

The Arc of Protection: Toward a New International Refugee Regime

T. Alexander Aleinikoff and Leah Zamore

Chapter Two

Protection, International Protection and Necessary Flight

That persons fleeing danger across international borders should be cared for—and not returned to harm—is uncontroversial. We believe that the moral case for assisting the displaced is “overdetermined.” They are “necessitous strangers,” to borrow Michael Walzer’s phrase;¹ fellow human beings who have experienced tragedy and trauma. To turn our backs on them is to deny our own humanity. Usually what they seek from our collective selves is far less than the benefits bestowed upon their individual lives. It is not surprising, then, that the Abrahamic religions enjoin adherents to care for the strangers in their midst.²

Persons displaced across borders are also victims of the international system of nation states. Subject to brutality in the state to which they have been assigned (for most, assigned through no choice of their own) and which, according to the system’s rule, has near complete “sovereignty” over them, they have crossed a border only to find themselves in another state which exerts similar claims to authority over their lives and their fortunes. They have no place on earth to flee to where they are free to help themselves. But the claims they put forth—that their fundamental human rights have been violated—invoke obligations that the nations of the world have, in exercise of their sovereignty, assumed. The UN Charter, and other international instruments, commit states to promote “universal respect for, and observance of, human rights and fundamental freedoms for all.”³ Most nations of the world have ratified either the 1951 Refugee Convention or its 1967 Protocol, and even those states that are not signatories (including Jordan, Lebanon, Pakistan and Thailand) currently protect millions of refugees. Meanwhile, when states take harsh actions against displaced persons, they generally deny that a violation of rights has occurred—for instance by calling refugees “economic migrants” or by insisting that conditions in their home countries are “safe” to be returned to; this further suggests that states consider themselves to be bound by the norms of international refugee law.

Most refugees find safety in poor countries nearby to their own. The communities that take them in are often as poor, or in some cases poorer, than refugees themselves. So caring for the world’s displaced can therefore be seen as one in a range of efforts to ameliorate global inequality, as most refugees derive from the global South and most of the aid they receive comes from richer states in the global North. If all this were not enough to justify protection for refugees, one could point to the self-interest of states, in both political

and security terms, in paying attention to the root causes and consequences of forced displacement.⁴

To note a global consensus on the case for aiding the forcibly displaced is not to specify the content of moral or legal obligations. Those questions, of course, are quite contentious. Part of the problem is that the terrain on which the arguments occur is a constantly shifting one. Sometimes the focus is on what classes of persons should be deemed to come within the Convention's definition of "refugee" or how that definition might be expanded to include similarly situated groups. This approach is of particular interest to lawyers and advocates, who argue in favor of capacious readings of the Convention's definition in order to extend rights to as broad a scope of people as possible. An alternative approach is to concede that the Convention definition is of restricted compass, but to assert that other categories of forced migrants warrant international concern as well. This strategy typically proceeds by identifying an underlying principle justifying assistance—such as flight from violence, or protection of fundamental rights or needs—and then showing that it is arbitrary to include only groups that come within the Convention's definition.⁵ That the Convention's definition arises from a particular historical moment reinforces this sense of arbitrariness.

We want to approach this debate from a different perspective. We start with the simple proposition—one, as we will argue, that is widely embraced in theory and practice—that persons who flee from circumstances in which they face a serious risk of harm should be received elsewhere and should not be forcibly returned (or be asked to return) to a situation in which they would face a serious risk of harm. We then explore for these people, whatever their motivations for leaving or the motivations of those who would do them harm in their place of origin, the nature and scope of the collective responsibility of the international community to aid them. We will call the content of that responsibility "international protection."

These seem like straightforward and not particularly controversial propositions. And yet they do not reflect the prevailing conceptions of who is entitled to aid, what that aid should be, and what "protection" means. We believe that the discussion of "protection"—a word that defies easy or precise definition—went off track in the nineties and led to a fundamentally flawed description of the purpose and promise of the international refugee regime. We do not suggest a return to the "original understanding"—although our reconceptualization is at home with the purposes of the Convention and the regime in important ways. Instead, we suggest a 3.0 version of international protection, one that identifies more fully the responsibilities of the international community and member states of the international refugee regime.

Our approach is more empirical than linguistic. We look to existing international and regional practice to see how the relevant questions have been approached in the past and in our day and the expectations that have been created. Our claim is not that what is, is right; rather, we believe that an approach that looks both at precepts and practices will describe a trajectory of international responsibility and institutional design—an arc of protection—that can offer life-saving and life-sustaining aid to persons whom the world believes merit our deepest concern.

I. The protean meaning of protection: A short history

The word “protection” is mysterious to most readers. Apparently central to the definition of refugee, it means more than physical protection from bodily harm (although it may include that) or security. The origin of the use of the term derives from international legal principles that precede the 1951 Convention, but the concept of “protection” has moved far from its origins. It now plays a central role in many aspects of the international refugee regime. Properly understood and mobilized, it indeed deserves its place at the core of the international response to displacement.

This historical review can be brief because it has been described in detail in the scholarly literature.⁶ The term “protection” is borrowed from general (European) international practice in the years immediately following World War I, and initially appears as part of the *definition* of refugee in a 1926 “arrangement” regarding Russian and Armenian refugees.⁷ The idea was this: in the international law of that era, legal relations were state-to-state; persons existed as citizens of a sovereign state acting in the international realm. A person outside her country of origin would rely upon her home state to “protect” her—to give her documentation for purposes of international travel, to stand up for her in disputes with nations in which she is travelling or residing, to provide other forms of “diplomatic protection.” The protection is afforded by the state of which the person is a citizen in the territory of another state. A refugee, however, is unable to rely upon the “protection” of her home state because that state has cast her out; she may no longer be a citizen (and thus not eligible for protection by the home state) or even if still a citizen, it is apparent that that state will not represent her interests in relations with other states or issue her documents that facilitate life outside the home state. Thus, in defining Russian refugees from the Russian civil war, the League of Nations employed the following definition: “Any person of Russian origin who does not enjoy or who no longer enjoys the protection of the Government of the Union of Socialist Soviet Republics and who has not acquired another nationality.”

The logic behind such a definition was simple: what refugees needed most from the international community was a legal identity, since they had lost—*de jure* or *de facto*—the citizenship of their home state and had not been granted status elsewhere.⁸ It also bears noting that by the twenties, identity documents had become a regular feature of interwar life in many countries. Refugees faced a growing matrix of controls “of which passport systems, alien registration and restriction rules [were] symbolic.”⁹ Thus the crucial intervention of the first High Commissioner for Refugees, Fridtjof Nansen, was the creation of identity cards (later called “Nansen passports”).¹⁰ Nansen passports did not endow refugees with rights—either the right to enter other states or substantive rights in the state in which they were residing: these matters were left to domestic laws and inter-state agreements—but they did facilitate international travel and gave refugees “a more secure legal status” while helping to return their “lost identity.”¹¹ They also introduced a link between protection and what are now called “durable solutions,”¹² since legal identity is a crucial prerequisite to the acquisition of membership in a new state. In many ways, the Nansen passports called into being the very category “refugees” as a distinct object of intergovernmental responsibility and concern.

Notably, the definitions of refugee in the early international instruments made no mention of “persecution” or other deprivations by the home state. Although problems in the home state are implicit (it is, at least in theory, the reason why a person is unable or unwilling to seek the protection of her state of origin), to link an international response directly to wrongful acts at home would have been an intervention in domestic affairs not yet sanctioned in this pre-human rights era. So international protection turned on the

(un)likelihood that the home state would fulfill its external, diplomatic responsibility toward its own citizens residing outside the state.

The Nansen passports and other measures were followed by a “legal avalanche” of arrangements and agreements related to international protection.¹³ By 1933, the number of ad hoc responses to refugee systems led the League of Nations to draft a general Convention Relating to the International Status of Refugees. The Convention applied only to groups of persons already recognized as refugees under earlier instruments; thus it did not provide a universal definition applicable to groups or persons who might flee in the future. And in relying on earlier definitions, it implicitly accepted the concept that a refugee is someone who lacked the protection of his or her home state in another state. Indeed, it was not, as is often argued today, the lack of protection afforded refugees before they became refugees (such as persecution in the home state) but the absence of home-state protection abroad once refugees had fled that triggered international protection. Despite this distinction from the 1951 Convention, the 1933 Convention is an important, if forgotten, precursor to the former, laying out a number of rights that ratifying states would grant to refugees on their territory. These included access to courts and schools, issuance of Nansen certificates, and protection against expulsion.¹⁴

The 1933 Convention had limited impact, attaining only eight signatories and establishing no methods of enforcement.¹⁵ But by 1933 the chief elements of the modern system of international protection were in place: a Convention establishing rights, including economic rights and the right of *non-refoulement*, and an Office of High Commissioner. These steps towards some kind of international regime, however, were soon overtaken by new flows of refugees from rising fascist states.

Jews fleeing Nazi Germany gained worldwide attention in the thirties and produced two international agreements among European states. Both the 1936 “arrangement” and the 1938 Convention on the status of refugees from Germany continued to use lack of home state protection abroad in the definition of persons covered.¹⁶ But the events occurring in Europe also suggested a different approach to refugee situations. The issue to be dealt with was not just cast-out populations, but also millions of persons in their home states who were subject to increasing degrees of harmful treatment and therefore likely to flee. This shifts emphasis away from a lack of protection by a home state for their citizens in a hosting state to a concern with persecution in the home state. While the evolving regime was helpful to some degree (the ’36 and ’38 agreements offered protection to at least 144,000 Jews in Europe), it is remembered primarily for its failures, from the Evian Conference to the German liner *St. Louis* and eventually the death camps. Jews faced the double tragedy of an unfolding catastrophe at home coupled with few states bound or willing to take them in. Despite the preceding decades of international agreements and maturing institutions, the failure of the nascent protection regime was crystal clear. As Hannah Arendt memorably put it, “once [these refugees] had left their homeland, they remained homeless; once they had left their state, they became stateless; once they had been deprived of their human rights, they were rightless, the scum of the earth.”¹⁷

Post-World War II Europe provided a new chapter in the development of international refugee protection. As soon as the fighting ended, the problem of refugees came to the fore.¹⁸ Some 20 to 30 million people were outside their countries of origins, and thus attention turned from flight to solution. But first a determination had to be made as to who would qualify for protection and solutions. During the first-ever session of the UN General Assembly, in January 1946, a substantial divide between the Western and Soviet representatives emerged. Russia insisted that *international* protection should be afforded only

to German Jews and Spanish Republicans; that all other refugees (especially those that had fled Soviet expansion) were not refugees at all but “quislings and traitors” who should be returned to their countries of origin at once. Reluctant to provoke their Eastern ally, the Allies acquiesced. The preferred solution immediately after the war ended was (forced) repatriation, supported by the Allied military command and the Intergovernmental Committee on Refugees (IGCR) which had been established by FDR in 1938 after the failure of the Evian Conference. Millions of refugees were sent east. Many ended up in Soviet labor camps.

By 1946 the Cold War had arrived. The IGCR was succeeded by a UN body, the International Refugee Organization. The IRO began with an agenda of continued repatriations. But its constitution included a prohibition against *refoulement*: “No refugees or displaced persons shall be compelled to return to their country of origin.”¹⁹ In fairly short order the repatriation programs stopped and the emphasis shifted to resettlement— instantiating what scholars later took to calling the “exilic bias” of the postwar refugee regime.²⁰ During the IRO’s five-year existence, over one million refugees found new homes in dozens of countries around the globe. As the Director General of the IRO explained, “the whole nature of the refugee problem had undergone a radical change since IRO was established. Large numbers of the displaced persons who were uprooted during the war and immediately afterwards turned out in fact to be political refugees. This determines the essential nature of the organization’s plans and program, dictating a shift in emphasis from repatriation to resettlement.”²¹ The IRO assisted in the repatriation of only 73,000 people, compared with the more than a million people whom it assisted in resettling.

In order to determine who should benefit from these international activities, the IRO’s Constitution supplied a definition of refugee. It was necessarily capacious, as it needed to cover displaced populations in a range of circumstances if solutions were to be available to all. Thus in a somewhat unwieldy list, the IRO included previous groups of refugees, victims of the fascist regimes, Spanish Republicans, and others who were “unable or unwilling” to avail themselves of protection from their home governments.²² The definition excluded, *inter alia*, war criminals and those who “assisted the enemies in persecuting civil populations.” “Persecution” makes its first appearance in an international refugee instrument in two provisions of the IRO Constitution. First, it is included in an arcane part of the definition of refugee, which refers to “victims of Nazi persecution” who were returned to Germany or Austria “as a result of enemy action, or of war circumstances, and have not yet been firmly resettled therein.”²³ More significantly, IRO’s jurisdiction is defined as extending to persons whose help from IRO is necessary “to provide for their repatriation” or if they have “expressed valid objections” to return. “Valid objections” were defined as including: “persecution, or fear, based on reasonable grounds of persecution because of race, religion, nationality or political opinions.”²⁴ (This language, of course, is adopted as the core of the definition of refugee in the 1951 Convention; in the IRO Constitution, it plays a subsidiary role—explaining why IRO could act on behalf of persons who were unwilling to repatriate.)

The concept of protection was also recognized as having a substantive content. IRO’s functions included the “legal and political protection” of refugees.²⁵ This term is not further defined in the Constitution but would have applied to the granting of identification and travel documents as well as the protection of the rights of refugees in hosting states— although neither the source nor the content of rights was specified.²⁶

The term of the IRO was set to expire in 1950 (later extended to 1951), and it was recognized by Western European states that some kind of international effort would need to continue on behalf of refugees—both for the “residual cases” of a million displaced persons

for whom a solution had not been found and for refugees likely to arise from the expansion of Communism in the Eastern bloc.²⁷ In 1949, the UN General Assembly began work both to establish an international organization to succeed the IRO and to draft a convention on refugees.

II. Protection in the 1951 Convention

UNHCR was created by a Statute of the General Assembly, opening its doors on January 1, 1950—a date that can appropriately be seen as the beginning of the modern era of refugee protection. The High Commissioner, as we described in Chapter 1, was assigned the responsibility of “providing international protection” and “seeking solutions.” The latter continued the work of predecessor organizations but the former was the first mention of *international protection* in an international instrument (as noted above, it is derived from the IRO’s charge to provide “political and legal protection” for refugees). The Statute offered no definition of international protection but it supplied a list of activities that the High Commissioner “shall provide” for refugees under his mandate, including: promoting the adoption of international conventions and supervising their application; assisting governments to promote solutions; promoting the admission of refugees; keeping in contact with governments, intergovernmental organizations and NGOs; and supporting through agreements with governments “the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection.”²⁸

It is not easy to identify an underlying concept of protection that is reflected in each of these specific activities, but it is important to see that the actions asked of the High Commissioner are the kinds of actions appropriate for an international organization.²⁹ The idea is not that the High Commissioner would begin to provide rights to refugees that their home states had denied them (whose denial had occasioned their flight); indeed, how could the High Commissioner do so? International organizations do not, by themselves, guarantee or supply rights. Rather, the Office of High Commissioner was established to continue the kinds of programs that had been undertaken by international organizations for the previous half century: working with states (and private organizations) to support admission, improve the condition of, and find solutions for refugees. That is, the high Commissioner was to focus on the phenomenon of displacement—a problem of continuing significance for an international community of states.

International protection entailed a series of legal and diplomatic activities aimed at securing for remaining refugees a legal identity conducive to their integration in countries of asylum or onward movement to countries of resettlement. Crucially, and as we explain in more detail below, the Statute of the Office of the High Commissioner made no provision for material assistance (a central function of UNHCR’s predecessor, the IRO). By 1951, states had come to see the “residual” refugee problem in Europe as a temporary one.

The High Commissioner Statute also made no mention of refugee rights. That was to be the province of the Convention being developed at the same time. Here was something old and new. As noted, the 1933 Convention had included a rudimentary set of rights. By 1951, the world had witnessed the atrocities of World War II and had entered the human rights era, with the adoption of the Universal Declaration of Human Rights, and so the Refugee Convention became a full-throated charter for the rights of refugees.

The Refugee Convention (adopted a year after the creation of UNHCR) figured protection in two senses. First, protection is mentioned specifically in the definition of

refugee, which borrowed from formulations in the various prewar instruments. Here we see protection in the early twentieth century sense—the acts of a home state to aid its citizens in a foreign state—combined with the subsequent focus on persecution. Article I of the Convention defines a refugee as a person who,

As a result of events occurring before 1 January 1951 and 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*; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

This use of “protection” in the definition, as scholars have argued, is either unnecessary or confusing.³⁰ On the one hand, establishing that one has a well-founded fear of persecution ought to implicitly establish that a person is “unable or unwilling” to avail him or herself of the protection of the home state. On the other hand, it may be that a refugee could reasonably fear persecution from some organ of the state and yet still be able to find a way to be granted a passport by officials in another part of the government (such as the embassy abroad). It is noteworthy that legal instruments that have come after the 1951 Convention have generally followed its definition but not included the language on protection.³¹

Second, the Convention as a whole offered substantive protection, committing states to guaranteeing specific rights—including mandates that states issue travel and identity documents to refugees who lacked them.³² The Convention’s rights echo the Universal Declaration of Human Rights and are important guarantees in and of themselves.

The formulation of the rights had an instrumental objective as well. Recognizing rights for refugees was a vital strategy for dealing with the “residual” caseload of displaced persons. In essence, the states that had been funding the IRO (as well as broader development programs) and resettling hundreds of thousands of refugees came to the conclusion that the remaining populations would need to be integrated into the states in which they were residing. Thus international assistance directed at refugees would end; refugees would either be given the ability to provide for themselves or it was expected that host states would provide for them by integrating refugees into their welfare systems. The Convention was a way to provide that opportunity—guaranteeing freedom of movement within the host state (i.e., out of Displaced Persons camps), rights to work and open a business, protections of labor laws, a right to an education, and welfare rights.³³ This purpose was made evident and complemented by the duties of the new High Commissioner. The Office’s funding was initially set at a few hundred thousand dollars, just a tiny fraction (0.2 percent) of the more than \$160 million that its predecessor organization, the IRO, received annually. Now that the primary responsibility for protection would fall to host states, the international protection functions of the High Commissioner—working at the international level to cajole states and coordinate NGOs—were seen as needing far less funding than the wide-ranging assistance activities of the IRO.

Thus, protection at the dawning of the modern era had a range of meanings. First, it described a set of rights for refugees that states joining the Convention promised to respect and promote. These rights were part of a project of promoting refugee welfare and the rebuilding of shattered lives through reconstruction and development. Second, framed as

“international protection,” it meant the work of a new multilateral organization operating at the international level (that is, among states) to move forward an agenda of responding to and solving refugee situations. Protection also connoted providing refugees with documents that gave them an identity and facilitated their cross-border travel (the original function of the Nansen passports.) At both the state and international levels, protection was distinguished from international assistance.

III. Subsequent developments and the rise of an assistance regime

As we described in Chapter 1, over the next several decades the work of UNHCR grew dramatically. Mass flows of refugees from Hungary, Algeria, Rwanda, and other newly independent African countries, and adoption of the 1967 Protocol (which removed the geographical and temporal limitations of the 1951 Convention) supported a “universalistic” definition of refugee and also undercut the idea that it was focused primarily on individual cases. By the time of the large-scale displacement in the Great Lakes and the Balkans in the nineties, UNHCR had become, in truth, a different agency.

The UNHCR Statute had suggested a very limited role for UNHCR in providing assistance, but subsequent General Assembly resolutions, backed by funding by important donor states, requested and ratified expansion of the agency’s mandate—both in terms of displaced persons assisted and the kind of assistance programs provided.³⁴ As the refugee regime expanded beyond Europe, a “care and maintenance” approach began to dominate; camps became routine; solutions seldom arose; and refugees were delinked from the economies and welfare systems of host countries. They became, in essence, wards of the international community.

James Hathaway has well described the “dualist approach” that took shape, one that could be traced to the foundational instruments:

The initial goal of the drafters of the Convention was to create a rights regime that would be conducive to the sharing out of the European refugee burden among a broad constituency of states. The needs of non-European refugees, on the other hand, were to be met by a combination of on-site assistance and the promotion of voluntary return to the state of origin. The result was a two-tiered protection scheme which is consistent with the facilitation of exile abroad for European refugees and which seeks to localize and contain refugees in the less developed world.

The result was that, “[w]hile extensions of the UNHCR's mandate . . . enabled the organization to assist large groups of persons in need, primarily in Africa, Asia, and Latin America, the assistance is qualitatively distinct from that given to ‘refugees’ under the Convention.”³⁵ And as the number of refugees in the global South began to far exceed the number in the North, the duality of response meant an increasing percentage of UNHCR’s budget would go to programs for assistance rather than protection.

A similar dualism arose in developing solutions to refugee situations. In Europe, the exilic bias emerged early on, according to which it was all but unthinkable that refugees, who were mainly fleeing Soviet states, would be sent back. By contrast, as a U.S. representative to UNHCR put it in 1960: “Nevertheless, in other areas, such as Africa, the Middle and Far East, there are several million refugees for whom the solution which had proved effective in Europe, namely immigration, was not always suitable.”³⁶ Similarly, a consensus emerged that,

“for the overwhelming majority of African refugees, their problems must be resolved on African soil. Resettlement in other countries is neither necessary, feasible, or desirable.”³⁷

The central players within the international system did not expressly base their acquiescence to a two-tiered refugee regime on geography or nationality. Instead, they constructed what B.S. Chimni has called the “myth of difference”: namely, that displacement outside of Europe was qualitatively different and therefore required a different sort of response.³⁸ As but one example, in 1985, High Commissioner Hartling repeated what had by then hardened into conventional wisdom: “internal upheavals and armed conflict”—not persecution—were the primary cause of refugee outflows in the developing world. “I would like to make it clear that I do not consider that persons falling into this ‘broader’ category are entitled to the same legal status as refugees according to the traditional definition.”³⁹ Of course, when refugees had fled Hungary en masse in 1956, UNHCR had recognized them as Convention refugees despite their having fled armed conflict. Similarly when Czech citizens fled west in 1968.

While assistance has come to overtake protection in UNHCR’s work, the nature of protection activities has not remained static. Responding to developments in human rights discourse and practice, UNHCR has grown considerably beyond activities identified in the Statute and described above: ratifications of the Convention, access to asylum, and the like.⁴⁰ Over time, new elements of protection have been added, so that UNHCR’s Division of International Protection now includes within its remit programs dealing with sexual and gender-based violence, education, at-risk youth, statelessness, “community protection” strategies, the role of development actors and financing in solutions, and anti-xenophobia and anti-discrimination efforts.

So too the norm of *non-refoulement* has matured in importance over time. It first appears in the 1933 Convention, supplying protection to recognized refugees. In the immediate postwar period, when the focus was on solutions for mass displacement, *non-refoulement* provided a reason to prevent repatriation—that is, those with a “valid objection” to returning to their country of origin would not be required to do so. In the 1951 Convention, *non-refoulement* appears as a defense against deportation: earlier articles of the Convention suggested that a refugee could be removed for reasons of public order. But Article 33 of the Convention protected a refugee subject to deportation to return to a country in which he or she would be persecuted.⁴¹

Today, the *non-refoulement* provision is seen as the fundamental protection of the 1951 Convention. It has gained in importance both because of the downplaying and lack of enforcement of other rights in the Convention, noted above, and because of the non-recognition of a right to enter (as we will explore in Chapter 3, a sort of right of asylum can be generated from a right to non-return). It is now implicitly linked to the definition of refugee and the concept of persecution: a refugee is defined as someone who cannot be returned to his or her country for fear of persecution, and states commit (via the *non-refoulement* principle) to not so doing.

* * *

International protection, then, can be conceived of as the collective actions of the international community, member states, and international organizations to guarantee rights and opportunities to persons forced from their homes and to ensure that they are not returned to danger. It is a response to *displacement*, focused on the particular harms and needs imposed by being forced from one’s home.⁴² The rights established, the programs put in

place, and the solutions proposed and provided are tailored to displaced populations. At the same time, protection looks different in different parts of the world and at different times (often for reasons that have little to do with the needs or situations of displaced persons).

In the form that emerged in postwar Europe, international protection has a strong rights component, starting from the 1933 Convention, that now includes 1951 Convention rights and other applicable international human rights (arising from international humanitarian law, the conventions against torture, protecting women and minorities against discrimination, guaranteeing rights of children, and establishing labor protections for workers).⁴³ It is also constituted by the enhanced mandates of UNHCR and other international organizations, which work to gain adherence to international legal norms and support efforts by states and other actors to advance the interests of refugees. Those efforts are focused on vulnerable groups and also increasingly on helping refugees attain self-reliance (consistent with the founding goal of the Convention). While there is an argument that the High Commissioner's responsibility to seek solutions is distinct from his responsibility to provide protection, these two duties are in fact both parts of the broader aim of helping refugees rebuild their lives.

The current understanding of international protection is not compelled by international agreements or by logical induction or deduction. One could provide meaningful renderings of international protection that include action on removing the conditions that contribute to flight or that establish rights for hosting populations or that guarantee refugees free movement around the world. And nothing necessarily rules these interpretations in or out for the future. The history we have briefly reviewed should make clear that international protection has had and will continue to have a trajectory, an arc; traces of the past contribute to the present even as new global events suggest further development of the concept in the future.

IV. The inadequacy of the “modern standard account” of international protection

Our description of international protection deviates to a surprising degree from what might be termed the modern standard account. Developed in the nineties, that account sees international protection as “surrogate” protection. It works by taking the “unable or unwilling to avail himself of the protection of his country of origin” language and turning it inward. As we have noted, the concept has always referred to the inability of a refugee to claim the protection of her home state when residing in another state.⁴⁴ We have further noted that, with the focus now on persecution in the home state and the inhumanity of returning a person to persecution, the “protection” element of the refugee definition is an historical relic, playing no significant role in modern interpretations. The modern standard account, however, tries to provide relevance to the presence of “protection” in the definition by applying it to actions of the home state in the home state. That is, a refugee is conceptualized as someone who has been denied protection at home and thus must be provided protection outside her home state.⁴⁵ In schematic form, the modern standard account runs something like this:

- (1) Citizens of a state are entitled to the protection of their fundamental rights by their home state;

- (2) a refugee is someone (a) whose home state has failed in its duty of protection by either directly depriving a person of her fundamental rights or failing to prevent others from depriving a person of those rights, and (b) has been compelled to leave her country of origin because of the deprivation of rights and failure of state protection;
- (3) “international protection” constitutes “surrogate” (or substitute) protection, providing persons who have crossed into another state the protection of the basic rights denied by their home state.⁴⁶

The modern standard account was adopted to solve a particular problem in cases involving persecution committed by non-state actors. Thus, it was reasoned that a person who faced persecution from a non-state group could still be a refugee if the home state failed to prevent the harm because it was either unable or unwilling to do so (think here of a fundamentalist group that imposes extreme harms on women that a state is unable to control). International protection, then, became a surrogate for the protection that the home state could not deliver *at home*. The analysis was taken even further. Not only would the concept of surrogate protection help protect persons subject to persecution by non-state actors, it also was asserted to be the foundation of the international refugee regime itself. That is, refugee protection as a whole is constituted by an obligation of the international community to remedy the failure of one of its members to live up to its duty to respect the rights of its citizens.⁴⁷ Both the state duty neglected and the international duty assumed are described as “protection.”⁴⁸

An easy symmetry informs the modern standard account: rights denied at home are compensated by rights provided by other states and the international community. But we believe that it has provided unnecessary complications for legal cases and also mischaracterized the basis and scope of the system of international refugee protection.

As noted, the concept of surrogate protection was deemed useful in cases involving non-state actors. In an oft-repeated formulation of a judge on the United Kingdom’s highest court, “Persecution = Serious Harm + Failure of State Protection.”⁴⁹ But adding “failure of state protection” is unnecessary in non-state actor cases. As the cases from the United States show, adjudicators are able to find persons persecuted by non-state actors if the state is unable or unwilling to prevent the harmful conduct. That is, the failure of state action is relevant to the risk of persecution, not the concept of persecution. Furthermore, as Fortin has noted, this definition of persecution is nonsensical if applied to persecution perpetrated by the government.⁵⁰ And as Susan Kneebone has pointed out, the formulation of “serious harm + failure of state protection” has tended to harden into an additional element of proof for applicants in asylum cases.⁵¹

But more important than these technical legal issues is the attempt to frame the concept of international protection in “surrogate protection” terms. To do so is to fail to see international protection as its own project, one that calls out a collective responsibility of states to respond to situations of displacement. The central functions of international protection—*non-refoulement*, registration and documentation, economic rights and social programs for displaced persons, solutions—do not necessarily correspond to rights that home states are charged with guaranteeing to their citizens. Indeed, if international protection is a “surrogate” for anything, it is the inability or unwillingness of the *host* state to protect and assist refugees in their territories. Nor are the rights provided by the Convention a substitute for home state rights. Refugee rights in hosting states are measured by what that state provides to its citizens and residents, not by what was denied by the home state. And

the goal of applying those rights to refugees is to permit them to rebuild their lives outside their state of origin. Again, the project is about ameliorating the harms of displacement where refugees are, not about substituting for rights denied back home.

To some degree, disputes over the meaning of international protection can be seen as a bit beside the point. Whatever the conception and purpose of protection alluded to in UN documents or scholarly treatises, UNHCR—with its partners in the international community—has continued (indeed, expanded) the work it puts under the heading of international protection. Those work streams have been annually affirmed, explicitly or implicitly, by the General Assembly, by states that fund UNHCR to carry out such activities, and by states that permit such activities to be undertaken on their territory.

But we have pursued this discussion for two reasons. First, the “surrogate protection” formulation is now commonly invoked almost without thought. It is just “common wisdom.”⁵² As we have made clear, we think it is an incorrect and unhelpful account of the system of international protection. Second, the concept of surrogate protection acts to reaffirm a home-state-centric vision of the refugee regime. The entire international system of norms, agencies, programs and practices, funding appeals, solutions strategies is reduced to substituting international action for home-state action. This seriously mischaracterizes the international protection regime. That regime is not a general program for the external enforcement of domestic rights. It is a system established to remedy the harms of displacement—in which rights guaranteed at the international level play a vital role—and to ensure that persons are not returned to situations of great harm.

V. To whom does international protection apply?

The discussion so far has primarily concerned the development of the system of international protection for refugees. We have noted a conceptual move from (external) protection to persecution and the growth of the mandate of UNHCR and other international institutions. Lawyers and advocates for refugees have focused primarily on the 1951 Convention’s definition of refugee—generally how it may be expanded so that additional persons and groups can benefit from the Convention’s catalogue of rights. In notable advances, adjudicators have been persuaded to recognize claims brought by victims of domestic violence and female genital cutting and by persons persecuted based on their sexual orientation. On a more general level, UNHCR’s Division of International Protection has recently issued guidelines suggesting that most—if not all—persons fleeing civil disorder and violence probably have valid claims to international protection under the Convention or other norms of international human rights law.⁵³

In other scholarly literatures, the focus has been not on how the Convention definition should be interpreted. Rather, it addresses the question of international obligation by identifying a core concept (denial of “basic rights,”⁵⁴ or persons who “escape from violence,”⁵⁵ for example) that explains the basis for the obligation and then seeing what other classes of displaced persons the concept would extend to. Classes typically suggested include persons forced to flee because of natural disaster, civil disorder and violence, climate change or extreme poverty. The claim is based on equality concerns: these “new” groups are constituted by persons who look as necessitous or deprived as those currently captured in the refugee definition (at least as measured by the identified core concept), yet they are disprivileged in international law having neither a Convention nor a dedicated UN agency to protect their rights.

We adopt a different approach, more inductive than deductive. We start by looking at the groups of displaced persons currently understood as meriting international concern and response and then ask whether there is an underlying concept that explains the current practice. Because we believe that the appropriate international response varies as among groups, we will not be overly concerned if the category we develop appears quite broad. (That is, we will not suggest that every person or group so identified is automatically entitled to all the rights in the 1951 Convention; but nor will we countenance an approach that discriminates between groups of displaced persons on the basis of geography.)

Whatever the content given the Convention's definition of refugee, it is plain that international practice, supported by domestic and international norms, extends protection well beyond it. As has been frequently noted, the international community now regularly assists a wide circle of displaced persons, including internally displaced persons (IDPs), persons fleeing natural disasters, and persons fleeing civil disorder and violence.

- Although no international convention expressly protects IDPs, a set of Guiding Principles on Internal Displacement developed under the auspices of the UN are now generally recognized to have attained “soft law” status. Furthermore, the multilateral system is organized to respond to IDP situations, with complicated structures in place to coordinate the work of dozens of international organizations and hundreds of NGOs. IDP emergencies due to conflict in Syria, Yemen, South Sudan, the eastern DRC, Ukraine, Iraq, Pakistan and Afghanistan have triggered massive international responses supported by funding appeals in the tens (sometimes hundreds) of millions of dollars. Regional measures and institutions likewise support responses to IDP situations. In 2012, the African Union's Kampala Convention came into force, providing a uniform definition for IDPs, emphasizing the responsibility of states to protect the internally displaced, and outlining key rights for the internally displaced which states must respect.
- Persons displaced because of natural disasters—earthquakes in Haiti and Nepal, floods in Pakistan, typhoons and tsunamis striking the Philippines and Indonesia, drought affecting the horn of Africa and the Sahel—are met with massive infusions of foreign assistance. Regional and global institutions now seek to predict such disasters, support programs to mitigate their harm and prevent displacement, and promote measures to build resilience in likely-to-be affected communities and regions. Concern about displacement is working its way into global efforts on climate change, with particular attention being paid to island nations that may soon cease to exist because of rising sea levels.⁵⁶
- As described above, the mandate of UNHCR now effectively reaches all persons who flee violence and conflict whether inside or outside their countries of origin.⁵⁷ This expansion of mission has been ratified by resolutions of the General Assembly and the financial contributions of donor states. Regional conventions and arrangements, as many commentators have noted, have propelled and support this expansion.⁵⁸

These international interventions to assist and protect displaced persons move beyond the Convention's definition in two respects. First, there is no need for a person to

show that he or she fears persecution upon return; the fact of displacement (and its attendant harms) and the unlikelihood of immediate return triggers the international response. Second, the instruments and processes supporting relief in situations of conflict and violence require no “on account of” ground—that is, the motive of the state (or non-state group) responsible for the threatened harm is not relevant. Thus, the Guiding Principles on IDPs state simply:

“[I]nternally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”⁵⁹

The OAU Convention defines its protected classes in the same terms, with no “on account ground,” no requirement to name the persecutor. (For natural disasters, like floods and earthquakes, looking for motives would involve claimants and adjudicators in, one might say, metaphysical questions.)

Viewed as a whole, a very different picture of the international response to forced displacement emerges. Of the world’s more than 60 million persons displaced by conflict and violence, nearly two-thirds are IDPs. A significant majority of the 16 million refugees under UNHCR’s mandate are persons who fled situations of generalized violence in their home countries (and who have not been processed through a status determination hearing).⁶⁰ And while it is difficult to estimate the number of persons displaced by natural disasters, it probably amounts to more than 25 million people a year.⁶¹ The international community generally recognizes persons in these groups as meriting some form of assistance and protection—irrespective of whether they, or groups they belong to, have been victims of targeted persecution.

In examining the categories of displaced persons to which international assistance and protection is provided (and believed to be warranted), we can identify a concept that implicitly informs the practice. We will label it “necessary flight”: the idea is that some form of international response is merited for persons whose lives become so intolerable at home that flight is a reasonable and justifiable response. We have chosen our words carefully here. We are not proposing a standard of “coercion”—one that would suggest that a “flee of necessity” had no choice but to leave. Rather, we are saying that we can understand the decisions of millions of persons to flee because of threats to their physical safety, the loss of shelter and livelihood, their ability to care for themselves and their families. In situations of conflict and violence, these are persons that the international system of states has failed; for victims of natural disasters, these are people the international system of states has the means to assist.

Adopting the concept of necessary flight has several implications. First, on this analysis, there is no need to identify or examine the motives of a “persecutor,” as is required under the 1951 Convention definition. Second, with a focus on flight, the first element of an international response will be emergency care. But if the causes resulting in the flight continue, then it would be wrong to send the person home (which would simply produce flight again); that is, the concept of necessary flight must be linked to a norm of non-return to danger. In addition, it must be seen to require a shift in focus away from the causes of flight toward the impediments to well-being and agency in exile. This, too, is a departure

from the modern standard account, which tends to frame the distinctiveness of “refugeehood” in terms of the human rights abuses that force people to flee rather than the violations and deprivations—the second exile—they endure once they are abroad. Third, the idea of necessary flight recognizes that many factors typically contribute to a decision to flee. Thus, the Convention’s demand that a person demonstrate a fear of persecution based on a particular ground establishes an artificial and unreasonable standard. Call this the “congeries difficulty”—a problem that refugee law tends to sweep under the rug.

There is surprisingly little research and data on exactly why and when people decide to abandon their homes for a safer, better life elsewhere. Our mental images of flight are highly schematic: soldiers with guns at the door, dissidents thrown in jail and tortured, bombs falling on civilian populations, rising flood water, crops and herds dead from drought. All of these horrendous events are likely to contribute to decisions to flee, but so too might one’s personal “risk appetite,” family left at home or already elsewhere, access to information related to the costs and risks of crossing to safety, other hardships at home, the expected life one would lead in the country of rescue. Those who flee might not be able to assess which of these—and a myriad of other factors—were most significant in a decision to flee.⁶² It is highly unlikely that an adjudicator could do better. The idea is that at some point an individual decides that life has become intolerable at home or in her home state. If she can offer a persuasive and reasonable justification for that conclusion, or if the situation itself readily attests to her decision, she appropriately triggers concern and response from the state to which she has fled or the international community (or both). That is, she has placed herself in the category of displaced persons for whom the need for international concern and response is plain. This is not to suggest that all displaced persons are refugees. Rather it is to suggest that identification of the groups and persons who merit international protection does not begin and end with the Convention definition.⁶³ Nor should it.

The concept of necessary flight recognizes that we have reached a point of inflection in the conceptualization of an international system of protection. The world has, in essence, taken the displaced as a whole—largely irrespective of the reasons for their displacement. This is a datum of surpassing importance. It signifies the (perfectly sensible) moral and humanitarian judgment that persons forced from their homes by threat of violence or natural disaster should be assisted when they flee and should not be asked to return home until it is safe to do so. This, of course, flips the usual analysis. Refugees are no longer the paradigmatic case; and strategies for protecting other categories of displaced persons no longer seek to simply assimilate their situations to those of refugees. Rather, “fleers of necessity”—whatever the cause or combination of causes for their flight—define the scope of the system of international protection.

Persons displaced by climate change represent a current example. After an initial rush to declare such persons “climate refugees,” thinking has advanced in other directions.⁶⁴ It is noted that migration caused by climate change is overwhelmingly internal to the affected state; thus the Guiding Principles of Internal Displacement are deemed more relevant than the Refugee Convention. So too the refugee regime’s demand for targeted persecution based on one of five grounds poorly fits climate change situations (which is a prime example of the “congeries difficulty”). Nor does the usual approach to solutions work: for climate migration, the most effective “solutions” may be mitigation and adaptation—strategies usually deemed inappropriate for refugees and victims of violence.⁶⁵

The point here is not that persons displaced because of factors related to climate change should not be the beneficiaries of international protection. Indeed, because of global contributions to the cause of their flight, global responsibilities ought to follow. The point is

that there is already a general consensus that norms of international protection apply in this situation. The challenge is in determining the nature of protection to be applied, not whether it will be applied at all.

A number of objections can be raised to our analysis. At the outset, it will surely be argued that our concept of necessary fleers is far too broad a category for the world to swallow. It would involve international protection for potentially tens of millions more displaced persons. At some point, surely, it can be asserted, notions of national interest and sovereignty will trump concern for the displaced. It is difficult enough to find states willing to give refugees the full set of rights already guaranteed to them; how likely is it, then, that international responsibility will be seen to stretch this far?

Several factors, however, undercut this critique. First, our central claim is that most displaced persons who cannot return home are already “persons of concern” to the international community, and scores of agencies and billions of dollars are mobilized to offer assistance and protection. We are simply arguing that the frame of reference be shifted—that refugees be seen as the special case among the general category of (protected) forced migrants.

Second, the concern that asylum adjudications systems will be overwhelmed by a broader conception of protected persons is not persuasive. The vast majority of necessary fleers arrive as part of mass movements of people, escaping civil war, natural disasters and other dramatic circumstances. As we have noted, protection and assistance under the Refugee Convention or regional instruments is afforded without convening individual status determinations procedures. Hosting states and the international community are well apprised of the events that have caused flight. It may be that some persons will later seek onward movement beyond the country of first asylum. (Indeed, we will suggest in later chapters that such mobility ought to become a regular feature of a well-functioning system of international protection.) But those numbers can be readily handled within existing domestic protection systems of (primarily) developed states that include a range of protections for persons whom it would be unconscionable to return home. These include subsidiary protection in the EU (for persons fleeing “indiscriminate violence in situations of international or internal armed conflict”); Article 3 of the European Convention on Human Rights (which protects against return to “inhuman or degrading treatment”); Temporary Protected Status in the United States (for persons forced to leave due to armed conflict, environmental disasters, and other extraordinary conditions); and the Convention against Torture (preventing return where there are “substantial grounds” for believing the individual might be subjected to torture).

Third, to recognize that the international community has responsibilities toward displaced persons—that international action is a matter not of charity or largesse but of duty—is not to specify the scope of those responsibilities. It may well be that refugees—targeted for persecution and unable to return home safely—need special attention, including, perhaps, offers of membership elsewhere. Persons displaced by an earthquake, on the other hand, may be fully recognized and welcomed as citizens of their home state; their protection needs may be far less and return may be easier to envision.

Another objection levelled against approaches that move beyond the Convention—and one that frequently arises in the “who is a refugee” literature—concerns the case of persons who leave their homes due to extreme poverty. The argument usually takes the forms of a *reductio ad absurdum*: the theory being proposed, if pursued with integrity, will need to reach persons fleeing due to economic necessity. First, note that this category is already the impetus for international action: the *raison d’être* of the development community—whose funds exceed that of the humanitarian sector by a factor of ten—is global poverty

alleviation. Furthermore, as just stated, international responses to situations of forced migration do not involve individual status determinations for most fleers. It is conceivable that a mass movement of extremely poor persons might occur—the drought in Somali in 2011 brought hundreds of thousands of desperate persons to Ethiopia and Kenya. In such circumstances, the world will surely respond (as it did when starvation threatened millions of persons in Biafra in the late sixties, Ethiopia two decades later, and in the Sahel and Somalia in this century). For individuals who travel beyond countries of first asylum, it may be unlikely that states will open up their domestic definition of refugees to include all “necessary fleers”—including persons fleeing extreme poverty. But it is highly likely that other forms of relief from return would be available to persons fleeing famine or violence caused by economic collapse.⁶⁶

Finally, it might be asked why our analysis focuses solely on persons who have been forcibly displaced. Are not never-leavers often in worse situations than those able to flee? (Compare the situation of Syrians who remained in Aleppo with those who fled across an international border.) If we are carrying humanitarian and moral principles forward so far beyond the category of refugee, why impose an arbitrary condition (the necessity of leaving one’s home) for international protection principles to apply?

Our answer here is sourced in path-dependent pragmatism, not deductive logic. A concern for the safety and well-being of human beings would of course embrace persons no matter where they are located. Indeed, the international system has put in place regimes and institutions—the multilateral development system, UN peacekeeping, the Geneva Conventions, and the human rights regime—in an effort to prevent and remedy harms everywhere. In addition, the world has developed a separate track for displacement. For various historical reasons, nearly a century of international attention has established norms, processes, and agencies that have produced displacement as a field of practice. While strategies and programming developed for displaced populations could be applied to persons who have not fled, they would need to take a far different form (beyond simple humanitarian relief).

This could of course change. It may be that in the future, the international community will decide that one international agency and strategy should apply to all persons living lives of danger and misery. But in today’s world, given the current array of international institutions and scope of international practice, it seems sensible to us to maintain “displacement” as a category of analysis and action.⁶⁷

Conclusion: The past, present and future of international protection

The meanings of protection and international protection have shifted over time. Initially part of the definition of refugee, protection was largely superseded by persecution as the core conception (protection remained in the 1951 Convention’s definition of refugee, but only as a vestige). Protection’s substantive role began with travel and identity documents and developed fairly quickly to include rights (starting with the 1933 Convention). Set largely aside by the need to focus on rescue prewar and repatriation postwar, protection-as-rights returned in spades in the 1951 Convention. That Convention viewed rights instrumentally—as providing guarantees to refugees that would enable them to rebuild their lives in the states in which they were residing (and in countries of resettlement). The Convention also led to the elevation of *non-refoulement* as a cornerstone of refugee protection.

Alongside the Convention, the international community established an organization to provide international protection to refugees. Much of the work of UNHCR, as initially conceived, continued the work of predecessor organizations—granting travel documents, seeking solutions, encouraging states to join international agreements and respect refugee rights. But UNHCR’s protection mandate has grown in important ways over its 60-year existence, expanding its programming to provide a wide array of interventions and services to “vulnerable” refugees, particularly women and children, and taking cognizance of general human rights instruments as they have developed since the post-World War II period.

At the same time as protection for refugees has broadened and deepened, the groups of displaced persons for whom protection is provided has also expanded. UNHCR’s mandate is now understood to reach all persons who flee violence and conflict over an international border; and UNHCR is also part of a coordinated effort of international organizations and NGOs that provide assistance and protection to IDPs. So too the international community has repeatedly responded in robust ways to natural disasters and other emergencies in every part of the globe.

While fairly narrow legal norms restrict refugee status—and the rights that accompany it—to a small minority of the world’s displaced, some kind of protection (most importantly, *non-refoulement*) is extended to virtually all “necessary fleers.” Put simply, persons forced from their homes are generally offered protection and not asked to return until it is safe for them to do so. After World War II a focus on persecution replaced the lack of home state protection as the core concern of the international regime for forced migrants; today rescue and non-return has supplanted persecution as the system’s motivating principle.

International protection, historically and practically, has never meant “surrogate protection.” It has never simply been “compensation” for rights violated at home. Rather, it is a network of norms, institutions and practices that deal with displacement *qua* displacement. It is best understood as the collective responsibility and actions of the international community and international organizations to guarantee rights and opportunities to persons forced from their homes and to ensure that they are not returned to danger.

The development of the concept of international protection has not been a straight line. The crises of the historical moment have greatly influenced the path: the expulsion of nationalities as empires collapsed, fascist persecution, the Cold War. But one can trace a trajectory that has, overall, expanded the scope of protection, even if its central elements—rights, the goal of self-reliance, *non-refoulement* and the pursuit of solutions—have been transgressed or emphasized differently at different times and in different places. In our own historical moment, the mass secondary flow of refugees from countries of first asylum and the number and duration of protracted displacement situations will now challenge and shape the system of international protection.

As we project the arc of protection forward, two new elements of international protection come into view. The first is the role of development agencies and other actors from outside the humanitarian sphere in responding to and resolving displacement. The second is the call for creation of a formal system for responsibility-sharing, recognized as vital to the regime by the drafters of the 1951 Convention but not established as a set of binding commitments. Both will feature centrally in the narrative ahead.

¹ Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*, (New York City: Basic Books, 1983), p. 48.

² See E. Padilla and P. Phan, eds., *Theology of Migration in the Abrahamic Religions*, (New York City: Palgrave Macmillan, 2014).

³ See Art. 55, Section C; Preamble, 1951 Convention Relating to the Status of Refugees; Preamble, International Covenant on Economic, Social, and Cultural Rights, 1966.

⁴ See James C. Hathaway, "Why Refugee Law Still Matters," *Melbourne Journal International Law*, no. 8 (2007): pp. 89-103.

⁵ Aristide R. Zolberg, Astri Suhrke, Sergio Aguayo, *Escape from Violence: Conflict and Refugee Violence in the Developing World*, (Oxford: Oxford University Press, 1989), pp. 258-262; Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement*, (Ithaca: Cornell University Press, 2013), pp. 12-15.

⁶ Atle Grahl-Madsen, "Protection of Refugees By Their Country of Origin," *Yale Journal of International Law*, no. 11 (1986): p. 3, <http://digitalcommons.law.yale.edu/yjil/vol11/iss2/3>; Louise Holborn, *Refugees, a Problem of Our Time: the Work of the United Nations High Commissioner for Refugees, 1951-1972*, (Lanham: Scarecrow Press, 1975), pp. 23-70.

⁷ Arrangement Relating to the Issue of Identity Certificates to Russian and Armenian Refugees of May 12, 1926.

⁸ For Arendt, the refugee was "an outlaw by definition." Here is her classic description:

The calamity of the rightless is not that they are deprived of life, liberty, and the pursuit of happiness, or of equality before the law and freedom of opinion—formulas which were designed to solve problems *within* given communities—but *that they no longer belong to any community whatsoever* ... The fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective. Something *much more fundamental* than freedom and justice, which are the rights of citizens, is at stake when belonging to the community into which one is born is no longer a matter of course and not belonging is no longer a matter of choice ... They are deprived not of the right to freedom, but of the right to action; not of the right to think whatever they please, but of the right to opinion. Privileges in some cases, injustices in most, blessings and doom are meted out to them according to accident and without any relation whatsoever to what they do, did, or may do. We became aware of *the existence* of the *right to have rights* (and that means to live in a *framework* where one is judged by *one's actions* and *opinions*) and a right to belong to some kind of *organized* community.

Hannah Arendt, *The Origins of Totalitarianism*, (New York City: Harcourt, 1973), p. 297.

⁹ John Hope Simpson, *The Refugee Problem: Report of a Survey*, (Oxford: Oxford University Press, 1939), p. 45.

¹⁰ The Arrangement with Regard to the Issue of Certificates of Identity to Russian Refugees was ratified by 54 states. Louise Holborn, *Refugees, a Problem of Our Time: the Work of the United Nations High Commissioner for Refugees, 1951-1972*, (Lanham: Scarecrow Press, 1975), pp. 7-9.

¹¹ Claudena M. Skran, *Refugees in Interwar Europe: The Emergence of a Regime*, (Oxford: Clarendon Press, 1995), p. 122.

¹² The traditional three durable solutions are: repatriation to the country of origin; local integration in the country of asylum; or resettlement to a third country. See Chapter 4.

¹³ Atle Grahl-Madsen, "Identifying the World's Refugees," *The Annals of the American Academy of Political and Social Science*, no. 467 (1983): pp. 11-23.

¹⁴ 1933 Convention, Article 3 League of Nations, *Convention Relating to the International Status of Refugees*, 28 October 1933, League of Nations, Treaty Series Vol. CLIX No. 3663, available at: <http://www.refworld.org/docid/3dd8cf374.html>. As the British delegate to the conference, J. L. Rubinstein, insisted, it was "an instrument of the first importance":

It betters the Nansen certificate system, it restricts abuses in the practice of expulsion, and it regulates certain points of private international law. Furthermore, it secures for refugees freedom of access to the law courts, and the most favorable treatment in respect of social life and assurance and of taxation; it exempts them from the rule of reciprocity, it provides for the optional institution of refugee committees in every country, and it secures certain modifications of the measures restricting unemployment.

J. L. Rubinstein, "The Refugee Problem," *International Affairs*, no. 5 (September 1936): p. 738.

¹⁵ Louise Holborn, *Refugees, a Problem of Our Time: the Work of the United Nations High Commissioner for Refugees, 1951-1972*, (Lanham: Scarecrow Press, 1975), p. 15.

¹⁶ Thus the 1938 Convention stated: "[T]he term 'refugees coming from Germany' shall be deemed to apply to: (a) Persons possessing or having possessed German nationality and not possessing any other nationality who are proved not to enjoy, in law or in fact, the protection of the German Government." Article 1, League of Nations, *Convention concerning the Status of Refugees Coming From Germany*, February 10, 1938, League of Nations Treaty Series, Vol. CXCI, No. 4461, page 59, available at: <http://www.refworld.org/docid/3dd8d12a4.html>.

¹⁷ Hannah Arendt, *The Origins of Totalitarianism*, (New York City: Harcourt, 1973), pp. 279-281.

¹⁸ In its first session, the General Assembly declared "the problem of refugees and displaced persons of all categories is one of immediate urgency."

¹⁹ United Nations, *Constitution of the International Refugee Organization*, 15 December 1946, United Nations, Treaty Series, vol. 18, p. 3, available at: <http://www.refworld.org/docid/3ae6b37810.html>.

²⁰ Gervase J.L. Coles, "The Human Rights Approach to the Solution of the Refugee Problem: A Theoretical and Practical Enquiry," in *Human Rights and the Protection of Refugees under International Law*, edited by Alan E. Nash (Montreal: Institute for Research on Public Policy, 1988), pp. 195-209.

²¹ Quoted in UN High Commissioner for Refugees (UNHCR), "Refugees and Stateless Persons and Problems of Assistance to Refugees," *Report of the United Nations High Commissioner for Refugees*, January 1952, A/2011, para. 48, available at <http://www.unhcr.org/en-us/excom/unhcrannual/3ae68c3d8/refugees-stateless-persons-problems-assistance-refugees-report-united-nations.html>.

²² IRO Constitution, Annex 1 1-2. United Nations, *Constitution of the International Refugee Organization*, 15 December 1946, United Nations, Treaty Series, vol. 18, p. 3, available at: <http://www.refworld.org/docid/3ae6b37810.html>.

²³ IRO Constitution Annex 1 Part 1(A)(3). United Nations, *Constitution of the International Refugee Organization*, 15 December 1946, United Nations, Treaty Series, vol. 18, p. 3, available at: <http://www.refworld.org/docid/3ae6b37810.html>.

²⁴ Id. 1(C)(1)(a)(i).

²⁵ Art 2(1).

²⁶ Louise Holborn, *Refugees, a Problem of Our Time: the Work of the United Nations High Commissioner for Refugees, 1951-1972*, (Lanham: Scarecrow Press, 1975), pp. 66-68; UN General Assembly, "Refugees and Stateless Persons," *Report of the Secretary-General*, October, 26 1949, A/C.3/527, para. 21 (reporting IRO's views on "disabilities" relating to conditions of residence, international travel and legal status in countries of residence to which refugees are subject in states of asylum and for which protection is needed), available at: <http://www.refworld.org/docid/3ae68bf00.html>.

²⁷ The United States prevented further reauthorization of the IRO, sought establishment of a different refugee agency and only reluctantly came to support establishment of UNHCR. Louise Holborn, *Refugees, a Problem of Our Time: the Work of the United Nations High Commissioner for Refugees, 1951-1972*, (Lanham: Scarecrow Press, 1975), p. 40; and Louise Holborn, *The International Refugee Organization: A Specialized Agency of the United Nations, Its History and Work 1946-1952*, (Oxford: Oxford University Press, 1956), p. 200.

²⁸ UNHCR Statute, II(8).

²⁹ According to a 1949 report of the Secretary General, which considers questions relating to an organization to succeed the IRO, the purpose of protection was to “ensure that refugees . . . shall not be subject to legal and social disabilities arising from their peculiar status.” IRO had provided to the Ad Hoc Committee a categorization of such disabilities under the headings of: (1) conditions of residence (e.g., residence permits; temporary asylum), (2) international travel (lack of national passport), and (3) legal status of refugees in countries of residence (personal status, inability to benefit from reciprocity agreements, eligibility for relief, social security, family allowances). UN General Assembly, *Refugees and Stateless Persons: Report of the Secretary-General*, October 26, 1949, A/C.3/527, para. 21, available at: <http://www.refworld.org/docid/3ae68bf00.html>.

³⁰ E.g., Atle Grahl-Madsen, *The Status of Refugees in International Law: Refugee Character*, (The Hague: A.W. Sijthoff, 1966), pp. 7-15.

³¹ Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa* (“OAU Convention”), September 10, 1969, 1001 U.N.T.S. 45, Art. 1:

The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.

When the U.S. Congress adopted the 1980 Refugee Act, whose purpose was to bring U.S. law into conformity with the Refugee Convention and the Protocol, it left out the Convention’s use of the term protection:

The term refugee means (A) any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Immigration and Nationality Act, sec. 101(a)(42).

³² Interestingly, the rights provided were in the “comparative” form of the 1933 Convention (refugees shall have the same right to X as provided to [citizens or foreign nationals]), not the universalistic language of modern human rights conventions.

³³ See Report of the Ad Hoc Committee on Statelessness and Related Problems, Status of Refugees and Stateless Persons—Memorandum by the Secretary General, January 3, 1950: noting that:

The abolition of the International Refugee Organization will herald a new phase of the refugee problem. This phase . . . will be characterized by the fact that the refugees will lead an independent life in the countries which have given them shelter. With the exception of the “hard core” cases, the refugees will no longer be maintained by an international organization as they are at present. They will be integrated in the economic system of the countries of asylum and will themselves provide for their own needs and for those of their families. This will be a phase of the settlement and assimilation of the refugees. Unless the refugee consents to repatriation, the final result of that phase will be his integration in the national community which has given him shelter. It is essential for the refugee to enjoy an equitable and stable status, if he is to lead a normal existence and become assimilated rapidly.

UN Ad Hoc Committee on Refugees and Stateless Persons, *Ad Hoc Committee on Statelessness and Related Problems, Status of Refugees and Stateless Persons - Memorandum by the Secretary-General*, January 3, 1950, E/AC.32/2, available at: <http://www.refworld.org/docid/3ae68c280.html>.

³⁴ See generally T.A. Aleinikoff, “The Mandate of the Office of the High Commissioner for Refugees”, in, *Research Handbook on International Law and Migration*, edited by Vincent Chetail and Celine Bauoz (Cheltenham: Edward Elgar Publishing, 2014) pp. 389-416.

³⁵ James C. Hathaway, “A Reconsideration of the Underlying Premise of Refugee Law,” *Harvard International Law Journal*, no. 31 (1990): p. 129, p. 157, and p. 165.

³⁶ As quoted in, “Possible Shift in Emphasis in Program of UNHCR,” *Despatch from the Mission in Geneva to the Department of State*, Department’s Airgram G-190 rptd USUN New York G-74, Geneva, April 6, 1961, <https://history.state.gov/historicaldocuments/frus1961-63v25/d311>.

³⁷ Atle Grahl-Madsen, “Refugees and Refugee Law in a World in Transition”, *Michigan Journal of International Law*, no. 3 (1982): p. 67, <https://repository.law.umich.edu/mjil/vol3/iss1/4>.

³⁸ B.S. Chimni, “The Geopolitics of Refugee Studies: A View from the South,” *Journal of Refugee Studies*, no. 11 (January 1998): p. 350, and pp. 355-360.

³⁹ UN High Commissioner for Refugees (UNHCR), Opening Statement by Mr Poul Hartling, United Nations High Commissioner for Refugees, at the Consultations on the Arrivals of Asylum-Seekers and Refugees in Europe, Geneva, May 28, 1985, <http://www.unhcr.org/en-us/admin/hcsp/3ae68fd028/opening-statement-mr-poul-hartling-united-nations-high-commissioner-refugees.html>.

⁴⁰ See e.g., UNHCR, *Report on International Protection (Submitted by the High Commissioner)*, March 3, 1964, A/AC.96/227, available at: <http://www.refworld.org/docid/3ae68bff8.html>.

⁴¹ Unless a security risk or convicted of a particularly serious crime. Art 33(2).

⁴² It is difficult to locate a consistent and comprehensive definition of international protection in UNHCR documents. Sometimes the concept of “surrogate protection” is invoked (incorrectly, in our view). In its 1993 Note on Protection, UNHCR states: “International protection as provided by countries of asylum in cooperation with UNHCR is an effort to compensate for the protection that refugees should have received in their own countries, and its objective is not fulfilled until refugees once again enjoy protection as full-fledged members of a national community.” UN General Assembly, *Note on International Protection (submitted by the High Commissioner)*, August 31, 1993, A/AC.96/815, available at: <http://www.refworld.org/docid/3ae68d5d10.html>. At other times the organization seems to get it just about right. Here is UNHCR’s definition in a 2005 self-study module, *An Introduction to International Protection*, at 17:

International protection can be defined as all actions aimed at ensuring the equal access to and enjoyment of the rights of women, men, girls and boys of concern to UNHCR, in accordance with the relevant bodies of law (including international humanitarian, human rights and refugee law).

The international protection of refugees begins with securing their admission to a safe country of asylum, the grant of asylum and ensuring respect for their fundamental human rights, including the right not to be forcibly returned to a country where their safety or survival are threatened (the principle of non-refoulement). It ends only with the attainment of a durable solution.

⁴³ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <http://www.refworld.org/docid/3ae6b3a94.html>; UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, December 18, 1979, A/RES/34/180, available at: <http://www.refworld.org/docid/3b00f2244.html>; UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <http://www.refworld.org/docid/3ae6b38f0.html>; UN General Assembly, *International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families: resolution / adopted by the General Assembly*, December 18, 1990, A/RES/45/158, available at: <http://www.refworld.org/docid/3b00f2391c.html>.

- ⁴⁴ We rely on Antonio Fortin's account. Antonio Fortin, "The Meaning of "Protection" in the Refugee Definition," *International Journal of Refugee Law*, no. 12 (October 2000): pp. 548–576.
- ⁴⁵ See Fortin, describing this as a move from "external" to "internal" protection.
- ⁴⁶ One can raise the analysis to the metaphorical level by holding that persecution severs the bonds of the state-citizenship relationship. See Andrew Schacknove, "Who is a Refugee?" *Ethics*, no. 95 (Jan 1985): pp. 274–284; thus, surrogate protection is necessary for persons who have been rendered virtually stateless due to persecution.
- ⁴⁷ Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement*, (Ithaca: Cornell University Press, 2013), pp. 1–10.
- ⁴⁸ James C. Hathaway and Michelle Foster, *The Law of Refugee Status*, (Cambridge: Cambridge University Press, 1991); James C. Hathaway, "Reconceiving Refugee Law as Human Rights Protection," *Journal of Refugee Studies*, no. 4 (January 1991): pp. 113–131; James C. Hathaway, *The Rights of Refugees Under International Law*, (Cambridge: Cambridge University Press, 2005), pp. 659–695.
- ⁴⁹ *Islam v. Sec'y of State for the Home Dept.*, House of Lords, [1999] 2 A.C. 629, relying on Gender Guidelines for the Determination of Asylum Claims in the UK, and the work of James C. Hathaway, "Reconceiving Refugee Law as Human Rights Protection," *Journal of Refugee Studies*, no. 4 (January 1991): pp. 113–131; and James C. Hathaway, *The Rights of Refugees Under International Law*, (Cambridge: Cambridge University Press, 2005).
- ⁵⁰ Antonio Fortin, "The Meaning of 'Protection' in the Refugee Definition," *International Journal of Refugee Law*, no. 12 (October 2000): pp. 548–576.
- ⁵¹ Susan Kneebone, "Refugees as Objects of Surrogate Protection: Shifting Identities," in *Refugee Protection and the Role of the Law: Conflicting Identities*, edited by Susan Kneebone, Dallal Stevens, Loretta Baldassar, (Oxon: Routledge, 2014), pp. 98–121.
- ⁵² Alexander Betts, *Protection by Persuasion: International Cooperation in the Refugee Regime*, (Ithaca: Cornell University Press, 2009), pp. 5–8, and pp. 25–27; Alexander Betts, Gil Loescher, and James Milner, *UNHCR: The Politics and Practice of Refugee Protection*, (Abingdon: Routledge, 2012), pp. 83; UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from El Salvador*, March 15, 2016, HCR/EG/SLV/16/01, p. 43, available at: <http://www.refworld.org/docid/56e706e94.html>.
- ⁵³ UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence Under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees and the Regional Refugee Definitions*, 2 December 2016, HCR/GIP/16/12, available at: <http://www.refworld.org/docid/583595ff4.html>.
- ⁵⁴ Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement*, (Ithaca: Cornell University Press, 2013), pp. 173–188.
- ⁵⁵ Aristide R. Zolberg, Astri Suhrke, Sergio Aguayo, *Escape from Violence: Conflict and Refugee Violence in the Developing World*, (Oxford: Oxford University Press, 1989), pp. 29–36.
- ⁵⁶ See the Nansen Initiative's Agenda for Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change, nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf; UNHCR Policy Brief, Displacement Related to Climate Change, United Nations Framework Convention On Climate Change (UNFCCC) 22nd Conference Of Parties (COP 22), Marrakesh, Morocco available at <http://www.unhcr.org/en-us/protection/environment/581870687/policy-brief-displacement-at-cop-22.html>; IPCC, "IPCC Fourth Assessment Report (AR4)," *Ipcc* 1 (2007): 976. Informal group on Migration/Displacement and Climate Change of the IPCC 2008. "Climate Change, Migration and Displacement: Who Will Be Affected?"; Angela Williams, "Turning the Tide Recognizing Climate Change Refugees in International Law," *Law & Policy*, no. 30 (2008): pp. 502–529; B. Docherty and T. Giannini, "Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees," *Harvard Environmental Law Review*, no. 33 (2009): pp. 349–403; Tiffany T.V. Duong, "When Islands Drown: The Plight of "Climate Change Refugees" and Recourse to International Human Rights Law," *Journal of International Law—Penn Law*, no. 31 (2010): p. 1239; Etienne Piguet, "Climate

Change and Forced Migration,” *Change, New Issues in Refugee Research*, no. 153 (2008): pp. 1–13; Michael B. Gerrard, Gregory E. Wannier, *Threatened Island Nations: Legal Implications of Rising Seas and a Changing Climate*, (Cambridge: Cambridge University Press, 2013).

⁵⁷ See Alex Aleinikoff, “The Mandate of the Office of the High Commissioner for Refugees,” in *Research Handbook on International Law and Migration*, edited by Vincent Chetail and Celine Bauloz (Cheltenham: Edward Elgar Publishing, 2014), pp. 389–416.

⁵⁸ *Convention Governing the Specific Aspects of Refugee Problems in Africa* (“OAU Convention”), September 10, 1969, 1001 U.N.T.S. 45, available at: <http://www.refworld.org/docid/3ae6b36018.html>; Regional Refugee Instruments & Related, *Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, November 22, 1984, available at: <http://www.refworld.org/docid/3ae6b36ec.html>.

⁵⁹ IDP Guiding Principles, Introduction, sec. 2.

⁶⁰ UNHCR’s mandate does not extend to more than five million Palestinian refugees under the mandate of UNRWA.

⁶¹ Internal Displacement Monitoring Center and the Norwegian Refugee Council, *Global Estimates 2015: People displaced by disaster*, <http://www.internal-displacement.org/library/publications/2015/global-estimates-2015-people-displaced-by-disasters/>

⁶² Consider the example of displaced Somalis. Hundreds of thousands of Somalis fled in 2011, facing targeted attacks by Al-Shabaab, generalized violence and the consequences of extreme drought. Indeed, these “causes” are interrelated to each other: the harm of the drought was magnified by the insecurity occasioned by the violence; and violence is likely to increase in situations of life-threatening scarcities. Persons fleeing civil violence no doubt are desperately concerned for their physical safety and their livelihoods; and yet many (perhaps most) people in similar circumstances do not flee.

⁶³ For some time, scholars have suggested broader categories of protection. In an influential treatment, Andrew Schacknove argues that concept of refugee should apply “to persons whose basic needs are unprotected by their country of origin, who have no remaining recourse other than to seek international restitution of their needs, and who are so situated that international assistance is possible.” Andrew Schacknove, “Who is a Refugee?” *Ethics*, no. 95 (Jan 1985): pp. 274–284. In a similar vein, Alexander Betts has developed the concept of “survival migrant” to bring within international concern “persons outside their country of origin because of an existential threat to which they have no access to a domestic remedy or resolution.” Betts further defines “existential threat” to include “core elements of dignity,” perhaps grounded in the concept of “basic rights.” Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement*, (Ithaca: Cornell University Press, 2013): pp. 188. The concept of “flee of necessity” is similar to these proposals—in moving considerably beyond the Convention’s definition of refugee and by taking into account “new drivers” of displacement (to use Betts’ term). But we would not add the extra step of having to demonstrate the abridgment of a “basic need” or “basic right.” (Note that these terms are different from a better-defined category of fundamental human rights.) In situations of mass flows, a number of basic needs and rights will be plainly at stake—there will be no need for showing which person has fled due to the violation of which particular need or right. (Furthermore, we have difficulty understanding the need for Schacknove’s additional element of a person being “so situated that international assistance is possible.” The ability to help, it seems to us, is distinct from a duty to help.) David Owen’s thoughtful consideration of the issue also relies upon a breach of basic rights by the home state. David Owen, “*In Loco Civitatis*: On the Normative Structure of the International Refugee Regime,” in *Migration in Political Theory: the Ethics of Movement and Membership*, edited by S. Fine and L. Ypi (Oxford: Oxford University Press, 2016), pp. 269–90 (a refugee as “one whose basic rights are unprotected by their state and can only be protected through recourse to the international community acting *in loco civitatis*, where it can so act without breaching the constitutive norms of the regime of governance”).

Betts appears to be moving beyond his earlier formulation of “survival migrant.” In a recent book, he and his co-author with Paul Collier suggest a “*force majeure* standard.” For persons with a

“fear of serious harm” upon return, the test would be “when would a reasonable person not see her-
himself as having a choice but to flee.” Alexander Betts and Paul Collier, *Refugee: Rethinking Refugee
Policy in a Changing World*, (Oxford: Oxford University Press, 2017), p. 52. This is getting close to our
analysis of “fleeer of necessity”—particularly in its jettisoning of both a requirement of demonstrating
fear of *persecution* and violation of a “basic right.” But it still falls short of the mark by seeing the fleeer
to be protected as one who does not have a choice. Fairly applied, that test would not reach most of
the forcibly displaced whom Betts and Collier seek to protect and assist. In our view, the relevant
question is whether flight is a reasonable response, not whether it is the only choice available.

⁶⁴ Jessica Lehman, “Environmental Refugees: The Construction of a Crisis,” UHU-EHS Summer
Academy (2009), p. 1; Etienne Piguet, “Climate Change and Forced Migration” no. 4 (UNHCR,
2008); Camillo Boano, Roger Zetter and Tim Morris, “Environmentally Displaced People:
Understanding the Linkages Between Environmental Change, Livelihoods and Forced Migration,”
Refugee Studies Centre, Forced Migration Policy Briefing No. 1 (2008); Diane C. Bates,
“Environmental Refugees? Classifying Human Migrations Caused by Environmental Change,”
Population and Environment, no. 23 (2008): p. 465.

⁶⁵ Jane McAdam, *Climate Change, Forced Migration, and International Law*, (Oxford: Oxford University
Press, 2012); Jane McAdam, “Refusing ‘Refuge’ in the Pacific: (De)Constructing Climate-
Induced Displacement,” *International Law*, no. 6, University of New South Wales Faculty of Law
Research Series Paper 27, (2010).

⁶⁶ Aristide R. Zolberg, Astri Suhrke, Sergio Aguayo, *Escape from Violence: Conflict and Refugee Violence in
the Developing World*, (Oxford: Oxford University Press, 1989), pp. 260-262 (extreme poverty as form
of violence for which international protection is warranted).

⁶⁷ The World Bank has noted the special vulnerabilities of displaced persons that justify a
differentiated development response. World Bank, “Forced Displacement and Development,”
Washington DC, March 25, 2016, pp. 8-10

[http://siteresources.worldbank.org/DEVCOMMINT/Documentation/23713856/DC2016-0002-
FDD.pdf](http://siteresources.worldbank.org/DEVCOMMINT/Documentation/23713856/DC2016-0002-FDD.pdf)