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Reimagining Sovereignty to Protect Migrants

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Symposium: Managing Mixed Migration

Reimagining Sovereignty to Protect Migrants

Pooja R. Dadhania[†]

The concept of sovereignty in international law allows states to exclude and expel most categories of migrants, subject only to very narrow exceptions from international human rights and refugee law. Inverting the state sovereignty paradigm traditionally used to exclude migrants, this Essay reimagines sovereignty to protect migrants by drawing on the international law doctrine of state responsibility. The doctrine of state responsibility requires states to remedy the consequences of their actions in violation of international law. States that violate the sovereignty of other states, more specifically their territorial integrity or political independence, and thereby cause forced migration should have an obligation to provide remedies for it. Such remedies could include providing a safe haven for migrants. Exploring migration through the lens of state responsibility may provide new opportunities to expand protection for migrants.

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INTRODUCTION

International law sharply differentiates between categories of migrants, protecting only a small subset such as refugees. The concept of sovereignty in international law has long been used to justify the exclusion and expulsion of other migrants, especially people that a state deems unauthorized economic migrants. In this Essay, I invert the state sovereignty paradigm that states draw

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upon to justify closing their borders and excluding migrants. I reimagine sovereignty as inclusion. I use the concept of sovereignty to obligate a state to protect migrants who are forced to leave their homes as a result of that state's uninvited violation of the sovereignty of the migrants' state of origin. More specifically, I use the doctrine of state responsibility to establish a state's obligation to accept migrants who are traditionally classified as economic migrants and are forced to leave their homes as a result of that state's violation of the territorial integrity or political independence of the migrants' home state.

I first explore and challenge the concept of mixed migration and its categorization of migrants into two main categories—those who have a right to remain in a state under international law because their flight is perceived as involuntary, such as refugees, and those who do not because their flight is viewed broadly as voluntary, such as economic migrants. I next introduce the concept of sovereignty as a traditional justification for the exclusion of migrants and reframe it to encompass an obligation to protect a subset of migrants who are forced to flee when a state violates the sovereignty of their home state. I then sketch a framework using the Articles on Responsibility of States for Internationally Wrongful Acts (“Articles on State Responsibility” or “Articles”)¹ to require a state to accept responsibility for its violation of another state's sovereignty, including accepting migrants who flee their homes as a result.² I conclude with a discussion of the broader implications of the law of state responsibility in the context of migration.

I. EXPLORING AND CHALLENGING MIXED MIGRATION

Cross-border migratory flows comprise people of different legal statuses with wide-ranging reasons for their migration. Migrants can be classified into various legal and informal categories, including economic migrants, refugees, environmental or climate migrants, victims of trafficking, and smuggled individuals.³ The categories of migrants are fluid and overlapping, and migrants may fall into multiple categories at any given time. The term “mixed migration” refers to this overlapping and varied composition of cross-border population flows.⁴ The fact that some migrants in mixed migratory flows have a right to remain in a state and others do not creates a dichotomy between migrants.⁵

1. See Int'l Law Comm'n Rep. on the Work of Its Fifty-Third Session, Draft Articles on Responsibility of States for Internationally Wrongful Acts, U.N. Doc. A/56/10 (2001) [hereinafter “Articles on State Responsibility”].

2. I plan to further develop this idea and framework in future work.

3. See International Organization for Migration (IOM), *Challenges of Irregular Migration: Addressing Mixed Migration Flows*, MC/INF/294, ¶ 6 (2008), https://www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/work/shops/return_migration_challenges_120208/mixed_migration_flows.pdf (listing different types of migrants).

4. See Marina Sharpe, *Mixed Up: International Law and the Meaning(s) of “Mixed Migration,”* 37 REFUGEE SURV. Q. 116, 121 (2018) (using the term “mixed migration” to “describe[e] complex population flows involving more than one legal category of migrant”).

5. See generally REBECCA HAMLIN, *CROSSING: HOW WE LABEL AND REACT TO PEOPLE ON THE MOVE* 1-24 (2021) (critiquing the “migrant/refugee binary” as a “legal fiction” that ignores “the nuanced patterns of global migration and the lived experiences of border crossers”) (internal quotation omitted).

A state has near unfettered discretion to decide who is allowed to enter its territory and who to exclude, limited only by international human rights and refugee law.⁶ The narrow protections provided under international law are reserved for only a subset of migrants whose flight is viewed as involuntary or forced.⁷ In particular, migrants who meet the refugee definition and migrants who fear torture are distinct under international law because states must not return them to a state where they fear persecution or torture.⁸ The definitional boundaries of these categories of migrants are strictly circumscribed. A “refugee,” for example, is defined narrowly under international law as a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.”⁹

The term “economic migrant,” by contrast, is often used as a catchall category for anyone who does not qualify for protection under international law. The United Nations High Commissioner for Refugees has defined economic migrants as “[p]ersons who leave their countries of origin purely for economic reasons not in any way related to the refugee definition, or in order to seek material improvements in their livelihood.”¹⁰ Economic migrants generally have

6. See *infra* notes 13, 16-17 and accompanying text (analyzing a state’s right to exclude migrants under principles of internal sovereignty). See generally William J. Aceves, *Relative Normativity: Challenging the Sovereignty Norm Through Human Rights Litigation*, 25 HASTINGS INT’L & COMP. L. REV. 261, 264-69 (2002) (analyzing developments in international human rights law that have “challenged the primacy of the sovereignty norm”).

7. The right to protection under international law does not encompass all migrants whose flight is involuntary or forced. For example, it excludes migrants fleeing their homes due to climate change. See United Nations High Comm’r for Refugees, *Providing International Protection Including Through Complementary Forms of Protection*, U.N. Doc. EC/55/SC/CRP.16, ¶10 (2005), <https://www.refworld.org/docid/47fd49d.html> (“Individuals who cannot return to their country of origin because of natural or ecological disasters do not generally fall under the protection regime of the 1951 [Refugee] Convention.”). See generally Wyatt Sassman & Danielle Jefferis, *Beyond Emissions: Migration, Prisons, and the Green New Deal*, 51 ENVIRONMENTAL L. 161, 182-84 (2021) (examining “sources [that] confirm climate change’s potential to increase migration and displacement of peoples around the world”).

8. Convention Relating to the Status of Refugees [hereinafter “Refugee Convention”] art. 33(1), July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 (providing that a contracting state may not “expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”); Protocol Relating to the Status of Refugees art. 1, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, June 26, 1987, 1465 U.N.T.S. 85 (“No State Party shall expel, return (*refouler*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”).

9. Refugee Convention, *supra* note 8, art. 1. In common parlance, the term “refugee” often is used more broadly than its international law definition, including to describe any migrant who flees their home for climate-related reasons and in response to generalized civil strife. See generally Andrew E. Shacknové, *Who Is a Refugee?*, 95 ETHICS 274 (1985). I use the term “refugee” as it is used in international law: to describe individuals who fall within the definition in the Refugee Convention.

10. U.N. High Comm’r for Refugees, MASTER GLOSSARY OF TERMS REV. 1, 14 (2006). The United Nations High Commissioner for Refugee has defined economic migrants and refugees as mutually exclusive categories. However, individuals can migrate for a variety of overlapping reasons, including fleeing persecution as well as improving their livelihoods. Despite the overlapping nature of these categories, for clarity, I use the term “economic migrant” to refer to individuals who do not qualify for protection under international law.

no right under international law to remain in other states.¹¹

So-called economic migrants leave their homes to improve their livelihoods for a variety of reasons, which may not in fact all be economic or may have a more attenuated relationship to economic motives. In addition to seeking employment opportunities, for example, some migrants pursue enhanced educational opportunities abroad. Others leave due to conditions in their home state that, though egregious, may not bring the migrants within the purview of the narrowly crafted refugee definition, such as generalized conditions of armed conflict, political instability, climate change, and economic collapse. These conditions may blend safety concerns with the quest for improved opportunities. International law does not differentiate between these reasons and does not mandate protection. Due to this lack of internationally prescribed protection, there is a problematic perception that the movement of economic migrants is voluntary, unlike the forced migration of refugees.

This perception oversimplifies reality, as does international law. Even if migrants do not meet the narrow definition of refugee, their flight may nevertheless be forced. I argue that international law should more closely scrutinize the motivations of so-called economic migrants. Migrants who leave their homes due to instability resulting from a violation of their home state's sovereignty should constitute a category of migrants that is specially protected under international law.

II. SHIFTING THE PARADIGM OF SOVEREIGNTY TOWARDS INCLUSION

Traditionally, international law allows states to exclude most migrants, including unauthorized economic migrants, as a prerogative of their sovereignty. Sovereignty, or supreme authority within a territory, is a central tenet of the international system.¹² There are two dimensions of sovereignty, internal and external. Internal sovereignty refers to a state's control within its own territory.¹³ External sovereignty, on the other hand, "connotes equality of status *between* the states—the distinct and separate entities—which make up our international society."¹⁴ External sovereignty refers to the "exclusion of external sources of

11. *Id.* at 14 ("Economic migrants do not fall within the criteria for refugee status and are therefore not entitled to benefit from international protection as refugees.")

12. See Stephen D. Krasner, *Abiding Sovereignty*, 22 INT'L POL. SCI. REV. 229, 230 (2001) ("Sovereign states are the building blocks, the basic actors, for the modern state system."); Hans J. Morgenthau, *The Problem of Sovereignty Reconsidered*, 48 COLUM. L. REV. 341, 341 (1948) (defining sovereignty as "supreme power over a certain territory"). The term "sovereignty" in international law has many meanings. See Krasner, *supra*, at 231-33 (analyzing four different contemporary usages of the term "sovereignty"). See generally Aceves, *supra* note 5, at 261-63 (examining the history of the term "sovereignty" in international law).

13. Geoffrey L. Goodwin, *The Erosion of External Sovereignty?*, 9 GOVT. & OPPOSITION 61, 61 (1974) (explaining that internal sovereignty "connotes the exercise of supreme authority by those states within their individual territorial boundaries"). Internal sovereignty includes both interdependence sovereignty and domestic sovereignty. Interdependence sovereignty refers to a state's ability to regulate its borders. See Krasner, *supra* note 12, at 231 (explaining that "[i]nterdependence sovereignty refers to the ability of states to control movement across their borders," including movement of people, goods, and ideas). Domestic sovereignty, which can affect interdependence sovereignty, "refers to authority structures within states and the ability of these structures to effectively regulate behavior." *Id.* at 231-32.

14. Goodwin, *supra* note 13, at 61; see also Krasner, *supra* note 12, at 230 ("Sovereign states

authority both *de jure* and *de facto*.”¹⁵

An absolutist conception of internal sovereignty justifies a state’s exclusive control over who lawfully enters and stays within its territory.¹⁶ Internal sovereignty is not absolute in practice and is subject to narrow exceptions from international human rights and refugee law.¹⁷ These exceptions do not extend to economic migrants, however, and states may turn them away or expel them from their territories as a function of their sovereignty.

But what if the concept of sovereignty could support an obligation to accept migrants, in addition to the authority to exclude them?¹⁸ I contend that external sovereignty can support such an obligation in situations where states violate the external sovereignty of other states.

The principle of non-interference is a central tenet of the international system and a necessary implication of external sovereignty.¹⁹ The United Nations Charter protects external sovereignty by admonishing member states against using force or threatening to do so against the territorial integrity or political independence of other states.²⁰ A violation of the external sovereignty of a state constitutes a serious breach of international law and can have enduring negative effects.²¹ Where states breach this fundamental precept of international law, they should take responsibility for the consequences of their actions, including harms to the citizenry of the injured state. Accordingly, I refer to states

are territorial units with juridical independence; they are not formally subject to some external authority. Sovereign states also have *de facto* autonomy.”).

15. Krasner, *supra* note 12, at 232.

16. See EMER DE Vattel, *THE LAW OF NATIONS; OR, PRINCIPLES OF THE LAW OF NATURE, APPLIED TO THE CONDUCT AND AFFAIRS OF NATIONS AND SOVEREIGNS* 169-70 (Joseph Chitty trans., 1867) (“The sovereign may forbid the entrance of his territory to foreigners in general or in particular cases, or to certain persons or for certain particular purposes.”); see also *Ye v. Minister of Immigration* (2009) 2 NZLR 596, ¶ 116 (CA) (“There is consensus at international law . . . that the right to control borders is a fundamental incident of the sovereignty of a state.”); *R. v. Sec’y of State for the Home Department* [2002] UKHL 41 (Lord Slynn); *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892) (“It is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.”).

17. See *supra* notes 7-9 and accompanying text (describing exceptions to the state’s power to exclude migrants under international human rights and refugee law).

18. In a different context, Professor Tendayi Achiume also uses sovereignty to support migration rights. She articulates a new theory of sovereignty to justify the migration of former colonial subjects to former colonial powers. See E. Tendayi Achiume, *Migration as Decolonization*, 71 STAN. L. REV. 1509, 1520-21 (2019) (presenting a “significant reconceptualization of sovereignty as interconnection . . . specifically, colonial and neocolonial interconnection” to justify the entry of economic migrants into former colonial powers).

19. See Krasner, *supra* note 12, at 230 (“An implication of *de facto* autonomy is the admonition that states should not intervene in each other’s internal affairs.”).

20. U.N. Charter art. 2, ¶ 4; see also Declaration on Principles of International Law Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, G.A. Res. 2625, U.N. Doc. A/RES/2625(XXV) (Oct. 24, 1970) (“The territorial integrity and political independence of the State are inviolable.”).

21. See United Nations, International Law Commission, DRAFT ARTICLES ON RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS, WITH COMMENTARIES 87 (2001), https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf [hereinafter “Commentaries”] (“Individual breaches of international law can vary across a wide spectrum from the comparatively trivial or minor up to cases which imperil the survival of communities and peoples, the territorial integrity and political independence of States and the environment of whole regions.”).

as “responsible states” and “injured states.”

One potential consequence of the breach of another state’s sovereignty is political and economic instability. There are many examples in which responsible states’ violations of sovereignty have led to long-term political and economic instability in the injured states. The consequences of U.S. military action in Afghanistan, as well as the aftermath of U.S. military aid to replace leftist leaders in Guatemala and Nicaragua during the Cold War, are just a few examples.²² These injured states are still reeling from the political and economic ramifications of the United States’ actions, and their citizens continue to flee. I coin the term “state-impacted migrants” to describe this subset of migrants who are compelled to leave their homes as a result of another state’s violation of international law.²³

III. FRAMEWORK FOR PROTECTING STATE-IMPACTED MIGRANTS UNDER THE ARTICLES ON STATE RESPONSIBILITY

A state that violates the sovereignty of another state should have a responsibility to accept state-impacted migrants who are forced to flee as a result. The Articles on State Responsibility, which provide a framework for requiring states to take responsibility for their internationally wrongful acts, can support such an obligation.

The International Law Commission, a body established by the United Nations General Assembly, finalized the Articles in 2001. Many of the principles enshrined in the Articles are reflective of customary international law.²⁴ The Articles outline generally applicable secondary rules of international responsibility that provide the consequences of a violation of a primary rule of international law. An injured state can invoke the Articles when another state commits an internationally wrongful act to require that state to rectify the harm caused by its actions.²⁵ Conduct of a state constitutes an internationally wrongful act when it is attributable to the state under international law and is a breach of

22. See generally John Quigley, *The Afghanistan War and Self-Defense*, 37 VAL. U. L. REV. 541 (2003) (questioning the validity of the United States’ claim of self-defense to justify armed action in Afghanistan); Laura Moye, *The United States Intervention in Guatemala*, 73 INT’L SOC. SCI. REV. 44 (1998) (analyzing the United States-supported coup in 1954 to overthrow the elected Guatemalan government); Kenneth Roberts, *Bullying and Bargaining: The United States, Nicaragua, and Conflict Resolution in Central America*, 15 INT’L SECURITY 67 (1990) (examining U.S. military aid and action in Nicaragua).

23. Generalized civil strife does not create a viable claim for refugee status in the absence of targeted persecution. See Hugo Storey, *Armed Conflict in Asylum Law: The “War-Flaw”*, 31 REFUGEE SUR. Q. 1, 4 (2012) (quoting 1951 Conference of Plenipotentiaries Delegate Neremiah Robinson as stating that the Refugee Convention did not cover individuals ‘fleeing from hostilities unless they were otherwise covered by Art[icle] 1 of the Refugee Convention’) (internal quotation omitted).

24. See JAMES CRAWFORD, *STATE RESPONSIBILITY: THE GENERAL PART* 90, 92 (2013) (finding that international and national tribunals cited the Articles over 150 times from 2001 to 2013 and explaining that “the position of the Articles as part of the fabric of general international law will continue to be consolidated and refined through their application by international courts and tribunals”).

25. Articles on State Responsibility, *supra* note 1, art. 1 (“Every internationally wrongful act of a State entails the international responsibility of that State.”); see also Commentaries, *supra* note 21, at 31 (“The emphasis [of the Articles] is on the secondary rules of State responsibility: that is to say, the general conditions under international law for the State to be considered responsible for wrongful actions or omissions, and the legal consequences which flow therefrom”).

an international obligation of the state.²⁶

I use the Articles on State Responsibility as a vehicle from which to derive a responsible state's obligation to remedy the consequences of its internationally wrongful acts that that cause forced migration. The primary violation of international law for which the Articles can be invoked is the violation of the external sovereignty of another state. The violation of another state's external sovereignty is a clear breach of one of the most fundamental norms of international law. The United Nations Charter establishes the primacy of external sovereignty and requires states to respect the political independence and territorial integrity of other states.²⁷

When a state commits an internationally wrongful act, the Articles provide a set of legal consequences, including cessation of the wrongful act, reparation for the injury, and satisfaction.²⁸ In cases where one state's violation of the sovereignty of another state triggers adverse effects in the injured state, the responsible state is legally obligated to provide a remedy for the harms of those adverse effects.²⁹

The Articles require a responsible state to make "full reparation for the injury caused by the internationally wrongful act."³⁰ Reparation by the state "must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed."³¹ Injury, as contemplated by the Articles, refers not only to material damage, but also moral damage, to a state and its nationals.³² Moral damage to a state's nationals can include "individual pain and suffering, loss of loved ones or the personal affront associated with an intrusion into one's home or private life."³³

In the case of a violation of sovereignty, full reparation for material and moral damage to an injured state's nationals may not be possible with only monetary remedies. Giving lawful status in the responsible state to state-impacted migrants may be a more effective remedy.³⁴ Moreover, it is consistent with the primary form of reparation contemplated by the Articles, restitution,

26. Articles on State Responsibility, *supra* note 1, art. 2; *see also* United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), Judgment, 1980 I.C.J. 3, ¶ 56. International obligations encompass both treaty and nontreaty obligations. Commentaries, *supra* note 21, at 35.

27. U.N. Charter art. 2, ¶ 4.

28. Articles on State Responsibility, *supra* note 1, arts. 28-41.

29. *Id.* at arts. 28, 30-31.

30. *Id.* at art. 31.

31. Factory at Chorzów (Germ. v. Pol.), Judgment, 1928 P.C.I.J. (ser. A) No. 17, at 47 (Sept. 13).

32. *See* Articles on State Responsibility, *supra* note 1, art. 31, § 5; *see also* CRAWFORD, *supra* note 24, at 486-87.

33. CRAWFORD, *supra* note 24, at 487.

34. Giving state-impacted migrants lawful status in the responsible state will not always be an effective remedy. For example, there may be instances when nationals of the injured state do not want to immigrate to the responsible state due to lack of economic opportunities there. Additionally, it may be inappropriate to propose migration if the responsible state has committed human rights abuses against nationals of the injured state or if the responsible state started a war of aggression with the injured state. This proposal is most effective in instances involving responsible states that are more economically developed and are not hostile towards the injured states' nationals.

which can take many forms.³⁵ The purpose of restitution is to “re-establish the situation which existed before the wrongful act was committed.”³⁶ Monetary damages may not suffice to reestablish the situation for state-impacted migrants that existed before the breach of sovereignty if the responsible state’s actions caused long-lasting political and economic instability in the injured state. To best restore state-impacted migrants to the position of safety and economic security they enjoyed before the violation of sovereignty, the responsible state may be required to accept these migrants.

Using the Articles as a framework to protect state-impacted migrants is not without challenges. For one, states would need to establish a causal link between the internationally wrongful act and the flight of state-impacted migrants, especially when some time has elapsed since the wrongful act and when there are multiple factors contributing to the flight.³⁷ A second potential challenge involves standing: the Articles on State Responsibility are state-centric and generally contemplate invocation by states rather than individuals.³⁸ While some states might be willing to facilitate the emigration of their citizens, as Vietnam and Mexico have done,³⁹ other states may be reluctant to do so for a host of reasons including potential concerns about losing skilled workers or harming relations with the responsible state.⁴⁰ A final set of challenges involves logistics.

35. Commentaries, *supra* note 21, at 97-98 (“The term ‘restitution’ in article 35 . . . has a broad meaning, encompassing any action that needs to be taken by the responsible State to restore the situation resulting from its internationally wrongful act.”). The Articles also allow for compensation and satisfaction. Articles, *supra* note 1, art. 34.

36. Articles on State Responsibility, *supra* note 1, art. 35.

37. See Commentaries, *supra* note 21, at 92-93 (“[T]he subject matter of reparation is, globally, the injury resulting from and ascribable to the wrongful act, rather than any and all consequences flowing from an internationally wrongful act.”); see also CRAWFORD, *supra* note 2424, at 492-93, 495-98 (discussing the causation requirement for reparation for injury caused by an internationally wrongful act as well as concurrent causes of damage).

38. See Commentaries, *supra* note 21, at 95 (“The [A]rticles do not deal with the possibility of the invocation of responsibility by persons or entities other than States It will be a matter for the particular primary rule to determine whether and to what extent persons or entities other than States are entitled to invoke responsibility on their own account.”). First and foremost, an injured state can invoke responsibility. Articles on State Responsibility, *supra* note 1, arts. 42, 46; see also Commentaries, *supra* note 21, at 116-17 (“Central to the invocation of responsibility is the concept of the injured State. . . . Article 42 provides that the implementation of State responsibility is in the first place an entitlement of the ‘injured State.’”). Other states can invoke responsibility in limited circumstances, including where the responsible state breached an obligation that it owed to the international community as a whole, such as a breach of a peremptory norm of international law. Articles on State Responsibility, *supra* note 1, art. 48; see Brigitte Stern, *A Plea for Reconstruction of International Responsibility* 95-96, in INTERNATIONAL RESPONSIBILITY TODAY: ESSAYS IN MEMORY OF OSCAR SCHACHTER (Maurizio Ragazzi ed., 2005) (“This dualism concerning wrongful acts leads to two different systems for invoking responsibility, the first being open to the injured State, whereas the second may be used by States other than the injured State.”).

39. For example, Vietnam agreed to facilitate the departure of refugees in 1979 through the Orderly Departure Programme. See U.N. High Comm’r for Refugees, *Flight from Indochina*, in THE STATE OF THE WORLD’S REFUGEES 2000: FIFTY YEARS OF HUMANITARIAN ACTION 79, 86 (2000), <https://www.unhcr.org/3ebf9bad0.pdf>. The Mexican consulate provides funding to U.S. nonprofit organizations to assist Mexican nationals with immigration processing in the United States. See Catholic Charities of the Diocese of Raleigh, *Mexican Consulate Awards Funding to Catholic Charities for Immigration Work* (2017), <https://www.catholiccharitiesraleigh.org/mexican-consulate-awards-funding-to-catholic-charities-for-immigration-work/>.

40. See Dhananjayan Sriskandarajah, Migration Policy Institute, *Reassessing the Impacts of Brain Drain on Developing Countries* (2005), <https://www.migrationpolicy.org/article/reassessing->

As a policy matter, responsible states may be concerned that accepting state-impacted migrants will open the so-called floodgates and overwhelm them.⁴¹ Additionally, principled criteria for distinguishing between state-impacted migrants and other migrants from the injured state would be needed. Despite these potential challenges, the doctrine of state responsibility nevertheless provides a creative avenue to rethink the protection of economic migrants and more broadly to reconceptualize responsibility for violations of sovereignty.

CONCLUSION

The strict dichotomy between refugees, whose migration is protected under international law, and economic migrants, whose migration is viewed as voluntary and thus not protected, is insufficient to capture the varied motivations that prompt human movement. Among those who migrate are “state-impacted migrants,” whose flight should not be construed as voluntary and who warrant protection under international law. I reimagine the concept of sovereignty, traditionally used to exclude migrants, to instead support the migration of state-impacted migrants. The Articles on State Responsibility may require states to remedy the adverse consequences of violations of the sovereignty of other states, which can include the responsible state providing a safe haven for state-impacted migrants who are compelled to leave their homes as a result of the responsible state’s actions.

Beyond violations of sovereignty, actions of states can have broad ramifications in other states in an increasingly interconnected international system. State responsibility can extend to a broad range of activities that cause migration, including actions affecting the environment and states’ economies. The law of state responsibility thus can be a vehicle for more expansive protection for migrants, including those forced to flee due to climate change and economic imperialism caused by a state’s violation of international law. At a time when global political will to craft new treaties to protect migrants remains low and exclusionary rhetoric is the norm, it becomes more important to use existing sources of international law to protect migrants more expansively.⁴² The Articles on State Responsibility are one such option and may afford protection to so-called economic migrants.

impacts-brain-drain-developing-countries.

41. Many receiving states erroneously perceive migration as causing a net harm to their economies. In actuality, migration can result in long-term net positive benefits for many receiving states. See, e.g., Jonathan Portes, *The Economics of Migration*, 18 CONTEXTS 12 (2019); Uri Dadush & Mona Niebuhr, “The Economic Impact of Forced Migration,” CARNEGIE ENDOWMENT FOR INT’L PEACE (2016), <https://carnegieendowment.org/2016/04/22/economic-impact-of-forced-migration-pub-63421>.

42. See, e.g., BBC, *Covid: Biden to Continue Trump’s Title 42 Migration Expulsions* (Aug. 3, 2021), <https://www.bbc.com/news/world-us-canada-58077311> (“I can say quite clearly: don’t come over . . . Don’t leave your town or community.”) (quoting U.S. President Joe Biden); Andrew Byrne, Jeevan Vasagar & Alex Barker, *East-West Tensions Break Out Over Call to Share Migrant Burden*, FINANCIAL TIMES (Aug. 31, 2015), <https://www.ft.com/content/ef5179bc-4ff7-11e5-8642-453585f2cfd#axzz3kSi3wjWA> (“Ninety-five per cent of these people are economic migrants . . . We will not assist this foolish idea of accepting anybody regardless of whether or not they are economic migrants.”) (quoting Slovak Prime Minister Robert Fico).