ADMiGOV

Advancing Alternative Migration Governance

Protection beyond legal-centrism and containment

Deliverable 4.4

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Abstract

This final report on the protection of displaced people focuses on three country cases, Lebanon, Turkey and Greece employing a bottom-up perspective to study how protection is practiced on the ground and in the everyday. In this report we highlight the limits of relying on the application of legal status for the provision of protection for displaced people as it ignores access to basic needs. Access to legal status that ensures access to human rights and freedoms — and not a minimalist legal status — remains important for the future security of displaced people, however, we show how an overdetermined focus on the legal status of displaced people in lieu of additional forms of protection focused on basic needs, as well as the provision of minimalist legal status with specific conditions attached that curtail rights and freedoms can engender additional harm to displaced people. In this report we focus on three main gaps in protection related to this legal-centrism. One, 'systemic' gaps in the normative and legal framework of protection such as failures to address basic needs because they fall outside of these norms and laws. Two, 'political' gaps stemming from the discretionary interpretation of legal/normative protection frameworks by political actors, states and the EU, and their subsequent application of strategies including containment, incarceration, and criminalization that put state security above the well-being of people. Three, 'conjunctural' gaps relating to the particular historical circumstances, such as the recent EU/Greek-Turkish border crisis, which provide additional motivation for the application of ad hoc legal categorization of displaced people and justify the violation of international protection norms.

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Acronyms

EU-ECHO	European Civil Protection and Humanitarian Aid Operations
GCM	Global Compact for Safe, Orderly and Regular Migration
GCR	Global Compact on Refugees
IOM	UN Migration Agency
IP	International Protection
MSF	Médecins Sans Frontières
OCHA	UN Office for the Coordination of Humanitarian Affairs
RIC	Reception and Identification Centre
TPS	Temporary Protection Status
WASH	Water, Sanitation and Hygiene

Country Reports

This is the final report of AdMiGov work package 4 on Protection in the borderlands of Europe. This report concludes three country reports:

Karadağ, S. and A. Üstübici (2021) *Protection during pre-pandemic and COVID-19 periodsin Turkey*, ADMIGOV Deliverable 4.2, Istanbul: Koç University. Available at: http://admigov.eu/upload/Deliverable_42_Protection_COVID19_Turkey_Karadag_Ustu bici.pdf

Pallister-Wilkins, P., A. Anastasiadou, A. Zavos and E. Papataxiarchis (2021) *Protection in a Hostile Environment: An on-the-ground study into protection practices in Lesvos and Athens*. ADMIGOV Deliverable 4.1, Amsterdam: UvA. Available at: http://admigov.eu/upload/Deliverable_41_Protection_in_a_hostile_environment_Pallis ter-Wilkins.pdf

Trovato, M.G., N. Al-Akl and D. Ali (2021) *Displaced Syrians in Lebanon: Protection amidst Crises.* ADMIGOV Deliverable 4.3, Beirut: American University of Beirut. Available at: http://admigov.eu/upload/Deliverable_43_Displaced_Syrians_in_Lebanon_Trovato_Al_ Akl.pdf

1. Introduction: Reimagining protection beyond current norms

At the beginning of the 21st Century the idea that protection should encompass the necessary conditions for life has gained ground. In the above spirit the provision of better protection for displaced people has become a central concern for governments, policy makers and humanitarian actors. These concerns solidified in 2016 with the signing of the New York Declaration and then later, in 2018, with the Global Compact on Refugees (GCR) and the Global Compact for Safe, Orderly and Regular Migration (GCM). Both Compacts are legally non-binding conventions that rearticulate existing rights-based approaches to displacement with foundations in earlier conventions such as the Universal Declaration of Human Rights of 1948, and the UN Refugee Convention of 1951 and subsequent Protocol of 1967. In recognizing the need for a holistic approach to migration and the centrality of protection within such an approach the Global Compacts were *significant progress*. This (re)commitment to a normative rights-based approach to displacement is significant in an increasingly xenophobic international political environment that questions state's, as well as transnational organizations such as the EU's, normative commitments to provide protection for displaced people fleeing conflict, human rights abuses and economic precarity.

That said, despite the fact that the GCR and GCM reproduce a reliance on international normative commitments they *cannot compel action on-the-ground*. In our research we have seen how on-the-ground protection is shaped and limited in practice by political decisions and actions, or more importantly inactions, at international, state, and local levels. In addition, the Global Compacts because of their legal-centrism replicate existing *limits* on imagining protection as encompassing more than legal status (e.g. refugee or temporary protection status) and *exclude* major parts of the world that are non-signatories to the Refugee Convention (e.g. Lebanon) or its Protocol (e.g. Turkey).[1] Furthermore, they are also Eurocentric since they give little or no attention to other cultural formations of care/refuge which are informed by non-individualistic value hierarchies that do not prioritize the legal.

We, like other researchers, are acutely aware of the *limitations* of existing frameworks that exclude access to basic needs and the effects of socio-economic precarity from protection rights, prioritize 'the West' over 'the Rest' (Krause 2021: 599) and promote strategies of

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[1] Legal status refers to national level laws governing the legal status of displaced people.

containment in the Global South (Chimni, 1998: 350). Here the Compacts' continued normative 'convention-centrism',[2] centring of legal status and ongoing Eurocentrism are serious obstacles in achieving a genuinely inclusive framework of protection. This is not to suggest an end to ensuring existing legal frameworks are applied. However, we are concerned about a continued reliance on and the reification of legal mechanisms in providing protection when our research has shown that these alone are no guarantee of ensuring a respect for human life and dignity.

Calls for applying legal frameworks are not always calls for greater and more holistic protection provision. Calls to apply legal frameworks in the existing socio-political environment do two things. One, they continue Eurocentric approaches and assumptions about the existence of legal frameworks at the national level aimed at providing protection. Here it is important to remember that not all states (e.g. Turkey and Lebanon) are signatories of existing international conventions providing *de facto* legal frameworks, or have national laws that provide protection for displaced people. Two, calls to apply legal frameworks assume legal frameworks are both immutable and positive in their provision of protection, when in our research we have seen how minimalist legal status with conditions attached reduces displaced peoples' rights and freedoms. Legal status on its own is not a panacea for protection. Here it is also important to note that legal mechanisms, e.g. asylum laws, are constantly changing — and have done so during our research — and that the law can often be used to foster harm and exclusion. Importantly, as laws are the result of socio-political processes and decisions, calls to apply the law are no guarantee of a favorable and positive outcome for displaced people, as our research has shown.

Our research studied protection practices on-the-ground. Through such a focus the limitations of existing protection frameworks, rooted in normative conventions, the centring of legal-status as sufficient as protection and the multiple levels at which gaps in protection are located have become evident. This report highlights a broad set of protection gaps that fall under three main categories. Firstly, *'systemic' gaps* which are endemic in the normative and legal framework of protection. They involve failures of the existing international and national level normative and legal protection mechanisms to adequately address basic needs because they fall outside of these norms and laws. As we have seen in from our research as long as protection is understood as only legal-status, or remains conditional, i.e., dependent on legal

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[2] Convention centrism refers to the international normative conventions that provide frameworks for providing protection for displaced people.

status, such gaps are going to be reproduced. Secondly, more directly we see *'political' gaps* due to the discretionary power of political entities, states and the EU, to interpret at will the legal/normative protection framework and apply strategies (for example, of containment, incarceration, or even criminalization) on the basis of priorities that put state security over the well-being of people and eventually deny basic needs. Thirdly, *'conjunctural' gaps* that relate to 'special' historical circumstances, such as the recent EU/Greek-Turkish border crisis, which provide additional grounds for ad hoc legal categorizations of displaced people and 'justify' the violation of international protection norms.

The above, systemic, political, and conjunctural protection gaps are not of the same order. They could be stratified (into primary and secondary) with 'systemic' gaps placed at the higher order. This is a matter of the priority one gives to human life. If we agree that "people are more than their migration status" (Hyndman and Reynolds, 2020: 72), an important point when approaching protection as encompassing the necessary conditions for life, then this order (and the problems that arise from it) becomes more visible.

This report shows that the ability of displaced people to access life's basic needs remains to a large extent linked to their legal migration status. This means the continuation of protection gaps in practice amid normative and instrumental frameworks that (re)produce statist and legal responses. To the extent that these responses continue the distinction between refugees and migrants they fail to capture people's lived experiences of displacement and subject them either to the legal regime of asylum in the case of refugees or exclude them from legal protection all together in the case of migrants. As we show in this report these responses fail not only to deliver protection in the form of access to basic needs but are also generative of further harms through their focus on legal migration status and the exclusionary work such categorization performs. In the above sense systemic gaps are primary. In challenging conditions of great fluidity and flux, such as the ones we faced on the ground in Greece, Turkey and Lebanon during our research in 2020-21, the dependence of protection on legal migration status becomes an even more pertinent factor in the emergence of protection gaps. This is particularly so if there is lack of political will for ad hoc interventions aiming to deal with some of these gaps. For these reasons, in this report, we place *special emphasis on the systemic and political gaps*.

This final report is more than a systematic, comparative presentation of the findings of the three 'national' reports on Greece, Lebanon and Turkey that have been already published.

The national reports offer a comprehensive account of the legal protection regimes and institutional provisions in heath and accommodation as well as a detailed description of the actual situation on the ground giving special emphasis to protection gaps during a period that was characterized by an unusual excess of protection challenges in the three countries. As an effect the national reports are dominated by an exceptionally large number of conjunctural gaps that have been recorded in the field. This final report, on the other hand, places our comparative research within a wider time frame (that includes the recent response to the 'Ukrainian crisis') and shifts the emphasis from the conjunctural to the systemic. In this respect we offer here a comparative synthesis as well as a critical account of long and middle-term patterns in the provision and lack of provision of protection.

The report is structured as follows. In chapter 2, we outline our research design and methodology highlighting our bottom-up and practice oriented approach to protection on the ground that aims to critically depart from the legal-centrism of the GCR and GCM. Here, in summarizing protection gaps in all three cases during the pandemic, we also reflect on some of the limitations we faced in carrying out research during the Covid-19 pandemic and economic collapse in Lebanon. In chapter 3, we highlight the problematic centrality of migration status in governing access to protection. Here we show how the lack of access to an official status is itself a protection gap that influences and exacerbates further protection gaps in accessing healthcare and accommodation. In chapter 4 we shift our focus to the provision of protection beyond migration status, through the discussion of actors and practices that delink access to basic needs from migration status, while being careful to highlight the limits of such assistance and the relations of dependence, inequality and exploitation that can result from such efforts. In chapter 5 we focus on the relationship between protection and containment mechanisms that undermine displaced people's human rights through the repeated use of practices, that link protection access to containment, including border controls, pushbacks and refoulement, internal mobility controls, and closed camps. The report concludes by proposing an alternative to protection beyond convention-centrism and containment, by drawing on the Temporary Protection emergency mechanism the European Council has enacted to govern displaced Ukrainian residents. This temporary protection mechanism with its focus on providing immediate rights to residency for a period of one year, with the possibility for extension, harmonised rights across the EU, access to the labour market, healthcare, accommodation and education shows that with political will, at least within the European Union, an alternative logic

of protection that both respects people's rights to find safety safely and legally, with dignity, and without the need for containment in border states (such as in Greece) can be achieved.

2. Research design and methodology

In migration governance 'protection' is a wide-reaching, malleable, concept that can be stretched by policy actors to incorporate a wide range of conditions for life including and beyond basic needs, yet one that becomes specific and, in principle, binding by the top-down international conventions and legal mechanism's governing the existing refugee and migration regimes. Initially we analytically aimed at an inclusive concept of protection that critically departs from the Eurocentric heritage of the dominant official concept in order to take into account the great diversity of emic constructs employed by on-the-ground protection actors, displaced people and the culturally specific terms in which they define their work and needs. For several reasons, particularly the pandemic limitations of our fieldwork, this strategy could not materialise. Therefore, we had to adopt the analytical working models of protection compiled and enacted by humanitarian actors, such as the Sphere Standards (2018), that set out 'minimum' standards for protection in humanitarian responses. We were guided by the Sphere Standards because of their focus on the provision of minimum standards of protection developed *in situ* by humanitarian organisations with practical experience in aiding displaced populations in multiple contexts. Despite the dangers of being analytically co-opted by the powerful humanitarian discourses of protection that such organisations employ, the Sphere Standards offered a more, practice-focused, bottom-up, holistic as well as multi-dimensional approach to the provision of protection than the normative ideals and rights-based approach taken by the GCR and GCM. In this sense they aligned with our practice-focused, bottom-up approach to researching 'protection *as is*' rather than 'protection *as wished*'.

The use of bottom-up approaches to protection in our research design has been important as we aim to achieve critical distance from the inherited categories through which the displacement-protection relationship is governed and move beyond the international normative order and sovereign states as the providers of protection tied to migration status, as well as, think about protection at different scales that include the local and showcase disjunctures between official categories and the lived experience of people. While we share one of the key

commitments informing the GCR and GCM, i.e. how to address the challenges of protection in the contemporary period, we were motivated, however, to think about not only the challenges of protection in practice but *reimagining protection outside and beyond the current norms articulated in current international conventions.*

In trying to reimagine protection, we are acutely aware of how "the realm of possibility is truncated by the language we use, the policy categories we adopt and deploy, the longstanding research practices we employ, and the inequalities they reproduce" (Hyndman and Reynolds, 2020: 67). The categories we have inherited from "convention-centric" approaches to protection artificially delineate and differentiate statuses between for instance, refugees, internally displaced persons, and migrants, which fail to capture the lived experiences or the needs of those subjected to such categorisation. Further, these categories and the migration statuses attached to them may work to socio-politically legitimise indifference and dehumanisation (see Bakewell, 2008; Skilbrei, 2020) alongside policies of containment that seek to continually transfer responsibility for protection provision onto others, be they regions e.g. the Global South, states, e.g. those in the Middle East, North Africa, or the EU's southern members and insular peripheries, e.g. the Aegean islands, or onto non-state and local actors, e.g. humanitarian organisations and civil society groups.
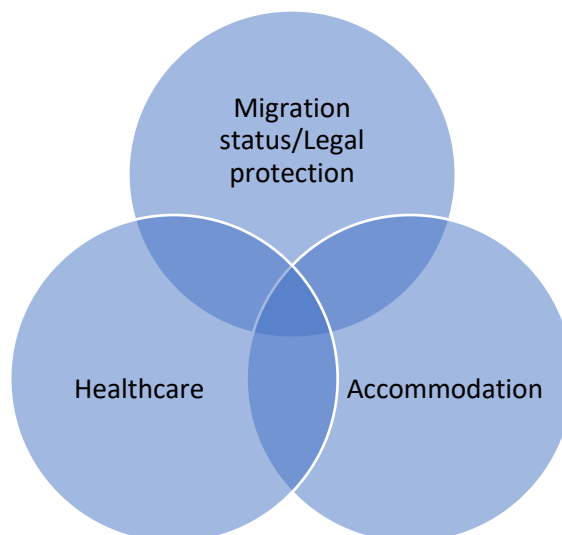

Figure 1 The three spheres of our research design

The Sphere Standard's three-dimensional concept of protection provides an analytically functional framework to assess how migration status intersects with 'protection as is' based on a focus on access to healthcare and accommodation. These three spheres have also been chosen because they are all key concerns in Greece, Lebanon, and Turkey where the local context plays an important role in their differential realization. Our research has geographically delimited itself, in part for pragmatic reasons as it has enabled us to apply our on-the-ground bottom-up approach based on *sustained long-term engagement with 'protection as is'*. But additionally, the three countries have been selected because they are important actors in providing protection in Europe's borderlands while they constitute very different socio-political and legal contexts for the actualization of protection in practice*.* In this regard we have been able to generate *a comprehensive overview of protection across different geographies*. This means that our conclusions relate to fundamental transnational fissures and challenges in the provision of protection. We show how, while national and local contexts differ and are important, these cannot be divorced from *the global politics of protection* based on both a convention-centric normative order and policies of containment that foster protection gaps, undermine human rights and dignity, and fail to put the needs of displaced people first in all instances.
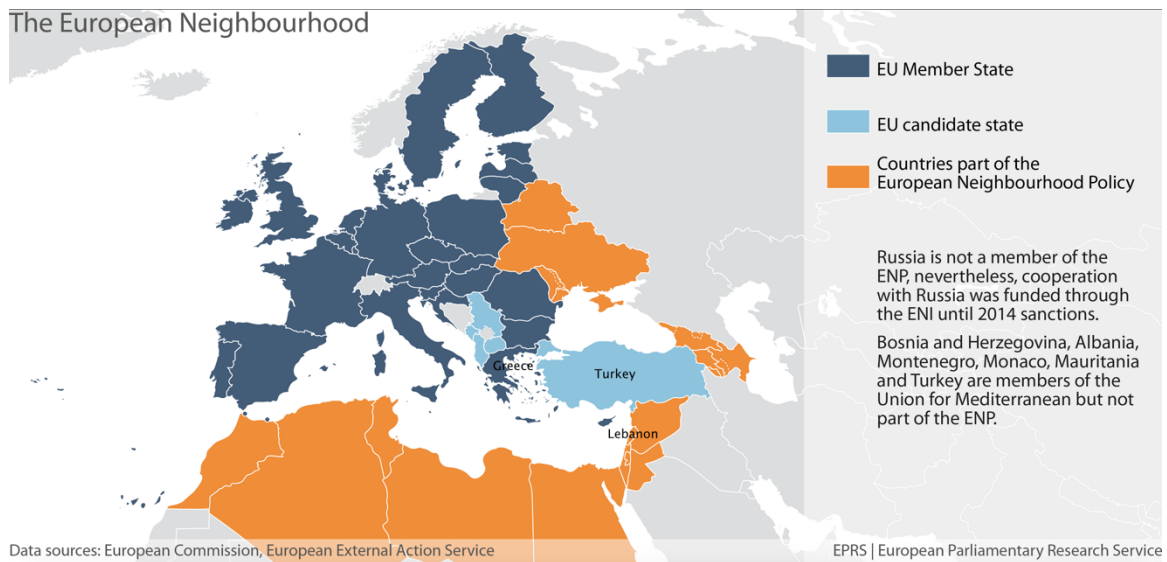

Figure 2 Europe's borderlands

Our methods of data collection included on-the-ground participant observation in protection contexts, in neighbourhoods and camp-like settings in Athens and Lesvos in Greece, Istanbul and Edirne in Turkey, the Bekaa Governate and Saida in Lebanon, as well as observing meetings of protection actors in particular contexts such as Lesvos. Alongside this we held interviews with key actors responsible for protection provision and the displaced subject to them across all localities. The Covid-19 pandemic has been a major challenge to our research since it affected ethnographic fieldwork and research on the ground. In particular, the extended lockdowns limited our access to our interlocutors. During the health crisis we were acutely aware of our responsibilities towards displaced people made precarious by both the pandemic and existing protection gaps. Alongside the pandemic ongoing economic collapse in Lebanon has had a considerable impact on our ability to carry out research in generalized conditions of precarity.

3. The problematic centrality of migration status: a chain of gaps in protection

One important finding of our research is the way legal migration status dictates access to protection. We must stress that this important point became evident through our comparative focus on cases where international conventions shaping legal frameworks are not in place such as Lebanon, a non-signatory to the 1951 Refugee Convention, and Turkey, a non-signatory to the 1967 Protocol that extended protection rights to non-Europeans. In these instances, the individual states employ *a range of legal migration statuses* to govern, directly and indirectly, the displaced and their access to basic needs such as healthcare and accommodation.

Migration status in the GCR

The relationship between migration status and access to basic needs is expressed in the Global Compact on 'Refugees' areas in need of support. As can be seen from our visualization in Table 1 below the GCR divides the 'how' of protection into a two-pronged approach focused on (1) 'reception and admission', and (2) 'meeting needs and supporting host communities'. Under 'reception and admission', 'registration and documentation', e.g. provision of migration status, is considered one of six key 'areas in need of support'. This two-pronged approach appears to suggest the decoupling of basic needs from migration status. However, by sequentially numbering these areas in need of support, the GCR continues and rearticulates the *centrality* of migration status in governing access to basic needs in practice.

Registration and documentation aim to 'make visible' displaced populations and their needs with the expectation that this visibility will lead to effective humanitarian provision (Bulley, 2014). However, for those who are not captured by such registration and documentation, or who are categorised in such a way that places limits on their access to basic needs the exclusionary logic of this curation has damaging effects, including homelessness, a lack of access to medical care, debt, and subsequent exploitation in the informal economy. From our research (see Figure 3) it is clear how a lack of status creates a primary protection gap, from which other, derivative and thus secondary yet more important, protection gaps emerge as status governs access to other basic needs.

Global Compact on Refugees Areas in Need of Support	
1. Reception and admission	2. Meeting needs and supporting host communities
1.1 Early warning, preparedness and contingency planning 1.2 Immediate reception arrangements 1.3 Safety and security **1.4 Registration and documentation** 1.5 Addressing specific needs (children, including those who are unaccompanied or separated; women at risk; survivors of torture, trauma, trafficking in persons, sexual and gender-based violence, sexual exploitation and abuse or harmful practices; those with medical needs; persons with disabilities; those who are illiterate; adolescents and youth; and older persons) 1.6 Identifying international protection needs	2.1 Education 2.2 Jobs and livelihoods **2.3 Health** 2.4 Women and girls 2.5 Children, adolescents and youth **2.6 Accommodation, energy, and natural resource management** 2.7 Food security and nutrition 2.8 Civil registries 2.9 Statelessness 2.10 Fostering good relations and peaceful coexistence

Table 1 The GCR's two-pronged approach to protection

Migration status and the creation of protection gaps in Greece, Turkey and Lebanon during the Covid 19 pandemic

The above point is well supported by our comparative study in Greece, Turkey, and Lebanon. The lack of status as a protection gap is most acute in Lebanon, where the absence of a formal and legal asylum framework coupled with the inability of the UNHCR to register refugees since 2015, means that displaced people entering the country since 2015 are *unable to access a migration status* of any kind. This lack of a migration status fosters considerable vulnerability for displaced people in their daily lives. It makes every day public tasks perilous due to the regularity of identity checks by Lebanese security forces and opens displaced people to exploitation and abuse. We catalogued how those without migration status struggled to obtain secure and affordable housing and lived with the constant threat of eviction. Meanwhile 20% of

our respondents reported being denied access to hospitals as they lacked the necessary documentation cataloguing their migration status (Trovato et.al, 2021).
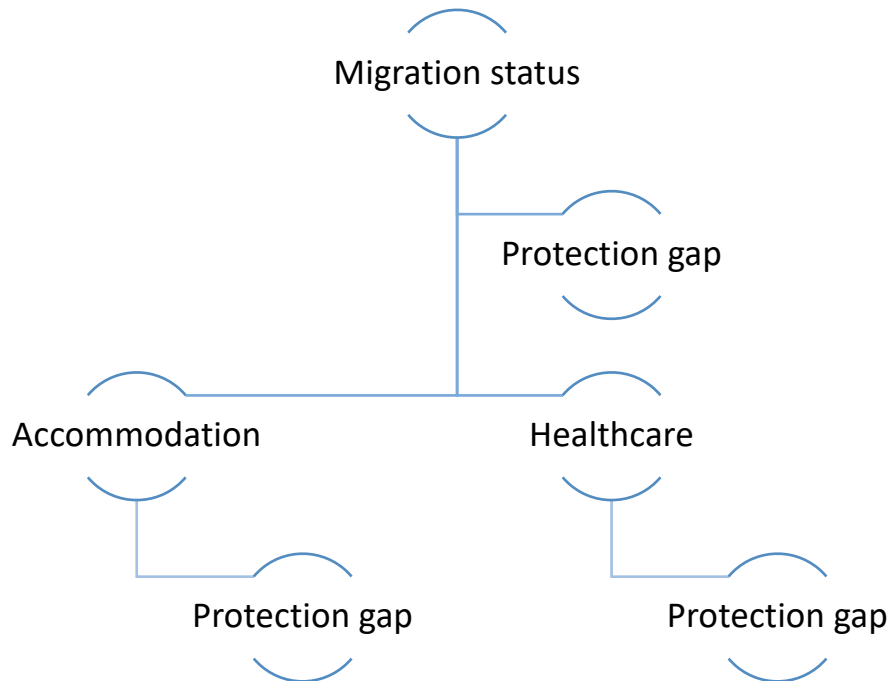

Figure 3 The migration status protection gap relationship

The situation in Turkey is more complex, but no less acute, due to the *variety* of migration statuses and instruments the Turkish government uses to govern protection. Here nationality conditions access to Temporary Protection Status (TPS), with only Syrians being eligible for such a status. Meanwhile non-Syrians may apply for international protection status. While those accepted are given Conditional Refugee Status, there are increasing number of applicants given Subsidiary Protection. Rejected applicants are asked to leave the country but most stay as irregular migrants. Alongside this, migration status is geographically tied to the province of first registration in the case of TPS while non-Syrians have no freedom to choose where they are registered, with access to certain provinces such as Istanbul being restricted since 2018. This results in a series of protection gaps (see Table 2).

Registration	Healthcare	Accommodation
•Ability to access basic needs legally impossible outside province of registration •Limits on where people can register, preventing family and comminity cohesion •Displaced people pushed to register in provinces with weaker protection provisions and fewer work opportunities	•Access to primary healthcare less developed for those withoot TPS (e.g. EU funded SIHHAT scheme) •Access to healthcare limited to province of registration/assigned satellite city •Access to free public healthcare for those with IP status availbale for one year only	•Restrictions on legal residence in Istanbul •Continued residence in Istanbul leads to loss of migration status and irregularisation •Loss of migration status increases risk of exploitation in the housing market

Table 2 Protection gaps in Turkey depending on migration status

The registration system in Turkey and the geographical limits it places on accessing basic needs fosters informality. Displaced people are forced in many instances to choose between a formal, regularized migration status and access to employment opportunities in Istanbul and cities where they are not registered and therefore not entitled to assistance (Karadağ and Üstübici, 2021). Furthermore, the time limits placed on access to affordable healthcare to those with an IP migration status places people at risk of exploitation and debt to pay for medical treatment.

In Greece access to basic needs is tied to the asylum system determining migration status. Access to official healthcare and accommodation is reliant on prior registration in person at one of the Reception and Identification Centres (RICs) or via an overburdened online appointment system. However, in our research we also found that access to asylum, for those in Athens and outside the system governed by the RICs, sometimes requires the presentation of documents proving residency, which for many living in informal accommodation are difficult to obtain and places additional barriers in the way of obtaining a recognized migration status.

Further, the Covid-19 pandemic in combination with the Greek-EU/ Turkish border crisis

in February-March 2020 exacerbated historic protection gaps as well as produced a whole new set of new, conjunctural gaps both, for the holders of legal status but, even more, for newly arriving asylum seekers. In a political climate characterized by rampant authorized xenophobia, racist attacks and the ongoing stigmatization of the asylum seeker community, protection standards were severely reduced (see, for example, the makeshift quarantine spaces in the shores of Lesvos) and structures of humanitarian protection shrank as they came under attack (Pallister-Wilkins et. al, 2021).

4. Protection beyond migration status: Filling the systemic gaps

We have been keen to stress the centrality of migration status in governing protection and the protection gaps that result. However, we also want to move beyond the "convention-centrism" of an approach that consolidates the role of migration status in protection and thus also focus attention on protection practices that *delink status and access to protection*. On the one hand this delinking may be contingent, resulting from existing protection gaps where those who fall outside of state responses are able to draw on support from non-governmental organizations, civil society actors and communities. On the other hand, this delinking may be strategic in that protection actors recognize the limits of existing mechanisms and the conditions of possibility they govern and make the political choice to operate outside of them, refusing to (re)produce the centrality of migration status in the process. In our research we have encountered both types of delinking.

The contingent delinking of humanitarian NGOs

Guided by humanitarian principles of universality, impartiality and neutrality and having developed considerable expertise in responding to displacement humanitarian NGOs are responsible for the provision of basic needs across Lebanon, Turkey, and Greece, at multiple sites and scales regardless of the migration status of the displaced. In addition, alongside established, professionalized humanitarian NGOs civil society organizations and solidarity networks strive to assist with displacement needs sometimes actively attempting to delink migration status from access to protection as a form of political action (Stierl, 2016, 2018).

The most widespread protection work operating outside the migration status-protection nexus is that offered by humanitarian NGOs and it occurs in response to the existence of protection gaps caused by tying protection to migration status. This work occurs across multiple sites and encompasses a plethora of practices including healthcare (including vaccinations) and psychosocial support, non-camp accommodation and safe spaces for collective community activities and children's play, as well as what is assumed to be shorter-term emergency relief including, emergency temporary shelter, hygiene kits and WASH facilities in camp spaces. Over time these shorter-term practices have often *become systemic* due to the wider structural failures of the protection regime. Humanitarian NGOs, due to their expertise developed over years of responding to displacement are often better equipped to respond to emergency situations and are encouraged to do so by for instance the response frameworks of EU-ECHO and the UN Office for the Coordination of Humanitarian Affairs (OCHA). However, humanitarian NGOs also fill the gaps left by a lack of protection offered by state and local authorities long after the initial moment of emergency has subsided, and displacement has become systemic.

In certain contexts, such as Lebanon, humanitarian NGOs have coordinated to provide most of the relief to displaced people within the country. This has led to the creation of a *decentralized network* of actors that has become more elaborate over time as the Syrian displacement crisis has become systemic. This complexity has seen attempts to coordinate and oversee relief efforts. The Regional Refugee and Resilience Plan (3RP), the Lebanese Crisis Response Plan (LCRP) were both initiated in 2014 and contain approaches to governing displacement that we see echoed in the both the GCR and GCM, such as a focus on multi-level responses, an increased and formal role for non-state actors and the bridging of emergency responses to displacement with longer-term development goals.

Filling these gaps left by a lack of government response and often responding to harms caused by a lack of access to migration status means that humanitarian NGOs, even while aiming to provide protection outside of — and often with no regard for — the migration status-protection nexus, end up *consolidating* such a system. For example, when humanitarian NGOs are presented with the pressing need to provide relief, for example in closed camp spaces in Greece that they are opposed to at the policy level, they step in to provide such relief in practice. This *has allowed poor protection practices originating at the governmental policy level, e.g. systemically inadequate camp facilities, to continue*. Here humanitarian relief acts as a

sticking plaster on the harms caused by inadequate facilities (see Pallister-Wilkins, 2020). These actions of humanitarian organizations are not surprising, and it is not our intention to undermine the valuable work they do in ensuring everyday protection in Lebanon, Turkey, and Greece. However, it should be noted that as the subject of humanitarian responses are those in need of protection and not government policies of containment, such policies remain unaddressed by such humanitarian relief and in fact are able to continue only with slightly less harmful effects.

Strategic delinking by informal civil society actors and solidarity networks

Beyond established humanitarian NGO responses protection is also provided by civil society groups and solidarity networks. Like their more established counterparts these groups fill the protection gaps caused by the relationship between migration status and access to protection, however, these groups often engage in protection work as part of larger political opposition to the centrality of migration status and policies of containment that govern the established transnational, convention-centric protection regime. Here explicit attempts are made to challenge the status categories that produce hierarchies of deservingness and exclude communities of people from access to protection. The need for protection is linked to wider, global systems of precarity faced by not only the displaced and, as a result, protection becomes a form of solidarity. This form of solidarity work highlights the structural causes of both displacement itself — conflicts, human rights abuses and, importantly for a move beyond convention-centrism, economic precarity —, the protection gaps caused by migration status governing protections and the failures and inadequacies of governmental protection responses. However, solidarity networks are not monolithic. While some challenge the differentiated statuses of refugees, internally displaced persons, and migrants underpinning the migration status-protection regime, some others reproduce these categories discursively and through those they assist, consolidating hierarchies of deservingness as a result.

The provision of protection beyond migration status, often with the added element of political resistance, has fostered a strong reaction from governments keen to maintain the containment practices and centrality of migration status in governing displacement. In our research we have chronicled the growing attacks against humanitarian relief and solidarity

activities including, the use of bureaucratic impediments that are particularly difficult for grassroots organizations to meet, denying access to communities in need through the consolidation of closed reception facilities/camps, and attempts to criminalize the provision of assistance.

Community responses to protection needs

Outside of humanitarian NGOs and solidarity networks, assistance is also provided by local communities and the displaced themselves as they confront the protection gaps fostered by the migration status-protection nexus. In many instances these responses are quicker at and more targeted in responding to the specificities of displaced peoples' needs due to relations of geographical and cultural proximity. However, at other times it is clear how informal responses can be exploitative and lead to further harms, as it is in the case of the camp fees for the informal camps in Lebanon, where such camps lack adequate shelter and sanitation facilities (Trovato et.al, 2021). Here is it important to unpack how displaced people are forced into informal arrangements by their migration status that excludes them from accessing formal assistance or the legal protection of the host state. For example, in Lebanon the lack of access to a migration status of any kind for many of those displaced results in exploitation in the informal housing market. This exploitation consists of poor housing conditions, high rents, insecure or no tenancies and an inability to access legal redress. In Turkey the protection gaps caused by geographically limiting protection access to provinces of registration for those with TPS and assigned satellite cities for those with an IP status are filled by informal practices which can include expensive, unregulated housing that pushes people (further) into debt.

Overall, the domain of practices that offer protection unconditionally is full of experimentations. Particularly informal civil society and solidarity initiatives are in the forefront of often imaginative experimentations in humanitarian interventions aiming towards more inclusive, all-embracing forms of protection. Such initiatives transcend camp-centric modes of accommodation, recognize cultural specificities, and empower the displaced travelers. There are important lessons to be learned from similar experiments to improve protection, and official actors, for example the UNHCR, are working in such directions. Yet as long as protection remains bound to legal status the positive impact of these initiatives cannot but be limited.

5. The politics of entrenchment leading to practices of containment

Alongside the centrality of migration status is the entrenchment of containment practices and the logics of protection used to legitimize such actions. Practices of containment, understood as limits on the internal and cross-border mobilities of displaced people, while being intimately related to the role migration status plays in governing access to protection, they are the source of a more explicitly political form of protection gaps. In our research it is the most violent and abusive form such governance takes as it too often results in the exact opposite of protection in its most extreme form: death.
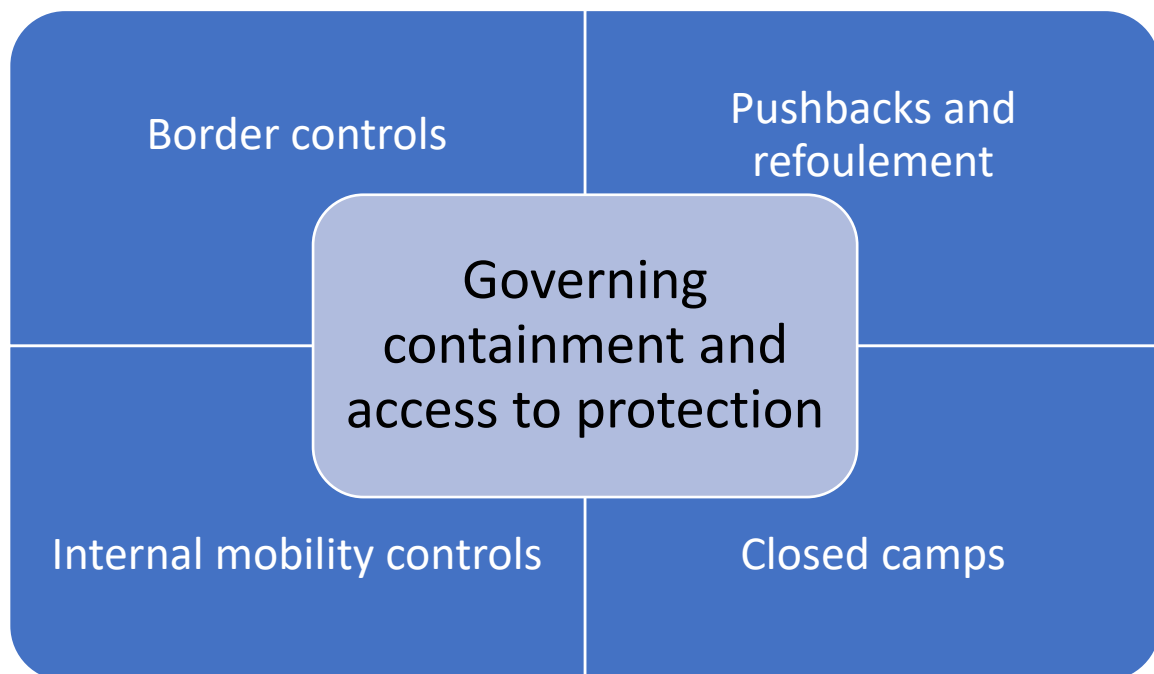
Figure 4 The mechanisms governing containment and access to protection

Border controls as containment

As was already seen from earlier findings of ADMIGOV (Jeandesboz et.al, 2020) visa regimes and carrier's sanctions enacted by state and transnational actors, including Lebanon and the European Union, deny safe and legal travel to displaced people as they cross borders in search of protection. These border controls mean displaced people are given an irregular migration

status which places them at increased levels of risk, exposing them to organized criminal networks, unsafe forms of transportation and too often physical harm and death. According to the Missing Migrants Project of the IOM, 1,874 are known to have died in the Eastern Mediterranean, which includes the Aegean crossing to Greece.[3]

The decision to place visa restrictions and accompanying carrier sanctions on displaced people is an active *political choice* exercised by states and the European Union. These controls have two main effects. First, they result in displaced people struggling to access protection in safe countries. Second, they make the act of seeking such protection difficult and dangerous as safe and legal routes are closed. Such containment strategies are not only practiced by the European Union through the implementation of the Schengen Visa policy and Strict Carrier's Liability. In 2014 Lebanon's decision to prevent the entry of Syrians has meant difficult entry conditions for Syrians seeking protection in Lebanon, where they face arrest and detention if caught.

Turkey, meanwhile, is considered a transit country (Üstübici, 2019) even while it is home to approximately 4 million displaced people. Its designation as a transit country has resulted in a number of EU funded projects targeted at containing the 4 million displaced people in this so-called transit space. The most well-known of these is the EU-Turkey Statement intended to provide financial support for protection in exchange for Turkish authorities preventing onward movement to the EU (Karadağ and Üstübici, 2021). This agreement mobilized concerns around the risks involved in unsafe forms of transportation to justify practices of containment.

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[3]https://missingmigrants.iom.int/region/mediterranean?region_incident=All&route=3891&month=All&incident_date%5Bmin%5D=&incident_date%5Bmax%5D=

SMOM

Schengen Area
Other EU members and territories of Schengen countries outside the Schengen Area (freedom of movement in the Schengen Area)
Visa not required for short stays in the Schengen Area, usually 90 days in any 180-day period (EU 2018/1806 Annex II)
Visa required to enter the Schengen Area, and to transit some Schengen countries in some cases (EU 2018/1806 Annex I)
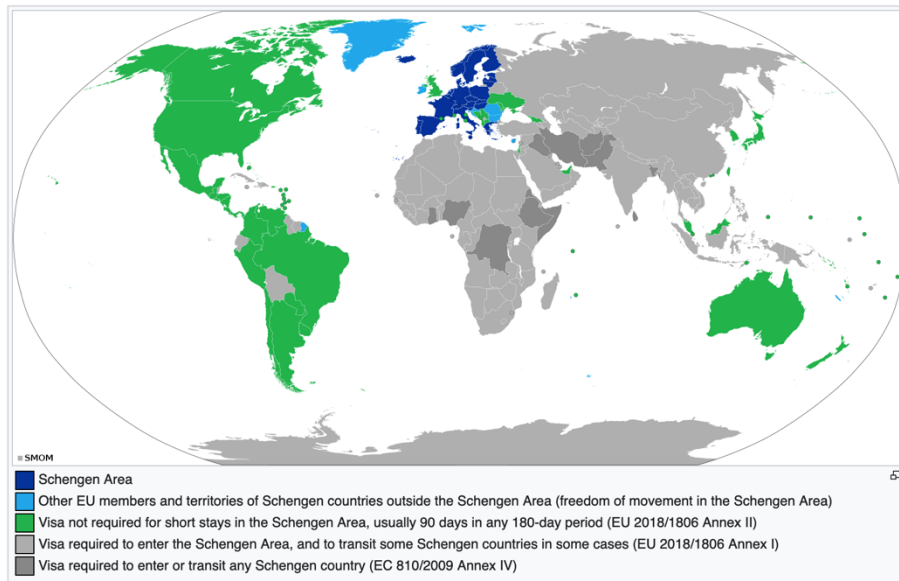Visa required to enter or transit any Schengen country (EC 810/2009 Annex IV)

Figure 5 Visa policy of the European Union

This onward movement is governed by a combination of the Schengen Visa regime that requires those wishing to enter the EU from those countries marked in grey in Figure 5 above to hold a valid visa alongside recognized international travel documents e.g. passports. Those without the correct documentation are prevented from accessing regular forms of transportation through the Strict Carrier's Liability which places financial penalties and the threat of operating license loss for those transport operators found to be bringing people into the Schengen zone without the necessary documentation. These restrictions are clearly intended to contain the problems of displacement outside of the European Union and in the Global South and, in this respect, are closely linked to the policies of externalization that dominate the EU's response to the challenge of irregular migration from the South (Moreno-Lax and Lemberg- Petersen, 2019). The lack of access to regular forms of transportation has resulted in a thriving illicit 'smuggling' economy as those from the grey countries shown in Figure 5 seek protection in the EU. The presence of this informal economy of travel shows how such containment measures through the traditional techniques of border control have failed to contain those in search of protection. However, traditional techniques of border control are also supplemented with additional illegal containment measures.

Pushbacks and refoulement

Alongside official instruments of border controls (visas and carrier's sanctions), containment is also made a reality through the *illegal* use of pushbacks. Importantly the freedom to not be forcibly returned to situations of violence, or non-refoulement, is the central pillar of protection in law. Yet, in practice we witness a very different picture at the borders of the EU. Here pushbacks have become a regular occurrence on the Aegean crossing from Turkey to Greece (Pallister-Wilkins et.al, 2021). These forced interdictions are illegal and prevent the displaced from being able to access their rights to asylum. However, alongside these violent and illegal measures that have resulted in death (HRW, 2020; Refugee Rights Europe, 2020), there are additional regular mechanisms enacted such as return protocols, and readmission agreements or "partnerships" in the EU that work to contain displacement outside of the EU and prevent people from accessing territory in which they can exercise their rights to asylum. All these actions *put the basic principle of non-refoulement into question*.

Internal mobility controls

Controls on the mobility of the displaced not only occur at the borders buy containment practices also occur within state territories. Across our research we see a range of controls on the mobility of the displaced that generate further protection gaps. In Lebanon these controls, e.g. police checkpoints, roadblocks and raids are ad hoc and form part of wider state security practices within which those without migration status are at particular risk in their everyday lives. In Turkey and Greece restrictions on mobility have been carefully designed and implemented as strategies of containment justified using logics of protecting the displaced from the harms of irregularized travel and existing politically induced protection gaps.

In Turkey an elaborate system of internal mobility controls, including police checkpoints, govern displaced people's movement within the country (İşleyen, 2018). These checkpoints, albeit implemented selectively and randomly, as they are designed to check migration status put those without status at particular risk and are part of a regime designed to geographically limit access to protection and thus govern mobility within Turkish state territory. The decision to limit access to basic needs to provinces of registration uses protection access as a form of

containment through sedentarization, keeping the displaced spatially disaggregated throughout Turkish territory and in some instances denying them access to urban centres such as Istanbul. In addition, this forced sedentarization through protection aims to prevent onward mobility to the EU as part of practices that aim to contain the displaced within the Global South.

This containment is unsuccessful, however, as displaced people continue to exercise their fundamental rights to mobility and struggle to make a future for themselves. As a result, processes of containment have been enacted within Greece, one of the primary EU entry points for displaced people. One of these practices is internal mobility controls, based on what is called the geographic restriction that aims to contain people on the Aegean islands while they await a decision on their migration status. This so called 'geographic restriction' formed part of the EU-Turkey statement. It was motivated to discourage movement from Turkey to Greece and was discursively framed as a way of protecting the displaced from the risks of EU border control induced irregularized travel. The geographic restriction's warehousing of the displaced on the Aegean islands and the turning of the islands into a buffer zone against irregular migration have been accompanied by failures to provide adequate facilities to ensure basic needs (Pallister-Wilkins et.al, 2021). These failures, and the harms they cause, have been meticulously documented by European and international humanitarian and human rights organizations (HRW, 2021; MSF, 2017a&b) and have faced condemnation from the Council of Europe (ECRE, 2020) and European parliamentarians. For example, Erik Marquadt, (MEP Verts/ALE) was clear in March 2021 that "living conditions for refugees on the Greek islands still do not meet minimum European standards." (European Parliament, 2021)

These failures to provide adequate, safe living standard have been responsible for deaths as people attempt to keep warm in unwinterized shelter (MSF, 2017b). These failures and the resulting in deadly protection gaps have also been used to motivate further containment measures, with newly constructed closed camps being presented as a solution to policy-made poor conditions.

Closed camps

Despite the successful implementation of the UNHCR's Estia program which in 2016 started offering accommodation to urban apartments to asylum seekers, since 2019 containment in

camps has been the core element of the conservative government's policy on protection. This became evident in the restructuring of RICs. "We have created a modern and safe new closed, controlled access center ... that will give back the lost dignity to people seeking international protection" said Greek Migration Minister Notis Mitarachis commenting on the newly built closed camp on Samos in September 2021 (DW, 2021). The closed camp on Samos is the first of five planned RICs on the Aegean islands intended to provide better facilities to displaced people. Residents of the camps are permitted to leave between 8.00-20.00, while those who have had their asylum application rejected are not permitted exit. The presence of a range of surveillance technologies including CCTV cameras and X-Ray machines and more traditional security technologies, such as barbed wire, have drawn condemnation from human rights groups, who claim these camps are more akin to jails, consolidating containment measures and increasing the dehumanization of displaced people.

Figure 6 New EU financed Zervou closed camp on Samos, Greece

As the medical humanitarian organization Médecins Sans Frontières (MSF) says "all of this to detain people whose only 'crime' is seeking safety and stability. In addition to the mass rejections of asylum applications, this new center is another symbol of the complete rejection of refugees and of their right to seek asylum" (MSF, 2021). MSF points to the harms fostered by the closed camps, reporting that their patients fear becoming prisoners and that their already vulnerable mental and physical well-being is being put at further risk. The institution of the new closed camps has seen the closure of other camp spaces. On Lesvos this has meant the closure,

first, in October 2020 of the Pikpa shelter for vulnerable asylum seekers and, later, in April 2021 of the Kara Tepe municipal run camp that was home to hundreds of people with greater vulnerabilities providing better facilities than Moria RIC, including winterised shelter and suitable sanitation (see Pallister-Wilkins et.al, 2021). With MSF condemning the move, saying Kara Tepe was "one of the few places that guaranteed security and dignity to about 400 vulnerable men, women and children" (InfoMigrants, 2021).

6. Conclusion

The recent Ukrainian displacement crisis has been highly didactic. It has clearly shown how the provision of protection is politically motivated and how protection for displaced populations can be achieved in ways designed to reduce harm and uphold human dignity in stark contrast to the practices we have encountered in our research.

Firstly, the Ukrainian displacement crisis shows that cross-border travel can be facilitated and kept out of the hands of organized criminal networks and risks to life avoided when the displaced are not subject to visa requirements. Indeed the 2022 Ukrainian displacement crisis is a clear example of the *disparities* in treatment and harms faced by the displaced dependent on their migration status *determined by country of origin*. Importantly Ukrainians are currently able to seek protection in the EU via regular means of transportation due to the existing Schengen visa waiver, meaning they can avoid irregularized transport and smuggling networks. This stands in glaring *contrast* to the, at least, 19 people who are known to have died in the final months of 2021 at the Poland-Belarus border after being denied entry to the EU.[4]

Additionally, the EU Council's decision to automatically grant Ukrainians and Ukrainian residents temporary protection "to alleviate pressure on national asylum systems" means that Ukrainians and Ukrainian residents granted temporary protection will "enjoy harmonized rights across the EU" including "residence, access to the labour market and housing, medical assistance, and access to education for children." (European Council, 2022)

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[4]https://www.infomigrants.net/en/post/38698/another-migrant-body-found-near-polandbelarus-border

Despite its temporary character, this is a welcome action by the European Council. However, it contrasts sharply with the policies used to govern displaced people in Greece where such access is sporadic, often dependent on non-governmental organizations and access for harmonized rights across the EU, rights to residence, and access to the labour market requires a positive asylum decision. This leaves us questioning what the difference is between those displaced from Syria, Iraq and Afghanistan (the nationalities making up the vast majority of displaced people in Greece, all who face conflict in their countries of origin) and Ukraine? Why is it that Ukrainians seeking protection from war in their home country are treated *differently* from Syrians, Iraqis, Afghans and all others fleeing conflicts?

For us the recent decision of the European Council highlights the centrality of political attitudes and political will in providing adequate protection in the first instance. In addition, it is a reminder that existing strategies of containment are by design not accident. Furthermore, it shows that failures to provide protection, like that extended to Ukrainians, are based on discriminatory political choices targeted at certain communities, but not others, based on their countries of origin. For us these are damaging differences as they undermine European normative legitimacy based on the respect for fundamental rights regardless of race, religion, or nationality and lead us to question the reliance on applying existing legal frameworks when the law can be applied in a discriminatory fashion.

As a result, we suggest that to provide a protection regime that minimizes harm, upholds human dignity and abolishes discriminatory containment policies the European Union could do worse than extend the practices of the current temporary protection regime afforded to Ukrainians to *all those displaced by war*. Anything else is an indictment of the Union and its espoused values of equality, freedom and justice.

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