

# **The Arc of Protection: Toward a New International Refugee Regime**

**T. Alexander Aleinikoff and Leah Zamore**

## **Chapter Four The Responsibility to Solve**

If the international system of protection is failing, whose job is it to fix it? In this chapter, we will press several arguments as to why states and international organizations have a responsibility to mend the system they have created and through which they control the movement, reception, and lives of the forcibly displaced. Our argument is to some degree a legal one, focusing on instruments and doctrines that have some force in international law. Perhaps more importantly, we make claims based on functionalism (what the protection regime requires, in a deep sense, if it is to stop failing) and on principle (one that attempts to provide a “moral fulcrum” for change).

### **I. Protracted displacement situations (PDS)**

The Dadaab refugee camp in northeastern Kenya is one of the largest in the world, hosting more than 200,000 refugees.<sup>1</sup> It is the third largest city in Kenya. The vast majority of refugees in Dadaab are Somalis who have fled years of conflict and drought. Dadaab is in its third decade, and it counts among its residents, according to UNHCR, thousands of children born to refugees who themselves were born in Dadaab—three generations of refugees and two that may never have experienced life outside of the camp into which they were born.

Dadaab—and the dozens of other long-term displacement situations around the world—does not fit the typical ways in which the lives of refugees are depicted. We imagine people streaming over borders, bound for emergency shelters built and supplied by the international community. If the turmoil that drove them from their homes ends relatively quickly, they return home to take up their lives where they left off. If conditions at home do not make safe return possible, they find a permanent home in their host country or are resettled to a new home in a new land.

Occasionally things work out this way. In 2010, nearly 90,000 ethnic Uzbeks living in Kyrgyzstan fled violence targeting their community; they returned a few weeks later. In 2011, over 150,000 Ivorians fled post-election violence in their home country, the majority to Liberia. Aided by UNHCR and a number of other humanitarian organizations in villages close to the Côte d’Ivoire border and elsewhere, many returned with the successful

installation of Alassane Ouattara as president. So too tens of thousands of Libyans received temporary protection in neighboring Tunisia and returned home after the downfall of the Qaddafi regime.

More typical, however, are “protracted refugee situations” (PRS) (to use UNHCR’s terminology)—ones in which refugees “continue to be trapped . . . for five years or more after their initial displacement, without immediate prospects for implementation of durable solutions.”<sup>2</sup> UNHCR has identified more than three-dozen PRS, involving nearly 12 million persons—two-thirds of the world’s refugees.<sup>3</sup>

- *Syrians in Turkey, Lebanon, Jordan and Iraq:* Over the past six years, more than five million Syrians have fled the violence in which more than 250,000 people have perished. Efforts to end the conflict have repeatedly failed. Even if the fighting stops, many will be unable or unwilling to return, either because they fled the side that prevails in the conflict or because they have no home, or even a hometown, to which to return.
- *Somalis in East Africa:* Nearly half a million Somalis are in Kenya and another half million Somalis reside in Ethiopia, Djibouti, and Yemen. The “Somali situation” began in the early nineties.
- *Eritreans in eastern Sudan:* We associate with Sudan those who have fled violence in Darfur (in the west of the country), and more recently those fleeing violence near the new international border that separates Sudan from South Sudan. But Sudan also hosts more than 100,000 Eritreans in its northeast region.<sup>4</sup> They live in camps where UNHCR and Sudanese organizations have been providing assistance for more than 40 years. The majority of the refugees have in fact now been born in Sudan, yet they remain without Sudanese citizenship.
- *Afghans in Iran and Pakistan:* Millions of Afghans have fled their homes over the past several decades. While about six million have returned home, nearly three million registered refugees remain in neighboring Iran and Pakistan—many having fled the Soviet invasion and occupation of Afghanistan in the late seventies and eighties. Most of the Afghan refugees live in urban or semi-urban settings, and many have found work (even if not legally authorized). The official policy of both Iran and Pakistan is that refugees should return home, but repatriation appears premature, at best, for hundreds of thousands of refugees given both their long stays outside the country and the continuing conflict.
- *Bhutanese in Nepal:* In the early nineties, more than 100,000 Bhutanese found refuge in UNHCR camps in southeastern Nepal. Although UNHCR has worked with the international community to help resettle over 100,000 Bhutanese refugees, nearly 10,000 remain in camps in Nepal.
- *Burmese in Thailand:* Burmese refugees have lived confined in nine camps over the border with Thailand since the eighties. Despite the resettlement of tens of thousands of Burmese since 2005, 49,000 registered refugees and 50,000 unregistered asylum seekers remain in the camps.<sup>5</sup>

- *Other developing protracted refugee situations:* In eastern Chad, over 250,000 Darfurians live in twelve remote camps where they sought refuge after the conflict in Darfur escalated a decade ago. There are more than 50,000 Colombian refugees in Ecuador, the majority in urban areas and the remainder in isolated regions near the border. In Tanzania, more than 60,000 Congolese are confined to the Nyarugusu camp, which opened more nearly two decades ago.

A similar list can be drawn for protracted situations of internal displacement: more than six million IDPs in Colombia and Syria; in Iraq, more than three million; two million in the DRC and Sudan.<sup>6</sup>

Each protracted situation has its own particular causes and characteristics. But overarching causes are similar to all. For refugees, it is unresolved political instability at home, a host country set against local integration, and an international community unwilling to accept onward movement of refugees or to provide the resources and the incentives necessary to make life tolerable in host states. For IDPs, continuing conflict makes return home impossible. And so the displaced wait—not necessarily for food or shelter, but for things less tangible but every bit as important: legal and social membership in a community, the opportunity to reconnect with family, the ability to take up normal lives. Whatever the causes, the results of protracted displacement are uniformly calamitous: children growing up in camps; inadequate health care and poor sanitary conditions; lost educational opportunities; prolonged detention; risks to physical safety (including widespread sexual and gender-based violence and female genital cutting); the recruitment of child soldiers; security concerns for states of asylum; and widespread, debilitating poverty.

The UN General Assembly, and UNHCR and its Executive Committee, have urged and supported policies to bring protracted refugee situations to a close.<sup>7</sup> And a number of plans and initiatives—some of which we described above and some we describe below—have been announced over the past two decades. But these have largely foundered on the unwillingness of states to take the necessary actions, such as increased funding, the appropriate intervention of development actors, additional resettlement, or the resolution of conflicts in the states of origin.

The inability of the international community and its constituent states to end protracted situations is more than a failure of political will. It is a derogation of legal duty and moral obligation. It is an affront to the first purpose of the postwar protection regime, which came into being precisely (and, for a time, solely) to address the plight of the “residual caseload.”

## II. A right to a solution?

The failure of states to resolve protracted refugee situations constitutes a violation of the economic and social rights of refugees. Precisely because those rights are so often unprotected in situ, we argue, a case can be made that there is also an overarching right to a solution for refugees.<sup>8</sup>

Putting to one side the question of where and how such a right might be enforced, it would seem that a “right to a solution” fits well with the human rights basis of the postwar protection regime. Although, as we have argued, the Refugee Convention was written by states pursuing state interests, the Convention plainly institutes a regime of rights. In

addition to the Convention, other human rights norms—e.g., prohibiting sex discrimination and torture, and protecting rights of children—play an important role in the overall refugee protection system. Might one of those rights be a right to a permanent solution—a right, if you will, not to be forever a refugee?

The closest the Convention gets to a right to a solution is in Article 34 (“Naturalization”):

The Contracting States shall as far as possible facilitate the assimilation and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

The Article imposes no binding duty of assimilation or naturalization and relates to only one of the “durable solutions.” As Erika Feller, UNHCR’s former assistant high commissioner for protection, has written: “The Convention foreshadows various types of solutions, as refugee status is by definition temporary, but again envisages no special arrangements to ensure they are realizable in a timely and durable manner.”<sup>9</sup>

If a right to a solution cannot be identified in the Refugee Convention, might it be found elsewhere in human rights law? One could begin with the Arendtian claim that membership in a national community is a prerequisite to the effective assertion and protection of human rights. In a well-known paragraph Arendt writes: “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.”<sup>10</sup> As brought to the refugee regime, the argument could proceed: (1) Membership is vital to the effective protection of human rights; (2) refugees lack (effective) membership (by definition); (3) therefore, a commitment to human rights necessitates that refugees be provided membership or something close to it (a right to a solution).

But this formulation of the right not to be a refugee can only be secured if there is a corresponding duty on some country, some political association, to take a refugee in and make them a member. As just noted, such a right cannot be found in the Convention. Indeed, as we have noted in previous chapters, the refugee regime is notorious for not including an express right to “physical” entry of a state: persons granted refugee status have a right not to be returned to persecution but apparently no right to enter a state in order to make a claim that would make the right to *non-refoulement* enforceable. If the claim to physical entry is deemed controversial, then it would be difficult to sustain the claim that states have assumed an obligation to grant “political” entry. (This is not to assert that states are not bound to respect the human rights of all persons, irrespective of status; rather it is to say that it is not easy to establish “a right to a solution” predicated upon the claim of a right to political membership.)<sup>11</sup>

But perhaps we can take this argument one step further and say that at least for the class of persons recognized as refugees, the freedom of states to grant or withhold political membership should yield to the necessities of protecting human rights. To see this, contrast the situation of migrants and refugees. In holding that states have autonomy regarding physical entry and citizenship vis-à-vis migrants, the result is (usually) that the migrant can count on his or her home state’s support while abroad and return to his or her home state and assert membership rights there. But this does not hold for refugees, who have, by definition, no home country in which they may safely claim the rights that normally

accompany membership. So perhaps, in this special case, the privilege of a state to determine membership rules should yield and refugees should be provided an opportunity for membership (at least after some significant period of time).

We think this is not an implausible line of argument. To be sure, it is consistent with the “soft” language of Article 34 of the Convention. But a “hard” right to membership, assertable today, cannot be found in any legal instrument nor is it widely respected by state practice. And, somewhat paradoxically, it is possible that recognition of such a right could in practice work to undermine the refugee regime: if states were found to have a duty to admit recognized refugees to full membership, they might choose to close their borders or establish a form of “subsidiary relief” short of refugee status by which they could avoid the obligation. Indeed, this is in many ways what has happened already when it comes to protection, via *non-entrée* in the North and safety-without-enjoyment in the South.

So far we have been considering a right to a solution that guarantees (eventual) state membership. As we have suggested previously and will develop below, it is possible to conceive of a “solution” in other terms—as circumstances in which international protection may be responsibly withdrawn because it has become redundant: a state of residence has guaranteed refugees a full complement of rights (including the ability to assert the right to non-return) and has provided meaningful access to economic self-sufficiency or inclusion in systems of social protection. While we will argue for the expansion of the concept of solutions to include this understanding, we cannot see the basis for a legal claim that a displaced person has a “right” to these arrangements—beyond recognition and enforcement of the rights already provided in the Refugee Convention and other applicable human rights instruments and under the domestic law of the hosting state.

### III. The Responsibility to solve

So we allow that it will be difficult to sustain the argument that there is a “right to a solution” that refugees can assert or that states, at this time, would be willing to recognize. But perhaps there is another way to provide the moral fulcrum that would be important to the resolution of protracted displacement situations—one that focuses on the *responsibility* of the international community, rather than a *right* of a refugee (or a concomitant obligation of a host state only).

We will present three interrelated arguments in support of what we will call “the responsibility to solve” (R2S).<sup>12</sup> The first flows from the human harms imposed on those left in the limbo of refugee status for an extended period of time; the second focuses on principles that underlie the international protection regime (the goal of a solution and responsibility-sharing); and the third derives from specific commitments of members of the UN General Assembly and signatories to the Convention to cooperate with UNHCR in seeking solutions.

#### *A. Responsibility to promote human security and human rights*

We have identified above the obvious dramatic negative impacts of long-term refugee status. Some are quite specific: refugees in many parts of the world are unable to fully enjoy rights guaranteed by the Convention, either because the host country is not a signatory or because, even if a signatory, the state does not fully comply with the Convention’s norms. Thus, refugees frequently are not permitted freedom of movement, a right to work, and other civil,

economic, and social opportunities on par with those provided to non-citizens or citizens in the host country as mandated by the Convention. Refugees living outside of camps in urban areas often face discrimination and marginalized existences. Refugees living in camps rarely are afforded treatment that accords with international standards on health, water, nutrition, and sanitation; sexual and gender-based violence is widespread (including female genital cutting); and education, skills training, and livelihoods are usually significantly constrained. UNHCR estimates that in some camps only about half of all primary school-aged refugee children attend school; a far lower percentage of refugee children attend secondary schools.<sup>13</sup> Refugee camps have become largely places of “care and maintenance,” with refugees receiving enough to survive but surely not enough to flourish.

That refugees would score low on a “human security” scale is lamentable but should not be surprising.<sup>14</sup> First, refugee camps are frequently placed in communities that already endure substantial hardship; indeed, it is often noted that conditions inside a refugee camp may be better than those for the local community outside the camp—hence, efforts are frequently made to open in-camp resources, such as schools and medical facilities, to the local community. Second, the assistance that UNHCR and other international and local NGOs can provide to refugees depends on the funds they receive from donors. Each year, UNHCR conducts a global needs assessment for all refugees and other persons of concern to UNHCR and calculates the funding it would need to provide them with levels of assistance and services consistent with minimum international standards. In 2016, UNHCR calculated that amount at \$7.5 billion; yet the funds made available to UNHCR were just slightly over half this amount—leaving a shortfall of some \$3.5 billion. Accordingly, it is a certainty that UNHCR and allied organizations will not be able to fully provide refugees with levels of assistance that would meet even minimum levels of human security. Moreover, the funds that are made available tend to dwindle over time, as attention shifts to new emergencies and “donor fatigue” sets in. This is the darker side of “self-reliance,” which can serve to justify cuts in assistance that are motivated not by refugee self-sufficiency but by donor desires to reduce expenditures.<sup>15</sup>

It would of course be unrealistic to assume that the international community could meet all needs and standards during or shortly after a humanitarian emergency. But the question we are considering concerns *protracted* displacement situations, in which persons—possibly have been living in a state of social suspension and significant deprivation for extended periods of time. These cumulative harms cry out for amelioration, as is true for the poor and underprivileged everywhere. But the needs of refugees represent additional factors: persons displaced for a considerable time are likely to live lives largely bereft of the kinds of community and human relationships recognized as necessary for human flourishing: family unification, community self-definition and development, self-reliance and self-determination, political participation, and effective protection against violence.

These kinds of serious deprivations, which stunt human capabilities and social and economic development, figure high on the international policy agenda. The 2030 Agenda for Sustainable Development, adopted at the UN in 2015, establishes seventeen far-reaching goals (and scores of targets) to promote human flourishing, reduce inequality, prevent environmental degradation, protect human rights, and build “peaceful and inclusive” societies. The sustainable development goals (SDGs) declare that “no one will be left behind” and that states commit to “begin with those furthest back.”<sup>16</sup>

These commitments are the most recent manifestation of the more general, hortatory provisions of the UN Charter that affirm the duty of states to cooperate toward universal observance of human rights and solutions to international economic and social

problems.<sup>17</sup> Furthermore, many of the harms addressed by the SDGs concern rights to food, education, health, work, and adequate living standards that are enshrined in the International Covenant of Economic, Social, and Cultural Rights (ICESCR). Similar to the Charter, the ICESCR commits states to progressively realize these rights not only through individual steps, but also “through international assistance and co-operation, especially economic and technical, to the maximum of its available resources.”<sup>18</sup>

The Charter, ICESCR, and the SDGs have not established enforceable commitments to provide international assistance toward the goals of human and social development. But surely they are strong statements about the responsibility of states to pursue collective action towards these goals, both for the sake of human beings, and in the self-interested pursuit of global peace, prosperity, and security.

#### B. *Principles of the international refugee regime that support a responsibility to solve*

Members of the international refugee regime have a responsibility to ensure it achieves its purposes. R2S underpins this broader responsibility in two ways: (1) solutions represent a central goal of the regime, and (2) international responsibility-sharing—a key part of which is cooperating towards solutions—is necessary if the regime is to succeed.

##### 1. *From protection to solutions*

The principles of protection we discussed in the previous Chapter provide a teleology implicit in the international refugee regime. For refugees, it can be summarized as *flight* (across an international border); *admission and recognition*; *assistance and rights protection (including both safety and enjoyment of asylum)*; and *solution*. This conceptualization flows from the very nature of the refugee problem: it is not simply the danger of being persecuted if returned; it is also fundamentally the fact of having been forced from one’s home, stripped of community and denied opportunities for a normal life. The goal of the regime of international protection is to ameliorate those harms—that is, to provide a *solution* to the state of being a refugee. In the words of Gervase Coles, “In the refugee situation, international protection should be seen as a temporary holding arrangement between the departure and return to the original community or as a bridge between one community and another.”<sup>19</sup>

The centrality of solutions to the international regime is made clear in the first paragraph of UNHCR’s founding Statute. It states that the High Commissioner,

shall assume the function of providing international protection [to refugees] . . . and of seeking permanent solutions for the problem of refugees by assisting governments and, subject to the approval of the governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.”

This emphasis is affirmed in repeated resolutions of the General Assembly<sup>20</sup> and conclusions of UNHCR’s Executive Committee.<sup>21</sup>

Solutions were also central to the refugee regime at the time of the drafting of the Refugee Convention. Indeed, while we might question whether a *right* to a solution can be read into the Convention, we also believe there is a danger in making too much of the

Convention's silence on solutions (beyond naturalization): in 1951, most of the postwar refugee situation had already been "solved." To say that third states did not *additionally* accept responsibility for the "residual caseload" is by no means to say that they assumed no responsibility for solutions. To the contrary, solutions have never been more forthcoming than in the years leading up to 1951.

## 2. *Responsibility-sharing and solutions*

The argument in the previous section finds its source in regime responsibilities that the international community owes to refugees. A second approach derives from obligations that states owe to one another in establishing and maintaining the regime; it is grounded in the role of international responsibility-sharing.

We have argued at various points throughout this volume that the importance of responsibility-sharing for a well-functioning system of international protection is clear. UNHCR's Executive Committee has made this linkage explicit in a Conclusion dealing specifically with protracted refugee situations:

[T]he status quo is not an acceptable option and, while every situation is unique, all feasible and practical efforts should be taken to unlock all continuing protracted situations especially through the implementation of durable solutions in the spirit of international solidarity and burden sharing.<sup>22</sup>

The idea of responsibility-sharing can be constructed from notions of fairness: justice would argue for no one state to be disproportionately affected by refugee flows because it is likely that the burdened state was not the cause of the flow and it is burdened simply because of propinquity. It has long been recognized that that burden may be significant. A 1998 UNHCR paper on burden-sharing noted that "large refugee and returnee populations may impede or jeopardize the development efforts of developing countries" and identified a number of significant impacts on hosting states, including:

1. Economic impact: substantial demands on food, energy, transportation, employment, and public services such as education, health and water facilities, and administering asylum procedures;
2. Environmental impact: unexpected and massive demand for scarce natural resources such as land, fuel, water, food, and shelter materials, with long-term implications for their sustainable regeneration;
3. Social and political impact: particularly where refugees or returnees are from different cultural, ethnic, religious, or linguistic groups from the local population;
4. Impact on national, regional and international peace and security: problems of politicization and militarization of refugee camps, which places substantial demands on the police and armed forces of countries of asylum.<sup>23</sup>

These impacts escalate over time, as outside resources tend to decline and funding is put to new emergencies rather than continuing situations. Those impacts are all the more dire because the states in question—the Kenyas and Lebanons and Pakistans of the world—face enormous economic and social challenges on their own.

Responsibility-sharing may also be justified in regime-preservation terms. Effective protection of refugees demands collective action. As Erika Feller has noted: "Refugee



protection is a global concern and a common trust. This means that responsibility for it is shared, not individual. It also means that, unless this is shouldered widely, it may be borne by none.”<sup>24</sup> It is thus not surprising to find reference to the necessity of responsibility-sharing in the Refugee Convention’s preamble:

Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international cooperation.

Our argument, then, is that responsibility-sharing is a necessary commitment of states, and that supporting solutions is an important way for meeting that commitment. Solutions to situations of displacement would reduce burdens on countries of first asylum and would help preserve the overall protection regime.

#### *C. Specific commitments of member states to cooperate for solutions*

The General Assembly resolution that establishes UNHCR calls upon states “to cooperate with the Office of the United Nations High Commissioner for Refugees . . . in the exercise of its functions.”<sup>25</sup> Because seeking solutions is explicitly one of UNHCR’s functions, states are accordingly specifically committed to assisting the High Commissioner’s work in this regard.

This straightforward legal argument has potentially profound implications. Yet the commitment of states to cooperate in the pursuit of solutions cannot be enforced nor is it robustly monitored. UNHCR actively seeks to increase the number of resettlement slots each year; and while the number of states taking refugees for resettlement has increased, the total number resettled each year is but a very small fraction—typically less than one percent—of the overall number of refugees worldwide. Similarly, over the last decade refugee returns have declined precipitously while efforts at local integration have largely stalled. Under both the Statute and the Convention, UNHCR is given authority to supervise state compliance with their commitments.<sup>26</sup> It may now be time for it to exercise that authority in a more active manner to call attention to state responsibility to assist in finding solutions.

### **IV. From principle to practice**

We have argued that R2S is a legal and moral commitment of state members of the international protection regime. The next question is how it may be translated from principle to practice.

#### *A. Of multi-state agreements, old and new*

States may take unilateral action to offer solutions to refugees. Naturalization programs, for instance, require simply the action of a single hosting state. As one example, in 2010 Tanzania began the process of naturalizing more than 160,000 Burundian refugees who had entered the country in 1972. PDS may also be resolved through exercise of the Convention’s

“cessation clause,” coupled with assistance to refugees returning to their home states and aid to long-term hosting states for environmental and other rehabilitation efforts.

More frequently, however, R2S will need to be brought to bear as a cooperative enterprise. A formal model that is frequently invoked is the Comprehensive Plan of Action (CPA). A CPA is an agreement among hosting states and other states (resettlement and/or states of origin) to work out solutions *en bloc* for displaced persons in a protracted situation. The most notable, both launched in 1989, have been the plan for Central American refugees (known by its Spanish initials as CIREFCA), and a CPA for Indo-Chinese refugees. CIREFCA adopted policies of local integration and return, with development agencies playing a role.<sup>27</sup> Under CIREFCA, more than 110,000 Nicaraguans, Salvadorans, and Guatemalans voluntarily returned to their countries of origin; thousands more were locally integrated into countries of asylum.<sup>28</sup> The Indo-Chinese CPA focused on resettlement, return, and prevention of future flows of “boat people.” Under the CPA, a million refugees were brought to the United States, several hundred thousand resettled in other countries (China, Canada, Australia, Thailand, and France) and 80,000 returned from refugee camps in the region to Vietnam.<sup>29</sup>

In more recent years, these kinds of multi-state agreements (with the participation of UNHCR and other multilateral institutions) have taken a different form. Rather than devising a plan that “solves” a refugee situation, states may announce plans to make progress *towards* solutions. The shift is important because it is likely to include measures supporting refugee self-reliance in hosting states based on the recognition that return is not possible in the short-term. In this way, the work towards solutions merges with new thinking on moving beyond “care and maintenance” for refugees in protracted situations.

The Nairobi Declaration, signed by the IGAD<sup>30</sup> states in 2017, is an important example of this trend. With its objective to “collectively pursue a comprehensive regional approach to deliver durable solutions for Somali refugees, whilst maintaining protection and promoting self-reliance in the countries of asylum,” the Declaration calls for measures, *inter alia*, to support the voluntary repatriation of Somali refugees, to respond to drought in the region (to prevent new forced displacement and to address a significant driver of structural poverty), and to maintain asylum space. Of particular significance are commitments to enhance, with the support of the international community, education training and skills development for refugees to prepare them for gainful employment in host communities and upon return, and to align domestic laws and policies, including civil documentation, with the Refugee Convention.<sup>31</sup>

Crucially, the Declaration also spells out responsibilities of the international community, particularly development actors and international financial institutions who are requested to accelerate debt relief and other financial assistance to facilitate development in Somalia, to provide concessional loans to affected communities, and to “mobilize resources to promote alternatives to refugee camps and the socioeconomic development for the mutual benefit of refugees and host communities.”<sup>32</sup> If such resources provide a genuine stimulus, they could well be transformative. The best example, to our minds, is not CIREFCA or the CPA but rather the Marshall Plan, which enabled millions of refugees in war-torn host states like Germany to rebuild their lives not only by strengthening labor markets but by enabling Germany to rebuild its welfare state. Indeed, Marshall aid is a crucial precedent not only—perhaps not even mainly—because of the scale of funds involved, but because of the form such funding took: grants instead of loans; stimulus instead of austerity.

Whether or not voluntary return with safety and dignity can occur in the medium term to Somalia (and there are disturbing signs that refugees are already being coerced into

returning prematurely—including as a means to pay off the debts they have incurred as food rations have been cut),<sup>33</sup> a kind of proto-solution of local integration can materialize. But it, too, must be accompanied by development aid—including, crucially, at the macroeconomic level—mobilized and directed to the benefit of hosting communities as well as refugees, with the goal for both groups being freedom from want, not (merely) independence from aid. Here, again, our reasoning is as much functional as it is moral. Such aid is necessary to incentivize host states to include refugees into their economies and societies, and it is crucial to ensure that such inclusion means more than inclusion into new forms of deprivation.

We must, however, temper these hopeful remarks with a word of caution. If, as is currently the case, development aid to the Somalias of the world remains inadequate; if it continues to come mainly in the form of loans (Somalia, like most host countries, is already indebted to development institutions); and if those loans come with austerity and privatization conditions; then such an approach would hardly be a departure from a status quo that has not prevented one million additional Somalis from being uprooted internally in recent years, let alone one that could see hundreds of thousands of refugees return to something other than insecurity and violence. To state this more generally, comprehensive plans that move in the direction of durable solutions run a risk of reinforcing “responsibility by proximity” if they focus too narrowly on quasi-integration.<sup>34</sup>

### *B. Labor migration and mobility*

The “half-way” CPAs just described represent a softening of traditional understandings of solutions (that they must accomplish durable return to the state of origin or membership in another state). Once we move away from membership-based assumptions about solutions, other possibilities open up. So rather than seeing a situation as solved when a refugee is “re-attached” to a state, one can conceptualize a solution as a state of affairs in which refugee agency is restored—that is, when refugees and other fleers of necessity can exercise choice about a place of residence in which to pursue family life and attain economic and social security. Scholars have approached this understanding by suggesting that labor migration and mobility could be viable solutions. The idea—which has, as we suggested previous chapters, some resonance with the Nansen Passport—would be to fashion opportunities for refugees to move from countries of first asylum to other states to search for and take up employment, join other family members, or pursue an education. If the right to leave and return to a country of asylum is protected, then the continued provision of international assistance and protection for those refugees may become unnecessary.<sup>35</sup> And importantly, it would be a step toward transcending “responsibility-by-proximity.”

Indeed, mobility sounds like a radical suggestion only because our thinking is locked into the idea of a system where a refugee is granted protection in a country of first asylum and then must be “resettled” elsewhere if he or she seeks to leave (and refugees who depart a country of first asylum otherwise become “illegal migrants”). But in reality a solution of mobility asks less of other states—a right for a refugee to enter and take up employment or go to school or join a family member. It is not a request for membership. It is a “cheaper” way for a state to meet its R2S responsibilities vis-à-vis that number of refugees who choose to avail themselves of it, while at the same time contributing to refugee agency and easing pressure on countries of first asylum.

## V. Counterarguments, and feasibility

In light of the above, we believe that a strong case can be made for the concept of a responsibility to solve long-term refugee situations. R2S, we have argued, follows from a general commitment of states to further human rights and the UN Charter and a specific commitment to support the High Commissioner in seeking solutions for refugees. It is also entailed by an obligation to ensure that the refugee regime—constructed and implemented by states—succeeds in its purposes. Recognition of R2S would provide an impulse for renewed attention to solutions, which could lead to enhanced funding for returns and local integration as well as more resettlement opportunities. It would also remind us that the principle of *non-refoulement*—while a crucial pillar of refugee protection—is not the ultimate goal of the international refugee regime. That is, the responsibility of the international community to refugees is not simply to support camps or other arrangements that provide (endless) temporary assistance to refugees; it is to restore human dignity and agency by ending the condition of being a refugee. In today’s world of a collapsing protection regime, there is a collective responsibility to prevent and remedy a looming collective failure.

There are counterarguments that need to be addressed. James Hathaway, has suggested that a focus on solutions “pathologizes” refugees and may be used to undercut enforcement of rights under the Refugee Convention:

Th[e] very simple notion—that the recognition and honoring of refugee rights is itself a fully respectable, indeed often quite a desirable response to involuntary migration—can too easily be eclipsed by the rush to locate and implement so-called “durable solutions” . . . Rather than propelling refugees towards some means of ending their stay abroad, the Refugee Convention emphasizes the right of refugees to take the time they need to decide when and if they wish to pursue a durable solution.<sup>36</sup>

We agree with Hathaway on the importance of preserving and fostering support for rights protected by the Convention, and we appreciate that effective realization of Convention rights may enhance the opportunities for, and durability of, solutions. We are also well aware of examples of refugees being forcibly returned in violation of Convention rights. But refugees trapped in protracted situations—some of which have lasted their entire lives—are not likely to need additional time to decide if they wish to pursue durable solutions. Thus we caution against arguments that appear to privilege Convention rights over the search for solutions when in fact the two pursuits are co-constitutive.

Another counterargument is based on political feasibility. It runs like this: many members of the international community already think they are doing enough, if not too much, to help refugees and that they are unlikely to assume any additional responsibilities. Host states can properly say that they have kept their borders open, provided safety, and borne substantial burdens; they can further note that refugees often receive more assistance from the international community than members of the hosting areas, and that if they have any additional responsibility it would be to their own citizens first. Donor states are likely to assert that they have provided and continue to provide billions of dollars in assistance each year, and that nothing in the Convention or other norms of the regime requires them to take refugees in if they can be safely provided for in countries of asylum.<sup>37</sup> They would further argue that the primary solution for refugee situations is return, so it makes sense to keep refugees close to home and hardly requires a Marshall Plan for host states. In short, given

everyone's recognition of the importance of solutions but lack of progress on providing them, it appears that the nations of the world have made clear through their actions that working toward solutions—even in other states—is not perceived to be in their particular interests. Why, then, should we expect that the identification of a “responsibility” to do something about the problem would actually change state behavior?

We are not ready to concede that moral principles have no sway in international affairs. From climate change to landmines, protection of endangered species and recognition of the rights of children, states continue to adopt policies that are not based on their pecuniary or political or near-term interests alone. Our guess is that many of the world's policy makers are not aware of the original vision from which the status quo makes such a tragic departure and that many could be moved to take action—particularly when the challenges are readily manageable. So identification of the current situation and a careful explication of relevant norms and principle can, we believe, have an impact.

If we are wrong, and states take actions only in pursuit of narrow and defined state interests, an appeal can be based on the benefits that would flow from taking up a collective responsibility to solve. It can be pointed out that donor states may, in the long run, save money spent from humanitarian funds for long-term “care and maintenance” of refugees. With the development of comprehensive plans for solutions, hosting states will see their burdens lessened due to increased repatriations or resettlement of refugees. And, if local integration is promoted, they will also reap the benefits of including a new workforce in local and national economies as well as development of local hosting communities.

Additional force could come from linking solutions plans to other kinds of state interests. Alexander Betts, in analyzing why some comprehensive plans of action have succeeded (CIREFCA and the Indo-Chinese CPA) and others not (the International Conference on Assistance to Refugees in Africa (ICARA)), has persuasively argued that it was UNHCR and the UN system's recognition of and appeal to “states' wider interests in linked areas such as security, peace-building, migration and development” that contributed to success.<sup>38</sup> This accords with our reading of the first, and most successful, postwar responsibility-sharing regime. In the midst of a budding Cold War, resettlement and the Marshall Plan made sense first and foremost as a way to curry favor with states that might have otherwise looked to the East for support. Both made sound ideological sense, in addition to being the right thing to do.<sup>39</sup>

The entry of Big Development into the displacement field is evidence of one such “plus” in the current moment. For the development agencies, “[f]orced displacement is emerging as an important development challenge” and “[t]he best results are likely to be achieved when humanitarian and development actors work together.”<sup>40</sup> For the politicians that run the governments that run the development organizations, other factors may be at work. The development turn may arise from motivations not very different than those that led to the creation of camps (and the resulting PDS) in the first place: to act in a humanitarian fashion toward persons in need while creating institutions and norms that keep people in places to which they first fled. If the dollars promised are large enough so that asylum states can show material benefits to their own citizens in hosting communities, the deal can be sealed.

To no small degree, this is an unhappy place to end up. *If* ultimately the interests of states must be appealed to, *and* the primary interest for donor states today is to put in place policies of containment, then we are led to the conclusion that new thinking on solutions will cut against precisely the goals of agency and mobility that we have suggested must be part of a principled system of international protection. A responsibility to solve will become

a faith worth fighting for only when it is yoked to a broader critique of the international refugee regime and a plan of action that moves us beyond a system based on (powerful) state interests. In previous chapters we have elaborated our own version of that critique. In the next and concluding chapter, we will bring the various threads of the critique that we have pursued heretofore; that will be the easy part. Developing a positive program for change, and a way to accomplish it, will be more difficult.

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<sup>1</sup> UNHCR, Dadaab Refugee Complex, <http://www.unhcr.org/ke/dadaab-refugee-complex> (data as of November 30, 2017).

<sup>2</sup> See Core Group on Durable Solutions, UNHCR, Framework for Durable Solutions for Refugees and Persons of Concern (May 2003), <http://www.refworld.org/docid/4124b6a04.html>. UNHCR Exec. Comm., Conclusion on Protracted Refugee Situations, 61st Sess., December 8, 2009, UN Doc. A/AC.96/1080, No. 109(LX)-109 (December 22, 2009), <http://www.unhcr.org/4b332bca%209.html>. However, for statistical purposes, UNHCR defines “major protracted refugee situations” as “refugee populations of 25,000 persons or more who have been in exile for five or more years in developing countries” while nonetheless cautioning that this “crude measure of 25,000 refugees in exile for five years should not be used as a basis for excluding other groups.” UNHCR, *The State of the World’s Refugees 2006: Human Displacement in the New Millennium 106-08* (April 20, 2006) [hereinafter UNHCR, *State of the World’s Refugees*], available at <http://www.unhcr.org/4a4dc1a89.html>. Indeed, for certain purposes, such as resettlement policy and planning, UNHCR defines a PRS more generally as “any situation ‘in which refugees and find themselves in a long-lasting and intractable state of limbo.’” UNHCR, UNHCR Resettlement Handbook 41, 288 (July 2011), available at <http://www.refworld.org/docid/4ecb973c2.html>; see also UNHCR Exec. Comm. of the High Comm’r’s Program, Standing Comm. 30th meeting, Protracted Refugee Situations, UN Doc. EC/54/SC/CRP.14 (June 10, 2004), <http://www.refworld.org/docid/4a54bc00d.html>.

<sup>3</sup> UNHCR Global Trends, p. 22; see *Forcibly Displaced: Toward a Development Approach Supporting Refugees, the Internally Displaced, and Their Hosts* (World Bank Group 2017), PRS remained fairly constant 1991-2015, at 5-7 million (p. 25). Now that the Syrian situation has passed the five-year mark, the total number of refugees in protracted situations exceeds 10 million. UNHCR, *Global Trends: Forced Displacement in 2016*, June 12, 2017, available at: <http://www.refworld.org/docid/594aa38e0.html>; World Bank. *Forcibly Displaced: Toward a Development Approach Supporting Refugees, the Internally Displaced, and Their Hosts*, (Washington, DC: World Bank, 2017).

<sup>4</sup> UNHCR 2015 Statistical Yearbook (Table 5).

<sup>5</sup> <https://www.unhcr.org/en>.

<sup>6</sup> UNHCR Global Trends 2016, p. 37. UN High Commissioner for Refugees (UNHCR), *Global Trends: Forced Displacement in 2016*, June 21, 2017, available at: <http://www.refworld.org/docid/594aa38e0.html>.

<sup>7</sup> See, e.g., G.A. Res. 64/127, 22, UN Doc. A/RES/64/127 (January 27, 2010) (The General Assembly “[e]xpresses concern about the particular difficulties faced by the millions of refugees in protracted situations, and emphasizes the need to redouble international efforts and cooperation to find practical and comprehensive approaches to resolving their plight and to realize durable solutions for them, consistent with international law and relevant General Assembly resolutions”); UNHCR, *State of the World’s Refugees*, supra note 12, at 105 (“The majority of today’s refugees have lived in exile for far too long, restricted to camps or eking out a meagre existence in urban centres throughout the developing world”); UNHCR, Protracted Refugee Situations,

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UNHCR/DPC/2008/Doc. 02 (November 20, 2008), available at <http://www.unhcr.org/492ad3782.html> (supporting the implementation of the High Commissioner's Special Initiative on Protracted Refugee Situations); UNHCR Exec. Comm., supra note 12 (noting the harms of protracted refugee situations and urging further action).

<sup>8</sup> The case for IDPs is weaker, as there is no binding IDP Convention from which the arguments we make on behalf of refugees could arise.

<sup>9</sup> Erika Feller, "Asylum, Migration and Refugee Protection: Realities, Myths and the Promise of Things to Come," *International Journal of Refugee Law*, no. 18 (September 2006): pp. 509-536. See also Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law*, (Oxford: Oxford University Press, 2007), pp. 264-266 (refugee movement necessarily has an international dimension, but neither general international law nor treaties require states to provide durable solutions).

<sup>10</sup> Hannah Arendt, *The Origins of Totalitarianism*, (New York City: Harcourt, 1973), p. 295, she elaborates:

The conception of human rights . . . broke down at the very moment when those who professed to believe in it were for the first time confronted with people who had indeed lost all other qualities and specific relationships—except that they were still human. The world found nothing sacred in the abstract nakedness of being human.

*Id.* at 299. See also Gervase 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. 195-221. The United States Supreme Court has also described the right of citizenship as "the right to have rights." *Trop v. Dulles*, 356 U.S. 86, 101-02 (1958) (Warren, C.J.).

<sup>11</sup> In this way there is an interesting parallel between the weakness of claims to physical entry and political membership. States are bound to respect the *non-refoulement* principle but not bound to permit entry that would make assertion of the principle secure; likewise, states are bound to respect human rights of all persons but not bound to grant membership which would permit the better securing of such rights.

<sup>12</sup> There is an obvious echo here of the Responsibility to Protect (R2P), which itself was a shift from the "right of humanitarian intervention" in cases of mass atrocities. See INT'L COMM'N ON INTERVENTION & STATE SOVEREIGNTY (ICISS), THE RESPONSIBILITY TO PROTECT 1-3 (2001), at <http://www.responsibilitytoprotect.org/ICISS%20Report.pdf>. The right of humanitarian intervention and R2P both start with recognition of the fundamentality of human rights and limits on sovereignty in cases of massive abuse of human rights. *Id.* at 12-16. But R2P is thought preferable because it foregrounds the responsibility of states to respect human rights while at the same time refashioning the role of the international community when states are unwilling or unable to do so. *Id.* at 17. The proffered R2S differs from R2P in important respects: the former does not override national sovereignty or propose coercive action; rather it represents a collective act of sovereignty, so there is no doubt about the legitimacy of concerted action.

<sup>13</sup> See, e.g., UN High Commissioner for Refugees (UNHCR), "Refugee Education: A Global Review" (November 2011) <http://www.refworld.org/docid/5142ee1c2.html> (noting a Gross Enrollment Ratio (GER) of 56 percent for primary-age children in Dadaab and 21 percent at the secondary level; the average primary school GER for refugees of 6 to 11 year-olds was 76 percent, in comparison with a global GER of 90 percent for the primary school in the same age-group).

<sup>14</sup> The "human security" concept aims to shift debates on security from a state-centered focus on "state security" to an understanding of security that includes individuals' "freedom from fear and freedom from want." 2005 World Summit Outcome, G.A. Res. 60/1, UN Doc. A/RES/60/1 (September 16, 2005) [hereinafter UNGA, 2005 World Summit Outcome], available at [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/60/1](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/60/1). Its current iteration derives from a 1994 UN Development Programme report and encompasses seven security components:

economic, food, health, environmental, personal, community, and political security. UNDP, HUMAN DEVELOPMENT REPORT 1994: NEW DIMENSIONS OF HUMAN SECURITY 22 (1994), <http://hdr.undp.org/en/reports/global/hdr1994/>. As Alice Edwards notes, the human security concept has the potential to contribute to refugee protection debates by focusing policymakers on the link between human harms and global security and the need for a multilateral solution. Alice Edwards, “Human Security and the Rights of Refugees: Transcending Territorial and Disciplinary Borders,” *Michigan Journal of International Law*, no. 30, (2009): pp. 763-807.

<sup>15</sup> See *infra*. See also, Kevin J. Kelley, “UN Pushes Refugee Self-Reliance as Donor Funding for Kenya Dwindles,” *Daily Nation* (November 25, 2017), <http://www.nation.co.ke/news/UN-refugee-donor-funding-Kenya-dwindles/1056-4202704-n3a88oz/index.html>.

<sup>16</sup> 2030 Agenda, para. 4.

<sup>17</sup> Article 56 of the UN Charter commits member states to take “joint and separate action” to achieve the goals declared in Article 55, namely:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

<sup>18</sup> International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), UN Doc. A/6316; 21 GAOR Supp. No. 16, at 49 (December 16, 1966), 993 UNTS 3, pt. 3, arts. 6, 11, 12, 13, 14, *entered into force* January 3, 1976 [hereinafter ICESCR].

<sup>19</sup> Coles, *supra* note 44, at 209. Similarly, Guy Goodwin-Gill defines refugee protection as “the use of legal tools to secure the rights, the security and the welfare of refugees,” and states that the objective “beyond the immediate needs of refugees, is solutions, either the voluntary return of refugees to their country in conditions of security; or assimilation in a new national community.” Guy Goodwin-Gill, “UNHCR’s Duty to Provide International Protection,” UNHCR (January 1987). Thus he concludes that there exists a “symbiosis of protection and assistance and protection and solutions.” *Id.* p. 17.

<sup>20</sup> Since adopting UNHCR’s Statute, the General Assembly has repeatedly reiterated the urgency and importance of UNHCR’s mandate to provide solutions. See, e.g., International Assistance to Refugees Within the Mandate of the United Nations High Commissioner for Refugees, G.A. Res. 832 (IX), UN Doc. A/RES/832 (IX), 1 (October 21, 1954), [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/832\(IX\)&Lang=E&Area=RESOLUTION](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/832(IX)&Lang=E&Area=RESOLUTION); International Assistance to Refugees Within the Mandate of the United Nations High Commissioner for Refugees, G.A. Res. 1166 (XII), UN Doc. A/RES/1166 (XII), 1(a), 2 (November 26, 1957), *available at* [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=%20A/RES/1166\(XII\)&Lang=E&Area=](http://www.un.org/en/ga/search/view_doc.asp?symbol=%20A/RES/1166(XII)&Lang=E&Area=)); Office of the United Nations High Commissioner for Refugees, G.A. Res. 65/194, 20, U.N. Doc. A/RES/65/194 (February 28, 2011), *available at* [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/res/65/194](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/res/65/194) (explaining that “international protection of refugees is a dynamic and action-oriented function that is at the core of the mandate of the Office of the High Commissioner and that it includes . . . the ensuring of durable, protection-oriented solutions”).

<sup>21</sup> UNHCR Executive Committee Conclusions 22, 29, 33, 41, 89, 95 all reiterate the importance of durable solutions. UNHCR Exec. Comm., Protection of Asylum Seekers in Situations of Large-Scale Influx, I.3, No. 22(XXXII)-1981, (October 21, 1981) [hereinafter UNHCR Exec. Comm., Protection



of Asylum Seekers], <http://www.unhcr.org/3ae68c6e10.html>; UNHCR Exec. Comm., General Conclusion on International Protection, (l), No. 29(XXXIV)-1983, (October 20, 1983), <http://www.unhcr.org/3ae68c6818.html> (noting the “essential need” for durable solutions); UNHCR Exec. Comm., General Conclusion on International Protection, (k), No. 33(XXXV)-1984 (October 18, 1984), <http://www.unhcr.org/3ae68c6e20.html>; UNHCR Exec. Comm., General Conclusion on International Protection, (c), No. 41(XXXVII)-1986 (October 13 1986), <http://www.unhcr.org/3ae68c9514.html>; UNHCR Exec. Comm., Conclusion on International Protection, 8, No. 89(LI)-2000 (October 13, 2000), <http://www.unhcr.org/3ae68c7e0.html>; UNHCR Exec. Comm., General Conclusion on International Protection, (i)–(j), (p)–(s), No. 95(LIV)-2003 (October 10, 2003), <http://www.unhcr.org/3f93aede7.html>.

<sup>22</sup> UNHCR Exec. Comm., Conclusion on Protracted Refugee Situations, 15, No. 109(LXI)- 2009 (December 22, 2009), <http://www.unhcr.org/4b332bca9.html>. See also *See* UNHCR Exec. Comm., Conclusion on International Protection, (d), No. 85(XLIX)-1998 (October 9, 1998), <http://www.unhcr.org/3ae68c6e30.html>. The general commitment to burden-sharing was made specific in a 2013 the Executive Committee declaration regarding Syrian refugees. UNHCR Exec. Comm., Report of the Sixty-fourth Session of the Executive Committee of the High Commissioner’s Programme, Annex 1, UN Doc. A/AC/96/1132 (October 9, 2013), *available at* <http://www.unhcr.org/525baeae9.html>.

<sup>23</sup> UNHCR Exec. Comm., Annual Theme: International Solidarity and Burden-Sharing in all its Aspects: National, Regional and International Responsibilities for Refugees, 8, U.N. Doc. A/AC.96/904 (September 7, 1998), at <http://www.unhcr.org/refworld/docid/4a54bc2f0.html>.

<sup>24</sup> UNHCR, Sixty-first Session of the Executive Committee of the High Commissioner’s Programme, Agenda Item 5(a), at 1 (October 6, 2010) (statement of Erika Feller, Assistant High Comm’r concerning Protection: Rule of Law 60 Years On), *available at* <http://www.unhcr.org/4cac7f2f9.pdf>.

<sup>25</sup> Art 35.

<sup>26</sup> UNHCR Statute, I.8(a) 1951 Convention, preamble; *id.* art. 35(1); *see also* Volker Turk, *UNHCR’s Supervisory Responsibility* 20 (UNHCR Working Paper No. 67, October 2002), *available at* <http://www.unhcr.org/3dae74b74.html> (analyzing UNHCR’s supervisory role and arguing that it “needs to be consolidated and strengthened”).

<sup>27</sup> International Conference on Central American Refugees (CIREFCA), Guatemala City, Guatemala, May 29–31, 1989, *Declaration and Concerted Plan of Action in Favour of Central American Refugees, Returnees and Displaced Persons*, CIREFCA 89/13/Rev. 1 (May 30, 1989), *available at* <http://www.refworld.org/docid/3fbb5d094.html>.

<sup>28</sup> Ron Redmond, *The Human Side of CIREFCA*, Refugees Magazine, UNHCR, Issue 99. <http://www.unhcr.org/en-us/publications/refugeemag/3b5426de4/refugees-magazine-issue-99-regional-solutions-human-side-cirefca.html>.

<sup>29</sup> UN Secretary-General, *Office of the United Nations High Commissioner for Refugees: International Conference on Indo-Chinese Refugees: Report of the Secretary General*, Annex, UN Doc. A/44/523 (Sept. 22, 1989), *available at* [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=a/44/523](http://www.un.org/en/ga/search/view_doc.asp?symbol=a/44/523) (Declaration and Comprehensive Plan of Action). W. C. Robinson, “The Comprehensive Plan of Action for Indochinese Refugees, 1989–1997: Sharing the Burden and Passing the Buck,” *Journal of Refugee Studies*, no. 17, (September 2004): pp. 319–333.

<sup>30</sup> This acronym is used more generally than the organization’s official name: the Intergovernmental Authority for Development. It includes eight states from the Horn of Africa, Nile Valley and Great Lakes region of Africa.

<sup>31</sup> Part IV, paras 4, 5.

<sup>32</sup> Part VII, paras 2, 3, 9.

<sup>33</sup> See, for instance, Kevin Sieff, “‘What Other Choice Do I Have?’ How Debt-Ridden Refugees are being Forced to Return to a War Zone,” *Washington Post*, December 15, 2017, [http://www.washingtonpost.com/sf/world/2017/12/15/how-refugees-are-being-forced-back-to-a-war-zone-to-repay-their-debts/?utm\\_term=.496547b740c3](http://www.washingtonpost.com/sf/world/2017/12/15/how-refugees-are-being-forced-back-to-a-war-zone-to-repay-their-debts/?utm_term=.496547b740c3).

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<sup>34</sup> Moreover, in the absence of broader macroeconomic relief in host states, together with continued rights enforcement (including of rights beyond the right to work), the emphasis on self-reliance can end up shifting the costs of protection onto refugees themselves. Of course, where refugees have access to decent employment, good schools, and affordable healthcare, self-reliance can be (at least for refugee adults who can work) a pathway to prosperity. But for the majority of refugees who are children, home-bound caregivers, elderly or infirm, and for the vast majority who live in places like eastern Chad or northern Kenya, a singular focus on self-reliance is too often a pathway into structural poverty—an invitation for refugees, among the most vulnerable and exploitable persons in the world, to join the lowest rungs of the global precariat. Indeed, even in middle-income countries such as Jordan and Lebanon, nine in ten refugees are surviving below the poverty line, the vast majority are in debt (\$1,000 per household on average), few have access to decent and affordable housing, and more and more are turning to “negative coping mechanisms,” including child labor and child marriage, just to survive. See e.g., Care International, “7 Years into Exile: How Urban Syrian Refugees, Vulnerable Jordanians, and other Refugees in Jordan are being Impacted by the Syria Crisis,” <https://reliefweb.int/report/jordan/7-years-exile-how-urban-syrian-refugees-vulnerable-jordanians-and-other-refugees>; WFP, Unicef, UNHCR, “Vulnerability Assessment of Syrian Refugees in Lebanon 2016,” <https://reliefweb.int/report/lebanon/vulnerability-assessment-syrian-refugees-lebanon-2016>; Laura Pitel, “A day on the factor floor with a young Syrian refugee,” *Financial Times* (September 20, 2017), <https://www.ft.com/content/abd615a4-76d7-11e7-a3e8-60495fe6ca71>.

<sup>35</sup> See Katy Long, “Extending Protection? Labour Migration and Durable Solutions for Refugees,” UNHCR Research Paper No. 176 (2009), available at <http://www.unhcr.org/4ad334a46.pdf>.

<sup>36</sup> James C. Hathaway, “Refugee Solutions, or Solutions to Refugeehood?,” *Refugee*, no. 24, (2006): pp. 3-10; see also James C. Hathaway, “Forced Migration Studies: Could We Agree Just to ‘Date’?” *Journal of Refugee Studies*, no. 20, (2007) pp. 349-369 (arguing that “as we join in the call to ‘find solutions,’ we impliedly acquiesce in official efforts to ‘derefugee’ the refugee population, and to turn them into little more than persons to be managed”).

<sup>37</sup> Of course, refugees are not being safely provided for, as evidenced by how many have chosen in recent years to risk their lives to travel North rather than stay where they are. Meanwhile, as we argued in the preceding chapter, “safety” is not the only principle that necessitates international support. That only makes our job harder: the funds needed to enable refugees to “enjoy” asylum in the countries to which they initially flee are orders of magnitude greater than those needed to (under)fund humanitarian programs.

<sup>38</sup> Alexander Betts, *Survival Migration: Failed Governance and the Crisis of Displacement*, (Ithaca: Cornell University Press, 2013), pp.160-170.

<sup>39</sup> Leah Zamore, “Refugees, Development, Debt, Austerity: A Selected History,” *Journal of Migration and Human Security*, no. 6, (2018): pp. 26-60, <https://doi.org/10.14240/jmhs.v6i1.111>.

<sup>40</sup> World Bank, “Forcibly Displaced: Toward a Development Approach Supporting Refugees, the Internally Displaced, and Their Hosts,” (2017), pp. 1-2, <https://openknowledge.worldbank.org/bitstream/handle/10986/25016/9781464809385.pdf?sequence=11&isAllowed=y>.