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PROTECTION IN CRISIS

FORCED MIGRATION AND PROTECTION IN A GLOBAL ERA

By Roger Zetter

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Executive Summary

The definition of refugee status set out in the 1951 Geneva Convention Relating to the Status of Refugees is clear: to be recognized legally as a refugee, an individual must be fleeing persecution on the basis of religion, race, political opinion, nationality, or membership in a particular social group, and must be outside the country of nationality. In practice, however, the contemporary drivers of forced migration are complex and multicausal, rendering protection predicated on persecution increasingly problematic and challenging to implement. In particular, the blurring of the lines between voluntary and forced migration, as seen in “mixed” migration flows, together with the expansion of irregular migration, have contributed to an increasing range of “protection gaps” and to the diminution of “protection space.” Forced migrants who fall outside the recognized refugee and asylum apparatus—and even many of those who qualify—face mounting risks.

Beyond traditionally defined persecution, much displacement today is driven by a combination of intrastate conflict, poor governance and political instability, environmental change, and resource scarcity. Together, such conditions leave individuals highly vulnerable to danger and uncertain of the future, compelling them to leave their homes in search of greater security. While most of the displaced—as many as 95 percent—will remain in their country of origin or in the immediate neighborhood, forced migrants are increasingly relying on wider patterns of mobility, both on the regional and global scale, to ensure their access to livelihoods and safety.

Forced migrants who fall outside the recognized refugee and asylum apparatus—and even many of those who qualify—face mounting risks.

Greater mobility—in conjunction with the complexity of modern drivers of displacement and the predominance of protracted crises—creates particular challenges for the governments and agencies responsible for providing protection, and can give rise to new types of vulnerability. These needs generally emerge along a number of different “displacement geographies:”

- **Within affected countries.** Individuals at risk in conflict situations may adopt self-protection strategies, such as hiding political opinions or beliefs, or they may move back and forth between home and a nearby location—in a process known as microscale displacement. (Similar adaptations may be made in cases of slow-onset displacement, as when induced by climate change.) However, these strategies can leave populations vulnerable to conflict and can make aid difficult to deliver.
- **Across borders.** To avoid longer-term displacement—an option of last resort for most—many individuals choose to employ circular mobility strategies that involve neighboring countries, or regions within their own country. Circular mobility enables forced migrants to keep open the prospect of return while still accessing physical or livelihood security elsewhere, but comes with its own challenges (e.g., lack of a legal framework for protection).
- **In cities.** As displacement becomes increasingly protracted, many refugees look to cities for economic opportunities that are restricted or unavailable in camp settings. While urban locations may offer access to services or employment, many urban refugees lack legal status, leaving them vulnerable to detention, eviction, or even *refoulement*,¹ among other risks.

¹ *Refoulement* is the return of persons who have the right to be recognized as refugees to their country of origin or other country where they may be subject to persecution.



- ***In transit and at destination.*** Where opportunities for return or full integration in the local region are scarce, forced migrants in protracted situations may further employ mobility as a solution by seeking entry (often through clandestine means) into northern, postindustrial countries where they can file asylum claims. The forced migrants making these journeys are, for the most part, not covered under existing legal frameworks, and are exposed to considerable risk.

Although the challenges observed in these emerging displacement geographies have placed significant strain on the protection system, responses and adaptations by governments and humanitarian actors have so far been limited. Asylum countries have developed a number of ad hoc legal statuses to deal with nontraditional protection needs (from “subsidiary protection” in the European Union to “temporary protected status” in the United States), but these do not necessarily address protection gaps for refugees seeking safety in the region or mitigate the risks inherent in their movement. The European Union has taken some steps toward addressing such gaps through its regional protection programs (and Regional Development and Protection Programmes), with limited effects to date. At the international level, concepts such as the “responsibility to protect” have been proposed to create an overarching normative approach to protection but without much success.

The fundamental challenge facing the global protection system—the disjuncture between contemporary patterns and processes of forced displacement and the current legal and normative frameworks to protect the displaced—so far remains unaddressed. Governments and humanitarian actors will need to undertake more fundamental reforms of the system to meet the needs of modern crises:

- ***Develop a coherent protection policy.*** Amid the complexity of contemporary displacement processes, forced migration can no longer be conceived as a discrete process demarcated by refugee status; instead, it should be thought of as part of a migration continuum. Policies to address displacement are therefore best set in a wider strategic framework that encompasses elements of migration management, state development, and resettlement support—alongside traditional asylum.
- ***Shift emphasis from status to needs.*** Current approaches that rely on determining migrants’ status (e.g., as refugees or not) and access to protection are ill-equipped to meet complex, multifaceted needs. Policies that instead address specific vulnerabilities, irrespective of the status of individuals, may have a broader reach and impact.
- ***Provide consistent protection along the displacement continuum.*** Individuals are subject to different protection policies and standards depending on their geographic location (with those who manage to reach northern asylum destinations potentially being afforded “premium” asylum status). This creates incentives for further movement and places particular strain on certain parts of the system. Forced migrants would be better served by protection policies that aim to enable access to the same level of rights and opportunities regardless of location.
- ***Address the increased management and politicization of protection.*** In many contexts, the provision of protection has gradually come to be dominated by procedures and regulations that focus on management, reducing the normative power of protection as a principle and a right. The increasingly political context in which protection is debated has further reduced its supremacy as a policy goal. Together, these two developments will make any actions to address emerging needs and protection gaps more challenging for governments and policymakers.



I. Introduction

For most people facing violence, severe rights abuses, or other risks, being forced to leave their home is the “option” of last resort. People abandon their home environments, evacuate their places of habitual residence, and rupture their social networks and economic livelihoods only with great reluctance—and only when other strategies to remain have failed.² Furthermore, a combination of drivers most often lies at the core of such displacement rather than a unique cause-effect relationship.

The scale of forced migration is significant and at the highest level since World War II. More than 51 million people worldwide are forcibly displaced as refugees, asylum seekers, or internally displaced persons (IDPs).³ Approximately 95 percent of displacement occurs in the global south, and more than 50 percent of the displaced live in urban areas.⁴

Given the global scale of irregular migration, there are likely to be millions more forcibly displaced people who have not travelled through legal channels or registered their claim for protection with authorities. In 2012 there were an estimated 11.4 million unauthorized migrants in the United States.⁵ Estimates for the European Union in 2008 (then the EU-27) varied between 1.9 million and 3.8 million.⁶ As many as 400,000 unauthorized migrants per year are estimated to transit through Mexico, seeking access to the United States.⁷ In 2014, Frontex⁸ (the European border agency) intercepted more than 280,000⁹ people attempting to make what the agency defines as illegal border crossings into the European Union. Not all these unauthorized migrants have been forcibly displaced, of course, but a substantial and increasing proportion has.

Against this backdrop, the familiar label “refugee” seems both increasingly problematic, when confined to its definition in international law, and inadequate in scope to capture the complex, multivariate factors—beyond persecution (the distinguishing characteristic of refugee status under the 1951 Geneva Convention Relating to the Status of Refugees)—that propel displacement in the contemporary world.¹⁰ While various

- 2 See Marion Couldrey and Maurice Herson, eds., “Preventing Displacement,” *Forced Migration Review* 41 (Oxford, UK: Refugee Studies Centre, 2012), www.fmreview.org/preventing.
- 3 Internally displaced persons (IDPs) compose more than 65 percent of the total (33.3 million individuals). United Nations High Commissioner for Refugees (UNHCR), *Mid-Year Trends 2014* (Geneva: UNHCR, 2014), <http://www.unhcr.org/54aa91d89.html>.
- 4 UNHCR, *Mid-Year Trends 2013* (Geneva: UNHCR, 2013), www.unhcr.org/52af08d26.html; Sebastián Albuja et al., *Global Overview 2014: People Internally Displaced by Conflict and Violence* (Geneva: Internal Displacement Monitoring Centre, 2014), www.internal-displacement.org/publications/2014/global-overview-2014-people-internally-displaced-by-conflict-and-violence; and Internal Displacement Monitoring Centre (IDMC) and Norwegian Refugee Council, *Annual Report 2014: 2013 in Review* (Geneva and Oslo: IDMC and Norwegian Refugee Council, 2014), <http://reliefweb.int/sites/reliefweb.int/files/resources/201407-global-IDMC-annual-report-en.pdf>.
- 5 Bryan Baker and Nancy Rytina, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012* (Washington, DC: Department of Homeland Security, Office of Immigration Statistics, 2012), www.dhs.gov/sites/default/files/publications/ois_ill_pe_2012_2.pdf.
- 6 Anna Triandafyllidou, *Undocumented Migration: Counting the Uncountable—Data and Trends across Europe*, Clandestino Project final report (Brussels: European Commission, 2009), <http://cordis.europa.eu/documents/documentlibrary/126625701EN6.pdf>.
- 7 Amelia Frank-Vitale, “Central American Migrants in Mexico: Implications for U.S. Security and Immigration Policy” (CLALS Working Paper Series No. 2, Center for Latin American and Latino Studies, American University, Washington, DC, 2013), www.american.edu/clals/upload/CLALS-Working-Paper_CA-Migrants-in-Mexico.pdf.
- 8 Frontex is the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.
- 9 Frontex, “Migratory Routes Map,” accessed March 10, 2015, <http://frontex.europa.eu/trends-and-routes/migratory-routes-map>. The 2014 figure substantially exceeds the 107,000 detections of undocumented entry to Europe recorded by Frontex in 2013. Frontex, *Annual Risk Analysis 2014* (Warsaw: Frontex, 2014), http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2014.pdf.
- 10 Philip Marfleet, *Refugees in a Global Era* (Basingstoke, UK: Palgrave, 2006); Roger Zetter, “More Labels, Fewer Refugees: Making and Remaking the Refugee Label in an Era of Globalisation,” *Journal of Refugee Studies* 20, no. 2 (2007): 172–92, <http://jrs.oxfordjournals.org/content/20/2/172.full.pdf+html>.



terms have been used to define these differentiated yet often overlapping patterns and processes,¹¹ “forced migrants” best captures the wider category of people for whom there is neither a simple definition nor an official designation, as well as the wide-ranging dynamics that drive population displacement.

The expansion of irregular migration further complicates the picture, especially in the context of multicausal, “mixed” migration flows (i.e., flows that include both forced and voluntary migrants) and the often unpredictable scale, patterns, and processes of these population movements. Governments perceive large, unregulated flows—regardless of the reasons that have forced people to leave their countries of origin—as threatening to both the sovereignty of national borders and the established concepts of state membership and citizenship.

States, intergovernmental organizations, donors, and humanitarian actors are evincing growing concern over the multiple challenges the humanitarian community faces in ensuring protection.

Although the drivers of forced migration are varied, some level of force and compulsion is always present. Crucially, a substantial and increasing number of forced migrants fall outside the existing protection regime and the legal and normative framework that defines it—this is the problem at the core of this report.

Together, these dynamics pose many challenges to the concept and the practice of protection, placing the system under strain worldwide. Accordingly, states, intergovernmental organizations, donors, and humanitarian actors are evincing growing concern over the multiple challenges the humanitarian community faces in ensuring protection at the global, regional, and field level.¹² The now-familiar phrases

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- 11 These include the *migration crisis lens*: see International Organization for Migration (IOM), “Migration Crisis Operational Framework” (101st Session, International Organization for Migration, Geneva, November 2012), [www.iom.int/files/live/sites/iom/files/What-We-Do/docs/MC2355 - IOM_Migration_Crisis_Operational_Framework.pdf](http://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/MC2355_-_IOM_Migration_Crisis_Operational_Framework.pdf); the *asylum-migration nexus*: see Stephen Castles and Nicholas van Hear, *Developing DFID’s Policy Approach to Refugees and Internally Displaced Persons*, Report to the Conflict and Humanitarian Affairs Department (Oxford, UK: Refugee Studies Centre, 2005), www.compas.ox.ac.uk/publications/reports-and-other-publications/dfid-approach-to-refugees/; *crisis migration*: see Susan Martin, Sanjula Weerasinghe, and Abbie Taylor, eds., *Humanitarian Crises and Migration: Causes, Consequences, and Responses* (London: Routledge, 2014); and *survival migration*: see Alexander Betts, ed., *Survival Migration: Failed Governance and the Crisis of Displacement* (Ithaca, NY: Cornell University Press, 2013).
- 12 See, for example, Swiss Federal Department of Foreign Affairs (SFDFA), *Strategy on the Protection of Civilians in Armed Conflicts* (Bern: SFDFA, 2013), www.isn.ethz.ch/Digital-Library/Publications/Detail/?lng=en&id=176466; Inter-Agency Standing Committee (IASC), “The Protection of Human Rights in Humanitarian Crises” (joint background paper by the Office of the UN High Commissioner for Human Rights [OHCHR] and the United Nations High Commissioner for Refugees [UNHCR], IASC Principles, Geneva, May 8, 2013), §4, www.refworld.org/pdfid/537f08744.pdf. Evidence of this concern is available at: United Nations (UN), *The Report of the Secretary General’s Internal Review Panel on United Nations Action in Sri Lanka* (New York: United Nations, 2012), www.un.org/News/dh/infocus/Sri Lanka/The Internal Review Panel report on Sri Lanka.pdf; IASC, *Whole System Review of the Centrality of Protection in Humanitarian Action* (Geneva: IASC, 2014); IOM, “Migration Crisis Operational Framework,” UN, “Rights Up Front,” May 2014), www.un.org/sg/rightsupfront/doc/RuFAP-summary-General-Assembly.htm; Local to Global Protection (L2GP), “Local to Global Protection,” accessed December 1, 2014, www.local2global.info/; Roger Zetter, *Protecting Forced Migrants—A State of the Art Report of Concepts, Challenges, and Ways Forward* (Bern: Swiss Federal Commission on Migration, 2014), <http://reliefweb.int/report/world/protecting-forced-migrants-state-art-report-concepts-challenges-and-ways-forward>; UNHCR, “UNHCR Annual Dialogues on Protection Challenges, 2013,” accessed December 1, 2014, www.unhcr.org/pages/5214d99c6.html; IASC, “Inter-Agency Standing Committee Transformative Agenda,” accessed December 1, 2014, www.humanitarianinfo.org/iasc/pagelader.aspx?page=content-template-default&bd=87; post-2015 Draft Development Goals; World Humanitarian Summit, “World Humanitarian Summit 2015,” accessed December 1, 2014, www.worldhumanitarianissummit.org/.



“protection gaps” and shrinking “protection space”¹³ provide a shorthand reference to these challenges.

The aim of this report is threefold. First, it analyzes contemporary drivers and emerging trends of population displacement. Second, it lays out and assesses the key areas where the international protection system—and those countries hosting displaced populations—are currently most under pressure as a result of population displacement, and it assesses how these pressures may evolve in the foreseeable future. Third, it assesses the implications of these trends for policymakers and the protection obligations of national governments, and key international agencies such as the UN High Commissioner for Refugees (UNHCR) and

Box 1. Refugees, Internally Displaced Persons, and the Architecture of Protection

Defining who is a “refugee.” The international legal, normative, and policy framework for refugees was established with the adoption of the 1951 Convention Relating to the Status of Refugees. Under Article 1A (2) of the Convention, refugees are defined as persons with “a well-founded fear of being persecuted” who are unable or unwilling to avail themselves of protection in their country of origin, and are therefore eligible for protection in another country. Five specific grounds for persecution are given: race, religion, nationality, membership in a particular social group, or political opinion. Individuals recognized as refugees cannot be forcibly returned to their country of origin (known as the principle of *nonrefoulement*). While the original Convention was limited to persons fleeing persecution as a result of the Second World War, the 1967 Protocol removed the temporal and geographical constraints and made the Convention truly global. To date, there are 142 states party to both the Convention and Protocol, and a further five states party to either the Convention or the Protocol. Several regional instruments, covering Africa and Latin America, build on the definition and rights laid out by the Refugee Convention.

The United Nations High Commissioner for Refugees (UNHCR) is responsible for supervising the 1951 Refugee Convention and for providing international protection to refugees falling within its competence, and the pursuit of “durable solutions.” UNHCR also provides legal and policy guidance on refugee protection to governments, lawyers, legal aid providers, and operational agencies.

Protecting the internally displaced. Until 1998 people who were forcibly displaced within their own countries by conflict or natural disasters rarely had any specific means of protecting their rights in these situations (beyond the general provisions of national constitutions and generic human-rights legislation and norms). Recognition of this “protection gap” and the significant number of people in it prompted the UN General Assembly to adopt the 1998 Guiding Principles on Internal Displacement, which reinforce the principle that “national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.” However, the 1998 Guiding Principles remain limited in their impact, as states are neither required to adopt them nor are they binding once adopted. Moreover, in situations of conflict-related displacement, states themselves may be the perpetrators (e.g., Sudan, Myanmar) and thus unlikely to adhere to the principles (as are armed nonstate actors).

Source: UNHCR, *The Statute of UNHCR Adopted by the UN General Assembly through Resolution 428 (V) on 14 December 1950* (Geneva: UNHCR, 2010), www.unhcr.org/3b66c39e1.pdf; UN Economic and Social Council (ECOSOC), “Guiding Principles on Internal Displacement,” July 22, 1998, U.N. Doc. E/CN.4/1998/53/Add.2 (1998), www.refworld.org/protectionmanual.html.

13 “Protection space” and “protection gaps” are widely used to describe two crucial dimensions of the current protection regime, although the terms have no official meaning. “Protection space” is both a physical and metaphorical term describing the locations in which forced migrants are found—for example, increasingly in urban settings—as well as the evolving diversity of processes and humanitarian actors who provide protection to forced migrants. “Protection gaps” describe instances where existing international or national normative and legal protection instruments do not adequately cover specific situations or needs, or where protection capacity is limited as a result of the nonapplication or inconsistent application of existing standards and norms for the protection of refugees. See, for example, UNHCR, *Protection Gaps Framework for Analysis: Enhancing Protection of Refugees* (Geneva: UNHCR, 2006), www.refworld.org/docid/430328b04.html.



the International Committee of the Red Cross (ICRC).

II. Displacement and Protection: Drivers and Impacts

Despite the relatively narrow legal definition set out in the 1951 Refugee Convention and 1967 Protocol (see Box 1),¹⁴ in the decades since its adoption the term “refugee” has become a generic label for a wide spectrum of involuntarily displaced migrants, including many who are not, *prima facie*, subject to persecution and therefore protection under the terms of the 1951 Convention.¹⁵ Widespread conflict and violence, warlord economies (e.g., following recent conflicts in Liberia and Sierra Leone), separatist movements (South Sudan), and ethnic cleansing (Bosnia, Rwanda, and the Central African Republic) drive people out of their homes in ways that may or may not involve persecution, as defined by the Convention.¹⁶

Three factors in particular underlie much of the displacement seen today, although these drivers often interact and reinforce one another in complex ways:

- **Intrastate conflict**, almost without exception, now accounts for the majority of involuntary displacement, and armed nonstate actors (ANSAs) are increasingly the perpetrators of the indiscriminate and generalized violence that propels people to leave their homes (as seen, for example, in Colombia, the Democratic Republic of the Congo, Somalia, the Central African Republic, and Mali). Iraq and Syria provide the most dramatic contemporary examples of these dynamics—and of their violent, large-scale, and rapid displacement of people.¹⁷
- **Poor governance, political instability, and repression** often underlie these situations, leading to generalized violence that, in turn, puts pressure on people to move to seek security or protect their livelihoods and limit their exposure to risks.¹⁸ Consider the postelection violence in Kenya in 2007, when more than 600,000 people were internally displaced, or the Arab uprisings that have occurred, most notably in Libya, since 2010.
- **Environmental factors** such as water scarcity, food insecurity, drought, environmental degradation, famine, natural disasters, and climate change constitute increasingly important risks. Of themselves, they may not directly displace populations. Rather, they often combine with—and exacerbate—other factors, including poverty, poor governance, and livelihood

14 In the rest of this report, “1951 Refugee Convention” is used as shorthand for both the Convention and the Protocol, unless otherwise stated.

15 Zetter, “More Labels, Fewer Refugees.”

16 See, for example, UNHCR’s position on displaced persons from Syria of October 2013, arguing that the vast majority of those fleeing the conflict fall within the refugee definition: UNHCR, *International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic, Update II* (Geneva: UNHCR, 2013), www.refworld.org/docid/5265184f4.html.

17 See, for example, Héloïse Ruaudel, *Armed Non-State Actors and Displacement in Armed Conflict* (Geneva: Geneva Call, 2013), www.genevacall.org/wp-content/uploads/dlm_uploads/2013/12/Armed-non-State-actors-and-displacement-in-armed-conflict1.pdf.

18 International Federation of the Red Cross (IFRC), *World Disasters Report 2012: Focus on Forced Migration and Displacement*, ed. Roger Zetter (Geneva: IFRC, 2012), 19–25, www.ifrcmedia.org/assets/pages/wdr2012/resources/1216800-WDR-2012-EN-FULL.pdf.



vulnerability.¹⁹ In contrast to rapid-onset drivers such as violence and conflict, environmental factors often manifest in ways²⁰ that are harder to detect, with consequences more difficult to discern.²¹ Yet, the actual and likely future impacts of population displacement pose substantial challenges to legal and normative protection frameworks.²²

The ongoing crisis in Somalia shows what happens when these factors combine. More than two decades of protracted clan conflict and governance failure rendered food insecurity and livelihoods fragile and no longer sustainable. Then the 2011 drought was the tipping point for another episode of large-scale population displacement.²³ Environmental pressures and, to date, low-level political disputes continue to increase competition for grazing land among pastoral and nomadic communities in the Horn of Africa—competition that may precipitate further large-scale displacement.

Where other risk factors are present, episodic conflict or generalized violence will, almost inevitably, precipitate involuntary migration or forced displacement, which may occur spontaneously and unpredictably from these multiple triggers. In sum, whatever the drivers of displacement, their convergence makes livelihoods—and life itself—extremely uncertain for those affected. Even if not manifestly forced out by overt violence, individuals, families, and communities will often feel compelled to leave their homes. Forced displacement follows upon governments' failure to protect people from human-rights violations, and, equally, forced migration is itself a major cause of subsequent failures in protection.

III. Geographies of Displacement and Paths to Protection

The majority of forcibly displaced people—perhaps as many as 95 percent—remain in their country of

- 19 "Livelihood vulnerability" is a term of art that describes the susceptibility of a population's livelihood to stress and risks induced by, for example, conflicts or natural disasters that render that population vulnerable. Vulnerability is most often assessed at the household level and includes risks to income, assets, and social well-being. See, for example, Terry Cannon, John Twigg, and Jenifer Rowell, *Social Vulnerability, Sustainable Livelihoods, and Disasters*, Report to Department for International Development (DFID) (London: DFID, Conflict and Humanitarian Disasters Department and Sustainable Livelihoods Office, undated), www.ipcc-wg2.gov/nj-lite/download.php?id=6377; Feinstein International Center, Tufts University, "Research Areas: Livelihoods, Vulnerability, and Resilience," accessed December 1, 2014, <http://fic.tufts.edu/research-area/livelihoods-vulnerability-and-resilience/>.
- 20 In the public mind, disasters occur suddenly, as the result of rapid-onset phenomena—for example, earthquakes, cyclones, hurricanes, and typhoons. Meanwhile, the effects of slow-onset disasters—e.g., climate change, environmental degradation, desertification, and drought—may take months and sometimes years to become evident. See, for example, UN Office for the Coordination of Humanitarian Affairs (OCHA), "OCHA and Slow-Onset Emergencies" (OCHA Occasional Policy Briefing Series No. 6, United Nations, New York, April 2011), http://reliefweb.int/sites/reliefweb.int/files/resources/report_36.pdf.
- 21 Etienne Piguet, Antoine Pecoud, and Paul de Guchteneire, eds., *Migration and Climate Change* (Paris: United Nations Educational, Scientific, and Cultural Organization [UNESCO], 2011), <http://onlinelibrary.wiley.com/doi/10.1111/j.1728-4457.2012.00539.x/abstract>; Roger Zetter, *Protecting Environmentally Displaced People: Developing the Capacity of Legal and Normative Frameworks*, Report commissioned by UNHCR and Governments of Switzerland and Norway (Oxford: Refugee Studies Centre, 2010), www.refworld.org/pdfid/4da579792.pdf; Jane McAdam, *Climate Change, Displacement, and International Law* (Oxford, UK: Oxford University Press, 2011), www.iom.int/jahia/webdav/shared/shared/mainsite/microsites/IDM/workshops/climate-change-2011/SessionIII-Paper-McAdam-Session.pdf; Roger Zetter and James Morrissey, "Environmental Displacement and the Challenge of Rights Protection," in *Humanitarian Crises and Migration: Causes, Consequences, and Responses*, eds. Susan Martin, Sanjula Weerasinghe, and Abbie Taylor (London: Routledge, 2014), chapter 9, 179–98; Roger Zetter and James Morrissey, "The Environment-Mobility Nexus: Reconceptualising the Links between Environmental Stress, Mobility, and Power," in *Oxford Handbook of Refugee and Forced Migration Studies*, eds. Elena Fiddian-Qasbiyeh, Gil Loescher, Nando Sigona, and Katy Long (Oxford, UK: Oxford University Press, 2014), 342–54.
- 22 There is great contention over estimates of how many will be displaced by climate change. The widely cited figure of 250 million displaced people by 2050, originally proposed by Norman Myers, is now considered to be an overestimate; Norman Myers, *Environmental Refugees: An Emergent Security Issue* (Vienna: Organization for Security and Cooperation in Europe, 2005), www.osce.org/eea/14851?download=true.
- 23 Anna Lindley, "Between a Protracted and a Crisis Situation: Policy Responses to Somali Refugees in Kenya," *Refugee Survey Quarterly* 30, no. 4 (2011): 14–49, <http://rsq.oxfordjournals.org/content/30/4/14.abstract>.



origin or in countries in the immediate neighborhood.²⁴ The heaviest stress on the protection regime—its norms, capacity, volume of demand, access to fair asylum procedures, quality of protection, as well as the rights of those needful of protection—thus remains close to the epicenters of mass displacement and not (despite the political rhetoric in Europe, the United States, and Australia, for example) in postindustrial countries.

Nevertheless, perhaps the most salient feature of contemporary patterns of displacement is that forced migrants are increasingly predisposed to wider patterns of mobility both on a regional and global scale (many of them through “mixed” migration flows). This has profound implications for those whose duty it is to provide protection, and on the norms and means of protection that are required. Further complicating matters, the majority of refugees and IDPs are now in protracted displacement situations, creating new protection needs that extend beyond imminent danger and *nonrefoulement*.²⁵

A common characteristic across the array of different displacement situations is the multidimensional, dynamic vulnerability that lies at the heart of protection needs. The displaced are vulnerable from, during, and after their forced displacement. How this “displacement vulnerability” interplays with protection may offer a more nuanced framing of the challenges.

Perhaps the most salient feature of contemporary patterns of displacement is that forced migrants are increasingly predisposed to wider patterns of mobility both on a regional and global scale.

Taking all these conditions into account, a more specific conceptualization of the nexus of the causes, patterns, and processes of displacement and the need for protection helps to elucidate the scope of the challenges. One way to frame such challenges is to examine distinct “geographies of displacement” and the protection needs that they present: in other words, the various spaces where forced migrants are exposed to risk, and where they search for or are in need of protection.

Six geographies of displacement—and protection—are proposed, as follows.

A. Internal Displacement and Protection in Conflict-Affected Countries

That the majority of forcibly displaced people—some 33.3 million—remain within their own countries highlights both the principal locus and the scale of the challenge. Moreover, as the first step in forced migration, internal displacement is often the precursor of cross-border movements and thus an early

24 Percentage derived from UNHCR and IDMC datasets; see footnote 3. Examples of containment in regions of origin are refugees from the Mozambican and Angolan civil wars in the late 1980s and 1990s who took refuge in neighboring countries such as Malawi, Zimbabwe, Swaziland, and Zambia.

25 “Protected displacement” or “protracted refugee situations” (PRs)—the terms used by UNHCR, and now in common currency—identify situations where more than 25,000 refugees have been in exile for more than five years and cannot go home because their countries of origin are at war, are affected by serious human-rights violations, or other reasons. Although rather arbitrary criteria, nearly two-thirds of refugees in the world today—more than 6 million people—are in protracted refugee situations. This extended time frame has serious implications for the types of protection needed beyond simple recognition as a refugee or protection from *refoulement*; for example, the right to work legally becomes even more important in protracted situations: see UNHCR, “Protracted Refugee Situations: UNHCR Dialogue on Long-Term Exile Cites Need for Comprehensive Solutions,” (news release, December 11, 2008), www.unhcr.org/49414a142.html; Gil Loescher, James Milner, Edward Newman, and Gary G. Troeller, eds., *Protracted Refugee Situations: Political, Human Rights and Security Implications* (Tokyo, New York, Paris: United Nations University Press, 2008), http://archive.unu.edu/unupress/sample-chapters/protracted_refugee_situation_web.pdf; Roger Zetter, “Unlocking the Protracted Displacement of Refugees and Internally Displaced Persons: An Overview,” *Refugee Survey Quarterly* 30, no. 4 (2011): 1–13, <http://rsq.oxfordjournals.org/content/30/4/1.extract>.



warning of the potential for refugee flows.

In most contemporary conflicts, violence is usually small-scale in the initial stages and tends to erupt spontaneously—often from multiple, unpredictable triggers. At this stage, people are susceptible to the erosion of livelihoods, social networks, and the norms of rights protection alongside a decline in physical security—conditions highlighted by the term “displacement vulnerability.” These conditions may eventually escalate to a level that precipitates forced displacement.²⁶

Although protection *during* and *after* displacement is the main focus of humanitarian actors, protection *from* or *before* displacement—in other words, averting or removing the underlying factors that propel forced migration—is often promoted as the ultimate goal of protection. This is the thinking that underpins the concept of the “right to remain,”²⁷ which a number of humanitarian actors now advocate. However, effective protection is rarely available within the country of origin; and the limited protection capacity a state may provide is often quickly overwhelmed. Moreover, where conflict and violence render households and communities at high risk of “displacement vulnerability,” or leave them trapped with little or no protection in conditions of chronic crisis, the “right to remain” cannot be privileged over other measures for protection and, ultimately, the right to leave their country and seek protection under other jurisdictions. Syria, Iraq, and, to a lesser extent, the Central African Republic provide dramatic contemporary examples of extremely violent conflicts—perpetrated by a cocktail of warring groups of insurgents, ANSAs, local militias, government forces, and rival ethnic groups—that render the “right to remain” inconceivable.

Once displacement becomes inevitable, IDPs use a number of strategies to protect themselves within their home country, including self-protection and microscale displacement.

Evidence from South Sudan, Zimbabwe, and Myanmar²⁸ demonstrates that communities frequently organize their own self-protection and survival strategies to avert, or cope with, forced displacement. Self-protection is mobilized long before the arrival of the outside, institutionalized protection provided by humanitarian actors, and is often overlooked by such actors. Typical self-protection strategies involve adhering to social and cultural precepts, customary law, and local traditions rather than claiming protection through formal human-rights “norms.”²⁹ For example, Nuba IDPs sought physical protection from aerial bombardment in mountain caves while surviving on roots, leaves, and fruit in Sudan’s South Kordofan region. Youth in the cattle camps of Jonglei in South Sudan organized themselves to protect their families and communities in the face of ongoing cattle raids during the civil war. “Soft” political and social stratagems (such as concealing political sympathies) were adopted in Zimbabwe to mitigate threats during the violent political upheavals of recent years, and by Christian families choosing to conceal their religious affiliations by travelling with Buddhist friends in government-controlled parts of southeast Myanmar.

Microscale displacement is characteristic of these self-protection strategies, especially among IDPs. Initially, people tend to remain close to their original locus, on the assumption and hope that they will soon return. Typically there is back-and-forth movement from places of habitual residence to temporary locations that offer better security. Such movement may be between different rural locations or within and between urban areas—and may be as limited as across streets or neighborhoods (as seen in Somali

26 IFRC, *World Disasters Report 2012*, chapter 2; Zetter, *Protecting Forced Migrants*; Vincent Chetail and Matthias Braeunlich, “Stranded Migrants: Giving Structure to a Multifaceted Notion” (Global Migration Research Paper No. 5, Graduate Institute, Geneva, 2013), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2364490.

27 The “right to remain” is advocated by some humanitarian and civil-society organizations to highlight the principle that people should not be forcibly displaced. It echoes the Universal Declaration of Human Rights Article 17(2)—“No one shall be arbitrarily deprived of his property”—but the principle is not embodied in international law or doctrine.

28 L2GP, “Local to Global Protection.” The subsequent examples in this paragraph are taken from IFRC, *World Disasters Report 2012*, 59–65.

29 This is not to say that self-protection strategies provide satisfactory or comprehensive protection and safety for vulnerable populations, but they must be the starting point for any analysis of protection initiatives.



communities³⁰)—or across peri-urban areas or rural hinterlands.

Alongside self-protection and microscale displacement, IDPs and, increasingly, refugees seek protection in other spaces and through other means, especially when displacement becomes protracted and temporary protection strategies and livelihoods become unsustainable. Under these conditions, urban areas and circular mobility play greater roles.

While self-protection and microscale displacement reduce some immediate vulnerabilities and keep open the prospects of return, the affected populations may still be exposed to substantial protection gaps if they have not moved sufficiently far from conflict zones. Such populations remain highly vulnerable to the predations of ANSAs and insurgents (e.g., Al-Shabaab in Somalia, various ANSAs in the Democratic Republic of Congo, and, in the past, the Lord's Resistance Army in northern Uganda and insurgents in Colombia).

Humanitarian actors have experimented with offering remote assistance and support where access is limited. This form of protection by proxy often involves negotiating with insurgents or working with local civil-society organizations in conflict-affected regions to deliver life-saving food and other emergency humanitarian assistance, and avoids exposing aid workers themselves to risk.³¹ But this cannot sustainably protect vulnerable populations amid protracted violence and severe human-rights abuses.

The characteristics of internal displacement and typical protection strategies outlined here hold where violence is essentially indiscriminate, such as in the Democratic Republic of Congo and, in the past, in Colombia. However, in a number of current conflicts—for example in Iraq, Syria, the Central African Republic, episodically in Somalia, and in northern Nigeria—violence is unprecedented in scale and systematic in organization. In these situations, insurgency and ethnoreligious mobilization and also perhaps, as in Syria, including the state military, often in combination, destroy the accepted norms and practices of protection for IDPs. In these cases internal displacement is characterized by the rapid unraveling of previously mixed communities and the cementing of monoethnic and monoreligious territories that serve not as a sanctuary from violence but as a relatively safer space for those who belong.

Land grabbing³² is a rather different, but increasingly frequent, driver of predominantly internal displacement. It poses additional and severe protection risks, mainly around land rights and the consequences for livelihoods. The process has been linked with forced (and often violent) displacement in countries such as Bangladesh, Colombia, Guatemala, Indonesia, Kenya, Malaysia, Nigeria, and Tanzania. Not surprisingly, it further impoverishes the already poor peasant or landless farmers.

Beyond self-protection, there are more institutionalized forms of protection for IDPs. First, several humanitarian actors—for example, the International Organization for Migration (IOM), UNHCR, ICRC, and the International Rescue Committee (IRC)—have developed strategies and logistics for emergency humanitarian evacuation and basic civilian protection in war zones. Second, the 1998 Guiding Principles on Internal Displacement (see Box 1) were adopted precisely to establish norms to cover the types of protection gaps identified here, although their impact has been limited.

30 Anna Lindley, "Displacement in Contested Places: Governance, Movement, and Settlement in the Somali Territories," *Journal of Eastern African Studies* 7, no. 2 (2013): 291–313, http://eprints.soas.ac.uk/15867/?utm_source=rss&utm_medium=rss&utm_campaign=displacement-in-contested-places-governance-movement-and-settlement-in-the-somali-territories.

31 See, for example, Active Learning Network for Accountability and Performance (ALNAP), *Somalia: Remote Programming Modalities* (London: ALNAP, 2009), www.alnap.org/pool/files/remoteprogrammingsomalia.pdf; UNHCR, *Iraq: Remote Control Aid* (Geneva: UNHCR, 2009), www.refworld.org/docid/4a8d54ccc.html.

32 The process impacts vulnerable, rural, subsistence and peasant-farming communities whose land is transferred to private companies and investors for commercial farming or resource extraction. Sometimes land grabbing takes place with government collusion and often by illegal, coercive, or even violent means. See IFRC, *World Disasters Report 2012*, 146–47.



B. Displacement and Circular Mobility

Unlike in the past, displacement is no longer a one-way movement from the locus of violence to refuge and protection. Populations under threat of displacement (or already displaced) are increasingly likely to undertake more complex patterns of mobility to protect themselves. Microlevel, short-term displacement may give way to circular mobility, which is often sustained over long periods of time and over substantial distances. In a circular pattern, displaced populations who have availed themselves of relative security elsewhere—perhaps across a border as refugees, or in secure areas within their country of origin—stay connected with their place of origin by periodic return, depending on the security situation. They return to collect rents, assess the condition of their property and smallholdings, safeguard customary rights, visit family, or assess if the violence has sufficiently diminished to permit more permanent return.³³ Both Somali IDPs and Somali refugees in Kenya, for example, have adopted this risk-minimizing strategy of circular migration, as have Sudanese IDPs and refugees from Darfur, Afghan refugees in Pakistan, and Iraqi refugees in Syria.³⁴

Circular mobility substantially reduces the risks faced by forcibly displaced people, although they may still be exposed to risks on their return visits home. Like self-protection and microscale mobility, it also keeps open the prospect of return. Yet it is hardly sustainable. One challenge to be faced is the response of protection authorities in the countries providing asylum for the displaced. Refugees who cross back and forth across the border may be treated with suspicion—Kenyan authorities, for example, view the mobility of Somali refugees as a vector for the deteriorating security situation in Kenya. More generally, authorities may question whether people who can move across the border in this fashion actually require the protection of refugee status. In such cases, mobility could be counterproductive by encouraging host countries to reduce their scope of protection or, worse still, to engage in *refoulement*.

Unlike in the past, displacement is no longer a one-way movement from the locus of violence to refuge and protection.

C. From Camps to Cities

The majority of forcibly displaced people—refugees and IDPs—now live in urban areas among their host communities, not in the camps that have become a widely recognized symbol of refugee crises.³⁵ This shift may be seen in all contemporary displacement crises: Iraqi refugees hosted in Syria before the civil war engulfed that country in 2011, Syrian refugees in Jordan and Egypt, Somali refugees in Kenya, refugees returning to Afghanistan and South Sudan, and the massive and spontaneous IDP urban settlement in the Afgoye corridor outside Mogadishu. Simply put, the urbanization of refugees and IDPs reflects the fact that as displacement becomes increasingly protracted, cities offer an immeasurably better economic future than refugee camps.

Within urban areas themselves, forced displacement—triggered by criminal elements (e.g., drug cartels in some Latin American cities), political violence (as in Kenya in 2007), and sectarian violence (e.g., Syria and

33 Dawn Chatty and Nasrine Mansour, “Unlocking Protracted Displacement: An Iraqi Case Study,” *Refugee Survey Quarterly* 30, no. 4, (2011): 50–83, <http://rsq.oxfordjournals.org/content/30/4/50.abstract>; Lindley, “Between a Protracted and a Crisis Situation,” Lindley, “Displacement in Contested Places,” Katy Long, *Permanent Crises? Unlocking the Protracted Displacement of Refugees and Internally Displaced Persons* (Oxford, UK: Refugee Studies Centre, 2011), www.rsc.ox.ac.uk/files/publications/policy-briefing-series/pb-unlocking-protracted-displacement-2011.pdf; IFRC, *World Disasters Report 2012*, 21–23.

34 That is, before the civil war in Syria enforced the return of hundreds of thousands of Iraqi refugees or secondary displacement elsewhere in the region.

35 IFRC, *World Disasters Report 2012*, 112–42; UNHCR, *State of the World’s Refugees: In Search of Solidarity* (Oxford, UK: Oxford University Press, 2012), 154–68, www.unhcr.org/4fc5ceca9.html; Sara Pantuliano, Victoria Metcalfe, Simone Haysom, and Eleanor Davey, “Urban Vulnerability and Displacement: A Review of Current Issues,” *Disasters* 36, no.1 (2012): 1–22, <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-7717.2012.01282.x/abstract>.



Iraq)—is an escalating phenomenon often symptomatic of governments’ inability to effectively protect their citizens.

Despite the advantages that urban locations offer, such as employment in the informal economy³⁶ and access to services and political and social networks, they rarely offer the legal protection and assistance available in refugee camps. Displaced urban populations have a precarious legal status in many countries; for example, some governments derogate refugees’ right to work. Their irregular status in urban areas and lack of a legal standing can also impede access to official protection mechanisms and institutions such as the police, courts, legal aid, and housing and property rights. Forced migrants who remain undocumented or unregistered (and often are dispersed around a city) are at risk of individual harassment, extortion, eviction, arbitrary arrest, detention, and threats of *refoulement*. They are vulnerable to housing evictions and periodic crackdowns on informal work—at times targeted, for example, at Somali refugees in Nairobi³⁷ and Syrian refugees in Jordan.³⁸ Compared with their peers in camps, refugees in urban settings may be subject to a higher incidence of domestic violence, sexual and gender-based violence (SGBV), and violence against children. Urban settings are more prone to negative coping mechanisms (such as child labor, early marriage, and prostitution), which tend to increase where protection capacity is deficient.³⁹ Securing adequate protection space for forcibly displaced people in urban settings is thus a major task of humanitarian actors, governments, and advocacy organizations.

Displaced urban populations have a precarious legal status in many countries.

D. Migrants Stranded in Crises

Stranded migrants are third-country nationals (TCNs) displaced as a result of crisis situations. They fall outside the existing protection instruments: no international organization has a mandate to protect them.⁴⁰ Stranded migrants typically comprise mixed migration populations of both regular and unauthorized residents, labor migrants who might be resident in the crisis-affected country, and forced migrants who have not claimed refugee status. In Libya, for example, a mixed flow of 800,000 people—including Asian migrant workers and others in transit from sub-Saharan Africa—became stranded in Libya during the 2010 civil war and the North Atlantic Treaty Organization (NATO) bombing, and sought refuge across the borders in Egypt and Tunisia. A joint evacuation and protection response was developed by IOM and UNHCR, including large-scale evacuation to migrants’ countries of origin. More recently, IOM was involved in a similar protection initiative in the Central African Republic, where it evacuated a complex mixed migrant population of refugees, stateless persons, and long-term residents of uncertain

36 Elizabeth Campbell, “Urban Refugees in Nairobi: Problems of Protection, Mechanisms of Survival, and Possibilities for Integration,” *Journal of Refugee Studies* 19, no. 3 (2006): 396–413, <http://jrs.oxfordjournals.org/content/19/3/396.abstract>; Danish Refugee Council (DRC), UNHCR, and FEG Consulting, *Living on the Edge: Livelihood Status Report on Urban Refugees Living in Nairobi, Kenya* (Copenhagen: DRC, 2012), www.refworld.org/pdfid/52401e8f4.pdf; UNHCR, *The Benefits of Belonging: Local Integration Options and Opportunities for Host Countries, Communities, and Refugees* (Geneva: UNHCR, 2011), www.unhcr.org/4e3276e26.html; Roger Zetter, “Reframing Displacement Crises as Development Opportunities” (DSI Policy Brief, Roundtable on Development Solutions, Danish Ministry of Foreign Affairs, Copenhagen, April 2014), www.rsc.ox.ac.uk/publications/reframing-displacement-crises-as-development-opportunities.

37 See, for example, Regional Mixed Migration Secretariat (RMMS), *Mixed Migration in Kenya: The Scale of Movement and Associated Protection Risks* (Nairobi, Kenya: RMMS, 2013), 9, www.regionalmms.org/fileadmin/content/rmms_publications/series_booklettwo.pdf.

38 Roger Zetter, H  lo  se Ruaudel, Sarah Deardorff-Miller, Eveliina Lyytinen, Cameron Thibos, and Finn Skadk  r Pedersen, *The Syrian Displacement Crisis: Mapping and Meta-Analysis of Existing Studies of Costs, Impacts and Protection* (Copenhagen: Danish Ministry of Foreign Affairs, 2014), <http://data.unhcr.org/syrianrefugees/download.php?id=4780>.

39 Ibid., 28–33.

40 Stranded migrants are not covered by the 1951 Refugee Convention (and therefore do not fall under UNHCR’s mandate) nor are they protected by the 1998 Guiding Principles on Internal Displacement.



nationality.⁴¹

As with other forced migrants, migrants stranded in crises are affected by various protection gaps. They often lack knowledge of, or access to, national protection or assistance regimes, and because of their insecure status, they may be particularly vulnerable when conflict arises. As temporary residents they are less likely to have the resources to quickly escape crises, such as family networks in safer areas or access to embassies to facilitate travel out of the country in conflict. They may also lack travel documents and passports (unscrupulous employers may confiscate passports to better control migrant workers), without which they cannot easily cross borders to seek safety. For those who manage to escape, the lack of a clear status as a refugee or IDP limits access to humanitarian assistance and protection.

E. The “Displacement Continuum:” Restricted Protection Space in Transit and at Destination

Of critical relevance to countries in the global north, the “displacement continuum” describes the movement of increasing numbers of migrants, for the most part forced, who first transit through and then outside their region of origin and then eventually arrive at the borders of postindustrial countries such as the United States and European Union (EU) Member States. This continuum is perhaps the most salient and dramatic feature of the new displacement geographies. In many ways it is an archetype of 21st-century migration processes, and combines many of the characteristics of the contemporary patterns and processes of population mobility and forced migration: a global reach, mixed drivers and flows, irregular or unauthorized movement not easily contained by border control or entry management, and migrants whose status is unclear and who fall outside international protection norms and frameworks.

Since many forced migrants are not readily covered by extant protection norms or legal frameworks, each stage of the journey along the continuum exposes them to high levels of risk.

Migrants on the displacement continuum flee from humanitarian crises because they see little prospect of return to their country of origin, and still less prospect of a sustainable future while in exile in the region. Their movement is evidence, on the one hand, of international actors’ inability to contain refugee crises by developing effective protection policies and sustainable solutions in regions of origin, and on the other, the relative ease of global mobility linked by transnational social networks. These conditions explain the enormous pressures on the asylum and immigration regimes of countries in the global north, and why managing these pressures so concerns politicians, policymakers, and humanitarian actors in these countries.

Since many forced migrants are not readily covered by extant protection norms or legal frameworks, each stage of the journey along the continuum exposes them to high levels of risk. Most do not have access to legal migration channels, and cross international borders by unauthorized means. The closer these migrants get to their putative destination, the greater their risk of vulnerability and exposure to human-rights violations, as increasingly effective border controls encourage riskier strategies (e.g., hazardous sea crossings or the use of smugglers).⁴² Clandestine entry accentuates the already high vulnerability of these

41 UNHCR, “2014 UNHCR Country Operations Profile—Central African Republic,” accessed December 1, 2014, www.unhcr.org/pages/49e45c156.html; IOM, *CAR Crisis: IOM Regional Response*, Situation Report, May 20–June 2 (Geneva: IOM, 2014), www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Regional-Response-to-the-CAR-Crisis-Sitrep-20-May-to-2-June-2014.pdf.

42 For a recent analysis of the protection vulnerability of those in transit in Turkey and Libya, see Melissa Phillips and Kathrine Starup, “Protection Challenges of Mobility,” *Forced Migration Review* 47 (Oxford, UK: Refugee Studies Centre, 2014), 27–30, www.fmreview.org/syria/phillips-starup.



migrants, and it reinforces their reluctance to access the refugee, asylum, or temporary protection they may be eligible to receive. Meanwhile, border governance measures often fail to protect human rights.⁴³ Evidence from Mexico,⁴⁴ as well as Yemen, Morocco, and Tunisia, demonstrates that migrants may become stranded or trapped in transit countries because of inadequate funds or documentation, heightening their vulnerability and exposure to protection gaps and human-rights violations.

Reliance on smugglers, organized-crime groups, and, in extreme cases, traffickers to facilitate movement by providing transportation, fraudulent documents, and bribes for border officials also exposes migrants to extreme risks.⁴⁵ The implications for the protection of these migrants are acute, yet little has been done to improve the protection capacity of transit countries, or to mitigate the extreme risks to which the migrants are susceptible. Human-rights violations are widespread and violent. There are frequent reports of extortion, rape, sexual assault, abduction, and robbery, often by smugglers. As many as 20,000 migrants and refugees may have lost their lives attempting to reach Europe via the Mediterranean Sea in the past 16 years.⁴⁶ UNHCR estimates 3,000 died in 2014 alone (including 2,200 between July 1 and September 30).⁴⁷ Yet, the number of unauthorized migrants arriving at the southern coasts of the European Union increased tenfold between 2013 and 2014, indicating that people are still willing to take the risk.⁴⁸

The tightening of entry controls at the borders of Europe and the United States is intricately linked to these conditions, and in the case of the European Union, is manifest in an increasingly complex and sophisticated *non-entrée* regime of physical instruments, legal processes, policy initiatives, and international agreements designed to preclude access to territory⁴⁹—the so-called Fortress Europe.⁵⁰ Symptomatic of the highly politicized milieu within which migration as a whole—and forced displacement and asylum in particular—are set, the closing down of legal channels of access to the European Union and the criminalization of unauthorized entry make it more difficult for vulnerable migrants to reach Europe safely and to exercise

43 See the recent OHCHR report, “OHCHR Recommended Principles and Guidelines on Human Rights at International Borders” (Conference Room Paper, A/69/150, UN OHCHR, Geneva, Switzerland, 2014), www.ohchr.org/Documents/Issues/Migration/A-69-CRP-1_en.pdf.

44 Cited in Chetail and Braeunlich, “Stranded Migrants,” 32.

45 A recent study suggests that up to 80 percent of the journeys are organized, albeit in a rather ad hoc fashion, from source to destination. See Global Initiative against Transnational Organized Crime (GITOC), *Smuggled Futures: The Dangerous Path of the Migrant from Africa to Europe* (Geneva: GITOC, 2014), www.globalinitiative.net/download/global-initiative/Global%20Initiative%20-%20Migration%20from%20Africa%20to%20Europe%20-%20May%202014.pdf.

46 Euro-Mediterranean Human Rights Network (EMHRN), “Prioritising Border Control over Human Lives: Violations of the Rights of Migrants and Refugees at Sea” (EMHRN Policy Brief, Euro-Mediterranean Human Rights Network, Copenhagen, 2014), 3, www.euromedrights.org/eng/wp-content/uploads/2014/06/Policy-brief-ENG-FINAL.pdf.

47 UNHCR, “On Eve of Lampedusa Disaster Anniversary, UNHCR Warns that Irregular Mediterranean Crossings Becoming More Deadly,” (news release, October 2, 2014), www.unhcr.org/542cfe899.html.

48 Ibid. A total of 165,000 arrived in the period January-October 2014 alone.

49 The regime includes efforts to unify the European Union’s asylum policy through the Global Approach to Migration and Mobility (GAMM), the Common European Asylum System (CEAS), and Dublin III; extensive border surveillance; and a battery of instruments and interventions, mainly in southern Member States and the Mediterranean, to enhance the security of the common external border. Such instruments include Frontex, the European External Border Surveillance System (EUROSUR), the European Asylum Support Office (EASO), the Task Force for the Mediterranean, and the “debordering and rebordering” of the European Union (see Alessandro De Giorgi, “Immigration Control, Post-Fordism and Less Eligibility: A Materialist Critique of the Criminalization of Asylum Across Europe,” *Punishment and Society* 12, no. 2 [2010]: 147–67, www.academia.edu/931104/Immigration_control_post-Fordism_and_less_eligibility; Jeremy Harding, *Border Vigils: Keeping Migrants Out of the Rich World* [London and New York: Verso, 2012]) to enable extraterritorial processing of migrants and asylum seekers through mobility partnerships, readmission agreements, and regional development and protection programs. Meanwhile, humanitarian admissions and resettlement policies for refugees and other highly vulnerable people are fragmented and decidedly limited. Political discourse reinforces the “securitization” of migration and asylum at the expense of the rights and protection of migrants (see Roger Zetter, “Creating Identities—Diminishing Protection: Securitising Asylum Seeking in the EUMS,” in *Refugee Protection and the Role of Law: Conflicting Identities*, eds. Susan Kneebone, Dallal Stevens, and Loretta Baldassar, chapter 3 [Abingdon, UK: Routledge, 2014]).

50 Andrew Geddes, *Immigration and European Integration: Towards Fortress Europe?* 2nd Edition (Manchester, UK: Manchester University Press, 2008). And what Guild has termed the “Externalisation of Europe’s Asylum Policy,” see Elspeth Guild, “The Europeanisation of Europe’s Asylum Policy,” *International Journal of Refugee Law* 18, no. 3–4 (2006): 630–51, <http://ijrl.oxfordjournals.org/content/18/3-4/630.short>.



their rights to seek protection.⁵¹ Thus, even if they manage to land, forced migrants face policies that, as applied, may severely restrict their rights to protection: fast-tracked applications, circumscribed grounds for appeal, international data sharing, dispersal and community fragmentation, the widening reach of detention and deportation powers, and direct or indirect *refoulement* in some circumstances. The adequate protection of forced migrants, refugees, and asylum seekers is far from guaranteed in all cases.⁵²

Mixed migration flows, meanwhile, strain the protection system—and are a primary reason why the European Union and several other key destination countries around the world (e.g., Australia) have adopted draconian regimes to discourage entry. Fewer forced migrants are eligible, or deemed eligible, for protection as refugees as it becomes increasingly difficult to align the specific causes of forced migration with the criteria for refugee status determination, leading to a perception that the system is being abused. But faced with a robust regime of border controls to address mixed migration flows, those who have a genuine claim to the protection of refugee status are increasingly denied access or must employ clandestine means to seek protection, creating new risks. As a result, forced migrants are exposed to a wide range of risks and experience vulnerabilities and protection needs for which there is limited effective legal or programmatic provision.

F. Slow-Onset Displacement

Slow-onset climate change and environmental stress challenge the protection regime in unprecedented ways. While earlier research tended to generalize the displacement impacts and drastically oversimplify the cause-effect relationship between climate change (and environmental stress in general) and forced displacement,⁵³ we now recognize more fully the complexity of these mobility processes and patterns and thus the protection needs of those who are displaced. Extant research points to two important conclusions.

First, the evidence now suggests that the displacement impacts and consequences of climate change are—and will in all likelihood continue to be—experienced within affected countries and regions, and thus significantly increase the volume of IDPs in need of protection in the coming decades.⁵⁴

Second, the adaptation measures employed by most affected individuals are quite localized. Households adopt a variety of strategies such as microlevel movement to reduce physical risks, different farming techniques, and seasonal or permanent migration to nearby towns and cities (not necessarily by the whole household) to diversify income streams. These strategies are heavily influenced by socioeconomic status, political power, land ownership, prevailing physical conditions, and the nature of the environmental threat.⁵⁵

Adaptive rather than protective, these responses leave substantial protection gaps. As critical natural resources such as land and water become depleted or disappear altogether, the need to protect material rights (including over land and property) becomes essential. It is the most vulnerable and impoverished

51 Alice Bloch, Nando Sigona, and Roger Zetter, *Sans Papiers: The Social and Economic Lives of Undocumented Young Migrants* (London: Pluto Press, 2014); IFRC, *Shifting Borders: Externalising Migrant Vulnerability and Rights* (Brussels: Red Cross European Office, 2013), http://redcross.eu/en/upload/documents/pdf/2013/Migration/Shifting_Borders_Externalizing_migrant_vulnerabilities_rights_Red_Cross_EU_Office.pdf; IFRC, *World Disasters Report 2012*, 30–31.

52 A counterargument is that these mechanisms may enable countries to provide better protection to those with recognized needs (e.g., fast-tracking applications from Balkan countries that in most cases will not be recognized frees up authorities to more quickly grant protection to others—like Syrian arrivals who have urgent claims).

53 See, for example, footnote 31 above.

54 The Nansen Initiative—a state-led, bottom-up consultative process—is exploring how to fill a legal gap in the protection of people displaced across national borders due to natural disasters, particularly in the context of climate change. It aims to build consensus at domestic, regional, and international levels on the development of key principles for the cross-border protection of this specific group; see the Nansen Initiative, “Home Page,” accessed December 1, 2014, www.nanseninitiative.org/. See also Walter Kälin and Nina Schrepfer, *Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps, and Possible Approaches*, Division of International Protection PPLA/2012/01 (Geneva: UNHCR, 2012), www.refworld.org/pdfid/4f38a9422.pdf.

55 Etienne Piguet, “Climate Change and Forced Migration” (New Issues in Refugee Research, Research Paper No. 153, UNHCR, Geneva, 2008), www.refworld.org/pdfid/4c2325630.pdf; Piguet, Pecoud, and de Guchteneire, *Migration and Climate Change*; Zetter and Morrissey, “The Environment-Mobility Nexus,” 342–54.



communities that will experience the heaviest impacts, and the need to protect social and political rights therefore becomes vital. Policy interventions are needed to remove the risks of dispossession, provide access to compensation and property-restitution mechanisms, safeguard democratic rights to consultation and active participation in resettlement, and, importantly, protect the so-called trapped populations who have neither the resources nor the capacity to migrate.

In theory the 1998 Guiding Principles should provide the basis for protection, given that most displacement will be internal, but their application has been limited in practice.⁵⁶ There is no extant protection machinery for those who cross borders due to slow-onset environmental change. The work of the Nansen Initiative seeks to remedy this gap.⁵⁷

IV. Humanitarian Crises as Development Opportunities, and the Protection Dividend

From the 1980s onwards the concept of the “refugee burden” has dominated policy and research debates about the impacts of mass displacement, as well as the international community’s approach to protection.⁵⁸ Of course, the negative impacts are undeniable: environmental degradation around refugee camps; competition between refugees and hosts in oversaturated labor markets, especially in the informal sector; social tensions, as host communities resent what is perceived as refugees’ preferential treatment; and negative macroeconomic effects.⁵⁹ Meanwhile, the conventional emergency relief model, allied to its normative basis in protection, has not provided durable solutions⁶⁰ to displacement crises. Amid the negative experiences of host communities, recipient governments resist long-term development solutions to refugee crises (outlined below) and enhanced means of protection for fear of encouraging refugees’ permanent settlement.

Yet the “burden” is rarely measured and, where it is, the analysis rarely quantifies the outcomes. A lack of economic analysis of the impacts of refugees’ presence, both positive and negative, severely hampers the design and implementation of longer-term developmental responses and programming to tackle the continuing effects of humanitarian crises.

The persistent framing of displacement crises as uniquely humanitarian emergencies further widens the damaging humanitarian-development divide that dominates responses to such crises. This paradigm

56 The 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (also known as the Kampala Convention) promises, in time, to offer improved protection for those who are environmentally displaced in Africa. It reinforces and strengthens the status of the 1998 Guiding Principles by consolidating key normative standards governing protection under conditions of internal displacement.

57 See footnote 72.

58 The notion of the “refugee burden” was first elaborated at the International Conference on Assistance to Refugees in Africa (ICARA) I and II, in 1981 and 1984. The contention of African countries was that they carried an undue and unsupported burden of the world’s refugees, the causes of which were as much global as local. The conferences were the means by which African countries sought resources from the “developed world” to offset some of the burdens.

59 A World Bank–UN assessment of the impacts of refugees from Syria on the Lebanese economy estimates a loss in real gross domestic product (GDP) growth of 2.85 percent per annum between 2012 and 2014; the doubling of unemployment, to more than 20 percent; and an increase in the national deficit of \$2.6 billion. The Syrian conflict will have cost Lebanon \$7.5 billion in cumulative economic losses between 2012 and 2014 (declining revenue collection due to a fall in GDP; reduced domestic economic activity, for example, in tourism, trade, and investment; and additional costs incurred for borrowing to support increasing demand for public services, adding to the deficit and increasing public debt). See World Bank, *Lebanon: Economic and Social Impact Assessment of the Syrian Conflict* (Washington, DC: World Bank, 2013), <http://documents.worldbank.org/curated/en/2013/09/18292074/lebanon-economic-social-impact-assessment-syrian-conflict>.

60 The Statute of UNHCR adopted by the UN General Assembly through Resolution 428 (V) on December 14, 1950. “Durable solutions” is the term used to describe the three accepted means of sustainably solving refugee crises: (1) voluntary return of refugees, (2) local integration in the country of asylum, and (3) third-country resettlement. Each of these solutions is increasingly problematic, as Sections V and VI of this report will discuss.



denies evidence of the agency of displaced populations; the benefits that refugees' skills may bring to their host communities; and the fact that the demand they create for food, goods, and services can expand markets for domestic producers and enhance the economic development of the host country.

How can the evidence of these positive impacts be brought to the fore? Protracted displacement renders new approaches vital. Today humanitarian and development actors are reconsidering how they respond to emergencies. Substantial empirical evidence demonstrates the positive economic and development effects (at the macro- and micro-, commercial, business, and informal levels) that humanitarian crises may have on both displaced populations and their hosts and the scope these approaches offer for sustainable outcomes, especially in urban settings.⁶¹

The persistent framing of displacement crises as uniquely humanitarian emergencies further widens the damaging humanitarian-development divide that dominates responses to such crises.

From early initiatives in the UNHCR's Convention Plus policy,⁶² subsequent but limited progress has been made in the 2009 Transitional Solutions Initiative of UNHCR, the United Nations Development Program (UNDP), and the World Bank⁶³—now reinvigorated by the 2014 Solutions Alliance.⁶⁴ Intergovernmental actors such as UNHCR, IOM, UNDP, the World Bank, the European Commission, donors, humanitarian nongovernmental organizations (NGOs), and the private sector are increasingly engaging with development-led approaches to refugee crises.⁶⁵

Of course, the scope of a reconfiguration of humanitarian emergencies as development opportunities⁶⁶ goes well beyond protection in a normative sense. However, by better harnessing the productive assets of refugees and IDPs and by reducing livelihood vulnerabilities and increasing self-reliance, governments and humanitarian actors can enhance the human rights, dignity, security—and thus the protection, in its wider sense—of forcibly displaced populations. Together with socioeconomic developmental support for

61 Zetter, "Reframing Displacement Crises;" Steven Zyck and Randolph Kent, *Humanitarian Crises, Emergency Preparedness, and Response: The Role of Business and the Private Sector* (London: Humanitarian Policy Group, Overseas Development Institute, 2014), <https://docs.unocha.org/sites/dms/Documents/Final%20business%20engagement%20in%20emergencies%20report.pdf>. On development impacts and gains, see, for example, Omar Dahi, "The Refugee Crisis in Lebanon and Jordan: The Need for Economic Development Spending Growth," *Forced Migration Review* 47 (Oxford, UK: Refugee Studies Centre, 2014), 11–13, www.fmreview.org/syria/dahi; and Anubha Sood and Louisa Seferis, "Syrians Contributing to Kurdish Economic Growth," *Forced Migration Review* 47 (Oxford, UK: Refugee Studies Centre, 2014), 14–16, www.fmreview.org/syria/sood-seferis.

62 UNHCR, "Convention Plus: The Targeting of Development Assistance for Durable Solutions to Forced Displacement," (joint statement, High Commissioner's Forum/2005/8, UNHCR, Geneva, February 2006), www.unhcr.org/437d9f152.html.

63 UNHCR, *Concept Note: Transitional Solutions Initiative*, United Nations Development Program (UNDP) and UNHCR in collaboration with the World Bank (Geneva: UNHCR, 2009), www.unhcr.org/4e27e2f06.html.

64 The Solutions Alliance: Ending Displacement Together is an initiative of the Danish government that brings together humanitarian actors, developmental organizations, affected states, donor nations, academics, the private sector, and other actors with the goal of promoting and enabling the transition of displaced persons away from dependency toward increased resilience, self-reliance, and development. Solutions Alliance, "Welcome to the Solutions Alliance," accessed December 1, 2014, www.endingdisplacement.org/.

65 For example, UNDP and UNHCR are jointly promoting regional cooperation on the Syrian and Iraq situations through a memorandum of understanding (MoU) (September 2014), which includes commitments to "restore and develop economic opportunities." The UNDP has recently launched its *3Rs Regional Refugee and Resilience Plan in Response to the Syria Crisis* (New York: UNDP, 2014), www.arabstates.undp.org/content/dam/rbas/doc/SyriaResponse/3RPbrochure-draft-AB-FI-NAL-lowres.pdf; and also its *Resilience-based Development Response to the Syrian Crisis* (New York: UNDP, 2014), www.undp.org/content/dam/undp/library/crisis%20prevention/UNDP_SYR_brochurev2_20140901.pdf. The World Bank has conducted a major study of the macroeconomic and fiscal impacts of the Syrian crisis on the Lebanese economy—see footnote 59.

66 Zetter, "Reframing Displacement Crises."



host communities—such as financing microenterprises, enhancing the long-term economic livelihoods of households, and safeguarding the quality of education and medical services in demand from refugee families—these initiatives help to offset the security and protection risks of refugees and IDPs and offer more durable solutions to their displacement.

V. Closing Normative, Policy, and Operational Gaps

The present-day dynamics of displacement pose many challenges to the concept and the practice of protection, as framed by the architecture of the 1951 Refugee Convention, the 1967 Protocol,⁶⁷ and related regional instruments on the one hand and the 1998 Guiding Principles on Internal Displacement on the other.⁶⁸ Multicausal drivers of displacement and mixed migration flows force the widening divergence of protection needs, norms, and capacity as more and more migrants fall outside the provisions of the available instruments. How have policymakers and humanitarian actors responded?

A. Normative Responses and Developments in International Law and Practice

Normative adaptation has been extremely modest to date.⁶⁹ An increasing number of states are codifying generic forms of “subsidiary protection”⁷⁰ and “complementary protection,”⁷¹ in some cases called “humanitarian protection” and “temporary protected status” (TPS).⁷² These forms of protection are essentially the response of countries in the global north to the rising demand for asylum seen in the past two decades or so. The positive view is that these governments recognize that highly vulnerable people need protection even when refugee status has been or is likely to be denied. On the other hand, it could be argued that these supplementary forms of protection allow countries to reduce the volume of people receiving refugee status and the obligations this imposes, as none of these provisions afford the same level of protection as the 1951 Convention. For example, protected entry and humanitarian admissions to the European Union have become very limited and intermittent in recent years. Whilst it could be argued that some protection is better than none at all, generic forms of protection afford limited rights and are in many cases temporary, leaving the beneficiary in an uncertain situation.

At the international level, a recent report from the Office of the United Nations High Commissioner for

67 See, for example, Thomas Gammeltoft-Hansen, *Access to Asylum: International Refugee Law and the Globalisation of Migration Control* (Cambridge, UK: Cambridge University Press, 2011); Anne Hammerstad, *The Rise and Decline of a Global Security Actor: UNHCR, Refugee Protection and Security* (Oxford, UK: Oxford University Press, 2014); Vanessa Holzer, *The 1951 Refugee Convention and the Protection of People Fleeing Armed Conflict and Other Situations of Violence* (Geneva: UNHCR, September 2012), www.refworld.org/docid/50474f062.html; James Simeon, ed., *The UNHCR and the Supervision of International Refugee Law* (Cambridge, UK: Cambridge University Press, 2013).

68 Of course the key point here is that despite the fundamental importance of the principle of protection and although international law makes ample reference to protection, paradoxically, international law does not define protection.

69 The one exception to this observation is the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (also known as the Kampala Convention).

70 “Subsidiary protection” may be granted when an applicant does not fulfil the requirements for becoming a refugee but the situation in the country of origin makes return impossible. Subsidiary protection is usually time limited.

71 “Complementary protection” is for those whose claim for refugee protection under the 1951 Refugee Convention has failed, but who cannot be returned to their country of origin because of other severe threats to their rights. Complementary protection is available in EU Member States, and countries such as Canada, the United States, New Zealand, and Mexico.

72 “Temporary protected status” (TPS) was invoked, for example, by the United States, for Hondurans and Nicaraguans following Hurricane Mitch in 1998—but only for those already outside those countries. A number of European countries reactively provided TPS to hundreds of thousands of mainly Bosnians fleeing civil war in the 1990s, and Switzerland granted TPS to thousands of Kosovo Albanians in 2000. Both Finland (in 2004) and Sweden (in 2005) have provided TPS to individuals unable to return to their country of origin because of an environmental disaster. Ruma Mandal, *Protection Mechanisms Outside of the 1951 Convention (“Complementary Protection”)*, PPLA/2005/02 (Geneva: UNHCR, June 2005), www.refworld.org/docid/435e198d4.html.



Human Rights (OHCHR) advocates and refines the human-rights obligations and the norms of protection to be provided at borders in accordance with international human-rights law. But the report is only advisory and it is too soon to gauge the impact that it might have on national practice.⁷³ A far-reaching strategy to strengthen the normative scope of protection for people susceptible to displacement was promoted under the doctrine of the Responsibility to Protect (R2P).⁷⁴ Adopted at the 2005 United Nations World Summit, the international community has stopped short of giving R2P any teeth, however, where it might have been invoked, for example, in Darfur or in Syria.⁷⁵ Perhaps the most radical and far-reaching normative development in protection since the 1967 Protocol was accomplished by the ratification of the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the “Kampala Convention”). But, again, it is too early to assess the convention’s impacts on protection. Finally, some progress is being made in filling the normative protection gaps for people crossing borders in the context of climate change.⁷⁶

B. Policy and Operational Developments

While legal norms remain underdeveloped, protection policy has advanced and diversified. Strategies for emergency humanitarian evacuation and basic civilian protection in war zones have been adopted by some humanitarian organizations such as ICRC and IOM. A number of NGOs have designed means to provide external support for self-protection without disempowering the self-protection capacities of the affected communities themselves.

At the global level the Global Protection Cluster (GPC) of the Inter-Agency Standing Committee (IASC, of the United Nations and partners) is now established as the principal interagency forum for collaboration in humanitarian contexts. It has enhanced coordination of protection overall including, importantly, setting common standards for protection by humanitarian actors. The UNHCR’s 2010 policy guidance on *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*⁷⁷ was an important reminder, mainly to governments in the global north. It asked that receiving states safeguard the quality of their refugee protection (e.g., reception conditions) and clarified the alliance of good practices in this area to general migration policies designed to cope with the growing scale of mixed migration.

Progress, too, has been made on developing protection tools and instruments for the displaced in urban settings:⁷⁸ for example, the 2009 UNHCR Refugee Protection and Solutions in Urban Areas,⁷⁹ the 2010 IASC Strategy for Meeting Humanitarian Challenges in Urban Areas,⁸⁰ and many NGO initiatives.⁸¹ The

73 OHCHR, “OHCHR Recommended Principles and Guidelines.”

74 The doctrine of R2P does not deal directly with protecting forcibly displaced people, but aims to tackle the conditions that lead to such displacement by advocating that if a state is unwilling or unable to protect its population where genocide, ethnic cleansing, war crimes, or crimes against humanity are taking place, then collective international intervention might be appropriate.

75 Jared Genser and Irwin Cotler, eds., *The Responsibility to Protect: The Promise of Stopping Mass Atrocities in our Time* (Oxford, UK: Oxford University Press, 2012), <https://global.oup.com/academic/product/the-responsibility-to-protect-9780199797769?cc=us&lang=en&>; Aiden Hehir, *Humanitarian Intervention: An Introduction*, 2nd edition (Basingstoke, UK: Palgrave-Macmillan, 2013); Susan Martin, “Forced Migration, the Refugee Regime and the Responsibility to Protect,” *Global Responsibility to Protect* 2 (2010): 38–59, www.academia.edu/6311945/Forced_Migration_the_Refugee_Regime_and_the_Responsibility_to_Protect.

76 See footnote 54 on the Nansen Initiative, and Kálin and Schrepfer, *Protecting People Crossing Borders*.

77 UNHCR, *Refugee Protection and Mixed Migration: A 10-Point Plan of Action* (Geneva: UNHCR, 2007), www.unhcr.org/4742a30b4.html.

78 Roger Zetter and George Deikun, “Meeting Humanitarian Challenges in Urban Areas,” *Forced Migration Review* 34, Special Issue on Urban Displacement (Oxford, UK: Refugee Studies Centre, 2010), 5–8, www.rsc.ox.ac.uk/publications/meeting-humanitarian-challenges-in-urban-areas.

79 UNHCR, *UNHCR Policy on Refugee Protection and Solutions in Urban Areas* (Geneva: UNHCR, 2009), www.refworld.org/docid/4ab8e7f72.html.

80 Objective 4 of the Strategy is key in the present context, “Promote Protection of Vulnerable Urban Populations against Violence and Exploitation.” See IASC, *IASC Strategy for Meeting Humanitarian Challenges in Urban Areas* (Geneva: IASC, 2010), 8, www.humanitarianinfo.org/iasc/downloaddoc.aspx?docID=5615&type=pdf.

81 See Good Practice for Urban Refugees website, “Tools and Guidelines,” accessed March 10, 2015, www.urbangoodpractices.org/guidelines/index?lang=eng?url=guidelines%2Findex%2F%3Aeng.



UNHCR report focuses on developing policy and practice on matters such as reception conditions, refugee profiling, and support for the livelihoods of urban refugees. Among five key priorities, the IASC strategy lists tools for assessing needs and vulnerability, and protecting vulnerable urban populations from violence and sexual exploitation. The predicament of third-country nationals stranded in crisis situations is being addressed through extensive cooperation between IOM and UNHCR.⁸²

The European Commission has been actively developing protection tools and instruments, although the outcomes are flawed. Examples include regional protection programs (RPPs) and their more recent manifestation in the Syrian region (Regional Development and Protection Programs, RDPPs); mobility partnerships⁸³ between EU Member States and refugee recipient or transit countries to enhance legal and administrative capacity for protection ; and protection for refugees, asylum seekers, and irregular migrants encompassed by the European Commission's Global Approach to Migration and Mobility (GAMM)⁸⁴ and the Common European Asylum System (CEAS).⁸⁵

Another example of new praxis within Europe is the “whole-of-government” approach seen in Switzerland. This is an interdepartmental policymaking process covering internal and external dimensions of migration (in all forms). Recognizing how forced displacement in far-away countries eventually affects mixed migration flows at Swiss borders, this approach seeks to coordinate the government’s development and humanitarian policies in regions of mass displacement with its policies governing asylum seekers’ entry and processing in Switzerland itself.⁸⁶

VI. The Challenge of Protection: An Agenda for Change

Though these normative and policy developments are useful, they do not tackle the fundamental disjuncture between (1) contemporary patterns and processes of forced displacement on the one hand and (2) the current legal and normative framework designed to protect the rights, dignity, and safety of displaced populations on the other. An increasing majority of people fall outside the existing protection regime, while, too often, the quality and delivery of protection for those migrants who fall within existing norms do not accord with international standards.

Amid powerful drivers of displacement and a protection apparatus under strain, it is clear that

82 See discussion of stranded migrants in Section III.E of this report, and IOM, “Migration Crisis Operational Framework.”

83 Mobility partnerships are soft-law-based, bilateral agreements between the European Commission (EC) or individual Member States, and countries that are (1) sources of migrant labor coming into Europe or, more recently (2) transit countries for forced migrants and mixed migration flows destined for Europe (European Commission 2011). Mobility partnerships serve as a migration management and institutional capacity-building tool, covering four dimensions: (1) legal migration and mobility, (2) maximizing the development impact of migration, (3) irregular migration and trafficking in human beings (of particular relevance to this report), and (4) international protection and asylum policy. European Commission, “Communication from the Commission to the Council and the European Parliament on Regional Protection Programmes,” EUR-Lex, COM(2005) 388 final, European Commission, Brussels, September 1, 2005, <http://eur-lex.europa.eu/legal-content/EN/TX/?uri=CELEX:52005DC0388>.

84 European Commission, “The Global Approach to Migration and Mobility: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions,” EUR-Lex COM(2011) 743 final, SEC(2011) 1353 final, European Commission, Brussels, November 19, 2011, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/pdf/1_en_act_part1_v9_com2011-743_en.pdf.

85 Adopted over the course of at least 15 years, this comprises a wide range of instruments setting out the minimum standards for reception, processing, and interpretation of protection criteria for asylum seekers in the European Union, and seeking to ensure consistent management and handling across all Member States. See, for example, Steve Peers, Elspeth Guild, Madeline Garlick, and Violeta Moreno-Lax, eds., *EU Immigration and Asylum Law*, 2nd edition, vol. 3 (Asylum) (Leiden, the Netherlands: Brill Nijhoff, forthcoming).

86 As a further example, the appointment in the United Kingdom of an independent chief inspector of borders and immigration to assess the efficiency and effectiveness of the United Kingdom’s border and immigration functions has helped to safeguard protection standards from often politically expedient objectives.



governments, intergovernmental agencies, and humanitarian actors face a number of profound challenges that transcend the legal and policy responses discussed above. These challenges call into question the sustainability of some of the accepted principles that commonly govern the interplay between forced migration and protection.

A. *Displacement, Protection, and Policy Coherence*

A coherent and systematic framework that addresses all forms of international migration is essential to tackle the disjuncture between forced displacement and protection.

The availability of legal channels for international migration has not kept pace with the expanding demand and global reach of this process;⁸⁷ as a result, the claim for protection is often the only entry route⁸⁸ apart from family reunification. The lack of opportunities for authorized⁸⁹ migration combined with the inexorable rise of conflict-driven forced displacement, and the limited scope for refugee resettlement, have put great pressure on the protection regime.

At the same time, given the complex and multicausal drivers, forced displacement can no longer be conceived as a discrete migratory process demarcated by refugee status, but part of an international migration continuum that also embraces authorized migration. Accordingly, it is essential that policies addressing forced displacement (and thus protection) are set within a wider policy framework that (1) includes but also expands the scale of managed (that is, authorized) migration, (2) enhances development-led strategies in countries of origin and the major recipient countries of displaced people to provide sustainable futures, and (3) expands refugee resettlement.⁹⁰

This trinity provides a coherent platform for a more orderly, transparent, and humane response to the protection needs of forcibly displaced people. At present a cohesive framework is lacking at national and international levels, despite efforts to develop one.⁹¹ As discussed earlier, the challenge lies in overcoming the negative public and political discourse that now surrounds immigration and asylum seeking.

B. *Conceptual Challenges: Protection Status, Rights, and Needs*

Not every forcibly displaced person is a refugee, but all forcibly displaced people need some form of protection. The existing legal and normative framework of protection is no longer sufficient to tackle the

87 Approximately 232 million people—more than 3 percent of the world’s population—are migrants living outside their countries of origin. This is an increase of 57 million from 2000 and a 50 percent increase on the 154 million international migrants in 1990. See UN Department of Economic and Social Affairs (UNDESA), “Number of International Migrants Rises above 232 Million,” (news release, September 11, 2013), www.un.org/apps/news/story.asp?NewsID=45819#.VHzU8zHF_OM.

88 It is worth noting that many countries no longer accept, or they resist, “external” claims for asylum through their embassies in an applicant’s country of origin (or neighboring countries), and that to apply for asylum in a host country effectively requires asylum seekers first to access asylum state territory; a claim for asylum is not of itself an entry route.

89 Sometimes also termed voluntary or regular migration, authorized international migration describes the process of people seeking better economic and social opportunities as well as different life experiences and lifestyles. International migration—notably labor mobility—is a major force in economic and social development in both origin and receiving countries, and the magnitude of its increase, noted above, is both a consequence and a driver of the processes of economic globalization that have unfolded in recent decades.

90 Refugee resettlement rarely exceeds 10 percent of the annual global demand of about 800,000 applications that UNHCR receives. Resistance to calls for the resettlement of Syrian refugees in European countries is symptomatic of governments’ reluctance to meet demand. European countries had offered just under 32,000 places for resettlement, humanitarian, and other forms of admission against asylum claims of just over 123,000 by May 2014—mainly concentrated in a handful of EU Member States—and compared with the UNHCR requests to provide resettlement and other forms of admission for 100,000 Syrians in 2015 and 2016. UNHCR, *Syrian Refugees in Europe: What Europe Can Do to Ensure Protection and Solidarity* (Geneva: UNHCR, July 2014), www.refworld.org/pdfid/53b69f54.pdf.

91 For example, the EU GAMM and mobility partnerships, Switzerland’s “whole-of-government” approach, and potentially the inclusion of migration in the UN Post-2015 Development Agenda (although it is significant and problematic that refugees have not been included as part of the migration provisions of the agenda).



diverse protection challenges of forced migration in the contemporary world. Against this backdrop, momentum is gaining to reconceptualize protection beyond the “status-based” determination of a refugee, as defined in the 1951 Refugee Convention.

As has been argued, the multidimensional needs of forcibly displaced people might be better addressed by the concept of “displacement vulnerability”—that is, vulnerability from, during, and after forced displacement. Two developments in particular are along these lines.

The existing legal and normative framework of protection is no longer sufficient to tackle the diverse protection challenges of forced migration in the contemporary world.

A number of humanitarian actors (ICRC, the International Federation of the Red Cross [IFRC], and Oxfam, among others)⁹² argue that forced displacement creates wide-ranging risks relating to livelihoods, socioeconomic structures, and physical security. Affected individuals require protection irrespective of their category or legal status. These agencies recommend a “needs-based” approach to providing protection that responds to vulnerabilities⁹³ and is not based on a specific legal status. Such an approach requires effective needs-based assessment techniques and encompasses displaced people regardless of status.

A parallel line of argument, promoted by some humanitarian NGOs and IFRC⁹⁴ proposes a “rights-based” approach. This assumes that the right to protection, like many other rights, is an entitlement of all human beings. It is not contingent on a particular legal (or social or political) status. Where governments are unable or unwilling to protect fundamental rights, the role of humanitarian and human-rights organizations is to advocate and negotiate on behalf of those whose rights are abused.

Given the constraints of status-based protection, the needs- or rights-based approaches might better address the diverse needs and identities of today’s displaced. The two approaches should be seen as complementary; in essence, both are predicated on mainstreaming protection into humanitarian assistance programs.⁹⁵ Irrespective of the basis for protection, all evidences points to the need for a framework that is as inclusive as possible.

C. Displacement and Protection—The Need for Policy Consistency

Existing policy, meanwhile, must be made more consistent. As previously discussed, it must address the modes of self-protection already being deployed by the displaced, encompass development needs, and counter the particular risks posed in urban settings.

92 See, for example, ICRC, *Enhancing Protection for Civilians in Armed Conflict and Other Situations of Violence* (Geneva: ICRC, 2012), www.icrc.org/eng/assets/files/other/icrc-002-0956.pdf; ICRC, *Professional Standards for Protection Work [Carried out by Humanitarian and Human Rights Actors in Armed Conflict and Other Situations of Violence]*, 2nd edition (Geneva: ICRC, 2013), www.icrc.org/eng/resources/documents/publication/p0999.htm; IFRC, “Migration: Ensuring Access, Dignity, Respect for Diversity, and Social Inclusion” (Resolution of the 31st International Conference of the Red Cross and Red Crescent, Geneva, 2011), www.rcrcconference.org/docs_upl/en/IC31_5_2_1_Migrant_Background_document_12Oct_EN.pdf; Oxfam, *Protection* (Oxford, UK: Oxfam, n.d.), accessed December 1, 2014, <http://policy-practice.oxfam.org.uk/our-work/conflict-disasters/protection>.

93 IFRC, “Migration: Ensuring Access.”

94 See, for example, IFRC, “Migration: Ensuring Access;” IFRC, *World Disasters Report 2012*, 13.

95 “Protection mainstreaming is the process of incorporating protection principles and promoting meaningful access, safety and dignity in all aspects [of the provision] of humanitarian aid . . . [so that the] protective impact of aid programming is maximised.” See Global Protection Cluster, “Brief on Protection Mainstreaming,” (Global Protection Cluster, 2014), [www.globalprotectioncluster.org/_assets/files/aors/protection_mainstreaming/brief_on_protection_mainstreaming.pdf](http://globalprotectioncluster.org/_assets/files/aors/protection_mainstreaming/brief_on_protection_mainstreaming.pdf).



Since internal displacement is the principal manifestation of forced migration today and, amid climate change, is likely to remain so for many decades, much more international support is needed to encourage states to embed and adhere to the 1998 Guiding Principles and regional conventions such as the 2009 Kampala Convention. Efforts to this end include advocacy by international actors such as ICRC and the Internal Displacement Monitoring Centre (IDMC), resources to support capacity building and training of protection agencies and personnel, and pioneering new approaches such as the Nansen Initiative.

The proliferation of protection policies and practices, and the largely reactive and tailored nature of initiatives, has mitigated the coherence of policy and practice. It could be argued that the “proliferation of protection” better tailors mechanisms to particular situations, and to regional or national needs and capacities. However, it has also reinforced the disaggregated response to contemporary protection challenges and thus the fragmentation of the normative basis of protection. Even where consistency and convergence is the aim (as with Europe’s CEAS), very uneven implementation means that policy and operational divergence remains a persistent feature of core protection norms and processes such as reception, admission, status determination, temporary protection, nationality and age verification tests, appeals, detention, and removals.⁹⁶

The proliferation of protection policies and practices, and the largely reactive and tailored nature of initiatives, has mitigated the coherence of policy and practice.

This lack of consistent praxis is paralleled by the absence of a comprehensive institutional response to protection. Many of the relevant initiatives have been developed by international agencies, governments, the European Union, or humanitarian NGOs on an individual basis to meet specific institutional goals, programming strategies, or political priorities.

Of more profound concern is the growing dichotomy between the concepts and practice of protection in regions of mass displacement in the global south and the regimes now embedded in the global north.⁹⁷ How Somalis can expect to have their status determined in the United Kingdom is not the same as it is in Kenya, for example—although both countries are parties to the 1951 Convention, and the outcome should be the same. Such divergence relentlessly diminishes the global consistency of the quality of protection for refugees and asylum seekers. Divergence sacrifices the quality of protection to the supremacy of containment.⁹⁸ When practices increasingly serve restrictionist interests in the global north, then the oft-quoted mantra of “equity” in burden sharing must be questioned.

D. From Protection Norms to Protection Management—A Shift in Priority

Although the scope of protection has been modestly extended through developments in “soft” law, many recent changes to policy and practice indicate a gradual shift in emphasis from norms-based principles to the *management* of protection. In other words, protection is now dominated by various institutionalized

⁹⁶ Whereas only 4 percent of asylum applicants received positive first-instance decisions in Greece in 2013 and 18 percent in France, in Italy the rate was 60 percent, in Sweden 53 percent, and in Switzerland 40 percent. See Eurostat, *Asylum Statistics* (Brussels: European Union, 2014), 6.

⁹⁷ This dichotomy is most evident in the “rebordering” of Europe and the restrictive regime of the European Union. See, for example, Geddes, *Immigration and European Integration*; Giorgi, “Immigration Control, Post-Fordism and Less Eligibility;” Harding, *Border Vigils*; Carl Levy, “Refugees, Europe, Camps/State of Exception: ‘Into the Zone,’ the European Union and Extra-territorial Processing of Migrants, Refugees, and Asylum-seekers (Theories and Practice),” *Refugee Survey Quarterly* 29, no. 1 (2010): 92–119.

⁹⁸ See earlier discussion of the displacement continuum in Section III, and footnote 49 on the issue of rebordering and migration in all its forms—intra-European mobility, international migration, mixed migration, forced migration, and refugees.



procedures and regulations, as deployed by diverse international agencies and humanitarian actors. With this focus on management, the normative supremacy of protection as a principle and a fundamental human right is, arguably, being diminished.

Two examples, GAMM and CEAS, are to be found in the European Union. Pointing to the precedence of management mechanisms such as these is not to deny the need for improved policymaking, the adjustment of protection instruments to meet particular circumstances and national capacities, or the coherent and consistent management of protection policies. However, it is essential to safeguard the international legal and normative principles on which protection is based and to ensure that these principles do not recede in the face of a more managed provision of protection.

E. The Politicization of Protection

Finally, these challenges point to where the protection system is under greatest strain: the highly politicized context within which protection is now placed. This is not to deny the reality that the 1951 Convention and the 1967 Protocol were constructed within a political context, nor that refugee protection has always served national and international political interests to a greater or lesser degree. However, what is different now is that, under the pressure of globalized mobility and the multicausal and complex drivers of forced displacement, protection has, in effect, been co-opted and instrumentalized as never before to serve national interests and a political discourse that reinforces the securitization of migration and asylum at the expense of the fundamental rights and protection of all migrants, especially those who have been forcibly displaced.⁹⁹ That protection now lies at the nexus of human rights, legal and normative precepts, and politics is potentially the most disturbing evidence of the fragmentation of today's system.

Solutions to the crisis of protection and forced migration can only be addressed within a wider and more coherent policy framework.

VII. Conclusion

Whilst the mitigation of forced displacement through long-term development, good governance, and full respect for human rights remains the ultimate aim, the increasing scale of conflict-driven and environment-related movement continues to strain the existing regime for the protection of the displaced, and to generate new demands for protection.

To refit the global protection system to meet the challenges of contemporary humanitarian crises, there is a need both to reinforce—but also to transcend—the well-established legal and normative frameworks of protection, and reframe our understanding of the concepts of forced migration and protection.

Better protecting forced migrants cannot stand alone as an aspiration, essential though this is. Solutions to the crisis of protection and forced migration can only be addressed within a wider and more coherent policy framework. This should expand the global scale of regular, managed migration; build on and promote longer-term, development-led strategies in countries of origin and the major destination countries; and substantially expand the scope and scale of refugee resettlement.

⁹⁹ The highly politicized public discourse on migration and asylum in Europe was dramatically evident in national elections and elections to the European Parliament in 2014, and the 2014 Swiss referendum on immigration quotas for the European Union. Meanwhile, xenophobia has been rising across Europe. See Zetter, "Creating Identities."



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Professor Zetter's recent research themes include protracted refugee situations, environmental change and population displacement, development-led responses to the economic costs and impacts of forced migration, and protection and forced migration.

He has been a consultant to many governments and international organizations, including the UN High Commissioner for Refugees (UNHCR), UN Development Program (UNDP), World Bank, UNHABITAT, International Federation of Red Cross Red Crescent Societies (IFRC), International Organization for Migration (IOM), Swiss Agency for Development and Cooperation, Oxfam, and Brookings-Bern Project; and the governments of the United Kingdom, New Zealand, Denmark, Norway, and Switzerland, as well as the European Commission.

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