compact focused too much attention on increasing the number of work permits granted to Syrian refugees without sufficient attention to policies that fitted the local context, and while the special economic zone elements of the Compact were 'potentially transformative in theory', it was 'ill-suited to the realities on the ground' (Huang & Gough, 2019). The launch of the London Initiative in 2019 is a de facto acknowledgment of these limitations and the need to widen the scope of 'international support for inclusive growth in Jordan that enables it to meet its commitments' (Huang & Gough, 2019). A report from IRC is forthright on the limitations of the scheme (IRC 2020: 9) and Betts himself acknowledges that 'Ultimately, the Jordan Compact was a political success but an economic failure.' (2021: 331)

Even if successful in improving conditions for refugees, experiments such as the Jordan Compact risk becoming a rhetorical resource for political entrepreneurs mobilizing nationals against the 'special treatment' of refugees. Indeed, the various openings and closings of services and sectors to Syrian refugees in Jordan may be indicative of the difficult politics of such projects in which international and national political pressures will often stand in tension.

In sum, making such schemes resilient over appropriate time-periods is extremely difficult and would require a level of sustained commitment from multiple actors that cannot be relied on. This is a lesson reinforced by Betts' recent investigation of refugee economies which acknowledges in the case of Kalobeyei, in Kenya, "that creating refugee self-reliance in remote border locations is extremely challenging" (2021: 166) and recognizes in the case of Dollo Abo, in Ethiopia, that there are equally challenging difficulties (2021: 171). Consequently, it would be extremely imprudent to put all our protection eggs in the development basket in the way proposed by advocates of 'protection there'.

This, though, leaves us with a challenge. Under current conditions in which the states of the Global North invest ever more resources in building remote control defences against the 'spontaneous' arrival of refugees (Fitzgerald, 2019) that both increase the risks of refugee journeys to these states and support the growth of the human smuggling industry, what other realistic options are on the table? Even if the development-oriented 'protection-there' strategy can't deliver on its 'win, win, win' promises and has significant limitations that make it decidedly non-ideal as a generalized response to refugee protection, it remains the case that, despite the urgings of the 2016 New York Declaration and the subsequent Global Compact on Refugees, there appears to be no political will for significant increases in resettlement opportunities. If we believe, as we do, that any cogent scheme of refugee protection should involve a much greater mix of refugee protection "here *and* there" than is currently available, what feasible paths are there to this end other than reliance on the willingness of refugees themselves to undertake difficult and dangerous journeys?

In terms of the movement of refugees from the Global South to the North, we think that some realistic options are available at regional, state, and sub-state levels as well as through the support of non-governmental agencies. Consider first that the political economy of states of the Global North involves significant use of immigrant labour. In this context, there is scope for incentivizing states to prioritize recruitment of refugees in contexts of labour migration, whether temporary or permanent. Such a scheme, supported by organisations such as *Talent Beyond Boundaries*, would provide states with a mechanism for significantly increasing their resettlement capacity at relatively low economic and political cost, although there are obstacles to scaling up this proposal (see Ruhs 2019). Furthermore, most of these Northern states (the USA is an exception) also have a demographic profile characterised by high life expectancy and low birth-rates which skews their age profile increasingly towards an older population. As the average age of mass refugee flows such as that from Syria tends to be skewed toward youth, such a scheme would also play a role in addressing the generational imbalance that increasingly characterise Northern societies. Judged against this background, the decision of Angela Merkel to open Germany to refugees in the summer 2015 is increasingly looking like a far-sighted move. Although it is also undoubtedly the case that this kind of policy would involve fewer negative shocks if conducted on a more regulated and controlled basis than Merkel took to be available to her, *Wir schaffen das* is a judgment that has been largely (albeit not wholly) vindicated and its benefits are now showing. This is in line with reasonable expectations since, as a recent study of Europe by d'Albis et al. (2018) notes, the beneficial macroeconomic effects of asylum inflows typically take 3-7 years to fully emerge.

Didier Fassin has commented that 'whereas many European states once regarded asylum as a right, they now increasingly regard it as a favor', where this development required that 'the image of refugees had to be transformed from victims of persecution entitled to international protection to undesirable persons suspected of taking advantage of a liberal system' (2016). No doubt the reversal or transformation of this narrative will require time and political work. For this reason, we also think that looking at other levels of government than that of the national state and at non-state actors is likely to be an important part of any realistic shift of the protection mix to a greater 'protection here' focus in the Global North. One focus can be sub-state government – provincial or municipal – with organisations such as the Mayors Migration Council (MMC) facilitating the role of local government in refugee protection. Notably the Marrakech Declaration highlighted the commitment of the MMC to the important role of local government in relation to the Global Compact for Refugees.<sup>7</sup> The focus on sub-state government acknowledges that the interests of sub-state nations (e.g., Scotland) or cities (e.g., London) may be more receptive to refugee protection than that of the state (e.g., UK) as a whole, and urges a more flexible approach to refugee protection in which sub-state governments can assume some responsibility for admissions (with only upper limits for the state as a whole set by central government). A related case can be made for forms of private sponsorship of refugees by community groups, diaspora associations, professional associations, and trade unions. In both cases, the assumption of responsibility for refugee protection and integration by the sub-state or non-state actors reduces the political costs for national governments while still allowing them to reap the reputational benefits (as the case of Canada neatly illustrates). Even under the relatively politically hostile conditions we currently face, we hold that there is realistic scope for a greater emphasis on 'protection here' than the non-ideal argument for 'protection there' admits and that the conscientious Northern policymaker has good reason to embrace such opportunities.

These considerations suggest that moving our attention from a narrow focus on the state to levels of governance above and below the state as well as to the potential roles of non-state

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<sup>7</sup><https://static1.squarespace.com/static/5df133ed5c523d063ce20693/t/5ea5fe595aaf842048077e95/1587936857584/Marrakech+Mayors+Declaration.pdf>

actors discloses rather more scope for realistic movement away from the coercive boxing of refugees into immediately contiguous states.

## **5. Widening the Focus**

Thus far we have conducted our discussion from the standpoint of the conscientious Northern policymaker addressing the global distribution of refugees between North and South. At this stage, however, in order to develop our argument further we need to widen the focus in two ways: first, by acknowledging the regional context in which the conscientious Northern policymaker is also situated; and second, by considering the ethical issues confronted by a conscientious policymaker in the Global South in relation to global and regional contexts.

For the Northern policymaker posing the question of refugee protection “here” or “there” in regional context raises the ethical dilemma of how to acknowledge one’s obligations to refugees without making one’s state vulnerable to exploitation by the actions of other Northern states (in the ways that Southern states are effectively exploited by Northern states). This is a key ethical dilemma because the willingness of states of the Global North to engage in a higher level of refugee protection in the North is liable to be significantly dependent on how vulnerable within the North these states take themselves to be.<sup>8</sup> This dilemma is exemplified by the vicissitudes of the Common European Asylum System (CEAS). In the context of the past five years, rules designed for distributing responsibility in ‘non-crisis’ contexts led to massively disproportionate outcomes under ‘crisis’ conditions, followed shortly by widespread non-compliance by those states that were overburdened and the de facto breakdown of CEAS as well as a push to strengthen the EU’s borders against spontaneous arrivals. Part of the attraction of development-focused protection policies to Northern policymakers is the contention that they will reduce asylum flows to the North. If, as Serena Parekh (2020) has cogently argued, the only real choices available to most refugees are (1) being semi-permanently warehoused in refugee camps with highly limited opportunities, (2) living a highly precarious life in urban (or peri-urban) settings or (3) undertaking a dangerous journey to the Global North, then it is unsurprising that some will choose the third option. In this respect, the North does indeed need to learn the lessons to which the advocates of development-focused approaches (such as Betts and Collier) draw attention if they wish to reduce onward movements to the North and hence their potential vulnerability to the kinds of ‘crisis’ context that undermine building fair cooperation among Northern states.

There are other lessons to be drawn from the travails of EU asylum policy. The first is that refugees’ own choices matter, not just for integration but also for the workability of distribution schemes. The second is that there needs to be some flexibility for states in terms of how (and how much) they contribute to refugee protection. These lessons might, for example, support a system of refugee matching and responsibility trading in a quota-based system<sup>9</sup> or, alternatively, the use of a mechanism for portable funding attached to refugees in a system that allowed refugees free movements rights after an initial reception period.

This is important in the light of the final lesson that can be drawn from EU asylum policy, namely, that with common commitment it is possible (if difficult) to build fair sharing mechanisms within regional bodies such as the EU and that doing so can itself provide a basis for a fairer sharing of global responsibilities. In the absence of such a scheme, the ethical dilemma confronted by the conscientious Northern policymaker is that to enjoy reasonable

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<sup>8</sup> And the two – ‘Northern’ solidarity with the ‘South’ and ‘Northern’ solidarity with other ‘Northern’ countries – are likely to be linked.

<sup>9</sup> For a version of this argument, see Owen 2018. For a sophisticated recent proposal on matching see Acharya, Bansak & Hainmueller (2020)

control over exposure to refugee flows requires the combination of resource transfers to Southern hosting states and the offer of resettlement places *with* the widespread use of non-entry measures designed to obstruct spontaneous arrivals that intensify the dangers of refugee journeys and support the growth of the people smuggling industry. This is why the development-based approach appears like a potential panacea to states of the Global North. But as we have argued, it cannot serve as a panacea, and the ethical dilemma remains firmly in place.

Let's now turn to policymakers in the Global South for whom the default prudential assumption is likely to be that states of the Global North, left to their own political considerations, will not significantly increase the number of refugees they accept from hosting states, either through resettlement or other legal pathways. We can start by noting that the default ethical dilemma of the Southern policymaker is that she is put in the position of choosing between meeting her responsibilities to citizens of her state and respecting the humanitarian needs and legal rights of (non-national) refugees. Remember, refugees make a rather extraordinary claim on hosting states—they assert a right to enter, to remain and to be provided with a slew of rights all based on the actions of their home state.

The development approach we have described above tries to resolve this dilemma by promising a bigger pie from which all—citizens and refugees—can be given bigger slices. But even if the development strategy produces a bigger pie, it still does not resolve the dilemma: why should not a policymaker seek to give citizens the lion's share of the benefits? Cannot that policymaker say that the care of refugees is a responsibility collectively held by the international community, and that that responsibility should be met with the wealthiest countries providing most of the support? Even more likely, as we have suggested above, development programming and funding will be inadequate to significantly increase the size of the pie—in which case, the conscientious policymaker indeed faces a difficult choice.

Given the vast disparity in wealth between North and South, we believe that policies of most of the hosting States in the South have been remarkable. They have rarely closed their borders to refugees and have not adopted the harsh deterrence policies (push-backs, detentions, prosecutions) so widely in use among Northern states. At the same time, many hosting states, in seeking to preserve opportunities for its citizens, have denied refugees a right to work and access to safety net programs—rights specifically guaranteed by the 1951 refugee convention. (Provision of health care and education varies State to State. In some places, these are provided by international organizations; in other places, refugees are provided access to local services.) In effect, the compromise many hosting states have reached is to permit the entry of refugees (often setting aside land for a camp or settlement) and to abide by the norm of *non-refoulement* but to provide little else if doing so would reduce support available for its citizens. Local integration is generally disfavoured by hosting states both because it is seen as putting refugees in competition for jobs with local populations and because it undercuts repatriation efforts. This compromise—combined with Northern resistance to onward movement of refugees—is what gives rise to the central failure of the international refugee regime: years of lives in limbo in countries of first asylum for the vast majority of refugees.

How can states of the Global South address this predicament? There is no doubt that one element in negotiating their ethical dilemma is likely to be through experiments in the economic integration of refugees (see Betts, 2021). But there are two wider strategies available that address the global and regional contexts respectively.

In the global context, Southern policymakers can seek to form negotiating blocs to put pressure on Global North states to adopt more robust responsibility-sharing arrangements either through issue-linkage (Owen, 2020: 100) or more directly by threatening to close their borders or return refugees unless states of the North do more (Aleinikoff & Zamore, 131-32).

It might be that threats to withdraw support to refugees—by sealing borders to new entrants or closing existing camps and sending refugees home (as Kenya has recently announced it will do)—would produce responses from the Global North that would more evenly distribute the burden of refugee protection. On the one hand, if effective, such threats could materially advance the interests of refugees and hosting states, and also contribute to the improvement of the global protection regime. On the other hand, such a strategy instrumentalizes refugees, which raises significant ethical concerns even if the strategy succeeds; moreover, there is every chance that the Global North, if it responds at all, would do so in a minimalist fashion (a few more dollars, a few more resettlement slots). In our view, given the morally problematic use of refugees as bargaining chips and the risks of failure, an ethically conscientious hosting state policymaker should not adopt such a policy unless either they had no other options remaining to them (i.e., they are suffering from complete overload as, arguably, both Lebanon and Jordan could claim at points during the continuing Syrian crisis) or unless the political circumstances were particularly favourable and there was compelling reason to be confident in a transformative outcome. There may be more scope to facilitating the onward movement of refugees towards the North (an option available to many Southern states); and in the case of Southern states close to Northern states, such a policy may even be weaponized in search of policy concessions (as Turkey and Morocco have done in relation to the EU). This strategy poses its own ethical dilemmas, particularly in the weaponized form, but is generally preferable to breaching the norm of *non-refoulement*.

In the regional context, the Southern policymaker has more scope for action in addressing responsibility-sharing efforts in regions where most refugees currently reside. Consider the discussion above regarding the role of freedom of movement for displaced persons as an element in an ideal international regime. Admittedly, this noble goal may be difficult to implement at the global level; but there is reason to think countries of an affected region might permit some form of less restricted travel for displaced persons. An example is the situation of more than 5 million Venezuelan refugees who have found safety in 17 countries in Latin America and the Caribbean. Some have been recognized as refugees; others have entered through (generously applied) immigration visa categories; many have been admitted without a formal status but their admission and stay has been tolerated.<sup>10</sup>

Another example is the Regional Comprehensive Protection and Solutions Framework adopted by Central American states and Mexico that seeks to “encourage[] cooperation between countries of origin, transit and destination, to foster responsibility-sharing on matters related to prevention, protection and durable solutions” for displaced persons. Providing for freedom of movement for refugees would be consistent with the aims of the Framework – and a stark departure from the deterrence measures that Mexico currently undertakes on behalf of the United States.

Refugee mobility could also be worked into existing regional and sub-regional freedom of movement agreements. A recently adopted Protocol by the IGAD states (of East Africa) provides for free movement of citizens of IGAD states.<sup>11</sup> As members of the OAU Convention on refugees, the IGAD states are committed to permitting the entry of refugees. In a noteworthy provision, the Protocol goes further, stating that ‘Member States shall allow citizens of another Member State who are moving in anticipation of, during or in the aftermath of disaster to enter

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<sup>10</sup> The COVID pandemic provided grounds for new and strict restrictions for Venezuelans as for migrants in the region generally.

<sup>11</sup> Protocol on Free Movement of Persons in the IGAD Region, <https://environmentalmigration.iom.int/sites/environmentalmigration/files/Final%20IGAD%20PROTOCOL%20ENDORSED%20BY%20IGAD%20Ambassadors%20and%20Ministers%20of%20Interior%20and%20Labour%20Khartoum%2026%20Feb%202020.pdf>

into their territory provided that upon arrival they shall be registered in accordance with national law.' Presumably, refugees and other persons displaced across national borders would be included in the free movement guarantees that would permit them to move subsequently to other IGAD states.

## **6. Conclusion**

Betts and Collier argue that the movement of refugees from the neighbouring state of refuge to the Global North is justifiable only (1) 'as a symbolic commitment to reciprocity' and (2) 'as a last resort' (Betts & Collier, 2017: 136). Their presumption is that the former will be accomplished by resettling those refugees who have special needs or vulnerabilities for whom protection cannot be adequately provided in the neighbouring state (e.g., those with serious medical conditions), while the latter will be a small minority who have good reason not to return to the post-conflict home state nor to stay in the neighbouring state. We have argued that this case fails as an argument at both ideal and non-ideal levels of theorizing, and that a much greater mix of protection there and protection here needs to be made available. Northern policymakers cannot rely on 'protection there' to resolve their ethical and political dilemma. As our reflection on South-South refugee movement should make clear, this question should not ultimately be seen as turning on 'protection there' or 'protection here' but rather on providing a range of possible options for refugees that allow their own heterogeneous preferences and commitments reasonable scope for expression in determining where and how their protection is secured while respecting the right of states not to be overburdened through the responsibility-avoidance of others. Achieving this end requires the Global North to recognize that they can only resolve their global and regional dilemmas if they support the Global South in addressing the distinct dilemmas that they confront.

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