Comments on "Sustainable Refuge"

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I have been invited to talk in particular about what sustainability may mean in the context of refugee policy, and to draw some links back from the paper presented today to the first book co-authored by the two keynotes, titled "Refuge".

I am personally very pleased to see sustainability being invoked in regard not just to migration – where it arguably has a longer and bit more varied history – but also more specifically in regard to refugee policy.

As a heuristic and mindset, a focus on sustainability is, to my mind, exactly what is missing from many current both academic and political proposals to more radically reform the current refugee protection regime. Elsewhere I have argued that the high numbers of asylum-seekers in Europe during 2015 and 2016 should really be seen as a crisis in terms of the overarching policy frameworks guiding asylum and immigration policy. As a result, there is little to suggest that we will see a return to "normal policy-making" despite the sharp drop in asylum numbers across the EU last year.

Instead, we should brace ourselves for a period of political insecurity, an *interregnum*, in which different policy frameworks and paradigms are put forward by both policy-makers, NGOs and academics, each competing for support. As is becoming evident already, some of the proposals are clearly guided more by other motives (electoral, institutional, reputational) and often entirely unrealistic to implement, unpromising in terms of bringing about effective reforms and hardly sustainable over time. At the same time, we should recognize the fact that the political and economic risks of pursuing any radical new reform not already tested can be high – a focus on different sustainability criteria offers a possible framework to help policy-makers think through and carefully address these different concerns.

So far so good.

The big question for me, is whether the principles outlined in the general part of Betts and Collier's paper are sufficiently developed when thinking about the refugee

regime as opposed to migration in general. The paper is quite divided in that the sustainability framework set out in the first part is not directly applied to all parts of the last part concerning refugees. I largely agree with the proposals made in regard to improving refugee protection in poorer countries – but to really take the sustainability idea serious, I think we need to move beyond the different ideas already outlined in the previous book.

So, trying to do that, and with a view to bridging the two parts of the paper, I would instead posit that 3 different but interrelated sustainability criteria have to be met when thinking about reforms of global refugee policy:

- The first is what we might call the domestic, reflecting the political viability in secondary asylum states such as the European: This is similarly reflected in the first part of the paper, but I remain more doubtful about both the underlying analysis and the resulting conceptualization of a "a democratic mandate." That migration and refugee policy must have overall democratic support is a no-brainer. The challenge here, however, is that the median voter consensus is anything but fixed – if anything the last few years demonstrate just how much public opinion can change as a result of external shocks in the form of large increases in asylum numbers. Scandinavian experiences, e.g. from Denmark, furthermore demonstrates that attempts from e.g. the Centre Left to "match" the opposing blocs asylum policies does not stabilize the political situation, but rather moves other parties towards further restrictions, successfully swinging the electorate as well. In short, you are shooting at a moving target here, and the very nature of a highly politicised policy issue such as migration means that a democratic mandate can be very difficult to square with other aspects of sustainability requiring more long-term planning perspectives and sustained policy commitments to e.g. third countries.
- A better starting point, I would think, for thinking about domestic political sustainability would be to address the different underlying factors in order to avoid that electoral support doesn't "blow up in the face of policymakers" as Paul Collier formulates it. This includes creating a more predictive and stable set of expectations towards refugees: No state is willing to sign a blank cheque and research shows that large and unexpected fluctuations and sudden influxes of refugees from one year to another is a major driver for electoral instability. Secondly, we need to broaden discussions over domestic asylum policy in the Global North to related issues regarding e.g. duration of stay and labour market integration rates: Today, my own and many other European countries are pursuing short-term policies to deter arrivals that will have deep-seated effects in terms of limiting refugees' economic and cultural

integration in the medium- to long run. Here, I agree with jørgen Carling pointing out that achieving sustainability is not simply a matter of catering to the current electoral consensus, but also to ensure that policies here and now won't undermine political support down the road because refugees keep being overrepresented in e.g. unemployment statistics.

- The second sustainability criterion concerns refugees themselves – also something addressed in the general part of the paper, and I concur with the authors that sustainability considerations arguably play out rather different for refugees than for other categories of migrants. In short, there is little reason to think that the migration hump effect holds up for refugees and a growing body of data suggesting that refugees whose core protection needs (and these may change over time) aren't met will, over time, pursue secondary movement – that applies both to refugees based on low- and middle-income countries outside Europe, and in regard to intra-EU movement between poorer and richer, or less and more welcoming, Member States.
- To make matters worse, despite decades of attempts to regulate secondary movement both within the EU and across regions, none of these measures are particularly effective – only a fraction of Dublin requests are actually effected. I think for most of the countries represented here today, unregulated secondary movement both from outside and within Europe is really *the* issue when it comes to asylum, and hence any reform that doesn't address refugees' own, often justified, drive to move on is unlikely to prove sustainable, no matter how carefully it is atuned to democratic mandates and the varied interests of the states negotiating.

- Third, we might consider the horizontal sustainability criteria, what could loosely be translated to fairness between refugee hosting countries. Somewhat surprising, this aspect is almost entirely absent from the paper. Yet, attention to ensuring sustainable policies between different refugee-hosting states is essential: Without that states feeling disproportionately affected have no incentive to follow commonly agreed rules or procedures (whether or not based in ethics or law), or to nationally improve refugee protection conditions but will rather pursue the de facto burden-sharing of turning the blind eye to asylum-seekers passing through or actively lower protection conditions to the point where a significant proportion of refugees will pursue irregular secondary movement

- This brings us back to criteria 2 and full circle. My fourth key point here, and something I would personally like to see your paper to emphasise much more, is the obvious inter-operation between these three sustainability perspectives. Importantly, sustainability along one of the dimensions above, don't necessarily translate into sustainability along the two others. For instance, horizontal fairness through e.g. quota systems or distribution keys among countries has so far proven difficult to square with vertical sustainability in terms of electoral acceptance. But a refugee policy will be sustainable if, and only if, it pays due attention to all three dimensions of this sustainability equation. This is something that is overlooked in current debates over reform to refugee policy, which almost always place exclusively or overly strong emphasis on one particular dimension –

Tensions in the migration paper by Betts and Collier

- Not really sure the authors strike a balance in setting out the sustainable migration framework in the first part of the paper: the emphasis is very much on the electoral support in Global North countries, with very little consideration of similar political dynamics in major refugee hosting countries, or migrant sending countries. One would think these issues equally if not more important for obtaining a sustainable migration and refugee policy; moreover, I found the horizontal aspect – sustainability between states – largely absent: both intra-regionally, such as within Europe, and inter-regionally, as in the relations between major refuge hosting states and richer asylum countries in the global North
- Secondly, without being an economist, even from a layman's perspective one is left wondering about some of the assertions made in the first part of the paper: the paper argues that European countries have applied de facto open-door policies for asylum seekers – something that is difficult to square with both dropping asylum numbers to the EU at large (and Alex Betts' argument that borders "sort of work"), but also evidently dropping recognition rates after the exceptional spike in 2015 and 2016. My own experience when serving as a part-time Danish asylum judge during the height of the European refugee crisis was that even judiciaries remain constantly wary of the effects of setting normative precedents that might serve as an open door for larger groups. The paper launches several critiques of law and lawyers – lawyers are at best irrelevant and at worst: "bend the words of law to their particular objective…disconnected from both current ethical norms, and the practical

consequences of applying decisions at scale". I would encourage the authors to nuance this and other off-hand assertions.

- The rejection of law and legal norms as significantly guiding state behavior in both the Refuge book is of course all the more interesting because you immediately afterwards set out two fundamental obligations of so-called rescue – while I can personally sympathise with these core obligations, I wonder if others might not see you as effectively doing exactly the same just based on ethics rather than law, and setting down normative obligations as being beyond democratic dispute. One wonders if the same states and democratic mandate that you are looking for will simply agree that they have a duty of rescue towards all poorer states in the world – an obligation that even among what you might call "headless heart" lawyers is very much debatable.

Thank you very much for a highly stimulating paper and for bringing attention to the issues of sustainability in the context of migration and refugee policy.