Shame on EU? Europe, RtoP, and the Politics of Refugee Protection

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In the early hours of Monday, April 4, 2016, over 130 people were deported from the Greek island of Lesbos on ships chartered by Frontex, the European Union's border agency. Most were Pakistani or Bangladeshi, but Sri Lankans, Indians, Syrians, and one Iraqi were also on board. This was the first enactment of the deal struck between Turkey and the EU on March 18, by which all new "irregular migrants" crossing from Turkey to Greece would be returned to Turkey as a "temporary and extraordinary measure."[1] As the two ferries left the docks in Lesbos, protestors roared their disapproval and raised banners with messages such as "Refugees Welcome" and "Shame on EU!"[2] Amnesty International condemned the deal as the start of "Europe's potentially disastrous undoing of its commitment to protect refugees,"[3] while Human Rights Watch warned that the deal threatens the rights of refugees and undermines the EU's principles.[4] In this burgeoning crisis, where European values and principles appear to have been abandoned or to offer little guidance for the EU's actions, perhaps the emerging Responsibility to Protect (RtoP) norm offers the EU a route toward a more coherent and responsible policy.

The EU has had something of an ambivalent relationship to RtoP, but it has been suggested that a proper engagement with this evolving norm has the potential to help EU states navigate their moral, political, and legal responsibilities with regard to refugees. As Jason Ralph and James Souter argue, RtoP's concentration on the responsibility to assist and protect those suffering in Syria "surely implies guaranteeing a form of asylum" for those who have fled to protect themselves.[5]

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Ralph and Souter therefore suggest a potential evolution of the norm in this direction. For others, such an evolution is unnecessary, claiming that there would be "no easier way" for states to fulfill their RtoP than through the provision of asylum.[6] In this article I argue against such a position for two reasons. First, the EU already proclaims a long list of values that it asserts both contributed to its founding and continues to guide its actions. Consequently, the addition of RtoP, which crucially contains no obligations to protect refugees in other territories, would add little. Second, when the logic underlying the EU's and RtoP's politics of protection is examined, a similarity emerges that would make such supplementation redundant. Although the EU is an apparently sui generis normative power, and though RtoP seems a substantial normative innovation in international society, what the refugee crisis reveals is that both are deeply conservative. The politics of protection underlying both RtoP and the EU's migration and asylum policy primarily entail a solidarity with, and a bolstering of, the sovereign capacity of the modern state. Neither Europe's ethos nor RtoP can therefore provide the firm ethical grounds on which to build a deeper commitment to the protection of the figure most clearly failed by modern states—the refugee.

My argument proceeds in three sections. First, I draw out the way the EU has constructed itself as an actor defined by a set of values that would appear to provide sure ethical footing when dealing with the current crisis. Interestingly, this has not led to an engagement with RtoP, which is weak in defining a role for regional organizations such as the EU. The second section therefore explores how, despite this mutual ignorance, there are substantial similarities between Europe's politics of protection and the second "pillar" of RtoP—the responsibility of the international community to encourage and assist individual states in meeting their own responsibility to protect. Europe's most successful protection policy, enlargement, operates as a highly evolved form of pillar two, building the all-round capacities and liberal values of potentially unstable states. Section three of this article turns to how this politics of protection has played out in the current crisis. While the Common European Asylum System was meant to create Europe as an "area of protection" based on shared values and solidarity, the overwhelming focus has been on its "external dimension," namely, strengthening the sovereign capabilities of third countries. Through pillar two–style policies, such as Regional Protection Programmes and deals similar to the one struck with Turkey, European protection finds itself caught between the subjects of its solidarity—that is, a solidarity between member states, a solidarity with third countries,

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and a solidarity with refugees. The residual protection offered to refugees is the outworking of this ethical crisis.

Europe's Protective Ethos

Europe's current tribulations are particularly notable because it is common for the EU to be spoken of as a peculiarly normative or ethical actor;[7] it is even more customary for European Commissioners to define it as such.[8] This ethos is formalized in Article 2 of the post-Lisbon Treaty on European Union (TEU):

> The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

This claim to being "founded" on liberal values requires interpretive work. As I note elsewhere,[9] there is no mention of such a foundation in the Treaty of Paris (1951) or the Treaty of Rome (1957), which established the earliest precursors to the EU (the European Coal and Steel Community and the European Economic Community, respectively). Even the original TEU (1992), negotiated at Maastricht, only declares an "attachment" to some of these "principles" in its preamble. The foundational role for "principles" was actually formalized in the Amsterdam Treaty, which came into force in 1999. Significantly, this revision of the TEU also granted the EU specific competence in immigration and asylum policy, allowing the creation of laws in this area via the supranational "community method" and starting the move toward a Common European Asylum System. Thus, the idea of the EU as having been founded on the above values and the development of immigration and asylum policy were institutionalized at the same time.

There is, as Andrew Williams notes, something curiously inept about this identification of a range of undefined principles and values that are then cast as a post hoc basis for the Union. Nonetheless, he also argues that with Lisbon there is "a clear and concerted attempt to enshrine constitutionally a notion of the 'good' for Europe that is sought through the EU."[10] The values express an ethos of the EU as an institution, or a set of institutions. Jacques Derrida defines an "ethos" as a culture, a way of being and dwelling in relation to oneself and others.[11] And this is precisely what Lisbon sought to formalize—a way of relating

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both to the collective self through values that are common to institutions and member states, but also to the rest of the world. The post-Lisbon TEU thus underlines that one of the Union's central aims is to "promote" these "values" (Article 3.1), both at home and in "its relations with the wider world" by contributing to "peace, security," and other social goods, including "solidarity and mutual respect among peoples" (Article 3.5). The EU's ethos is therefore not solely communitarian; it expresses a cosmopolitan solidarity with non-Europeans. As Catherine Ashton, the first post-Lisbon High Representative for Foreign Affairs and Security Policy, noted in 2010, the EU's external relations are built on its basic values: "They are the silver thread running through all that we do."[12]

While protection is not one of the core values encapsulated in these listings, the EU's ethos is nonetheless always directed toward protection, both internally and externally. The commitment to forming a common immigration and asylum policy in 1999 was firmed up at the Tampere European Council that year as part of a drive to create a European space based explicitly on common values—a single "area of freedom, security and justice" (the AFSJ—a suite of policies to ensure free movement for EU citizens while maintaining their entitlements to justice, rights, and security) with border-free movement guaranteed by the 1985 Schengen Agreement.[13] While the AFSJ was primarily oriented toward EU citizens, protecting their rights to move and work freely and access justice in a secure environment, it was recognized by the Tampere European Council that "it would be in contradiction with Europe's traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory."[14] Thus, the building of a Common European Asylum System (CEAS) became necessary. There followed three five-year programs (Tampere, 1999; The Hague, 2005; and Stockholm, 2010) that worked toward the AFSJ and its CEAS. A key priority of the Stockholm program was building a "Europe that protects" its citizens and their common values via a comprehensive internal security strategy.[15] Concomitantly, the aim of the CEAS was for Europe to become a "common area of protection and solidarity" for non-EU citizens seeking international protection.[16] The Commission's 2015 European Agenda on Migration therefore speaks of the CEAS as an enactment of its "duty to protect," guarding the lives and fundamental rights of asylum seekers.[17]

It is thus not surprising that the EU does not explicitly use the language of RtoP in relation to refugees, migrants, or asylum seekers within its ethics and politics of protection. After all, it already has a system of cosmopolitan values in place;

protection is merely an outworking of these values. Perhaps more importantly, the emerging norm of RtoP, whatever its future potential, is currently redundant in this area: it contains no requirements for states or regional organizations to welcome refugees from other territories. The original International Commission on Intervention and State Sovereignty report introducing RtoP only mentions refugee "flows" as a reason why national interest may be mobilized to intervene in conflict situations,[18] and refugee repatriation and resettlement as a problem of post-conflict protection within the territory concerned.[19] It contains no responsibility to welcome refugees, a subject that is already catered for by international humanitarian and refugee law. Alex Bellamy recently argued that for RtoP to be truly effective it requires the full implementation of international refugee law (the 1951 Convention on the Protection of Refugees, the 1967 Protocol, and especially the principle of "non-refoulement," which forbids the return of those seeking asylum to their place of persecution), though he notes that these international refugee laws are "already established."[20] And yet the 2005 UN World Summit Outcome document, in which the United Nations formally accepted that each state has a "responsibility to protect its populations" from genocide, war crimes, ethnic cleansing, and crimes against humanity, makes no explicit reference to refugees.[21] The UN Secretary-General's 2009 report on RtoP's implementation mentions the protection of refugees as a goal "relating to the responsibility to protect," but offers no detail on this relation.[22] The 2014 report does include a paragraph on the protection of refugees and internally displaced persons, though responsibility for their protection is placed solely with the UN High Commissioner for Refugees (UNHCR) working alongside nongovernmental organizations.[23]

Thus, RtoP cannot help the EU deal with the current crisis without a significant extension of its meaning and remit. Given the reluctance of Western states to resettle refugees even in the extreme present circumstances, such a major augmentation is extremely unlikely in the near future. Meanwhile, this expansion would also be unnecessary because of long-standing international legal provision in the area. As Emma Haddad observes, though the international community's responsibility to intervene when a sovereign state is failing to protect its citizens remains contested, "that duty is quite clear and unequivocal when those people have crossed an international border."[24] If the EU and its member states are content to show a "disturbing disregard for international law covering the rights of refugees, asylum seekers, and migrants" in their recent deal with Turkey,[25] breaking with an emerging norm would seem to prove little obstacle. Nonetheless, this

raises a wider issue about the EU's ambivalence concerning RtoP. Despite formal declarations backing RtoP, "overt support for and actual implementation of the RtoP notion has been slow to emerge within the Union itself."[26] The next section draws out this inconsistency as part of a deeper parallel between the EU's and RtoP's politics of protection: both offer a minimalist protection of the individual amid a more maximalist defense and reinforcement of the state.

Parallel Protection: The EU, RtoP, and the State

Ian Manners has stressed that part of what makes the EU a "normative power" is that the norms and values it embodies and endorses seek to shift the practice of international politics beyond "the bounded expectations of state-centricity."[27] For some, this means that "one would expect it, prima facie, to welcome a norm redefining state sovereignty such as R2P."[28] In fact, the EU has been inconsistent in its backing of RtoP. While it initially welcomed the UN Summit Outcome and its endorsement of the principle in 2005, EU pledges of support have since been rather patchy, with little action on a consistent interpretation or implementation in its conflict prevention policies.[29] Put in constructivist terms, the EU has accepted but not yet internalized RtoP as an emerging norm.[30] Scholars have offered many reasons for this apparent failure—from a lack of coordination, clear strategy, and political will to commit the necessary means for protecting people outside its borders,[31] to a disagreement between the strategic cultures of influential member states.[32] It is not my concern to explain the EU's ambivalence with respect to RtoP. Rather, this section is interested in how the EU and RtoP offer similar, parallel forms of protection that, far from shifting focus away from the state, actually make it the primary *target* of their protection.

Part of the problem for finding the EU's place within RtoP has been the latter's lack of detail and specification regarding the role of regional organizations. RtoP generally has three relevant subjects of address: the state, whose sovereignty is redefined as involving responsibilities of protection against the four crimes noted in pillar one; the populations residing in that state's territory to whom such responsibilities are owed; and the international community, represented by member states of the United Nations, to which responsibilities are passed if any state fails to fulfill them. In terms of the three pillars of RtoP laid out in the Secretary-General's 2009 implementation report, the state is the relevant protection-giving subject of pillar one (the protection responsibilities of the

state) and member states acting through the UN are the relevant subjects of pillar three (timely and decisive response). The subject of pillar two (international assistance and capacity-building') is the "international community," whose role it becomes to help states achieve their responsibilities under pillar one. It is here we find reference to the role of regional arrangements, but only to the extent that the international community can draw on their cooperation alongside states, subregional arrangements, civil society, the private sector, and the wider UN system.[33] Regional organizations become just one of many actors to encourage and help states meet their responsibilities through building their protection capacity and assisting their efforts.[34] By way of example, the EU-led "Operation Artemis" in the Democratic Republic of the Congo is mentioned alongside efforts elsewhere by the Organization for Security and Co-operation in Europe, the Economic Community of West African States, the United Kingdom, and UN peacekeeping operations.[35] While regional organizations may have a role in pillar three, this is primarily in "non-coercive and non-violent response measures";[36] their coercive actions must have the "prior authorization of the Security Council," as must their use of "targeted sanctions."[37]

Regional participation in all three pillars is fleshed out slightly in the Secretary-General's 2011 report on RtoP's implementation. The role of regional organizations, such as the EU, is merely one of bringing "added value" to each pillar:[38] collaborating with UN agencies on encouraging governments to meet their responsibilities; providing training, education, and awareness-raising; undertaking early-warning and fact-finding research alongside quiet diplomacy and mediation; developing norms and standards to promote tolerance and accountability; and serving as conduits for the timely flow of accurate information. Regional participation therefore remains underspecified. The EU is also rarely mentioned, in part because the stress is put on the proximity (both cultural and geographical) of regional organizations to conflict-affected societies, which allows them a particular legitimacy in certain contexts.[39] As few atrocity crimes take place near the EU, its RtoP role is automatically minimized. However, the one area in which the EU is mentioned in slightly more substantive terms is its policy of enlargement: "Through initiatives to stem discrimination and xenophobia *and its rigorous standards for membership accession*, the European Union helps to discourage conditions that could breed atrocity crimes."[40] Indeed, this is cited twice, as "the requirements for entry into the European Union may also be helpful in encouraging countries to meet human rights standards."[41] Oddly, while the former is raised

under pillar one, the latter emerges as part of pillar three, though entry requirements can hardly be seen as a "timely and decisive response."

Regardless of which pillar entry requirements fall under (most obviously one or two), Geert De Baere endorses the Secretary-General's reading in his own analysis:

> He thus appears to regard EU enlargement as its greatest contribution to R2P. That may be quite an accurate observation. The EU too was set up as a means for tackling a situation of states that did not manage to guarantee the safety of their population, which implied a loss of sovereignty. It is perhaps the most successful example of conflict prevention and of the rebuilding of broken states after conflict.[42]

European Commissioners have frequently agreed with this assessment. Former Enlargement Commissioner Štefan Füle reflected that not only has enlargement historically been the EU's most successful security policy, it is now bringing "peace, stability, and prosperity" to the Western Balkans. In his words, "The prospect of EU membership for these countries plays a key role in the process of their reconciliation," as demonstrated by the recent dialogue between Serbia and Kosovo.[43]

However, the EU's enlargement policy and its requirements for entry—seen by the Secretary-General as the EU's greatest contribution to RtoP—have never at any time referred to RtoP. Enlargement predates RtoP by several decades, beginning in 1973 when the European Community welcomed in Denmark, Ireland, and the United Kingdom. The process of enlarging the EU as such began in the early 1990s as its institutions wrestled with the need for a coherent position in relation to newly liberated Central and Eastern European countries. The first set of coherent "requirements for entry" thus emerged in 1993, with the so-called Copenhagen Criteria. These referred not to any kind of responsibility to protect but to the European values that would later become the post hoc foundation of the EU. A candidate country must have achieved "stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities."[44] These principles are now enshrined within the post-Lisbon TEU, with Article 49 establishing the basis for enlargement as "any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union."

The EU's entry requirements aim at something much wider and deeper than protecting populations from mass atrocity crimes. They seek to institutionally guarantee a whole range of liberal-democratic values and principles that make

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up the ethos of the EU. As such, their implementation is a long and highly bureaucratic process. Once a state applies to join the EU, its fulfillment of the Copenhagen Criteria is considered by the Commission before the European Council decides whether to make it a candidate. Additional criteria can then be set before negotiations begin. For the Western Balkan countries this has included the signing and implementation of Stabilisation and Association Agreements, which contained general requirements (for example, setting up a free trade area) as well as more specific issues, such as the return of refugees and compliance with the International Criminal Tribunal for the Former Yugoslavia. A screening process then begins, in which the Commission decides the candidate's deficiencies in relation to the obligations of membership and the *acquis communautaire* (the body of EU law). The *acquis* is split into thirty-five chapters, each of which must be negotiated separately and contains benchmarks to be reached before new chapters are opened.[45]

The aim of these entry requirements is not then primarily to protect populations, but to completely transform the candidate states into modern, liberal democracies. It is an exercise of what Enlargement Commissioners call the EU's "transformative power."[46] The experience helped to transform Central and Eastern Europe into a set of "modern, well-functioning democracies," and that experience is now being transferred to the Western Balkans.[47] When these unstable, atrocity-prone states accede, they too will thus be "transformed," becoming "stable, secure, well-governed, and prosperous . . . fully part of the European mainstream."[48] In this way the enlargement process can be seen as a highly evolved, heavily bureaucratized, and invasive version of pillar two capacity-building: encouraging and helping states through advice, rule of law requirements, and financial help to peacefully and permanently resolve conflict via tolerance and democracy. In particularly recalcitrant and vulnerable states, such as Bosnia and Herzegovina, without centralized authority or capacity, this has involved not just institution-building but outright "member state-building," as the EU seeks to change the constitution and the structure of the government from the ground up.[49]

In this sense, the EU's entry requirements are not primarily targeted at protecting the populations of its neighboring states; rather, they aim to protect both the EU itself from instability on its borders, as well as its neighboring states by building their strength and capacity. The protection of populations is a beneficial and non-incidental by-product. This was revealed most clearly when the EU, as part of

the Stabilisation and Association Process, demanded that the hyperdecentralized federal structure of Bosnia be reformulated on the basis of a stronger central state and an end to the Office of the High Representative (leftover from the Dayton peace accords). This was democratically rejected by the Bosnian Serb Republika Srpska and generated renewed calls for its secession. The EU's response was that secession, whether or not it was the democratically expressed will of the population, was something it would "never accept."[50] This stance makes sense if we understand EU entrance requirements as being first and foremost about protecting the EU and its neighboring states.

Although the EU's entry requirements may appear contrary to the spirit of RtoP, the two in fact share the same underlying logic. State protection is also central for RtoP. In both the 2005 World Summit declaration and the 2009 RtoP implementation report, the Secretary-General stressed that "the responsibility to protect is an ally of sovereignty, not an adversary. . . . By helping states to meet their core protection responsibilities, the responsibility to protect seeks to strengthen sovereignty, not weaken it. It seeks to help states succeed, not just react when they fail."[51] This is also emphasized in the 2011 report, which notes that the "core function" of both global and regional organizations is to "permit the full and peaceful expression of sovereignty within the purposes and principles of the Charter."[52] The desire to reinforce state sovereignty is essential to UN Special Adviser Jennifer Welsh's emphasis on pillar two over pillar three.[53] The Secretary-General's 2014 report on pillar two underlines its intent to "reinforce, not undermine, sovereignty" as it "reaffirms the fundamental principle of sovereign equality" between states.[54]

While certainly seeking to strengthen the protection of populations, the narrow approach to RtoP adopted by the UN—focusing only on preventing the four crimes of genocide, ethnic cleansing, war crimes, and crimes against humanity—severely limits its scope.[55] In contrast, the stress on pillars one and two, and the noncoercive aspects of pillar three, offer a wide and thorough form of protection to the state, its sovereignty, and its centrality. This is hardly surprising, as conflict intervention literature has long noted the necessity of restoring "legitimate and functioning order and authority" as well as stopping atrocities; the latter is unsustainable without the former.[56] What RtoP offers suffering populations and individuals, then, is the minimalist protection that characterizes humanitarianism,[57] as opposed to the maximalist protection offered to the state. And this is a protective logic shared by the EU, both in its enlargement policy and in its immigration and asylum arrangements.

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Solidarity and Outsourced Protection

The first two sections of this article have argued that not only does RtoP currently fail to offer ethical guidance on the EU's treatment of refugees because it contains no requirement to grant asylum but it also replicates, in a much narrower fashion, much of what the EU already does through its founding values and enlargement policy. Despite their state-challenging appearance, both the EU and RtoP concentrate their protection on the state rather than on suffering populations. This final section explores how this helps us understand the EU's politics of protection regarding refugees and migrants specifically. It finds that Europe as a "common area of protection," as promised by the AFSJ and CEAS, operates less by welcoming refugees and more by outsourcing its protection to spaces beyond the EU's member states. And it does so precisely in the terms advocated by RtoP: "assistance and capacity-building." Rather than bettering the EU's protection mechanisms, RtoP effectively authorizes its current treatment of refugees.

As mentioned in the first section above, the EU as a common area of protection has been developed on the basis of its shared values, without reference to RtoP. The value most often stressed in relation to the CEAS has been that of solidarity through a sharing of responsibility. To this end, the Tampere Programme (1999–2004) concentrated on harmonizing the legal frameworks of EU member states around minimum standards.[58] The Hague Programme (2005–2009) set up the second phase, which included the establishment of a common asylum procedure and uniform status for those granted protection, as well as an appeal to member states to fully implement the first phase.[59] The second phase also stressed the "external dimension" of asylum policy.[60] This external dimension is founded on partnership with third countries, especially those that produce and transit refugees, assisting them in "their efforts to improve their capacity for migration management and refugee protection," as well as preventing illegal migration, helping to provide durable solutions, building border-control capacity, and tackling the problem of return.[61] It aimed to develop pillar two–style policies of capacity-building and assistance, tying them not only into development and humanitarian policy *but also* into the policing of borders—combating illegal migration and facilitating the return of failed asylum seekers. The external dimension would both protect refugees and police their movement.

This was underlined in the Stockholm Programme (2010–2014), which recognized that the CEAS must not stop at internal EU solidarity and mere partnership with third countries:

> Promoting solidarity within the EU is crucial but not sufficient to achieve a credible and sustainable common asylum policy. It is therefore important to further develop instruments to express solidarity with third countries in order to promote and help build capacity to handle migratory flows and protracted refugee situations in these countries.[62]

Thus the "external dimension" of European protection sought to express "solidarity" with third countries by augmenting them, "particularly their capacity to provide effective protection." Notice that here the Council is not expressing solidarity with refugees themselves—those in need of international protection—but only with third countries. In contrast, the Commission's Global Approach to Migration and Mobility, the overarching framework within which the external dimension of immigration and asylum policy is organized, emphasizes a need to "enhance solidarity with refugees and displaced persons."[63] The EU thus seems at odds with itself over precisely who is the subject of its solidarity.

The specific solidarity policies mentioned by both Council and Commission are Regional Protection Programmes (RPPs), developed by the Commission from 2005.[64] The Council's solidarity also involves an attempt to "encourage the voluntary participation" of EU member states in an EU resettlement scheme for bona fide refugees trapped outside its borders.[65] However, this hospitable protection of refugees remains voluntary. The stress is thus laid on the external dimension *remaining* external, delivering European protection *elsewhere* by outsourcing it.[66] RPPs are the primary mechanism for this outsourcing, financing UNHCR and NGO projects from existing EU funds to do two things: build protection capacity in these problem regions and promote durable solutions (repatriation, resettlement, or integration) in regions that produce and transit refugees. Relating to the latter, RPPs include a resettlement commitment from EU member states, though like the wider external dimension this is on a voluntary basis and therefore *commits* to little.[67]

The first two Regional Protection Programmes targeted Eastern Europe as a transit region (Belarus, Moldova, and Ukraine) and the African Great Lakes region (specifically Tanzania) as a region of origin. A further two followed in 2010 covering the Horn of Africa (Djibouti, Kenya, and Yemen) and northeast Africa (Egypt, Libya, and Tunisia). The Commission announced in 2013 that a new Regional Protection and Development Programme for Syrian refugees would cover Iraq, Jordan, and Lebanon.[68] Although the EU does not refer to RPPs explicitly in terms of RtoP, as Haddad notes they are almost the definition of

what one might expect from pillar two with regard to external refugee protection.[69] They are a matter of collaborating with and funding UNHCR in encouraging governments and their agencies to meet their responsibilities; providing government training and education on border controls and protection issues and procedures; and developing norms and standards to promote compliance with international refugee law.[70] They are thus about the delivery of European protection to external spaces, and RPPs now surround the EU's problematic borders to the south and east.

The actual projects funded by Regional Protection Programmes are too numerous and diffuse to list. It is also difficult to do so as, despite frequent references made to them by the Commission and Council, their details remain vague and project reports are not available to the public. Aspasia Papadopoulou was granted access to UNHCR and Commission archives to research and assess the concept and implementation of RPPs, and as such she provides an invaluable summary.[71] Papadopoulou found that each of the regional projects was beset by particular contextual problems, but all suffered from a lack of coordination, funding, visibility, understanding, and engagement. In providing funding for classic UNHCR services, RPP projects have "contributed to the overall improvement of conditions" for refugees and national authorities. However, this way of operating also makes it unclear "how far RPPs are really additional or different to regular UNHCR projects."[72]

In spite of their limited success, it is clear that Regional Protection Programmes have at their core the protection of refugees through the strengthening of state capacities. Yet, like the wider "external dimension" of the CEAS, they also encompass attempts to *control* refugee populations. Commissioner Franco Frattini, whose Justice, Freedom, and Security portfolio included the AFSJ and CEAS, noted this dual purpose when introducing RPPs in 2005. As he explained, they aim to ensure that those who need protection are able to access it "as quickly as possible and as closely as possible to their needs"; but they also seek to "prevent illegal secondary movements."[73] The Commission confirms that RPP protection includes agreement with third countries on "roles and responsibilities" regarding "irregular second movement situations."[74] RPPs' strengthening of third countries' registration, border controls, and protection capacities is therefore also about preventing movements that may bring refugees closer to Europe. They are as much about protecting the EU member states from a confrontation with the other as they are about protecting the other. It is hardly surprising, then, that the weakest

aspect of RPPs has been their resettlement commitment, in as much as the numbers resettled to member states through RPPs are very small.[75] This is clear if we look at the first two RPPs. While 12,471 refugees in Tanzania were welcomed by Australia, Canada, and the United States between 2004 and 2008, EU member states accepted just 434. In the same period, only 204 refugees were resettled from the Eastern European RPP to member states.[76] Even in these cases, RPPs' lack of visibility made it impossible to tell whether resettlement could be attributed to an RPP or to existing conventional cooperation with UNHCR programs.[77] In this situation, it is no wonder that so many refugees have used traffickers to facilitate their secondary movements. As EU Commissioner for Home Affairs Cecilia Malmström noted in 2014, for asylum seekers "there are basically no legal ways to get to Europe."[78]

The ethos that the EU expresses through its protection of refugees then diminishes in concentric circles of solidarity: greatest solidarity is expressed between member states by emphasizing the external dimension of protection; a secondary solidarity is directed toward third countries by strengthening their capacities to protect refugee populations and control their borders. It is only a tertiary, minimalist or humanitarian solidarity that encompasses refugees through a protective politics of care and control. The care of refugees is made dependent on their willingness to be controlled, refraining from movement toward the EU. These circles of responsibility do, however, inevitably clash, and a hint of this was visible above in the disagreement between the Council and Commission over whether third countries or refugees were the subject of solidarity. More visibly, this has been evident in conflicts between member states. Germany sought to express a greater solidarity with refugees in September 2015, opening its borders to undocumented migrants and allowing somewhere from three thousand to seven thousand to arrive in Munich in one day. This provoked a very public spat with the Hungarian Prime Minister, Viktor Orbán, as Germany's hospitality effectively turned Hungary into a transit state for those making the illegal movements the EU was trying to prevent. Meanwhile, Angela Merkel tried to use the praise she received from civil society to pressure other member states into accepting relocation and resettlement quotas. The attempt largely failed, however, as German border controls were reimposed within eight days and Hungary erected a razor-wire fence along its border with Serbia to stop further arrivals.[79]

Although Germany's capitulation could be interpreted as the EU reneging on its cosmopolitan values, this case is far from clear. If such values are to be expressed

first in solidarity with other EU member states and only third and minimally (through outsourcing) with refugees, it is Hungary rather than Germany that was acting more in line with the European ethos. And crucially, this form of diminishing solidarity cannot be criticized using the emerging norm of RtoP. It is authorized and legitimized *by* RtoP, which, in its present incarnation, is based on a maximalist defense of state sovereignty and a minimalist protection of populations. In fact, with the evolution of the RPP concept into the Regional Protection and Development Programme (RPDP) for Syrian refugees, the EU is offering far more than what is required by RtoP's minimalism. The RPDP has provided greater funding and coherence than RPPs by directly linking protection to humanitarianism and socioeconomic development as part of a long-term perspective managed by the Danish government.[80] While this may appear a stronger articulation of the EU's secondary and tertiary solidarity, resettlement is no longer part of the package; it is handed over entirely to the UNHCR.

The EU further stepped up its outsourcing of protection in November 2015 when it reached agreement with African leaders at Valletta on an EU Emergency Trust Fund for Africa. This fund of over €1.8 billion in development aid for states in the regions of North Africa, the Horn of Africa, the Sahel, and Lake Chad encompasses and goes beyond the regions already dealt with by RPPs. Accessing this funding will depend on agreed upon projects that address "the root causes of irregular migration" and promote "economic opportunities, security, and development."[81] The majority of the north of Africa is thereby incorporated within a giant RPDP, strengthening African states so as better to protect and contain actual or potential displaced populations.

It is the 2016 Turkish deal, however, that best demonstrates the entanglement of both solidarity policies related to RtoP discussed in this article: (1) entry requirements for EU membership and (2) the external dimension of immigration and asylum policy. What the EU received from the deal was a reinforced role for Turkey in its external dimension. Turkey agreed that all new "irregular migrants"—even those from recognized conflict zones such as Afghanistan, Iraq, and Syria—arriving in Greece from March 20 onward would be deported back to Turkey.[82] The government would also commit to taking "any necessary measures" to prevent further illegal migration. For every Syrian returned, a legally recognized and UNHCR-verified Syrian refugee would be resettled from Turkey's camps into the EU. No such commitment is offered for any other nationality. This will not necessarily involve any greater commitment from the EU, as it would

initially use up the remaining 18,000 places of the resettlement scheme agreed to by member states in July 2015. Beyond that, any new resettlements would be based on voluntary commitments by member states up to a maximum of 54,000. Thus, in keeping with the prioritization of the external dimension of immigration and asylum policy, the EU's own resettlement commitment is the deal's weakest element.

In return, Turkey received an accelerated move toward visa liberalization, which was meant to include the lifting of visa requirements for Turkish citizens entering the Schengen area before June 2016. In reality this has been delayed, as the EU claimed Turkey failed to meet the border security and fundamental rights conditions, enraging the Turkish government, which has threatened to tear up the deal. There was, however, a hastened disbursement of the €3 billion already allocated under the Facility for Refugees in Turkey to improve the protection, education, healthcare, infrastructure, and living conditions of refugees; and the EU has committed to providing a further €3 billion before 2018. Most interestingly, Turkey received the EU's promise to "reenergize" its accession process, opening new chapters of the *acquis* for negotiation and reopening previously frozen chapters. Even when the deal was signed, many of the Copenhagen Criteria—which were so crucial in institutionalizing the ethos of the EU around democracy, the rule of law, human rights, and the protection of minorities—were under threat in Turkey. Following the failed coup in July 2016, this situation only worsened. Nonetheless, the EU not only designated Turkey a "safe third country" but also initially furthered its progress toward full EU protection as a future member state by opening Chapter 33 (Financial and Budgetary Provisions) of the *acquis* for negotiation. However, on November 24 the European Parliament voted overwhelmingly to suspend the accession process due to concerns over human rights and the rule of law in Turkey.

Criticism of the EU regarding this deal has, in large part, focused on whether or not Turkey can be considered a safe third country, an issue underlined by the European Parliament's recent vote. According to the EU Asylum Procedures Directive, accelerated return of irregular migrants to a third country depends upon that country being safe under the following definition: offering no risk of serious harm or threat on account of race, religion, nationality, social group, or political opinion; respecting the principle of non-refoulement; refraining from the use of torture and degrading treatment; and allowing the possibility for migrants to request refugee status.[83] Human Rights Watch and others strongly

question most of these criteria with respect to Turkey, particularly Turkey's refusal to allow non-Europeans to request refugee status. The Afghans, Iraqis, and Syrians deported from Greece can all be refouled once they reach Turkey.[84] However, all of the EU's actions here are tied to its membership requirements, which the Secretary-General sees as the EU's greatest implementation of RtoP. In September 2015 the Commission proposed a new regulation that established the "safe" status of Turkey, justified on the grounds that, like other candidate countries, it had been deemed to fulfill the Copenhagen Criteria.[85]

Conclusion

No matter how ethically questionable the EU's politics of refugee protection remains, it is important to stress that RtoP as currently formulated offers no resources for criticizing the EU or helping it to revise its response. Not only has the EU already institutionalized a much deeper and wider set of values than those encompassed by RtoP, it also has greater experience in implementing them through its entry requirements. RtoP currently offers no guidance for how a regional organization could act more appropriately or ethically. Furthermore, RtoP proposes no responsibility on the part of states or regional organizations to welcome refugees beyond the existing commitments prescribed by international law. However, when we examine RtoP alongside the EU's entry requirements and outsourced asylum protection, we see that both operate via a similar underlying ethics of solidarity with states, which limits the potential of either to develop a responsibility to resettle refugees.[86] Both seek primarily to protect and strengthen the state, namely, its sovereignty and protection capacity, by securing the borders of wealthy states and reproducing a global migration regime that traps (and protects) people near conflict.[87] This is what the EU is doing in Turkey by committing to €6 billion in funding by 2018 and hastening its advance toward EU membership. RtoP currently asks for considerably less. Indeed, perhaps we can say that instead of the RtoP norm evolving to include a commitment to asylum, the EU's more thoroughgoing solidarity with—and outsourcing of protection to—third countries is its more obvious evolution. In sum, perhaps the EU's externalized politics of protection *is* the evolution of RtoP.

NOTES

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