A threat to cosmopolitan duties?
How COVID-19 has been used as a tool to undermine refugee rights

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The spread of COVID-19 has exposed pre-existing structural inequalities and injustices within societies around the world. The pandemic has had disproportionate and adverse impacts on women, minorities, indigenous peoples and the socio-economically disadvantaged. COVID-19 has also affected those moving between societies, such as asylum-seekers and refugees. Even before the pandemic, international society was facing refugee and displacement crises. For example, by the end of 2019 there were 26 million refugees, 4.2 million asylum-seekers and 45.7 million internally displaced persons worldwide. Although 2020 saw a decline in international travel owing to border closures, quarantine and self-isolation measures implemented in response to the pandemic, the movement of people fleeing violence and persecution did not cease. By December 2020, just under 95,000 people had crossed the dangerous central Mediterranean Sea en route to Europe. Meanwhile, in Central America and Mexico, over 1.1 million people have been forcibly displaced because of gang violence, conflict and poverty. Across the globe, by the end of 2020, just under 80 million people were displaced.

When refugees and asylum-seekers have been discussed during COVID-19, the focus has primarily been on their particular vulnerabilities to the pandemic or how states need to include them in health care responses. Refugees face signifi-
cant challenges when it comes to health care owing to language barriers, detention in camps and insufficient access to food. Ultimately, it has become difficult for asylum-seekers and refugees to practise physical distancing or gain access to the necessary hygienic products and testing facilities. Although it is widely recognized that the pandemic has had a disproportionate effect on refugees, sufficient attention has not been given to the impact that the pandemic has had on states’ lack of willingness or ability to fulfil their obligations under the international refugee regime. As refugees and asylum-seekers have moved between states, they have encountered closed borders, arbitrary detention and state officials pushing them back to the countries whence they came. These responses have had profound impacts on refugees and asylum-seekers, undermining refugee rights and the international refugee regime more broadly.

This article discusses how some states have exploited COVID-19 to evade their obligations to refugees under international human rights and refugee law. It explains how these states have adopted new (or fine-tuned pre-existing) migration deterrence policies to try to whittle down the protections offered to refugees in international society under the international human rights regime. Focusing on the policies of some European states, including Italy, Malta, Greece and several Balkan countries, as well as the United States and Australia, which are key destinations for asylum-seekers and refugees, this article argues that COVID-19 has been exploited to try to normalize pre-existing migration deterrence policies with the primary aim not of stopping the spread of the virus, but of hindering migration flows.

The next section of this article outlines the impact COVID-19 has had on refugees and the human rights concerns arising from the declaration by states of public emergencies to deal with the pandemic. The following section then explores how some states have exploited the public health emergency to strengthen their migration deterrence policies during the pandemic, reducing bonds of solidarity with refugees and undermining international refugee protections in the process. The next section analyses how states used pushbacks, border closures, restrictions on access to asylum, and detention to avoid their obligations under international refugee law. The final section explores the implications COVID-19 has had for the refugee regime and for protecting the rights of those travelling between states. It argues that although self-regarding considerations have significantly harmed bonds of solidarity with refugees during the pandemic, other-regarding considerations have served to strengthen resistance to deterrent policies, delegitimizing them and offering hope that more humane policies can be developed.

COVID-19 vaccine discourse?, BMJ Global Health 5: 11, 2020, pp. 1–4.
8 Lorenzo Guadagno, Migrants and the COVID-19 pandemic: an initial analysis, Migration Research Series no. 60 (Geneva: International Organization for Migration, 2020), https://publications.iom.int/books/mrs-no-60-migrants-and-covid-19-pandemic-initial-analysis, esp. p. 5.
9 The 1951 Convention Relating to the Status of Refugees defines a refugee as ‘someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion’. See UN, Convention and Protocol Relating to the Status of Refugees, 28 July 1951, https://www.unhcr.org/en-au/3b66c2a10.
National emergencies, COVID-19 and implications for the refugee regime

The spread of COVID-19 around the world prompted a rapid and drastic shift in state conduct. Many states implemented emergency policies and laws to stop the spread of the disease and save lives. Some closed their borders to international travel and arrival of non-citizens; populations in some cities were forced to isolate and quarantine; and citizens’ freedom of movement was heavily restricted. When it came to state responses to asylum-seekers and refugees, public health advice was clear in recommending that some restrictions were necessary to combat the virus, but these restrictions were not contingent on the exclusion of asylum-seekers and refugees from health care. The policy recommendations made by the Inter-American Commission on Human Rights (IACHR),10 the UN High Commissioner for Refugees (UNHCR),11 the International Organization for Migration (IOM),12 the European Commission,13 the World Health Organization (WHO),14 and non-governmental organizations (NGOs) such as Human Rights Watch and the International Commission of Jurists,15 all identified upholding international obligations to refugees as an integral part of state responses to COVID-19.

Alongside including refugees in the response to COVID-19 was the need to facilitate international cooperation and sharing of responsibility between states and other international actors. The principle of international cooperation is embedded in the 1951 Refugee Convention, in recognition that no individual state can deal with refugee flows alone.16 Sharing of responsibility covers areas ranging from the resettlement of refugees to providing funding to host countries, assisting in voluntary repatriation and integration initiatives, and providing refugees with complementary pathways, such as humanitarian visas.17 Despite responsibility-sharing being a contentious norm, and one which states understand differently—with developed

10 Organization of American States (OAS), 'The IACHR urges states to protect the human rights of migrants, refugees and displaced persons in the face of the COVID-19 pandemic', press release, Inter-American Commission on Human Rights, 17 April 2020, http://www.oas.org/en/iachr/media_center/PressReleases/2020/077.asp.
11 Global Refugee Forum, The role of the Global Compact on Refugees in the international response to the COVID-19 pandemic (Nordhavn: UNHCR, 2020), https://reliefweb.int/report/world/role-global-compact-refugees-international-response-covid-19-pandemic; UNHCR, Key legal considerations on access to territory for persons in need of international protection in the context of the COVID-19 response (Nordhavn, 16 March 2020), https://www.refworld.org/docid/5e7132834.html.
12 Guadagno, Migrants and the COVID-19 pandemic, p. 5.
13 European Commission, COVID-19: guidance on the implementation of relevant EU provisions in the area of asylum and return procedures and on resettlement, C(2020) 2516 final, 16 April 2020, https://www.refworld.org/docid/5e99707d4.html.
14 The rights and health of refugees, migrants and stateless must be protected in COVID-19 response: a joint statement by UNHCR, IOM, OHCHR and WHO (New York, 2020), https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25762&LangID=E.
15 Kenneth Roth, We can beat the virus only by protecting human rights (New York: Human Rights Watch, 6 May 2020), https://www.hrw.org/news/2020/05/06/we-can-beat-virus-only-protecting-human-rights; International Commission of Jurists (ICJ), The impact of COVID-19 related measures on human rights of migrants and refugees in the EU, briefing paper, 26 June 2020, https://www.icj.org/wp-content/uploads/2020/06/Covid19-impact-migrants-Europe-Brief-2020-ENG.pdf.
16 See preamble, Part D, of the 1951 United Nations Convention Relating to the Status of Refugees.
17 UN, Report of the United Nations High Commissioner for Refugees, part II: Global Compact on Refugees, General Assembly, Doc. No. A/73/12 (Part II) (New York, 2018), p. 18; see also art. 2 of UN General Assembly, Declaration on Territorial Asylum, A/RES/2312(XXII) (New York, 14 Dec. 1967), https://www.refworld.org/docid/3b0f6532c.html.
states in particular being hesitant to adopt binding commitments—both it and international cooperation were considered necessary to stop the spread of the virus. As the Global Refugee Forum, established under the 2018 Global Compact on Refugees, stated: ‘The global challenges posed by the pandemic require international cooperation, through concrete, practical immediate and future measures to support low- and middle-income host countries whose health and social protection systems are already strained.’ International cooperation, responsibility-sharing and adherence to international refugee law were seen by human rights and refugee authorities not as a hindrance to stopping the spread of COVID-19, but as crucial elements in responding to the virus and ensuring that host countries had the necessary resources to respond to refugee movements during the pandemic.

However, COVID-19 made it particularly difficult to protect refugees. The pandemic led to a sharp decline in economic activity in host countries, leading to a lack of funds to host and support refugees in developing countries. Many of these countries also rely on remittance income from family members who work in other countries, and the decline in this income—which, before the pandemic, amounted to $350 billion, surpassing foreign direct investment, portfolio investment, and foreign aid as the single most important source of income from abroad—exacerbated the situation. The UNHCR and IOM also had restricted access to refugees, leading to a reduced capacity to engage in assistance activities. As a result, 2020 saw the lowest resettlement rate in more than 20 years. Alongside these restrictions, the UNHCR faced a budget shortfall of 51 per cent in 2020, further inhibiting its ability to carry out much-needed tasks worldwide. Although budgetary gaps are not a new problem for the UNHCR, the pandemic has exacerbated the problem of protecting asylum-seekers and refugees.

The difficulty of protecting refugees during the COVID-19 pandemic was further exacerbated by migration deterrence policies, which some states used to prevent asylum-seekers and refugees from arriving on their shores. Some states argued that emergency measures needed to be taken to stop the virus, and this meant infringing human rights. Under article 4 of the International Covenant on Civil and Political Rights (ICCPR), states are permitted to derogate from the covenant during times of national emergency, including public health crises.

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18 Rebecca Dowd and Jane McAdam, ‘International cooperation and responsibility-sharing to protect refugees: what, why and how’, *International and Comparative Law Quarterly* 66: 4, 2017, pp. 863–92.
19 Global Refugee Forum, *The role of the Global Compact*, p. 1.
20 Global Refugee Forum, *The role of the Global Compact*, p. 1.
21 On the socio-economic consequences, see also UN Sustainable Development Group, *Covid-19 and people on the move*, policy brief (New York, June 2020), https://unsdg.un.org/resources/policy-brief-covid-19-and-people-move.
22 Antoinette Sayeh and Ralph Chami, ‘Lifelines in danger’, *Finance and Development* 57: 2, 2020, p. 16.
23 UNHCR and IOM, *COVID-19: access challenges and the implication of border restrictions* (Nordhavn and Geneva, 27 April 2020), https://reliefweb.int/sites/reliefweb.int/files/resources/COVID%20%20Access%20Challenges%20and%20Implication%20Border%20Restrictions%20%28UNHCR%20and%20IOM%29.pdf.
24 UNHCR, ‘UNHCR warns 2020 risks lowest resettlement levels in recent history’, press release, 19 Nov. 2020, https://www.unhcr.org/en-au/news/press/2020/11/5fb4e6f24/unhcr-warns-2020-risks-lowest-resettlement-levels-recent-history.html.
25 UNHCR, *Consequences of underfunding in 2020* (Nordhavn: Sept. 2020), p. 6, https://www.unhcr.org/underfunding-2020/wp-content/uploads/sites/107/2020/09/Underfunding-2020-Full-Report.pdf, accessed 28 Sept. 2021.
26 UNHCR, *Financials* (Nordhavn, n.d.), https://reporting.unhcr.org/financial.
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As the UN Human Rights Committee stated in the context of the response to COVID-19, states can derogate from the covenant under article 4, ‘provided this is required to protect the life of the nation’. However, the committee also stated that if states chose to derogate from the covenant, they had to follow strict procedures, including the declaration of a state of emergency and notifying the UN Secretary-General. They cannot derogate from all rights; non-derogable rights are to be upheld at all times. In addition, the measures that states take are expected to be non-discriminatory as well as proportionate and necessary.

Although states are entitled to derogate from some rights under the ICCPR, the Human Rights Committee has noted that some states have not followed the correct protocol during the pandemic. According to Gillian Triggs, Assistant High Commissioner for Protection at the UNHCR, ‘countries have sought to derogate from their treaty-based human rights obligations and many others have adopted emergency measures that impose severe and unreasonable limits on liberties’. Human rights groups have reported that governments have pushed through policies that violate human rights in the name of stopping the spread of the virus. As Kenneth Roth has stated:

Some governments around the world are using the pandemic to claim that human rights are a luxury we cannot afford. With the crisis as a pretext, they are arresting critics, intensifying surveillance, and seizing broad emergency powers. The underlying assumption is clear: safeguarding human rights is a nicety that must be jettisoned when times get tough.

Not only did countries step up pushbacks on land and sea, and detain asylum-seekers (including children), but some, under national emergency laws, closed their borders to refugees and refused to process asylum applications. As discussed in more detail below, although some states claimed that these policies were necessary to deal with an unprecedented global pandemic, many of these policies went beyond what was necessary and proportionate, and discriminated against asylum-seekers.

COVID-19 and cosmopolitan duties to refugees

The adoption of migration deterrence policies during the COVID-19 pandemic was not a new development. Since the late 1980s and early 1990s, liberal democracies in Europe, along with the United States, Canada and Australia, have implemented non-entrée or ‘remote control’ asylum policies that have aimed to deter

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27 UN Human Rights Committee, Statement on derogations from the Covenant in connection with the COVID-19 pandemic, 24 April 2020, p. 1, doc. no. CCPR/C/128/2, https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatementEN.pdf.
28 The non-derogable rights are set out in articles 6, 7, 8, 11, 15, 16, 18. See UN Human Rights Committee, Statement on derogations, p. 2.
29 UN Human Rights Committee, Statement on derogations, p. 1.
30 UN Human Rights Committee, Statement on derogations, p. 1.
31 ‘Statement by Ms. Gillian Triggs, Assistant High Commissioner for Protection, to the 71th session of the Executive Committee of the High Commissioner’s Programme’ [New York: UNHCR, 7 Oct. 2020], https://www.unhcr.org/en-au/admin/dipstatements/5f7c2d744/statement-ms-gillian-triggs-assistant-high-commiss-ioner-protection-71th.html.
32 Roth, We can beat the virus.
asylum-seekers from reaching their shores and seeking asylum.33 These policies have included applying carrier sanctions on airlines and deployment of airline liaison officers in foreign countries to prevent people boarding without valid documentation.34 State exclusion zones have been created, whereby states excise part of their territory for migration purposes. For example, in a 2001 amendment to the Migration Act, Australia excised Christmas Island and several other offshore territories from its ‘migration zone’. Non-citizens who enter such excised zones are then deported without adequate asylum protections.35 Some states have detained refugees (sometimes indefinitely) to deter others,36 and some have erected barriers to prevent the arrival of refugees.37 Some states have also cooperated with third parties to push and pull back migrants before they reach their destination country,38 increasing the risk that they will be returned into harm’s way.

These deterrence policies have been heavily criticized by legal scholars,39 the UN,40 human rights groups,41 and regional bodies and courts,42 for violating human rights. The purpose of these deterrence policies has been to help the states in question to avoid fulfilling their responsibilities under the refugee regime.43 In doing so, destination countries are not seeking to destroy the refugee regime; indeed, many developed countries see maintaining the refugee regime as integral both to creating a humanitarian identity and to ensuring that developing states continue to cooperate with them on refugee issues.44 However, developed states have taken measures to try to reshape and reinterpret their obligations under the regime.45 They have done this by abiding by the letter of the law, while at the same time violating its spirit.46 A procedure known as ‘evasion’, this practice blurs the boundary between conformity to the law and violation of it.47

33 David Scott Fitzgerald, *Refuge beyond reach: how rich democracies repel asylum-seekers* (New York: Oxford University Press, 2019).
34 Asher Lazarus Hirsch, ‘The borders beyond the border: Australia’s extraterritorial migration controls’, *Refugee Survey Quarterly* 36: 3, 2017, pp. 48–80.
35 Pauline Maillet, Alison Mountz and Kira Williams, ‘Exclusion through imperio: entanglements of law and geography in the waiting zone, excised territory and search and rescue region’, *Social and Legal Studies* 27: 2, 2018, pp. 142–63.
36 Katelin Morales, ‘Australia’s Guantanamo Bay: how Australian migration laws violate the United Nations Convention Against Torture’, *American University International Law Review* 31: 2, 2016, pp. 327–50.
37 Reece Jones, *Violent borders: refugees and the right to move* (London and New York: Verso, 2017), p. 88.
38 Thomas Gammeltoft-Hansen and James C. Hathaway, ‘Non-refoulement in a world of cooperative deterrence’, *Columbia Journal of Transnational Law* 53: 2, 2015, pp. 235–84.
39 Thomas Gammeltoft-Hansen, *Access to asylum: international refugee law and the globalisation of migration control* (Cambridge: Cambridge University Press, 2011).
40 See UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, doc. no. A/HRC/37/50 (New York, 2018), https://ap.ohchr.org/documents/dpage_e.aspx?i=A/HRC/37/50.
41 See e.g. Amnesty International, *Libya’s dark web of collusion: abuses against Europe-bound refugees and migrants* (London, 2017).
42 On pushbacks, see Hirsi Jamaa and Others v. Italy, European Court of Human Rights, application no. 27765/09 (2012).
43 Gammeltoft-Hansen and Hathaway, ‘Non-refoulement’.
44 Gammeltoft-Hansen and Hathaway, ‘Non-refoulement’.
45 See Alise Coen, ‘Can’t be held responsible: weak norms and refugee protection evasion’, *International Relations* 35: 2, 2019, pp. 341–62; Lama Mourad and Kelsey P. Norman, ‘Transforming refugees into migrants: institutional change and the politics of international protection’, *European Journal of International Relations* 26: 3, 2019, pp. 687–713.
46 Fitzgerald, *Refuge beyond reach*, p. 253.
47 Zoltán I. Búzás, ‘Evading international law: how agents comply with the letter of the law but violate its
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As a result of these deterrence policies, developing countries have taken on the majority of the responsibility for hosting and protecting asylum-seekers and refugees. In 2020, 85 per cent of displaced people were hosted in developing countries. Therefore, responsibility has not been shared equitably. However, these policies have also resulted in significant harm to people on the move. Europe’s pullback operations with Libya have resulted in asylum-seekers and refugees being detained in inhumane facilities, beaten, tortured, killed and subjected to slavery. Moreover, some European countries’ focus on deterrence rather than search and rescue operations in the Mediterranean Sea has led to an increase in drownings, as people continue to get on unsafe boats to head to Europe. In Australian detention centres on Manus Island and Nauru, people have suffered severe mental harm because of their indefinite detention and inhumane conditions. And in the United States, people have been returned to Central and South America where they have been killed or tortured.

The use of evasive tactics to deter asylum-seekers should not be surprising. The refugee regime has long been heavily politicized. While some states take international norms seriously, others are, as Bull remarked, ‘notoriously self-serving in their policies’. The result is that refugees and asylum-seekers have been discriminated against or used in geopolitical games, both during and since the Second World War. Refugees and migrants have been used as a vehicle for coercive pressure against other states, with weaker states using the threat of mass migration as a means to coerce target states into changing their behaviour. Although these practices of politicization and evasion are not new, they have escalated under the cover of COVID-19. States restricted movement of asylum-seekers and refugees, inhibited their ability to claim asylum, reduced opportunities for resettlement, undermined cooperation on refugee flows and put responsibility for refugees on the countries least able to support them.

These evasive practices draw attention to systems of exclusion and the role the state plays in exacerbating differential treatment between insiders and outsiders. As discussed in more detail below, during the pandemic, care of citizens has been given primacy over care of outsiders, such as asylum-seekers and refugees.

48 UNHCR, Figures at a glance.
49 See Amnesty International, Libya’s dark web.
50 See Forensic Oceanography, Death by rescue: the lethal effects of the EU’s policies of non-assistance (London: Goldsmiths, University of London, 2016), https://deathbyrescue.org.
51 Medicins Sans Frontières (Australia), Indefinite despair: the tragic mental health consequences of offshore processing on Nauru (Sydney, Dec. 2018), https://msf.org.au/article/statements-opinion/indefinite-despair-mental-health-consequences-nauru.
52 Human Rights Watch, Deported to danger: United States deportation policies expose Salvadorans to death and abuse (New York, Feb. 2020).
53 Hedley Bull, Justice in international relations, 1983 Hagey Lectures (Waterloo, Ont.: University of Waterloo, 1984), p. 14; Samuel M. Makinda, Hedley Bull and international security, working paper no. 1997/3 (Canberra: Department of International Relations, Australian National University, 1997), pp. 16–17.
54 See Phil Orchard, A right to flee: refugees, states, and the construction of international cooperation (Cambridge: Cambridge University Press, 2014).
55 Kelly M. Greenhill, Weapons of mass migration: forced displacement, coercion, and foreign policy (Ithaca, NY: Cornell University Press, 2010); Gerasimos Tsourapas, ‘The Syrian refugee crisis and foreign policy decision-making in Jordan, Lebanon, and Turkey’, Journal of Global Security Studies 4: 4, 2019, pp. 464–81.
Moreover, the latter have been portrayed as threatening, as they could bring the virus into the political community.\textsuperscript{56} Although framing refugees as a threat is certainly not new,\textsuperscript{57} what is so troubling about states’ response to COVID-19 is their adoption of what Michael Perry calls a ‘self-regarding’ attitude to the pandemic. As Perry argues, ‘according to the self-regarding strategy, it is good for oneself or one’s nation … that certain things not be done and certain other things be done even if it is not the case that every human being is sacred’.\textsuperscript{58} A self-regarding strategy, therefore, leads to a policy orientation through which governments privilege their own citizens and national interests at the expense of refugees and asylum-seekers.

This stands in contrast to what Perry calls an ‘other-regarding’ approach. An other-regarding approach recognizes not only that every human being is inviolable, but also that—whatever the circumstances—certain things are not to be done to human beings and certain things ought always to be done for them. In his own words, ‘some things are bad and some things are good, not just for some human beings, but for every human being’.\textsuperscript{59} In the context of this article, an other-regarding approach refers to a cosmopolitan approach through which refugees, asylum-seekers and all human beings are considered equal and treated the same way.

A self-regarding approach is problematic because it neglects international obligations and duties that are embedded within the refugee regime. The refugee regime provides a right to apply for asylum, prohibits refoulement to a country where a person could face persecution, and encourages international cooperation and responsibility-sharing between states. By engaging in border closures, refusing to process asylum applications, and carrying out expulsions and pushbacks during COVID-19, states undermined their duties to outsiders and what Linklater has called the ‘we–I’ balance, referring to efforts to balance the interests of humanity (we) and the sovereign state (I).\textsuperscript{60} During the pandemic, the we–I balance swung strongly in the direction of ‘I’, as states neglected their international human rights and ethical obligations to outsiders in the name of stopping the spread of the disease. This exacerbated the contraction of moral boundaries that was already under way before the pandemic, and significantly weakened bonds of solidarity with asylum-seekers and refugees.

An other-regarding approach challenges the idea that obligations and duties to citizens should be privileged above obligations and duties to humankind more broadly.\textsuperscript{61} Rather, it promotes respect for the ‘other’, or what Hedley Bull described

\textsuperscript{56} See e.g. Jo Ling King and David Ingram, ‘Facebook removes Trump ads on refugees and Covid-19’, NBC News, 1 Oct. 2020, https://www.nbcnews.com/tech/tech-news/facebook-removes-trump-ads-refugees-covid-19-11244602.

\textsuperscript{57} Nicola Langdon, ‘Empathy and othering: framing Syria’s refugee crisis in the British press’, in Marianna Karakoulaki, Laura Southgate and Jakob Steiner, eds, Critical perspectives on migration in the twenty-first century (E-International Relations, 2018), https://www.e-ir.info/2018/09/06/empathy-and-othering-framing-syrias-refugee-crisis-in-the-british-press/.

\textsuperscript{58} Michael J. Perry, The idea of human rights: four inquiries (Oxford: Oxford University Press, 1998), p. 32.

\textsuperscript{59} Perry, The idea of human rights, p. 86.

\textsuperscript{60} Andrew Linklater, Violence and civilization in the western states-systems (Cambridge: Cambridge University Press, 2006), p. 7.

\textsuperscript{61} See Andrew Linklater, The transformation of political community (Cambridge: Polity, 1998).
as ‘cosmopolitan’ justice, which is underpinned by ‘ideas which seek to spell out what is right or good for the world as a whole, for an imagined … cosmopolitan society to which all individuals belong’.

Bull’s idea of cosmopolitan justice is also partly derived from what he described as ‘world order’ or order among humankind, which ‘is something wider than order among states; something more fundamental and primordial than it; and … something morally prior to it’. Adopting a self-regarding approach ignores the fact that it is the state system that has created refugees, and therefore it is the responsibility of states to care for them. As Maley argues, ‘without states, refugees as we broadly understand the term would not exist’. This is because, as Haddad has rightly noted, refugees are not just ‘the consequence of a breakdown in the system of separate states, rather they are an inevitable if unanticipated part of international society’. An other-regarding approach to refugees, especially during pandemics, is therefore crucial. As states have created refugees, states also have an obligation to protect them.

Understanding the politics behind these migration policies, and how they have operated during the pandemic, is a matter of urgency. Before the outbreak of COVID-19, the global situation of refugees prompted some analysts to argue that the refugee system, which has shown signs of weakness for decades, is now broken and in need of radical transformation. The refugee regime not only serves as a fiduciary institution that protects the rights of those moving between states, it also represents what Cronin has called an international protection regime, that is, an institution designed to further the ‘common good’ of the international community. And yet, rather than using the pandemic as an opportunity to develop more inclusive policies towards refugees, some states attempted to extend and normalize deterrence policies, further exacerbating the problems of refugee governance and undermining the important role that human rights play in global governance more broadly.

The fact that some states exploited the pandemic to pursue migration deterrence is troubling, as the interdependence of international society suggests that global pandemics may become a regular phenomenon. COVID-19 has been the latest in a growing line of infectious diseases that have spread around the world. Excluding asylum-seekers and refugees from public health care policies has not

62 Hedley Bull, The anarchical society, 2nd edn (London: Macmillan, 1995), p. 81.
63 Bull, The anarchical society, p. 21.
64 William Maley, What is a refugee? (Oxford: Oxford University Press, 2016), p. 75.
65 Emma Haddad, The refugee in international society: between sovereigns (Cambridge: Cambridge University Press, 2008), p. 7.
66 On the importance of understanding the politics of pandemic responses, see Davies and Wenham, 'Why the COVID-19 response needs International Relations'.
67 Alexander Betts and Paul Collier, Refuge: transforming a broken refugee regime (London: Penguin, 2018).
68 Evan J. Criddle and Evan Fox-Decent, Fiduciaries of humanity: how international law constitutes authority (New York: Oxford University Press, 2016).
69 Bruce Cronin, Institutions for the common good: international protection regimes in international society (Cambridge: Cambridge University Press, 2003).
70 Samuel M. Makinda, 'The global covenant as an evolving institution', International Journal of Human Rights 6: 1, 2002, p. 124.
71 Lancet Commission, 'Lancet COVID-19 Commission statement'. See also Colin McInnes, 'WHO’s next? Changing authority in global health governance after Ebola', International Affairs 95: 5, 2019, pp. 1093–1110.
only made it harder to stop the virus from spreading,\textsuperscript{72} it has also had serious human rights implications.

**Refugee deterrence policies during the COVID-19 pandemic**

Whereas the appropriate accommodation of refugees requires an other-regarding, as opposed to a self-regarding, approach, under COVID-19 many states adopted an entirely self-regarding attitude. Migration deterrence policies, including pushbacks and expulsions on land and at sea, border closures and arbitrary detention, have exacerbated the vulnerability of asylum-seekers and refugees.

**Pushbacks and expulsions on land and at sea**

During the COVID-19 pandemic, many international human rights and legal bodies argued that the non-refoulement principle must be upheld at all times.\textsuperscript{73} A principle of customary international law,\textsuperscript{74} and a key pillar of international refugee and human rights law, non-refoulement prohibits states from returning refugees to places where they will be harmed. Article 33(1) of the 1951 Refugee Convention states:

\begin{quote}
No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
\end{quote}

Although the Refugee Convention provides an exception to non-refoulement that permits states to return individuals who are considered a threat to national security,\textsuperscript{75} international human rights law provides no such exception when returning a person would lead to a substantial risk of torture.\textsuperscript{76} Moreover, unlike the Refugee Convention, which applies only to refugees, the non-refoulement principle under international human rights law applies to everyone.\textsuperscript{77} Taken together, international human rights and refugee law provide robust protections against returning people into harm’s way.

However, during the pandemic, some states expelled migrants from their territories, and pushed back refugees at sea and on land. According to the UNHCR’s Assistant High Commissioner for Protection, ‘27 countries have returned asylum-seekers to their country of origin, risking refoulement’.\textsuperscript{78} Some countries, such as Malaysia, Thailand, Greece and Malta, engaged in boat pushbacks at sea, invoking

\textsuperscript{72} Sally Hargreaves, Bernadette N. Kumar, Martin McKee, Lucy Jones and Apostolos Veizis, ‘Europe’s migrant containment policies threaten the response to Covid-19’, British Medical Journal, vol. 368, 2020, p. 2.

\textsuperscript{73} UNHCR, Key legal considerations.

\textsuperscript{74} See Margit Ammer and Andrea Schuechner, ‘Principle of non-refoulement’, in Manfred Nowak, Moritz Birk and Giuliana Monina, eds, The United Nations Convention Against Torture and its optional protocol: a commentary, 2nd edn (Oxford: Oxford University Press, 2019), pp. 9–175.

\textsuperscript{75} See art. 33(2) of the 1951 UN Convention Relating to the Status of Refugees.

\textsuperscript{76} See Nigel S. Rodley with Matt Pollard, The treatment of prisoners under international law, 3rd edn (New York: Oxford University Press, 2009).

\textsuperscript{77} See Ammer and Schuechner, ‘Principle of non-refoulement’.

\textsuperscript{78} ‘Statement by Ms. Gillian Triggs’.
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the virus as justification. Boat pushbacks occur when the destination state intercepts an incoming migrant vessel, either within its territorial waters or on the high seas, and pushes it back from its territory. Malta pushed back 49 people who had entered Maltese waters to Libya, a country where there have been cases of torture, slavery, killing and inhumane detention of asylum-seekers. Between March and August 2020, Greece pushed back 1,072 asylum-seekers, forcing them onto unsafe boats on the sea border between Turkish and Greek waters and leaving them there until Turkish officials rescued them. In some instances, Greek authorities damaged the engines of the migrant vessels and left them stranded in the ocean. These practices, which have been carried out with the knowledge of Frontex, the European border agency, pose a serious threat to life and violate the non-refoulement principle and search and rescue obligations under international law.

Pushbacks on land are also occurring along the Balkan route into Europe. Bosnia and Herzegovina, Croatia, Serbia, Greece, North Macedonia and Hungary have pushed back asylum-seekers at their borders during the pandemic. Greece has been pushing Syrian refugees back across the Evros river to Turkey, apparently beating them and removing their personal belongings. Likewise, Croatian government agents are said to have beaten migrants, stolen their possessions and spray-painted a cross on migrants’ bodies, telling them it is a cure for COVID-19.

These pushbacks on land and at sea are not new. They have been used before COVID-19 by Italy, the United States, Australia, Greece, and several countries.

79 Amnesty International, ‘Rohingya refugees stranded at sea show urgent need for regional response’, 22 April 2020, https://www.amnesty.org/en/latest/news/2020/04/bangladesh-urgent-response-needed-for-rohingya-refugees-stranded-at-sea/; Amnesty International, ‘Malaysia/Thailand: Launch urgent search and rescue missions for remaining Rohingya at sea’, 27 July 2020, https://www.amnesty.org/en/latest/news/2020/07/launch-urgent-search-and-rescue-missions-for-remaining-rohingya-at-sea/.
80 Jennifer Rankin, ‘Migration: UN agency decries return of boat with 49 people to Libya’, Guardian, 17 March 2020, https://www.theguardian.com/world/2020/mar/17/migration-un-agency-decries-return-of-boat-with-49-people-to-libya.
81 See Amnesty International, Libya’s dark web.
82 Patrick Kingsley and Karam Shoumali, ‘Taking hard line, Greece turns back migrants by abandoning them at sea’, New York Times, 14 Aug. 2020, https://www.nytimes.com/2020/08/14/world/europe/greece-migrants-abandoning-sea.html.
83 Kingsley and Shoumali, ‘Taking hard line’.
84 Katy Fallon, ‘EU border force “complicit” in illegal campaign to stop refugees landing’, Guardian, 24 Oct. 2020, https://www.theguardian.com/global-development/2020/oct/24/eu-border-force-complicit-in-campaign-to-stop-refugees-landing.
85 Border Violence Monitoring Network, Special report: COVID-19 and border violence along the Balkan route (April 2020), https://www.borderviolence.eu/wp-content/uploads/COVID-19-Report.pdf.
86 Human Rights Watch, Greece: investigate pushbacks, collective expulsions (New York, 16 July 2020), https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions.
87 Lorenzo Tondo, ‘Crosses on our heads to “cure” COVID-19: refugees report abuse by Croatian police’, Guardian, 28 May 2020, https://www.theguardian.com/global-development/2020/may/28/they-made-crosses-on-our-heads-refugees-report-abuse-by-croatian-police.
88 See Hirsi Jamaa and Others v. Italy.
89 Sale, Acting Commissioner, Immigration and Naturalization Service, et al. v. Haitian Centers Council, Inc., et al., Supreme Court, no. 92–344, argued 2 March 1993, decided 21 June 1993, United States Reports, vol. 509, Oct. term 1992.
90 Amnesty International, By hook or by crook: Australia’s abuse of asylum-seekers at sea (London: Amnesty International, 2015).
91 See Human Rights Watch, Greece: violent pushbacks at Turkey border, 18 Dec. 2018, https://www.hrw.org/news/2018/12/18/greece-violent-pushbacks-turkey-border.
Balkan states. The practice has been heavily criticized by human rights authorities and courts, including the UNHCR, the UN Committee Against Torture, UN Special Rapporteurs on Torture, the European Committee on Torture, the European Court of Human Rights, and the Inter-American Commission on Human Rights. Pushbacks are widely considered illegal because they do not provide adequate opportunity for people to apply for asylum and risk returning individuals to places where they could be harmed. Although some states have argued otherwise, the non-refoulement principle applies to people who are already within a state’s territory as well as extraterritorially.

Alongside pushbacks on land and at sea, some states, including the US, also expelled asylum-seekers from their territories. As part of a campaign to restrict the ability of people to apply for asylum in the US, the Trump administration expelled 204,000 people, including 8,800 unaccompanied children, without asylum proceedings, from March 2020 onwards. Although COVID-19 was invoked as a reason for these actions, a former Trump official told CBS News that there was no public health justification for implementing the order and that they ‘were forced to do it’. These expulsions resulted in many Latin American individuals and families being returned to countries where human rights groups have previously documented the torture or killing of people who have returned.

Thus, instead of following public health advice by including asylum-seekers and refugees in public health care policies, some states have excluded them, thereby swinging the ‘we–I’ balance in favour of insiders and increasing the threat to refugees’ lives.

**Border closures and restrictions on the right to apply for asylum**

The risk of harm was amplified by some states ceasing to process asylum applications and closing their borders to non-citizens. Border closures have been a key...
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tool for preventing the spread of the disease by restricting the movement of people from one state to another. But they have also served to distinguish outsiders from insiders. Although these measures may be justified when applied to tourism or other forms of non-urgent travel, some countries have used border closures to keep out asylum-seekers. For example, in April 2020 Italy and Malta declared their ports ‘unsafe’ because of COVID-19, meaning that migrant vessels could not come in to dock even if they had been rescued at sea. The Italian emergency decree stated that ‘for the entire duration of the health emergency, due to the outbreak of coronavirus, Italian ports cannot be classified as “safe places” for the landing of people rescued from boats flying a foreign flag’.  

The declaration of ports as unsafe also meant that these two countries did not engage in search and rescue operations. In a statement to the European Commission justifying the declaration of its ports as unsafe, Malta claimed that in the light of the magnitude of these pressures, it is considered that the Maltese authorities are not in a position to guarantee the rescue of prohibited immigrants on board of any boats, ships or other vessels, nor to ensure the availability of a ‘safe place’ on the Maltese territory to any persons rescued at sea.  

According to the UNHCR, by April 2020 167 countries had partially or completely closed their borders.  

These border closures had adverse consequences for asylum-seekers and refugees and increased the risk of migrants drowning at sea. There have been numerous cases where Italy or Malta has not responded to calls for the rescue of people at sea. In one case, in July 2020, 52 people called the NGO Alarmphone, which helps assist with search and rescue. As the boat was in Maltese waters, Alarmphone contacted the Maltese authorities in the hope that they would come to its rescue. However, according to the NGO, Malta ‘remained uncooperative, hanging up the phone repeatedly without noting down crucial information about the boat in distress’. When a commercial merchant vessel rescued them and tried to arrange for them to disembark in Malta, it was told to go to the Italian island of Lampedusa. Italy refused the vessel and told it to return to Malta, where it was again denied entry. After five days at sea, those on the boat were finally allowed by Malta to disembark at its ports.

105 Lorenzo Tondo, ‘Italy declares own ports “unsafe” to stop migrants arriving’, Guardian, 8 April 2020, https://www.theguardian.com/world/2020/apr/08/italy-declares-own-ports-unsafe-to-stop-migrants-disembarking.  
106 ‘Malta shuts its ports to asylum-seekers, citing COVID-19 pandemic’, Times of Malta, 10 April 2020, https://timesofmalta.com/articles/view/malta-says-it-cannot-guarantee-migrant-rescues.784571.  
107 UNHCR and IOM, COVID-19: access challenges.  
108 UNHCR, COVID-19 platform: temporary measures and impact on protection (Nordhavn, n.d.), https://im.unhcr.org/covid19_platform/#_ga=2.19943456.343766945.1600226562-434446957.1608681977.  
109 Angela Giuffrida, ‘Calls in Italy to rescue people at sea after fears of more migrant deaths’, Guardian, 13 April 2020, https://www.theguardian.com/world/2020/apr/13/calls-in-italy-to-rescue-people-at-sea-after-fears-of-more-migrant-deaths.  
110 Alarmphone, ‘Rescued but not safe! Europe plays games with 52 lives!’  
111 Alarmphone, ‘Rescued but not safe!’  
112 Al Jazeera, ‘Malta allows migrants stranded on animal cargo to disembark’, 8 July 2020, https://www.aljazeera.
The failure to engage adequately in search and rescue missions has endangered the lives of both refugees and migrants. In August 2020 there were ‘at least four shipwrecks’ in the Mediterranean, as a result of which over 100 people died and 160 people remained missing. The following month, just under 200 people drowned trying to cross the Mediterranean. Policies of this kind go beyond what is necessary and proportionate, discriminate against people on the move, and, as Human Rights Watch has argued, ‘cannot be justified on public health grounds’.

Aside from border closures, some states have also stopped, or significantly reduced, the processing of asylum claims. These include Greece, Slovenia, Hungary, Australia and the United States. The closure of borders to asylum-seekers and refugees, and the subsequent suspension or reduction of asylum procedures, not only undermines the right of people to apply for asylum, but is not a necessary and proportionate response to the virus. In response to the pandemic, the European Commission announced that there should be ‘a Temporary Restriction on Non-Essential Travel to the EU’. However, it also stated that there were exceptions, namely, those ‘in need of international protection’, such as asylum-seekers and refugees. Moreover, if restrictions were to apply, ‘any restrictions in the field of asylum, return and resettlement must be proportional, implemented in a non-discriminatory way and take into account the principle of non-refoulement and obligations under international law’. Alternative measures, such as testing and quarantine, could have been implemented for asylum-seekers and refugees, but instead migration deterrence policies were pursued. Stopping the virus was not the only rationale behind the border closures and refusal to process asylum applications. These measures reflected self-regarding considerations and attempts to normalize deterrence policies, thereby helping some states to avoid their international obligations to refugees.

113 Alarmphone, ‘Four shipwrecks in one week off Libya’, 23 Aug. 2020, https://alarmphone.org/en/2020/08/23/four-shipwrecks-in-one-week-off-libya/.
114 Alarmphone, ‘Stop the mass dying at sea!’, 27 Sept. 2020, https://alarmphone.org/en/2020/09/27/stop-the-mass-dying-at-sea/.
115 Lorenzo Tondo, ‘Libya says migrants stopped at sea will not be let back in’, Guardian, 14 April 2020, https://www.theguardian.com/world/2020/apr/10/libyan-officials-migrants-stopped-seaports-unsafe.
116 Human Rights Watch, Greece: investigate pushbacks.
117 See Border Violence Monitoring Network, Special report, pp. 8–9.
118 Harriet Spinks, Seeking asylum in the time of coronavirus: COVID-19 pandemic effects on refugees and people seeking asylum (Canberra: Parliament of Australia, 19 May 2020), https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/FlagPost/2020/May/COVID-19__impacts_on_refugees_and_asylum_seekers.
119 Rebecca Gendelman, Julia Neusner and Kennji Kizuka, Humanitarian disgrace: US continues to illegally block, expel refugees to danger (Los Angeles: Human Rights First, Dec. 2020), https://www.humanrightsfirst.org/sites/default/files/HumanitarianDisgrace.12.16.2020.pdf.
120 See art. 14 of the 1948 UN Universal Declaration of Human Rights.
Detention

International law sets out restrictions on who may be detained, how detainees should be treated, and the duration of their detention. Under the 1951 Refugee Convention, refugees cannot be penalized for seeking asylum, including by being arbitrarily detained. Moreover, children should be detained only as a last resort. If people are detained, they must be treated humanely, and their right to health must be upheld. During the COVID-19 pandemic, detention centres made it difficult for detainees to practise social distancing, with overcrowding in many camps. Moreover, there has not been enough testing capacity and sanitary conditions have been poor. As a result, numerous international actors, including the UNHCR, the WHO, the UN High Commissioner for Human Rights and other UN agencies, the IACHR, human rights groups, the UN Subcommittee on the Prevention of Torture, and the European Committee on the Prevention of Torture, have called for immigration detainees to be released from detention when safe to do so to ensure that COVID-19 health regulations can be acted upon, and to prevent the spread of the virus in refugee camps.

Unfortunately, some states have continued to detain asylum-seekers and refugees in inhumane conditions. For example, in Australia, where 1,400 people were confined in immigration detention in March 2020, the government refused to release people found to be refugees into the community. Although the Australian government has implemented protocols to prevent and reduce the risk of contracting COVID-19 in detention, the effects of continued incarceration have
resulted in significant harm. In 2019, for example, 192 asylum-seekers taken from Manus Island to Australia for medical care were held in a Melbourne hotel for over a year, which led to mental harm and trauma. According to a lawyer representing some of the detainees, they did not have fresh air, sunlight or a chance to go out for a walk for close to a year.\footnote{\url{default/files/documents/2020/08/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia.pdf}.} One detainee described the conditions as more difficult than those they had experienced on Manus Island.\footnote{Luke Henriques-Gomes, ‘Refugees detained in Melbourne hotel “devastated” as they await move to another site’, \textit{Guardian}, 15 Dec. 2020, \url{https://www.theguardian.com/australia-news/2020/dec/15/refugees-detained-in-melbourne-hotel-devastated-as-they-await-move-to-another-site}.}

Greece also detained asylum-seekers during COVID-19,\footnote{Human Rights Watch, \textit{Europe: curb immigration detention}.} with some detention facilities being gravely inadequate. Before the Moria detention facility burned down in September 2020, the inhumane conditions in the camp had led to widespread cases of scabies and lice among the detainees.\footnote{Katy Fallon and Harriet Grant, ‘Lesbos coronavirus case sparks fears for refugee camp’, \textit{Guardian}, 11 March 2020, \url{https://www.theguardian.com/global-development/2020/mar/11/lesbos-coronavirus-case-sparks-fears-for-refugee-camp-moria}.} Moreover, there was a lack of shelter, with one MSF nurse working in the camp reporting: ‘I’ve seen 13-year-old boys sleeping outside underneath the olive trees with pneumonia.’\footnote{Fallon and Grant, ‘Lesbos coronavirus case’.} The detention policy in Greece, as in Australia and other parts of Europe,\footnote{See Border Violence Monitoring Network, \textit{Special report}.} is arguably not the result of an evidence-based response to COVID-19. It represents, on the contrary, the reinforcement and attempted normalization of migration deterrence policies that were initiated before the pandemic.\footnote{See Human Rights Watch, \textit{Greece: violent pushbacks}.} Rather than following public health advice from international organizations and human rights authorities, and appropriately accommodating asylum-seekers and refugees when it is safe to do so, some governments have strengthened their migration deterrence policies. This self-regarding approach leaves asylum-seekers at the risk of catching the virus, which in turn could make it more difficult for the world to get rid of COVID-19.

\textbf{Undermined, but not extinguished}

How might these violations of international human rights and refugee law be understood? If states can violate the laws and norms of the refugee regime with impunity, does this not effectively mean the demise of the regime? Although migration deterrence policies have undermined the ability of international refugee laws to constrain states, all is not lost. Arguably, refugee laws and norms retain their legitimacy. This can be seen in a number of ways.

First, not all states took the self-regarding approach and used COVID-19 as an excuse to avoid their international obligations. Some states adopted an other-regarding approach and made efforts to expand the bonds of solidarity with
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asylum-seekers and refugees. For example, the UK, Belgium, the Netherlands and Spain released immigrants from detention.144 Portugal gave asylum-seekers and refugees temporary citizen rights, providing them with access to health care facilities.145 Germany and Sweden continued to permit asylum applications,146 and by October 2020 113 countries had permitted full or partial access to their territories.147 As Gillian Triggs noted, ‘107 countries have been creative in enabling asylum claims by adopting remote digital technologies for registration, interviews, submission of documents, and flexible timelines for documentation that are so vital and for visa extensions’.148

Second, the fact that human rights and refugee laws have been violated does not mean they do not matter.149 Although compliance with norms provides a useful signal of their impact, there are other ways to determine the legitimacy and power of norms and laws.150 One of these is to examine how a state justifies its violation of a norm. During COVID-19, some states invoked a state of emergency to avoid their obligations under the refugee regime. This act of justifying their behaviour as an ‘emergency’ response is an acknowledgement that under normal circumstances such behaviour would not be acceptable. Some countries, such as Greece, denied they were engaging in illegal conduct, such as pushbacks.151 Denying violations and invoking emergency conditions do not constitute abandonment of laws and norms but in fact constitute recognition of them, as the states responding in these ways are continuing to engage with the international legal framework.152 Although there is the risk that some states may try to continue to appeal to ‘emergency conditions’ even after COVID-19 has come under control, it will become harder to justify as the threat of the pandemic diminishes.

Third, the legitimacy of the refugee regime was sustained despite widespread violations because these violations were not supported by leading international actors. As international law is created through the practices not just of states, but also of courts, international organizations and scholars, among others,153 examining how these other actors responded to violations can help determine whether those violations have support or are condemned. Support for the violators would suggest the demise of the norm, while condemnation of the violators would indicate a reaffirmation of the norm.154 Constructivist scholars have shown how violations of a norm can trigger blowback, providing an opportu-
nity to pressurize or persuade states to alter their behaviour, while also producing socialization effects that reaffirm the norm. As shown in the examples cited above, migration deterrence policies faced significant resistance. Authoritative actors, including international organizations, regional organizations and NGOs, criticized deterrence policies and reaffirmed the need to uphold the refugee regime during the pandemic. Although this criticism did not always succeed in constraining states, it was important. Resistance by key human rights groups and international organizations to such policies not only kept the norms, principles and laws of the refugee regime alive during the pandemic, but also delegitimized those policies.

The continued reaffirmation of international refugee and human rights law by many states and authorities provides grounds for optimism that solidarity and moral boundaries can be expanded to be inclusive of refugees and asylum-seekers during pandemics. Although some states took advantage of the emergency to attempt to normalize their deterrence policies, they were unable to legitimate those policies in the eyes of human rights and refugee authorities. Nonetheless, the refugee regime itself has some weaknesses. For example, there is a lack of clear guidance on what international cooperation and responsibility-sharing should look like, and even before the pandemic, the Global Compact on Refugees was not able to consolidate strong responsibility-sharing norms within international society. And yet, despite these weaknesses, this article has shown that pandemics do not have to result in a contraction of moral boundaries whereby states privilege the well-being of their citizens while neglecting the welfare of humanity. Pandemics can be an opportunity to expand solidarity with asylum-seekers and refugees, and better incorporate their interests into policies that affect them. Expanding moral boundaries beyond sovereign borders should not be seen as an idealist political project, but rather as a necessary one.

Conclusion

The COVID-19 pandemic exposed stark inequalities in societies around the world. It also tilted the balance between the interests of humanity and of citizenship in favour of citizenship, thereby resulting in discriminatory practices that privileged those inside the state at the expense of those outside it, such as asylum-seekers and refugees. Some states used the virus as an excuse to enhance pre-existing migration deterrence policies, including border closures, pushbacks, expulsions and arbitrary detention. Thus, the pandemic provided extra cover for self-regarding, as opposed to other-regarding or cosmopolitan-orientated, policies.

Although some states and international actors defended and protected the refugee regime, international society was unable to protect and assist refugees adequately during the pandemic. The stress this has placed upon the refugee

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155 See Thomas Risse, Stephen C. Ropp and Kathryn Sikkink, eds, The persistent power of human rights: from commitment to compliance (Cambridge: Cambridge University Press, 2013); Ryan Goodman and Derek Jinks, Socializing states: promoting human rights through international law (New York: Oxford University Press, 2013).

156 Sam Makinda, ‘Following postnational signs: the trail of human rights’, Futures 37: 9, 2005, pp. 943–57.
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regime represents a significant setback to efforts at strengthening bonds of solidarity and expanding moral and ethical boundaries beyond sovereign borders. Developing stronger refugee protections, and challenging policies that arbitrarily and unnecessarily exclude people seeking asylum, constitute an urgent task for international society. If global pandemics are becoming more frequent in a globalized and interdependent era, it is important that international society addresses the mistakes that were made in relation to the treatment of refugees and asylum-seekers throughout COVID-19. International society has both practical and moral grounds for action to challenge exclusionist policies towards asylum-seekers and refugees, to prevent future harm as a result of asylum deterrence policies, and to develop more humane forms of international refugee governance.