

The Arc of Protection: Toward a New International Refugee Regime

T. Alexander Aleinikoff and Leah Zamore

Chapter Five Conclusion—Achieving the Vision

We have, in essence, defined four arcs along which international protection of refugees has progressed. First, the *classes of protected persons* have expanded dramatically. The geographical and temporal limits of the 1951 Convention have been removed, making the definition of refugee global. Regional instruments and international practice now affirm that persons fleeing across borders due to conflict and violence will generally be considered refugees.¹ We have come close, as a matter of practice, to ensuring that all necessary fleers receive some form of international protection.

Second, *protection activities* of UNHCR, other international organizations, and NGOs have moved considerably beyond those initially anticipated by the founders of the international refugee regime. In addition to the granting of identity and travel documents and advocacy for refugee rights, international protection today includes a wide range of programs for refugees in vulnerable situations—women, children, LGBTI people. Hundreds of millions of dollars are spent each year by the international community on refugee education, health, and livelihoods projects.

Third, *refugee rights* have expanded—at least as a formal matter—beyond those enshrined in the Convention to include norms from later adopted human rights instruments. The Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the ILO convention as well as the Covenants on economic, social, cultural and civil and political rights are particularly significant. Most recently, protections in international maritime law have come to the fore.²

Fourth, the *category of responders* has grown. Development agencies now see displacement as an important area for their intervention. And private sector actors—seeing both moral obligations and opportunities for profit—have entered the refugee protection space.

Thus over the past 70 years, we have witnessed substantial movement forward along the arc of protection. Today, more displaced persons are being assisted by more actors in more ways than at any time in history. It is thus an extreme irony that the system is largely in disarray, betraying its founding principles and enduring goals. A regime designed to put people back on their feet keeps them on their knees. A system of protection intended to guarantee the return to normal life has produced a surreal existence for the vast majority of

displaced persons, condemned to life in extreme poverty and perpetual limbo. The country of first asylum—the place of rescue—has become, for most refugees, a place of confinement where they are both locked in and locked out: unable to return safely home and forbidden to move elsewhere, they are also denied entry into economic opportunities and social programs in hosting communities. Humanitarian programs have supplanted rights-based approaches, producing deprivation (and debt) instead of dignity.³ Development programs have also retreated from their welfarist origins, often prioritizing global markets instead of the global poor.⁴

Plainly, dramatic measures are needed to repair this broken system. But the programs for reform proposed by those with most of the world's resources—the global North—are likely to reinforce rather than remedy the fundamental failings of the current state of affairs. Let us leave to one side proposals that would move the system backwards on the arc of protection—that would cut back on the definition of refugee, adopt encampment policies, restrict established refugee rights, or condition development aid on border closures or interceptions.⁵ We will examine instead what we will label the New Liberal Consensus on reform of the refugee regime.

A. The New Liberal Consensus

The New Liberal Consensus has emerged over the past decade from programs, discussions, and funding decisions among states, the EU, multinational organizations, policy advocates, and academics. There is no formal New Liberal Consensus “manifesto,” but we can identify a set of ideas and policy recommendations that are generally adhered to and advocated for by a wide range of progressive, reform-minded government officials, experts, and institutions. (We should be clear: we have contributed to these discussions and agree with certain elements of the Consensus, as the preceding pages should make apparent.) The constituent elements of the Consensus are as follows:

1. **The refugee definition should not be “opened up,” although persons fleeing conflict and violence have properly come to be understood, and assisted, as refugees.**⁶ While it is accepted that there are “new drivers of forced migration” producing displaced persons in refugee-like situations, there is great concern that any attempt to amend the refugee definition might backfire and produce a less generous definition. At the same time, international organizations receive large amounts of funding to respond to displacement caused by natural disasters and to situations of internal displacement, and states have not objected to UNHCR guidelines that suggest that persons fleeing conflict and violence—as distinct from persecution—are entitled to international protection.
2. **Refugees are best assisted in states close to home.**⁷ A number of factors are said to support this proposition: staying in countries near one's country of origin will make return easier (repatriation being considered, a priori, the “ideal” solution); refugees are likely to have co-ethnic or co-religious communities in states close to home states; it is cheaper to assist refugees in the global South than in the global North.
3. **Self-reliance should replace “care and maintenance” as the primary focus of international programing; development aid is important to this paradigm shift.**⁸

Helping refugees attain self-sufficiency restores dignity and reduces dependence. It may also reduce expenditures for assistance in the long-run. To be successful, the turn to self-reliance requires significant support from the development community, and such funding should benefit both refugees and hosting communities.

4. **Refugees can be a benefit to hosting states, if permitted to work.**⁹ The Consensus takes aim at the idea that refugees are a burden and that they compete with host community members for jobs and resources.
5. **Resettlement programs should be expanded and additional legal pathways created to help share the burden imposed on countries of first asylum.**¹⁰ Increasing movement to third countries will help preserve “asylum space” in countries of first asylum and respect for the principle of *non-refoulement*.
6. ***Non-entrée* policies should be criticized and xenophobia condemned.**¹¹ Australian, EU, and U.S. deterrence and detention policies risk *refoulement* and inflict serious harms on asylum seekers. They also lend cover to other states wishing to follow a similar course. The power and spread of populist anti-immigrant sentiment is said to make politicians in many developed states cautious (if not cowardly).

A number of these points find mention in the New York Declaration, its Annex on the Comprehensive Refugee Response Framework and the draft Global Compact on Refugees.¹²

Were the world to adopt policies along the lines of the New Liberal Consensus, the lives of many refugees would surely be improved. And yet it is important to see that the Consensus is actually quite at home with the premises of the approach that has produced the present state of affairs. We can see this by noticing what’s missing. While the Consensus gestures at increased responsibility-sharing (through, e.g., “new pathways” to third countries), no serious effort is made to construct a global framework for addressing protracted situations. States of the global North are not being asked to commit themselves to a system of distributing burdens, nor is any international structure or platform suggested for allocating “shares.” And while xenophobia and *non-entrée* policies are criticized, they are not really confronted; indeed, they become a basis for supporting policies that offer developed states *more* protection from spontaneously arriving asylum seekers. That is no accident: the Consensus continues to relegate the overwhelming majority of refugees to the countries in which they were first provided protection; save for the tiny fraction of necessary fleers who may be resettled, movement beyond home regions is seen not as a core component of protection but rather as (irregular) migration and therefore subject to the “normal,” often draconian, rules that states put in place for regulating the entry and stay of so-called regular migrants.

No less crucially, the New Liberal Consensus says very little about enforcement of refugee rights. It emphasizes access to labor markets, to be sure; but it does so, too often, to the exclusion of refugees’ welfare and labor rights—rights intended to lessen rather than increase refugees’ market dependency. That omission is often defended as a matter of *realpolitik*, of taking seriously host states’ baseline hostility toward refugees. Yet it has as much if not more to do with the supply-side preferences and pro-business policies of donors and industry: namely, that labor markets are inherently emancipatory and self-regulating; that few problems cannot be fixed with the right mix of temporary vocational training, targeted micro-lending and corporate tax concessions; that minimal safety nets are sufficient to ward

off abject poverty; that corporate power is benign; that wage theft and exploitation are exceptional.

The reality facing millions of refugees is far less sanguine. Their poverty remains endemic whether they earn it in the marketplace or receive it in camps, and unregulated and inequitable markets pose additional risks.¹³ While the New Liberal Consensus recognizes the need for “additionality,” it proposes no funding solutions on the scale or of the quality necessary to overcome rather than maintain an increasingly intolerable status quo. The focus is primarily on ending one form of dependency: dependency on aid. Indeed, the tendency is often to reframe humanitarian funding *cuts* not as derelictions of international obligations but as opportunities for self-reliance and innovation.¹⁴ Meanwhile, the qualitative problems with development assistance—including its proclivity to create debt and to encourage austerity and to protect investors over workers or consumers—are left largely unexamined.

All of which is to say that the New Liberal Consensus is surprisingly close to the current North-South bargain and the broader political economy that undergirds it: the global North adopts policies to incentivize the global South to keep refugees from moving onward. According to the Consensus, development funds should be tapped to supplement declining humanitarian funding (until such time as refugees are deemed self-reliant) and should aim to insert refugees into global value chains and labor markets by, for instance, subsidizing foreign corporate investment in the export sectors of host states. The potential benefits to hosting states are said to be two-fold: increased overall levels of funding, and participation of refugees in host economies (and especially in the low-wage sectors that their citizens shun). Nothing more is demanded of the global North; indeed, once refugees have re-attained “productive” lives, their justification for moving North can be asserted to be far weaker (regardless of whether the economies and welfare systems of hosting states become in any sense adequate). A goal of self-reliance, it turns out, is simply the old humanitarianism tune with new development lyrics, a way for the global North to believe it is doing something to relieve human misery while keeping refugees immobilized in the poorer states to which they first fled.

The underlying problem with the New Liberal Consensus, then, is that it cedes too much to powerful states. In an attempt to generate “sellable” policy proposals, the Consensus offers no serious critique of the manner in which the entire regime has been constructed and put into practice by donor states for donor states. It places considerable blame on the humanitarian sector despite the fact that “care and maintenance” is more a symptom than a cause of systemic poverty in refugee-hosting areas. It asks states to be truer to their better selves, and tries to show them why it is in their interest to be so. But so long as the game continues to be played on the field of (Northern) state sovereignty, and so long as the power imbalances between donor states and hosting states (to say nothing of refugees) remain so dramatic, it is pretty clear what the results will be. If fundamental reform is to be achieved, powerful states must be persuaded to yield some portion of their power over outcomes and far more of their resources in a common endeavor of international action and governance (as they have in other areas of international practice).

The question then becomes: assuming states could be so persuaded, what might meaningful reform look like?

B. Program of reform

So it is now time to collect the various recommendations we have made throughout these pages and to set forth our view of a program of reform. We are well aware that we have not addressed questions of “root causes” and prevention of displacement—that is, that the best way forward on improving the international system of protection is to find ways to not have to invoke it. Our focus has been, and will continue to be, post-displacement policies. The proposals we offer all pose challenges to states; they cannot be adopted without states doing things they would rather not do. Thus we follow this section with some thoughts on how such a program of reform might gain traction.

Norms

People fleeing across international borders who cannot return in safety are generally offered assistance and protection by neighboring states and the international community. The classes of persons protected now extend beyond the definition of refugee in the 1951 Convention, to include persons who flee because of violence and conflict, threats from organized crime and gangs, natural disasters and drought, social stigmatization, and other engines of upheaval. Various regional instruments recognize such groups as entitled to protection. So, too, does consistent state action.

We have suggested the term “fleers of necessity” to describe persons who have reasonable grounds for flight and who cannot reasonably be expected to return for some period of time. The arc of protection now extends in practice to necessary fleers. It is time that international norms conform to practice. This could be accomplished in a number of ways. The General Assembly could amend UNHCR’s statute or adopt a resolution confirming that UNHCR’s activities extend to all displaced persons in need of international protection. Or, a Protocol to the Convention could be drafted to the same effect.¹⁵ The Guiding Principles on Internally Displaced Persons could be formally adopted at the UN (to date, they have only been “presented” to the Human Rights Council). Soft law norms can evolve from thematic processes such as the Nansen Initiative and its Protection Agenda (relating to movement across borders due to disasters and the effects of climate change),¹⁶ which has further given rise to the Platform on Disaster Displacement.¹⁷

To say that international norms reach all necessary fleers is not to say that all are entitled to all of the protections guaranteed in the Refugee Convention. Exactly what rights should apply would depend on the cause of flight, the likelihood of voluntary return, conditions in places of exile, and other factors. But to say that persons not coming within the narrow definition adopted in 1951 are not entitled to protection is no longer acceptable.¹⁸

Rights

At a number of points we have stressed the importance of refugee rights, guaranteed in the Refugee Convention and other human rights instruments, and by customary international law. Rights may be justified on both instrumental and non-instrumental grounds—and the extent to which they contribute to dignity and refugee agency.

It is remarkable how important rights—a particular conception of rights as providing a bulwark against material deprivation and inequality—were at the origins of the international regime, and how infrequently invoked they are today. Targeted assistance long ago supplanted rights protection as the *raison d’être* of the (Southern) refugee regime; and

now development-for-self-reliance, which seeks to replace the assistance paradigm, is proceeding with little attention to rights (other than the right to work and freedom of movement *within* the hosting state, which, while crucial, are insufficient to prevent exploitation of refugee labor or the confinement of refugees within the lowest ranks of the global working poor). In a sense, development-for-self-reliance runs the risk of becoming not an enhancement of protection but of protection-in-reverse: small amounts of development aid can be used to justify the withdrawal of humanitarian assistance and the transfer of the costs of protection onto impoverished displaced persons themselves.

Rights cannot exist only on paper. They must be a part of the lived world of displaced persons; they must bite. So there must be methods of enforcement. In some hosting and resettlement states, claims may be pressed in the courts—under international and domestic law.¹⁹ International funding for displacement situations could (and should) be conditioned on respect for rights (indeed, respect for rights and inclusion in economies and welfare systems should be the only non-fiduciary conditions attached to displacement-related development aid).²⁰ But such methods cannot succeed so long as they remain ancillary.

Agency and mobility

The current state of affairs fails refugees because it denies them agency and dignity and condemns them to lives of poverty. Any reform effort must be directed at ending the second exile in the hosting state and enhancing mobility among the states that constitute the international refugee regime. Inclusion in the hosting state would mean the right and opportunity to enter the workforce, to have children educated in school, to be protected by labor laws, and to be eligible for programs of social protection. Significant progress—at the conceptual level—has been made along some of these lines. UNHCR’s programming is moving in this direction, and at least some major development funders appear to be on board.²¹

A very simple idea seems to be beyond the pale: let refugees move to where they can best rebuild their lives. As described in chapter four, this can be thought of as “movement within the regime”—that is, among states that constitute the international system of protection. The Nansen Passport of the early twentieth century, recall, did not guarantee entry into another state; rather it provided documentation upon which receiving states could rely and it facilitated return to the state in which the refugee had received asylum. But it did more than this. Based on the idea that refugees should be able to travel to other states in search of life-sustaining work, the Nansen Passport helped to construct a collaborative multilateral enterprise of refugee protection. That is, states recognized a common obligation both to help refugees make their way in providing for themselves and their families and to ensure that countries and communities of first asylum do not bear a disproportionate responsibility due to morally dubious phenomena such as proximity and happenstance.

Now take this forward a century. Under current practice, there is no perceived common obligation to enhance refugee agency and to help them find a place of safety where they can best rebuild their lives. As noted, refugees are virtually stuck in the country of first asylum and must find routes as (illegal) migrants to other states. This means that a Syrian refugee who leaves Turkey for Germany is treated either as an asylum seeker in Germany or as a migrant looking for work. A well-functioning system would recognize that the person remains a Syrian refugee so long as he or she is not able or willing to return safely to Syria. There should be no need for Germany to re-adjudicate the asylum claim; nor should the person have to qualify under rules constructed for migrants. That is, refugees should be able

to move among members of the regime to find decent work, rejoin family, access necessary health care, or pursue educational opportunities. This perspective is appropriately skeptical of the self-serving idea that displaced persons are best helped closest to home. This may be true for many (and if true, then we need not be worried in the first place that a right to inter-state movement would lead to “floods” of displaced persons moving North). But why not, so to speak, test the hypothesis and in doing so materially advance the rights and interests of the displaced while ending the inequitable and unsustainable system of “responsibility by proximity”?

It should be apparent that this kind of mobility within the system benefits all members. Refugees are able to regain agency and attain self-reliance; hosting states benefit 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. This kind of mobility would have the added benefit of undercutting smuggling and trafficking activities, which would surely decrease exploitation and abuse of refugees and prevent deaths at sea. Indeed, as suggested earlier in this volume, mobility can itself be a “solution” to the refugee situation—one that does not demand of states that they extend membership.

We are not so naïve as to think that systemic mobility can be adopted immediately. There would be strong opposition from third countries that would (correctly) believe that they would receive large numbers of refugees. This would not constitute fair burden-sharing any more than the current situation of “responsibility by proximity.” So states may want to ease into mobility, perhaps establishing annual quotas, or requiring refugees to establish that there is an employer who has offered them a job. Or mobility could be established at a regional or sub-regional level—as in the EU and among ECOWAS states.²²

Responsibility-sharing

We have repeatedly stressed the need for robust responsibility-sharing. This is the unfinished work of the 1951 Convention. And we have argued in chapter four that state members of the regime have a responsibility to solve protracted refugee situations. A number of proposals for responsibility-sharing have focused on distribution of the world’s refugees, suggesting that each state be assigned a “share” of the burden, based on such factors as GDP, population size, and unemployment rate.²³ States could meet their obligations in a variety of ways: through resettlement programs, funding refugee relief efforts, or “selling” their shares to others states.²⁴ An international organization—UNHCR is often proposed—would assign shares annually and monitor compliance.

We have a less rigorous proposal in mind. Here we bow to political feasibility: it seems highly unlikely (at least in the near- or medium-term) that states would commit *ex ante* to such shares;²⁵ but even if they did, there would be no way to hold them to their commitments: “Yes, we said we’d take 10,000 refugees in the next emergency, but we didn’t mean refugees from [country X].” What the international refugee regime has lacked from the start is an institutional structure that brings states, multilateral organizations, civil society and other actors together to craft a comprehensive plan for emergency or protracted situations. There have been occasional ad hoc conferences, some yielding important results (such as the CPA for Southeast Asian “boat people”). But it would be far more sensible to have in place a standby arrangement that can be invoked when circumstances demand.

Thus we propose the establishment of a Global Action Platform on Forced Displacement. The Platform would be a multi-stakeholder organization, constituted by UN organizations, donor and hosting states (in equal proportion), development banks and other

development actors, representatives of displaced communities, the private sector, and civil society. (An executive secretariat could be established, led by UNHCR.) Through a triggering mechanism—perhaps a formal call from the High Commissioner for Refugees or the Secretary General—the Platform would convene a conference of its members to respond to a particular displacement situation, either an emergency or a protracted situation. The conference would construct a comprehensive, global plan adequate to the circumstances before it. Such a plan would provide parameters for the response of the international community in the country hosting refugees (including respect for refugee rights) and also establish responsibilities for actors elsewhere (in terms of funding, resettlement, other avenues for mobility).²⁶ There would be no pre-assigned “shares”; participating states and other members would allocate and agree to responsibilities for the particular situation. But the starting point would be that such allocations be equitable and be based on criteria far less arbitrary than proximity—preferably those outlined above: rights, agency and mobility, additional and redistributive development aid, and genuine responsibility-sharing.

To be successful, the Platform would need to tap into new sources of financing, from development funding, foundations, and other innovative vehicles such as the issuance of bonds. By establishing a fund up-front, the Platform would have ready resources to meet a new emergency or to launch a significant initiative to resolve a protracted situation, including by supporting the onward movement of refugees.²⁷ At the country-level, it would provide funding for the response in the hosting state. Crucially, such a response would move beyond the traditional mix of loans and austerity and corporate guarantees at the macro-level and targeted self-reliance activities at the micro-level. It would aim to provide a genuine stimulus—a New Deal for Refugees and their Hosts—for host states that agree to include refugees in their welfare and education systems and labor markets. Members of the platform could also consider additional policies now seen as outside the international refugee regime, such as debt relief for hosting states and action to combat capital flight and corporate tax evasion in and from host states.

It seems entirely plausible that the global response to the Syrian displacement crisis would have been different if the Platform had been in existence. Early on, a number of states, development agencies, private sector actors, civil society, and UN organizations would have convened at the global level to develop a comprehensive response—one that would have included coordinated work of development and humanitarian agencies in the neighboring states, including the provision of macroeconomic relief; and a plan for permitting entry of refugees into other states (whether through formal resettlement, labor visas, family unification or other humanitarian pathways). Had such a plan been implemented, the massive unauthorized movements over several years—with all the well-known tragic consequences—could well have been avoided.²⁸

C. From proposals to progress

In accepting, more or less, the current North-South status quo, the New Liberal Consensus approaches the international refugee regime not as a system but as a series of bilateral and multilateral bargains. We believe that the arc of protection should describe more than one-off arrangements entered into for the mutual advantage of individual states. It is, rather, the dynamic behind a collaborative effort to respond to and resolve situations of displacement. The states that have signed up to the project—by ratifying the Convention, serving as members of UNHCR’s Executive Committee, approving the annual General Assembly

resolution on refugee protection—have obligations toward displaced persons to support the system. This plainly means respecting the rights of refugees and helping and urging other member states to do so as well. And it means adequately funding the international organizations and NGOs that respond to emergencies and help refugees rebuild their lives. But, as we have shown in the previous chapter, states also have responsibilities toward other states to take those measures that can reasonably be expected of them to further the goals of the regime. That includes providing host states with the resources—and the policy space—necessary not only to absorb refugees into their welfare systems and labor markets but also to ensure that those systems and markets are equitable and sustainable.

But how, it might fairly be asked, can states be persuaded to undertake the collective work necessary to fix the system they have put in place and now allowed to fail—to respect the rights of the displaced and to stay true to the commitments they have made to each other in constructing the regime? Some have tried to argue that it is in states' best interests to adopt significant measures to reform and repair the existing system.²⁹ But, as we have suggested before, it seems unlikely to us that we are better at understanding state interests than the states themselves. Thus we are hardly surprised that earlier impressive proposals for reform, written to appeal to state interests, have not gained traction.

For these kinds of situations, recourse is sometimes made to “political will”: all we need are a few courageous leaders who could motivate us to do the right thing (that all reasonable people would recognize as needing doing). But we are quite skeptical, in our current historical moment, that such leadership will come from the top ranks of politicians. The influence (or fear) of populist politics, mixed with virulent forms of Islamophobia, appears to be playing a larger role in domestic political debates than the number of its proponents should merit. The German government walked back from its welcoming and generous policies towards Syrian refugees after facing significant opposition from right of center political groups (and from its fellow European states). And the election of the Trump administration led to an executive order that suspended the U.S. refugee program for 180 days and ultimately cut refugee admissions by more than 50 percent.

There may be space, however, at lower levels of government for progressive reform. This may seem like a curious argument, but we base it on this reasoning. Entire bureaucracies in states in the global North exist to handle refugee matters, and they are filled with many people who are dedicated to the refugee cause. Many senior staff (quietly) reject the anti-refugee policies of political leaders. Because much policy development and most program implementation is carried out at these quieter levels, steps can be taken—not in contravention of publicly announced government policies, but in areas with significant import for refugees and reform of the system. Career officials are likely to be more open to proposals based on claims from morality than political leaders; it is part of the mission of their agencies and often the reason they sought employment there.

Examples of policy-making at the mid-level could include funding for NGOs to pursue refugee rights agendas; urging UNHCR to establish a global refugee congress that would choose representatives to attend UNHCR Executive Committee meetings; development agency support for efforts to create a “merchant bank” to promote private sector investment in refugee-hosting communities.³⁰ As we have repeatedly suggested, the claim of a “refugee crisis” is overblown. The “refugee problem” is actually a manageable set of issues, if high politics would permit it to be handled at regular politics levels. That is, it is at these quieter levels of government that most refugee policy should and could be constructed.³¹

It might well be that states—at whatever level—are not willing to pursue an appropriately ambitious reform agenda. If so, two possibilities present themselves: (1) to work with entities other than (powerful) states; and (2) to induce reform by holding states accountable for the failing system they have created and maintain.

Beyond states

We have noted historical examples of successful regional approaches to refugee situations, including the Marshall Plan, the Southeast Asian CPA, and CIREFCA. The 2017 Nairobi Declaration signed by Intergovernmental Authority of Development (IGAD) member states does not provide a solutions strategy in the sense of binding commitments for return, resettlement, and local integration. It is more of an agreement paving the way to solutions—emphasizing investment and debt relief in Somalia, voluntary return, and inclusion of refugees in hosting state economies. But it is a strong example of how regional processes can serve as platforms for agreements that push individual states toward policies that they have been hesitant to adopt on their own. (It is somewhat remarkable to see Kenya—in the same year it announced its decision to close the Dadaab refugee camp and send refugees home—sign a document with a stated objective of “maintaining protection and promoting self-reliance” for Somali refugees in Kenya.) Similar efforts are now underway in Central America regarding forced migrants from the Northern Triangle countries of El Salvador, Guatemala and Honduras.³²

Progress may also be possible at the subnational level. Officials at the local level have, in many states, adopted policies more inclusive toward refugees than national policy makers. A number of “networks” of mayors have been established (dealing with broader migration issues as well as the reception and integration of refugees); and city-to-city refugee resettlement initiatives have been proposed. Local policies, of course, will not be able to conflict with national laws and regulations that may be less favorable to displaced populations. But—as for career officials in state bureaucracies—there is likely to be sufficient space for development of programs more welcoming to refugees.³³

State accountability

Inducements, incentives, and moral arguments may be unsuccessful in influencing state, regional, and subnational policy and action. To state this frankly, it is likely that states will have to be challenged and pressured to live up to existing commitments, to recognize that they have *regime responsibilities* that transcend their narrow interests, and that regime success is very much within their broader interest. That is, we must think hard about how to enforce state accountability to repair the regime that states and their institutions have permitted to fall into disrepair.

At the global level

The current system is remarkably thin on accountability. One of the High Commissioner’s responsibilities, according to UNHCR’s Statute, is “supervising” the application of “international conventions for the protection of refugees.” However this authority is rarely invoked in any formal way.³⁴ No international court hears claims that states are violating the Convention or other applicable human rights norms, and no treaty body has been established to monitor and report on member state compliance.³⁵ Major donors to UNHCR

request detailed reports on how money is spent, but that kind of fiscal oversight, to the extent it is effective, invariably pushes the agency's programs further into alignment with donor interests. Meanwhile, accountability in the other direction—that is, accountability of states to UNHCR or to each other (let alone to refugees)—is virtually nonexistent. The Executive Committee receives a large amount of documentation from UNHCR but it rarely probes into member state behavior.

A number of interesting proposals for enhancing accountability have been made. B.S. Chimni has recommended establishing a “Refugee Rights Committee,” with states required to report on a regular basis.³⁶ A similar proposal is included in a model international convention on mobility drafted by the Columbia Global Policy Initiative, which has extensive provisions relating to the rights of forced migrants. It would require states to file regular reports with the Secretary General, for review by a committee established under the convention.³⁷ But, while these ideas (and others) are intriguing, and are certainly steps in the right direction, they focus attention almost exclusively on hosting states.³⁸ Absent a robust regime of responsibility-sharing, such initiatives could have the effect of absolving third states and the wider international community of their role in creating the status quo of rightless refuge and inequitable responsibility-sharing and their correlative obligation to solve it.

Rather than, or in addition to, monitoring host states, another idea would be to bring developing host states together as a negotiating bloc. In recent years, European states have been able to prevent refugee influxes through harsh enforcement policies and practices at their borders and by negotiating deals with individual hosting states that condition development and other financial assistance on cooperation with deterring flows.³⁹ Negotiating as a bloc, hosting states might well be able insist on a significant expansion in responsibility-sharing among states of the global North. There is a risk that hosting states might wield such power in ways deleterious to refugees. But the risk of a race to the bottom is far greater under the status quo. Indeed, it is no coincidence that just weeks after the EU-Turkey deal came to fruition, Kenya threatened to close the Dadaab refugee camp—the implicit point being made was that hosting states could use their (mis)treatment of refugees as a bargaining chip for enhanced aid. A united front among host states could lead, by contrast, to movement in the opposite direction: toward a global system of responsibility-sharing.

At the national level

Accountability at the national level can be pursued through legal and political means. As noted above, lawsuits—perhaps supported by international organizations and NGOs—can be brought on behalf of refugees in hosting state courts. Courts in many states may not be open to refugees or may present decidedly unfavorable venues for such claims. But where courts are open, a legal campaign can and should be launched. In a world that well understands the potential benefits of human rights litigation, this is surprisingly unexplored territory.⁴⁰

A second strategy is political organization and pressure. It is common, in today's world, to remark on the influence of populist objections to refugees and migrants in general. But hand-wringing is not a substitute for political action. A politics of exclusion and repression must be met with a political movement for inclusion and rights. We have seen small but important examples: a convoy of cars from Vienna to Budapest to transport Syrian refugees to more friendly spaces; spontaneous demonstrations at U.S. airports in response to

the Trump executive orders that sought to suspend the admission of Muslim migrants and all refugees to the United States; a march of thousands of persons in Madrid to commemorate World Refugee Day and call for increased admissions of refugees to Spain; an Ai Weiwei installation that shrouded the pillars of the Berlin Opera House with life preservers discarded on Greek beaches by Syrian refugees.

These beginnings will need to be organized into a larger transnational movement for refugee rights. Importantly, it can and should be organized by refugees themselves. As we have suggested in chapter three, recognizing the role of refugee voices is a vital principle of reform of the system. Here, new technologies can amplify voice, connect refugees around the world, and facilitate the creation of a global political movement.

D. Concluding reflections

In an ideal world, persons would not be forced to flee their homes; and those who did flee would receive care and then return home when the fighting stops or the water recedes. This of course is not our world. Most who flee never return to their homes—and many not to their home countries. Those who cross international borders (about one-third of all fleers) will find succor in neighboring states for a while, but will live lives in limbo for years with decreasing assistance from the international community. A very few will be permitted to rebuild their lives in a third state. Decisions to flee are difficult decisions; and the human costs of flight are obvious, most particularly to the displaced persons themselves. Family life, livelihoods, schooling, communities all are disrupted. This shattering of everyday life is complicated enormously by the political arrangements that constitute a regime of nation-states. Borders, in this world, mean much—providing safety to fleers but also subjecting them to national and international technologies of aid and discipline. Loss of agency is, too often, the price paid for sustenance.

Those assisting fleers know all this. They understand the objectification of the displaced—reduced to numbers in order to support appeals for funding, characterized as “illegal migrants” to justify harsh measures of control, redefined as sources of cheap, commodified labor in order to incentivize policies conducive to self-reliance. Humanitarianism saves lives, but it does not restore the humanity of refugees. Neither do development approaches that chiefly serve ulterior purposes (from border management to business interests to counterinsurgency). The refugee “problem” is a political one. The solution to it is as well.

So we conclude this volume with some reflections on states, refugee agency, and politics. Without the pressure of political action, states are likely to do little to promote and restore refugee agency.

Of states

Refugees are not simply people forced to flee their homes; they are people who, forced to leave their homes, come into contact with the power of other states. In this way, the refugee reaffirms rather than challenges “stateness”—of the expelling state, the states through which the refugee transits, and the destination state on whose door the refugee knocks. States are present in every part of the displacement story: they create refugees; the international community of states fails to stop conflicts that produce flight across borders; hosting states deny rights to displaced persons; and other states prevent onward movement that would

significantly enhance refugee prospects. States may give international humanitarian organizations funding to provide tents and blankets, but they hold the keys and the guns.⁴¹

We tend to see the existence of refugees as evidence that the state system has failed.⁴² Thus political theorists have seen the protection of refugees as a necessary part of a better functioning system of states. David Owen has argued that refugee protection is a form of “legitimacy repair” for the international regime of states.⁴³ Evan Criddle and Evan Fox-Decent have written that “[p]rovision of asylum is the juridical price of statehood.”⁴⁴

But it just may be that the state system finds refugees more useful than delegitimizing. In every camp, on every boat, at every border, states run the game—showing beneficence or a harder edge, they make clear that they will define legality and illegality. In the sovereign control of their borders, they may admit the needy and the persecuted—for political or moral reasons that serve state interests. If too many people flee hardship across borders, states can label such mass movements “crises” that justify strong assertions of state authority: Australia “excised” islands from its “migrant zone” in order to adopt measures that repelled asylum seekers; the EU and Turkey reached a deal to keep Syrian refugees from European shores (the refugees were not consulted); Hungary built fences; Kenya and Ethiopia keep refugees in camps; the United States provided significant funding to Mexico to return Central Americans from Mexico’s southern border. At the end of day, states are stronger when there are refugees in the world.

Of agency

The current refugee regime gets agency wrong in both directions, failing to recognize agency where it exists and tolerating structures and practices that severely restrict it.

Fleers of necessity have in fact more agency than is usually acknowledged under a system of aid that figures them primarily as victims. Although their freedom to act is often quite constrained, ultimately they choose when and how to leave and (often but not always) where to go. Once they have arrived elsewhere, they begin to develop ways of surviving that inevitably link them to their place of settlement. If permitted, they would contribute to hosting or resettlement communities, and would move to places where they could be productive members of society.

At the same time, refugee agency is subject to significant restraint. It is limited by hosting states that restrict refugees’ movement and exclude them from social programs and economic opportunities, and by other states that deter their arrival, put them in long-term detention, label them terrorists and freeloaders, or simply let them die at sea. International organizations undermine refugee agency by “caring for” them rather than seeking to empower them. In few areas of human life is human dignity more at risk.

Restoring agency serves values of human dignity and freedom, giving refugees space to make their own choices about how to remake their lives. It lies at the core of international protection, properly conceived, and is materially advanced by a regime of rights, properly enforced.

We have suggested that mobility must be seen as a central aspect of refugee agency. The general path of a refugee today is from forced mobility (flight) to forced immobility (the second exile). The central problem facing the international refugee regime is not the movement of refugees toward Europe or the United States. It is the failure to construct a system of responsibility-sharing that would promote lawful movement beyond countries of first asylum and support inclusion of the displaced in the economic and social life of hosting and receiving states.

Were refugee rights respected and mobility facilitated, we can see a post-Arendtian world where other “solutions” for refugees are imaginable beyond those that call for permanent membership in a political community. As we have suggested, the international community is deeply wedded to the traditional three durable solutions. This is not surprising: in a world of discrete states with discrete populations and no means beyond states for enforcing rights and providing opportunities, membership remains the *ne plus ultra*. But this world—if it ever truly existed—is not today’s world. Movements of people, interpolations of transnational legal norms into domestic systems, the global reach of commercial relations, easy transfers of huge sums of money, the reach of the internet—to mention only a few of the forces that both define and buffet the nation-state—put paid to notions that territorial limits determine life outcomes. It is not necessary to be able to predict the future of the international system to consider solutions to “the refugee problem” that are not grounded in state membership. In such a world, forced migrants might still be considered “exiles”—yearning for a day of return. But with rights and mobility, they would no longer be in need of international protection as refugees.

Of aid and politics

Refugee assistance and protection are largely seen as emanating from a humanitarian impulse. A crucial aim of humanitarianism is to take the politics out of international assistance to displaced persons: persons forced to flee over international borders are to be cared for whatever the politics of the state they were leaving or the politics of the state in which they were arriving. Seen this way, humanitarianism is not concerned with accountability or with power or with injustice. When we see a drowning child, we want to rescue her; and in providing that assistance we rarely stop to ask: how do we hold responsible those who exposed her to danger, who is accountable so that her suffering is healed, how do we prevent similar harms in the future? “[H]umanitarianism is about feelings rather than rights,” Miriam Ticktin has written; “It is about compassion, not entitlement. Humanitarian exceptions are precisely that—exceptions to regular laws. And they are usually made on the basis of certain kinds of emotion. When migrants are spoken of as humanitarian victims, we take them out of the range of the law to where they have the right to be free from violence.”⁴⁵

Development assistance—despite its longer time horizons and greater resources than humanitarian aid—poses similar problems. Cloaked in the rhetoric of technical expertise, development aid seeks to “alleviate” poverty, in effect rendering poverty as a scientific rather than a political problem. Livelihoods programs, microfinance, and other approaches intended to improve the lives of the poor are not directed at ameliorating the structural causes of poverty in the first place. In many ways, such approaches reinforce the latter by rendering systems of mass disenfranchisement slightly more palatable.

These are legal and political issues—ones that are rarely addressed anywhere in the international system of refugee protection. The appearance of neutrality and non-discrimination and expertise is vital to sustaining support for the international aid system. But this appeal to the non-political nature of humanitarian relief and development assistance is surely carried too far if it is used to argue against a political approach to securing and supporting international protection.⁴⁶ Neutrality in the face of inequity is not neutral.

The principles of protection are not self-enforcing. They must be asserted and fought for. That requires more than the enlightened or self-regulating actions of

international organizations. It calls for avowedly political action—and perhaps new kinds of political imagining—at all levels of governance.⁴⁷

¹ UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html>; UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence Under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions*, December 2, 2016, HCR/GIP/16/12, available at: <http://www.refworld.org/docid/583595ff4.html>.

² *International Convention for the Safety of Life At Sea*, November 1, 1974, 1184 UNTS 3, available at: <http://www.refworld.org/docid/46920bf32.html>.

³ See e.g., Kevin Sieff, “What Other Choice Do I Have?” How Debt-Ridden Refugees are being Forced to Return to a War Zone,” *Washington Post*, December 15, 2017, http://www.washingtonpost.com/sf/world/2017/12/15/how-refugees-are-being-forced-back-to-a-war-zone-to-repay-their-debts/?utm_term=.496547b740c3, (explaining the link between the volatility of aid and the surge in debt among Somali refugees in Kenya). See also, a December 2017 survey finding that nearly 90 percent of Syrian refugee households in Lebanon—a major focus-country of international interventions—are indebted, and almost 80 percent are living below the poverty line. (The survey, conducted by WFP, UNHCR, and UNICEF, is available here: https://data2.unhcr.org/en/documents/download/61312#_ga=2.76103189.1095955734.1515005727-270738478.1465743137.)

⁴ Leah Zamore, “Refugees, Development, Debt, Austerity: A Selected History,” *Journal of Migration and Human Security*, no. 6, (2018): pp. 26-60, <https://doi.org/10.14240/jmhs.v6i1.111>.

⁵ See e.g., Denmark’s Aliens (Consolidation) Act, No. 863, June 25, 2013, https://www.nyidanmark.dk/NR/rdonlyres/2A42ECC8-1CF5-4A8A-89AC-8D3D75EF3E17/0/aliens_consolidation_act_863_250613.pdf; Refugee Council of Australia, “Australia’s Detention Policies,” May 17, 2016, <https://www.refugeecouncil.org.au/getfacts/seekingsafety/asylum/detention/key-facts/>; Bill Frelick, “U.S. Detention of Asylum Seekers and Human Rights,” *Migration Policy Institute*, March 1, 2005, <https://www.migrationpolicy.org/article/us-detention-asylum-seekers-and-human-rights>; UNHCR, *UNHCR Observations on Amendments to the Danish Aliens Act as Set Out in Loforslag nr. L 62*, January 2016, <http://www.refworld.org/docid/5694ecf64.html>.

⁶ UNHCR, *Guidelines on International Protection No. 12, Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions* (2016), <http://www.unhcr.org/en-us/publications/legal/58359afe7/unhcr-guidelines-international-protection-12-claims-refugee-status-related.html>.

⁷ See e.g., Alexander Betts and Paul Collier, *Refuge: Rethinking Refugee Policy in a Changing World*, (Oxford: Oxford University Press, 2017).

⁸ UN Secretary-General, *In Safety and Dignity: Addressing Large Movements of Refugees and Migrants*, paras. 80-82, UN Doc. A/70/59 (Apr. 21, 2016), <https://reliefweb.int/sites/reliefweb.int/files/resources/N1611262.pdf> [https://perma.cc/M8XA-FX4X]; Alexander Betts, Louise Bloom, Josiah Kaplan, and Naohiko Omata, *Refugee Economies: Rethinking Popular Assumptions*, (Oxford: Humanitarian Innovation Project, 2014), <https://www.rsc.ox.ac.uk/files/files-1/refugee-economies-2014.pdf>; World Bank Group, “Forcibly Displaced: Toward a Development Approach Supporting Refugees, the Internally Displaced, and Their Hosts,” Washington, DC (2017),

https://openknowledge.worldbank.org/bitstream/handle/10986/25016/Forcibly%20Displaced_Overview_Web.pdf?sequence=6&isAllowed=y.

⁹ Alexander Betts, Louise Bloom, Josiah Kaplan, and Naohiko Omata, *Refugee Economies: Forced Displacement and Development*, (Oxford: Oxford University Press, 2017). Aleinikoff has supported this view as well. T. Alexander Aleinikoff, “From Dependence to Self-Reliance: Changing the Paradigm in Protracted Refugee Situations,” Policy Brief, Migration Policy Institute, (May 2015), <https://www.migrationpolicy.org/research/dependence-self-reliance-changing-paradigm-protracted-refugee-situations>.

¹⁰ UNHCR, *Note on the Principle of Non-Refoulement*, November 1997, available at: <http://www.refworld.org/docid/438c6d972.html>.

¹¹ James Hathaway, “The Emerging Politics of Non-Entrée,” *Refugees*, vol. 91, (1992): p. 40; UNHCR, “‘Don’t confuse refugees with terrorists,’ says Guterres,” 2005, <http://www.unhcr.org/en-us/news/latest/2005/7/42e0df204/dont-confuse-refugees-terrorists-says-guterres.html>; UNHCR, *Opening Statement by Mr Antonio Guterres, United Nations High Commissioner for Refugees, at the Fifty-Sixth Session Executive Committee*, October 3, 2005, <http://www.unhcr.org/en-us/admin/hcspeeches/43411aa54/opening-statement-mr-antonio-guterres-united-nations-high-commissioner.html>; William Maclean, “Rich world angst about foreigners threatens refugee aid: UN refugee chief,” *Reuters*, November 20, 2016, <https://www.reuters.com/article/us-migrants-nationalism-unhcr-idUSKBN13F0S3>; United Nations, “In hard-hitting speech, UN human rights chief warns against populists and demagogues,” September 6, 2016, <https://news.un.org/en/story/2016/09/538432-hard-hitting-speech-un-human-rights-chief-warns-against-populists-and>.

¹² In the New York Declaration and Annex I: refugee camps as exception; role of development and private sector (paras. 73, 80, 86); resettlement/pathways (para. 77-79); opening up local labor markets to refugees (para. 84; Annex I, 13(b)); welcoming increased engagement of the World Bank and multilateral development banks (para. 86); combating xenophobia (para. 39).

¹³ As one example, a recent report from the Freedom Fund highlights the growing ubiquity among Syrian refugees in Lebanon of child labor (with an estimated 60-70 percent of refugee children working), child marriage, “survival sex,” and forced labor. See “Struggling to Survive: Slavery and Exploitation of Syrian Refugees in Lebanon,” Freedom Fund, available at: <http://freedomfund.org/wp-content/uploads/Lebanon-Report-FINAL-8April16.pdf>.

¹⁴ See e.g., Kevin J. Kelley, “UN pushes refugee self-reliance as donor funding for Kenya dwindles,” *Daily Nation*, November 25, 2017, available at: <http://www.nation.co.ke/news/UN-refugee-donor-funding-Kenya-dwindles/1056-4202704-n3a88oz/index.html>.

¹⁵ See the Model International Mobility Convention, available at <http://globalpolicy.columbia.edu/mobility-convention>.

¹⁶ See, UNHCR and *Climate Change, Disasters, and Displacement*, May 2017, available at: <http://www.refworld.org/docid/59413c7115.html>.

¹⁷ Information on the Platform on Disaster and Displacement can be found here: <http://disasterdisplacement.org/the-platform>.

¹⁸ See e.g., UNHCR, *Climate Change and Disaster Displacement: An Overview of UNHCR’s Role*, 2017, <http://www.unhcr.org/en-us/protection/environment/5975e6cf7/climate-change-disaster-displacement-overview-unhcrs-role.html>; Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, vol. I, 2015, <https://nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf>; Mary Robinson Foundation—Climate Justice, *Protecting the Rights of Climate Displaced People*, June 2016, <https://www.mrfcj.org/wp-content/uploads/2016/07/Protecting-the-Rights-of-Climate-Displaced-People-Position-Paper.pdf>.

¹⁹ Kenya National Commission on Human Rights & another v. Attorney General & 3 others, February 9, 2017, <http://kenyalaw.org/caselaw/cases/view/131173>; “Landmark Victory for Refugee Rights in Ecuador,” Asylum Access, September 15, 2014, <http://asylumaccess.org/landmark-victory-for->

[refugee-rights-in-ecuador/](#); see also Asylum Access Malaysia Submits Shadow Report to CEDAW regarding the Rights of Refugee Women in Malaysia, January 15, 2018; <http://asylumaccess.org/asylum-access-malaysia-submits-shadow-report-cedaw-regarding-rights-refugee-women-malaysia/>; James Cavallaro, Diala Shamas, Beth Van Schaack, et al., Communiqué to the Office of the Prosecutor of the International Criminal Court Under Article 15 of the Rome Statute: The Situation in Nauru and Manus Island: Liability for Crimes Against Humanity, February 14, 2017, <https://law.stanford.edu/publications/communique-to-the-office-of-the-prosecutor-of-the-international-criminal-court-under-article-15-of-the-rome-statute-the-situation-in-nauru-and-manus-island-liability-for-crimes-against-humanity/>. Not all succeed: *Sale v. Haitian Centers Council, Inc.*, 509 US 155 (1993).

²⁰ Center for Global Development, *Refugee Compacts: Addressing the Crisis of Protracted Displacement*, April 2017, <https://www.cgdev.org/sites/default/files/Refugee-Compacts-Report.pdf>. Leah Zamore, “Refugees, Development, Debt, Austerity: A Selected History,” *Journal of Migration and Human Security*, no. 6, (2018), pp. 26-60, <https://doi.org/10.14240/jmhs.v6i1.111>.

²¹ See e.g., UN High Commissioner for Refugees (UNHCR), *Comprehensive Refugee Response Framework: From the New York Declaration to a Global Compact on Refugees*, December 5, 2016, available at: <http://www.refworld.org/docid/589332a90.html>; World Bank, *Forcibly Displaced: Toward a Development Approach Supporting Refugees, the Internally Displaced, and Their Hosts*, 2017, available at: <https://openknowledge.worldbank.org/handle/10986/25016>; European Parliament, “Labour Market Integration of Refugees: Strategies and Good Practices,” (March 2016) [http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578956/IPOL_STU\(2016\)578956_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/578956/IPOL_STU(2016)578956_EN.pdf); European Commission, “Development, Refugees, and IDPs,” *Issue Paper*, 2016, available at: http://ec.europa.eu/echo/files/policies/refugees-idp/dev_refugees_idps_issues_paper_en.pdf.

²² Importantly, mobility among states is included as an Outcome and Indicator in the implementation of IGAD’s plan for Somali refugees.

²³ The Model International Mobility Convention, Article 211(2), available at <http://globalpolicy.columbia.edu/mobility-convention>; Alexander Betts and Paul Collier, *Refuge: Rethinking Refugee Policy in a Changing World*, (Oxford: Oxford University Press, 2017); James C. Hathaway and R. A. Neve, “Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection,” *Harvard Human Rights Journal*, vol. 10, (1997): pp. 115-211.

²⁴ Peter H. Schuck, “Refugee Burden-Sharing: A Modest Proposal,” *Yale Journal of International Law*, vol. 22, (1997): pp. 243-297 http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=2691&context=fss_papers.

²⁵ Hathaway argues that it is only ex ante that states will sign up (“you don’t buy insurance in the middle of a fire”); we disagree.

²⁶ The Platform could function as a kind of globalized, multi-stakeholder CRRF. See UNHCR, “Comprehensive Refugee Response Framework: From the New York Declaration to a Global Compact on Refugees,” (December 2016), available at: <http://www.refworld.org/docid/589332a90.html>. It might also consider how a response plan would contribute to the meeting of the Sustainable Development Goals for displaced populations and hosting communities.

²⁷ GAVI, the Vaccine Alliance, is an example of a platform that focuses on both financing and delivery. It draws together traditional direct contributions and “innovative” financing mechanisms, with the latter including the International Finance Facility for Immunization (IFFIm); the Advance Market Commitment (AMC); and the GAVI Matching Fund. The IFFIm issues bonds to accelerate GAVI-financed vaccination campaigns on the basis of legally binding multiyear pledges made by GAVI’s donor partners. Under the AMC, donors commit to guarantee the prices of vaccines once they are developed.

²⁸ The “Regional Refugee and Resilience Plan” (3RP) is sometimes cited as an example of this kind of joined up planning, but in fact it falls far short. Separate humanitarian and development plans have

been combined and published in a single document. But it did not undertake the joint analysis or planning or establish the collective responsibility that could significantly advance response to the Syrian refugee crisis.

²⁹ Alexander Betts and Paul Collier, *Refuge: Rethinking Refugee Policy in a Changing World*, (Oxford: Oxford University Press, 2017); Hathaway.

³⁰ A proposal of the World Commission on Forced Displacement.

³¹ The mobility agenda would be harder to push forward at these mid-levels.

³² For information on UNHCR's CRRF pilots, see <http://www.unhcr.org/en-us/comprehensive-refugee-response-framework-crrf.html>.

³³ In addition, cities are also in charge of many if not most of the public services that refugees utilize or have need of. Their empowerment could therefore be a crucial step toward a more progressive approach to refugee development and integration.

³⁴ Volker Turk, "UNHCR's Supervisory Responsibility," UNHCR, New Issues in Refugee Research, Working Paper no. 67, Geneva (October 2002), ISSN 1020-7473, available at: <http://www.refworld.org/docid/4fe405ef2.html>.

³⁵ Compare institutions established under various other international agreements: CAT, CCPR, CERD, CEDAW; see Michael Doyle's draft Mobility Treaty which would establish a treaty body for refugee issues.

³⁶ B. S. Chimni, "Reforming the International Refugee Regime: A Dialogic Model," *Journal of Refugee Studies*, no. 14, (June 2001): pp. 151–168.

³⁷ International Convention on the Rights and Duties of All Persons Moving from One State to Another and of the States they Leave, Transit or Enter, Art. 202.

³⁸ See Volker Turk, "UNHCR's Supervisory Responsibility," UNHCR, New Issues in Refugee Research, Working Paper no. 67, Geneva (October 2002), ISSN 1020-7473, available at: <http://www.refworld.org/docid/4fe405ef2.html>.

³⁹ Ibid.

⁴⁰ For a positive example see the case challenging the closure of the Dadaab refugee camp in Kenya, cite in note 19 *supra*.

⁴¹ To see the power and presence of states, consider the way displaced Syrians are categorized and regulated throughout their flight. In Turkey, Syrian refugees are labeled "Syrians under Temporary Protection"; on the Mediterranean, they are "smuggled" or "trafficked" migrants; upon arrival in Europe, they may be "detainees," "illegal migrants" or "asylum seekers." Eventually they may be recognized as "refugees" or granted "tolerated status." Cf. Michel Agier, *Managing the Undesirables: Refugee Camps and Humanitarian Government*, (Cambridge: Polity, 2011), p. 6.

⁴² Joseph H. Carens, "Refugees and the Limits of Obligation," *Public Affairs Quarterly*, no. 6, (1992): pp. 31–44; Carens, Joseph H. "Aliens and Citizens: The Case for Open Borders," *The Review of Politics*, no. 49, (1987): pp. 251–273.

⁴³ David Owens, "In Loco Civitatis: On the Normative Basis of the Institution of Refugeehood and Responsibilities for Refugees," in *Migration in Political Theory: The Ethics of Movement and Membership*, edited by Sarah Fine and Lee Ypi (Oxford: Oxford University Press, 2016), pp. 269–290.

⁴⁴ A "fiduciary" interpretation of international law; states are recognized as legitimate by the international community when they fulfill obligations as fiduciaries to persons over whom they exercise authority. Evan J. Criddle and Evan Fox-Decent, *Fiduciaries of Humanity: How International Law Constitutes Authority*, (Oxford: Oxford University Press, 2016), p. 282.

⁴⁵ Miriam Ticktin, "Thinking Beyond Humanitarian Borders," *Social Research: An International Quarterly*, special issue on "Borders and The Politics of Mourning," edited by Alexandra Delano and Benjamin Nienass, no. 83, (Summer 2016): pp. 255–271, at p. 264.

⁴⁶ Doubtful whether humanitarianism in fact is non-political. See B. S. Chimni, "Globalization, Humanitarianism and the Erosion of Refugee Protection," *Journal of Refugee Studies*, no. 13, (September 2000): pp. 243–263.

⁴⁷ Miriam Ticktin, "[Thinking Beyond Humanitarian Borders](#)," *Social Research: An International Quarterly*, special issue on "Borders and The Politics of Mourning," edited by Alexandra Delano and Benjamin Nienass, no. 83, (Summer 2016): pp. 255-271, at p. 266 ("We need a different form of political care—beyond care as welfare, which is tied to the sovereignty of nation-states, and includes the enforcement of borders—and beyond humanitarianism, which is tied to innocence, emergency and compassion. That is, we need to think beyond care as a very particular array of moral sentiments and social arrangements. Political work to this end must be a shared act, which involves rethinking what political action and justice mean for everyone, not just for those who are understood as needing help or care, or for those who want to migrate. We all must rethink what an equitable world would look like, as it will affect us all").