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Protecting human rights defenders at risk: asylum and temporary international relocation

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The response of the international community and civil society to human rights defenders at risk has thus far failed to take adequate account of the international refugee regime. The refugee regime can offer a meaningful remedy to human rights defenders at risk. More specifically, human rights defenders at risk seeking asylum abroad can qualify as refugees and receive meaningful protection from the international refugee regime. In a more organised manner, temporary international relocation initiatives (TIRIs) for human rights defenders at risk provide good examples of the emerging regime of protection for human rights defenders intersecting with the international refugee regime. Human rights defenders at risk within and those who manage TIRIs frequently grapple with issues concerning asylum – and the fundamental tension between TIRIs and asylum seeking. However, TIRIs also reveal a set of similarities between the two regimes: their shared recognition of the failure of states to fulfil their human rights obligations; their shared focus on (and contestation) of risk; a similarly shared focus (and contestation) of who is and within and outside each regime; and similar attempts to translate political sympathy into protection. These similarities can assist in charting a more productive, and explicit, engagement between the two regimes in the future that provides for better protection for human rights defenders at risk.

Keywords: human rights defender; risk; refugee; UNHCR; international protection; asylum; temporary international relocation initiatives

Introduction

We also thank all those states that have given asylum and assistance to South African refugees of all shades of political beliefs and opinion. The warm affection with which South African freedom fighters are received by democratic countries all over the world, and the hospitality so frequently showered upon us by governments and political organisations, has made it possible for some of our people to escape persecution by the South African government, to travel freely from country to country and from continent to continent, to canvass our point of view and to rally support for our cause. – Nelson Mandela¹

[R]elations with the United Nations country teams on the ground and with United Nations bodies and agencies could be strengthened to make their contribution to the protection of defenders more effective, subject to the characteristics of the mandates of each of them. – Michel Forst²

The work of human rights defenders is increasingly at risk in many parts of the world. In the face of this growing risk, the international human rights movement has been criticised for

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failing to provide adequate protection to those defending human rights. The reality for many human rights defenders is that they work in environments that lack effective domestic remedies for human rights abuses. Indeed, it is often their complaints about and advocacy to bring attention to this deficiency that puts them at risk.

In the absence of local remedies, human rights defenders at risk have relied upon a range of tactics to mitigate their risk, including improvement of physical security infrastructure; mutual solidarity with other local and international civil society organisations; engagement with the diplomatic representatives of foreign states; and, international pressure through international human rights mechanisms.³ Programmes of support from leading international civil society organisations have focused on developing the capacity of human rights defenders at risk to pursue these tactics and to support them in the execution of these tactics.

The response of the international community and civil society to human rights defenders at risk has thus far failed to openly acknowledge an important remedy⁴ for human rights violations that pre-exists the contemporary human rights movement: the international commitment to offer asylum to refugees from persecution. The two solitudes of human rights defenders at risk and refugee protection have not always been so unconnected. As the first epigraph indicates, the refugee regime has in previous eras been recognised as protecting those at risk because of their human rights activism; as the second epigraph indicates, efforts are ongoing to better coordinate the protection of human rights defenders at risk, including – potentially – by drawing upon the protection offered by the refugee regime. Temporary international relocation initiatives (TIRIs)⁵ for human rights defenders at risk epitomise the way the two protection regimes exist in tension with each other.

This article seeks to explore the protection provided by the international refugee regime and to examine the extent to which the refugee regime can benefit the protection of human rights defenders at risk. After first highlighting relevant features of the emerging protection regime for human rights defenders at risk and the international refugee regime, this article will examine the lack of cross-referencing between the literature and practice on human rights defenders at risk and refugees which occurs despite both regimes sharing a set of key features. An examination of the qualification criteria for access to the international refugee regime demonstrates how human rights defenders at risk can qualify for refugee protection. As a more organised instance of international protection, the nature and operation of TIRIs will be explored as examples of a necessary, imperfect but productive engagement with the international refugee regime by those seeking to protect human rights defenders at risk. The central argument throughout this article is that the international refugee regime can provide a useful tool for states and civil society and an important support for human rights defenders in jeopardy.

The international refugee regime and the emerging regime of protection for human rights defenders at risk

It is useful at the outset to sketch out the basic parameters of both regimes to allow a comparison and a fuller understanding of how they do (and might better) interact.⁶ While it is increasingly in competition with other regimes, the international refugee regime provides a set of norms, institutions and processes to regulate and coordinate the international protection of refugees. Although much younger, the developing institutions and processes of protection for human rights defenders at risk also constitute an emerging regime, albeit one that

is less formalised and manifests itself at many levels. The key features of both regimes will be highlighted below and common attributes of both regimes will be explored.

Key features of both regimes

The international refugee regime consists of the legal norms and international institutions of refugee protection. The customary and treaty-based norms of refugee protection define the term 'refugee' and define the core protections to which refugees are entitled. These date back to the early contemporary human rights period and were some of the earliest human rights treaties⁷ negotiated by the United Nations (UN); the Convention Relating to the Status of Refugees⁸ of 1951 and the Protocol Relating to the Status of Refugees⁹ of 1967 continue to provide the cornerstones of the refugee regime. These treaties have been supplemented by regional treaties which expand the scope of the term 'refugee' and provide subsidiary protection for other groups at risk of human rights violations. An overwhelming majority of the world's states are party to the treaties that define the international refugee regime.¹⁰

The principal institution of the regime is the office of the United Nations High Commissioner for Refugees (UNHCR). With an annual budget of around US\$4 billion and around 9000 staff in over 250 offices in more than 100 different states, UNHCR is the largest agency by any measure within the UN system. UNHCR also hosts a number of regular fora and processes that continue to articulate best practices in refugee protection and develop the norms of the regime. Regional institutions, such as the European Union's European Asylum Support Office, supplement the UNHCR. These institutions provide a wide range of services to refugees, varying according to refugee population and local context, including assistance with resettlement and family reunification, primary education, basic health care, housing, and some financial support for vulnerable individuals and families. In many countries, the norms and institutions of the international refugee regime have been, respectively, incorporated into and recognised by domestic law. In such states, domestic law has established formal processes whereby individuals seeking recognition as refugees can have their claims to protection determined. There, recognition as a refugee brings with it formal immigration status and an entitlement to various civil, political and economic rights. Other states without such processes often rely upon UNHCR to conduct status determination (and also provide key services to refugees).

Over its 60-year history, the refugee regime (and the international protection it requires for refugees) has both become highly politicised and entered into competition with a number of other regimes that have emerged. During the Cold War, international protection was an extension of the global, Manichean political battle: 'Recognizing persecution and identifying its perpetrators caused no headaches and the grant of asylum was generally used to reaffirm the failures of communism and the benevolence of the West.'¹¹ The international protection of refugees continues to be politicised, though the refugee identity now often carries with it stigma and states increasingly erect barriers to accessing protection.¹²

In contrast to the long history of the refugee regime, the human rights defender at risk protection regime is much more recent, and perhaps as a result less formalised. It traces its origins back to the Declaration on Human Rights Defenders of 1998 and the creation of a special procedure within the human rights architecture of the UN. The term 'human rights defender' is conventionally dated to the declaration, although the text of the declaration notably does not mention the term.¹³ The declaration was the result of a lengthy series of negotiations among states and involving human rights civil society organisations

dating back to the mid-1980s¹⁴ and was finally passed by the UN General Assembly on the eve of the 50th anniversary of the Universal Declaration on Human Rights (UDHR).¹⁵ The formal origins of these negotiations are in the same resolution of the UN Human Rights Commission that led subsequently to the creation of the Office of the High Commissioner for Human Rights (OHCHR) and later to the replacement of the UN Human Rights Commission with the UN Human Rights Council.¹⁶

Since shortly after the Declaration on Human Rights Defenders, the Special Rapporteur on Human Rights Defenders has provided guidance on its interpretation and the implementation of its obligations, in particular in relation to the protection of human rights defenders at risk and the creation of 'enabling environments' for the work of human rights defenders. Inevitably, the Special Rapporteur has had to negotiate his or her position and role both within the UN human rights regime and in relation to other regimes. Unlike the refugee regime, which for much of its history has understood itself as apart from the human rights regime, the protection regime for human rights defenders at risk has been, from its inception, understood as within larger global, regional and national human rights norms, institutions and processes.

Lack of attention to the intersection of the two regimes

Very little attention has been paid to the intersection of the protection of human rights defenders with other regimes of protection, including the international refugee regime.¹⁷ The isolation of the two regimes is mutually constructed: the refugee regime seldom acknowledges the nature and situation of human rights defenders and actors in the protection regime for human rights defenders at risk have been reticent to acknowledge refugee protection as an avenue of protection.

In relation to the former, although human rights defenders are often required to flee their country of origin and activity, they are seldom, if ever, within the refugee regime identified as such – or been identified as such by decision or policymakers. Neither UNHCR nor any state has issued guidelines on the extent to which human rights defenders at risk may qualify for refugee protection.¹⁸ Worldwide, the published refugee jurisprudence consists of only a handful of claims that refer to the category 'human rights defender' and only one decision that determines status on the basis of the identity of human rights defender at risk.¹⁹ While human rights documentation about conditions in countries of origin used in refugee status proceedings increasingly deploy the category 'human rights defender' (in the identification of groups particularly at risk), the term human rights defender is not imported as such into the analysis of refugee decision makers. Indeed, activists within the refugee regime, including refugees themselves, rarely self-identify as human rights defenders.²⁰

Similarly, as mentioned earlier, the emerging protection regime for human rights defenders at risk does not openly acknowledge refugee protection as a productive avenue of protection. This lack of acknowledgement is in some ways a continuation of the in-country and transnational advocacy focus of the older literature on the defence of human rights 'activists'.²¹ The continuation of this silence into the human rights defender literature is part of a broader inattention to protection: there has been a 'surprising paucity of research on the protection of human rights defenders'.²² What research that has been done has – unsurprisingly – focused predominantly on elaborating the protection needs of human rights defenders within the institutions and processes of the human rights regime.²³ For example, the recent seminal issue of the *Journal of Human Rights Practice*, which provided the first sustained discussion of 'the protection of human rights defenders', made no

mention of refugee protection.²⁴ The reports of the Special Rapporteur and other organisations working on human rights defenders issues are similarly silent about refugee protection. Thematic reports on human rights defenders neither identify refugees as a potentially vulnerable group of human rights defenders nor raise refugee protection as a viable possibility for protection when domestic remedies fail.²⁵

Bringing human rights defenders at risk under the protection of the international refugee regime

A threshold issue for the argument that the two regimes should more explicitly acknowledge each other is the proposition that they share some of the same beneficiaries: that human rights defenders at risk can qualify for and benefit from protection as refugees. The following section outlines how human rights defenders at risk who flee internationally might be understood, generally, to fall within the definition of ‘refugee’.²⁶ It also outlines some of the limitations of refugee protection as a preliminary attempt to understand why human rights defenders at risk do not always seek refugee protection or self-identify as such during the asylum process.

Qualification as a ‘refugee’

Do human rights defenders at risk qualify for protection as ‘refugees’? And if so, how? In the absence of significant precedent accepting human rights defenders at risk *per se* as refugees, the only way to answer these questions is by conducting a doctrinal analysis of the extent to which human rights defenders at risk fall within the definition of ‘refugee’ at the core of the international refugee regime.²⁷

Article 1(A)(2) of the Refugee Convention defines a refugee as someone who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country²⁸

This definition of refugee requires that a refugee satisfy four elements, specifically that he or she (i) is outside of her country of nationality²⁹; (ii) has a ‘well-founded fear of being persecuted’; (iii) is at risk of persecution ‘for reasons of race, religion, nationality, membership of a particular social group or political opinion’; and, (iv) is ‘unwilling to avail himself of the protection’ of her country of nationality. In addition, other provisions within the Refugee Convention (v) allow certain individuals at risk to be excluded from refugee protection if considered ‘undeserving’ of protection. Each of these aspects of the definition of refugee (or the exclusion of individuals from it) will be discussed below with a view to assessing whether human rights defenders at risk – in doctrine and practice – fulfil each element. In addition, the analysis will highlight resonances between issues in the refugee definition and issues facing the emerging regime to protect human rights defenders at risk. While one or more of these elements can be contested in individual claims for asylum of human rights defenders at risk and while the interpretation of the definition of refugee varies from jurisdiction to jurisdiction, overall there is a strong *prima facie* argument that human rights defenders at risk who are outside their country of nationality or habitual residence are entitled to the protection of the international refugee regime.

Outside of her country of nationality

The first element of the definition is satisfied once a human rights defender leaves her country of nationality. Neither the method of departure nor any temporary status in another country would automatically preclude a human rights defender at risk from fulfilling this condition. This element is satisfied even when a defender leaves her country and while abroad faces a problem that prevents her return. Such a '*sur place*' refugee is 'on an equal footing with those who cross a border after the risk of being persecuted is already apparent'.³⁰

The ability of human rights defenders to leave their country of nationality has been restricted by states, often as part of the administrative or judicial investigation of defenders. Such restrictions are one manifestation of the 'legalisation' of (use of the law for) the harassment and persecution of defenders. It can often be difficult for a human rights defender at risk to even be able to access a passport both because of political interference and mundane bureaucratic resistance. In extreme cases a state may denationalise a human rights defender and thereby remove any formal entitlement to a passport – and consequent ability to legally travel.

But the restrictions on international travel do not only originate from countries of persecution. Refugee practitioners have noted a growing trend towards the restriction of access through increasingly restrictive visa regimes and interception of potential refugees even before departure.³¹ Being forthright about being at risk will generally result in a human rights defender being denied a visa. States can mitigate the problem of access through the facilitation of visas and the creation of special visa categories for human rights defenders. However, in practice, such mitigations have proven difficult to operationalise in the face of securitised borders and immigration bureaucracies.

Well-founded fear of persecution

The second element of the definition requires that there be a 'well-founded fear of persecution'. This requirement can be broken into two independent components³²: risk and persecution.³³

In relation to the component of risk, a well-founded fear has been interpreted in the refugee jurisprudence as requiring a 'serious possibility' of persecution. Alternative formulations of the level of risk required include a 'real chance',³⁴ 'reasonable possibility',³⁵ and 'real and substantial danger'.³⁶ What all of these formulations share in common is the recognition that the level of risk facing a refugee does not need to approach certainty or even exceed a balance of probabilities; in statistical terms judges have expressed the level of risk required as around 10%.³⁷

In many cases, human rights defenders at risk who have fled their country have already suffered serious human rights violations. In such cases, a presumption will operate that these violations will repeat themselves in the future should the human rights defender return.³⁸ In other cases without past persecution, guidance can be drawn from the situation of similarly situated individuals, including reports of the mistreatment of other human rights defenders.³⁹ However, at the end of the day, certainty will be impossible because of the 'forward looking' nature of the analysis.

In relation to the component of persecution, a refugee must face a risk of 'persecution'. Persecution is commonly seen as an act that is 'sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights'.⁴⁰ Human rights defenders at risk face many threats, including arbitrary arrest and indefinite detention; extrajudicial

execution; torture; unfair trial; and, discriminatory prosecution. As a general principle, many of these forms of mistreatment will be seen as severe violations of their human rights and would qualify as persecution.

Some of these acts of persecution are specifically prohibited in the Declaration on Human Rights Defenders while others are articulated elsewhere in international human rights law.⁴¹ However, the question arises whether the trials of working in an attritional environment might qualify a human rights defender for refugee protection. Human rights defenders in many states face restrictions on the rights of human rights defenders to freely associate, pursue remedies, protest and express themselves.⁴² Defenders also commonly face more mundane interference in other domains of their life as a result of their 'anti-government' activities, including international travel, employment, housing and education.⁴³ Assuming there is sufficient evidence as to the cause of the mistreatment⁴⁴ and the mistreatment is in violation of international standards,⁴⁵ there is nothing in principle to stop such acts of mistreatment from constituting persecution either individually or cumulatively.

A key issue that emerges in the analysis of potential refugee claims by human rights defenders – and a common defence by states to claims of mistreatment by human rights defenders – is whether or not the feared acts of mistreatment are simply the result of the prosecution of a law of general application. As the Special Rapporteur has noted, there has been a turn towards the 'legalisation' of the mistreatment of human rights defenders through such acts as prosecution for public disorder, defamation, tax evasion and money laundering. States have a legitimate concern about such activities and are often required by international law to take action against individuals partaking in such activities.⁴⁶ If a human rights defender simply faces a lawful prosecution then he or she will not be granted protection as a refugee: 'It should be recalled that a refugee is a victim – or potential victim – of injustice, not a fugitive from justice.'⁴⁷

However, in many cases, such prosecutions are mere pretexts for persecution. At the heart of the analysis of the prosecution must be a review of whether the prosecution is based on a law and conducted in a manner that complies with international human rights law. In relation to the former, prosecution of a domestic law that violates international standards may be persecution. For example, prosecution of human rights defenders for failing to comply with reporting requirements that violate the freedom of association may constitute persecution.⁴⁸ In relation to the latter, discriminatory prosecution – in terms of the decision to prosecute, the manner of prosecution, or the punishment following prosecution – may also make an otherwise lawful prosecution persecutory. Even where a human rights defender faces a legitimate prosecution, he or she may nonetheless have a claim to protection on the basis of other feared mistreatment.⁴⁹

For reasons of race, religion, nationality, membership of a particular social group or political opinion

The third element of the definition requires a link between the risk of persecution and one of the five enumerated grounds. In most human rights defender at risk cases, this requirement would be fulfilled by establishing a 'nexus' between the individual's risk and either her perceived 'political opinion' or her 'membership in a particular social group'. While most commonly the nexus provides a causal explanation of the well-founded fear of persecution of a refugee, the nexus may also provide a causal explanation of the failure of the state to protect a refugee.⁵⁰

It is probably not surprising that the historic bias of the international human rights movement towards civil and political rights has influenced the interpretation and the

practical application of the ‘political’ nexus of the refugee definition.⁵¹ The refugee case law and refugee status determination processes have much more easily recognised as ‘political’ refugees individuals contesting political freedoms and civil rights; individuals pursuing overtly (partisan) political means; and, individuals suffering persecution in the form of violation of their civil and political rights. While many human rights defenders do not overtly identify themselves and their activities as ‘political’, they are often perceived as such by their agents of persecution. Human rights defenders are, almost by definition, expressing views on matters in which ‘the machinery of state, government, and policy may be engaged’,⁵² and would therefore qualify as having a political nexus.

Human rights defenders may also either work in support of, or themselves be members of, socially marginalised groups. These groups may be defined by race, religion and nationality and will thereby provide a nexus. The final enumerated group, ‘membership in a particular social group’, would also apply to many human rights defenders as it has been interpreted as ‘tak[ing] into account the general underlying themes of the defense of human rights and anti-discrimination that form the basis for the international refugee protection initiative’.⁵³ Although there remains ongoing debate in the jurisprudence about the proper approach to constructing a ‘particular social group’, the following groups (amongst others) have been accepted as social groups: sexual orientation, trade unions, women and various groups at risk of human rights violations.⁵⁴ Human rights defenders who face risk as a result of their membership in or work on behalf of such groups would have a nexus.

Unable, or owing to such fear, being unwilling to avail oneself of the protection of the country of nationality

The fourth element of the definition requires that the state be unable or unwilling to offer protection to human rights defenders at risk. This element of the definition underscores the surrogacy of the protection offered by the refugee regime: ‘the underlying rationale of international protection [is] as a surrogate, coming into play where no alternative remains to the claimant’.⁵⁵ While the jurisprudence has at times suggested that states should be presumed to be able to protect individuals⁵⁶ and that individuals should be required to exhaust all opportunities for state protection,⁵⁷ the better view is that the adequacy of state protection is a question to be decided on the facts of the case.⁵⁸

In some cases, a human rights defender will be fleeing a non-functioning state or there will be an admission by her state that he or she cannot be protected. More commonly, a human rights defender flees a functioning state that is simply unable or unwilling to offer protection. Ironically, a human rights defender’s own criticism of the inadequacy of state mechanisms for protection may be the cause of her risk. The past inability or unwillingness of a state to offer protection, the agent of persecution (and the complicity of a state in the persecution), and the failure of a state to protect similarly situated individuals are factors to be considered. Although yet to be explored in the jurisprudence, presumably the ability of a state to provide protection to a human rights defender is closely linked not only to the operational abilities and willingness of the police, but also to whether or not the state has formal (national or local) mechanisms to protect human rights defenders at risk and the possibilities for protection through national human rights institutions.

Where a human rights defender can find safety elsewhere in her country of origin then protection is available and refugee protection will not be granted. The availability of ‘internal protection’ is unlikely where the agent of persecution operates throughout the state⁵⁹ – or is, indeed, the state.⁶⁰ The analysis must also consider the different conditions for human rights defenders throughout a state, including increased risk for defenders faced

in particular areas.⁶¹ The federal structure of some states, while complicating the protection of human rights defenders, may also open the possibility of gaining protection in an alternate state or a federally administered district.⁶² However, in no case will such an internal relocation be based on the assumption that a human rights defender will be silent or cease her activities. Such an assumption would: ‘amount to requiring the “same submissive and compliant behaviour, the same denial of a fundamental human right, which the agent of persecution seeks to achieve by persecutory conduct”’.⁶³

Individuals undeserving of protection as refugees

The Refugee Convention not only sets out the previously mentioned grounds for inclusion within its definition of refugee (and the protections of the regime) but also sets out a number of grounds of exclusion, including individuals seen as undeserving of protection as refugees. Articles 1(F)(a), (b) and (c) of the Refugee Convention exclude from refugee protection individuals who there are serious reasons for believing have committed (a) crimes against peace, crimes against humanity, or war crimes; (b) non-political crimes outside of the country of refuge; and (c) acts contrary to the purposes and principles of the UN.⁶⁴ These provisions are paralleled, albeit in broader terms, by the exclusion within the Declaration on Human Rights Defenders of those pursuing non-peaceful activities⁶⁵ and, the prohibition of acts ‘aimed at the destruction of the rights and freedoms referred to in the present Declaration’.⁶⁶ Given the broader exclusions of the Declaration on Human Rights Defenders, it is likely that most human rights defenders at risk would fall within the definition of refugee. Given the ongoing struggle to define the term ‘human rights defender’, it is interesting to note that while the refugee regime excludes *ab initio* active combatants,⁶⁷ it has provided protection to former combatants,⁶⁸ members of the armed forces of repressive regimes,⁶⁹ participants in violent protest⁷⁰ and proponents of the violent overthrow of repressive regimes.⁷¹

Practical benefits of and obstacles to the protection of the international refugee regime

Qualification as a refugee is not an abstract notion. Engagement with the international refugee regime has the potential to bring specific benefits to human rights defenders at risk, including entitlement to various rights, and, international attention and personality. However, as with any regime of protection, the reality often falls short of the promised benefits. There are concrete obstacles to engagement with the international refugee regime, most of which are experienced and well-documented with respect to other refugees. These obstacles include the problem of access, difficulties in status determination, and the compatibility of protection by the refugee regime with continued work as a human rights defender. These aforementioned benefits and obstacles to the engagement of the international refugee regime by human rights defenders at risk are set out in more detail below.

First, refugees are entitled to a series of specific rights to which they would otherwise not be entitled, as enumerated in Articles 3 to 34 of the Refugee Convention. While some of these rights are also enumerated in other international human rights treaties, the Refugee Convention offers various unique guarantees: the prohibition on *refoulement* to persecution,⁷² a ban on expulsion,⁷³ the right to engage in various forms of work,⁷⁴ and various forms of administrative assistance.⁷⁵ These rights provide a core set of entitlements that are designed to facilitate a refugee’s new life in her country of asylum.⁷⁶

Outside of the international refugee regime, a human rights defender at risk has very little legal basis for a claim for protection against any state other than her state of nationality

and activities let alone rights sufficient to establish a sustainable residence outside of that state. In contrast, the Refugee Convention provides the right to engage in various forms of economic activity and the ability to move freely within the country of asylum. The broader refugee regime provides assistance with resettlement (to a safe country where life in a refugee's country of first asylum proves unsustainable)⁷⁷ and family reunification.⁷⁸

Second, as a refugee, a human rights defender at risk also has a claim to international personality and attention. The principle of comity requires states to recognise each other's decisions about refugee status. In practice, this means that a decision to confer refugee protection on a human rights defender at risk by an individual state is recognised by other states and brings with it a shared interest in the protection of the human rights defender at risk. A concrete expression of this shared interest is the ability of a refugee to travel between states using a 'Convention Travel Document', preventing a human rights defender at risk from being isolated in her state of asylum.

This international interest in the protection of a refugee continues even if he or she returns to her country of nationality. Under Article 1(C)(5) of the Refugee Convention, an individual continues to be recognised as a refugee until she has 're-established' herself in her country of nationality. In terms of the international refugee regime, this means that both the UNHCR and the state of asylum retain an interest in the treatment of the human rights defender at risk even upon her return to her country. While operationalising such an interest can be difficult (and is often contested by the country of nationality), it can provide a form of continuing protection after the human rights defender at risk returns home.

However, invoking the protection of the refugee regime is not without difficulty. First, human rights defenders at risk (and those who support them) must be aware of the regime in order to engage with it. The reality is that many refugees are either completely unaware of or inaccurately informed about the criteria or processes of the refugee regime. Once aware, a human rights defender at risk must be able to access refugee protection. As noted earlier, access to protection has become more difficult. Human rights defenders at risk working in regions where the Refugee Convention has not been widely adopted face particular difficulties in accessing protection.⁷⁹ The development of special visas for human rights defenders at risk may partially address the problem of access.

Second, the refugee regime relies upon a necessarily flawed and not always reliable determination of refugee status conducted by states and the UNHCR. Status determination processes in many states (and the UNHCR) have become cumbersome and 'over-sophisticated' – increasingly they are designed to render inadmissible or to impose severe procedural constraints on certain types of claims and claimants. The decision makers in both state and UNHCR refugee status determination processes are frequently poorly informed about the situation in an applicant's country of origin, overworked and cynical. As a result, a significant number of individuals deserving of refugee protection, including human rights defenders at risk, are denied protection.⁸⁰ Even at its best, refugee status determination is an emotional and time-consuming process which can leave a human rights defender at risk in 'limbo' for a lengthy period of time. During this period, a human rights defender at risk may be detained and restricted from working.

Third, and most importantly, there are significant obstacles presented by the refugee regime for the continued human rights work of human rights defenders at risk. The refugee regime has long been criticised for its 'exilic bias', offering protection only to those outside their country of nationality or habitual residence.⁸¹ As noted previously, the Refugee Convention causes refugee protection to 'cease' if a refugee re-establishes herself in her state of origin.⁸² This provision of the Refugee Convention has been

exacerbated by more stringent domestic legislation and policy that further limit the ability of refugees to travel, especially back to their country of origin.⁸³

While technology and transnational advocacy networks have provided new opportunities for human rights activities outside of the country of origin, refugees remain physically separated from their community of fellow human rights defenders within their state of origin. There is a political dimension to the separation as well: human rights defenders who have sought asylum abroad may be viewed by their colleagues who have remained in the country as having ‘deserted’ the (formerly) shared cause.⁸⁴ The state may also use a human rights defender at risk’s physical presence abroad or her refugee claim to discredit her ‘patriotism’ or to assert that she has fallen under ‘foreign influence’.⁸⁵

In addition to the physical and political obstacles to continued work presented by refugee status, there are also emotional barriers to continued work as a human rights defender. The human rights defender community is not immune to the prejudices that result in social stigma of asylum seekers and refugees in mainstream society. Human rights defenders at risk who have sought refugee protection report having to overcome the opinions of their colleagues that they have ‘given up’ or that ‘there is no dignity’ in protection as a refugee.⁸⁶

Temporary international relocation initiatives (TIRIs) and the intersection of the two regimes

Although the two regimes have been described as existing in remarkable isolation from each other, the isolation is not complete.⁸⁷ TIRIs provide a concrete and expanding instance of the protection of human rights defenders intersecting with the international refugee regime. The growth in size and number of TIRIs brings together a new tactic within the human rights defender at risk regime and a re-examination of the nature (and length) of protection. An examination of TIRIs exemplifies the need (and productive potential) of further direct interaction between the regimes.

Background on TIRIs and temporary protection

There exist more than 50 TIRIs that endeavour to assist human rights defenders at risk in relocating outside of their state. The largest of these initiatives are run by civil society and exist on a regional level, relocating human rights defenders at risk to other states within the region. However, there are also smaller programmes of international relocation that relocate human rights defenders at risk globally (outside of the region), usually to Europe. These initiatives are managed by a range of civil society actors, ranging from general human rights organisations to organisations specifically focusing on human rights defenders. Almost all of these programmes have been forced to engage the international refugee regime for the protection of human rights defenders at risk when international relocation fails to sufficiently mitigate risk within the time period of hosting.⁸⁸

Although many TIRIs are quite recent in development, the organised provision of international protection by civil society has a long history. In 1933, the Academic Assistance Council (now known as the Council for Assisting Refugee Academics, CARA) was founded to provide support to scholars fleeing persecution by Nazi Germany.⁸⁹ Programmes of support have also existed for a long time for specific types of what are now known as human rights defenders at risk, including scholars, journalists and authors.⁹⁰

While the fellowships offered by CARA do not necessarily result in protection as refugees, many of its most famous beneficiaries have used their fellowship as a means to access

longer-lasting refugee protection. Since the Declaration on Human Rights Defenders, programmes of protection explicitly for human rights defenders at risk have been developed (or reconceived). A recent mapping of regional and global TIRIs identified more than 50 separate initiatives that were ‘diverse in nature and target different groups of HRDs’.⁹¹

Most TIRIs are institutionalised as a programme within a civil society organisation or network focusing on the protection of human rights defenders at risk (either generally or a specific sub-set of the group). However, there are a few ad hoc TIRIs that have occurred in response to an immediate, one-time crisis and which were therefore not institutionalised. One of the largest and most high-profile of such partnerships occurred following the contested re-election of the Iranian president in 2009. Two European states and Reporters Without Borders cooperated to support (through the respective provision of emergency visas and material support) the flight to Europe of a number of human rights defenders at risk.⁹² While TIRIs provide an organised programme of status, shelter and support, there are also other programmes designed to support human rights defenders at risk seeking to flee abroad in a self-directed manner. While not formally TIRIs, such programmes provide financial support for human rights defenders at risk to self-organise temporary international relocation.⁹³

Regional networks that provide international relocation for human rights defenders at risk within their region of activity exist in the Middle East and North Africa, East Africa, Southern Africa, Latin America, and Asia.⁹⁴ A number of small programmes of support also exist that relocate human rights defenders at risk outside of their region of activity, usually to Europe or North America. The largest global programme of support is the International Cities of Refuge Network (ICORN), a loose network of about 40 cities that provide sanctuary to ‘writers at risk’.⁹⁵

Although exact numbers of spaces for human rights defenders at risk within TIRIs are difficult to determine, within the European Union alone there are no more than 300 spaces per year:

The current supply structure for shelter for human rights defenders across the EU Member States, whether these are city shelters, fellowships, NGO relief grants or government financial schemes, are limited and currently represent fewer than 300 temporary shelters a year in the entire EU 27. There are many examples of unmet demand (waiting lists).⁹⁶

Outside of the European Union, there are the aforementioned significant regional networks of protection and some of the global TIRIs also provide international relocation outside of Europe, including Scholars at Risk and some of the ICORN cities of refuge. Although there has been no formal census of spaces, globally TIRIs likely provide international relocation to between a few hundred and around one thousand human rights defenders at risk every year.⁹⁷ More ad hoc programmes in support of the self-directed international relocation of human rights defenders at risk probably double this number. While the existing network of TIRIs needs to be rebalanced to better locate human rights defenders at risk geographically closer to where they live and work, the consensus view of those in the sector is that they remain an important, growing and currently under-resourced tool for protection.⁹⁸

In a small number of cases, TIRIs are explicitly seen as pathways to permanent protection, usually through providing access to asylum procedures.⁹⁹ However, in most cases, the programmes are conceived as a means to mitigate the risk faced by human rights defenders, through variously the passage of time, the heightened international profile of the human rights defender or their increased capacity to mitigate risk through new tactics of practice.¹⁰⁰ Despite such a conception of their purpose, a recent mapping of these programmes concluded that ‘a small number of human rights defenders relocating to existing shelter

initiatives have had little choice but to apply for asylum'.¹⁰¹ The only alternative to seeking asylum is the circulation of human rights defenders at risk amongst initiatives in an attempt to extend their temporary protection until their risk has been mitigated:

While the ultimate goal of existing shelter initiatives are [sic] for HRDs to enjoy safe haven in the EU for a temporary stay and then return to their home countries, the existing picture indicates a risk that many HRDs end up 'relocation shopping' from programme to programme or being forced to apply for asylum or pursue other means of entry.¹⁰²

The rates of asylum seeking amongst TIRIs vary enormously, between 0% and 66%,¹⁰³ and there is no direct correlation between the length of the sojourn and likelihood of asylum seeking.¹⁰⁴

TIRIs and the similarities of the two regimes

An examination of TIRIs highlights the similarities of the emerging regime of protection for human rights defenders at risk and the international refugee regime. The two regimes share four striking similarities that provide avenues for productive cooperation while also highlighting potential tensions. These similarities are (i) there is a shared recognition of the failure of states to fulfil their human rights obligations; (ii) risk is both central to and contested within both regimes; (iii) there is a similar contestation of who is and within and outside each regime; and, (iv) there is a shared attempt to translate political sympathy into protection.

Shared recognition of the failure of states to fulfil their human rights obligations

First, both TIRIs and refugee protection are rooted in recognition that human rights obligations continue to be violated and that the international community has a duty to provide protection to victims of such violations. Unfortunately, TIRIs also underscore the extent to which both the emerging regime of protection for human rights defenders at risk and the refugee regime have failed in fulfilling this duty.

The declaration and the related creation of the category 'human rights defender' were a result of the explicit recognition by the international community of the inadequacy of existing mechanisms for ensuring compliance with human rights obligations. With the creation of the Special Rapporteur on Human Rights Defenders, the international community also recognised its responsibility to human rights defenders at risk. In parallel, the refugee regime was borne out of a pragmatic understanding by the international community of the inadequacy of existing mechanisms for ensuring compliance with human rights obligations.¹⁰⁵ A constant refrain of the refugee regime is that it exists as a 'surrogate' form of protection for individuals who have not been protected by existing (national) mechanisms: 'its general purpose is to afford protection and fair treatment to those for whom neither is available in their own country'.¹⁰⁶ At the core of the definition of refugee is the requirement that a refugee be unable or unwilling to gain the protection of her¹⁰⁷ country of nationality or former habitual residence.¹⁰⁸ As noted earlier, and somewhat controversially, its proponents understand its protection as a form of extraterritorial human rights 'remedy'.

TIRIs justify their often expensive existence based upon an analogous lack of other avenues of protection; TIRIs are a 'last resort' once it is clear there can be no safety in the country of a human rights defender's activities.¹⁰⁹ However, TIRIs also underscore another failure of protection: the failure of other states to offer protection to human rights defenders at risk. TIRIs exist in tension with state immigration bureaucracies

designed to keep individuals at risk from obtaining a visa. Indeed, difficulties in obtaining visas were noted as a significant problem facing surveyed TIRIs.¹¹⁰ Even once a visa is obtained, the fear of not having future access to visas (and, consequently, asylum) often prematurely forces a decision to seek asylum: ‘Some HRDs stressed that, due to the short duration of available temporary relocation programmes, they had been forced to apply for asylum.’¹¹¹ As Bhaba has pointed out, asylum systems can reveal the disconnect between public proclamations of support and actual protection:

[Asylum advocates] urge governments and courts to be translators of general human rights norms into the minutiae of administrative practice. They test, even expose, the boundaries of domestic insularity and hypocrisy by juxtaposing internationalist public pronouncements with exclusionary and parochial bureaucratic procedures: atrocities that are condemned when carried out at a safe distance suddenly become the subject of a test of the civility and willingness to enforce human rights obligations within the host state.¹¹²

In a similar way, TIRIs reveal a disconnect between human rights defenders at risk and initiatives to support them. If either in-country initiatives or the asylum provided by the international refugee regime were sufficient, then there would be no need for TIRIs.

Risk is both central to and contested within both regimes

Second, both regimes have at their core a concern about prospective risk – though the exact nature of the risk is disputed within both regimes. In practice, the term ‘human rights defender’ is deployed almost exclusively in situations where human rights defenders are at risk, contrary to the broader meaning of a defender implied in Article 1 of the declaration. This usage began during the negotiation of the declaration and continued with the work of the Special Rapporteur. The explicitly acknowledged context of the Special Rapporteur is that human rights defenders ‘are often subjected to threats, harassment, insecurity, arbitrary detention and extrajudicial executions’.¹¹³ In practice, the activities of the mandate holder have focused almost exclusively on the study of repressive trends and the situation of human rights defenders at risk.¹¹⁴ Similarly, at the heart of the definition of refugee is concern about the prospective risk of persecution faced by an individual, expressed by the well-worn phrase ‘well-founded fear of persecution’.

At first glance, TIRIs explicitly define themselves as providing protection to human rights defenders at risk. However, the exact definition of risk varies from initiative to initiative, and often includes the ‘risk’ produced by ‘working in an attritional environment’. While such a description of risk fits well with the Special Rapporteur’s advocacy for broadly construed ‘enabling environments’, it does not always sit easily with the more technical definition of risk embraced by the refugee regime. Conversely, the disproportionate attention within the human rights defender at risk regime to civil and political rights results in a much narrower conception of risk (and harm) than used by TIRIs.¹¹⁵ In both cases, TIRIs challenge the existing notions of risk: What level of risk merits international attention? Can suffering risk in itself be sufficient to merit international protection?

Contestation of who is and within and outside each regime

Third, and not unrelated to contestations about risk, both regimes have at their core a contested definition. The term ‘human rights defender’ is one that the international community has only with some vacillation embraced: the declaration formally goes by a longer title and neither uses the term ‘human rights defender’ nor mentions the ‘defence’ of human rights.¹¹⁶ While the term human rights defender was used repeatedly (and, seemingly

uncontroversially) during the lengthy negotiations of the text, it was not until the subsequent creation of the position of Special Representative on the Situation of Human Rights Defenders in 2000 that the international community formally embraced the term.¹¹⁷ The caveats issued before its proclamation by a group of states¹¹⁸ and ongoing debate about who should be excluded from the term¹¹⁹ reflect the continuing fight over who should be the beneficiaries of the regime.

Likewise, the definition of ‘refugee’ is highly contested, as evidenced by the volume of jurisprudence on its meaning and the complicated (and expensive) state and UNHCR apparatuses to determine refugee status. As Hathaway has noted, a great deal of effort during the first 50 years of the contemporary refugee regime was devoted to interpreting the meaning of ‘refugee’.¹²⁰ Unlike the declaration, the Refugee Convention contains a definition of ‘refugee’ – albeit one that has been further expanded by regional refugee instruments. While over the last decade there has been a remarkable transnational convergence in the interpretation of the definition, the application of the definition of refugee to individual cases remains highly contested.

Human rights defenders within TIRIs are unlikely to become victims of these ongoing debates. The selection for such schemes privileges certain categories of human rights defenders, notably writers-at-risk, journalists and scholars.¹²¹ Such individuals are at the uncontested centre of the emerging regime. Equally, their sponsorship by the TIRI (and possibly internationally connected nominating organisations) provides a level of support and credibility that distinguishes them from most asylum seekers. In this case, TIRIs, rather than revealing, actually obscure the definitional contestations of the intersecting regimes.

Translation of political sympathy into protection

Fourth, both regimes represent pragmatic attempts to translate political sympathy for a group of individuals into protection. The obvious *quid pro quo* of leveraging political sympathy for protection is that care must be taken to ensure that the group being protected is politically sympathetic. In the case of refugees, this meant, at the outset of the regime, restricting its core protections to refugees¹²² and excluding from its protection individuals who were ‘undeserving’ of protection.¹²³ More recently, proponents of the refugee regime have argued against the expansion of the UNHCR’s mandate and diluting the hard-gained advantage of the refugee regime by shifting its focus to the broader phenomenon of forced migration.¹²⁴ Often these concerns find their way in to the aforementioned debates about the scope of the definition of refugee.

Proponents of protection regimes face a tension between a humanitarian desire to protect more individuals at risk and a pragmatic reality that particular regimes of protection arise from political sympathies that can vacillate as the group being protected grows or changes in composition. The text of the Declaration on Human Rights Defenders already bears signs of this tension, particularly in relation to its frequent caveat that it embraces only those using ‘peaceful means’; its negotiating history similarly reveals a desire by some states to limit the advantages that could be leveraged for human rights defenders. While the Special Rapporteur has worked hard to expand the range of civil society actors benefiting from the regime, none of the new beneficiaries bring into question the political sympathy that provides the foundation of the regime.¹²⁵

The development of TIRIs followed a similar strategy to leverage political sympathy into protection, as evidenced by their origins as a response to Nazi violence against public intellectuals, professionals and academics. But this strategy exists in tension with the general lack of political sympathy for refugees. Early efforts allowed would-be refugees

to be defined instead by their professional identities: as scholars, journalists and writers. Similarly, the more recent expansion of TIRIs has attempted to leverage these (and other) professional identities and the broader sympathies that the public might have with the defenders of human rights abroad.¹²⁶ In the context of the European Union, the support for TIRIs leverages the ideological commitment of the member states (and the European Union itself) to human rights:

There is strong political commitment across the Member States for supporting HRDs. The EU institutions and various Member States in their foreign affairs policies (Finland and the Netherlands, for example) generally recognise the need to support individual HRDs as drivers of democratisation, rule of law and promotion of human rights in third countries.¹²⁷

A similar ideological commitment to human rights defenders at risk and TIRIs has been expressed by other (Western) states.¹²⁸ The difficulty with TIRIs emerges when it intersects with asylum: 'The political constraints in some Member States relate almost entirely to the issue of immigration.'¹²⁹ The previously noted stigma associated with asylum can undermine the support for human rights defenders within the TIRIs – and even support for the TIRIs themselves. While there are notable exceptions to this proposition, in many TIRIs there is concern that asylum seeking by human rights defenders might undermine the viability of the programme.

Ways forward

Human rights defenders at risk, like so many others at risk, do seek and have been granted protection as refugees. However, within the international refugee regime they are not identified as human rights defenders and neither does the emerging regime of protection for human rights defenders at risk provide sufficient, or even significant, support for accessing refugee protection. The argument of this article is that the community of human rights defenders at risk (and those concerned about their situation) and the emerging regime to protect them must more directly and openly engage with the international refugee regime. Equally, the international refugee regime stands to benefit from greater engagement with the emerging regime for human rights defenders at risk.

As the human rights defender at risk regime develops, any further formalisation should address its nexus with asylum. For example, any future international resolutions or instruments concerning human rights defenders should explicitly recognise the right of human rights defenders at risk to seek and to enjoy asylum. The formalisation of the human rights defender at risk regime may provide an opportunity, to the extent that human rights defenders at risk are seen as a politically expedient group, to progressively develop the right to access asylum, which has become a key issue within the international refugee regime.

There is very little information in the public domain about TIRIs; even the observations made in this article need to be more rigorously documented and examined. However, even from the little evidence available, visa regimes are a crucial determinant of which (and how) human rights defenders at risk can be sheltered within TIRIs. The possibility for longer term ('protection') visas for human rights defenders within TIRIs might remove the need for human rights defenders within such programmes to seek asylum. Having said that, TIRIs should also more formally and proactively address the need for refugee protection for some human rights defenders within their programmes of support. Support is often needed for the transition between participation in a TIRI and the more isolated existence of an asylum seeker or refugee.

Further engagement between human rights defenders at risk and the international refugee regime offers potential benefits not only for human rights defenders at risk themselves. In an era of political polemic about ‘bogus’ asylum seekers, greater engagement also provides a way to strengthen popular support for the international refugee regime. Since the end of the Cold War, the international refugee regime has lost some of its ideological power.¹³⁰ The provision of sanctuary to individuals fleeing because they champion human rights provides a potential new ideological currency to the refugee regime. Recent headlines from the Western media about the popular sympathy for Malala Yousafzai¹³¹ provide an example of a human rights defender whose sanctuary was actively celebrated by the popular media and public. In this sense, human rights defenders at risk, for better and worse, have the potential to become the anti-communists and fellow travellers of the twenty-first century.

The refugee regime should formally recognise the entitlement of human rights defenders at risk to international protection as refugees. The UNHCR regularly issues ‘guidelines on international protection’ that apply refugee law to particular populations or contentious issues. It would be a useful step for such a guideline to be issued assessing the qualification of human rights defenders at risk for refugee protection and addressing some of the issues around refugee protection identified in this article. Equally, states should pay particular attention to building a jurisprudence of refugee protection for human rights defenders at risk, for example by identifying and publishing refugee decisions that confirm the qualification of human rights defenders at risk per se for refugee protection.

The engagement of the refugee regime with human rights defenders at risk must extend to human rights defenders at risk within asylum procedures, where policies of dispersal, detention and isolation have a significant impact on the well-being of human rights defenders and where there is at best ambivalence – and often open hostility – to human rights defenders continuing their activism as asylum seekers. Within determination systems, the refugee regime must actively seek information about human rights defenders from other branches of government. In the United Kingdom, for example, it has been suggested that ‘there could perhaps be scope for a more systemic approach to information sharing between the UK Home Office and the Foreign Office, to take advantage of the latter’s knowledge of individual human rights activists, political and religious movements’.¹³² Once refugee status is recognised, the refugee regime needs to recognise its ‘exilic bias’. Policies need to be reconsidered and revised that prevent the continued engagement by human rights defenders in advocacy and, when safe, their return.

In closing, the refugee regime offers immediate and concrete benefits to human rights defenders at risk, even if engagement with the regime is not always unproblematic. In recent scholarship, the protection offered by the international refugee regime has been described in terms that seem tailor made for the protection of human rights defenders at risk:

Refugee law may be the world’s most powerful international human rights mechanism. Not only do millions of people invoke its protections every year in countries spanning the globe, but they do so on the basis of a self-actuating mechanism of international law that, quite literally, allows at-risk persons to vote with their feet.¹³³

While access to international protection as a refugee may be more fraught than this quotation suggests, it behooves those developing a new regime for human rights defenders at risk to pay greater attention to the possibilities offered by the refugee regime.

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Notes

1. Nelson Mandela, 'Address at the Conference of the Pan-African Freedom Movement of East and Central Africa' (Addis Ababa, 1962). Mandela's speech was his first international public statement and arguably his first as a refugee.
2. 'Report of the Special Rapporteur on Human Rights Defenders: Situation of Human Rights Defenders', UN Document Number A/69/259 (14 August 2014).
3. This range of current tactics can be mapped to the traditional taxonomy of tactics set out before the coining of the term 'human rights defender': Lauri Wiseberg, 'Protecting Human Rights Activists and NGOs: What More Can Be Done?', *Human Rights Quarterly* 13, no. 4 (1991): 525–44.
4. The use of the term 'remedy' to describe what is offered by the international refugee regime underscores the gap between the two regimes. The term has become a legal term of art in international human rights law, typically including access to justice; reparation for harm suffered; and, access to information (see for example, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN General Assembly Resolution Number 60/147 (16 December 2005)). In contrast, the refugee regime has historically used the term in a more pragmatic way: '[Refugee law] is the only international human rights remedy which can be engaged directly and immediately by at-risk persons themselves. Most important of all, it is a fundamentally practical remedy which can be reconciled to the most basic interests of states.' (James Hathaway, 'Why Refugee Law Still Matters', *Melbourne Journal of International Law* 8 (2007): 89 at 103. See also Justice A.M. North and Nehal Bhuta 'The Future of Protection – The Role of the Judge', *Georgetown Immigration Law Journal* 15 (2001): 479 at 486.
5. These initiatives have been known by a variety of names in the academic and policy literature, including 'protective fellowship schemes', 'sanctuary' initiatives, and programmes of 'international relocation'. The current term is chosen because it highlights the organised, time-limited and international movement of human rights defenders at risk.
6. Regime is understood as the explicit and implicit 'principles, norms, rules, and decision-making procedures around which actor expectations converge', Stephen D. Krasner, 'Structural Causes and Consequences: Regimes as Intervening Variables', in *International Regimes*, ed. Stephen D. Krasner (Ithaca, NY: Cornell University Press, 1983), 1. This approach is consistent with the definition adopted by Karen Bennett et al. in 'Critical Perspectives on the Security and Protection of Human Rights Defenders', *The International Journal of Human Rights* 19, no. 7 (2015): 883–895, (this issue).

7. The idea that these treaties are ‘human rights treaties’ is of recent origin. As Tom Clark and Francois Crepeau wrote in 1999, ‘[f]or too long, the [Refugee Convention] has been treated as a piece of international legislation that could only be interpreted according to its own internal logic and objectives in isolation from international human rights law’. ‘Mainstreaming Refugee Rights: The 1951 Refugee Convention and International Human Rights Law’, *Netherlands Quarterly of Human Rights* 17, no. 4 (1999): 389–410. For a more recent articulation of the Refugee Convention as being part of broader international human rights law see Vincent Chetail, ‘Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between Refugee Law and Human Rights Law’, in *Human Rights and Immigration*, ed. Ruth Rubio-Marín (Oxford: Oxford University Press, 2014); and Colin Harvey, ‘Time for Reform? Refugees, Asylum-seekers, and Protection Under International Human Rights Law’, *Refugee Survey Quarterly* 34, no. 1 (2015): 43–60.
8. 89 U.N.T.S. 150, entered into force 22 April 1954 [the ‘Refugee Convention’]
9. 606 U.N.T.S. 267, entered into force 4 October 1967 [the ‘Refugee Protocol’]. The Refugee Protocol effectively removed the temporal (pre-1951 refugees) and geographic (European only) limitations on the definition of refugee allowed under the Refugee Convention.
10. One hundred and forty seven states are party to either the Refugee Convention or the Refugee Protocol.
11. Gil Loescher, *The UNHCR and World Politics: A Perilous Path* (Oxford: Oxford University Press, 2001), 7.
12. Erika Feller, ‘Evolution of the International Refugee Protection Regime’, *Washington University Journal of Law and Policy* 5 (2001): 129; Katie Long, ‘In Search of Sanctuary: Border Closures, “Safe” Zones and Refugee Protection’, *Journal of Refugee Studies* 26, no. 3 (2013): 458–76.
13. UNOHCHR, ‘Human Rights Defenders: Protecting the Right to Defend Human Rights’ (Fact Sheet 29, n.d.), 2 (n. 2).
14. For an overview of the negotiation of the declaration see ‘Breaking the Walls of Silence: Issues at Stake in the Draft Declaration on Human Rights Defenders’ (Amnesty International, IOR 40/07/95, August 1995); and Michel Forst, ‘Background to the Declaration on Human Rights Defenders: Human Rights Defenders’ (Amnesty International, n.d.).
15. The UNDHR (and its 50th anniversary) were explicitly referenced in the UN General Assembly resolution that accompanied the Declaration on Human Rights Defenders and in a preambular paragraphs of the Declaration on Human Rights Defenders itself.
16. The negotiation of the declaration began with the formation of an open-ended working group to negotiate a text by the UN Human Rights Commission in 1984 (Resolution 116/1984 of 16 March 1984).
17. A similar argument could be made about the emerging regime of protection of international criminal law. See for example Markus Eikel, ‘Witness Protection Measures at the International Criminal Court: Legal Framework and Emerging Practice’, *Criminal Law Forum* 23, no. 1–3 (2012): 97–133.
18. For example, none of the ‘country information and guidance reports’ published in UK Visas and Immigration in 2014 (used by its officials to make decisions in asylum and human rights applications) identified ‘human rights defender’ as a discrete actor or category of risk.
19. The only determination of refugee status based explicitly on being a ‘human rights defender’ found in a search of reported decisions in Australia, Canada, the United Kingdom and the United States, was the decision of the Refugee Appeal Division of the Canadian Immigration and Refugee Board in *MB4-02097* [2014] CanLII 64251 (Maria De Andrade, 9 September 2014).
20. A notable exception is discussed in Katie McQuaid, ‘“We Raise Up the Voice of the Voiceless”: Voice, Rights and Resistance amongst Congolese Human Rights Defenders in Uganda’, *Refugee* (forthcoming). A historic reason for this is the very recent embrace of the language of rights by those within the refugee regime, whose actors have traditionally understood their endeavour as humanitarian in nature. Perhaps the relative novelty of the category of ‘human rights defender’ also reduces the likelihood that activists for refugees will self-identify as and rely in advocacy upon being human rights defenders. See Guglielmo Verdirame and Barbara Harrell-Bond, *Rights in Exile: Janus-Faced Humanitarianism* (Oxford: Berghahn, 2005); and Barbara Harrell-Bond, ‘Can Humanitarian Work with Refugees be Humane?’, *Human Rights Quarterly* 51 (2002): 51–85.

21. Lauri Wiseberg, 'Protecting Human Rights Activists and NGOs: What More Can Be Done?', *Human Rights Quarterly* 13, no. 4 (1991): 525–44.
22. Alice M. Nah, Karen Bennett, Danna Ingleton, and James Savage, 'A Research Agenda for the Protection of Human Rights Defenders', *Journal of Human Rights Practice* 5, no. 3 (2013): 401–20 at 402.
23. A good example of this is the first report of the current Special Rapporteur which highlighted the need for greater coordination and cooperation (as quoted in the second epigraph) but which focused in its concrete examples exclusively on '[s]trengthening cooperation with other [Human Rights Council] mandate holders'.
24. Nah et al., 'A Research Agenda for the Protection of Human Rights Defenders', 401. More generally see *Journal of Human Rights Practice* 5, no. 3 (2013). Notwithstanding its lack of mention in the publication, the report of the practitioner-academic workshop at which the papers were discussed lists the following question as part of its suggested research agenda: 'What is the effectiveness of protection mechanisms, instruments and methods such as ... refugee protection?' Centre for Applied Human Rights, *A Research Agenda on Human Rights Defenders at Risk* (3 February 2012), 4.
25. The exception to this proposition is the recent OSCE (Organization for Security and Co-operation in Europe) Guidelines on the Protection of Human Rights Defenders (Warsaw: OSCE, 2014), which repeatedly mentions the particular risks facing human rights defenders who are refugees or who work on refugee issues.
26. The analysis in this section owes a great debt to the analysis within the recently impressively updated edition of James Hathaway's very influential *Law of Refugee Status* (Toronto: Butterworths, 1991); James Hathaway and Michelle Foster, *The Law of Refugee Status*, 2nd ed. (Cambridge: Cambridge University Press, 2014).
27. It is beyond the scope of this article to conduct a systematic analysis, especially given that notwithstanding the convergence of interpretations of the term refugee there remain interpretative *lacuna* that complicate the analysis. However, the *prima facie* analysis conducted here can both suggest a provisional conclusion as well as highlight areas for future, more detailed, analysis.
28. While the Statute of the UNHCR defines 'refugee' using slightly different terms, state and UNHCR practice is to treat differences as historical anomalies and to interpret the earlier definition of refugee in the Statute as identical to the definition in the Refugee Convention. Regional refugee instruments have also expanded the core definition of refugee. The beneficiaries of these 'expanded definitions' vary from region to region and the requirements of these new definitions are generally seen as more lenient than those found in the Refugee Convention.
29. The definition of refugee also applies to stateless persons. In the case of stateless persons, the country of reference is her 'country of former habitual residence' and there is no requirement to establish that the state is unable or unwilling to offer protection (the fourth element of the definition outlined).
30. Hathaway and Foster, *The Law of Refugee Status*, 74. See also UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, UN Doc. HCR/IP/4/Eng/REV.1 (1992), at ¶ 94 et seq; *Minister for Immigration and Citizenship v. SZJGV* (2009) 238 CLR 642 (Australian High Court, 30 September 2009); *Win Win v. Canada (Minister for Citizenship and Immigration)* [2008] FC 398 (Canadian Federal Court, 28 March 2008).
31. The government of the United Kingdom famously stationed immigration officers at the airport in Prague to prevent Czech nationals of Roma descent from boarding flights to the United Kingdom. See *Regina v. Immigration Officer at Prague Airport and Another, Ex parte European Roma Rights Centre and Others*, [2004] UKHL 55 (United Kingdom House of Lords, 9 December 2004). For further information about the broader trend towards restricting access to asylum (including its relationship to the securitisation of borders), see Idil Atak and François Crépeau, 'The Securitization of Asylum and Human Rights in Canada and the European Union', in *Contemporary Issues in Refugee Law*, ed. Satvinder Singh Juss and Colin Harvey (London: Elgar Publishing, 2013): 227–257.
32. The jurisprudence and scholarship has generally rejected attempts to link the two components (for example, to allow a lower level of risk to suffice when the gravity of the feared persecution is greater): 'We were referred to no authority nor any writing on the subject which indicates that the gravity of the risk is to be considered in the balance when determining whether the

- asylum seeker has a well-founded fear of persecution', *Puerta v. Minister for Immigration and Multicultural Affairs* [2001] FCA 309 (Australian Full Federal Court, 29 March 2001), at ¶ 11.
33. The traditional refugee law analysis bifurcates the 'well-founded fear' element into a subjective and objective component. The current analysis foregoes, for reasons of length and simplicity, explicit attention to 'subjective fear' (which examines the state of mind of the refugee) and incorporates relevant issues that arise in the context of human rights defenders at risk into its discussion of the practical issues in the proof of the two noted elements (risk and persecution) of the objective fear. However, this approach is also consistent with recent scholarship which takes issue with the bifurcation of fear, see for example Bridgette A. Carr, 'We Don't Need To See Them Cry: Eliminating the Subjective Apprehension Element of the Well-Founded Fear Analysis for Child Refugee Applicants', *Pepperdine Law Review* 33, no. 3 (2006): 535–74; and James Hathaway and W.S. Hicks, 'Is there a Subjective Element in the Refugee Convention's Requirement of "Well-founded Fear"?', *Michigan Journal of International Law* 26 (2005): 505.
 34. *Chan Yee Kin v. Minister for Immigration and Ethnic Affairs* 169 CLR 232 (Australian High Court, 9 December 1989).
 35. *Chan v. Canada* [1995] 3 SCR 593 (Canadian Supreme Court, 1995).
 36. *R v. Secretary of State for the Home Department, Ex parte Sivakumaran* [1988] AC 958 (UK House of Lords, 16 December 1987).
 37. The formulation of risk in statistical terms has been decried as overly mechanistic. However, the 10% bar does provide a useful reminder that the level of risk required is well below a balance of probabilities. See *INS v. Cardoza-Fonseca*, (1987) 480 U.S. 421 at 440 (US Supreme Court, 9 March 1987, opinion of Justice Stevens); and *Abebe v. Attorney General* (2005) 432 F.3d 1037 (US Court of Appeal, 9th Circuit, 30 December 2005), at 1042.
 38. In the absence of a significant and durable change in material circumstances, there will be a 'presumption' that individuated past persecution will be repeated in the future. Whether this presumption should be treated as factual or legal is much debated, see *Fenandopulle v. Minister of Citizenship and Immigration*, [2005] FCA 91 (Canadian Federal Court of Appeal, 8 March 2005).
 39. In this respect, the human rights documentation produced by the Special Rapporteur can be very useful to document the situation of human rights defenders, including his or her reports concerning communications, general thematic reports and reports on country visits. The contributions of human rights defenders to the UN Human Rights Council's universal periodic review may also provide evidence of the situation facing human rights defenders.
 40. This phrasing was adopted in the legislation setting out the European Union's common European asylum system; it is shared by UNHCR and most common-law jurisdictions. Article 9 of Council Directive 2004/83/EC of 29 April 2004: On minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, *Official Journal of the European Union* L 304/12 (30 September 2004).
 41. Even those rights articulated in the Declaration on Human Rights Defenders are generally also articulated in an international instrument or in customary international law. The declaration only articulates a small number of 'new' rights (not articulated elsewhere) which are contestable due to the non-binding nature of the declaration.
 42. All of these rights are protected in the Declaration on Human Rights Defenders and guaranteed by international human rights treaty and customary law.
 43. None of these rights are protected in the Declaration on Human Rights Defenders though they are guaranteed by international human rights treaty and customary law.
 44. A well-founded fear of persecution must be for reasons of one of the five enumerated grounds. For further discussion, see the next section.
 45. Refugee law does not distinguish between civil and political rights and social and economic rights: 'breaches of [socio-economic rights] may, in principle, be relied on to found a refugee claim as rights in themselves', in *BG (Fiji)*, [2012] NZIPT 800091 (New Zealand Immigration and Protection Tribunal, 20 January 2012), at ¶ 90.
 46. The OECD's Multilateral Convention on Mutual Administrative Assistance in Tax Matters (as amended by its Protocol) requires signatories to cooperate with respect to tax collection. The United Nations Convention against Transnational Organized Crime similarly requires states to

take action against money laundering. Human rights law itself requires states to act against actions ‘aimed at the destruction of any of the rights and freedoms’.

47. UNHCR, *Handbook*, ¶ 56.
48. The UN Human Rights Council has called upon states ‘[t]o ensure that reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy’ ‘Protecting Human Rights Defenders’ A/HRC/RES/22/6 (12 April 2013), at ¶ 9(a).
49. The UNHCR, *Handbook*, ¶ 58 states: ‘there may be cases in which a person, besides fearing prosecution or punishment for a common law crime, may also have “well founded fear of persecution”’. For a discussion of whether such individuals may be excluded from protection see § 3.1.5.
50. The nature of the causal link is frequently unexamined and inconsistently articulated in the jurisprudence. See Michelle Foster, ‘Causation in Context: Interpreting the Nexus Clause in the Refugee Convention’, *Michigan Journal of International Law*, 23, no. 2 (2001): 265–340. See § 3.1.4 for a discussion of the failure of state protection.
51. The drafters of the Refugee Convention identified as ‘political’ refugees a range of persons, all of whom would qualify as human rights defenders explicitly working on and facing threats to civil and political rights: those fleeing from revolution, diplomats thrown out of office and members of an outlawed political party. UN Doc. E/AC.7/SR.172 (12 August 1950), at 18–23; and UN Doc. E/AC.7/SR.173 (12 August 1950), at 5, quoted in Hathaway and Foster, *The Law of Refugee Status*, 405.
52. *Canada (Attorney General) v. Ward*, [1993] 2 S.C.R. 689 (Canadian Supreme Court, 1993), at 746. See also *RT (Zimbabwe) & Ors v. Secretary of State for the Home Department* [2012] UKSC 38 (United Kingdom Supreme Court, 25 July 2012).
53. *Canada (Attorney General) v. Ward* at 739
54. *Interpretation of the Convention Refugee Definition in the Case Law* (Legal Services Unit of the Immigration and Refugee Board of Canada, Toronto, December 2010), at § 4.7.
55. *Canada (Attorney General) v. Ward*, at 692.
56. *Kadenko v. Canada (Solicitor General)* (1996), 1996 CanLII 3981 (Canadian Federal Court of Appeal, 15 October 1996).
57. *Carillo v. Canada (Minister of Citizenship and Immigration)* [2004] FC 944 (Canadian Federal Court, 30 June 2004). The requirement to have exhausted local avenues of protection bears a superficial resemblance to the requirement for many international human rights bodies that an individual have exhausted domestic remedies. However, the analogy is a false one in so far as a refugee will have no ongoing ability to remedy this defect and the focus of the inquiry in determining refugee status is future (not past) persecution.
58. *A. v. Minister for Immigration and Multicultural Affairs* (1999) 53 ALD 545 (Australian Full Federal Court, 23 February 1999). For a fuller rebuttal of the presumption of state protection see Hathaway and Foster, *The Law of Refugee Status*, 519 et seq.
59. *Arboleda v. US Attorney General* (2006) 434 F3d 1220 (United States Court of Appeals 11th circuit, 3 January 2006).
60. *Januzi v. Secretary of State for the Home Department* [2006] UKHL 5 (United Kingdom House of Lords, 15 February 2006).
61. The Special Rapporteur has identified the particular vulnerability of human rights defenders working in rural areas in many states.
62. For the difficulties of establishing a national protective mechanism in a federal state see Daniel Joloy, ‘Mexico’s National Protection Mechanism for Human Rights Defenders: Challenges and Good Practices’, *Journal of Human Rights Practice* 5, no. 3 (2013): 489–99.
63. *National Coalition for Gay and Lesbian Equality and Another v. Minister of Justice and Others*, (1998) 12 BCLR 1517 (South African Constitutional Court, 9 October 1998), at ¶ 130, quoted in UNHCR, *Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity* (21 November 2008), at ¶ 26.
64. Regional human rights treaties have expanded Article 1(F)(c) to include individuals who act contrary to the purposes and principles of regional organisations. See for example Article 1 (5) of the Convention Governing the Specific Aspects of Refugee Problems in Africa.
65. Article 12 of the Declaration on Human Rights Defenders. The UN Office of the High Commissioner for Human Rights has issued guidance that ‘the actions taken by human rights defenders must be peaceful in order to comply with the Declaration on human rights defenders’.

Fact Sheet 29: Human Rights Defenders: Protecting the Right to Defend Human Rights (UN OHCHR, Geneva, April 2004), 10.

66. Article 19 of the Declaration on Human Rights Defenders.
67. So-called 'refugee soldiers' are generally excluded from refugee protection on the basis of its civilian character and their status as armed combatants under international humanitarian law.
68. There is nothing in the definition of refugee (or subsequent international practice) that excludes former members of a legitimate military force who have renounced their military activities and whose activities (individually and collectively) are within the bounds of international humanitarian law. UNHCR, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum* (UNHCR, September 2006), at 32 and 33.
69. *Zoeger La Hoz, Carmen Maria v. M.C.I. and Contreras Magan, Miguel Luis v. M.C.I.* Federal [2005] FC 762 (Canadian Federal Court, 30 May 2005).
70. *Immigration and Naturalization Service v. Aguirre-Aguirre* 526 U.S. 415 (United States Supreme Court, 3 May 1999).
71. *Gil v. Canada (Minister of Employment and Immigration)*, [1995] 1 FCR 508 (Canadian Federal Court of Appeal, 21 October 1994).
72. Article 3 of the Convention Against Torture and Other Forms of Cruel, Inhuman and Degrading Treatment or Punishment offers a narrower (but unconditional) protection against *refoulement* to torture.
73. Expulsion is forced removal to a country where a refugee would not face persecution. The prohibition on expulsion of Article 32 is limited to refugees lawfully in a state's territory and is subject to several limitations.
74. While the International Covenant on Economic, Social and Cultural Rights famously articulates the 'right to work' (Article 6), this right is significantly qualified by the provisions of Article 2(1) and (3): the recognition that rights can be 'progressively realized' and that states of the Global South may refuse to extend the right to work to non-nationals (including refugees).
75. Refugees often find themselves without access to the ordinary bureaucracies of a state by virtue of their lack of (or holding of unrecognised) civil status, travel and identity documents. The Refugee Convention provides access to necessary documentation and administrative assistance in Articles 25, 27 and 28.
76. As articulated by Hathaway, the architecture of the Refugee Convention seeks to provide a growing set of rights to refugees as they 'attach' themselves (seek to integrate into) new communities of asylum. Hathaway, *The Rights of Refugees under International Law*, 156 et seq.
77. There is no 'right' to resettlement within the refugee regime and only a fraction (less than 1%) of the global population of refugees are resettled. Resettlement typically takes place from the Global South to the Global North and is both a form of 'responsibility sharing' and a mechanism to address the needs of particularly vulnerable refugees.
78. Family reunification is not mentioned in the Refugee Convention but it was articulated as a closing (consensus) recommendation of the conference that drafted the treaty, has been since articulated in a number of resolutions of the UNHCR's Executive Committee, and has been adopted as policy by many states of asylum.
79. Almost all of the four dozen states that are not party to the Refugee Convention are located in a nearly continuous geographic swath from Lebanon through to Indonesia that includes most of the Middle East, all of the states of the Gulf of Arabia, all of the states of South Asia and most of the states of South East Asia.
80. Jaya Ramji-Nogales, Andrew I. Schoenholtz, and Philip G. Schrag, *Refugee Roulette Disparities in Asylum Adjudication and Proposals for Reform* (New York: NYU Press, 2011); Sean Rehaag, 'Judicial Review of Refugee Determinations: The Luck of the Draw?', *Queen's Law Journal* 38, no. 1 (2012): 1–58.
81. B.S. Chimni, 'New Issues in Refugee Research Working Paper No. 2: From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems' (Geneva: UNHCR, May 1999).
82. Article 1(C)(4) of the Refugee Convention.
83. For example, many states issue travel documents under the Refugee Convention that preclude travel to a refugee's country of origin.
84. GHK Consultants, *Mapping of Temporary Shelter Initiatives for Human Rights Defenders in Danger In and Outside the EU Report for Workshop on the Establishment of an EU Temporary Relocation Programme for Human Rights Defenders At Risk* (Brussels, 16 February 2012), 20.

85. Refugee Council, 'Between a Rock and a Hard Place: The Dilemma Facing Refused Asylum Seekers' (Refugee Council, December 2012), 11; GHK Consultants, *Mapping of Temporary Shelter Initiatives for Human Rights Defenders*, 20 and 27.
86. This is based upon conversations with human rights defenders at risk who sought asylum after being part of the TIRI of the Centre for Applied Human Rights.
87. GHK Consultants, *Mapping of Temporary Shelter Initiatives for Human Rights Defenders*, Annexes 4 and 5.
88. This is a result of the inability of the temporary relocation abroad to sufficiently mitigate risk; very few of these programmes have been explicitly designed to provide a route for human rights defenders to access asylum.
89. For more information on the history of the council see <http://www.cara1933.org/history.asp> (accessed 18 May 2015).
90. In addition to CARA, the Scholar Rescue Fund dates back to 1919 and has provided temporary international protection to more than 400 scholars from more than 40 states. PEN International has a similarly lengthy history (it was founded in 1921) and has been supporting writers needing international protection since 1934 and the founding of its German-speaking Writers Abroad centre in London.
91. GHK Consultants, *Mapping of Temporary Shelter Initiatives for Human Rights Defenders*, 10.
92. *Ibid.*, 20.
93. Annexes 4 and 5 of the GHK Consultants report list more than two dozen such programmes of (largely) financial support.
94. Established regional TIRIs include programmes managed by the Euro-Mediterranean Human Rights Network and the Cairo Institute for Human Rights Studies (CIHR) (in the Middle East and North Africa); East and Horn of Africa Human Rights Defender Programme (EHAHRDP) (in East Africa); Southern Africa Human Rights Defender Trust (in Southern Africa); Sonomos Defensores Programme and a new programme managed by the Consorcio Desarrollo y Justicia (in Latin America); and Forum Asia (in Asia).
95. GHK Consultants, *Mapping of Temporary Shelter Initiatives for Human Rights Defenders*, 57.
96. *Ibid.*, 38.
97. The length of the temporary international relocation offered may vary considerably within this estimate. It has been estimated that there are 'no more than a few dozen long-term [longer than six months] placements' (see Borislav Petranov, *Keeping Defenders Safe: A Call to Donor Action* (New York: International Human Rights Funders Group, 2014), n. 113).
98. *Ibid.*, 35.
99. A notable example of such a practice is the access to refugee status provided by the 11 member cities of ICORN located in Norway. The aforementioned human rights defenders at risk relocated to Europe from Iran were also brought under the explicit understanding that they would seek (and be granted) asylum. GHK Consultants, *Mapping of Temporary Shelter Initiatives for Human Rights Defenders*, 18.
100. The theories of change for TIRIs have been under-articulated and under-explored; often they are presented simply as humanitarian initiatives responding to immediate threats.
101. GHK Consultants, *Mapping of Temporary Shelter Initiatives for Human Rights Defenders*, 10.
102. *Ibid.*, 19.
103. *Ibid.*, 19 et seq.
104. GHK Consultants, *Mapping of Temporary Shelter Initiatives for Human Rights Defenders* (at 19) suggest a correlation between length of sojourn and likelihood of seeking asylum but this link is confounded by other intervening variables (e.g. those TIRIs that provide a longer sojourn generally are designed for human rights defenders at higher risk).
105. The international refugee regime developed from the 'minorities treaties' that were made a condition of membership in the League of Nations for the successor states of the Austro-Hungarian and Ottoman Empires. See James Hathaway, *The Rights of Refugees under International Law* (Cambridge: Cambridge University Press, 2005), 81 et seq.
106. Lord Hope of Craighead in *Horvath v. Secretary of State for the Home Department*, ex. parte [2000] UKHL 37 (6 July 2000) referring to comments by Lord Keith of Kinkel in *Reg. v. Secretary of State for the Home Department*, Ex parte Sivakumaran [1988] A.C. 958, 992H-993A.
107. A female pronoun is used throughout when referring to refugees or human rights defenders simply for reasons of stylistic simplicity.

108. Article 1(A)(2) of the Refugee Convention.
109. GHK Consultants, *Mapping of Temporary Shelter Initiatives for Human Rights Defenders*, 1.
110. *Ibid.*, 18.
111. *Ibid.*, 20.
112. Jacqueline Bhabha, 'Internationalist Gatekeepers?: The Tension Between Asylum Advocacy and Human Rights', *Harvard Human Rights Journal* 15 (2002): 155–82 at 158.
113. Resolution of the UN Commission on Human Rights 2000/61 (at the fourth preambular paragraph).
114. In 2008, the mandate of the (new) Special Rapporteur was amended to include, *inter alia*, the 'study ... [of] trends, developments and challenges' facing human rights defenders. The Special Rapporteur has in recent years produced reports on various trends threatening human rights defenders and the current Special Rapporteur has indicated a desire to pay particular attention to the 'most exposed group' of human rights defenders. 'Situation of Human Rights Defenders', UN General Assembly A/69/259 (5 August 2014), at ¶ 48–54.
115. While previous Special Rapporteurs have tried to bring new groups of human rights defenders within the regime, they have generally done so by highlighting the civil and political rights violations of these groups (e.g. the extra-judicial execution of land and environmental activists).
116. The declaration repeatedly refers to individuals who are active in the 'promotion and protection' of human rights. The only use of the term 'defence' is in relation to the right to a legal remedy in Article 9(3)(c) wherein individuals may 'provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms'.
117. Although the resolution is entitled 'Human Rights Defenders' only one of the three specific tasks assigned to the Special Representative makes explicit reference to 'human rights defenders' (see ¶3 of UN Commission on Human Rights Resolution 61 of 2000 on 26 April 2000). The position of the Special Representative was subsequently replaced by a Special Rapporteur (with Resolution 7/8 of 27 March 2008 the UN Human Rights Council).
118. Letter dated 18 November 1998 from the Permanent Representative of Egypt to the United Nations addressed to the President of the General Assembly, UN General Assembly document A/53/679 (18 November 1998) (a letter setting out a restrictive reading of the declaration by Egypt and 25 other states).
119. See the article by Eguren Fernández and Patel in this issue: Luis Enrique Eguren Fernández and Champa Patel, 'Towards Developing a Critical and Ethical Approach for Better Recognising and Protecting Human Rights Defenders', *The International Journal of Human Rights* 19, no. 7 (2015): 896–907.
120. Hathaway, *The Rights of Refugees under International Law*, 1.
121. GHK Consultants, *Mapping of Temporary Shelter Initiatives for Human Rights Defenders*, 1.
122. Initial efforts to draft a treaty that protected the stateless as well as refugees were abandoned in part because of the social stigma of the former in post-World War II Europe.
123. For a discussion of those historically seen as undeserving (and excluded from protection under Article 1(F) of the Refugee Convention see § 3.1.5 below). A current example includes proposals in the United Kingdom to tighten asylum rules to exclude 'extremists'. 'New laws to target radicalization', *BBC News*, 13 May 2015, <http://www.bbc.co.uk/news/uk-politics-32714802> (accessed 15 May 2015).
124. James C. Hathaway, 'Forced Migration Studies: Could We Agree Just to "Date"?' *Journal of Refugee Studies* 20, no. 3 (2007): 20.
125. The Special Rapporteur has suggested that various groups of activists should be more explicitly embraced by the regime (and that it should be more sensitive to their particular needs), including women human rights defenders; those working on socio-economic issues; those working on indigenous issues; development actors; and those working in rural communities.
126. The term 'human rights defender' itself can be seen (and has been critiqued) as a 'professional' label and in keeping with the broader trend towards the professionalisation of human rights practice.
127. GHK Consultants, *Mapping of Temporary Shelter Initiatives for Human Rights Defenders*, 24.
128. The US Department of State has also signalled its commitment to human rights defenders at risk at TIRIs through such programmes as 'Defend the Defenders' and its 'Embattled NGO (Assistance) Fund'. Petranov, *Keeping Defenders Safe*, 31.

129. GHK Consultants, *Mapping of Temporary Shelter Initiatives for Human Rights Defenders*, 24.
130. Loescher, *The UNHCR and World Politics*, 6.
131. Malala Yousafzai was a child human rights defender from Pakistan who suffered an assassination attempt as a result of her high-profile public campaigning for access to education for girls. She and her family have been provided with medical care and refuge in the United Kingdom. In 2014, she was awarded the Nobel Peace Prize. Her situation also highlights the difficulties faced by human rights defenders who have sought asylum; attitudes to her in Pakistan are more hostile, where she has been described in the media as 'the good native ... the perfect candidate for the white man to relieve his burden and save the native'. Hamida Ghafour, 'Malala Yousafzai: Backlash against Pakistani Teen Activist Spreads in Her Homeland' *The Toronto Star*, 19 June 2013, http://www.thestar.com/news/world/2013/07/19/malala_yousafzai_backlash_against_pakistani_teen_activist_spreads_in_her_homeland.html (accessed 9 May 2015).
132. Adam Hug, 'Introduction: Shelter from the Storm?', in *Shelter from the Storm? The Asylum, Refuge and Extradition Situation Facing Activists From the Former Soviet Union in the CIS and Europe*, ed. Adam Hug (London: Foreign Policy Centre, April 2014), 8.
133. Hathaway and Foster, *The Law of Refugee Status*, 1.