

I

Global Disorder

Global refugee numbers are at their highest since the early 1990s: 21.3 million people.* As if this were not bad enough, the typical focus on refugees leads to a radical underestimation of the disruption to people's lives caused by violent disorder. To be classified as a refugee you have to cross an international border. Many people fleeing violence are in no position to do that. The pertinent underlying phenomenon is displacement, not refuge. Measured by the number of people who have been displaced from their homes by violence, the total is far higher: 65.3 million. This is the highest figure ever recorded. It is even the highest proportion of the world's population ever recorded: one person in every 113.¹ Global modernity has not only produced technological miracles like the iPhone, and more than 1,800 billionaires; it has broken all records for the human tragedies that constitute displacement. How can this be?

In the past seventy years the world has experienced the most extraordinary period of sustained economic growth in history. This has transformed living standards. People not only have higher incomes, but have much better health, and are much better educated and informed. That this unprecedented spread of prosperity has coincided with a massive increase in the numbers seeking refuge is even more extraordinary. It demands explanation.

It is tempting to relate the record number of displaced with the record number of billionaires. But facile explanations about the rich getting richer while the poor have got poorer will not do. Most people today, not just the billionaires, are much better off than our forebears alive in 1945. Furthermore, in terms of global divergence, the bad decades were those early in the period when around a score

of rich countries left everyone else behind. By the 1980s there was a grim cliff between a rich world and a poor world with little in between. Since the 1990s, global inequality has been falling rapidly as most other countries have started to catch up. The most spectacular cases have been China and India, home to a third of mankind. But this trend is widespread; once impoverished and conflict-devastated societies like Vietnam, Rwanda and Colombia are now peaceful and have achieved rapidly rising living standards. Most countries are now somewhere in the middle. So, global economic developments look to be unpromising as an explanation for the upsurge in displacement. What else might it be?

WHAT DRIVES DISPLACEMENT AND REFUGE?

People seeking refuge are not fleeing poverty, *they are fleeing danger*. The flight for refuge happens when a society ceases to provide security for its people. For one reason or another, it falls into violent disorder. During the decade 1935-45 Europe fell into such disorder. The rise of fascism made Germany dangerous for Jews, and triggered a civil war in Spain. An analogous ideology in Japan supported an invasion of China. Each of these events created huge civilian displacements. Then the Second World War ravaged entire regions. But the dangers that have produced the current vast refugee problem have had very different origins.

This, indeed, is the first big awkward fact about mass violence: many different circumstances can bring it about. Violent societies are analogous to Tolstoy's unhappy families: they each become violent in their own way.² They are best defined by what they are not: safe for ordinary people.

No society is completely safe. In the USA black men face a heightened risk of being shot by the police; in Saudi Arabia adulterous women are at risk of being stoned; in Russia it would be unwise to denounce President Putin. Each of these is reprehensible, and a worthy focus of concern. In some cases, when individual risk is severe and targeted, people may need to seek asylum. But, for the

most part, this is not what is driving the flight to refuge – it is vital to distinguish mass violence from such manifestations of individual insecurity. Mass violence is rare; insecurities are pervasive. A failure to delineate mass violence properly would drive us to seek 'solutions' in the construction of some imagined idyllic society: idealized versions of Sweden or Montana according to taste. The desperation that leads people to abandon their homes to seek refuge is too serious a phenomenon for such romanticism. So our focus is on the circumstances in which a society collapses into mass violence; not those in which awful things happen to some people.

Even with this tourniquet around the problem, mass violence has numerous causes.

The traditional source of violence is inter-state conflict. The violence that dislocated civilian life in China in the 1930s, Russia in the 1940s, and Korea in the 1950s happened because of invasions from hostile neighbours. Hence, one condition for security is that a country be sufficiently strong militarily to protect itself from invasion by foreign enemies. Many countries may not even have such enemies.

If mass violence is not brought from abroad, it must originate at home. Such disorder is unusual and only comes about if two very different sources of internal security both fail at the same time.

The most attractive source of internal security is legitimacy. Most states, whether democratic or not, have sufficient legitimacy in the eyes of their citizens for people to be willing to comply with the rules. Those states whose legitimacy is accepted by a large majority of citizens need far fewer resources in order to enforce their rules. Britain can get by with a small and unarmed police force; North Korea needs the capacity for state violence against individual citizens to be so substantial as to be a constant reminder.

Yet, despite lacking legitimacy, North Korea has not collapsed into mass violence. Kim III maintains order in the same way as Kim II and Kim I: by brute repression. Brute repression threatens mass violence against citizens: were there to be an uprising, people would probably be slaughtered in their thousands, but the threat is *latent*. It is so awful, and so credible, that it does not need to be used.

Evidently, what matters for domestic security is the extent of state

legitimacy relative to the capacity of the state for coercive force. All states need *some* coercive force because no government, however inclusive and responsive, wins universal acceptance. All societies include recalcitrant oddballs who regard their grievances as licence for violence. On conventional criteria, Sweden in the 1980s is about as close as any state has ever come to Earthly perfection. But this did not prevent its Prime Minister, Olof Palme, from being shot dead in the street. Both legitimacy and coercive force reduce the risk of collapse into mass violence, and so there is a trade-off. A state can maintain the security of its citizens with very little coercive force if it has high legitimacy, or with very little legitimacy if it has sufficient coercive force.

In delineating the conditions for security we have also delineated its antithesis: fragility. A fragile state is a poor country marked by weak state capacity and legitimacy. There is a striking correlation between levels of fragility and levels of displacement. Fragile states are those that have no defence against mass violence. They are not invariably beset by mass violence: but each is a house of cards.

Fragility is the single most salient cause of displacement around the world today. Even factors that may become increasingly common drivers of flight like climate change and natural disasters are only likely to cause mass cross-border movements if they affect fragile states. When Hurricane Katrina struck New Orleans it did not require people to leave the United States. In contrast, when the earthquake struck Haiti many people fled to the neighbouring Dominican Republic because they could not find a domestic remedy or resolution to their situation.

Our opening question, however, was not 'which states are fragile?' but 'why has mass violence increased?' In effect, why might exposure to fragility have increased despite the wide diffusion of global economic growth?

WHY HAS FRAGILITY INCREASED?

The reasons for fragility are complex. We will not find a single big cause, which if only it was fixed would reverse the upsurge. Even Bush and Blair will not serve, other than as being responsible for

those refugees from Iraq. President Obama and virtually all other leaders agree that Afghanistan was a 'war of necessity', and by the time of the Arab Spring both Bush and Blair were out of office. We need to look beyond pantomime villains. Fragility has increased because of a combination of several major global changes: we suggest five of them. In each case, their effects on fragility have been incidental to their rationale. An implication is that there are no easy fixes. Humpty cannot be restored to his seat on the wall.

MAD no more

Paradoxically, one factor might have been the end of the Cold War between the Warsaw Pact and NATO. The Cold War was defined by fear of 'mutual assured destruction' (MAD) from nuclear weapons, something that people who have grown up after 1991 find it hard to appreciate. Both sides recruited allies, so a conflict almost anywhere might draw in the superpowers and escalate, as had happened at the onset of the First World War. This made even conflicts in out-of-the-way places potentially so dangerous that they were discouraged. Broadly, each superpower was allowed to keep its client regimes in power. Low-level proxy wars took place across client countries, but governments across Africa, Latin America, and South-East Asia maintained relatively strong state capacity as the US and the Soviet Union poured in money and weapons. With the end of the Cold War there was no longer an overarching need to do so: the lid was taken off. From Sierra Leone to Somalia to Bosnia, reduced state capacity contributed to mass violence.³

Quite possibly this mattered in Syria, which had long been a client state of Russia. During the Cold War it would most likely have been understood by Washington and its allies that significant regime change in Syria would be resisted militarily by Russia and so was too dangerous to encourage. But by 2011 such behaviour seemed long past. When the Arab Spring first spread to Syria, the American Ambassador did not feel inhibited in addressing a protest with expressions of support. Nor was the rejection of the notion of a Russian sphere of influence confined to the Middle East. The European Union embarked upon encouraging Ukraine to take the first steps

towards membership. In each case this led to two distinct phases of mass violence. In the first phase, there was violent internal resistance: in Syria the regime used violence against the protesters, while in Ukraine a violent insurgent group emerged in the eastern provinces opposed to the protest-generated new government in the west. In the second phase, Russia intervened militarily: in Syria with its air force, and in Ukraine with disguised ground troops.

The democratic peace?

A second paradoxical factor might have been the spread of democracy following the fall of the USSR. In Western societies democracy, understood as elections matched by checks and balances on the use of power, has long been accepted as conferring legitimacy, and, with the West triumphant, it was somewhat glibly assumed that this was a global truth. Democratic accountability of governments to their citizens would eliminate the grievances that were the cause of internal violence against the state.

Following the fall of the Soviet Union, democracy appeared to spread rapidly around the world. But what actually spread around the world was the practice of holding an election. Elections are events that can be held in virtually any circumstances. In contrast, the checks and balances on the use of elected power which are an integral part of the long-established democracies are not events but processes, and they take time and continuous struggle to establish. Currently, many societies have a lopsided democracy in which checks on power are too weak to prevent majorities from abusing minorities. In around a third of elections the checks on power are too weak to prevent voting malpractices that can enable minorities to abuse majorities.⁴ Further, in some societies there is too little sense of shared identity to give life to the notion of the common good: 'we' means 'our group' not 'our nation'. Power, whether won through violence or an election, is used for the same end: redistribution to 'us' from 'them'. In none of the above circumstances will an election turn power into legitimate authority, and so the costs of enforcing compliance with the state will not fall.

However, while the rapid spread of lopsided democracy did not turn out to be the holy oil that anointed governments with legitimacy,

it did reduce the coercive power of the state. For literally thousands of years autocrats have understood the most effective forms of coercion. One tried-and-tested rule is to act pre-emptively. It is too risky to wait until your opponents have acted: they might succeed. Act on suspicion, albeit this requires punishing the innocent along with the guilty. A second rule, also tried and tested, is to use violence not as a last resort but routinely: it is an effective reminder of the dangers of non-compliance. Even modest adherence to democracy precludes these methods.

Bringing these two effects together, the rapid spread of democracy after 1991 probably left many societies more susceptible to mass violence. Even after a government had won an election, many people who felt alienated continued to regard state power as illegitimate, while the state was less able to restrain such opposition from becoming violent.

The best-known demonstration of the failure of elections to produce a government seen as legitimate by its citizens is Iraq. Iraq has had more elections than we can readily recall, but by 2011 they had yielded a sectarian government of the Shia under the Prime Minister, Nouri al-Maliki. He attempted, with diminishing success, to coerce an alienated Sunni minority. By 2011 democratic Iraq was fragile in the extreme.

But the most dramatic example of the inability of an election to achieve acceptance of government was Libya. Having liberated themselves from the brutal and grotesquely self-serving regime of Colonel Gaddafi, Libyans elected a government-of-reason. But instead of the country developing, it rapidly descended into rival violent factions. The state completely collapsed, with wide-ranging repercussions that we will encounter in the next chapter.

Yes we can!

A third factor leading to increased fragility is technological. Changes in technology have long been a standard explanation for international warfare: at times technology favours defenders – think of castles – and at times it favours attackers – think of tanks. One explanation for the First World War is that the technology of the time

favoured attackers and so during July 1914 there was a self-fulfilling rush into military escalation. There are equivalent technological shifts between state coercion and insurrection. Tear gas and phone tapping have long enhanced coercion, but, starting around 2005, the explosive global spread of mobile phones and social media radically enhanced many forms of social protest, from rallies to insurrection. The first political manifestation of the new power of social networks was the victory in 2008 of the outsider Barak Obama in the primary contest against Hillary Clinton: social media, exemplified by 'Yes, we can!', defeated a conventional political campaign. But where the power of social media mattered most was in confronting state violence.

Protest does not depend exclusively, or even primarily, upon the extent of grievance. It depends upon the likely consequences of participation. The consequences if you are taking part in a public demonstration against a coercive state are straightforward. If few other people take part, the likelihood of being caught and punished is very high, whereas if a million others come into the square the forces of coercion will be so outnumbered that the risk of punishment is very low. The consequences for the regime are similarly dependent upon numbers. If the protest is small the regime will brush it off, or even double-down, whereas if it is massive there is a good chance that it will be toppled. The payoffs to participation are therefore highly sensitive to the expected participation of others.

The advent of the mobile phone and social media, adopted predominantly by the urban young, suddenly transformed the payoff to protest. Around the Middle East, grievances against the authoritarian regimes that were serving narrow interests were longstanding: the situation in 2011 was similar to that in 2001 or indeed to 1991, or even 1981. But whereas taking part in a protest at any of the earlier dates would have been quixotic, by 2011 to millions it became 'Yes, we can too!' Nor was this a uniquely Arab phenomenon: three years later the same thing happened in Ukraine.

However, its international spread first became an Arab phenomenon because the transmission of behaviour from one country to another through social media depends on the extent to which different national networks overlap. Evidently, urban youth in Tunisia,

Libya, Egypt, and Syria were linked by language, culture, and spatial proximity as well as by political context.

The resource booms

A further likely factor in the rise in fragility is the period of continuous increase in the price of natural resources – known as the 'super-cycle' – in the decade up to 2013. For countries that were resource exporters this raised national income but had other effects that were not so benign.

In a brilliant new study, the economist Nicolas Berman and his colleagues have geo-referenced all the mineral resources extracted in Africa, and linked them geographically to all the outbreaks of organized violence on the continent.⁵ Although the link has been studied by many scholars for over a decade, this study has finally produced incontrovertible evidence that resource extraction increases the risk of violent conflict, and also gone a long way to understanding why it does so. While the study is only of Africa, there is no reason to think that its results are not more general. It finds that the surge in prices during the super-cycle increased the incidence of organized violence. It did so primarily by enabling rebel groups to tap into mines as sources of finance, which they then used to buy armaments. Such an effect clearly became important in Syria, since ISIS managed to gain military control over the Syrian oilfields and used the revenues from oil to escalate the violence.

High resource prices also have political effects. The governments of resource-dependent countries are more likely to be autocratic. Even when a resource-exporting country holds an election, new research finds that an increase in the price of the natural resource makes it less likely that the election will be free and fair.⁶ The largest current displacement problem in Africa, in South Sudan, is inextricably linked to oil. The conflict is essentially a conflict over the control of oil wells. And it has not just been oil; mineral extraction – from diamonds to coltan – has shaped two decades of mass violence and fragility in the Democratic Republic of Congo.

High resource prices, and associated new discoveries, may also have psychological effects. Citizens may become dissatisfied because

their expectations rise by more than what the government manages to deliver.⁷ That the uprisings of the Arab Spring occurred around the peak of the global oil price may be more than coincidence.

Islamic extremism

Over a long period, a supremacist Islamic ideology had been promoted internationally by Saudi Arabia. This had initially been encouraged by the USA as a means of stimulating an insurgency against the Soviet occupation of Afghanistan: thus were born the Taliban. In societies in which the state was well equipped to keep large-scale organized violence at bay, the supremacist ideology manifested itself as terrorism; for example, in Bangladesh. But societies in which the government had less military capacity became exposed to the far more serious threat of mass violence.

The Sahel, the geographical area of transition south of the Sahara and the poorest region on the planet, is divided into countries whose tiny economies can barely support a viable state. As the new ideology took root in the region, societies became yet more fragile. The situation was exacerbated by the fall of Gaddafi's regime in Libya. In his death-throes Gaddafi had recruited mercenaries from the Sahel. His recruits had little interest in risking their necks for such a ridiculous cause, but as he fell they took the opportunity to loot his armoury. Oil wealth and paranoia had made Gaddafi a soft touch for any international arms salesman without scruple, and so he had amassed a spectacular trove of modern weaponry. Compared to the toy armies of the Sahelian governments, Gaddafi had been Goliath. The mercenaries had their own agenda: grievances against their governments. As they demolished the Malian army, Islamic supremacists recognized an opportunity and exploited it. Posing as allies of the ragbag mercenary forces, they marginalized them and usurped power. As the Malian state crumbled many thousands of civilians were displaced. Two years later, a similar process happened in the Central African Republic, producing a much larger displacement. Somewhat similar processes happened with the rise of Al-Shabaab in Somalia and Boko Haram in Nigeria.

But such opportunistic exploitation of a fragile situation by Islamic supremacists found its apotheosis in Iraq. The large, disaffected

Sunni minority produced by lopsided democracy, repressed by a state characterized by venal incompetence, was ready prey for ISIS. As ISIS built a brutal mini-state in northern Iraq, it set its sights upon an invasion of Syria.

CRYSTALLIZING MASS VIOLENCE

Many societies are fragile, but only in some of them do the risks crystallize into the mass violence that gives rise to displacement. As with other forms of organized violence, what drives the numbers are the tail risks: the outliers. This can make it misleading to talk about 'trends'. Totals are dominated by a few low-probability events that nevertheless happened. It is tempting to discern the unavoidable march of history in such numbers, but the world is not like that.⁸ Refuge is what statisticians call a 'fat tails' phenomenon: a very low likelihood event but with catastrophic consequences that create a thick tail to a distribution curve.⁹

The lists of fragile states typically include between forty and sixty countries around the world but only three of them account for half of all the world's current displacement. Even within those three, one is dominant: the conflict in Syria alone has generated over 11 million displaced people. The accounts of the violence in Syria typically read as though it were inevitable, but it could not reasonably have been predicted. Syria was a repressive autocracy initially destabilized by the Arab Spring: a phenomenon that was not widely foreseen. The flight to refuge was subsequently exacerbated by the external intervention of ISIS: the horror of ISIS took the international community by surprise. It was then greatly amplified by Russian bombing: an intervention that caused international astonishment. Syria has evidently been a 'fat tails' event.

The other two conflicts that with Syria account for half of all displacement are Afghanistan and Somalia. The origins of their fragility were very different from Syria's. The surge in Afghani refugees resulted from the American invasion and continuing warfare with the Taliban. But Afghanistan was already a failed state: the insurgent Taliban had recently gained control of most of the country, but were recognized as a government only by Saudi Arabia, Pakistan,

and the United Arab Emirates. Violent internal disorder had long been endemic. Somalia has also been a failed state for a generation, prone to organized violence, but with only limited and sporadic international intervention from its neighbours, Ethiopia and Kenya.

But while the grand total is dominated by these tail events, with 40-60 societies that are fragile, some risks will always be crystallizing. The other half of the world's total displacement comes from this steady drizzle of mass violence, not sufficiently dramatic to dominate the daily news, but still the stuff of tragedy. The recent such collapses into mass violence and flight are South Sudan, Sudan, Yemen, Burundi, Ukraine, the Central African Republic, Myanmar, and Eritrea. As with the population of fragile states from which they are drawn, this is a very disparate collection united by little beyond violence. The Tolstoy analogy is inescapable; at best we can cluster them.

Three situations are predominantly attributable to the tensions generated by lopsided democracy. In South Sudan the national government has failed to create sufficient sense of shared identity between the two major ethnic groups, the Dinka and the Nuer. As was explained to one of us in a meeting with a presidential adviser, before the latest conflict began, the problem as perceived by the Dinka-dominated government was that the Nuer did not recognize the authority of the government despite its being duly elected. The Nuer had indeed created their own substantial armed group. The solution determined by the government was to purchase arms. In Burundi, despite initially being democratically elected, the president never accepted a national mission, as opposed to governing on behalf of his own group. But the trigger for the refugee crisis was his insistence on a third term, won through an election that was not recognized as free and fair. The resulting mass protests were met with state mass violence, which in turn led to displacement. While lopsided democracy could not deliver legitimacy, the tiny economies of these two small and impoverished societies could not support the apparatus of repression that would have been needed to keep insurrection at bay through intimidation. The fragility of South Sudan was further compounded by an oil cycle of boom and bust.

Much as this will arouse indignation, Ukraine is also a case of lopsided democracy. As in some other recent countries, it is existentially divided. Elections reveal a split between a West-admiring western part and a

Russia-admiring eastern part. Under a Russia-admiring government, duly elected but unencumbered by checks and balances, the President became a world-class looter. An Arab Spring-style mass youth uprising in the capital toppled him, replacing him with a similarly unencumbered West-admiring government. Thereupon an insurgency began in the eastern provinces. With Russian support for the insurgency the violence escalated, with the West-admiring government resorting to bombing the civilian supporters of the insurgency.

A different cluster of countries is predominantly characterized by an inherently weak state such as typifies the impoverished small countries of the Sahel. Misgoverned for decades, the Central African Republic has been continuously fragile, but the same conjunction of supremacist Islam and spill-over from the fall of the Gaddafi regime that produced mayhem in Mali pushed the society over the edge. Military intervention by France prevented a prospective meltdown into genocide.

Yemen was the worst global displacement disaster of 2015 in terms of the numbers displaced that year; so understanding it matters. Around 2.5 million people became displaced, 9 per cent of its entire population. Like the Central African Republic, it is analogous to a Sahelian country. It has never managed to function as a state for more than a few years at a time and is riven by rivalries between clans. Also like the Sahelian countries it has been ready prey for supremacist Islam. The polity was further stressed by an oil boom-bust cycle. In a final twist of the knife, Saudi Arabia intervened to support the government, undertaking a bombing campaign against the civilian population of the insurgent side closely analogous to the intervention of Russia in Syria.

Sudan, though much larger than the other Sahelian countries, shares their essential features: the capacity of the state is too weak for it to be other than fragile. Its fragility certainly cannot be attributed to lopsided democracy: there has been nothing remotely democratic about the Sudanese regime. Lacking even a semblance of legitimacy, the state is entirely reliant upon coercion. It would need a North Korean scale of violent menace to cow its population into continuous acquiescence in state power. Like Yemen, tensions were compounded by an oil boom-bust cycle.

For decades Myanmar was a weak state over-reliant upon repression that periodically resorted to mass violence against its own

citizens. But the latest upsurge in refugees was more attributable to inter-ethnic tensions than to state repression. The Rohingya, a Muslim minority in a Buddhist-majority society, became the victim of majority violence from which the state was unwilling, and possibly unable, to protect them. Wanting to win an election with the votes of the majority community, even the longstanding civil-rights campaigner Aung San Suu Kyi did little to reduce tensions.

Finally, Eritrea belongs in its own unique category. A repressive state, with considerable capacity for mass violence, it had relied upon the technique of incarcerating its potentially disaffected youth in the army to serve long terms as conscripts. For around a decade this worked: the rhetoric of unity in the face of the powerful neighbouring enemy, Ethiopia, lent a degree of legitimacy. Gradually, this narrative has lost its power to ensnare. While Eritrea's economy has stagnated, despite its excellent coastal location, the economy of landlocked Ethiopia has been well run for ordinary people and delivered rapidly rising living standards. It has also become home to thousands of Eritreans. To the bottomless dismay of the heroic people who fought for the secession from Ethiopia, their struggle succeeded only to be revealed as pointless. With the demise of the rationale for a society kept permanently on a war-footing, the ordinary people who worked as the jailers of the nation's youth lost their dedication. Junior officers and border guards began to accept bribes from reluctant conscripts keen to escape. What began as a trickle has gradually further eroded norms of obedience to power and has become a flood. There is no mass violence within Eritrea. The people who are fleeing the country are not families whose homes have become unsafe. There is no breakdown of order. Faced with a choice between the quasi-prison conditions of conscription, and the actual prison conditions that would result from non-compliance, young people have used their ingenuity. What we are witnessing is a mass breakout from a nation that has become a jail.

THE OPTIONS FOR FLIGHT

Where fragility crystallizes into mass violence, civilian populations need to flee their homes. The focus of international refugee law remains

the antiquated notion of 'persecution' but the practical reality is that fragility ultimately underlies most of today's refugee movements. When we turn to the ethics of international response, in Chapter 4, we will argue that the defining feature of need is this flight from violence. The targets of that violence may be an identifiable group of people, as with Germany's Jews, or a particular location, as with the bombing of Aleppo. In either case, people must flee to safety.

The people displaced from their homes may be able to find sanctuary elsewhere in the country, or they may need to leave it. The concept of an 'internally displaced person' (IDP) describes somebody who is displaced in his or her own country. Often, a displacement leads to some people opting to move within the country as IDPs, and others opting to leave it as refugees. Sometimes people do not have an option. German Jews were at one extreme: terrorized by the fascist government, they were at risk everywhere in Germany, and so flight abroad was the only safe resort. In contrast, the people terrorized by Boko Haram, a supremacist Islamic insurgency operating in north-east Nigeria, may have the option of moving elsewhere within Nigeria. Boko Haram is confined to a small and relatively lightly populated portion of the country, though since that area is a border region, for some crossing the border will be the safest option.

In Syria most of the 11 million displaced have remained in the country. This was probably inherent to the nature of the violence, which has been predominantly territorial. Although it began as a regime witch-hunt against protesters, the conflict rapidly escalated into a conventional struggle to control territory. Consequently, many people whose homes were in dangerous areas have sought sanctuary in the safe ones. Perhaps they are able to live with relatives, making their relocation less disruptive than fleeing abroad. For others, relocating within Syria may have been the only option because periodically the borders have been closed.

Only those who cross the border qualify for the legal designation of 'refugee'. International agencies and the international media tend to focus mainly on those who cross borders. But those people displaced from their homes who seek sanctuary elsewhere in their country should not drop off the international agenda, and their practical needs of sanctuary often go unmet. Since mass violence occurs

in states that are fragile, even though much of a country may remain safe the state is unlikely to have the capacity to cope. Although the international community has developed guidelines on how states should respond to internally displaced people, institutional responses remain weak and uneven.

That same distinction as to whether a border is crossed delineates internal and international migration. In poor countries most migrants move from rural areas to towns and cities within the country, but some cross a border. Those that become international migrants share the same directly observable phenomenon that determines whether someone fleeing for safety is classified as an IDP or a 'refugee'. But refugees are not migrants. Although the difference cannot be discerned from the physical act of crossing a border, it is no less real. At its core is the psychological impetus for the decision. Migrants are lured by hope; refugees are fleeing fear. Migrants hope for honeypots; refugees need havens.

Among the global population of 7 billion, only one person in seven lives in a honeypot country.¹⁰ Many of the other 6 billion would like to move to one of them. In contrast, less than 1 per cent of the world's population are displaced, and less than half of them are refugees. Were the international community to be too intellectually lazy to distinguish the quest for refuge from the desire to migrate, a vital need which it is manageable to meet would get drowned in a tidal wave of would-be migrants.

Refugees need havens: where do they find them?

HAVENS OF REFUGE

If you think that the distinction between havens and honeypots is contrived, you are about to confront your prejudices. We suggest that you jot down a list of the most desirable countries in which international migrants might dream of living: the top ten honeypots. It is not difficult: most of us dream such dreams, and migrants take the next step and enact them. Now try to jot down a list of the top ten havens: the countries to which refugees flee. How similar are your lists?

The top haven country for the past four decades has been Pakistan.

Did you get it right? Indeed, did Pakistan even feature on your list of the top ten honeypots? Probably not. We will work a little down the list, turning to the runner-up haven country, which was indeed a very close second. It is Iran. Some people find modern Iran alluring, but it scarcely fits the Western image of a desirable country to relocate to. The next four are all African: Ethiopia, Kenya, Uganda, and Tanzania.¹¹

One strikingly counter-intuitive feature that these six countries have in common is that while they are the top-ranked countries for the inflow of refugees, they are all countries of emigration. Far from being honeypots, the more affluent members of their societies tend to seek honeypots elsewhere. One was, of course, the father of President Obama. Vying for the remaining places in the top ten havens, depending on the year of measurement, are Thailand, Turkey, Jordan, Lebanon, the Democratic Republic of Congo, and Chad.

To return to our opening point: the concept of a haven is utterly different from that of a honeypot. Honeypots are economically much alike: they are rich. So what, if anything, do havens have in common?

If you are trying to find similarities in government humanitarian policies, or in the generosity of local peoples, you are looking in the wrong place. Neither the governments nor the peoples of Thailand, Jordan, and Kenya have more in common than they would with any other randomly drawn grouping. What haven countries have in common is their locations. They are not close to each other, but they are all close to fragile states, and often to clusters of such states. Driven out by fear, rather than lured on by hope, refugees overwhelmingly head for havens that are proximate.

Countries such as Pakistan and the Democratic Republic of Congo did not become haven countries because they put up 'welcome' signs at railway stations. They became haven countries by default: refugees flocked to them because they were close by. Their states would have had to organize their capacities for coercion to the limit, and indeed most likely beyond the limit, to avoid becoming havens. Whether or not they are well equipped to cope with a massive influx of refugees, and most of them are not particularly able to do so, that is what they have got. Indeed, some of them are among the poorest countries in the world. A few of them are themselves high on the list of fragile states.

We began this chapter with an astonishing fact. Our new century, which will deliver wonders like unprecedented longevity, leisure, prosperity, and connectivity, is also delivering record levels of displacement. Sixty-five million people have fled from their homes in fear of violence. What, if anything, can the rest of us do to remedy this situation?

Tony Blair sprang to political prominence with a compelling phrase: he would be 'tough on crime, and tough on the causes of crime'. The twin approach, not just reaction but *prevention*, sounded smart. It is similarly appealing to start from the notion that the best policy towards displacement is to prevent it from happening.

We have seen that displacement arises from fragility: so could states be made much less fragile by international assistance? This is indeed now the priority for much international public policy. Aid agencies are focusing their resources more heavily on fragile states: for example, Britain's Department for International Development, widely regarded as currently the most sophisticated of the development agencies, has increased the share of its budget ring-fenced for fragile states, first to 30 per cent, and in 2015 to 50 per cent. The security services are also focusing more heavily on such states: intelligence services are working with their governments to counter supremacist Islam, and the armed forces are training their armies. But there are limits to what is possible. Recall that the big numbers are generated by 'fat tail' events that are not readily predictable.

Beyond that, helping countries to become resilient is not easy. States need to enhance their legitimacy in the eyes of their citizens, and also enhance their capacity to maintain security. International actions may be able to assist these processes, but each is primarily a domestic struggle. Since each fragile state is distinctive – an 'unhappy family' with its own peculiarities – cookie-cutter interventions are liable to do harm in some contexts. But even if it is generally accepted that each situation needs its own context-specific international support, this risks giving each of the many international agencies a licence to invent its own approach. So we should not expect too much of international risk prevention. The causes of earthquakes are far less complicated than those of mass violence, but despite enormous research effort we still cannot usually predict them even by a few

hours. Instead, the best policy for earthquake-prone areas is to construct for resilience.

So probably the international community's main responses to the risks of mass violence are going to be reactive. The key message to take from this chapter is that effective international reaction to displacement and refuge is going to be needed for decades to come. This does not depend upon some precarious projection of likely refugee numbers: the grand totals are likely to go up and down unpredictably. But the underlying process of refugee generation is clear enough: a large group of fragile states is each exposed to a small but significant risk that it will implode into the mass violence against civilians that generates displacement. Many of those displaced will probably remain in their own countries, but many others will seek havens beyond the border. For the next few decades the international community will need to react to the needs of the internally displaced and the refugees. The essential question that we now address is whether the capacity for effective reaction is already in place or will need to be built.

2

The Time-Warp

Seventy years ago, the international community faced the largest displacement crisis in its history. Millions of people found themselves uprooted in the aftermath of the Second World War, with borders being redrawn across Europe. Solutions were urgently needed both for the people displaced and for governments seeking to restore stability. A United Nations refugee regime was hastily created, reflecting the onset of the Cold War in the late 1940s. It comprised two core elements: an international treaty offering a definition of a 'refugee' and the rights to which such people should be entitled, and the creation of a UN specialized agency with a mandate to protect and find solutions for these refugees.

The deal reached reflected the politics of the time. Even though the initial impetus for the regime stemmed from the aftermath of the Holocaust and the collective failure to provide protection to fleeing Jews during the 1930s, the architecture of the regime was profoundly shaped by the early-Cold War context in which it was created. It was generated because the norms of revulsion at the Holocaust happened to align with the strategic interests of the US in the containment of Communism. Key decisions like how even to define a 'refugee' were shaped by the concerns of the US and its Western allies to avoid the return of displaced people to Communist Soviet bloc countries. The outcome was in many ways a pragmatic compromise designed as a temporary stop-gap solution for a particular historical juncture.

And yet, in a classic instance of Eurocentric policy formation, that European regime was subsequently extended, without significant adjustment, to the rest of the world. Over time, it became the global refugee regime, shaping the response to refugees in Africa, the Middle East, Latin America, and Europe decades later. Although there has

been incremental change, this has generally been piecemeal, relying mainly upon court decisions to reinterpret refugee law or episodic shifts in organizational mandates to address particular displacement challenges. At no point has there been a major reform process to consider the ongoing relevance of the post-war framework in a radically different world. The trajectory has been highly path-dependent: decisions in the present have been limited by the decisions made in the past, even though past circumstances may no longer be relevant.

Subsequent change has been slow and haphazard. Legal adaptation has come from layers of reinterpretation of the language of a convention created for a bygone era. Courts have contrived to fit a host of circumstances into the arcane notion of 'persecution' but in ways that have been varied and inconsistent, and that have left omissions. Organizational adaptation has come from responses to new emergencies often being ossified as permanent policy. These incremental shifts have, over the intervening seven decades, created a growing gap between institutions and needs.

The result is a regime that is no longer fit for purpose. It fails to engage adequately with contemporary challenges. Even though factors such as climate change and state fragility will drive future displacement, they are sidelined by the existing regime. Even though most refugees are now in urban areas, it provides a model premised mainly on assistance in camps. Even though refuge is inherently political, the main UN refugee agency has been prescribed a 'non-political' character in its founding statute. A clause intended to ensure the organization did not take sides in the Cold War too often now prevents it from proactively engaging with the political barriers to refugee protection. Furthermore, it also struggles to adequately utilize new opportunities that have opened up as the world has progressed, including leveraging globalization, technology, the role of business, and the capacities of refugees themselves.

Existing institutions are premised upon a simple and valuable idea: that people have a right to flee serious harm, and receiving countries have a corresponding obligation to admit them. But there are also elements of the regime that are incontrovertibly dysfunctional. The European migrant crisis triggered in April 2015 has lifted refugees to the top of the political agenda for virtually the first time since the end of the Cold War. With the global spotlight on the regime, and a widespread sense of crisis, there is a

moment of opportunity for change. This chapter therefore aims to make sense of the institutional trajectory of the refugee regime, and explore which elements have endured because they have value and which have lasted simply because of inertia or lack of imagination.

A REFUGEE REGIME FOR COLD WAR EUROPE

For as long as there have been political communities, there have been persecuted groups forced to flee in search of rights. Since the establishment of nation-states in Europe following the Peace of Westphalia in 1648, governments have sought ways to govern refugee movements. The Huguenots, for example, as Protestants expelled from France following the revocation of the Edict of Nantes in 1685, were accepted as refugees in Britain. Throughout the revolutions of the eighteenth and nineteenth centuries, European states worked bilaterally to ensure safe passage and population exchange for the victims of state formation and dissolution who better fitted the ethnic or religious criteria of newly emerging states.

It was not until the twentieth century that states recognized the reciprocal sharing of responsibility for refugees as a humanitarian obligation. During the inter-war years, with the collapse of the Ottoman Empire, in 1921 the newly launched League of Nations created the position of High Commissioner for Refugees (LNHCR). The organization the Commissioner headed was modest but effective in form, simply providing travel documents (known as 'Nansen passports') to designated groups of stateless and displaced people: Russians, Greeks, Turks, Bulgarians, and Armenians.¹

The first large-scale multilateral attempt to manage refugees only emerged in the aftermath of the Second World War, with tens of millions displaced across Europe. It was at this moment that the modern refugee regime, the bulk of which remains intact today, was born. Like much of the post-war architecture of multilateral order, it comprises two main elements: a treaty and an international organization.

The 1951 Convention is a simple document. It provides a definition of a refugee and outlines the rights to which such people are entitled. It defines a refugee as someone outside his or her country of origin

because of a 'well-founded fear of persecution' because of race, religion, nationality, membership of a social group, or political opinion. It then sets out a series of claims refugees can make against states: principally, the right not to be forcibly returned to a country in which there is a risk of serious harm (*non-refoulement*), as well as key civil and political, and economic and social, rights.

UNHCR's founding statute, adopted by the UN General Assembly on 14 December 1950, created an organization with a mandate of 'providing international protection' to refugees and 'seeking permanent solutions' to their plight by assisting governments and private organizations to facilitate voluntary repatriation or assimilation within new national communities. The only other element of note in the statute is the designation of the organization as having a 'non-political character'.

This refugee regime was certainly not intended by the negotiating states to endure, let alone to be disseminated around the world. Participants recognized that they were reacting to a unique situation that required a highly specific solution. To make this clear, states imposed a series of limitations. UNHCR's work was temporally limited: it was set to expire at the end of 1953. Moreover, both UNHCR and the Convention were temporally restricted to what had already happened: they were to apply only to people who were refugees 'as a result of events occurring before 1 January 1951'. To make its limitations crystal clear it is also spatially bounded: the 1951 Convention was created with a geographical limitation, allowing its signatories the option to apply it to people displaced 'owing to events in Europe'.

Furthermore, the *travaux préparatoires* – the published records of the negotiations – reveal that even the relatively limited choices of the day were the outcome of awkward political compromise among the twenty-six negotiating governments. The United States was the most keen to impose tight restrictions on the regime. Eleanor Roosevelt and the State Department delegation had argued that the regime should be temporary and not apply to other, emerging refugee crises of the late 1940s and early 1950s in India, Korea, and Palestine. They also insisted – against the requests of India, Pakistan, and many directly affected Western European countries like France and Belgium – that UNHCR should have no role in the direct provision of material assistance but should simply provide legal guidance and expertise to governments.²

The negotiating positions of key governments were interest-based and not the result of lofty humanitarian principles. The US was primarily motivated by a desire to control and discredit Communism. The adoption of a definition of refugees based on individualized 'fear of persecution' emerged because of the US's vehement rejection of repatriation to Communist countries being a viable solution for those who had been displaced from Eastern Europe. This was a reaction to the immediate antecedent to UNHCR – the UN relief and rehabilitation agency, operational between 1943 and 1946. That agency had indeed sought to facilitate repatriation. But in 1947 the US terminated the agency and briefly created its own International Relief Organization (IRO) with a focus on resettling those who risked return to the East. Its condition for backing the embryonic UNHCR regime was that it too held this focus on non-return to persecution.³

Other governments had different goals that were also the result of their particular interests, but these were largely thwarted. Against the US position, the refugee-hosting countries of Western Europe wanted UNHCR to operationally provide material assistance to populations on their territories. But in the context of already receiving huge assistance through the US-led Marshall Plan of 1948, they were forced to defer to the US's wishes. The UK was alone among Western states in pushing for UNHCR and the Convention to have immediate global scope, mainly because of its concerns with managing its empire and the immediate legacy of post-colonial displacement on the Indian subcontinent.

Yet, despite US dominance, Western European governments did manage to sow the seeds for the possible survival of the regime. Unlike the 1951 Convention, UNHCR itself had no geographical limitation, discretion was given to governments to apply the 1951 Convention to 'events in Europe and elsewhere' if they so wished, and it was understood that UNHCR's mandate might well be renewed. The drafters envisaged that it might endure and adapt, recognizing that its definition of a refugee would not cover all situations but might evolve dynamically through at least two routes: the interpretation of national courts and supplementary international agreements.

Over the next several decades, this hastily negotiated and ostensibly temporary regime survived largely intact, adapting incrementally – through opportunistic and occasionally pathological means.⁴ A regime

initially not intended to last a decade would become the basis of global refugee governance.

Central to its survival was the opportunity afforded by the Cold War. Initially viewed as temporary by the US and functioning on the basis of private foundation grants, UNHCR was able to demonstrate its strategic value to the US through its response to two events. In 1953 it tackled the West Berlin crisis. Faced with a strike in East Berlin and exodus to the West, UNHCR conceived a plan of action to support international and German voluntary agencies to meet the present emergency caused by the influx of refugees through Berlin, supporting emigration, immediate relief in Berlin, and integration of refugees in Western Germany. The second event was in 1956, when the invasion of Hungary by the Soviet Army led to the mass exodus of nearly 200,000 refugees to neighbouring Austria and Yugoslavia. Overwhelmed by the influx of refugees, Austria formally requested UNHCR to appeal to governments on its behalf for assistance in responding to the emergency, providing the organization with the chance to prove to the US that it could play a key strategic role in helping those fleeing Communism.

EUROCENTRISM GOES GLOBAL

The big turning point was geographical expansion. The 1967 Protocol Relating to the Status of Refugees expanded the scope of a regime originally designed for Europe to the rest of the world. Against the backdrop of anti-colonial struggles, decolonization, and emerging Cold War proxy conflicts, the West was concerned to manage the potentially destabilizing consequences of refugee movements in the Third World. UNHCR had already been called upon on an ad hoc basis to respond to the crises for Chinese refugees in Hong Kong and Algerian refugees in Tunisia in 1957, for example, and the Protocol brought the 1951 Convention into line with the universal scope of UNHCR's statute.

The decision to apply Europe's refugee regime unaltered to the Third World was pragmatic, hasty, and again largely dictated by Cold War strategic interests. By the mid-1960s, and with the advent of the Vietnam War, the Third World had come to be seen as a volatile source of instability for the West. From South-East Asia to Southern and Eastern

Africa, newly independent states were perceived as potential targets for Soviet alignment and unprotected refugees as a potential vector for cross-border insurgency. It was concern with 'refugee warriors' rather than a benevolent desire to protect the vulnerable that lay behind the globalization of Europe's regime.

The mismatch was immediately obvious. Refugees fleeing liberation wars or post-colonial violence in situations like Rwanda's 1959 revolution, Angola's post-1961 civil war, or the emergence of violence in Sudan from the late 1960s were in a very different situation compared to those dispersed across Europe after the Second World War. The same applied to those fleeing proxy violence, military coups, and juntas in Latin American countries like Guatemala, El Salvador, and Nicaragua. The European regime's focus on individualized 'persecution' simply did not fit the circumstances of war refugees in other parts of the world.

Despite the obviously poor fit, adjustments to the post-war European framework were piecemeal and on a region-by-region basis. In 1969 African governments agreed the Organization of African Unity (OAU) Convention Relating to the Status of Refugees, applying the 1951 Convention to the African context but with some significant changes. It expanded the definition of a refugee to include 'persons fleeing events seriously disturbing public order in either part or the whole of his country of origin'. Later, in 1984, Latin America followed suit when the Organization of American States (OAS) agreed the Cartagena Declaration on Refugees, expanding its regional definition to include people threatened by 'generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order'.

Tweaks aside, the core practices of the global refugee regime have emanated from its post-war European origins.⁵ The biggest change within the refugee regime has arguably been the most detrimental to it: the move towards a 'care and maintenance' model. The 1950 decision that UNHCR should not engage in the direct provision of material assistance began to change from the 1980s. Until that point, the regime's primary role had been to offer legal and operational guidance to states relating to the provision of protection and solutions. During the 1960s and 1970s, in most of the developing world, refugees were mainly self-settled in rural areas and de facto integrated among local host

populations. But from the 1980s the refugee camp—long used by some governments—became the default instrument of formal refugee assistance in the developing world. Vast areas in often remote, arid, and dangerous border locations were annexed as spaces for emergency protection that became enduring residences for the long-term displaced.

Dehumanizing camps became the default response for a combination of reasons. First, with democratization, debt crises, and the 'Structural Adjustment' programmes of the 1980s and 1990s through which the International Monetary Fund and the World Bank imposed economic liberalization and cuts in government spending across much of the developing world, host governments became increasingly constrained in their ability to allocate scarce resources to non-citizens.⁶ Camps offered a means to place refugees 'out of sight and out of mind' while abdicating financial responsibility to the international community. Second, with the end of the Cold War, UNHCR needed to remain relevant to its core donors. Without a role to play in meeting the US's Cold War strategic interests, it sought to reinvent itself as a humanitarian organization. The camp made this possible, allowing the organization to dramatically expand its staff numbers and budget through its growing and visible role in both emergency assistance and long-term camp management. UNHCR staff numbers grew from 500 to over 9,000 between 1950 and 2016. Camps provided jobs: just not for refugees.

While the refugee regime has not been entirely static over the last several decades, it has certainly been path-dependent, and today's system still resembles that created for the particular circumstances of post-war Europe, albeit in a radically different world.

THE SILENCES OF THE 1951 CONVENTION

The 1951 Convention sets out the morally incontrovertible idea that people who face serious harm in their country of origin should not be forced to go back until it is safe to do so. It identifies that such people should be able to access basic rights and freedoms while in exile and ultimately be able to either go home or be integrated in another society. In that sense, its central idea is that when people's own countries are

unable or unwilling to ensure their most fundamental rights they should be allowed to cross an international border in search of a safe haven.

However, its limitations have become increasingly more obvious over time. Generally, the value of international legal norms resides in their ability to build a shared set of expectations about appropriate state behaviour over time. But the problem today is that the 1951 Convention no longer generates a shared commitment and nor does it adequately prescribe behaviours that fit today's displacement challenges. Never truly global, it is more adrift than ever from current needs.

Today, most countries fail to comply with the 1951 Convention. Signatory states in the developed world find ever more elaborate ways to disregard or bypass the principle of *non-refoulement*, adopting a suite of deterrence or *non-entrée* policies that make it difficult and dangerous for refugees to access their territory: carrier sanctions, razor wire fences, interception en route. Signatory states in the developing world do tend to admit refugees more because of geographical necessity and international pressure than law, and when they do, they still almost universally fail to implement the socio-economic rights in the Convention. And, yet, paradoxically, many of the most generous host countries in the world are not even full signatories: Jordan, Lebanon, Thailand, Nepal, and Turkey, for instance. Countries in the Middle East and Asia have argued that the Convention does not meet the realities of displacement in their regions, and that their own cultural and legal practices in any case provide sources of sanctuary. Meanwhile, Turkey has signed the 1951 Convention but not its 1967 Protocol, meaning that it has no international legal commitment to recognize refugees who come from outside geographical Europe.

The way that different states interpret key ideas in the Convention has changed gradually over time through the mechanisms envisaged by its drafters: court jurisprudence and supplementary international agreements. For example, in some jurisdictions, the interpretation of a well-founded fear of persecution has broadened to include war refugees, people fleeing persecution by non-state armed actors, or certain extreme forms of socio-economic rights deprivation. Meanwhile, the so-called nexus-grounds such as 'membership of a social group' have expanded to include additional groups: for example, those fleeing persecution based on sexual orientation.

On the other hand, however, these updates have been slow, patchy, and inconsistent. They have depended almost entirely on decisions in particular regions or by individual countries to stretch the scope and interpretation of key parts of the 1951 Convention. This has had a number of consequences. It has meant that the definition of a 'refugee' can mean something quite different from one country to another. More fundamentally, the slow pace of adaptation, mainly through courts, has left the dominant interpretations of the 1951 Convention poorly adapted to meet the displacement challenges of the contemporary world.

It's not that the 1951 Convention need necessarily be abandoned. It may well play a useful residual role insofar as it still encourages commitment and compliance. The problem is when an overriding obsession with it risks expending finite political capital on a digression. In particular, there are three broad areas in which there is a gap between what the current refugee regime offers and practical needs in the contemporary world.

MISSING PEOPLE: WHO NEEDS TO BE A REFUGEE?

Although the drafters of the 1951 Convention recognized that the definition of a 'refugee' would need to adapt over time, it has become increasingly out of touch with the realities of displacement in the twenty-first century. Like most legal regimes, the refugee regime identifies a category of people (refugees) and a set of rights to which such people are entitled. The 1951 Convention sets the threshold for being part of the category of people entitled to a privileged immigration status as 'persecution'. It establishes that such people not only have a right to *non-refoulement*, but rights in exile and, where needed, a pathway to citizenship. Yet 'persecution' no longer seems the right threshold for a privileged immigration status and the rights associated with it.

The original reason for privileging persecution is historical: not returning people to Communism was the primary concern of the emerging global superpower at the time the Convention was drafted. Today, though, there are a range of reasons why extremely vulnerable people cross international borders that fall outside the traditional understanding of persecution. Environmental disturbance, including

that due to climate change; generalized violence, whether because of war or drug- and gang-related violence; and food and water insecurity – these have all been identified among the ‘new drivers’ of displacement. For many people affected by these challenges, there will be opportunities to relocate domestically; for others there may not be.

Connecting many of these drivers of displacement is a central underlying trend: a growth in the number of fragile states, for the reasons we saw in the previous chapter. In these states people generally face chronically poor living standards. With increased global opportunities for mobility, many choose to move. This dual trend of increased fragility and growing mobility has created an emerging phenomenon that might be described as ‘survival migration’ – people who leave their countries because they simply cannot secure the minimum conditions of human dignity in their country of origin.⁷ Many find themselves in a neither/nor situation – neither are they generally recognized as refugees, nor are they simply voluntary economic migrants.

For some scholars, like Matthew Price, the answer would be that asylum should prioritize the persecuted over and above the broader category of people fleeing fragile states. His claim is that when a tyrannical government is deliberately ‘out to get you’, this leads to a severance in the basic social contract between state and citizen. This severance makes effective redress within that person’s own state extremely unlikely, requiring territorial asylum and, in all likelihood, a pathway to alternative citizenship. On that basis, it has been argued that those fleeing persecution are the most deserving of the deserving.⁸ But this argument no longer stands up to scrutiny.

It is not clear that those fleeing this narrow understanding of persecution are necessarily more deserving than other displaced populations. From an ethical perspective what should matter is not the particular cause of movement but the threshold of harm that, when not addressed in the homeland country, necessitates border crossing as a last resort.

One way of grounding how we should identify refugees in a changing world is through the concept of *force majeure* – the absence of a reasonable choice but to leave.⁹ More specifically, the threshold for refuge would be: fear of serious physical harm.¹⁰ And the test would be: when would a reasonable person not see her- or himself as having a choice but to flee? In other words, if you were in the same situation, what would you do?¹¹

The value of ‘fear of serious physical harm’ is that it is a universal concept. While ‘persecution’ is a historically and culturally contingent idea, ‘fear from physical harm’ is a universal common denominator. Why would someone not see her- or himself as having a choice but to flee? Because she or he is afraid, as you would be. Fear is not country-specific. Unlike migration, which is usually about an upside, refuge is needed when horrible things have happened to you and your family: members of your family have been attacked by militias, your daughters have been raped, or your village has been destroyed by serious flooding and there is nowhere else to go.

The standard should be intuitive and universal, rather than relying upon the shoehorning of circumstances into an arcane and regionally specific language of the past. An additional advantage of the *force majeure* standard is that it reflects the direction of travel that the refugee regime has gone in wherever developing countries have adapted the European norms of the late 1940s to meet their own regional circumstances. The regional refugee regimes for Africa and Latin America include a greater emphasis on ideas like ‘generalized violence’ and ‘serious disturbances to public order’, for instance. If we had a more universally applicable standard, perhaps even current non-signatory regions like the Middle East, South Asia, and South East-Asia might have greater reason to commit to regional or even international standards for refuge.

Take the example of Zimbabwe. Between 2003 and 2009, up to 2 million Zimbabweans fled to neighbouring South Africa to escape Robert Mugabe’s regime and a serious set of socio-economic rights deprivations, resulting from hyperinflation, famine, drought, and the collapse of the national economy. Many fleeing were in an almost identical position to refugees in having to leave the country simply in order to survive. However, the legal problem was that most were not fleeing the political situation so much as the economic consequences of the underlying political situation. As a result, when in South Africa, most were not recognized as refugees. At the peak of the crisis, South Africa recognized fewer than 10 per cent as refugees and was deporting around 300,000 Zimbabweans a year back to the country. The outcome was clearly unjust but it reflected South Africa’s use of the ‘persecution’ standard of the 1951 Convention’s definition of a refugee, which excluded most Zimbabweans.¹²

Further, Price’s argument assumes the existence of a functioning

state, and a 'social contract' between the citizen and the state which has breached through persecution. But in many fragile societies the 'state' as such is a shadow. Somali refugees are not fleeing persecution by the state, but the consequences of a society without a state. The resulting disorder and violence are no less *force majeure*; nor is the need for post-flight support less urgent. In such cases, the original anti-Communist emphasis upon resettlement away from the persecuting state has also lost much of its pertinence. In contrast to expectations during the Cold War, political transitions and opportunities for repatriation take place in both Price's archetypal authoritarian regimes and many fragile states.

Contrary to many international public policy assumptions, there are practically no weak states that should be permanently written off. In the twenty-first century it is feasible for all societies to become reasonably viable. The global tragedy of the 1980s was Ethiopia; that of the 1990s was Rwanda: both are now thriving. Many societies will remain fragile for many years, and so long-term provision must be made for those who flee the fallout from anarchy. Sometimes this will persist for so long as to make assimilation into other societies the best option, but, as we discuss in Chapter 7, a refugee strategy that incubates the restoration of a functioning state has an important role. Whether people have been persecuted by a state is essentially immaterial to which of these options is appropriate.

A final weakness with the emphasis upon 'persecution' is that in practice its meaning has been stretched far beyond the logically minimalist way in which it is described by Price. Some states have restrictive interpretations; in others it is more commonly understood as a threshold of 'serious harm' rather than the original idea of a state being 'out to get' its own citizens. But the fact that this expansion has emerged through the often conservative and inconsistent pathway of the jurisprudence of national and regional courts has led to huge variation, in ways that frequently appear ethically arbitrary. In some states, war refugees are recognized; in others they are not. In some states, those fleeing attacks by non-state-armed actors are recognized; in others they are not. In some states, those fleeing conscription are recognized, in others they are not. Even across Europe, where there are supposedly harmonized asylum standards, there is huge variation in practices: for example, in 2014 the recognition rate for Iraqis was 14 per cent in

Greece and 94 per cent in France; for Eritreans it was 26 per cent in France and 100 per cent in Sweden.¹³ When persecution has no coherent or consistent meaning, how can it be a credible threshold for determining who gets to cross a border in search of rights?

A key question faced by the international community therefore remains, 'Who is a refugee?' Among the millions of people crossing international borders in search of refuge, who should be prioritized and on what basis? What should be the threshold for access to a safe haven? In a changing world, the old answers provided by 'persecution', and the conservative and inconsistent role of courts in incrementally reinterpreting it over time, seem inadequate to respond clearly and decisively to these questions.

Where and how to determine the threshold are decisions that should be in the hands of policy-makers rather than just the courts. While lawyers take such decisions based on individual rights, policy-makers must consider the implications for entire societies. As we show in Part II, unless policy is properly thought through, the 'rights' exercised by the few can have adverse repercussions for the many. For example, wherever the threshold is placed, policy-makers will need to openly confront the challenge of how to reconcile the quantity and quality of protection. On the one hand, in a world of survival migration, the scope of protected categories will inevitably need to broaden. Governments will simply have to collectively find ways to protect those fleeing new forms of fragility. On the other hand, in order to increase the numbers and categories of protected people, new ways will have to be found to offer protection more sustainably and at scale.

MISSING PROVIDERS: WHO SHOULD BEAR THE BURDEN?

So who should provide havens? The 1951 Convention is silent on both where and with what resources refuge should be provided. The question of which state has primary responsibility for providing refuge is simply not answered explicitly by the existing regime. Consequently, it is politics – and more specifically power – rather than law or principle

that primarily determines who takes responsibility for refugees and on what basis.

In principle the regime recognizes that refugees should be a shared global responsibility. The Preamble to the 1951 Convention explicitly recognizes that international cooperation is a necessary condition for the achievement of protection, assistance, and solutions, stating 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 co-operation'. In practice, though, there are no clearly specified principles or operational mechanisms for what has been called burden- or responsibility-sharing.

On the one hand, the refugee regime offers relatively clear norms relating to 'asylum' – the obligation to admit refugees onto the territory of a state. On the other hand, it has relatively weak norms relating to 'responsibility-sharing' – the obligation to contribute to supporting refugees who initially arrive on the territory of another state. Despite repeated attempts by the international community to negotiate supplementary agreements on responsibility-sharing, clear and authoritative principles and mechanisms have proved elusive. In the absence of a clear allocation mechanism for spreading responsibility, proximity has de facto shaped its distribution, which is why, as we have seen, states that neighbour conflict and crisis take in the majority, and those that have the luxury of hiding behind territory and water have historically been able to shirk responsibility.

While proximate countries are left with a legal obligation to admit refugees, more distant countries have had almost total discretion in determining whether, and to what extent, they are prepared to contribute, whether by offering resettlement places or financial support. This leads to the inequitable outcome that a relatively small number of some of the poorest countries in the world take on the greatest responsibility.

These geographical dynamics, reinforced by the existing institutional architecture, create perverse incentives. Southern host states face legal obligations and significant international pressure to open their borders and provide refugees with access to their territories. But they also face strong domestic incentives to offer only the most minimal forms of protection and material assistance. Northern donor

states have strong incentives to shirk responsibility and to free-ride on the contributions of more proximate states.

The result is a regime that is perennially characterized by collective action failure. Refugee protection is a global public good: all countries benefit to some degree from the human rights and security outcomes it yields, irrespective of whether they contribute. As with all public goods – like street lighting at the domestic level – free-riding and under-provision are inevitable unless some kind of centralized institution creates rules for effective cooperation. Yet existing institutions offer insufficient mechanisms to ensure adequate overall provision. The cooperation problem in the refugee regime can be thought of as what game theorists would describe as a 'suasion game': one in which weaker players are left with little choice but to cooperate and stronger players are left with little incentive to cooperate.¹⁴

This explains in part why fewer than 1 per cent of the world's refugees get access to resettlement in third countries beyond their region of origin. It explains why UNHCR's assistance programmes around the world are chronically under-funded. It explains why distant countries in the global North, who take a relatively tiny proportion of the world's refugees, constantly compete with one another in a 'race to the bottom' in terms of asylum standards in order to encourage refugees to choose another country's territory rather than their own.

In the absence of clear rules, attempts by UNHCR to overcome this collective action failure have had to be ad hoc and episodic. The organization relies upon annual voluntary contributions for almost all of its budget, rather than having access to assessed, multi-year funding contributions. This makes it easy for governments to change their priorities but difficult for UNHCR to plan. Meanwhile, in order to address long-standing or large-scale refugee crises, it has relied upon the UN Secretary-General convening international conferences such as the International Conferences on Assistance to Refugees in Africa (ICARA I and II) of 1981 and 1984, the International Conferences on Indochinese Refugees of 1979 and 1989, and the International Conference on Central American Refugees (CIREFCA) of 1989, intended to generate reciprocal governmental commitments for a particular crisis.¹⁵

To take an example, after the end of the Vietnam War in 1975, hundreds of thousands of Indochinese 'boat people' crossed territorial waters

from Vietnam, Laos, and Cambodia towards South-East Asian host states such as Malaysia, Singapore, Thailand, the Philippines, and Hong Kong. Throughout the 1970s and 1980s, the host states, facing an influx, pushed many of the boats back into the water and people drowned. Like today, there was a public response to images of people drowning on television and in newspapers, but addressing the issue took political leadership and large-scale international cooperation. In 1989, under UNHCR leadership, a Comprehensive Plan of Action (CPA) was agreed for Indochinese refugees. It was based on an international agreement for sharing responsibility. The receiving countries in South-East Asia agreed to keep their borders open, engage in search-and-rescue operations, and provide reception to the boat people.

However, they did so based on two sets of commitments from other states. First, a coalition of governments – the US, Canada, Australia, New Zealand, and the European states – committed to resettle all those who were judged to be refugees. Second, alternative and humane solutions, including return and alternative, legal, immigration channels were found for those who were not refugees in need of international protection. The plan led to over 2 million people being resettled and the most immediate humanitarian challenge was addressed, partly because of the political will generated at the end of the Cold War and partly because of exceptional leadership by UNHCR.¹⁶

As the Indochinese example highlights, these ad hoc initiatives have sometimes succeeded when they have been accompanied by decisive leadership and a clear framework for collective action, and have met the interests of states. But such initiatives have been rare and their very existence is indicative of a broader structural weakness in the refugee regime: the absence of norms for responsibility-sharing.

In the twenty-first century, increasing opportunities for mobility and migration have further complicated the question of ‘Where to protect?’ Rather than waiting passively for governments to decide where protection should be provided, more and more refugees have been making this decision for themselves. ‘Spontaneous arrival asylum’ – including moving directly onwards to more distant countries in the North by using the service of human smugglers – has become the primary means by which refugees are redistributed beyond their ‘regions of origin’.

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In response, those receiving countries in the developed world have created a range of new practices relating to where refugees should receive protection. Most of these have had in common the aim of reasserting, by fiat or coercion, the idea that refugees should have received protection nearer to home rather than embarking on independent journeys. One such example is the advent of the ‘safe third country’ concept – the idea that refugees should seek asylum and remain in the first safe country they reach and if they have passed through such a country they can be subject to removal. Another example is the idea of ‘outsourcing’, with countries seeking bilateral agreements in which they pay another country to admit spontaneous-arrival asylum-seekers and process their claims. Australia’s bilateral agreement with Nauru is perhaps the most infamous example. These techniques may well offer a convenient means to contain refugee populations but they are neither supportive of refugee protection nor sustainable.

Australia’s approach to the extra-territorial processing of asylum-seekers illustrates the worst of all policy outcomes when a government unilaterally attempts to reconfigure the political geography of asylum. Its so-called Pacific Solution, run between 2001 and 2007, turned away all spontaneously arriving asylum-seekers arriving by boat and sent them to detention centres on Pacific island states – notably Nauru and Papua New Guinea. Amid catastrophic human rights consequences, including prolonged child detention and high suicide rates, the scheme was abandoned, only to be reintroduced in 2012. Australia has also tried to develop similar bilateral agreements with states like Malaysia and Cambodia to receive and process Australia-bound asylum-seekers. Crucially, the 1951 Convention itself does nothing to prohibit the transfer of responsibility for refugees and asylum-seekers – although it has generally been interpreted to place absolute responsibility on the transferring state to ensure those moved receive full access to their rights, not only under refugee law but also under international human rights law.

Such emerging trends put forward increasingly unilateral answers to one of the key areas in which the 1951 Convention is largely silent, ‘Who should bear the burden?’ Yet it is crucial that if refugee protection is to be sustainable, better answers be found, premised upon collective rather than unilateral action and reinforcing rather than undermining the quantity and quality of protection available to refugees. It is in the

historical absence of a clear set of principles and mechanisms for responsibility-sharing that, gradually, almost all states have found themselves in a race to the bottom in term of standards of protection.

MISSING MODELS: WHY CAMPS ARE NOT ENOUGH

The principal way in which the refugee regime provides protection is ineffective and outdated. Since the 1980s the dominant model has been the long-term provision of assistance in refugee camps and closed settlements. A model designed to provide immediate access to food, clothing, and shelter during humanitarian emergencies has become the way in which the international community provides refugees with long-term support. Frequently located in remote and insecure border areas, the 'camp' has become the primary means of protection for refugees around the world.

Until the 1980s, the main way of protecting people was a reflection of the Convention's aspiration to support autonomy. In the North, resettlement was accepted as the dominant durable solution for refugees. Most refugees were moving East-West, fleeing Communism, rather than coming from the South. Repatriation was therefore seen as impossible and immediate, long-term integration as the most politically desirable option. In the South, refugees were generally allowed to spontaneously settle in rural areas. From Julius Nyerere's Tanzania to Kenneth Kaunda's Zambia, Africa's benevolent authoritarian rulers saw it as a pan-African duty to openly provide access to their territories. But this was also the case in other parts of the world – for Afghans in Iran and Guatemalans in Mexico, for instance.

Since the 1980s, though, a very different model has emerged with the advent of a global humanitarian industry intent on distributing food, tents, and blankets. Gradually, UNHCR was asked by governments to provide organized assistance and all too willingly obliged, especially once it found itself without purpose and without money at the end of the Cold War. Host governments in the South, challenged by democratization and structural adjustment, found a means to avert public concern about pressure on resources by abdicating

responsibility to internationally managed enclaves in peripheral areas of their countries. Moreover, as new opportunities emerged for 'jet age' asylum-seekers to move from South to North, Northern donor states began to view refugee camps as a means to contain refugee populations who otherwise might try to turn up at their borders.

To take an example, following independence from British rule Tanzania had, under the one-party state rule of Nyerere, opened its borders to allow refugees from across the continent – notably Burundians, Rwandans, and those fleeing liberation wars across Southern Africa – to self-settle in rural areas. It afforded them access to the same agricultural, educational, and health opportunities as those available to host nationals under the country's socialist *Ujamaa* model. International development actors – and not humanitarian actors – provided integrated development support that simultaneously benefited citizens and refugees alike. The example has been widely cited as illustrative of a 'golden age' in African refugee policy. It was only with the introduction of competitive elections and the move towards privatization and retrenchment of public services that Tanzanian governments began to shift towards encampment policies, calling upon the international community to take on a 'care and maintenance' role, and that refugee camps began to emerge across the country.¹⁷

In Kenya, for instance, the Dadaab refugee camps were created in 1993 to host the mass influx of Somali refugees who arrived following the outbreak of the country's civil war in 1991. The cluster of three camps were designed with a maximum capacity of 120,000 people, but in 2011 the combined populations swelled to host over 500,000 Somali refugees and today it hosts over 300,000 in dire conditions, after some went home or moved onwards. The camps are located in the remote border region of the North Eastern Province, and are the subject of violent cross-border incursions from warring factions and terrorist groups operating in Somalia. Concerned with security and competition for resources, the government has adopted a strict encampment policy, generally requiring Somalis to remain in the camps and denying them access to the formal economy. The international community provided seemingly indefinite humanitarian assistance, which was inevitably inadequate. A funding model based on a short-term emergency response is being used to pay for permanent needs.

Dadaab is illustrative of so-called protracted refugee situations, in which refugees have been in exile for at least five years, and are often denied access to the right to work or to freedom of movement. Today, 54 per cent of the world's 21.3 million refugees are in such situations. UNHCR is responsible for refugees in thirty-two separate protracted refugee situations around the world, with an average length of exile of twenty-six years. Twenty-three of these have lasted more than two decades. In principle, refugees should have timely access to 'durable solutions': a pathway towards permanent reintegration into the state system. But in practice they are getting trapped in indefinite limbo without even the most basic sources of autonomy and opportunity. In 2015, for instance, fewer than 300,000 of the world's refugees received access to either resettlement, repatriation, or local integration. The rest were forced to remain in limbo for another year; the majority without even the right to work. They risk becoming perpetual refugees.

From a refugee's perspective, long-term encampment has been described as a 'denial of rights and a waste of humanity'.¹⁸ Wuli, for example, is a refugee from Somaliland. He has lived in the Ali-Addeh refugee camp in Djibouti since fleeing his own country at the age of eighteen in 1988. Nearly three decades later, he still lives in the same inhospitable camp, in an arid and remote area where temperatures regularly exceed 40°C. Ali-Addeh, home to around 12,000 refugees, has no markets nearby and refugees are not allowed to work. Post-primary educational opportunities are limited, so Wuli provides informal education to young refugees, many born in the camp, in his own tent. He explained: 'Man does not live on food and water alone but on hope. My hope is gone but I pass it on to the next generation.' His situation is typical of so much wasted talent across the world's refugee camps.

These protracted circumstances are bad not only for refugees, but also for host states and the rest of the world. They represent not only a human rights issue but also a security challenge. Without opportunity, they risk creating a lost generation – with people sometimes being born in, growing up in, and becoming adults in camps. They provide ideal nurturing grounds for recruitment and radicalization by rebel groups, militias, and terrorist organizations, who can exploit the presence of an alienated, unemployed, and bored youth population. A range of studies have shown how protracted refugee camps in

border locations may serve as vectors for the spread of conflict and violence. We heard stories in the Za'atari refugee camp of parents explaining how their grown-up children had chosen to return to fight in Syria rather than wait passively in the camp.

There are very few viable alternatives to the dominant camp-based 'care and maintenance' model. But the model is so inadequate that refugees are moving onwards of their own accord. To take the example of Syrian refugees, just 9 per cent actually live in camps, because they offer such limited prospects. Only around 10 million of the world's refugees now live in camps.

Cities like Beirut and Amman have become the most common alternative to camp life. Reflecting a wider trend, urbanization is shaping the lived reality of refugees – and large numbers live in global metropolises like Nairobi, Johannesburg, Bangkok, São Paulo, Istanbul, and Cairo. Over half the world's refugees, including 75 per cent of Syrians, live in urban areas in neighbouring countries. But, in cities, assistance is limited and the formal right to work is usually restricted. Although UNHCR has an Urban Refugee Policy, it offers very little assistance in practice, with most urban refugees receiving no tangible help. By moving to cities, most refugees relinquish all formal support but also end up locked out of the formal economy. The world simply has not created a refugee assistance model compatible with a world of global cities. The actors who really matter for urban life – municipal authorities, employers, refugee-led community organizations – are too often excluded from such models. The result is that too many refugees in cities find themselves without aid and facing destitution.

There is another option, which increasing numbers of Syrians and others around the world are taking: risking death to travel onwards to another country. And that's what we're seeing in Europe now; the growth in secondary movements impelled by the inadequacies of the global protection system. Around the world, refugees are effectively offered a false choice between three dismal options: encampment, urban destitution, or perilous journeys. For refugees, these inadequate options – camps, urban destitution, and boats – are the modern global refugee regime.

UNHCR AND THE TWENTY-FIRST CENTURY

International regimes are about organizations as well as just norms. UNHCR has not been static since its creation in 1950. Its entire history has been one of adaptation and change. For example, at its creation, it was a temporary organization with no funding and a staff of just a few hundred. Sixty-five years later it has offices in almost every country and an annual budget in excess of \$5bn. The scope of its work has expanded dramatically from its being a mainly legal organization focused just on the protection of refugees to becoming an operational one engaged in the protection of refugees, stateless persons, internally displaced persons, and victims of natural disaster.

The pre-eminent historian of the organization, Gil Loescher, shows how successive UN High Commissioners for Refugees have confronted a common challenge: how to walk the 'perilous path' between being beholden to major donor states simply to sustain operations and yet needing to carve out sufficient autonomy to persuade states to contribute to protection and solutions for refugees, occasionally against their own self-interest. Faced with competing obligations towards donor states, host states, and refugees, and the need to ensure the organization's own corporate survival, the most successful High Commissioners have had the strategic awareness to translate the pre-vailing politics of the day into commitments to refugees.¹⁹

However, the metric by which any international organization should be assessed is its ability to facilitate collective action within its given policy field. In UNHCR's case this relates to its ability to facilitate collective action to ensure refugees have access to protection and solutions. This involves ensuring governmental commitment and compliance to the core norms of the regime: *non-refoulement* and refugees' access to rights. It also involves supporting international cooperation to ensure there is adequate funding to supply refugees' basic material needs, as well as their timely access to durable solutions like resettlement, local integration, and repatriation.

Of course, one of the challenges is that not all of these outcomes are uniquely within the control of UNHCR and so passing judgement on

organizational performance must allow for this limitation. Nevertheless, it has at its disposal a range of tools to influence state behaviour and guide these types of outcomes. It has the moral authority that comes from having supervisory responsibility for the 1951 Convention, the expert authority that comes from over six decades of working in this area, a virtual monopoly on the refugee mandate across the UN system, convening power and the ability to create special initiatives, the authority to raise funding directly, and a presence in virtually every country in the world.

UNHCR's capacity to facilitate collective action has depended in part upon the wider context of global order and the distribution of power in the international system. During the Cold War, it was far more viable for UNHCR to have an explicitly 'non-political' mandate. It had the backing of and, to a large extent, worked on behalf of the United States government and its Western allies. Facilitating resettlement from East to West and supporting frequently authoritarian – but often aligned – satellite countries around the world in creating stable hosting conditions for refugees posed relatively uncomplicated political challenges for UNHCR.

In the immediate post-Cold War era, the world changed significantly but UNHCR was at least able to reinvent itself in a context in which the United States, as its main backer, was the pre-eminent superpower, and the appetite for multilateralism was widespread. There was a significant demand from governments for UNHCR to facilitate durable solutions for populations who were displaced in regions that had previously been afflicted by Cold War proxy violence – South-East Asia, Central America, and Southern Africa, for example. From Cambodia to Mozambique, UNHCR helped people to go home and it scarcely needed to lift a finger to get donors to pay for it. Meanwhile, with the advent of so-called 'new wars' from the Balkans to sub-Saharan Africa, donor states looked to humanitarianism as a new feature of their foreign policy toolbox, a fig leaf for the unwillingness to engage in more direct military intervention.

It is in the twenty-first century that the global order has gradually become a far less auspicious environment for UNHCR to be an effective facilitator of collective action. On the one hand, the terrorist attacks of 11 September 2001 contributed to a new demand for