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Refugees are no merchandise

by Carolus Grütters

Abstract: *I rifugiati non sono merce* – The paper focuses on refugees starting from Schuck’s proposal to create a “market for refugees in Europe”. Firstly, it analyses the framing of refugees as pollution. Secondly, it underlines that the terms refugees, migrants, and asylum seeker are frequently used interchangeably. Finally, the Author dwells on the problematic aspects regarding the refugees quota system.

Keywords: Refugees; Asylum seeker; Migrants; Quota system; European Union.

Peter H. Schuck wrote an intriguing opinion in the New York Times (9 June 2015) on the issue of refugees trying – and too often dying – to get across Europe’s Mediterranean. He signals a ‘seemingly unending flow of migrants’ into Europe as a problem and suggests a solution: ‘create (and regulate) a market in which states can buy and sell (...) protection quota’. The foreseeable objection that refugees are no commodities is rebutted suggesting that ‘trading protects more refugees than the status quo does’, followed by the comparison: ‘just as environmentalists now endorse the trading of pollution rights’.

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I had to read it a second time, but it was there: the suggestion that refugees are like pollution. I strongly object. In this response I would like to comment on a few issues in Schuck’s Opinion. Firstly, the framing of refugees as pollution. Secondly, the indiscriminate use of related but different concepts like refugees, migrants, and asylum seekers. Thirdly and more extensive, a comment on the idea of a market regulating protection quota.

Firstly, the framing. According to Webster’s dictionary pollution means: the action (or the state of) making impure or to contaminate with man-made waste. Using this term frames the discussion on refugees in a corner they do not belong. Refugees are victims of persecution, which makes them as such vulnerable. And although refugees tend to be on the run, it does not mean that they are to be considered as disposable or contamination. In doing so refugees are devaluated to something less than human beings; something you can bargain about. Instead, we should be talking about people who are fleeing home knocking on doors abroad asking for protection. In that context, an appropriate framing might have been First Aid Planning or even more simple, help instead of waste.

Secondly, the used terminology. Schuck’s argument is about the protection of refugees. In that context it is not very helpful to switch – as Schuck does – rather seamless between different concepts as refugees, migrants, and asylum seekers. This

becomes rather problematic in his introduction in which he states: ‘the question is not whether to let the genuine refugees in, but where they should go’. Apparently the argument is about the second half of the statement: ‘where they should go’. However, he starts with ‘genuine’ refugees, as if there are different types of refugees: the genuine ones and the fake ones. To be clear, a refugee is a person who has well-founded fear of persecution. Whether he is recognized as such is independent of being one. If a person asks for protection he is labelled as an asylum seeker until his application has been assessed. After assessment such a person is no longer an asylum seeker but a migrant who is authorized to stay or not.

Thirdly, the market issue. This is a concept I would like to make several remarks on. The first is that the problem of (the existence of) refugees can only be solved if the conflicts that create them are resolved. That might sound like a cheap answer, but quite some discussions only tend to label refugees as a problem, which should be evaded or – as Schuck now proposes – sold to the highest bidder. The comparison with ‘cap-and-trade-schemes’ (trading emission rights) is therefore deceptive. It suggests that we should take it for granted that our society generates conflicts creating refugees: annoying but necessary. Whereas pollution might be seen as an issue that can be captured in quota, refugees can not. They are neither abstract nor necessary, but foremost victims who should be protected. Reasoning otherwise comes close to accepting refugees as collateral damage.

Another problem with the trading emission rights comparison is that emission rights are meant to stimulate manufacturers to shift to cleaner types of production. The cleaner the production, the less emission rights have to be bought, which should compensate for the costs of a cleaner or more sustainable production process. In a perfect situation emission rights would then stimulate this type of behaviour of manufacturers meaning that the ultimate goal of such a market would be a non-polluting production process and at the same time a market (of emission rights) that becomes redundant. Although this type of effect of a market is – in theory – justifiable, the prices of these emission rights are far too low in practice. The *euobserver* mentioned in 2016: ‘Polluting is simply too cheap to work as an incentive’ (Peter Teffer, ‘EU carbon credits drop below € 6’, in: *euobserver* 29 January 2016). Despite this practical problem, the comparison between emission rights and protection rights is problematic because one can hardly argue that the trading of protection rights will – in the end – stop conflicts that create refugees.

But let’s have a closer look at Schuck’s proposal. He starts with a quota system in which a particular formula calculates each EU Member State’s fair share. Interestingly, such a system has already been tried. In 2015, the European Commission agreed about the relocation of 160,000 people to other Member States. Two years later in 2017, the Commission reported that some 12,000 people had been relocated, i.e. 7.5% of the original task. Apparently, this is not working. The question ‘why’ relates to at least three aspects.

The first is that the formula used by the European Commission to calculate the quota is not transparent but flawed. Although specified as objective, the list of quota based on this formula is unexplainable if one does not ‘throw in’ some political factors or opinions. Cyprus, for instance, which has some 1.2 million inhabitants is supposed to relocate 0.4% of the total number whereas Malta (also located as an island within the Mediterranean with only a third of Cyprus’ population and less than half of the GDP per capita compared to Cyprus) is supposed to relocate twice as much. Thus, Malta

exceeds Cyprus by a factor of six, which is not explained by other objective circumstances.

A second problem with this quota system is that, even if one agrees on the actual size, there is a difference between obligations agreed upon and the actual fulfilment of these obligations. The practice for example of donor conferences trying to collect financial support for international aid proves time and again that you can put anything on paper, paper won't blush.

A third problematic aspect of a quota system – based on a fair distribution and a practice in which each country takes its share – is concerned with the difference between the receiving countries, i.e. the Member States of the European Union. This is relevant because, currently, refugees who are allowed to stay in one country are not allowed to move to another country. Meaning, that starting from the moment refugees are allotted to a country, these refugees have a restricted freedom of movement in terms of the places they can move to and settle. However, the whole idea of the European Union is based on the idea of free movement, and the introduction of restrictions of movement has to be verifiable and realistic. Paradoxically, if these settlement restrictions would not stand, the whole idea of using quota would be pointless. So, the question rises whether countries would simply accept quota knowing that a substantial part will move on to a limited number of countries within the EU.

Finally, the market mechanism itself. Let's suppose that the aforementioned objections have been resolved and the only issue left on the table is about the market itself. Schuck suggests that a market will enhance the protection of refugees. I don't see why and how. Suppose that we have a list of quota and that for one reason or another country A wants to accept *more* refugees. Country A can only do so by asking on this market whether there is another country B that wants to reduce its share for whatever reason. Normally, if you want something on a market you offer a certain price to the seller hoping that this offer will be accepted. On this protection rights market, however, country A can only do 'more' if country B is willing to pay for that. So, the incentive to protect more is primarily depending on the resistance of other countries not to protect. Thus, such a market can only redistribute to a certain extent those already admitted; it cannot and will not increase to total number of protected refugees.

And how about the other way around? What happens if country B wants to get rid of (a part of) its share of obligations to protect? Country B cannot offer on this market the protection *rights* to country A. No, country B can only try to outsource its obligations to country A. Such payments already take place – as Schuck rightly states. However, Schuck mentions this within the context that it is successful. But it is not. Paying other countries to take care of refugees means in practice the simple prevention of entry of these refugees. The message then is: keep these people out of my country and I will pay you for that. This, however, has nothing to do with the *protection* of refugees but only with *excluding* people.

In the jargon of policy makers this is called migration management, a euphemism for closing the borders. Australia is doing that; it pays countries like Indonesia considerable amounts of money to prevent refugees to set foot on Australian soil. However, Indonesia has not ratified the Refugee Convention (or its Protocols), which means that the concept of a refugee does not exist in the legal perspective of Indonesia and these people are not protected but only labelled as irregular migrants.

Or take Turkey, which has been paid by the European Union to ‘keep’ the people who would otherwise try to get to Europe. Yet, Turkey only recognizes refugees if they come from Europe itself, not from countries outside Europe. This means that refugees are excluded and not protected.

So we have to draw the conclusion that a market for refugees as meant by Schuck in order to increase the number of protected refugees won’t work. The only thing that will happen – if not already happens – is that certain countries will pay for *not* having to comply with the obligations imposed by the Refugee Treaty. Subsequently, the number of refugees that will be kept outside safe areas, i.e. European Union, will increase whereas the actual number of protected refugees will decrease. So, adding a market element, as Schuck suggests, will make things worse for refugees – not better.