Cascading toward "De-Solidarity"?
The Unfolding of Global Refugee Protection

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Introduction

Predicting the future is a fraught exercise, even for anointed or self-described prophets. Without any claims to prophetic power, my reflection bristles even more with risk of miscalculation and error. Thus I attempt with trepidation to see into the future of international solidarity for refugee protection with a plea for forgiveness of any errors and gratitude for the munificence of my peers. I take solace in strong evidence of certain emergent trends that allows one to make reasonably reliable predictions.

Just as complexity has usually attended the unfolding of human socio-economic, political and legal histories, international solidarity for refugee protection will likely neither be unilinear in any normative direction nor uncomplicated. It will likely consist of streams flowing in diverse directions, with some features that counter and contradict, as well as the operation of dialectical social forces. Thus, the tapestry contains both bright and bleak patches. But overall international solidarity is likely decipherable and coherent in the effects and affects it has on the lives of multitudes, especially in the global South, who so desperately seek refuge.

Before delving into the brightness and bleakness, a few preliminary points. First, when it comes to refugees, the world does not face a crisis of numbers but rather a 'crisis of solidarity'. Only about 0.3 percent of the world's population has attempted to seek refuge outside their home country in recent years, so the refugee crisis discussed passionately and sometimes hysterically in the media and academe cannot be logically understood as a crisis of numbers. Given relatively small global numbers, this crisis is a consequence of the unwillingness of rich states, primarily in

the global North, to accept as many refugees as they could and should. This situation is exacerbated by lack of capacity among states that already host the vast majority of refugees. Ten states from the global North provide 75 percent of the UN's refugee protection budget, and eight states in the global South countries host 90 percent of the world's refugees. Such a situation raises questions about equitable responsibility-sharing and presents a crisis of international solidarity par excellence.

Second, while the notion of international solidarity has not escaped a degree of definitional contestation, it enjoys a long pedigree in political and legal thought and action. Ideas about the 'pivotal importance of mutual help among individuals as well as among states' have been with us for a very long time, including in African, Buddhist, European, and Islamic thought.[1] In any case, the Independent Experts charged by the UN with studying this concept in the human rights context have more or less coalesced around a definition of the term as 'the expression of a spirit of unity among individuals, peoples, states and international organizations, encompassing the union of interests, purposes and actions and the recognition of different needs and rights to achieve common goals.'

Last, the concept of international solidarity is Janus-faced. As much as it is capable of being directed toward the achievement of the 'good', it is just as susceptible to being deployed toward the advancement of the 'bad'. There is a world of difference between the solidarity expressed by NGOs who rescue drowning asylum-seekers in the Mediterranean Sea,[2] and that shown by the European Union (EU) toward the Libyan Coast Guard to facilitate efforts to intercept and return asylum-seekers to Libya where asylum-seekers risk torture, enslavement, and death. Thus, Melber observes, all-too-often enthusiasm for the expression of international solidarity

> leaves unanswered [questions about] who practices solidarity with whom and for which purpose. Let's not be misled: the alliance of right-wing anti-immigration parties is as much an act of solidarity among like-minded as the struggle for a decent treatment of refugees by human rights activists. Hence, strictly speaking, solidarity – similar to civil society – simply characterizes a specific form of interaction, without considering the aims contents and meaning of such actions. We therefore should be careful when somewhat naïvely assuming that solidarity by definition means something 'good'.

The international solidarity principle does not in itself possess a fixed, exclusive, positive, progressive valence. We must always ask: international solidarity for what ends and whose benefit?

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[1] See Danio Campanelli, 'Principle of Solidarity', in *Max Planck Encyclopedia of Public International Law* (2011); J.K.

[2] Eugenio Cusumano and James Pattison, 'The Non-Governmental Provision of Search and Rescue in the Mediterranean and the Abdication of State Responsibility' (2018) 31:1 *Cambridge Review of International Affairs* 53.

Bright Patches in the Tapestry of Refugee Protection

The efforts of increasing number of cities and civil society actors to transgress the anti-refugee discourses, policies, and practices of the countries of which they are a part plug some of the many international solidarity gaps for refugee protection. For example, the Latin American city of Sao Paulo emphasized 'open and inclusive migration governance' and pushed its national government to increase financial support to localities for the purpose of welcoming refugees and migrants. Similarly, European cities such as Barcelona, Frankfurt, Madrid and Utrecht are leading the charge for open and fair refugee and immigration laws, policies and practices through tactics ranging from protest, to outright defiance of national refugee/migration initiatives, to proactive legislation, policies and practices for integration of refugees and migrants.

Activities of progressive cities and civil society in solidarity with each other gradually disrupt the alleged power and monopoly states claim over refugee protection. When "sanctuary cities", often pushed to action by progressive civil society actors, find ways to stop deportation of those undocumented refugees who live within them, or refuse to cooperate with the immigration departments of their central governments, or issue official documents to irregular asylum-seekers to allow them access basic social services,[3] nothing less than an incipient reconfiguration of state sovereignty itself is in the offing. Law usually follows events, rather than vice versa, so the de jure position may catch up with these de facto developments.

As Awad and Natarajan foresee, continual regional renegotiation of sovereign borders, which has been happening in some regions and sub-regions for several decades, helps ease population movement. Freer movement allows asylum-seekers easier access to territories disposed to express solidarity with them. Awad and Natarajan show that in recent years, 84 percent of West African migrants moved to other states within that sub-region, aided by Free Movement Protocols enacted by West African states under the auspices of the Economic Community of West African States (ECOWAS). There are also broader African trends indicating partial moves in this direction such as African Union (AU) efforts on the *Continental Free Trade Agreement* (with some free movement rights enshrined) and on a common travel passport for all Africans.

In ECOWAS and other such areas, re-negotiation of sovereign borders is in some cases undergirded by what Awad and Natarajan see as the recovery of the

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[3] Harald Bauder, 'Sanctuary Cities: Policies and Practices in International Perspective' (2017) 55:2 *International Migration* 174.

memories of the peoples of these regions of their historical trade, political, economic migration circuits:

> For states of the South, situated in the same sub-regions, irregular migration as a concept does not have the same meaning. Nor should it be criminalized in letter or practice. It seems that for at least some of the states in the South, following age-old routes across recently traced borders is not completely illegitimate.

Far from waning, this trend is likely to continue, to the benefit of asylum-seekers; and the ongoing work to expand and deepen regional integration in Africa is instructive here.

Another element of brightness, however weak its luminescence and notwithstanding how evanescent it may turn out to be, is the recently adopted Global Refugee Compact. To the extent that its contents represent a meeting of the minds of almost all states, that: (a) more funding should be given by other states to the very small number of their peers that provide protection to the bulk of the world's refugee population, (b) responsibility for protection needs to be distributed more equitably among states including through resettlement, (c) there is a need to hold solidarity conferences, (d) the Office of the UN High Commissioner for Refugees (UNHCR) and states are to establish a new 'support platform,' and (e) rich states should provide more resources to tackle the root causes of global refugee flows, this instrument will likely have some positive impact. Despite limitations and conservative bias, a number of international organizations, especially UNHCR, continue to push for these and other protective principles and measures.

The oppressed and immiserated and their moral allies sometimes build their own infrastructures of solidarity. As Cowen identifies, 'the underground railroad [taking slaves in the United States to freedom] is a breathtaking reminder of the power of oppressed peoples to build infrastructures that work to make another world possible.' In Calais, asylum-seekers built their own infrastructure, an informal settlement popularly referred to by the racist moniker 'the Jungle.' While this informal settlement was torn down eventually by the French government, it offered important benefits to its residents for some time. Even if bulldozed or otherwise displaced by power – whether local, global or 'glocal' – refugees and their moral allies imagine and build alternative infrastructures that contribute to a brighter future. The infrastructure progressive civil society built to rescue migrants from drowning in the Mediterranean is another example. These have also been displaced, yet while they operated they saved the lives of thousands. People such as Cedric Herrou, who created means for transporting asylum-seekers from Italy to France, are also examples systemic interventions through building solidarity. The future of

international solidarity for refugee protection will be coauthored by various actors, not simply constituted through state action.

Bleak Patches in Tapestry of Refugee Protection

In the global North and South there is too little focus on tackling (beyond merely discussing) the root causes of global refugee flows. The role of bad governance in the global South is oft-discussed. Less commented upon is the historic and continuing responsibility of many global North states. [Chimni](#) references the role of certain historical processes, such as the devastation of whole regions by the slave trade and colonial occupation and exploitation. In contemporary times, Northern military and economic interventions into the global South, as well as systemic socioeconomic and political interventions, also bear responsibility. Despite calls in the Global Refugee Compact, there are no indications that such root causes are being effectively tackled.

The 're-rise' of [anti-refugee/foreigner populism](#) in [Europe](#), the United States, Brazil, India, and other countries, is concerning. Far right parties have surged in popularity and in some cases seized power. Their main appeal has been harsh and at times racist anti-refugee and migrant rhetoric. This trend impacts the ability of states to express international solidarity for refugees, as mainstream political parties in the global North are tempted to harshen their own immigration and refugee stances to manage the electoral risk posed by the far right.

Given EU [developments](#) directed at decriminalizing expressions of solidarity towards migrants, and the historic [decision](#) of the French Constitutional Court in the Cedric Herrou case that found criminalization of this type of conduct is unconstitutional, there is some brightness on the horizon. However, relatively few EU states provide a [humanitarian exception](#) to the criminalization of assistance to irregular asylum-seekers, and the continued prevalence of such criminalization give one pause as to the future of such humanitarian endeavors.

Despite lofty language about expanding pathways for legal immigration in the [Global Refugee Compact](#) and [Global Migration Compact](#), it is difficult to imagine alteration of the current [non-entrée policies](#) practiced by almost all states in the global North and some in the global South. Even as I write, discursive and concrete policy processes normalize, deepen, and expand abusive deployments of international solidarity. For example, there is no let-up in the EU's determination to externalize its borders through the [EU-Turkey Agreement](#), the [EU-Libya Arrangement](#), and the Italy/Libya Agreement, going even so far south as the West African state of [Niger](#); with robust implementation of such agreements all-too-often leading to [serious human rights abuses](#). Proposals by global North states to

substitute payments for refugee intake continue to be [floated](#) without being [dismissed](#). Even highly offensive, albeit non-official, proposals to build new colonial cities in Africa as a way of stemming refugee flows are touted in the [media](#). Such proposals were rejected as abusive deployments of international solidarity in the October 2018 [Report](#) of the Independent Expert on Human Rights and International Solidarity.[4] Yet risks remain that such abusive policies may become normalized given that similar practices have already become established praxis. Indeed, the [EU/European Council's Conclusions](#) of 28 June 2018 call for intensification of some of the measures criticized here. Power contributes to shaping meaning, normalizing behavior, and transforming the normal into the normative. Chimni identified in 1998 how 'a particular knowledge-power constellation configured to legitimize the non-entrée regime that severely afflicts global refugee protection',[5] and the self-perceived collective interest of rich and powerful states today remains dedicated to intensifying such non-entrée policies.

Most rich states resist binding international laws that allocate responsibilities to them to take in more refugees and/or contribute more finances. These same states are enthusiastic about binding legal texts outlawing human smuggling and trafficking.[6] Their resistance to protection obligations is also presented in a way that fully or partly elides, eclipses or denies their partial responsibility for root causes of refugee flows.[7] This position has not changed all that much for decades. The recently adopted non-binding [Global Refugee Compact](#) does not change this position significantly. It does not contain the kind of mandatory responsibility-sharing mechanism that groups such as [Amnesty International](#) have called for, instead offering a voluntary approach. Chimni has argued convincingly that responsibility-sharing is already a principle of customary international law,[8] and Turk and Garlick point to the UN Charter and certain soft law instruments to ground legal obligations in this respect,[9] but such prescient calls are yet to be heeded.

Perhaps most troubling is a phenomenon I refer to as *de-solidarity*. By this, I do not mean the failure to express solidarity or the tendency to abusively deploy it. Rather, I

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[4] *Report of the Independent Expert on Human Rights and International Solidarity*, A/73/206 (20 July 2018) paras 24-48.

[5] B.S. Chimni, 'The Geopolitics of Refugee Studies: A View from the South' (1998) 11 *Journal of Refugee Studies* 350; B.S. Chimni, 'The Birth of a 'Discipline': From Refugee to Forced Migration Studies' (2009) 22 *Journal of Refugee Studies* 11.

[6] Ibid.

[7] Ibid.

[8] B.S. Chimni, *International Refugee Law: A Reader* (2000) 146; Usha Natarajan, "Forced Displacements from Syria or How to Institutionalize Regimes of Suffering" (2013) 2(6) *ESIL Reflections* 1.

[9] Volker Türk and Madeline Garlick, 'From Burdens and Responsibilities to Opportunities' (2016) 28:4 *International Journal of Refugee Law* 656, at 658-665.

mean the increasing tendency to fundamentally question or problematize solidarity itself as a conception, praxis or obligation, and to work to dismantle the infrastructure of solidarity. Such stances are evident for instance when a Hungarian mayor claimed that solidarity with global South refugees by European peoples 'looks more like suicide'.[10] To him, European solidarity with such people is illogical and self-destructive, so it is solidarity itself that needs to be rooted out.

Conclusion

Protecting those in need of refuge requires more international solidarity of many different kinds. We must augment the solidarity of our (re)imagination. We must continually reimagine the world, and not merely through the eyes of the global North. This has of course been called for times without number but bears reemphasis. This will allow us to appreciate refugee flows on a global scale as a relatively stable phenomenon requiring sustained management, rather than as a series of crises requiring emergency measures. We need to reimagine our response to rising right wing populism without falling into Hilary Clinton's troubling error: her misdiagnosis that curbing immigration is the answer. And given Cowen's reminder that infrastructure can 'both connect and contain', we need to reimagine international solidarity to harness its progressive side while containing its negative tendencies. Clearly, a particular form of international solidarity has been effectively deployed to contain global refugees, but solidarity also allows for crafting increasingly imaginative means to protect refugees. The forces arrayed against positive expressions of international solidarity for refugee protection are powerful. Yet I remain hopeful because, as the literary icon Chinua Achebe sang, inspired by the cosmology of his heavily diasporic Igbo kith and kin, it is 'morning yet on creation day'.

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[10] Itamar Mann, *Humanity at Sea: Maritime Migration and the Foundations of International Law* (CUP, 2016) 3.