

CAN STATES RESIST MIGRATION BLACKMAIL WHILE PROTECTING MIGRANTS?

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STATES ON EUROPE'S PERIPHERY sometimes use the threat of creating a "migration crisis" to extract concessions from European Union (EU) member states.¹ This practice has become increasingly prevalent in recent decades due to the EU's increasing reliance on outsourcing migration control activities to neighboring states. To illustrate, consider the following cases:

- In 2010, Muammar Gaddafi, playing to racist fears among Europeans, threatened to "turn Europe black" with migrants from Africa unless the EU paid him five billion euros.² Gaddafi's regime in Libya was eventually deposed. However, the EU now pays hundreds of millions of euros to Libyan militias to pull back migrants, who are detained in dehumanizing prisons.³
- In 2021, Alexander Lukashenko, president of Belarus, sought to create the perception of a migration crisis along EU borders by encouraging migrants to transit through Belarus to Poland, Latvia, and Lithuania.⁴ He, in conjunction with Russia, likely aimed to pressure the EU into repealing sanctions as well as to destabilize the EU in general. EU countries responded by suspending asylum procedures, increasing border security, engaging in mass pushbacks, and imposing additional sanctions.⁵
- After years of acting as Europe's gatekeeper under the 2016 EU-Türkiye Statement, Recep Tayyip Erdoğan announced in 2020 that Türkiye would no longer prevent migrants from crossing into Europe and would stop accepting migrants returned from the EU.⁶ Erdoğan likely aimed to induce the EU to support its military actions in northern Syria and to recruit

1 In this paper, I use 'migrants' as a catchall category to mean people who (may) move across borders. This includes refugees, asylum seekers, and nationals of a blackmailing state if they are likely to move. I focus on the case of EU member states in this paper.

2 Adamson and Tsourapas, "Migration Diplomacy in World Politics," 123–24.

3 Hayden, *My Fourth Time, We Drowned*.

4 Halemba, "Europe in the Woods."

5 Ganty et al., "EU Lawlessness Law at the EU-Belarusian Border."

6 Muftuler-Bac, "Turkey and the European Union Refugee Deal."

additional funding (nominally, for hosting refugees) over which Türkiye had greater discretionary control. Greece responded by temporarily suspending asylum procedures, engaging in mass pushbacks, and reinforcing its borders (with EU support).⁷

- In 2011, the European Court of Human Rights ruled that EU member states should halt the return of asylum seekers to Greece due to human rights violations by Greek authorities.⁸ Because deportation back to Greece was now more legally difficult, “Greece theoretically received a *carte blanche* to wave asylum seekers through its territory.”⁹ In 2015, the SYRIZA-ANEL coalition government adopted a policy of waving asylum seekers onwards, partly to gain leverage in its debt negotiations. Greece’s defense minister, playing up racialized fears, declared, “we cannot keep ISIS out if the EU keeps bullying us.”¹⁰ Other EU member states responded by making agreements with Türkiye and various Balkan states. The European Commission then determined that asylum transfers could resume.¹¹ Its leverage undercut, Greece shifted its stance.
- The Kenyan government has repeatedly threatened the closure of the Dadaab refugee camp and the mass expulsion of refugees partly in order to recruit additional funding from international donors. Kenya has obtained around three hundred million dollars in aid from the United States, United Kingdom, and EU through this and other tactics.¹²

These are cases of noncooperative bargaining, wherein states leverage migration against target states who fear irregular migration. I call this phenomenon *migration blackmail*.

Migration blackmail: State A makes a migration-related threat against state B in order to extract (unrelated) concessions from B.¹³

- 7 For an overview of Türkiye’s migration diplomacy vis-à-vis the EU, see Kleist, “Beyond the Crisis Mode of the EU-Turkey Refugee Agreement”; Laube, “Diplomatic Side-Effects of the EU’s Externalization of Border Control and the Emerging Role of ‘Transit States’ in Migration Diplomacy”; and Tsourapas, “The Syrian Refugee Crisis and Foreign Policy Decision-Making in Jordan, Lebanon, and Turkey.”
- 8 European Court of Human Rights, *MSS v. Belgium and Greece* (Judgment), Application No. 30696/09, January 21, 2011, <https://hudoc.echr.coe.int/fire?i=001-103050>.
- 9 Tsourapas and Zartaloudis, “Leveraging the European Refugee Crisis,” 250.
- 10 Tsourapas and Zartaloudis, “Leveraging the European Refugee Crisis,” 245.
- 11 See Tsourapas and Zartaloudis, “Leveraging the European Refugee Crisis,” 255–56.
- 12 Micinski, “Threats, Deportability and Aid,” 2.
- 13 Migration blackmail is sometimes also discussed as “weaponizing migration.” See Greenhill, *Weapons of Mass Migration*. I think this is a problematic frame. It wrongfully frames migrants as weapons. For a critique of the weaponization paradigm, see Bender, “Against

Migration blackmail comes in many varieties. However, in this paper, I focus on a “standard scenario”: a blackmailing state (implicitly) threatens to flood a target state (or states) with unwanted migrants unless the target state (or states) meets certain demands. Specifically, the blackmailing state (typically a transit or host state) indicates its intention to allow a considerable number of migrants (typically a mixed migration flow) to transit onwards to the target’s territory or external border unless the target (typically a regional neighbor or a union of states such as the EU) meets the blackmailing state’s economic or political demands.¹⁴ If the target state acquiesces, the blackmailer indicates it will slow migration by closing down the migration route; otherwise, the blackmailer indicates its willingness to manufacture a migration crisis at the borders of the target and often to place migrants in a position of acute vulnerability.

Migration blackmail may pose a dilemma for target states. This is because it seems to generate an especially acute conflict between two important goals that may appear to be, at first glance, mutually exclusive.¹⁵ On the one hand, target states have interests in resisting and avoiding blackmail. This seems to require closing borders with the blackmailing state. Anything else means allowing the blackmailer to impose burdens on the target. On the other hand, migrants have significant interests, which are placed in jeopardy by this response. Many migrants have interests in securing access to international protection, and all have interests in avoiding acute vulnerability and harm. In cases where migrants will not receive adequate protection within the borders of the blackmailing state and lack reasonable alternatives to move elsewhere, the only way to

“Weaponised Migration.” I therefore prefer the term *migration blackmail*. I borrow this term from the migration diplomacy literature, which contrasts it with “backscratching,” which is “promising to refrain from taking unilateral action against refugee populations within their borders, if compensated” (Tsourapas, “The Syrian Refugee Crisis and Foreign Policy Decision-Making in Jordan, Lebanon, and Turkey,” 465). What distinguishes migration blackmail from mere noncooperation is the leveraging of migration to achieve some other non-migration-related goal. In defining migration blackmail to include only unrelated concessions (rather than migration-related concessions), I may depart slightly from Tsourapas’s definition. This departure is relevant to the argument in section 5 below.

14 Not all cases of migration blackmail fit the standard scenario, as the case of Kenya illustrates. I focus on the standard scenario because it raises the dilemma most acutely.

15 Bauböck et al. define hard ethical dilemmas as follows: “Dilemmas are *ethical* ones if they involve choices between morally worthy goals that cannot be easily ranked, and they are *hard* if they cannot be easily resolved through clear thinking but persist in some form even after taking those actions that one considers as morally required or recommended” (“The Ethics of Migration Policy Dilemmas,” 429–30). I follow their approach. Note that this definition of a dilemma is different from standard definitions of moral dilemmas, which require a conflict of obligations. Importantly, I argue below that not all cases of migration blackmail in fact give rise to hard ethical dilemmas.

respect their interests may seem to be to open borders in a limited way. It may thus seem that the target state must either give in to blackmail, thereby accepting the responsibilities the blackmailer imposes and their costs, or refuse those responsibilities, thereby leaving migrants unprotected or harmfully pushing them back across the border. None of these options seems wholly satisfactory. Thus, target states face the *migration blackmail dilemma*: there is no way to effectively resist blackmail while respecting migrants' legitimate interests in accessing protection and avoiding harm.

This paper examines the circumstances that can lead to this dilemma and considers how target states should navigate it. My core claim is that in a standard migration blackmail scenario, states are not justified in closing their borders or derogating from their protection obligations. This is an important conclusion because this has been the standard response taken by EU member states to migration blackmail—a response that has been legally sanctioned and enabled by the latest reforms to the EU Common European Asylum System.¹⁶

My argument proceeds as follows. I begin in section 1 by identifying what is problematic about migration blackmail. I then use this analysis to show in section 2 how migration blackmail may generate a dilemma. Importantly, these sections show that although migration blackmail may generate a dilemma for target states, it does not *always* do so. I then argue in section 3 that even when migration blackmail is dilemmatic, states often bear significant culpability for the situation. Still, even where migration blackmail is dilemmatic and states are not culpable, I argue that migrants' interests in accessing protection and avoiding harm trump states' interests in blackmail avoidance. This entails that closed-border reactions to blackmail are impermissible, and states are therefore required to adopt a stance of qualified openness (section 4). However, I contend that states retain a range of policy options to resist blackmail and to mitigate its costs even if they must honor migrants' claims to protection; permitting restrictive border closure is not necessary to resolve the dilemma (section 5). I briefly conclude by explaining the relevance of my argument for policy developments within the European Union.

1. WHAT IS WRONG WITH MIGRATION BLACKMAIL?

As defined above, migration blackmail occurs when one state uses the (potential) presence of migrants in its territory as leverage to extract unrelated

16 See European Commission, "Common European Asylum System," https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system_en, (accessed February 10, 2025).

concessions from a target state or states.¹⁷ Before considering how states are permitted to respond to blackmail, I first consider what may be morally problematic about migration blackmail as a practice. I do so because how states may respond to migration blackmail depends on an assessment of the permissibility of the practice.¹⁸ Plausibly, migration blackmail is problematic when and because it either (1) wrongs migrants or (2) wrongs target states and their citizens. I consider each case in turn.¹⁹

One prominent concern is that migration blackmail *instrumentalizes* migrants and therefore wrongs them. Blackmail may do this because it involves issue linkage: using migrants as leverage for some external goal without regard for migrants' aims and interests. Plausibly, instrumentalization, which involves using migrants as a mere means rather than treating them also as ends in themselves, is problematic because it expresses the attitude that migrants are not entitled to the dignity due to agents.²⁰ This worry is valid. However, it is hardly unique to migration blackmail, and its moral weight is difficult to assess.²¹

Second, blackmailers often wrongfully threaten to harm migrants. Migration blackmail sometimes involves embedded threats, wherein the blackmailer *directly* threatens migrants in order to threaten target states. For example, Belarusian border guards reportedly beat migrants, force them across the Polish border, and do not allow them back into Belarus.²² Analogously, Kenya would wrongfully harm Somali refugees if it expelled them; so, it is wrong to threaten to expel them. While the ultimate target of Kenya's threat to expel Somali

17 There is a fine line between migration blackmail and other forms of migration diplomacy, especially because almost all diplomacy issue linkage, and often the blackmailer's aims, may be opaque. What sets migration blackmail apart is the use of an implicit threat that leverages migrants under a negative frame from a migration-independent aim.

18 Below, I assume that legitimate states have a limited right to exclude because my analysis is largely addressed to policymakers in actual states operating under significant political constraints. Defenders of open borders may still share some of the concerns discussed about wronging migrants and target states. More importantly, they should endorse my core conclusions about the limits of how states may permissibly respond to migration blackmail.

19 Migration blackmail is most often employed by comparatively weak states. (Russia's recent actions vis-à-vis Finland are an exception to this rule, and Russian policy interests also play a role in the Poland-Belarus case.) However, more powerful states also employ problematic strategies (e.g., coercive threats and problematic conditionality) designed to induce weak states to accept unjust migration deals. Many of these strategies are subject to similar and often weightier objections. I discuss this issue in Sharp, "Collective Self-Determination and Externalized Border Control."

20 For discussion, see Mieth and Williams, "Beyond (Non)-Instrumentalization."

21 Scanlon, *Moral Dimensions*, ch. 3.

22 Perkowska, "(No) Children's Rights at the Polish-Belarusian Border," 251.

refugees is the international community, Kenya nevertheless wrongs these refugees by threatening to harm them. However, not all cases of migration blackmail involve threatening migrants. Türkiye's threat against the EU, for example, involved threatening to *stop* coercing migrants by allowing them to move onwards to Greece.

Such cases may be problematic for a third reason: namely, that they (deceptively) place migrants at serious *risk* of harm. For example, Belarus encouraged migrants to travel to Belarus with the promise that they would have access to the EU by crossing from Belarus to (e.g.) Poland, refused to offer these migrants protection in Belarus, and knew that it was unlikely that they would be admitted by EU member states. This foreseeably resulted in people freezing to death at the EU's external borders.²³ This has caused eighty-eight documented deaths since September 2021 at the Polish-Belarus border alone.²⁴ Belarus thus wrongfully subjected migrants to the risk of harm. Crucially, as I argue later, the ultimate harm in this case was coperpetrated by Poland, as these deaths arose only because Poland and other EU member states denied entry to migrants through violent pushbacks, physical border fortifications, and border closures.²⁵

Migration blackmail therefore often—perhaps always—wrongs migrants.²⁶ One might therefore think that migrants have an interest in being protected against the practice. However, migrants also have interests in accessing protection, and, as we will see, these two goals may conflict.

Migration blackmail may also wrong target states. First, it might impose unfair burdens on the target state. Second, it might constitute a wrongful threat.

23 Kazharski, "An Authoritarian Spectacle."

24 See We Are Monitoring Association (Border Group Coalition), "Interactive Dashboards" (updated weekly), <https://wearemonitoring.org.pl/en/statistics/interactive-dashboards/?cn-reloaded=1>, accessed February 15, 2025.

25 Ganty et al., "EU Lawlessness Law at the EU-Belarusian Border."

26 It is an open question whether migration blackmail always *wrongfully* instrumentalizes migrants. Some migrants—refugees and those in similar positions—have interests in accessing international protection. If blackmail successfully facilitates entry to a target state willing to offer protection, then migrants may have a countervailing interest in allowing it to continue. Of course, migrants should not have to incur such risks to access protection. However, in the absence of routes to protection not based on blackmail, overburdened host states may be permitted to put pressure on target states by allowing or facilitating migration *so that they can better support migrants and refugees* within their territories. This arguably does not count as migration blackmail, strictly speaking, since such states do not try to extract *additional* migration-external benefits from those states by using migrants, beyond those benefits to the migrants themselves. Thus, although there are cases in which leveraging migrants in order to win financial support to host them may be permissible, migration blackmail is still likely wrongful in such cases because it involves using migrants for additional purposes.

Again, these worries do not apply to all cases of blackmail. The first assumes that protecting migrants comes with net burdens. Migration sometimes creates burdens, such as “objective” (e.g., financial) burdens, “subjective” burdens (e.g., unwanted changes to the target state’s social landscape), the normative burdens of discharging obligations towards migrants, and interactive burdens that stem primarily from hostile reactions of the target state’s population towards migrants (e.g., backlash).²⁷ The significance of these costs varies, but migration also comes with benefits, or at least opportunities for host states to benefit.²⁸ These potential benefits need to be taken into account in assessing the charge of unfairness, as threatening to benefit someone is not wrongful.

Both these wrongs presuppose that the blackmailer’s threat imposes an *unfair* distribution of burdens. A threat to flood the target state with migrants wrongs that state when it leaves the state’s choice situation worse than what it is entitled to from the blackmailing state.²⁹ Whether this is so depends on the background distribution of the burdens of migration. Importantly, target states usually do less than their fair share of refugee protection, while some blackmailing states, such as Türkiye, may do more than their fair share. Granted, a target state may have an interest in choosing *how* to discharge their migration-related duties. However, since it is often clear that a target state has no plans to discharge its duties at all, it is difficult to assign much weight to this interest. In most cases, this makes the appeal to fairness as a wrong-making feature seem hypocritical and empty, although there may be some cases in which the complaint may be reasonable. Poland, for example, hosts a large number of Ukrainian refugees, while Belarus hosts none (and is indeed partially responsible for their displacement).³⁰

Moreover, migration blackmail is problematic when the blackmailer unjustly constrains the target states’ *effective sovereignty*—the state’s control over its internal socioeconomic dynamics and its reasonable freedom from external interference.³¹ This may infringe the target state’s self-determination. A blackmailing state may trigger these costs by threatening to overload the target state’s capacity or to trigger political instability. Effective sovereignty

27 Kapelner, “Anti-Immigrant Backlash.”

28 Betts, *The Wealth of Refugees*.

29 Kolodny, “What Makes Threats Wrong?”

30 For criticism of Poland’s racialized refugee protection regime, which has been (relatively albeit imperfectly) welcoming to white Ukrainians while unleashing violent exclusion against migrants entering via Belarus who are racialized as nonwhite, see Balogun, “Refugees Separated by the Global Color Line.”

31 Ronzoni, “The Global Order.”

has both an objective and a relational component.³² This latter component is what makes the migration blackmail dilemma distinct from the more general potential conflict between states' and migrants' interests.

To expand, the relational concern about blackmail is about an *unequal* power relationship in which the blackmailer can impose burdens on the target at will, thereby undermining the target's effective sovereignty and constraining their self-determination. This is worrying if, by dominating the target state, the blackmailer dominates its inhabitants.³³ This worry is most salient when (1) the blackmailer possesses asymmetric power, and (2) the threat of large-scale migration would genuinely impair the target's capacity for self-rule.

However, these conditions are not always—indeed, not often—met. On the one hand, states may be justified in proportionately pressuring those who do not comply with their duties to do their fair share in refugee protection schemes. While this may set back the target state's interest in self-government, it does not *wrongfully* do so if states are (as I argue later) obligated to partake in such schemes. On the other hand, target states are often already in a position of superior power vis-à-vis blackmailing states and routinely exercise this power over them to ensure that *they* must bear the brunt of the burdens of refugee protection. When this is so, migration blackmail may thus be viewed as a potential exercise of *counterpower*. Specifically, migration blackmail may be viewed as a form of resistance to nonvoluntary or coerced forms of responsibility sharing, which *de facto* impose greater obligations on states in the Global South.³⁴ Finally, everyone has an interest in norms that promote justice-conducive cooperation among states. If blackmail undermines such norms, we all have reason to object to it. However, where such norms are already conspicuously absent, the complaint against flouting them has limited force.

Thus, migration blackmail may potentially wrong target states in several ways. Crucially, however, it does not always wrong target states. When it does depends on the details of the case. My own tentative assessment is as follows. On the one hand, all cases of migration blackmail likely wrong migrants

32 Importantly, these two conditions may come apart: Russia has engaged in migration blackmail vis-à-vis Finland; it is vastly more powerful than Finland, but the low number of migrants who have been involved in this case means that this poses no serious threat to Finland's state capacity.

33 Pettit, "A Republican Law of Peoples."

34 Assessing whether migration blackmail counts as counterpower or as dominating raises a complex issue. Türkiye, in its migration blackmail, targets the EU, which is a more powerful confederation. However, it uses this leverage directly against Greece, which it has greater power than. Plausibly, this counts as a use of counterpower vis-à-vis the European Union but a case of dominating power vis-à-vis Greece. I discuss this issue further in Sharp, "Collective Self-Determination and Externalized Border Control."

because they instrumentalize them, although not all cases involve the other additional harms to migrants identified above. On the other hand, many but not all cases of migration blackmail wrong target states and their citizens. Some cases of migration blackmail may be exercises of counterpower against states or groups of states (e.g., the European Union) that pose no serious threat to the target state's capacity, while other cases do indeed risk wrongfully dominating or foisting unfair burdens on the target.

Whether blackmail wrongs the target state matters because it affects how states are permitted to respond to the practice. A state has a distinctive and strong reason to resist migration blackmail in ways that may set back migrants' interests *only if* the state in fact has legitimate and strong interests in avoiding blackmail in the particular case. To the extent that this is not the case, the dilemma I explore below does not arise. There may, however, be reasonable disagreement about these matters. My aim below is to address *reasonable* policymakers in target states who may feel the pressure that migration blackmail generates but who aim to respond with a sensitivity to the precarity of the situation of migrants. I thus assume below, unless otherwise stated, that migration blackmail wrongs both states and migrants. I assume this because it represents a charitable reconstruction of the reasonable moral concerns that policymakers in target states might have about migration blackmail. If it turns out that the above objections to blackmail are *not* applicable in a given case, this makes the argument for my normative conclusions more straightforward because it means the state interests that closed-border strategies seek to protect are less severely imperiled. Thus, my aim is to discuss and refute the best-case scenario for defenders of the harsh responses to migration blackmail that are sometimes advocated in policy discussions and to take (the reasonable bits of) policymakers' perspectives seriously. I discuss the nature of the dilemma that migration blackmail gives rise to in more detail in the next section.

2. THE MIGRATION BLACKMAIL DILEMMA

Wrongful migration blackmail may sometimes generate an apparent dilemma for target states. States have significant interests in avoiding wrongful threats and domination, avoiding unfair burdens, and maintaining justice-conducive cooperative norms. This gives target states reason to resist and avoid blackmail. A blackmailing state aims to demonstrate that it has the power to impose burdens on its target. Thus, it is important not only that states resist blackmail but that target states avoid blackmail by making themselves invulnerable to it. This latter objective seems to require that target states refuse the blackmailer's demands *and* avoid the costs that the blackmailer seeks to impose. States'

interests may thus appear to be best protected by adopting a closed-border response because even when the target state refuses the blackmailer's demands and accepts the burdens of migration, the target remains vulnerable to the blackmailer's ability to impose costs on them at will.

Yet migrants also have significant interests. Chief among these are interests in securing access to adequate protection and avoiding harm. Migrants are usually unlikely to receive adequate protection in the blackmailing state, as many of these states offer low-quality protection or no protection at all. Moreover, a closed-border strategy typically involves harmful and violent methods for keeping migrants from reaching the state's borders, such as mass pushbacks and pullbacks. These methods directly harm migrants.³⁵ For example, in response to Turkish blackmail, Greece hardened its external borders and engaged in violent pushbacks.³⁶ Similar events occurred at the Polish border.³⁷ As a result of these dynamics, migrants, regardless of status, are thereby placed in a position of extreme vulnerability. They are, practically speaking, stranded in the blackmailing state without protection. Many migrants literally cannot return to their states of origin via different routes. (They may lack the means to do so, and sometimes the blackmailing state prevents them from doing so.) Migrants with claims to refugee status also face persecution or, on broader definitions of who counts as a refugee, conditions under which their basic rights would be at risk of violation if they return to their states of origin. Thus, simply refusing blackmail—which in practice means either pushing back migrants or swiftly deporting them to their home states—fails to respect migrants' significant interests.

Therefore, respecting migrants' interests seems to require that a target state allow individuals being leveraged by blackmailers to enter and seek protection in its territory because these migrants usually have no reasonable means of accessing protection other than by entering the target state. In addition to these especially weighty interests, migrants have additional interests in exercising control over their lives—in controlling their own mobility and in receiving accommodation in a state that fits their preferences or interests—which further bolsters this claim.³⁸ Yet embracing limited openness means accepting that

35 Hillier-Smith, "Doing and Allowing Harm to Refugees" and *The Ethics of State Responses to Refugees*; and Schmid, "Saving Migrants' Basic Human Rights from Sovereign Rule."

36 Koros, "The Normalization of Pushbacks in Greece."

37 Grześkowiak, "The 'Guardian of the Treaties' Is No More?"

38 Although I believe this interest in autonomy is of crucial importance, I bracket it for purposes of my discussion, as it is likely to be contested by policymakers. Once one considers these and other interests in mobility, the case against closed-border responses becomes even stronger.

the blackmailing state can impose obligations on the target, which is less than what fully resisting blackmail seems to require. Thus, we arrive at the migration blackmail dilemma.

Migration blackmail dilemma: There is no way for target states to effectively resist and avoid blackmail while adequately respecting migrants' interests in accessing protection and avoiding harm.³⁹

It is unfair to insist that migrants' claims to international protection must go unmet to shield states against blackmail; however, requiring target states to open their borders or make concessions simply because another state decides to instrumentalize migrants seems to license a problematic norm of interstate relations and foist undue burdens on target states.

How, then, are states morally permitted to respond to blackmail? One must distinguish between two kinds of responses. States can respond proactively—by adopting *preventative solutions* that seek to stop blackmail from arising and by undercutting the circumstances that give rise to it; or they can respond reactively—by grappling with blackmail once it has arisen. While I will focus primarily on the latter issue in this paper, a discussion of the latter kind of response without the former would be shortsighted. First, it is desirable from the perspective of target states that they immunize themselves against blackmail. Second, purely reactive migration policies risk perpetuating blackmail by contributing to the dynamics that cause it.⁴⁰ Third, considering only reactive responses risks naturalizing the conditions that give rise to migration blackmail rather than seeing them as something that arises due to the policies of specific states. Finally, I argue in the next section that because the conditions that make blackmail possible or effective often arise due to the problematic policies of

39 I assume that many if not most of the migrants in question in blackmail scenarios have legitimate refugee claims. This is empirically plausible on any reasonable conception of refugeehood, but it is particularly plausible on broader conceptions of who counts as a refugee. For discussion of refugee definitions, see Shacknové, “Who Is a Refugee?”; Lister, “Who Are Refugees?”; Bender, “What’s Political about Political Refugeehood?”; Buxton, “The Duty to Naturalise Refugees”; and Owen, “Differentiating Refugees.” Importantly, many migrants who do not qualify for refugee status on the narrower definition outlined in the Geneva Convention are still extremely vulnerable, especially in cases of migration blackmail. Moreover, it is difficult to determine who is entitled to refugee status without assessing their claims; hence, people have a right to *seek* asylum. For those who lack valid refugee claims, states can, I assume for purposes of argument, generally avoid the costs associated with protecting them by simply deporting them to their home states after fairly assessing their claims. So migrants without claims to refugee status impose only limited costs on target states.

40 Kleist, “Beyond the Crisis Mode of the EU-Turkey Refugee Agreement.”

target states, target states may sometimes be partially liable for some of the burdens associated with migration blackmail.

3. THE CULPABILITY ARGUMENT

Before exploring how states should navigate the migration blackmail dilemma, it is worth considering why migration blackmail occurs in the first place. Certain features of the international order make blackmail an attractive strategy for peripheral states.⁴¹ These include large-scale displacement crises for blackmailing states to leverage, the negative (and often deeply racist) perceptions of (certain) migrants, the absence of fair responsibility-sharing schemes, and the broader policy trend towards the externalization of migration control. These conditions and circumstances are not natural or inevitable; instead, they often arise partly due to unjust actions on the part of the international community of states in general and on the part of target states in particular. When this is the case, these states are partially liable for the consequences of migration blackmail. At the very least, they lack the standing to complain about being coerced into protecting migrants. I call this the *culpability argument* for target states' special responsibilities in cases of migration blackmail.

There are several broader dynamics that have greatly contributed to the current situation in which migration blackmail appears as an attractive strategy to states on Europe's periphery. A first precondition for migration blackmail is the existence of a large number of forcibly displaced or otherwise vulnerable people in the Global South. A "supply" of people in this position is usually necessary for migration blackmail to appear as a feasible strategy. While some forced displacement originates from crisis and circumstances for which the origin state bears sole culpability, other cases of forced displacement are partially driven by serious injustices *for which target states bear some culpability*. Forced displacement from Afghanistan and Iraq, for example, is something for which many European member states bear some culpability. More indirectly, European diplomatic politics and economic policy may play a role in shaping displacement elsewhere in the Global South.⁴² This grounds special responsibilities on the part of states towards these displaced persons. When this is so, these states cannot reasonably complain about being made responsible for these persons by a blackmailing state. Indeed, more broadly, states have independent moral and

41 The deeper background conditions that make migration blackmail possible include global poverty, global inequality, state dysfunction, a state system in which actors have asymmetric power, and the unaddressed legacies of colonial domination. These conditions are, in my view, conditions of ongoing injustice that states also have collective obligations to address.

42 Souter, *Asylum as Reparation*.

prudential reasons to find durable solutions for currently displaced individuals and at least to stop contributing to displacement in the Global South because doing so would help to prevent migration blackmail from arising.

To be sure, not all cases of displacement are ones for which target states specifically bear culpability. However, there are also certain background conditions that make migration blackmail possible, and these states may bear some responsibility for those. These background conditions include the overall structure and character of the global or regional migration regime that make migration blackmail appear to peripheral states as a viable and attractive strategy. First, states are susceptible to blackmail because of the securitization of migration, xenophobia, and racialized nationalism. These dynamics make certain forms of migration, even irregular (but not unlawful) entry by asylum seekers, appear as threatening. This is what gives blackmailers leverage. These perceptions, however, are not immutable. Indeed, some states and their political leaders, such as Poland, Greece, and many other EU member states, have greatly contributed to exacerbating these negative perceptions. These states bear some culpability for fomenting anti-immigrant attitudes that make migration blackmail appear so threatening and therefore a rational strategy for blackmailing states. States therefore have reason to engage in reframing migration (e.g., avoiding securitization and creating alternative narratives) and fashioning more inclusive national identities. They should also build arrival systems that can efficiently and fairly process and integrate new arrivals. Such systems preempt blackmail by reducing crisis perceptions and allowing states to better harness migrants' human capital, turning perceived burdens into economic and social benefits.

Second, a structural cause of blackmail is the absence of a system of fair responsibility sharing that justly distributes the burdens of migration governance in general and of protecting refugees in particular. Under such a system, there would be a clear mechanism for ensuring that the burdens of migration blackmail do not fall only on one state. Such schemes might even be designed in ways that specifically provide for solidaristic resettlement in cases of migration blackmail. States have duties to build just responsibility-sharing systems because this is necessary to sustainably guarantee access to protection and ensure interstate justice.⁴³ Instead of building such a system, however, states who are targets of migration blackmail, such as Poland, have worked actively against it.⁴⁴ This may impact the duties of states in this position. Specifically,

43 This extends slightly the argument in Aleinikoff and Owen, "Refugee Protection," 470–71. The argument is institutional: if states have a duty to ensure refugees are protected, then they also have duties to create institutions that reliably ensure their protection needs are met.

44 Poland has rejected introducing a robust responsibility sharing mechanism into the EU's common asylum system. See Vaagland and Chmiel, "Parochialism and Non-Cooperation."

it undercuts the standing of states like Poland to complain when they end up having to bear undue burdens.

Finally, European states have collectively pursued a general strategy of migration control that has made migration blackmail all but inevitable. Specifically, EU member states have coordinated to adopt a system of migration control based on containment and externalization. States in the Global North have created an elaborate architecture of remote control, which prevents asylum seekers from reaching their territories.⁴⁵ This system *de facto* outsources protection for refugees to third countries, often in the Global South, and also relies on these countries to engage in border control activities on behalf of the EU. Not only has this system been deleterious for refugees' rights; but as a direct consequence of this strategy, many people in need of refuge are unable to access adequate protection and many states in the Global South have become unfairly burdened as hosts.⁴⁶

Crucially, outsourcing protection has made the EU increasingly dependent on third countries for border control and has led to an increased concentration of migrants in those states. This enables blackmail and makes it an attractive tactic of migration diplomacy.⁴⁷ The EU-Türkiye pact, for example, increased Türkiye's leverage vis-à-vis the EU, and as a result of its position as a major refugee host on the EU's periphery, Türkiye periodically threatens to open its borders in order to gain political and economic benefits from the EU. States thus have reason to end externalization policies in order to undercut blackmailers' leverage. In addition, given that target states are sometimes culpable for creating this dangerous dynamic in the first place, it may be reasonable to expect them to bear some responsibility for hosting refugees (who, as a direct result of the externalization policies of those states, have often languished for years with precarious (non-)protection) and for the foreseeable consequences of designing such a system in the first place.

I have argued that target states are often responsible for the conditions that give rise to migration blackmail. This is because target states often have (1) contributed to forced displacement, (2) contributed to wrongful perceptions of migrants as threatening, (3) worked against fair burden-sharing schemes, and (4) contributed to migrants' lack of access to international protection. Thus, target states bear some responsibility for creating the circumstances that give

45 FitzGerald, *Refuge Beyond Reach*; and Sharp, "Collective Self-Determination and Externalized Border Control."

46 For discussions of inadequate protection and overburdening host states in the Global South, see Parekh, *No Refuge*; Alienikoff and Owen, "Refugee Protection," 471; and Sharp, "Collective Self-Determination and Externalized Border Control."

47 Huysmans, "The European Union and the Securitization of Migration"; and Tittel-Mosser, "Reversed Conditionality in EU External Migration Policy."

rise to migration blackmail in the first place and for the precarity of migrants who seek protection. They may therefore lack the standing to complain when they are made to bear additional costs in the form of migration blackmail.

More generally, understanding the conditions that give rise to migration blackmail can also help us to understand that there are a range of justice-conducive ways that states might prevent migration blackmail in the first place—policies that states have duties to adopt anyway. These include (1) ending their complicity in forced displacement, (2) cultivating more welcoming attitudes towards immigrants, (3) instituting fair burden-sharing schemes, and (4) ending reliance on border externalization. These policies are not only morally desirable and arguably morally required; they also are *prudentially* in states' interests because they would help prevent migration blackmail.

Importantly, I do not want to overstate the force of the culpability argument. The fact that target states bear some responsibility for the dynamics that give rise to migration blackmail does not morally permit blackmailers to blackmail. Blackmailing states bear significant culpability for their actions. Moreover, not all potential target states bear significant culpability for all cases of migration blackmail. For example, Finland may not bear significant culpability for Russian migration blackmail. Still, the culpability argument constitutes a helpful corrective to target states' portrayal of themselves as purely innocent bystanders who are targeted for no good reason by nefarious states beyond Europe's borders. Thus, in the next section, I offer an independent argument for why states should prioritize migrants' fundamental interests in responding to migration blackmail. This argument applies even where target states do not bear special responsibility for creating the conditions under which migration blackmail occurs and even if one rejects the culpability argument.

4. THE PRIORITY CLAIM

The migration blackmail dilemma, to recall, is that it appears states cannot effectively resist blackmail while adequately respecting migrants' interests. How are states morally permitted to navigate this dilemma? I focus below on what states are morally permitted to do, not on what would be morally best for them to do. I base my discussion solely on minimal principles rather than on a full theory of migration justice. This is because migration justice is a matter about which there is serious disagreement, and these more minimal assumptions are more likely to appeal to policymakers. In this section, I defend a claim about the weight of the interests at stake and then show that this rules out standard responses to migration blackmail, which I call *closed-border responses*. The specific claim I defend in this section is:

The priority claim: Migrants' interests in accessing adequate protection and avoiding harm ought to take precedence over state interests in blackmail avoidance.

Two things are worth noting about this claim. First, the priority claim is not a general claim that migrants' interests ought to take precedence over the interests of states and their citizens. Rather, it picks out particular interests—namely, in accessing adequate protection and harm avoidance—and claims that these take precedence over those state interests plausibly threatened by blackmail.⁴⁸ Second, my aim is to defend the priority claim *in the specific case of migration blackmail*. This involves showing specifically that migrants' interests in harm avoidance and accessing international protection take precedence over the state interests that are plausibly threatened by migration blackmail. What makes the priority claim interesting is that states and their citizens are often taken to have (and if the argument of section 1 is correct, may indeed sometimes have) distinctive interests in avoiding blackmail that go beyond their generic interests in exercising control over migration. Thus, I offer a defense of the priority claim that takes these interests seriously.

The priority claim may be supported by two lines of reasoning: one that appeals to migrants' interests in avoiding harm, the other that appeals to their need for protection. I sketch both arguments below.

4.1. *The Harm Argument*

A first argument for the priority claim stems from the widely held view that there is an asymmetry between doing and allowing harm. On many deontological moral theories, it is worse to perpetrate harm than to fail to aid. Harming involves causing a person to be worse-off by bringing about a state of affairs that significantly impacts their core interests or well-being.⁴⁹ Yet excluding migrants in situations of migration blackmail almost always involves harming them.

This is so for two reasons. First, states perpetrate exclusion through literal threats of force and violent assaults on migrants. In the case of Poland, migrants are sometimes beaten and physically pushed behind a border fence by the Polish border guards. This is an uncontroversial case of harm.⁵⁰ Second,

48 Migrants may have other weighty interests and claims (such as autonomy and equality) that may also usually take precedence over the interests of citizens, even if states have special duties to their citizens. However, I do not rely on these claims here. For a discussion of equality, see Sharp, "Relational Equality and Immigration" and "The Right to Emigrate." For a discussion of autonomy, see Oberman, "Is There a Human Right to Immigrate?"

49 Hillier-Smith, "Doing and Allowing Harm to Refugees," 301–2.

50 Other times, they are detained in appalling conditions for long periods, something that is further enabled by recent changes to the European asylum system. See Majcher, "Creeping

migrants instrumentalized by blackmailing states are often caught in a uniquely vulnerable position because they (1) are literally prevented from returning to their states of origin or cannot return safely and (2) face a systematic condition of nonprotection or underprotection in the blackmailing state. Consider the following statement by a refugee about the situation in Poland:

We want to stay here and become Polish citizens, but they do not allow us to do so. When we go to Belarus, they beat us there, take our money, and send us back to Poland. The Belarusian police expel us, to Poland. These children cannot walk, they will all die on the road, in the forest. We have no food or water. We walk 40 km to Belarus, and there they catch us, beat us, and send us back to Poland. And so on and on between Poland and Belarus.⁵¹

Cases like this count as not merely allowing but perpetrating harm against migrants. When one agent intentionally and forcefully prevents another from escaping a harm that may befall her—by, say, blocking a door that would allow her to escape her torturer—he causes her to be harmed. In the present case, the harm in question *essentially depends* on being denied entry to the target state. It is the behavior of the border guards in Poland that causes migrants to be in a state of nonprotection and extreme vulnerability. Belarus is thus not solely culpable for the harm; Poland is too.

Thus, when a state forecloses migrants' only means of accessing asylum, it harms those migrants. Such harm requires a particularly high threshold for justification, which migration blackmail does not meet. The Polish case is extreme because migrants literally cannot return to their country of origin, since Belarus prevents them. But even where this is not the case, most people caught in situations of migration blackmail are refugees or similarly necessitous migrants: for them, returning would place them in situations of danger or extreme precarity.⁵²

The harm argument helps to respond to a likely objection to the priority claim—namely, that states are entitled or even obligated to privilege the interests of their compatriots and so to exclude migrants in cases of blackmail, even if this means failing to benefit migrants. The problem with this argument is that the exclusion of people in this case involves not simply failing to benefit migrants but actively harming them. But neither a state's special responsibilities towards its citizens nor one's associative duties towards one's compatriots can

Crimmigration in CEAS Reform.”

51 Quoted in Perkowska, “(No) Children's Rights at the Polish-Belarusian Border,” 251.

52 Importantly, many of these harms occur whether or not a person has a valid claim to refugee status.

justify harming others.⁵³ A parent may not harm innocent children in order to serve his own child's interests, and states may not aggress against other states and harm foreign citizens in order to serve their own citizens' interests, even if parents have special duties towards their children and states have special duties towards their citizens.⁵⁴ Analogously, the fact that states have special obligations towards their citizens does not permit them to harm migrants.

This general position can be further supported by considering in more detail the significance of citizens' interests in blackmail avoidance. As explained above, states' interests in blackmail avoidance include interests in avoiding unfair burdens and domination and in maintaining effective sovereignty. Yet states' interests ultimately matter when and because they impact the lives of the individuals who states represent. However, the fact that a state must bear unfair burdens does not imply that any group of its citizens is asked to bear significant burdens. Certainly, individuals have interests in living in a representative state that possesses effective sovereignty. Such an arrangement protects them against external domination; and so when a state interferes with another state, it potentially exposes the citizens of that state to some degree of domination. Yet the degree of domination in realistic cases of migration blackmail is usually minimal. In the case of Finland and Russia, one of the more compelling cases of migration blackmail, the actual burdens that Finnish citizens are being asked to bear is extremely limited. It is simply not the case that hosting an additional few more thousand refugees will impair essential interests of citizens in self-determination or foist upon them unreasonable costs. Migrants, in contrast, have clear, fundamental interests at stake in accessing adequate protection and in having their basic rights protected. These interests are simply weightier than those that blackmail threatens to impair for the citizens of target states.⁵⁵

4.2. *The Protection Argument*

The above argument for the priority claim appeals to the premise that excluding migrants in cases of blackmail involves harming them. But let us suppose for the sake of argument this is not the case. Suppose instead that the exclusion of migrants in cases of blackmail merely results in harm to migrants but does not

53 Hidalgo, "Associative Duties and Immigration."

54 Hillier-Smith, *The Ethics of State Responses to Refugees*, 67.

55 Perhaps the most significant interest at stake is that of maintaining core democratic institutions over time. Insofar as migration blackmail threatens to impair these, it provides a serious reason for concern. See Kapelner, "Anti-Immigrant Backlash." However, there is little reason to believe core democratic institutions are seriously threatened by most cases of migration blackmail. Where they are threatened, they are threatened by reactionary forces *within the host state*, not by migrants, and so it is unfair to displace this burden onto migrants.

involve harming migrants. Still, migrants' interests in accessing protection in cases of blackmail trump the interests of target state citizens in avoiding blackmail.

There are at least two broad ways to develop this argument. The first appeals to the role of refugee protection in securing the legitimacy of the international order.⁵⁶ The state system is a dispersed system of governance that assigns individuals whose basic rights need protection to states charged with protecting them. A condition of this arrangement being minimally justifiable to those it governs is that everyone's rights are reliably protected.⁵⁷ Yet states often fail to protect human rights. This creates a duty on the part of the community of states to repair this departure from the basic conditions of the legitimacy of the international order and to ensure each person's rights are protected. The international refugee protection system is just such a legitimacy repair mechanism. Because ensuring the protection of fundamental rights is a basic condition for the justifiability of the international order, this duty takes precedence over issues of fairness in the distribution of burdens of protection.⁵⁸ It takes precedence, specifically in this case, for two reasons. First, excluding refugees in cases of blackmail may leave them in a state of nonprotection. In fact, it constitutes nonrefoulement because it returns them to a situation in which their basic rights are at risk. But nonrefoulement is the central and most stringent norm of the international refugee regime and so takes precedence over fairly distributing the burdens of refugee protection.⁵⁹ Second, the legitimate power of states to exercise control over migration, on the legitimacy repair view, depends on states discharging their duties towards refugees.⁶⁰ But in cases of migration blackmail, these duties are not discharged because refugees remain unprotected. So states cannot, on this view, legitimately exclude refugees in situations of migration blackmail.

A second argument appeals to a more ecumenical justification of states' duties to refugees.⁶¹ This is the view that the moral foundation of states' duties

56 Owen, "In Loco Civitatis" and *What Do We Owe to Refugees?*; Buxton and Draper, "Refugees, Membership, and State System Legitimacy"; and Sharp, "Immigration and State System Legitimacy."

57 Owen, *What Do We Owe to Refugees?* For an alternative legitimacy criterion, see Buxton, "The Duty to Naturalise Refugees."

58 Owen, "Refugees, Fairness and Taking Up the Slack."

59 There is some reasonable debate about how to understand nonrefoulement. The decisive moral issue is, however, whether refugees are returned to a place where their basic rights are placed at risk.

60 Sharp, "Immigration and State System Legitimacy."

61 I think both arguments for duties to protect refugees are convincing. I thus believe that this duty has multiple grounds. However, many philosophers may endorse only the latter ground, and so I consider these two positions independently.

towards refugees is that states have a duty to rescue those in need of protection. The priority claim, as a claim about the weight of the moral interests at stake, is not seriously disputed even by those who endorse a rescue-based view of states' obligations towards refugees. For example, although David Miller is skeptical about the demandingness of duties to rescue, this is not because he takes the interests of refugees to have less moral weight but because he is skeptical about *how* duties can be derived from refugees' interests.⁶² Miller agrees that people's interests in receiving protection are very weighty. Indeed, their basic rights and most fundamental interests are at stake. Thus, on no understanding of the migration blackmail scenario do citizens have similarly weighty interests.

The issue, then, is how these interests ground a duty to rescue, not whether they are weightier than those of citizens. So, let us consider the two most widely asserted limits to the duty to rescue.⁶³ One alleged source of limits to duties to rescue is the collective nature of these duties. Specifically, the claim is that it might seem unfair to saddle *only* target states with such duties. But this argument is unconvincing for four reasons. First, the duty to effectively remedy injustice plausibly takes precedence over fairness in discharging this obligation among the duty holders, even in standard rescue scenarios. Second, as I have argued above, states that are targets of migration blackmail are often responsible for undermining efforts at fair sharing. Appeals to fairness thus seem uniquely inapplicable in these cases. Third, in many cases of blackmail, there are no alternative ways in which migrants can access protection other than by entering the territory of the destination state. When this is the case, the collective duty is *de facto* particularized. In practice, *only* the target state can engage in rescue. However, in the next section, I further argue that the costs of rescue may be distributed in a second stage, once migrants are granted a safe route out of their precarious situation.

Finally and most importantly, the appeal to fairness in fact explains why it is *more* problematic to exclude migrants in cases of migration blackmail. If the complaint here is about fairness, that same complaint applies even more starkly to the way closed-border responses treat migrants. Closed-border responses involve displacing the costs of avoiding blackmail onto migrants themselves.⁶⁴ But migrants are not culpable for their predicament. They are merely attempting

62 Miller, "The Nature and Limits of the Duty to Rescue" and "Responsibility and the Duty of Rescue."

63 For discussion, see Herrmann, "Cosmopolitanism, Global Justice and Refugees," 180–85. A further qualification of the duty to rescue that Herrmann discusses, the indeterminacy of the duty bearer, is less salient in this situation given that only the target state(s) can typically initially rescue individuals from vulnerability in cases of blackmail.

64 Compare Owen, "Refugees, Fairness and Taking up the Slack," 154.

to access international protection through one of the limited available means, and seeking asylum is neither a crime nor something for which migrants may be reasonably blamed. However, target states are part of the group that holds duties to rescue and among whom these duties should be appropriated. They are thus liable for taking up the slack when others in the community of duty bearers fail to do their part. Thus, displacing the costs onto the *victims* of instrumentalization—victims who have often already been made to bear the unfair burdens of a dysfunctional global protection regime—is especially unfair. It is substantively more unfair than asking that a state take on more than its fair share of the burdens of refugee protection. Considerations of fairness, then, speak decisively against closed-border responses.

A second qualification of the duty to rescue concerns costs. It might be thought that the costs that states are made to bear in some cases of migration blackmail are too high to reasonably hold them under a duty to protect migrants. There is, to be fair, a genuine moral dispute to be had about the costs of rescue. However, there are several reasons to believe that reasonable parties to this dispute should maintain that target states are under a duty even in cases of migration blackmail. First, states sometimes bear special responsibilities for protecting particular migrants in these cases. Second, real-world cases of migration blackmail do not pose an acute threat to core state functions or to the fundamental interests of citizens of target states. Third, even if a given target state must bear a disproportionate burden, this does not automatically entail that any individual citizen of that state must bear such a burden. Since state interests do not matter fundamentally, showing that individual citizens are unduly impacted is necessary for the argument to succeed. Finally, if the target state in question can substantially mitigate the costs of rescue, this would suffice to defeat worries about demandingness based on costs. In section 5, I argue that this is often the case, which helps to complete my defense of the priority claim.

4.3. *The Priority Claim in Practice*

Suppose, then, that the priority claim holds. Some important implications for how states may respond to migration blackmail follow. A target state's response to migration blackmail divides along two dimensions: whether the target state *allows or refuses* migrants' entry and whether it *acquiesces to or resists* the blackmailer's demands. The priority claim rules out reactive strategies that involve denying migrants entry, at least in realistic scenarios of migration blackmail. These closed-border responses come in several varieties, and the priority claim generates a strong presumption against all of them.

Closed-border defiance occurs when a target state rejects the blackmailer's demand *and* denies migrants entry without securing protection for them

elsewhere. This has been one of the EU's standard responses to migration blackmail. Greece adopted such a response to Türkiye in 2020, and Poland adopted such a response to Belarus in 2021 and onwards. This approach is usually defended on grounds that it sends a clear signal that target states will not allow themselves to be subject to blackmail pressure. However, this approach is unjustifiable if, as is often the case, migrants' rights are not adequately protected in the blackmailing state. This violates the priority claim, since in scenarios of migration blackmail, migrants typically have no realistic option of receiving international protection other than by accessing the territory of the host state.⁶⁵ Second, closed-border defiance requires harming migrants. To ensure that migrants do not enter their territory, states engage in violent pushbacks that block escape routes to safety.⁶⁶ This displaces the costs of avoiding blackmail onto migrants, who are not culpable for the extortive behavior of blackmailing states. Finally, this response unfairly disadvantages migrants by preemptively rejecting their claims—indeed, thwarting their ability to lodge them—without assessment of their merits, as made most patent by Poland's recent suspension of the right to asylum, which has been *de facto* sanctioned by the EU.⁶⁷ Closed-border defiance thus resists blackmail at the expense of protection. This is not a permissible way to balance conflicting interests in cases of blackmail.

A second kind of closed-border response is *closed-border externalization*, wherein a target state complies with (the core of) the blackmailer's demands. In exchange, the blackmailer may agree to arranging externalized protection in its territory, although such agreements invariably involve other (e.g., financial and political) concessions as well, given that blackmailers also have migration-independent aims that motivate them to engage in blackmail in the first place. This strategy may allow for the target state to avoid some of the burdens that the blackmailer seeks to impose. Yet it may prove counterproductive. In negotiating externalized protection, the target state may cement its dependence on the blackmailer, leading to more blackmail in the long term. Moreover, meeting the blackmailers' demands may be impermissible. While it would have been permissible to cut Greece a favorable deal in debt negotiations, it would not have been permissible to support Türkiye's incursions in northern Syria. More

65 For example, it is not an option for migrants in Belarus to return (Belarus does not allow it) or to receive protection in Belarus (Belarus does not offer it). I say typically because there may be potential exceptions. However, even in cases that are sometimes pointed to as exceptions, such as that of Türkiye or Greece, the "protection" offered is limited, the conditions migrants face are dire, and many core rights go unprotected. Kleist, "Beyond the Crisis Mode of the EU-Turkey Refugee Agreement."

66 Border Violence Monitoring Network, *The Black Book of Pushbacks*.

67 Vinocur et al., "Poland Wins After EU Backs Its Proposed Asylum Ban for Russia, Belarus."

generally, target states should be extremely cautious about externalization agreements that bolster illegitimate actors in blackmailing states by providing them with funding and dual-use capacity.⁶⁸

Closed-border externalization is thus potentially permissible only if the arrangements lead to adequate protection for migrants. However, as I have argued above, this is not typically the case. Whether externalization leads to adequate protection depends in part upon what kind of protection persons require.⁶⁹ Yet blackmailing states are typically poorly positioned to provide adequate protection. Some blackmailing states are unable to offer adequate protection because they are oppressive regimes. If political oppression is at least one of the conditions that grounds claims to refugeehood, then oppressive states cannot in principle fulfill the normative function of refugee protection.⁷⁰ Other blackmailing states simply lack the capacity or willingness to provide adequate protection. Even if their capacity could be augmented by international support, this is often feasible only in the medium term. Thus, externalization in practice is rife with protection gaps and depends on dehumanizing measures such as encampment and detention.⁷¹ These measures fail to adequately respect migrants' fundamental interests. For this reason, closed-border externalization is, in practice, not permissible as a response to blackmail.⁷²

A final ultimately unjustified response that is ruled out by the priority claim is the approach taken by the European Union under the instrumentalization provisions of the "Crisis Regulation," a part of the recent EU pact on migration and asylum that the EU formally adopted in April 2024.⁷³ This regulation essentially allows EU member states to derogate from their protection obligations and to assess asylum applications via so-called border procedures—rapid consideration of asylum claims in border areas with few legal protections and little

68 Jakob and Schlindwein, *Dictators as Gatekeepers for Europe*; and Sharp, "Collective Self-Determination and Externalized Border Control."

69 For further discussion, see Owen, *What Do We Owe to Refugees?* chs. 2–3; and Alienikoff and Owen, "'Refugee Protection,'" 470–72.

70 Bender, "What's Political About Refugeehood?"

71 Parekh, *No Refuge*; and Hillier-Smith, "Doing and Allowing Harm to Refugees."

72 This conclusion leaves open whether there may be cases in which externalized protection in the blackmailing state *in theory* might be permissible as a response to blackmail. Although I am skeptical about this, ruling this out is not necessary for my argument. In any case, states have strong prudential interests in not relying on this strategy—namely, it makes them vulnerable to migration blackmail in the future.

73 See Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147. For a detailed critique of a prior draft, see European Council on Refugees and Exiles (ECRE), "ECRE Reaction."

recourse for appeal coupled with the legal fiction of nonentry to limit migrants' rights and facilitate quick deportation.⁷⁴ It also dramatically expands the use of detention—often in inhumane conditions—for asylum seekers. These measures, it has widely been argued, are likely to result in refoulement, as they *de facto* sanction the expulsion of asylum seekers before they are given genuine hearings. While this approach is perhaps nominally more moderate than the straightforward closed-border strategies taken unilaterally (albeit with tacit EU support) by states like Poland, it nevertheless fails to take seriously asylum seekers' claims to apply for asylum and to access protection, despite the fact that they are within the territory of the target state. This approach again displaces costs onto migrants for few benefits, as detention and border procedures do not help to reasonably manage costs but instead counterproductively contribute to crisis perceptions and funnel people into costly and inhumane detention facilities.⁷⁵ Thus, the rhetorical appeal to instrumentalization—a concept vaguely defined in EU law—is used to justify punishing rather than protecting migrants who are the victims of instrumentalization and to undermine core legal protections for asylum seekers.⁷⁶ Since there is no further purpose that this category serves under current EU law, there is no compelling reason to codify this category in the EU's asylum regulations.

5. MITIGATING THE COSTS OF BLACKMAIL WHILE PROTECTING MIGRANTS

The claim that closed-border responses are impermissible leads to the provisional conclusion that in cases of migration blackmail, target states are not permitted to exclude and instead must allow migrants to access protection in their territories. Given that the question of whether migrants have such claims can typically be assessed only after allowing entry, target states must allow people to enter and lodge asylum claims.⁷⁷ This involves providing safe pathways

74 Grześkowiak, “The ‘Guardian of the Treaties’ Is No More?”

75 Majcher, “Creeping Crimmigration in CEAS Reform.”

76 See Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147, especially section 4(b) for the definition of ‘instrumentalisation’. For critical discussions, see ECRE, “ECRE Reaction”; Ganty et al., “EU Lawlessness Law at the EU-Belarusian Border”; and Ancite-Jepifánova, “Migrant Instrumentalisation.”

77 What this means in practice depends on the specifics of the scenario. Minimally, it might involve the following: a target state might allow migrants currently residing in the blackmailing state to enter and lodge asylum applications; the applicants should then be allowed to remain in the state's territory (or the territory of a country where their rights will be adequately protected) while their claims are fairly assessed by a competent and unbiased

for entry from the blackmailing states for migrants with claims to protection, allowing them to formally apply for asylum, and fairly assessing their claims. This may seem to severely constrain the ability of target states to resist blackmail. Therefore, some may doubt whether states are indeed required to maintain such openness. I consider two ways of pressing these doubts below. In so doing, I demonstrate that target states have options for resisting blackmail that do not depend on displacing the costs of doing so onto vulnerable migrants.

5.1. *Incentivizing Blackmail*

One might argue that my analysis underestimates the moral importance of resisting blackmail. I framed the migration blackmail dilemma as a conflict between the interests of states and the interests of migrants. However, one might argue that migrants also have interests in avoiding being instrumentalized. If limited openness incentivizes future blackmail, this may be net worse for (potential) migrants in the long run, and states may have reasons to take a harder stance in order to disincentivize instrumentalization.

This objection is analogous to a familiar objection to paying ransoms—namely, that it incentivizes ransom-taking.⁷⁸ A similar line of reasoning was one of the putative justifications for the EU’s so-called Instrumentalization Regulation (a component of the larger Crisis Regulation)—namely, that a harsh response is needed to disincentivize instrumentalization.⁷⁹ Yet the objection is unfounded, and the parallel is inapt. Most fundamentally, punishing the victims of instrumentalization is not an appropriate response to concern about people being instrumentalized. But this is what the Instrumentalization Regulation in effect does.

Moreover, the argument turns on an implausible claim about incentives. I have not argued that states should capitulate to blackmailers. *That* would incentivize blackmail. Rather, I have argued that states should open their borders in a minimal way to allow vulnerable migrants to escape instrumentalization. Opening safe routes for migrants fleeing a blackmailing state does not incentivize blackmail.⁸⁰ Indeed, it does the opposite. Opening a safe migration route from the blackmailing state signals that the target state is impervious to black-

authority; if a claim is successful, the applicant should receive asylum, either within the state’s borders or elsewhere as part of a just and fair responsibility sharing scheme.

78 Howard, “Kidnapped.”

79 See Regulation (EU) 2024/1359 of the European Parliament and of the Council of 14 May 2024 addressing situations of crisis and force majeure in the field of migration and asylum and amending Regulation (EU) 2021/1147.

80 The strongest argument against paying ransoms is that doing so makes the payer of the ransom complicit in injustice (Howard, “Kidnapped”). This argument may apply to paying

mail. It signals that the target state is willing to accept the cost imposed without acquiescing to the blackmailer's demands. Third, opening safe routes that bypass a blackmailing state undermines the leverage that blackmailers need in the first place. This is an important preventative measure that target states might further take to insulate themselves from blackmail. Finally, opening safe routes is compatible with engaging in counter-blackmail measures, such as sanctions, to further deter blackmail. Because target states can impose counter costs on blackmailing states without imposing these costs on migrants, they can resist blackmail without displacing the costs of doing so onto migrants. I discuss this further below.

5.2. *Unfair Burdens Revisited*

A second objection to my argument is that limited openness unduly constrains the ability of target states to resist blackmail because it requires them to bear the burdens associated with migration. This might seem unfair. Must target states really accept that blackmailing states can impose obligations upon them at will? There are really three issues behind this objection, which I will treat in turn.

The first is whether the fact that an obligation is unjustly imposed invalidates that obligation. I believe not. Whether one agent can impose an obligation on another is distinct from whether the agent on whom that obligation is imposed has a complaint against its imposer. Consider an analogy. If Jim starts throwing babies in the pool, and Tina is the only capable swimmer around, Jim thereby triggers Tina's duty to rescue the babies. Tina has a complaint against Jim for compelling her to engage in rescue activities, but this complaint does not invalidate her obligation. Analogously, target states may have a complaint against blackmailers, but this does not invalidate their duty to protect vulnerable migrants. Why must target states bear the burdens of these rescue activities? The answer in the above case is that only Tina can rescue the babies from the pond, and this is the answer in the case of migration blackmail as well. There is usually no way to rescue those trapped in blackmail scenarios without letting them enter the target state's territory. If this means the target state must take on the burdens of protection activities, then so they must. This conclusion again is fully compatible with the target state having a fairness complaint against the blackmailer.

The second issue is whether target states lack a reasonable way to resist migration blackmail while maintaining limited openness for migrants from a blackmailing state who seek to enter their territories. Target states have other options to resist blackmail. On the one hand, target states can counter blackmail

a blackmailer in the context of an externalization agreement, but it does not apply to accepting migrants.

by other means. Specifically, they can do so by imposing costs on the blackmailing states in other domains. The standard way to do this is via diplomatic sanctions aimed at regime officials or via sanctions against states or individuals.⁸¹ Such sanctions can plausibly disincentivize blackmail without excluding migrants. Such sanctions have an advantage: because other states in the target state's region typically have an interest in avoiding blackmail as well, it may be comparatively easier to form coalitions to sanction blackmailing states than it to organize burden-sharing schemes. Of course, sanctions presuppose that the target state or states have leverage over the blackmailer. Sanctions, particularly economic sanctions, may also prove ineffective and impose costs on civilians. However, sanctions can usually be targeted (e.g., towards elites) in ways that avoid these worries, and they are therefore morally preferable to resisting blackmail by inflicting harm on migrants. Moreover, as I have suggested above, it may be possible to signal resistance to blackmail by *opening* borders. Specifically, if the target state can credibly indicate that it does not regard accepting migration as a serious cost, this can disincentivize blackmail.

The third issue is whether limited openness entails accepting all the burdens associated with migration. Crucially, it need not entail this. This is because there are often strategies available to target states to decrease the burdens of allowing entry and offering protection. First, migrants can benefit host states when protection is organized effectively.⁸² At least, states can organize protection in ways that minimize the costs of providing it. They can adopt policies of social and economic integration and offer migrants training in important sectors of the economy where labor is in demand. Second, by seeking to reframe migration positively, they can try to decrease xenophobic public reactions, which are a main source of the costs in these cases. These mitigation strategies may prove difficult to implement due to hostile political climates in target states. However, when such options are open to target states, it is simply not the case that accepting migration imposes only burdens on host societies, and to the extent that it does, this is partially attributable to social and political failures in those societies.

Moreover, maintaining a stance of limited openness is not the same as offering all who enter protection. The basic duty of states in circumstances of migration blackmail is to *facilitate* access to protection. A target state may do this by

81 My aim here is not to defend any particular policy but merely to indicate the existence of alternative means of resisting blackmail. Asset freezing is an example of a standard sanction against individuals (e.g., regime officials); economic and diplomatic sanctions are examples of measures deployed against governments.

82 Betts, *The Wealth of Refugees*; and Gowayed, *Refugee*. This is but an instance of a wider truth that immigrants generally benefit host states economically.

offering protection to those in need, but it might in principle do so in other ways. Specifically, the state might rely on burden-sharing agreements, either with other target states or through regional schemes. Doing so would allow the target state to diffuse the blackmailer's leverage *and* to avoid bearing the full cost of protecting migrants. I have suggested above that states are independently required to institute fair responsibility-sharing schemes.⁸³ However, because such schemes have proven difficult to realize, the key question is how target states might facilitate access to protection while shirking unfair burdens in their absence.

States may do so in cases of migration blackmail through a mix of positive and negative bargaining strategies. Positively, states might appeal for solidarity. States may thus seek to recruit additional funding to shoulder the burdens of hosting migrants. This type of bargaining strategy is sometimes called "migration backscratching."⁸⁴ This involves a state signaling a willingness to host migrants if they receive adequate support for doing so. This strategy can be effective in recruiting funds. It may be particularly likely to succeed in the EU context. EU member states have strong desires to reduce regional migration pressures, and few EU states indicate that they are willing hosts. Other EU member states may thus be more willing to fund protection to prevent future blackmail if a target state indicates its willingness to act as a host for a sizable portion of the migrant population in question. States might also seek to encourage other states to offer resettlement. They can do so by signaling that they are willing to do their part and to share in the burdens of refugee protection.

Negatively, target states may engage in limited noncooperation. Less controversially, states in the EU may simply allow some number of migrants to transit onward, in effect displacing costs of protection onto a neighbor. This is what Greece did in the case mentioned above, although problematically, it did so largely in order to gain leverage in its debt negotiations. This may be permissible when the following conditions obtain: (1) the target state is *genuinely overburdened*; (2) it has *clear evidence* that doing so would allow migrants to access protection in other states (and will allow these migrants to return and receive protection if they do not); and (3) doing so is in line with migrants' own mobility preferences. Such a strategy comes with the risk that migrants will not receive access to protection, although the risk is minimized if the above conditions are met.

83 Not all burden-sharing schemes are fair or secure effective protection. Such schemes also interfere with migrants' choices. Although just schemes must take migrants' autonomy interests seriously, migrants' interests in accessing decent international protection takes precedence over their autonomy in choosing a preferred destination. For discussion, see Gibney, "Refugees and Justice Between States."

84 Tsourapas, "The Syrian Refugee Crisis and Foreign Policy Decision-Making in Jordan, Lebanon, and Turkey."

More controversially, it may perhaps be permissible for target states to leverage their ability to allow migrants to transit onwards *in order to recruit funds to benefit these migrants*. Thus, target states may indicate their willingness to displace costs onto their neighbors in order to recruit participation in burden-sharing schemes and additional funding for migrants. This might seem to simply replicate the dilemma with which I began. Is this not just a form of impermissible migration blackmail? Note first that such a policy may be conceptually distinct from migration blackmail as I defined it above, since the aim of such a policy would be to benefit migrants themselves by recruiting funds to host and integrate them rather than to use migrants for some independent state objective. When the state acts for these reasons, it does not treat migrants as a mere means. Instead, it leverages migrants' presence in ways designed to promote *their ends* (benefiting them materially and opening up other resettlement options for them). It is thus less clear that this wrongfully instrumentalizes migrants. Similarly, as long as a state engaged in noncooperative bargaining neither forces nor requires migrants to leave but rather offers them protection within their territory, such a policy neither wrongfully threatens migrants nor places them at risk of harm. It is thus not clear that such a policy wrongs migrants. Recall, moreover, that not all cases of leveraging migrants wrong states, and it may be permissible for states who do their fair share of refugee protection to coerce states who fail to do their fair share into sharing responsibility.

While this argument for the permissibility of noncooperative leveraging of migrants is potentially compelling, I am agnostic about whether such actions are fully permissible. They may at best remain morally ambiguous. This is because, on the one hand, these noncooperative strategies may backfire, and on the other hand, these policies may wrongfully contribute to harmful perceptions of migrants as threats. Such tactics thus merit further normative investigation and need to be approached with the utmost caution. However, the larger lesson of this section stands: it is not the case that target states can resist blackmail only by refusing migrants. There are other strategies available to target states. While these strategies may not prove wholly effective and are unlikely to allow target states to avoid being saddled with *some* costs, they may go some way towards enabling states to resist migration blackmail while maintaining a commitment to ensuring that migrants have access to protection.

6. CONCLUSION

I have argued that states faced with migration blackmail sometimes face a difficult policy dilemma: how to resist blackmail while respecting the legitimate interests of migrants. The prevalent response to this dilemma has been for target

states to close their borders and to suspend migrants' rights, including the right to asylum and the standard procedural protections associated with it. I have argued that these measures are generally impermissible for four reasons. First, not all cases of migration blackmail give rise to a dilemma, as allowing migrants leveraged in standard blackmail scenarios to enter and apply for asylum does not usually in fact impose significant burdens on target states or their citizens. Second, target states sometimes bear special responsibilities for the plight of migrants and the circumstances that make blackmail possible. Third, migrants' interests in avoiding harm and accessing protection generally defeat the countervailing interests that target states and citizens have in excluding them. Finally, target states have alternative measures at their disposal to mitigate the costs associated with protecting migrants.

These arguments show that the EU's response to migration blackmail is profoundly mistaken. The EU's approach privileges the interests of target states to the detriment of migrants without adequate justification, problematically framing migrants as a threat. Although proponents of this approach often try to justify it by appealing to the fact that migrants are harmed by instrumentalization, the EU's approach to migration blackmail in fact harm migrants because it displaces the costs of avoiding migration blackmail onto the migrants themselves. Rather than punishing migrants for seeking asylum, the EU should instead open safe migration routes to undercut the leverage of blackmailing states, reverse its policies of externalization, and signal that it does not view migration as a threat by accepting those in need of protection. These are policies that the EU has independent moral and prudential reasons to adopt, and adopting them is required to both prevent and ethically respond to migration blackmail.⁸⁵

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85 I would like to thank Rainer Bauböck, Julia Mourão Permoser, Martin Ruhs, Lukas Schmid, audiences at the European University Institute and Ludwig-Maximilians-Universität München, and several anonymous reviewers for helpful comments on this paper. I would like to give special thanks to ZEIT-Stiftung's Borders in Focus program, specifically to Anna Hofmann, who organized an informative trip to the Poland-Belarus border. I learned immeasurably from Mateusz Krępa, Maciej Grześkowiak, Kamila Fiałkowska, Magda Kicińska, Karol Grygoruk, Michał Zadara, Kinga Stańcuk, and many other Polish academics, journalists, and activists who are challenging ongoing border violence in Poland.

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