



Special International Zones in Practice and Theory

by

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Abstract

France had a problem. Foreign nationals had flown into the Roissy-Charles de Gaulle and claimed the right to stay as refugees seeking asylum. Wary of mere economic migrants, France processed the claims without letting the supposed refugees into . . . France. How? By keeping them in the airport's *international transit zone*—the area between the exit doors of airplanes arriving from abroad and the far side of customs and immigration clearance. This split border allowed France to summarily process and (typically) deport the foreigners while keeping them outside the country's territory for asylum seekers. Still, they came. Detainees got seriously ill. France created *floating* international zones to take them to a local hospital, a portion of which became a *temporary* international zone. These French innovations inspired Hungarian *transit zones*, Australian *migration zones*, and similar fractured borders across the globe. Legally speaking, these resemble *airport transit zones*—areas where foreign travelers can catch connecting flights without going through local border control—and *duty free areas* they might visit. Each of these species of quasi-sovereignty fall within a more general genus, the special international zone ("SIZ"): *An area that its host nation state places outside of its territory for the purpose of some local laws, leaving other local laws and applicable international obligations in force*. Special international zones appear throughout history, including today's, in great number and variety. SIZs continue to spread, grow, and adapt. This paper introduces SIZs as objects worthy of study on many counts, but most particularly because they offer nation states a way to unbundle their territorial services.

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Special International Zones in Practice and Theory

Tom W. Bell¹

Introduction: Nation States by Degrees

In 1992, at the Roissy-Charles de Gaulle Airport outside Paris, the French Republic had a problem. Foreign nationals had flown into the airport and tried to stay as refugees seeking asylum. The government regarded the claims as bogus and the supposed refugees as mere economic migrants attempting to exploit a loophole in international law. Unwilling to have unwanted foreigners imposed upon it, France came up with a clever solution: It would process the supposed refugee's claims without letting them into the country.²

How did France work this bit of legal legerdemain? By keeping the foreigners within de Gaulle's *international transit zone*—the area between the exit doors of airplanes arriving from abroad and the far side of customs and immigration clearance, beyond which lies France proper.³ Exploiting this bubble in its border allowed France to summarily process and deport most of the supposed refugees while keeping them outside of the national territory for purposes of claiming asylum.⁴ *Voilà.*

As the days dragged on, the French built accommodations for the foreigners within

the airport's international zone, forcing them to choose between staying within its confines or leaving the country entirely. That kept them safely outside of France's territory for immigration purposes. Eventually, though, the foreigners suffered medical conditions requiring hospital treatment. So the French designated certain vehicles as *floating international zones* and used them to transport the patients to a local hospital, relevant parts of which they also designated as *temporary international zones*.⁵ This entire archipelago of fixed, floating, and temporary zones, specially created to allow foreign nationals to stay within the geographic borders of France but outside of its immigration or asylum territory, lawmakers called *zones d'attente pour personnes en instance* ("ZAPI" or "*zones d'attente*").⁶

This French innovation, turning international transit zones into extra-territorial pre-asylum processing areas, proved both popular and controversial. It rapidly spread to other countries, mutating in the process, giving rise to Hungarian *transit zones*, Australian *migration zones* or *excised territory*, and similar devices in countries across the globe, under names such as *reception area*, *transit area*, or *detention area*.⁷ Faced with similar problems at sea, the United States declared its territorial waters outside the reach of national and international laws applicable to

¹ Professor, Chapman University Fowler School of Law; Academic Director, ICG.. Copyright 2018 Tom W. Bell.

² See TUGBA BASARAN, SECURITY, LAW AND BORDERS: AT THE LIMITS OF LIBERTY 3 (2010).

³ Code de l'entrée et du séjour des étrangers et du droit d'asile [Code of entry and stay of foreigners and of the right of asylum] art. L221-2 (Fr.) [hereinafter CESEDA art. L221-2].

⁴ See BASARAN, *supra* note 1, at 50–64.

⁵ See *id.* at 59.

⁶ See JAMES C. HATHAWAY, THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW 298 (2005); F. Julien-Lafferrière, *Le traitement des demandeurs d'Asile en Zone d'attente entre théorie et réalité*, 1238 HOMME & MIGRATIONS 32, 32–36 (2002).

⁷ Boldizsár Nagy, *Hungarian Asylum Law and Policy in 2015–2016: Securization Instead of Loyal Cooperation*, 17 GERMAN L.J. 1033, 1048–49 (2016) (discussing migration zones); Tugba Basaran, *Legal Borders in Europe: The Waiting Zone*, in A THREAT AGAINST EUROPE?: SECURITY, MIGRATION AND INTEGRATION 63, 64 (J. Peter Burgess & Serge Gutwirth eds., 2011) (discussing other zones).



asylum-seekers.⁸ Some countries have even declared the decks of their ships extraterritorial zones, allowing them to rescue and return migrants without affording a venue for asylum claims.⁹

Commentators have criticized extraterritorial zones as fictional, illegal, and illiberal.

The advent of this new species of institution alarmed commentators, who criticized the supposedly extraterritorial zones as fictional, illegal, and illiberal.¹⁰ Judicial authorities, in contrast, have gone no further than demanding respect for preexisting international obligations.¹¹ Thus, scrutinized and somewhat tempered, *zones d'attente* and similar special international zones have come to play an important role in regulating the global flow of asylum seekers, economic migrants, and others seeking to enter unwelcoming nation states.

Most people know of just one kind of international zone: the airport transit zone, where foreign travelers can buy goods free of customs, duties, or taxes and catch connecting flights without going through local border controls.¹² Students of international law may have heard of still more obscure examples of nation states willingly rolling back their effective borders, such as they have done for the United Nation's headquarters and CERN's

laboratories.¹³ In each of these and similar cases, such as the French *zones d'attente*, the same general pattern repeats: A nation state designates a portion of its geographic territory as outside the reach of some local laws, leaving local laws still in effect and preexisting international obligations unchanged.

Given their shared features, growing practical importance, and common theoretical challenges, these legal institutions need a shared name. The term "special economic zones" ("SEZs") offers a model because SEZs also represent discrete areas where a host country applies unique, and usually less burdensome, financial and business regulations. Hence the term adopted for this paper: Special International Zone ("SIZ").

Summarizing the examples to follow, this paper defines as an SIZ:

An area that its host nation state places outside of its territory for the purpose of some local laws, leaving other local laws and applicable international obligations in force.

Special international zones already exist in great number and variety. They continue to spread, grow, and adapt. What does the future hold for SIZs? Perhaps more of the same—but worse. A country could take France's example too far, for instance, creating special border areas and floating personal temporary microzones that together have the practical effect of keeping entire regions and populations outside the country's national territory in terms of legal rights and privileges, while putting them firmly inside the territory in terms of police powers.

Or SIZs might evolve in a more benign

⁸ Immigration Consequences of Undocumented Aliens' Arrival in United States Territorial Waters, 17 U.S. Op. O.L.C. 77, 79 (1993).

⁹ Tugba Basaran, *Security, Law, Borders: Spaces of Exclusion*, 2 INT'L POL. SOC. 339, 343 (2008).

¹⁰ See *infra* Section II.A.

¹¹ See, e.g., *Amuur v. France*, 1996-III Eur. Ct. H.R. 826 (holding that France could not unilaterally place part of its territory beyond the scope of Article 5, section 1 of the European Convention on Human Rights, pertaining to detention of protected persons).

¹² See *infra* Sections I.A, II.C.

¹³ See *infra* Section I.E.



direction, creating refugee cities for homeless populations, “deep blue” zones for seasteads, or special international residency and work (“SIRW”) zones for digital nomads.

¹⁴ All these and other options become possible once the general concept of a SIZ—a designated area outside the reach of some local laws but still subject to international obligations—has been defined, illustrated, and explained. If that appeals, read on.

SIZs might evolve in a more benign direction.

After this Introduction, Part I of the paper surveys contemporary legal practices to discover SIZs regulating trade and travel across the globe through SEZs, international transit zones, duty-free retail areas, pre-asylum waiting areas, and other variations on the theme. Part II reviews the scant extant commentary on special international zones, especially criticisms of pre-asylum waiting areas, to develop a theory of special international zones under which they might redeem themselves as instruments of public policy. Part III applies that theory to describe some possible forms of future SIZs. The paper concludes by explaining how special economic zones can promote the public good by providing a means for nation states, under the constraints of international law, to selectively unbundle their services, by placing select territories outside the reach of some local laws by placing them within SIZs.

¹⁴ See *infra* Part III.

I. Special International Zones in Practice

This Part describes special international zones as observed in the field, so to speak, in the many places nation states have deliberately rolled back their powers, leaving a void filled by the governing influences of international trade, travel, and cultural exchange. The little-celebrated, but indisputably useful, international transit zone, described in Section I.A, fits squarely within the definition of a SIZ. Other examples fall at its edges. Section I.B describes a class of zones—special economic zones—that do not so much import international law as simply let the default level for customs, duties, and taxes revert to their default level—zero—in the absence of a nation state. Section I.C’s topic, the duty-free retail area, likewise serves the international community by setting certain parts of a nation state’s territory beyond the reach of its powers.

Pre-asylum waiting areas, discussed in Section I.D, do the opposite; they leave some of a nation state’s territory or guests within the reach of its power, but outside the comfort of its rights and privileges. In these areas, the chaos of international human migration smashes into the hard edges of state power. These, too, represent special international zones of a type—a distinctly dystopian one. Ending this survey of SIZs on a lighter note, Section I.E offers a collection of other interesting species in the genus.

A. International Transit Zones

International transit zones ease the transition between a host state’s territory and the places beyond, including the territories of other sovereigns and the ungoverned international commons of the



sea and sky. The zone turns the border from a thin, solid line into a thick, complex, modulated buffer.¹⁵ So far as passengers and their luggage are concerned, international transit zones typically extend from the point of departure from the craft arriving from abroad—the exit door of a foreign airplane, for instance—to the inside border of immigrations and customs control. They ease international transit by allowing passengers to touch down on the host's territory without passing through customs and immigration controls. Though it arises more as a gap between borders than as an entity unto itself, the international transit zones satisfies the definition of SIZ above: “An area that its host nation state places outside of its territory for the purpose of some local laws, leaving other local laws and applicable international obligations in force.”¹⁶

*International transit zones have won
a storied place in diplomatic
relations.*

Like all SIZs, international transit zones come into being by the choice of the local sovereign, which withdraws the effective reach of otherwise applicable laws relating to customs, duties, and immigration. Still other local laws, such as those forbidding trafficking in forbidden drugs, remain in force. In almost all cases (because almost all countries have joined it), the *Convention on International Civil Aviation* (aka *Chicago Convention*) requires that an airport treat

¹⁵ See generally Jean-Baptiste Frétiigny, *Air Travel Opens New Understanding of Borders: The Case of Paris Charles de Gaulle Airport*, ANNALES DE GEOGRAPHIE 1, 5 (2014), http://www.academia.edu/12970808/Air_Travel_Opens_New_Understanding_of_Borders_The_Case_of_Paris_Charles_de_Gaulle_Airport.

¹⁶ See *supra* Introduction.

transiting craft as if in a customs and duty-free area.¹⁷ In other cases, such as in implementing the special privileges shared by travelers among Schengen Area countries, airports in particular countries may configure their international transit zones to favor certain trips or travelers.¹⁸

In addition to serving the quotidian needs of typical travelers, international transit zones have won a storied place in diplomatic relations by serving as temporary (and sometimes not so temporary) holding pens for people caught between being arrested at home and becoming a political problem abroad.¹⁹ Consider the case of Eric Snowden. Offered shelter of sorts by Russian authorities, who evidently sympathized with his crusade against elements of the United States government, he was allegedly housed in the international transit zone of Moscow's Sheremetyevo International Airport; or perhaps, in a move akin to that used by France to justify scattering *zones d'attente* across its territory, in a more comfortable location nearby temporarily designated as extra-territorial by the Russians in pursuance of their campaign to irk the Americans.²⁰ But more on that ploy anon.²¹

B. SEZs and Related Special Jurisdictions

The World Bank defines SEZs as

¹⁷ Convention on International Civil Aviation art. 24, Dec. 7, 1944.

¹⁸ Frétiigny, *supra* note 14, at 13–15.

¹⁹ Mehran Karimi Nasseri, an Iranian refugee, lived within the international transit area of Terminal 1 at Roissy-Charles de Gaulle Airport from 1988 to 2006. See Frétiigny, *supra* note 14, at 21.

²⁰ Brian Palmer, *What's Life Like in an Airport Transit Zone?*, SLATE (July 2, 2013), http://www.slate.com/articles/news_and_politics/explainer/2013/07/edward_snowden_has_spent_a_week_in_a_transit_zone_at_moscow_s_airport_what.html [<http://perma.cc/CZ8G-QC9V>].

²¹ See *infra* Section I.D.



“demarcated geographic areas contained within a country’s national boundaries where the rules of business are different from those that prevail in the national territory.”²² Through SEZs, in other words, a host offers a haven from the status quo that prevails elsewhere in the national territory. As such, SEZs represent a kind of special international zone—one wherein the host country rolls back the scope of customs, duties, taxes, and other select impediments to commerce, leaving in their place nothing but lots of freedom on a thin layer of international law.

By withdrawing the reach of select federal and state laws back from the border of FTZs, the United States effectively cedes governance of such matters to international law.

SEZs come in many types, including free trade zones, export processing zones, and wide-area hybrid export processing zone freeports.²³ They come in many sizes, too, ranging from a portion of a single factory to metropolitan areas housing millions.²⁴ Though not SEZs in the modern sense, areas governed by special rules have existed almost as long as government itself. SEZs proper have enjoyed special vigor in recent decades.²⁵

To better understand how SEZs as a class qualify as a kind of special

international zone, consider the Foreign Trade Zones (“FTZs”), which are popular in the United States.²⁶ FTZs lay within the country’s borders geographically speaking, but “are treated for purposes of the tariff laws and customs entry procedures as being outside the customs territory of the United States.”²⁷ The board charged with administering the zones thus considers them “outside the customs territory of the United States for the purposes of duty payment.”²⁸

By design, being outside the customs and excise taxes area of the United States offers a considerable inducement to transshipment and import-export processing services. Other benefits follow from the extra-territorial status of FTZs, too. If a processor in the zone works imported materials into goods destined for the United States proper, the processor can choose to have the requisite duties assessed on either the value of the materials as imported or the value of the finished goods that include them—a useful option for accounting reasons.²⁹ Merchandise brought into a zone for shipment abroad can be counted as exported immediately, before it physically leaves the United States, for purposes of federal excise taxes and drawbacks.³⁰ Also, consistent with the notion that in a federal system, no individual state can have a territory greater than the United States to which it belongs, personal property stored in the zone falls outside the scope of state and

²² Thomas Farole & Gokhan Akinci, *Introduction to SPECIAL ECONOMIC ZONES: PROGRESS, EMERGING CHALLENGES, AND FUTURE DIRECTIONS 3* (Thomas Farole & Gokhan Akinci eds., 2011) (quoting Claude Baissac, *Brief History of SEZs and Overview of Policy Debates*, in *SPECIAL ECONOMIC ZONES IN AFRICA: COMPARING PERFORMANCE AND LEARNING FROM GLOBAL EXPERIENCE 23* (Thomas Farole & Gokhan Akinci eds., 2011)).

²³ *Id.* at 2.

²⁴ *See id.*

²⁵ *See* TOM W. BELL, *YOUR NEXT GOVERNMENT?: FROM THE NATION STATE TO STATELESS NATIONS 19–27* (2018).

²⁶ *See* Foreign-Trade Zones Act, 19 U.S.C. §§ 81a–81u (2016); Regulations of the Foreign-Trade Zones Board, 15 C.F.R. § 400 (2018). Section 81c(a) distinguishes between FTZs and the customs territory of the United States.

²⁷ Scope, 15 C.F.R. § 400.1(c) (2018).

²⁸ *Preface to* FOREIGN-TRADE ZONES BOARD, 78TH ANNUAL REPORT OF THE FOREIGN-TRADE ZONES BOARD TO THE CONGRESS OF THE UNITED STATES (2016).

²⁹ William G. Kanellis, Comment, *Reining in the Foreign Trade Zones Board: Making Foreign Trade Zone Decisions Reflect the Legislative Intent of the Foreign Trade Zones Act of 1934*, 15 NW. J. INT’L L. & BUS. 606, 618 (1995).

³⁰ *Id.* at 618–19.



local *ad valorem* taxes.³¹

By withdrawing the reach of select federal and state laws back from the border of FTZs, the United States effectively cedes governance of such matters to international law, such as it is in these matters. And in the sorts of matters that concern FTZs—customs and taxes—international law mostly is *not*. As with the duty-free zones discussed next, in other words, FTZs represent special areas where international rather than local law has real effect.

C. Duty-Free Retail Areas

A duty-free retail area functions as if it were outside the tax area of its host country for a select few people: passengers leaving for abroad. It allows them to purchase certain goods—typically, luxury ones such as liquor, cigarettes, or perfume—on condition that they immediately remove them from the host’s tax territory. The law of the United States, for instance, defines a duty-free retailer as “a person that sells, for use outside the customs territory, duty-free merchandise that is delivered from a bonded warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the customs territory.”³²

From France, pre-asylum waiting areas spread to other countries.

Duty-free retail areas are thus defined not only by limits on a map, but also limits on behavior. Which transactions classify as “duty-free” depends not merely on where they happen, but also on the intent of the purchaser. More generally than that, with the

advent of market-defined “Traveler Spaces” catering solely to the needs of ticket-bearing passengers passing through international transit zones and “duty-free prices” outside such zones designed to simulate the financial experience of shopping within them, dutyfree retail areas have come to symbolize places freed from the usual, mundane social obligations.³³

The ready availability of cut-priced alcohol, cigarettes, and luxury goods drives home the point: duty-free retail areas offer special zones beyond merely parochial local regulations. Dutyfree zones belong in “an in-between space, global in dimension, whose strategies of appropriation are at odds with those of the nation states.”³⁴ Duty-free retail areas operate not so much as a space on a map, or even as a label for some people, but as an idealized special international zone, where nation states withdraw their impositions, and the bland nothing of the ungoverned commons allows as much trade in rich and intoxicating goods as the market will bear.

D. Pre-Asylum Waiting Areas

As related in the Introduction above, France created an innovative new kind of SIZ—*zones d’attente*—by placing areas within the geographic boundaries of the country outside of its territory for immigration and asylum purposes.³⁵ This new kind of SIZ began within Roissy-Charles de Gaulle Airport in 1992, but quickly multiplied across France, growing in size and number, and mutating into floating and temporary forms.³⁶ From France, pre-asylum waiting areas spread to other countries.³⁷ They now represent a routine matter of local

³¹ See Foreign-Trade Zones Act, 19 U.S.C. § 81o(e) (2016).

³² 19 U.S.C. § 1555(b)(8)(D) (2016).

³³ Frétigny, *supra* note 14, at 22.

³⁴ *Id.* at 25.

³⁵ See *supra* Introduction.

³⁶ CESEDA art. L221-2.

³⁷ Basaran, *supra* note 6, at 64.



law, used across the world, usually without much note, as one of several mechanisms that nation states use to manage the flow of refugees, economic migrants, and other wandering people.³⁸

Why did the French create *zones d'attente*? Because, like other signatories to the *1951 Convention and Protocol Relating to the Status of Refugees* (“*Refugee Convention*”), it has promised to give refugees within its territory a variety of rights and privileges.³⁹ France has bound itself to allow guest refugees to practice their religion, receive identity papers, and travel freely throughout the country.⁴⁰ Most significantly, the convention forbids France, like other contracting parties, from expelling or returning refugees to the country’s borders if to do so would put his or her life or liberty at risk for certain reasons, such as on account of race, religion, or social group.⁴¹ France doubts that the economic migrants showing up at Roissy-Charles de Gaulle and its other ports of entry qualify as “refugees” for purposes of the *Refugee Convention*, but if they can make it onto French territory, they can make a play for the status, thus winning at least temporary admittance (which by dint of flight often becomes *de facto* but illegal permanent admittance). France thus created the *zones d'attente* to, in effect, pull back the border of its territory for purposes of those seeking asylum under the *Refugee Convention*.⁴²

How did the French create the *zone d'attente*? The applicable provision of the civil code begins by giving the *zone* tightly defined boundaries, saying it “extends from

embarkation and disembarkation points to where immigration checks are carried out.”⁴³ From there, though, the lines quickly get broader and blurrier. The *zone* may also include, “in transit areas or near the railway station, port, or airport, or near the place of disembarkation, one or more places of accommodation providing the concerned foreigners with hotel-type services.”⁴⁴

The *zone d'attente* can thus grow within the boundaries of the existing international transit zone. The largest of France’s immigration detention centers is located next to the runways of Roissy-Charles de Gaulle, for instance, ensuring that those housed in the *zone* receive frequent and unpleasant reminders of their tenuous status in the country.⁴⁵ Given that they arise by mere administrative fiat, a *zone d'attente* could also be added to the edges of an existing international zone, making up a larger complex of associated but distinct SIZs.⁴⁶ The French have done far more than that, though.

France created the zones d'attente to, in effect, pull back the border of its territory for those seeking asylum.

The civil code also stretches the *zone d'attente* to any place the unwanted alien must go for administrative procedures, such as to attend an off-site asylum hearing or “in case of medical necessity.”⁴⁷ Through that

³⁸ See BASARAN, *supra* note 3, at 8.

³⁹ UN High Commissioner for Refugees, *Introduction to CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES 3* (2010) [hereinafter *REFUGEE CONVENTION*].

⁴⁰ *Id.* at 17, 28–29.

⁴¹ *Id.* at 30.

⁴² BASARAN, *supra* note 3, at 56–59.

⁴³ CESEDA art. L221-2.

⁴⁴ *Id.*

⁴⁵ Morgane Iserte, *Enquête en « zone d'attente réservée » de l'aéroport de Paris-Charles de Gaulle: vers une gestion sécuritaire des « flux migratoires »* [Investigation into “Waiting Area” of Paris-Charles de Gaulle], 71 *CULTURES & CONFLICT* 31, 33 (2008).

⁴⁶ CESEDA art. L221-2. The article's first line gives power to set the zone's boundaries to “the competent administrative authority.”

⁴⁷ *Id.*



provision, the French can justify their use of floating and temporary zones. The creativity of French lawyers does not end there, however. The code even provides for the creation of a retroactive temporary *zone d'attente* that runs from where and when any group of ten or more foreigners has arrived in France from outside a border crossing to where they are discovered, up to twenty-six days later.⁴⁸

Commentators have not always treated the French *zones d'attente* with the highest regard, calling them fictional, illegal, and illiberal. This paper reviews those critiques below.⁴⁹ Regardless of such theoretical musings, though, the *zones d'attente* did and do exist. Indeed, they have been booming.

Pre-asylum waiting areas, because they help nations states regulate the flow of refugees, economic migrants, and other wandering people, will not go away any time soon.

Courts have shaped the operations of *zones d'attente*, as when the European Court of Human Rights held that France could not detain foreigners without counsel indefinitely.⁵⁰ This commentary and judicial guidance operates only at the edges, though. These sorts of pre-asylum waiting areas, because they help nation states regulate the flow of refugees, economic migrants, and other wandering people, will not go away any time soon. Whether called *migration zones*, *excised territories*, *reception areas*, *transit areas*, or *detention areas*, these SIZs will play a continuing and important role in

⁴⁸ *Id.* France is not alone in retroactively creating pre-asylum waiting areas. See BASARAN, *supra* note 3, at 91 (discussing Australian retrospective regulations).

⁴⁹ See *infra* Part II.

⁵⁰ *Amuur v. France*, 1996-III Eur. Ct. H.R. 826.

international law.⁵¹

E. Other Special International Zones

This Section reviews some other special international zones. It offers only a small sample of what a more complete catalog might include: SIZs ranging from ancient sanctuaries to nascent blockchain governments, with references to the many privileges traditionally associated with diplomatic personnel, friendly foreign military forces, and non-governmental organizations (“NGOs”).⁵² The examples could include SIZs as well known as the United Nations’ headquarters,⁵³ or as obscure as Canada’s temporary surrender of sovereignty to aid the birth of a princess in exile.⁵⁴ The “other” SIZs reviewed here: CERN and the special administrative regions of Hong Kong and Macau.

1. CERN

The European Organization for Nuclear Research, better known as “CERN” from the acronym for its French name, the “Conseil Européen pour la Recherche Nucléaire,” offers a notable example of how an international zone can create a safe space for large scale investment, research, and development. CERN enjoys a special status in the laws of the member countries that together created and fund it. This status, set forth in the *Protocol on the Privileges and Immunities of the European Organization for Nuclear Research* (“Protocol”), exempts

⁵¹ Nagy, *supra* note 6, at 1048–49; Basaran, *supra* note 6, at 64.

⁵² BASARAN, *supra* note 3, at 66.

⁵³ HANS Kelsen, THE LAW OF THE UNITED NATIONS: A CRITICAL ANALYSIS OF ITS FUNDAMENTAL PROBLEMS 350 (1950) (describing the origins and effects of UN’s “headquarters district”).

⁵⁴ *Netherlands’ Princess Margriet born in Ottawa*, RADIO CANADA (Jan. 23, 1992), <http://www.cbc.ca/player/play/1403696302> (recounting that in 1940, Canada temporarily withdrew sovereignty over an Ottawa hospital room in order to ensure that the birth of the Netherlands’ Princess Margriet there to her family in exile would not take place under the cloud of a foreign flag, which might otherwise threaten her claim to royal succession).



CERN's property, officials, and the family of CERN officials from customs, duties, national taxes, and visa restrictions.⁵⁵ This has the practical effect of placing CERN properties, papers, and people in a sort of special international zone.

Territory under the reach of particular national laws seem to pull back where CERN touches down. The *Protocol* provides that CERN's real property—its grounds, buildings, and other structures—“shall be inviolable” against the authority of any “agent of the public authorities,” who may enter only with “the express consent of the Director-General or his duly authorized representative.”⁵⁶ The organization, its property, its income, and its imports and exports escape national taxation, duties, or similar fees.⁵⁷ The *Protocol* thus defines CERN's special international zone in both territorial and functional terms.

Although the *Protocol* reserves most of its benefits to CERN “officials,” it defines that term broadly enough to cover a wide range of employees, including “‘members of personnel’ as defined in the Staff Rules and Regulations of the Organization.”⁵⁸ These people must pay a sort of internal tax “for the benefit of the Organization,” but the salaries and emoluments they get from the Organization remain “exempt from national income tax” under the *Protocol*.⁵⁹ In practice, therefore, most CERN employment falls outside of any nation's tax territory.

CERN employment and residency falls outside of any member country's legal territory, too. CERN officials enjoy “for themselves and the family members forming part of their household, the same exemption from immigration restrictions and aliens' registration formalities as are normally granted to officials of international organizations.”⁶⁰ The *Protocol* renders Organization officials exempt “from all compulsory contributions to national social security schemes, on the understanding that such persons are provided with equivalent social protection” by CERN.⁶¹

These provisions have the practical effect of putting CERN property, papers, and personnel in a special international zone.

The *Protocol* even puts CERN outside the justice systems of its member countries. As befits an international organization, the *Protocol* makes careful provision for the resolution of CERN's disputes in forums, such as in private arbitrations, that remain outside the control of any one country.⁶² It could hardly be otherwise, given the high stakes at issue—CERN's cross-border Large Hadron Collider cost almost U.S. \$4.4 billion to build—and the many national interests affected.⁶³

Taken together, these provisions have the practical effect of putting CERN property, papers, and personnel in a special international zone. As in a French *zone*

⁵⁵ PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN ORGANIZATION FOR NUCLEAR RESEARCH (Mar. 18, 2004), <http://cds.cern.ch/record/1035110/files/cer-002693576.pdf> [<http://perma.cc/RVV4-S7UU>].

⁵⁶ *Id.* at art. 3(1), (2).

⁵⁷ *Id.* at art. 6. Note, however, that this exemption does not extend to “the purchase or use of goods or services or the import of goods intended for the personal use” of those working for CERN. *Id.*

⁵⁸ *Id.* at art. 1(d).

⁵⁹ *Id.* at art. 10(2)(b)(i).

⁶⁰ *Id.* at art. 10(2)(c).

⁶¹ *Id.* at art. 11.

⁶² *Id.* at arts. 16–19.

⁶³ CERN, LARGE HADRON COLLIDER THE GUIDE 17 (2017), <http://cds.cern.ch/record/2255762/files/CERN-Brochure-2017-002-Eng.pdf> [<http://perma.cc/RZK8-HX99>] (listing total price of LHC of 4.332 billion Swiss francs).



d'attente, these exemptions apply only to certain activities and people. A CERN SIZ lies outside not all national boundaries, but only the boundaries of select customs, taxes, and visa laws. And like a French *zone d'attente*, the status of a CERN SIZ can attach to particular people, creating floating personal temporary microzones that follow covered individuals even outside of the zone.

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2. Special Administrative Regions of Hong Kong and Macau

Thanks to the history of European colonialism and the vagaries of fate, the People's Republic of China has adopted a policy of “one country, two systems” with regard to both Hong Kong and Macau, allowing each to exist within China's national territory as a Special Administrative Region (“SAR”) with some, but not all, attributes of sovereignty.⁶⁵ This policy, embodied in a Basic Law adopted to govern each region upon its handover from European powers to Chinese powers in the late 1990s, allows Hong Kong and Macau responsibility over each of their local customs,⁶⁶ taxes,⁶⁷ immigration,⁶⁸ labor,⁶⁹ and other areas of law traditionally the sole

province of a national government. These SARs exist in a bubble of sorts—within the national Chinese territory but without the legal territory of Chinese customs, taxes, etc.

China's policy of “one country, two systems” allows Hong Kong and Macau to exist within its national territory as Special Administrative Regions with some, but not all, attributes of sovereignty.

This special international zone is not, however, outside the reach of all Chinese laws. When the law concerns matters closer to the core of Chinese authority and pride, such as pertaining to the applicability of international agreements,⁷⁰ the supremacy of the national constitution,⁷¹ or the adoption of flags and related symbols,⁷² the SAR's autonomy ends. Here, the national and legal borders of China coincide, and the SARs exist in the same territory(ies) as other parts of China.

In a functional sense, the Hong Kong and Macau SARs fit the definition of special international zone set forth above. Both have been placed by China outside its territory for the purpose of some laws, leaving other Chinese laws and applicable international obligations in force. Granted, the peculiar circumstances surrounding the origins of those SARs makes them very special kinds of SIZs. The colonial powers that China convinced to peacefully abandon all claims to Hong Kong and Macau, England and Portugal, respectively, did so only under the promise that the newly formed SARs would

⁶⁴ Appropriately enough, given its innovations with other sorts of SIZs, France had a central role in the creation of CERN; the Convention forming it was written in Paris and signed by France, *naturellement*. See *The European Organization for Nuclear Research is born*, CERN, <https://timeline.web.cern.ch/events/the-european-organization-for-nuclear-research-is-born> [<http://perma.cc/YL2W-6BQT>] (last visited Dec. 9, 2017).

⁶⁵ See THE BASIC LAW OF THE HONG KONG ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA art. 1, http://www.basiclaw.gov.hk/en/basiclawtext/images/basiclaw_full_text_en.pdf [hereinafter HONG KONG BASIC LAW]; MACAU BASIC LAW pmbll., <http://www.umac.mo/basiclaw/english/pre.html>.

⁶⁶ HONG KONG BASIC LAW art. 116; MACAU BASIC LAW art. 112.

⁶⁷ HONG KONG BASIC LAW art. 106, 108; MACAU BASIC LAW art. 104, 106.

⁶⁸ HONG KONG BASIC LAW art. 154; MACAU BASIC LAW art. 139.

⁶⁹ HONG KONG BASIC LAW art. 147; MACAU BASIC LAW art. 115.

⁷⁰ HONG KONG BASIC LAW art. 153; MACAU BASIC LAW art. 138.

⁷¹ HONG KONG BASIC LAW art. 11; MACAU BASIC LAW art. 11.

⁷² HONG KONG BASIC LAW art. 10; MACAU BASIC LAW art. 10.



enjoy considerable autonomy. Query, therefore, if China ever had full title to the powers hypothetically transferred. Did China withdraw its legal territory from Hong Kong and Macau? Or did China decline to fully expand to the SARs sovereign powers it enjoyed in adjoining territories? In either event, Hong Kong and Macau offer examples of a host country designating part of its territory as beyond the reach of select national laws and leaving room for international principles—here, those of a more cosmopolitan and liberal world—to have effect.

II. Special International Zones in Theory

As documented above, special international zones have long operated, in many guises, all across the globe, without much incident. The SIZ has not, however, been subject to much consideration as a theoretical object itself. Has it perhaps been so ubiquitous as to escape notice?

Nation states have, after all, long relied on an intrinsic power to reshape their interior borders as each alone sees fit. As Tugba Basaran observes, “The distinction between physical presence and legal presence is not a new invention used for migration controls only, but relies on historical precedents in different contexts.”⁷³ Citing ancient examples such as ancient sanctuaries from prosecution, the special privileges of ambassadors, military personnel deployed abroad, NGOs, and modern inventions such as special economic zones, Basaran concludes that “[t]he creation of outside spaces on the territory of the host state, placed under an international or foreign legal jurisdiction, and thus not

part of domestic law, is an old technique.”⁷⁴

Pre-asylum waiting areas have raised concerns that nation states might be using SIZs to evade the obligations of international law.

In recent years, however, the advent of *zones d’attente* and similar pre-asylum waiting areas has raised concerns that nation states might be using SIZs not simply to reshape the scope of domestic law, but to evade the obligations of international law. This, in turn, has made the theoretical status of SIZs a pressing matter. Hence this Part. Section II.A relates the predominant critiques of SIZs *qua* pre-asylum waiting areas: that they are legal fictions, illegal, or illiberal. Section II.B offers a way to redeem SIZs in terms of theory, as refuges free from the constraining effects of some domestic laws on the one side and governed by principles of international liberty on the other. If built to those specifications, (which admittedly cannot always be said of pre-asylum waiting areas) SIZs fit nicely within the existing theoretical framework, both positive and normative, of international law.

A. Zones as Fictional, Illegal, and/or Illiberal

Although for the most part SIZs quietly regulate the flow of international trade, travel, and cultural exchange without incident, *zones d’attente* and other pre-asylum waiting areas have drawn withering criticism. James C. Hathaway calls pre-asylum areas “[a] particularly insidious mechanism”⁷⁵ and “a legal ruse”⁷⁶ used by

⁷⁴ *Id.*

⁷⁵ HATHAWAY, *supra* note 5, at 298.

⁷⁶ *Id.* at 321.

⁷³ BASARAN, *supra* note 3, at 66.



France and other nation states to avoid their international obligations to refugees.⁷⁷ Other commentators call it “a fiction,”⁷⁸ “legal fiction,”⁷⁹ “arbitrary,”⁸⁰ or, perhaps most tellingly, as “places of illiberal practices.”⁸¹ Such critiques speak too broadly, insofar as they condemn all SIZs, but justly target the growing practice of nation states rolling back the borders of local laws protecting individual rights and privileges while leaving in place local police, security, and penal laws.

Why do commentators direct such ire at pre-asylum waiting areas? Because nation states arguably use them as a subterfuge to avoid fulfilling their obligations under the *Refugee Convention*.⁸² That international agreement has proven very popular on paper; 146 countries have signed, including those now hosting various sorts of pre-asylum waiting zones.⁸³ In so doing, each promised to afford several rights to refugees who find themselves “in” or “within” the contracting state’s territory.⁸⁴ And while no country is legally required to admit refugees, Article 33 of the *Refugee Convention* says, “No Contracting State shall 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.”⁸⁵

The Amuur court did not—and indeed could not—forbid France from redrawing its territorial borders.

Commentators argue that member countries violate this principle of *non-refoulement* when they use pre-asylum waiting areas to “expel or return” refugees “to the frontiers of territories” where the enumerated threats await. Hathaway, for example, after dismissing the *zones d’attente* as “a legal ruse” and citing the seminal European Court of Human Rights case, *Amuur v. France*, as authority, summarily concludes: “There is thus no international legal difference between opting not to consider the refugee status of persons present in ‘international zones’ or ‘excised territory’ and refusing to consider the refugee status of persons clearly acknowledged to be on the state’s territory.”⁸⁶ Human Rights Watch uses the same quick two-step citing *Amuur* and other cases in support of the claim that such zones represent nothing more than legal fictions used to hide violations of migrants’ rights.⁸⁷

The *Amuur* court gave these critics an irresistibly good quote: “Despite its name, the international zone does not have extraterritorial status.”⁸⁸ In truth, however, like any holding, the effect of *Amuur*’s words can reach no farther than the underlying controversy allows. The dispute turned on application of Article 5, section 1 of the

⁷⁷ *Id.* at 298, 321.

⁷⁸ Nagy, *supra* note 6, at 1048.

⁷⁹ HUMAN RIGHTS WATCH, LOST IN TRANSIT: INSUFFICIENT PROTECTION FOR UNACCOMPANIED MINOR CHILDREN AT ROISSY CHARLES DE GAULLE AIRPORT 5 (2009); see also Lydia Gall, *Dispatches: Asylum Seekers Stuck Outside Transit Zones in Hungary*, HUMAN RIGHTS WATCH (Apr. 4, 2016, 12:00 AM), <https://www.hrw.org/news/2016/04/04/dispatches-asylum-seekers-stuck-outside-transit-zones-hungary>.

⁸⁰ HUMAN RIGHTS WATCH, *supra* note 78, at 5.

⁸¹ Basaran, *supra* note 6, at 70.

⁸² See generally REFUGEE CONVENTION, *supra* note 38.

⁸³ Protocol Relating to the Status of Refugees ch. 5, Oct. 4, 1967, 606 U.N.T.S. 267.

⁸⁴ See REFUGEE CONVENTION, *supra* note 38, at 17 (guaranteeing religion); *id.* at 28 (art. 27 guaranteeing issuance of identity papers); *id.* at 29 (art. 31(1)–(2) guaranteeing “non-penalization for illegal entry or presence” and movements of refugees within country of refuge).

⁸⁵ REFUGEE CONVENTION, *supra* note 38, at 30.

⁸⁶ HATHAWAY, *supra* note 5, at 321–22.

⁸⁷ HUMAN RIGHTS WATCH, *supra* note 78, at 9–10.

⁸⁸ *Amuur v. France*, 1996-III Eur. Ct. H.R. 826, 851.



European Convention on Human Rights, a provision directed at preventing wrongful detention. Specifically, the court held that for France to hold the applicants in the *zone d'attente* for twenty days “under strict and constant police surveillance,” and without any “legal and social assistance,” wrongfully deprived the applicants of their liberty.⁸⁹

The *Amuur* court thus did not speak so boldly as its oft-quoted words might suggest. Instead of ruling all extraterritorial zones legal nullities—an issue not before the court and quite beyond its power to decide—the court ruled only that France had operated its *zone d'attente* in violation of the European Convention on Human Rights.⁹⁰ That much should prove unremarkable.

The court did not—and indeed could not—forbid France from drawing its territorial borders in ways that impact only local law, or that leave its international obligations unimpeached. As proof of the opinion’s limited effect, France responded to *Amuur* and similar judicial corrections, not by abandoning its use of extraterritorial areas, but by amending and expanding the use of *zones d'attente*.⁹¹

Calling pre-asylum waiting zones “fictional” does not change their very real impact. Calling the operation of such zones “illegal” may or may not have an effect, as indicated by (sometimes) successful litigation.⁹² But what about calling pre-asylum waiting zones “illiberal” (in the sense of “liberty-violating” rather than

“non-leftist”)?

That is the concern voiced by Tugba Basaran, who argues that through such devices, “liberal states can deny to particular populations fundamental rights, which are the normative and legal foundation of liberal states, whilst continuing to control the very same space through policing powers.”⁹³ Contrary to commentators who view *zones d'attente* as fictional or *per se* illegal, Basaran sees them as alarmingly mundane tools of contemporary governance. “Border zones are legal constructions and law is an ordinary means by which the liberal state legitimizes illiberal practices.”⁹⁴

At the farthest extreme, pre-asylum waiting areas become little more than labels reading “unwelcome foreigner” attached to entire populations.

On that view, at least in the guise of pre-asylum waiting zones, SIZs allow nation states to roll back human rights while leaving police powers in place. Indeed, in actual practice, most hosts not only leave police powers in place, but considerably augment them, surrounding the zones with fences and walls, placing them under close observation, and creating an overall experience, from the point of view of detainees and those tasked to guard them, not far removed from a prison.⁹⁵ The worst of these pre-asylum waiting areas has, by credible accounts, added not just detention, but punishment to the mix, offered in the form of *ad hoc* abuse dished out by

⁸⁹ *Id.* at 848–49.

⁹⁰ *Id.*

⁹¹ See Gebremedhin v. France, 2007-II Eur. Ct. H.R. 131, 174, 178 (holding that lack of a suspensive clause in appeals from denials of asylum violates the Refugees Convention).

⁹² For an example of unsuccessful litigation against the operation of a pre-asylum waiting area, see *Mahdid and Haddar v. Austria*, 2005-XIII HRDC 289, 300, which held that a three-day wait in an international transit zone at Vienna International Airport, pending consideration of asylum claim, did not constitute unlawful deprivation of liberty.

⁹³ BASARAN, *supra* note 3, at 1.

⁹⁴ *Id.* at 7.

⁹⁵ HUMAN RIGHTS WATCH, *supra* note 78, at 16, 42; see also Clémence Richard & Nicolas Fischer, *A Legal Disgrace? The Retention of Deported Migrants in Contemporary France*, 47 SOC. SCI. INFO. 581, 594–95 (2008); see also Julien-Lafferrière, *supra* note 5.



overburdened border officials.⁹⁶ Sadly, but unsurprisingly, children have fared especially badly when foreign migration flows have run into modern machinery of border control.⁹⁷ It offers scant consolation to the detainees caught within such zones that they can exit back to the countries from which they fled.⁹⁸

Done wrong, SIZs could allow nation states to violate their obligations to human rights, the international community, and their own citizens.

The fractured nature of pre-asylum waiting areas abets their use as instruments of illiberal government. They pop into existence and disappear again, even appearing retroactively, at the whim of mere administrators. They split like amoeba and wiggle away in the form of floating and temporary zones. At the farthest extreme, pre-asylum waiting areas become little more than labels reading “unwelcome foreigner” attached to entire populations in the form of myriad floating personal temporary micro-zones. Far from a legal fiction, that describes how *zones d’attente* function quite realistically.⁹⁹ It may, however, qualify as a legal absurdity.

It arguably mocks the meaning of

⁹⁶ Sonia Wolf, *Illegal Immigrants Suffer Beatings, Humiliation at Paris Airport: Report*, AGENCE FRANCE PRESSE-ENGLISH 1 (Dec. 16, 2003).

⁹⁷ See Kim Willsher, *Boy of eight held at Paris airport for more than a week*, GUARDIAN (Mar. 30, 2016, 12:38 PM), <https://www.theguardian.com/world/2016/mar/30/boy-of-eight-held-at-paris-airport-for-more-than-a-week> [<http://perma.cc/QW5Y-RH94>]; France: *Unaccompanied Children Detained at Borders*, HUMAN RIGHTS WATCH (Apr. 8, 2014, 1:00 AM), <https://www.hrw.org/news/2014/04/08/france-unaccompanied-children-detained-borders> [<http://perma.cc/HFK9-V6JM>]; HUMAN RIGHTS WATCH, *supra* note 78.

⁹⁸ *Amuur v. France*, 1996-III Eur. Ct. H.R. 826, 849–50.

⁹⁹ See BASARAN, *supra* note 3, at 54.

“international” to call these kinds of zones “SIZs.” Rather than areas *between* nation states, pre-asylum waiting areas represent areas more fully national and statist than anywhere else on earth. In them, the softening graces of liberal government—its respect for human dignity and its adherence to the rules of law—draw back, leaving nothing but brute force.

On the charge of illiberality, then, the critics of *zones d’attente* and similar pre-asylum zones lay a telling blow. Done wrong, SIZs could allow nation states to violate their obligations to human rights, the international community, and their own citizens. How can theory set SIZs right? The next Section suggests keeping the “international” in SIZ by ensuring that they continue to promote free travel, trade, and cultural exchange.

B. Zones as Liberal International Refuges

The prior Section reviewed the theoretical critiques against *zones d’attente* and similar pre-asylum waiting areas and found one in particular especially telling: Such zones can serve as instruments through which supposedly liberal states enforce illiberal policies. This danger arises not only because nation states find it expedient to shrink the effective territory of the liberties and privileges they uphold while leaving the reach of their police powers undiminished, but also because international law has relatively little force to compel nation states to treat foreigners more respectfully in special international areas. Transit zones, SEZs, duty-free areas, and other SIZs typically serve those aims in practice, of course. As yet, though, theory has little to say about the matter. This Section begins filling that gap by justifying special international zones not simply as



expressions of local power, but also as institutions that the community of nations accepts and respects as instruments for promoting freedom of travel, trade, and cultural exchange.

It does not take much imagination to discern how SIZs could serve as refuges to those traditionally liberal values. All of the many types of SIZs reviewed above in Part I serve international trade, travel, and cultural exchange in various ways. Some do so obviously, as when international transit zones ease the passage of travelers through a country or when free ports encourage trade. Others do so indirectly, as when the Hong Kong and Macau SARs allow liberal values to subsist in a sea of nominal communism, or when, with the best of intentions but with mixed results, pre-asylum waiting areas attempt to impose a measure of order on the chaos of human migration.

These innate virtues of SIZs remain as yet underappreciated as theoretical ideals. It could hardly be otherwise, given that only in this paper has the SIZ itself emerged as worthy of study. Now, having identified it in the wild, so to speak, and come to understand its ways, we can turn to directing SIZs toward human ends. That exercise might begin by curbing mutations, such as *zones d'attente* and other pre-asylum waiting areas that, if unchecked, might remove whole regions and people from the liberality of the nation state, but not coercive grip.

Again, it does not take much imagination to discern how to save SIZs from that fate. Activists, reporters, and scholars have brought the problem to the world's attention. *Amuur* and other judicial correctives on the scope of police powers imposed within *zones d'attente* show international law working exactly as it

should, albeit at its usual glacial pace.¹⁰⁰ No theoretical discussion was needed to start that remedial process. Perhaps now it might contribute to the effort, however.

As SIZs continue to grow, spread, and adapt in practice, our theories about SIZs must keep pace. It ill serves our understanding to dismiss them as fictional or illegal. SIZs are no less real than any social institution and have become a commonplace tool of international law. Theory should recognize the full potential, good and bad, of special international zones.

For the greatest part, SIZs have made international travel, trade, and cultural exchange more cheap, easy, and safe.

Illiberality is not built into the DNA of SIZs; quite the contrary. For the greatest part, during the long course of their history and throughout their many instantiations, SIZs have made international travel, trade, and cultural exchange more cheap, easy, and safe. In this capacity, they have served as powerful forces for peace, prosperity, and human freedom. Recognizing this theoretic ideal might make it easier to reform *zones d'attente* and similar pre-asylum waiting areas. It might also help when it comes to designing new SIZs—the topic of the next Part.

III. Special International Zones in Development

Having above described special international zones in practice and theory,

¹⁰⁰ See generally *Amuur v. France*, 22 Eur. Ct. H.R. 533 (1996); *Gebremedhin v. France*, 2007-II Eur. Ct. H.R. 131.



this paper now turns to questions of application. What might the next generation of SIZs bring? This Part offers four examples: refugee cities, deep blue zones, peer group country standards, and special international residency and work zones. The following Sections address each in turn, *seriatim*.

A. Refugee Cities

A select few policymakers and commentators have proposed creating zones designed to give displaced people a more appealing option than flinging themselves against the gates of unwelcoming countries. Alexander Betts and Paul Collier have called for the creation of special economic zones where refugees might find gainful employment relatively close to home, rather than in some far off European or North American country, without unduly disrupting the local labor markets of the host country.

¹⁰¹ Refugee Cities, a 501(c)(3) public charity, proposes to help host countries and NGOs implement a similar policy.¹⁰²

Special refugee zones have already gotten a bit of traction in the real world. The EU has entered into a compact with Jordan under which productions from its SEZs will receive favored access to European markets on condition that Syrian refugees get to work alongside Jordanians (instead of, as is more typical of refugee populations, being barred from local labor markets).¹⁰³ That approach to aiding refugees has drawn criticism from human rights activists, however, and no other such projects appear in the offing.¹⁰⁴ Perhaps would-be host

countries worry about setting out to offer aid to those in need but ending up with unwanted residents and citizens. A properly structured SIZ could help fix that problem.

Structuring a refugee camp as a special zone that lies outside the territory of its host country for purposes of many local laws, including for the purpose of establishing the privileges of residency or citizenship, would lower the risks of a host country taking in refugees and other wandering populations. That would make it easier for those suffering masses to find a place to rest. Absent binding international obligations to the contrary, a country should be able to create a SIZ outside of the host's legal territory for some purposes, such as for establishing rights to residency or citizenship, without causing much of a diplomatic stir. As noted above, such devices have become routine in many contexts and countries.¹⁰⁵

Structuring a refugee camp as a special zone would lower the risks of a host country taking in refugees and other wandering populations.

Done right, and reported fairly, such a refugee SIZ program would likely win its host accolades. Who could complain if a country willing to let foreigners onto its territory as an act of humanitarian mercy, in response to an emergency situation, redrew its legal boundaries to withdraw the full panoply of its residents' and citizens' privileges and obligations from the foreign guests? All the many other countries

¹⁰¹ See ALEXANDER BETTS AND PAUL COLLIER, REFUGEE: RETHINKING REFUGEE POLICY IN A CHANGING WORLD 171–73 (2017).

¹⁰² REFUGEE CITIES, <https://refugeecities.org> [<http://perma.cc/AV7C-46WB>] (last visited Dec. 4, 2017).

¹⁰³ See European Union Press Release IP/16/588, Syrian Crisis: EU Ready to Step Up on Partnerships with Lebanon and Jordan (Oct. 17, 2016).

¹⁰⁴ See Heaven Crawley, *Why jobs in special economic zones*

won't solve the problems facing the world's refugees, THE CONVERSATION (Apr. 6, 2017, 6:45 AM), <https://theconversation.com/why-jobs-in-special-economic-zones-wont-solve-the-problems-facing-the-worlds-refugees-75249> [<http://perma.cc/SQK3-J6XX>].

¹⁰⁵ See *supra* Part I.



unwilling to give shelter on better terms would, at any rate, have little grounds to criticize.

This outline of a legal framework for refugee SIZs leaves many questions unanswered. Foremost among them: Would it be right for a country hosting a refugee SIZ to deny those taking shelter within the zone from free access to and from other international zones, traffic, and travelers? The French *zones d'attente* seem headed in that direction, but remain a lot more like prisons than areas where local law has given way to international norms. Tugba Basaran reports a trend toward greater access, but notes that French *zones d'attente* remain subject to strict limits, under which a few NGOs can access certain parts of the zones, and certain parties therein, subject to the unfettered discretion of the Minister of the Interior.¹⁰⁶

Another question worth asking: Conceding that a host country ought to have every right to deny a foreign sovereign the right to govern some or all of a refugee SIZ, can it rightly deny migrant people some form of self-government, if only that provided by an NGO, or church, or some other organization short of a competing sovereign nation? I should hope not, but should also confess to a partial view of such matters, given professional interests in the field.¹⁰⁷ Refugee Cities seems to agree; it suggests that “a regional, supranational entity, such as the EU, or a collection of representatives from the host country and neighboring nations, could establish the regulatory authority” for the refugee cities it advocates.

¹⁰⁸ It also calls for giving the residents of

refugee cities various ways to get involved in self-government.¹⁰⁹

Only time will tell what form refugee cities will take, and whether they will take form at all. Many other questions persist. The problems that inspire the idea of special international zones for refugees persist, too, though. Perhaps refugee cities, in some form, will help to abate them.

B. Deep Blue Zone

French Polynesia has invited Blue Frontiers Pte. Ltd. to submit plans for developing a new kind of special economic zone in that country—a “SeaZone” encompassing both land and water areas.¹¹⁰ The final legal structure of that special jurisdiction will depend on action by the National Assembly of French Polynesia. Even as a mere hypothetical, though, the SeaZone presents an interesting exercise for the application of the SIZ model. The seasteader’s unique situation—they seek little more from French Polynesia than a safe nursery where the first generation of their floating communities can grow and mature in anticipation of eventually moving to the high seas—calls for unique solutions.¹¹¹ It calls, for reasons set forth in more detail earlier and elsewhere, for a unique kind of special international zone: a “‘deep blue’ zone.”¹¹²

What is a deep blue zone? It takes its name from the prevailing color of the international waters of the planet, ocean areas shared by the vessels of all nations, under the exclusive control of none. The deep blue zone would recreate those areas

nance/ [\[http://perma.cc/4FUN-YDKA\]](http://perma.cc/4FUN-YDKA) (last visited Dec. 4, 2017).

¹⁰⁹ *Id.*

¹¹⁰ BLUE FRONTIERS, <https://www.blue-frontiers.com/> (last visited Dec. 8, 2017).

¹¹¹ See generally JOE QUIRK WITH PATRI FRIEDMAN, SEASTEADING: HOW FLOATING NATIONS WILL RESTORE THE ENVIRONMENT, ENRICH THE POOR, CURE THE SICK, AND LIBERATE HUMANITY FROM POLITICIANS (2017).

¹¹² See BELL, *supra* note 24, at 63.

¹⁰⁶ See Basaran, *supra* note 8, at 350.

¹⁰⁷ See BELL, *supra* note 24, at 219–33 (relating “stories of the sort ordinarily recounted over drinks” about the author’s consulting practice).

¹⁰⁸ Governance, REFUGEE CITIES, <https://refugeecities.org/about-the-project/our-response/gover>



in simulated form by offering close to shore many of the legal effects of staying far out at sea.

A deep blue SIZ would allow select foreign vessels to anchor within the territorial or inland waters of its host nation on terms designed to simulate those that apply in international waters. This would change the rule ordinarily applicable in territorial waters, wherein foreign vessels can typically do no more than maintain innocent passage.¹¹³ Because the host could fine-tune the zone's rules to disallow military vessels, resource extraction, and other international rights ill-suited for inland waters, the deep blue zone need not pose any unusual risks. At the same time, the arrangement would give seasteaders a protected harbor, both literally and legally speaking, in which they could try out the arrangements they aim to someday use in international waters.

A deep blue SIZ would allow select foreign vessels to anchor within the territorial or inland waters of its host nation on terms designed to simulate those that apply in international waters

If seasteaders make it out into the open ocean, for instance, as they so ardently claim to want, they will find themselves living in cities that, because they float in international waters, will enjoy ready access to the world's maritime trade. Vessels flying the flags of many sovereigns will visit and trade with seasteads. Furthermore, the seasteaders' vessels will themselves likely sport various flags, whether of nation states or, still more hypothetically, of seasteading

¹¹³ See UN Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 arts. 17–21.

polities.¹¹⁴

Because each flag brings with it much of the substantive law of the flag's issuer, rendering the vessel flying it national territory for some purposes,¹¹⁵ seasteads offer the prospect of bringing many various polities together in close proximity under fluid conditions. Just as the borders of ecosystems, such as where a river meets the ocean, generate the greatest diversity and growth, this polycentric feature of seasteads offers the prospect of untold wonders—or chaos. Such complex systems do not always behave predictably. Through a deep blue SIZ, seasteaders might reduce the rough and tumble of international seas and laws to safe, controlled conditions.

C. Peer Group Country Standards

Special economic zones, for the most part, aim to offer little more than areas free of customs, duties, and taxes, sometimes with the added benefit of one-window service for any government paperwork that persists. Zones competing on those fronts need not reference the laws of other countries. Relatively recently, however, zones have begun to compete not only on the price and convenience of governing services, but also on the applicable rules.¹¹⁶ That opens the door for a zone that allows its guests to choose rule sets from any of a number of pre-approved countries, bringing international law to bear on what is ordinarily a purely local question.

Though somewhat by historical accident rather than by Chinese design, Hong Kong demonstrated long ago that importing the right foreign laws to a special jurisdiction can help it thrive. First as a Crown Colony and then, under a “Basic

¹¹⁴ See BELL, *supra* note 24, at 63 (discussing flagging options, including self-flagging seasteads).

¹¹⁵ See *id.* at 62.

¹¹⁶ See BELL, *supra* note 24, at 187.



Law” that maintained the legal system’s fundamental features after its handover to China in 1997, Hong Kong has succeeded by offering Asia a common law legal system relatively friendly to private enterprise and high finance.¹¹⁷ Eager to replicate that success, Dubai employed retired English judges, even fitting them out with robes and perukes, and wrote “the laws of England and Wales” into its legal system.¹¹⁸ Honduras plans to take the process even further with its *zonas de empleo y desarrollo económico* (“zones of employment and economic development” or “ZEDEs”), which within broad limits will allow each zone to import common law or other rules from public or private sources of its own choosing.¹¹⁹

Zones have begun to compete not only on the price and convenience of governing services, but also on the applicable rules.

These trends suggest that a future special international zone might best satisfy the market demand for good rules not simply by offering another country’s laws within its bounds, as in Hong Kong or Dubai, nor even by offering a flag-free generic common law legal system, as Honduran ZEDEs might, but by offering a choice between any of the many rule sets that a variety of peer countries would apply to a

particular area of regulation. The host would select the countries in its peer group on the basis of the quality of their regulations, market demand for them among zone clients, and their suitability given local conditions. A special zone set up in Central America might choose to put all OECD countries (thus including all members of EU and NAFTA) and its neighboring countries in its peer group, for example. With regard to some areas of regulation, guests could either stick with the regulatory scheme that applies by default in the zone (which might itself come from outside the host country) or choose one from a peer country.

Under peer group standards, for example, if a company that manufactures and sells medical devices in the German market decides to expand its operations to the zone, it could choose to stick with the rules it has already mastered. The zone would not try to master those rules itself, but would instead require the company to certify that its practices in the zone, because they follow those established in its home country, comply with German law. This certification could be provided by the peer country itself under special arrangement or by some trusted third party. Upon offering its certification of compliance with peer group country standards, the company would be allowed to make and sell medical devices in the zone.

Though companies would probably often want to “bring to the zone” the same regulations they have already satisfied back home, thus saving the need to master another set of rules, a company setting up in the zone could choose the regulations of any peer country. It may turn out, after all, that all medical device companies in the zone, even those from other countries, will want work under German regulations.

¹¹⁷ See STEVE TSANG, A MODERN HISTORY OF HONG KONG 273–77 (2004).

¹¹⁸ Law on the Application of Civil and Commercial Laws in the Dubai International Finance Center, DIFC Law No. 3 of 2004, art. 8(2)(e) (U.A.E.), https://www.difc.ae/files/9214/5448/9184/Law_on_the_Application_of_Civil_and_Commercial_Laws_in_the_DIFC_DIFC_Law_No._3_of_2004.pdf.

¹¹⁹ Decreto No. 120-1203, Ley Orgánica de las Zonas de Empleo y Desarrollo Económico (ZEDE) [Organic Act for Zones for Employment and Economic Development (ZEDE)], LA GACETA, DIARIO OFICIAL DEL LA REPUBLICA DE HONDURAS (Sept. 6, 2013).



In this way, a SIZ run on peer group standards could reveal which countries, among those trusted to have reasonably good rules, offer the sorts of regulations that protect the public while encouraging economic development. That in turn might encourage countries to compete for the coveted top spot in terms of trusted but efficient regulatory services. This is not just a matter of prestige, nor even of what revenue might be had from selling certification services to parties invoking a particular countries' regulations within a zone that applies peer group country standards. The countries that take the lead in offering the world regulations that both protect the public while promoting profit will give its domestic industry a great advantage over foreign competitors, who instead of having already mastered the prevailing rules will have to either play catch up or suffer under the familiar but unpopular rules of their own home countries.

D. Special International Residency and Work Zones

Future SIZs could also take a form designed to attract digital nomads, voluntary exiles, and other parties eager to pay for enjoying lower barriers to international travel, trade, and cultural exchange. Enterprising host countries could serve that growing market by offering special international residency and work zones. This Section explains SIRW zones in greater detail.

In a SIRW zone, a nation state would roll back its customs and immigration border, legally speaking, and leave behind an area open to visitors, residents, and workers from abroad. Like French *zones d'attente*, these zones would begin as offshoots of a pre-existing international transit zone. The usual tourist and resident visa and work

permit rules would not apply in a SIRW zone. Other rules might apply of course; that depends on the host government, the organization (probably private) that operates the zone, and the international market for places to live and work.

Most likely, the SIRW zone would offer comfortable housing and work environments for all its guests and expedited processing of residency visas and work permits for those seeking stronger links to the host country. To judge from current practices in international transit zones, private parties will likely manage SIRW zones under the host's oversight.¹²⁰ Instead of applying its customs and immigration rules to the zone, the host would assess a flat lease, *per capita*, or other fee. This would ensure that the zone pays its way, in terms of public finances, while being treated as a black box by the host country in terms of the taxation of (and thus interference with) the zone's internal operations.

Extant SIZs have come close to creating SIRW zones without quite fulfilling all the criteria. Norway's Svalbard Islands look like one at first glance. As its welcoming website says, "Everyone may, in principle, travel to Svalbard, and foreign citizens do not need a visa or a work or residence permit from Norwegian authorities in order to settle in Svalbard."¹²¹ In contrast to the voluntary process through which host countries ordinarily create SIZs, however, Norway had to accept this limitation on its sovereignty somewhat by force. It never had the right to impose visa or work permit requirements in the islands, but rather had to forswear imposing those limits on nationals of other

¹²⁰ See Frétigny, *supra* note 14, at 15–16; see also BASARAN, *supra* note 3, at 102–03.

¹²¹ *Entry and Residence*, THE GOVERNOR OF SVALBARD, <https://www.sysselmannen.no/en/Visitors/Entry-and-residence/> [<http://perma.cc/W747-M99G>] (last updated Sept. 27, 2016).



parties to the Svalbard Treaty in order to win such control over the islands as it now claims.¹²² It bears noting, however, that the Governor of Svalbard, evidently not pressed for space, has extended the invitation to *all* foreigners.¹²³

In a SIRW zone, a nation state would roll back its customs and immigration border to leave behind an area open to visitors, residents, and workers from abroad.

Something akin to a SIRW zone also emerges from the details of the Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) Act, the legislative enactment of an agreement reached between the government and the private developer of a free port.¹²⁴ The Act gave a new corporation, the Grand Bahama Port Authority, Ltd., sweeping powers to create and run the port, including responsibility for education and healthcare, and exemptions from all manner of customs, duties, taxes, and fees.¹²⁵ More to the point for present purposes, it also allowed the Port Authority (or its licensees) to bring to the Bahamas and employ a broadly defined class of skilled workers and their dependents, subject only to a government veto right against identified individuals.¹²⁶ This is not quite a SIRW zone, but neither is it far from one.

In its full flower, SIRW zones would

offer something of a mirror image of the pre-asylum waiting areas that France and other countries have created. Instead of trying to drive migrants away, a SIRW zone would try to convince them to come, stay, and work. Like pre-asylum waiting areas, though, SIRW zones would exist within a country's geographic borders but outside of its territory, legally speaking, for purposes of customs or immigration.

Conclusion: Unbundling Sovereignty for the Public Good

This paper has introduced the special international zone—an area that its host nation state places outside of its territory for the purpose of some local laws, leaving other local laws and applicable international obligations in force—as a distinct genus of legal institution worthy of close study. As Part I documented, SIZs have a long history, already exist in great numbers across many types, and continue to grow and adapt. Their success should come as no surprise, given that SIZs prove so useful in helping smooth the barriers, gates, and gaps between nation states' various territories. The theoretical foundations of SIZs have hitherto remained rather undeveloped, however. Part II began correcting that deficiency by defending SIZs as irreplaceable tools for promoting the liberal ideals embodied in free trade, travel, and cultural exchange. Part III applied that theoretical approach to SIZs by describing special international zones that might, if brought to fruition, promote peace, prosperity, and human dignity.

Nation states usually follow the same business model as cable TV companies: bundle many various services into an indivisible whole. SIZs allow innovative nation states to offer something like service *à la carte*. Whereas in most of its territory, a

¹²² The Svalbard Treaty art. 3, Feb. 9, 1920.

¹²³ *Entry and Residence*, *supra* note 120.

¹²⁴ *The Hawksbill Creek Agreement*, GRAND BAH. PORT AUTH., <http://www.gbpa.com/index.php/about-us/the-agreement> [<http://perma.cc/9JME-JW2E>] (last visited Jan. 22, 2018). The author thanks Mark Frazier for bringing this arrangement to his attention.

¹²⁵ See generally *Hawksbill Creek, Grand Bahama (Deep Water Harbour and Industrial Area) [Hawksbill Creek Agreement]*, CH.261 (June 20, 1955) (Bah.).

¹²⁶ *Id.* § 2(20).



government offers a single package of services—taxes, regulations, policing, etc.—in a SIZ it can offer a curated selection of these. In an international transit zone, for instance, most of the usual laws apply with the exception of certain ones relating to immigration and taxes. A SIRW zone might remove labor regulations from the mix, too. A deep blue zone would remove still other local restrictions, leaving international norms to fill the gap. This, the power of special international zones to regulate the territorial boundaries of nation states, stands to work widespread and lasting changes on the structure of international relations.

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