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Migration Reports

Protecting Forced Migrants

A State of the Art Report of Concepts, Challenges and Ways Forward

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Malian refugee families with their belongings on their way to camp.
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December 2014

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Migration Reports

Foreword

The field of asylum is constantly in crisis, but today the crisis seems to be more acute than ever before. At the global level, it is the United Nations High Commissioner for Refugees who must handle this emergency, but in Europe, there is still no shared policy. In Switzerland, the continuous legal adjustments conceal a situation in deep disarray. In recent months, the escalation of conflicts on Europe's doorstep have led to almost daily human dramas.

Some people think that Europe and Switzerland should bar the doors in response to these migrations, which they consider unjustified. Others believe that if the doors were just opened wider, all of the migrants could be accommodated. For most, however, the dominant feeling is a sense of unease: What is to be done when there are such large numbers of people in distress that it seems impossible to accommodate them? Is it fair that only those who risk their lives to travel are protected? How can the destination countries show solidarity while still retaining control of the flows of migration? How can the achievements of the 1951 Convention be preserved while at the same time allowing for the reforms that are needed now?

No one could consider the current system of asylum to be satisfactory, but a substantive, evidence-based political debate will be necessary in order to define future goals and shape the reforms that are needed. In order to contribute to this process the Federal Commission on Migration (which, we should recall, resulted from a merger of the Federal Commission on Foreigners and the Federal Commission on Refugees) decided to look at the larger context.

Unusually for the FCM, the study that it has commissioned does not address a specific need – unlike the studies on such issues as the resettlement of refugees in 2008, the expulsions in 2010, or the short-term work permits in 2013. It has also deliberately avoided focusing on Switzerland in order to facilitate a large-scale inquiry that concerns all countries. After extensive reflection, the FCM's working group decided to place the notion of *protection* at the centre of the study, a notion that is broader than *asylum* or *refugee,* and less bound up with existing laws. A series of fundamental questions were then derived from this: What are the current protection needs on the global level? What has caused these needs? What are the policies that have been implemented to respond to them? Are they sufficient? What are the paths that will ensure access to protection for the greatest number of people?

The answers to these questions require an extensive knowledge of the scientific literature and of current policy debates as well as an international network of contacts with organisations and individuals responsible for providing protection. In Roger Zetter, the FCM has found the ideal person to carry out this mission. Professor Zetter was the director of Oxford University's Refugee Studies Centre from 2006 to 2011 and has published some of the most influential scientific articles on protection policies. Professor Zetter immediately agreed to write this report for us, for which he has our sincere gratitude. He is far enough outside the Swiss context not to be affected by national debates and is extremely knowledgeable about the global landscape of forced migration. The report's findings challenge a number of common beliefs, showing that there are considerable legitimate needs for protection and that the answers provided so far are not at all well-developed. The report establishes a foundation for solid reflection and outlines paths to follow in order to meet one of the great humanitarian challenges of our time.

Etienne Piguet, Vice President FCM

Contents

Acronyms

AU	African Union
ALNAP	Active Learning Network for Accountability and Performance
ANSA(s)	Armed non-state actor(s)
CEAS	Common European Asylum System
CIR	Consiglio Italiano per i Rifugiati (Italian Council for Refugees)
CoO	Country of Origin
CSO(s)	Civil Society Organisation(s)
DMFA	Danish Ministry of Foreign Affairs
DRC	Danish Refugee Council
DRR	Disaster Risk Reduction
EASO	European Asylum Support Office
EC	European Commission
EU	European Union
EUMS(s)	European Union Member State(s)
EUROSUR	European External Border Surveillance System
FCM	(Swiss) Federal Commission on Migration
GAMM	Global Approach to Migration and Mobility
GPC	Global Protection Cluster
IASC	Inter Agency Standing Committee
ICRC	International Committee of the Red Cross
IDP(s)	Internally Displaced Person(s)
IFRC	International Federation of Red Cross and Red Crescent Societies
INGOs	International non-governmental organisations
IOM	International Organisation for Migration
IRC	International Rescue Committee
MMTF	Migration Task Force
NGOs	Non-governmental organisations
NRC	Norwegian Refugee Council
OCHA	Office of the Coordinator of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
PEP	Protected Entry Procedure
R2P	Responsibility to Protect
RSD	Refugee status determination
SFDJP	Swiss Federal Department of Justice and Police
SFDFA	Swiss Federal Department of Foreign Affairs
TCNs	Third Country Nationals
UNDP	United Nations Development Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	Office of the United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
VAR(s)	Voluntary assisted return(s)

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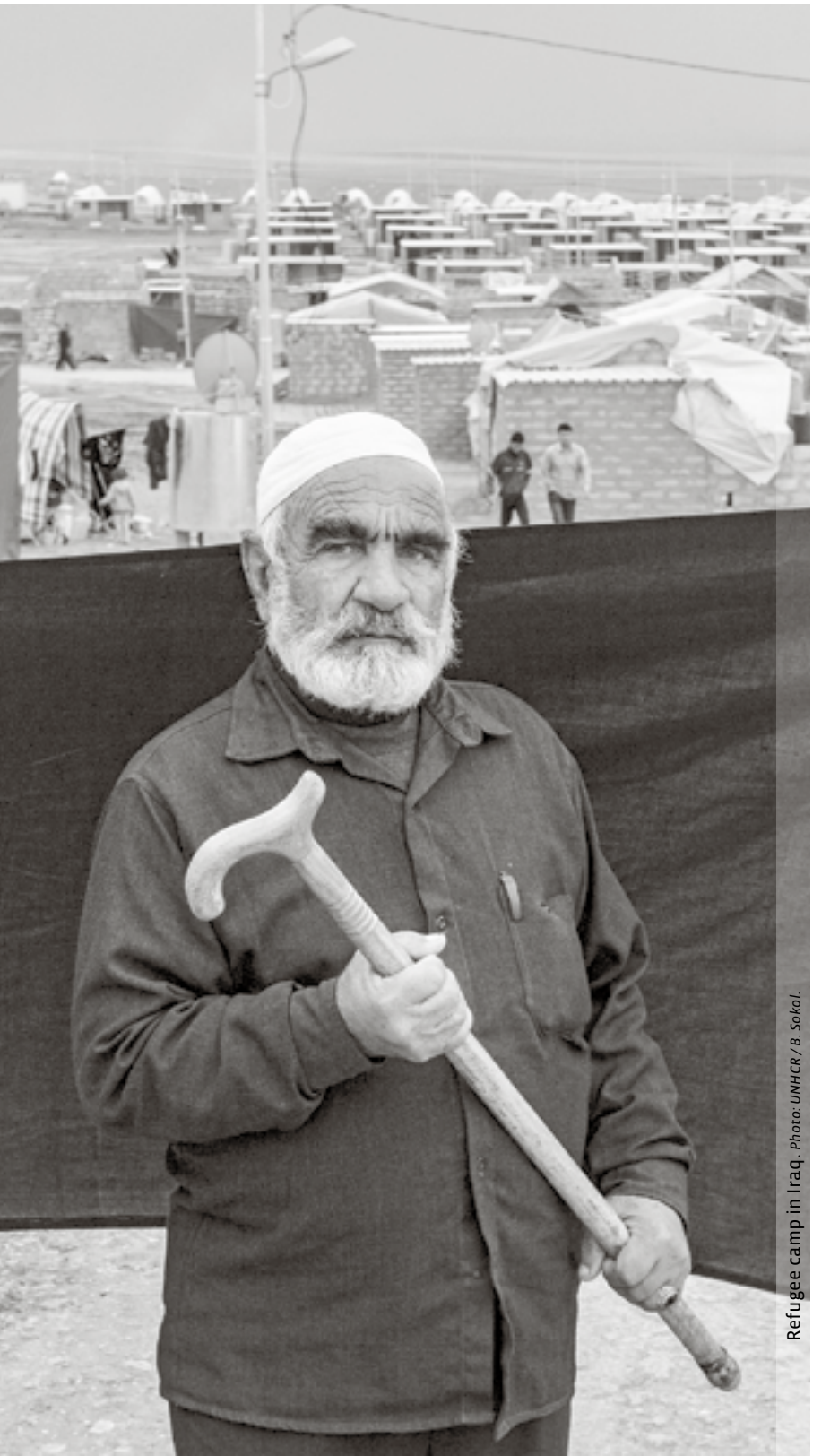
I benefitted from the wisdom and expertise of too many people to mention individually. But I wish to thank:

- colleagues at the European Commission, ICRC, IDMC, IFRC, IOM, Norwegian Refugee Council, OHCHR, UNHCR (in Geneva and Rome);
- officials of the Federal Government of Switzerland in the Federal Department of Foreign Affairs (FDFA) and the Federal Department of Justice and Police (FDJP), the Government of Norway (Ministry of Justice and Public Security, Ministry of Foreign Affairs and the Immigration Appeals Board), and the Government of Denmark (Ministry of Justice and Ministry of Foreign Affairs);
- the Schweizerische Flüchtlingshilfe (SFH), Norwegian Organisation for Asylum Seekers (NOAS), Italian Council for Refugees, the Jesuit Refugee Service in Italy;
- Servizio centrale dello SPRAR, Italy;
- Special thanks are also due to Michael Diedring and Aspasia Papadopoulou at ECRE in Brussels.

Roger Zetter

1 Executive summary



Refugee camp in Iraq. *Photo: UNHCR / B. Sokol.*

This study investigates the protection needs of forcibly displaced populations, and it explores current and future challenges to the provision of protection. It makes recommendations on how these challenges might be met and how protection can be enhanced.

The principle of protecting human, political, social, and civil rights has its foundations in international human rights and humanitarian law, norms and standards. When states are unwilling or unable to provide this protection because of violent conflict, human rights abuses, persecution and other threats to life and livelihoods, people are often forcibly displaced, for example IDPs and refugees. Such people have a special call on the international community for protection in order to reduce their vulnerability to such risks.

The motivation for the study reflects widespread interest and growing concern about the multiple challenges the humanitarian community faces in ensuring such protection in humanitarian crises. This is because the patterns and the dynamics of population displacement in the contemporary world are profoundly different from the situation when the normative principles, and international legal framework for protection, were laid down in the *1951 Convention relating to the Status of Refugees and the 1967 Protocol*.

The increasing complexity, unpredictability and indiscriminate patterns of violence, conflict and persecution – and the equally complex and diverse mobility patterns of people who are forcibly displaced by these events – challenge the efficacy of established protection norms and practice. Other risk-drivers include poverty and poor governance, which may precipitate involuntary migration. Often it is a combination of factors that lies at the core of displacement. Thus, many people on the move today fall outside the well-established protection categories,

standards and instruments because the norms define too narrowly the nature of the protection challenge and needs. These changing circumstances bring into sharp focus conceptual questions about the evolving scope and widening interpretation of protection for forcibly displaced people. They also pose operational questions about the purpose, relevance, and application of protection under the present-day forms of conflict, violence, and persecution that drive forced displacement. These are the questions this study addresses.

For these reasons, the label «refugee» has seemed both problematic, when confined to its specific persecutory meaning in international law, and inadequate in scope to capture the complexity and multi-variate motives that compel people to flee. Instead, some level of force and compulsion is a common feature. It is this wider category of people broadly termed ‹forced migrants›, for whom there is neither a simple definition nor an official designation, which constitutes the focus of this study. More than 50 million people are forced migrants worldwide and there are potentially many millions more who are undocumented. Almost 95% are found in their regions of displacement in the global south.

This study adopts a broad interpretation of protection, grounded in its normative foundations in international law, but which is conceptual and constitutive application. Nevertheless, it is recognised that tensions exist between the specificity of the term protection in its legal and normative meanings, and its increasingly wider use in humanitarian crises. Linked closely with the concept of vulnerability, protection in this study includes the wider provision of safety, security and the reduction of vulnerability for people who are forcibly displaced because of threats to their lives and livelihoods. The conceptual and constitutive elements of protection come together in an operational framework that comprises the policies, programmes and processes of governments, intergovernmental, humanitarian and development agencies.

The study argues that we can best understand the protection needs of forced migrants by examining the different «spaces» in which they find themselves at different temporal stages of their journeys. Thus six distinct «geographies» or «spatialities» of forced migration are explored, each one exposes significant protection gaps and shrinking protection space and poses new, contrasting protection challenges. The geographies are:

- Internally displaced persons
- The urbanisation of forced displacement
- Micro-level displacement and circular mobility
- Third country nationals who are «stranded migrants in crisis»
- The «forced migration continuum» – the movement of migrants who transit through and then outside their region of origin
- Forced displacement in the context of slow-onset climate change and environmental stress

Underpinning these experiences is the vulnerability to which people are exposed before, during and after forcible displacement. The study questions whether the conventional, «status-based protection» is the only or a sufficient response, or whether the means to reduce vulnerability and exposure to vulnerability is an equal imperative. From this perspective, «needs-based» or «rights-based» protection are significant. Thus, a crosscutting concept of «displacement vulnerability» and its interplay with protection is proposed, which offers a more nuanced framing of the challenges and the problematique of protection.

The main body of this study explores and critiques a range of current and emerging protection initiatives developed by national, international and intergovernmental agencies, as well as non-governmental humanitarian actors. It examines the scope of these initiatives and their capacity, strengths and weaknesses to address the protection needs and displacement vulnerabilities of forced migrants. Inter alia it considers initiatives such as: self-protection; the Global Protection Cluster; protection in an urban setting; regional Development and Protection Programmes, and development-led approaches to protection; the 10-point Plan of Action; Responsibility to Protect

«More than 50 million people are forced migrants worldwide.»

Executive summary

(R2P); Mobility and Migration Partnerships; protection in transit; a substantial section of the study explores the situation in Europe, the «re-bordering» of the EU, the Common European Asylum System and the Post-Stockholm Programme; protection capacity and policy in the context of climate change.

Five main arguments underpin the analysis of these initiatives.

First, there is the proliferation of definitions and practices of protection, but this has taken place without a coherent, systematic framework or overarching architecture to support or co-ordinate these initiatives.

Second, many international agencies, governments and humanitarian NGOs have developed protection initiatives to meet their specific institutional goals or programming strategies. But while protection is now «mainstreamed» – arguably, humanitarian assistance has become protection – only a small number of organisations are the duty bearers for protection. Given the manifold wars and crises, this «proliferation of protection» may have been a necessary response by humanitarian organisations in order to better tailor the protection machinery to particular situations, needs and actor capacity; yet this proliferation, associated as it is with the reconfiguration of the institutional structures, has produced a fragmented response to contemporary protection challenges.

Third, there is a distinct and growing dichotomy between the concepts and practice of protection in regions of mass forced displacement compared to the global north where non-entrée regimes for refugees, asylum seekers and other forced migrants are becoming increasingly embedded. A twin-track protection model has emerged that significantly reduces protection space for forced migrants.

«Protection should transcend national and political interests.»

Fourth, while some of the initiatives are «soft-law» based, in the main they tend to be decreasingly based on legal and normative frameworks and principles, but on policy and operational needs. This situation reflects and reinforces a profound transformation in the underlying rationale and practice of protection: this is the shift from norms-based principles to the «management» of protection that is linked to the institutional reconfiguration. The «managerial turn» in protection, a significant contention of the study, is gradually undermining the normative foundations of protection

Fifth, protection now lies at the nexus of human rights, legal and normative precepts and political interests. Protection should transcend national and political interests, but the increasing politicisation of protection is the most disturbing finding of the study since it corrodes the universal quality of protection, and renders more problematic the way that protection challenges posed by the contemporary dynamics of forced migration can be addressed.

The study discusses ways forward and new modalities for the protection of forced migrants around five themes.

On *Definitions and Principles* the study: recommends greater recognition be given to the phenomenon of «forced migration»; proposes wider consideration of «needs-based» and «rights-based» protection and «displacement vulnerability»; stresses that norms of protection must transcend national and political interests; rejects the bi-polar protection regimes of the global north and global south in favour of lasting commitment global and indivisible protection norms; recommends taking stock of the increasingly disaggregated responses to contemporary protection challenges; and advocates for the resuscitation of the Responsibility to Protect doctrine (R2P).

On *structural considerations* the study: emphasises that protecting people *from* forced displacement is the most desirable form of protection, achievable through long-term development and respect for human rights; calls for policy coherence by recognising the interconnectivity of forced and regular migration, by promoting the «whole-of-government» approach to policy making, and by reinstating a global response to refugees and forced migration in the draft post-2015 UN Development Agenda; emphasises the need for policies that secure more open channels for orderly, managed, regular migration and mobility; calls for greater international effort to scale up the adoption and implementation of the

1998 Guiding Principles on Internal Displacement; advocates the need for much larger and more effective resettlement programmes in the global north.

On *enhancing the policies and praxis of protection* the study: advocates better support for the modalities of self-protection; encourages the development of more effective protection in situations of local and circular migration; advocates an enlarged role for the UNHCR and IOM in developing protection space and standards in transit countries; calls for the consolidation of policies and practice for protecting displaced populations in urban areas; promotes the «value added» role of development-led strategies for protection; recommends incremental and flexible approaches to local integration as a valuable protection instrument in protracted displacement situations; stresses the urgent need to scale-up the attack on people smuggling and trafficking; and calls for the better protection of communities susceptible to land grabbing.

On *Europe and protection,* the study: calls for a substantial review of the non-entrée regime, extra-territorial processing, the border management strategy and a reversal of the politicisation, and the «managerial turn» in protection in order to re-establish viable protection space and a full 360° protection system in Europe; recognise the importance of the Global Approach to Migration and Mobility (GAMM) as a co-ordinated and comprehensive policy framework; advocates expansion of Temporary Protection (TP) measures, protected entry and humanitarian admissions; re-enforces the importance of substantially expanding resettlement opportunities in Europe. It also calls for a reduction in the use of detention and deportation of irregular migrants; advocates the sharing and standardisation of country of origin information, and the appointment of independent inspectors at national and EU levels responsible for assessing and advising on asylum, immigration and protection; and endorses the need concerted messaging and action to counter the negative perceptions and attitudes towards migrants among the media, government agencies and citizens.

On *climate change and environmental stress,* the study: endorses the application of the *1998 Guiding Principles on Internal Displacement* and the *2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa;* urges national governments to give greater priority to developing protection policies and norms, which should be mainstreamed in plans and strategies dealing with climate change and migration; stresses the need for better co-ordination and collaboration between government ministries and agencies, and the development of professional expertise in human rights protection and environmental law. It advocates a larger role for international and intergovernmental agencies and humanitarian actors in supporting and encouraging national governments; advocates for expansion of Temporary Protection status for those displaced in the context of climate change and environmental disasters; anticipates the major contribution that the Nansen Initiative will make when it reports in 2015 and recommends continuation.

2 Introduction, overview and scope of the study

Ship wrecks on the coast of Sicilia. *Photo: Simone Prodolliet.*

2.1 The aims and objectives of the study

This study has been commissioned by the Swiss Federal Commission on Migration (FCM).

The *aims* of this study are to review, from the perspective of governments in the global north, the protection needs of forcibly displaced people, the current and future challenges to the provision of protection, and to propose recommendations to enhance protection policies.

The main *objectives* are to:

- Outline the development of the concept, the typologies and policies of protection
- Identify current and emerging protection needs of forcibly displaced people
- Review the adequacy of protection instruments and policies to cover the spectrum of current and future needs, and to identify the main contemporary challenges and limits to the provision of protection
- Analyse and assess the scope of national, international and intergovernmental initiatives and responses to current and future protection needs and challenges
- Propose policy recommendations to tackle existing constraints and respond to emerging policy challenges to the provision of protection

2.2 The challenge of protection

States have a responsibility to protect their citizens from violent conflict, human rights abuses, persecution and other threats to life and livelihoods. But when states are unwilling or unable to provide protection from these threats, then individuals, households and often whole communities may be forcibly displaced or feel compelled to flee, in order to seek protection and reduce their vulnerability to such risks. Indeed,

forced migration precipitated by humanitarian crises is a powerful indicator that normal protection conditions have failed. And just as forced migration is a major consequence of the failure to protect people from human rights violations, so too forced migration is itself frequently a major cause of subsequent failures in protection.

Averting or removing the underlying factors that propel forced migration is the ultimate goal of protection. But this frequently fails and, when it does, providing protection to forcibly displaced populations in order to safeguard their dignity and their rights rests on humanitarian principles and the operations of a wide range of humanitarian, government and other actors. This study investigates the protection needs of forcibly displaced populations, and it explores current and future challenges to the provision of protection. It makes recommendations on how these challenges might be met and how protection can be enhanced.

The motivation for the study reflects widespread interest and growing concern about the multiple challenges the humanitarian community faces in ensuring protection in humanitarian crises (see e.g. Swiss FDFA 2013). At the global, regional and field level, states, intergovernmental organisations, donors and humanitarian actors «face multiple challenges in ensuring protection» (IASC 2013:§4). For example, the UN Secretary General's «Internal Review Panel on United Nations Action in Sri Lanka» (IRP) (UN 2012) was highly critical of the failure to protect vulnerable populations in that crisis, noting that the «systemic challenges and issues raised in the [Sri Lanka IRP] report are not limited or specific to Sri Lanka or the United Nations, but arguably symptomatic of broader challenges that permeate the international community's *protection response* to crises» (IASC 2013:§6) (italics added). Examples of protection failures in the 2010 Haiti earthquake response and, as far back at the Rwanda genocide in 1994 are also cited. The infamous Srebrenica massacres of 1995 in Bosnia-Herzegovina, which took place within the protected space of a so-called «safe haven», must be added to the catalogue of the failure to protect.

The IRP on Sri Lanka has sparked other actions. The «Rights up Front» declaration of the UN (UN 2014) reiterates the aim of the organisation to «promote respect for human rights» as a core purpose of the United Nations in the context of violations of human rights and humanitarian law. The IASC Principals have reaffirmed the commitment and role of all humanitarian actors to ensure the «centrality of protection in humanitarian action»[1]. The sixth annual High Commissioner's Dialogue on Protection Challenges, in 2013, highlighted the distinct challenges surrounding protection and solutions for internally displaced persons (IDPs) (UNHCR 2013). Perhaps the most significant reflection of current concerns, the IASC has recently issued Terms of Reference for a «Whole System Review of the Centrality of Protection in Humanitarian Action»[2]. The review, aimed at strengthening protection as an integral part of humanitarian action, will cover all aspects of humanitarian protection including forcibly displaced people.

«How do protection and forced migration interact?»

But what is meant by forced displacement? What is meant by protection? What forms does it take? How do protection and forced migration interact? How have the concept and practice of protection evolved in recent decades in the context of increasing numbers of forcibly displaced people? Who provides protection? Who should be protected? Should only refugees under the *1951 Convention relating to the Status of Refugees* and *1967 Protocol* be protected? Or might different groups of people, compelled to leave their homes by force other than persecution, also require protection? These are some of the questions that motivate this study.

The principle of protecting the human, political, social, and civil rights has its foundations in international human rights and humanitarian law, norms and standards. More specifically, the principle of protection for forcibly displaced people was established in the *1951 Convention relating to the Status of Refugees* (the «1951 Refugee Convention»). This enshrined protection for refugees – a precise category of forced migrant – in

1 See for example «The Protection of Human Rights in Humanitarian Crises», A Joint Background paper by OHCHR and UNHCR, IASC Principles, 8 May 2013. www.globalprotectioncluster.org

2 www.reliefweb.int

International Law, a principle that has provided the foundations of legal and normative policy and practice in relation to refugee displacement ever since.

However, the patterns and the dynamics of population displacement in the contemporary world are profoundly different from the situation when the 1951 Refugee Convention and, later, the 1967 Protocol were adopted. The increasing complexity, unpredictability and indiscriminate patterns of violence, conflict and persecution, and also, the equally complex and diverse mobility patterns of people who are forcibly displaced by these events, challenge the efficacy of established protection norms and practice. Many people on the move today fall outside the established protection category of the 1951 Refugee Convention. Other uprooted and vulnerable populations such as internally displaced people outnumber refugees. Yet they are equally vulnerable and require protection. These changing circumstances – analysed in greater detail in the next chapter – bring into sharp focus conceptual questions about the evolving scope and widening interpretation of protection for forcibly displaced people, as well as operational questions about the purpose, relevance, and application of protection under the present-day forms of conflict, violence, and persecution which drive forced displacement: these are questions which this study addresses.

Protection, of course, is not a solution to the problems of uprootedness; but it is the cornerstone of both international humanitarian action for forcibly displaced populations and the search for durable solutions to their plight. Exposure to the shrinking capacity of «protection space» and the increasing scale of «protection gaps»[3], widely observed by academics, advocacy organisations and international agencies, raises fundamental concerns about the efficacy of protection for displaced populations in the contemporary period. It is these concerns that underpin the rationale for this study and define the context within which it is situated.

2.3 The scope of the study

Protection of rights in the context of humanitarian needs in general, and the protection of a specific group of people – forced migrants – is, of course, a potentially enormous field to be explored. Thus the parameters and scope of the study must be explained.

First, and most obvious, within a context of protecting a wide range of rights for all citizens, this study is only concerned with protection of forcibly displaced people – itself a problematic concept which is explored in Chapter 3. This means considering protection as a crosscutting concept that covers a wide range of factors, but within a specific context. At the same time, the study gives priority to protection in an international setting and is thus less concerned with internal displacement and internally displaced people (IDPs).

Next, although this study acknowledges the significance of International Humanitarian and Human Rights Law in the legal and normative framing of the concept and practice of protection, this is not an explicitly legal study: it does not, for example, examine jurisprudence, legal procedure, the work of the national or international legal judiciary, appeal systems, or case law on, for example, specific categories of rights violations such as SGBV (sexual and gender-based violence). Other sources detail this legal context and the many challenges to the legal understanding and interpretation of protection related to refugees (see for example: Gammeltoft-Hansen 2011; Hammerstad 2014; Holzer 2012; Simeon 2013). Rather, this study explains that, beyond its immediate legal origins, its normative framework and its concern with rights, protection is now widely conceived and practiced by intergovernmental and international organisations and humanitarian NGOs. The study responds to these new and emerging trends by exploring different typologies, approaches and instruments of protection and the extent to which they adequately reflect the changing environments within which forcibly displaced people need protection. The study argues that compliance with the normative framework of protection is essential, but no longer sufficient to tackle the protection challenges of forced migration in the contemporary world.

Further, this is neither a study about the detailed operational, technical and programmatic characteristics of protection for forcibly

displaced people, nor an examination of the resources, capacities and delivery of protection for them «in the field». The study is not, therefore, an evaluation of the humanitarian regime and system in which the UN system is the principal actor protecting the rights of forced migrants: the IASC (Inter Agency Standing Committee), OCHA (Office of the Coordinator of Humanitarian Affairs), the Office of the UNHCR (United Nations High Commissioner for Refugees) or the OHCHR (Office of the High Commissioner for Human Rights); and it does not review in detail the operations of other actors such as IOM, ICRC, and humanitarian NGOs, Humanitarian Coordinators and Humanitarian Country Teams and Integrated Missions. Equally, in omitting operational and programmatic aspects, the study does not provide a detailed examination of the operational aspects of many European Instruments related to protection such as the Common European Asylum System, Frontex, and Dublin III, for example.

Neither an action-oriented «whole system review» (of the type commissioned by the IASC), nor a norm-based study of international humanitarian law in the context of population displacement, instead this study has a more limited and innovative ambition.

Located at the intersection of humanitarian protection and forced displacement, it seeks to bring these concepts, principles, substantive content and the constitutive elements of these two phenomena into closer conjuncture by exploring and analysing the interplay between them. At the same time it seeks to broaden our understanding of protection in the context of forced migration. To this extent the study challenges the contention of the IASC «that *protection* loses its specificity when it is used to refer to a broad range of humanitarian activities» (IASC 2013:§9). While this argument might apply to populations who are susceptible to violations of their human rights, for forced migrants the crux of the challenge of rights protection is that the majority fall through or outside existing protection instruments, or the capacity and remit of duty bearers. It is precisely the recourse to more narrowly conceived legal and norm-based doctrines for this particular population, which this study questions. This study suggests that such an approach may be as much part of the problem as the solution.

Transcending legal and normative frameworks and time bound concepts of protection, the study seeks to refine and shed new light on the significance and meaning of these phenomena in the contemporary world. By reframing our understanding of the two concepts of forced migration and protection, and by defining a more clearly shared understanding of these concepts, the study seeks to enhance the response of the international community to the challenge of protection for forcibly displaced people.

Finally, reflecting the terms of reference of the Federal Commission on Migration (FCM), the study adopts a global north, specifically European, perspective.

The study is organised as follows.

Chapter 3: sets the context for the study and defines and analyses the main concepts and terms – forced migration and protection.

Chapter 4: explores the current and emerging protection needs of forcibly displaced people; reviews the adequacy of protection instruments and policies to meet these needs; and identifies the nature, scale and dynamics of the challenges that are presented.

Chapter 5: analyses and assesses the scope of national, international and intergovernmental initiatives and responses to current and future protection needs and challenges.

Chapter 6: proposes recommendations and ways forward to reframe approaches to protection that can tackle existing constraints and respond to emerging policy challenges to the provision of protection.

3 «Protection space» and «protection gaps» are widely used terms in the literature to describe two crucial dimensions of the current protection regime. The terms arise from the evolving dynamics of forced displacement analysed in Chapters 3 and 4 (UNHCR 2011b). «Protection space» is both a physical and metaphorical term that describes the changing locations in which forced migrants are found – for example the increasing urbanisation of displacement – as well as the evolving diversity of processes and humanitarian actors who provide protection for the forced migrants. «Protection gaps» is the term to describe Gaps in the international protection framework and in its implementation. These are instances where existing protection instruments and norms do not adequately cover specific situations or needs, or where protection capacity is limited as a result of the non-application or inconsistent application of existing standards and norms for the protection of refugees (UNHCR 2006).

3 Forced migration and protection

Two people rescued by the Italian Navy. *Photo: UNHCR / Alfredo d'Amato.*

3.1 International Migration

International migration is a complex and growing global phenomenon. Usually termed regular or authorised migration and principally a *voluntary* movement of people seeking better economic and social opportunities, as well as different life experiences and lifestyles. Approximately 232 million people – more than three per cent 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% increase on the 154 million international migrants in 1990 (UN-DESA 2013). International migration – notably labour mobility – is a major force in economic and social development in both origin and receiving countries and the magnitude of this increase is both a consequence and a driver of the processes of economic globalisation that have unfolded in recent decades.

The saliency of migration to the international community is highlighted by the UN Global High-level Dialogue on Migration and Development in 2006 and 2013, and the incorporation of international migration in the draft of the post-2015 UN Development Agenda.

New patterns and processes of international migration are emerging (see e.g. Castles et al. 2013; Faist and Özveren 2004). Countries such as Italy and Spain, that were formerly sources of emigration, are now countries of immigration. Expanding global mobility is producing new diasporas, transnational communities and social networks; the majority of global migrants – some 70% – originate in the south; south-south migration is increasing, with Brazil for example a major destination country. Nevertheless, post-industrial countries remain the most significant destination for international migrants, attracting 70% of global migrants; borderless spaces such as the European Union (EU) facilitate international mobility within the

Union, but rely on the increasingly strict control over the entry of migrants from outside the EU.

3.2 Forced Migration

In contrast to *voluntary* regular migration, a smaller but very significant international migratory movement comprises people who leave their homes and countries *involuntarily*. Following the adoption of the *1951 Convention relating to the Status of Refugees* (the «1951 Refugee Convention»), such people were deemed to have a well-founded fear of being persecuted and were labelled refugees. The 1951 Refugee Convention defined five specific grounds of persecution attached to this label: race, religion, nationality, membership of a particular social group or political opinion. In 1967 a Protocol was added to the Convention that removed its temporal and geographical constraints and so the Convention became truly global[4]. There are 142 States Parties to both the Convention and Protocol and a further five States Parties to either the Convention or the Protocol.

In the decades after its adoption, the label refugee applied not only to those who fell within the specific terms of the 1951 Refugee Convention, in other words the legal and normative framework of international law: increasingly it has come to provide a generic description covering a wide spectrum of involuntary migrants displaced by conflict, violence and also other drivers but who are not, *prima facie,* subject to persecution under the terms adopted in the 1951 Refugee Convention.

Involuntary and irregular migration are now a highly problematic phenomena for the international community, not least because the volume of these migrants, the variety of drivers, and the range of destinations have all expanded enormously in the last two decades or so: trends that can be expected to continue in the coming years.

Conflict and violence, persecution, warlord economies, armed non-state actors, separatist movements, repression and extreme abuse of human rights are readily recognisable causes that force people to flee their abode or their countries. Ethnic cleansing, which has forcibly displaced millions of people in recent decades in Bosnia, and Rwanda for example, is an extreme manifestation of these «crisis» conditions. Where violence and conflict drive people from their habitual places of residence, it is intra-state conflict, almost without exception, that now accounts for involuntary migration. Thus, armed non-state actors are increasingly the perpetrators of the indiscriminate and generalised violence that leads to forced migration for example in Colombia, DRC, Somalia, Mali, Iraq, and Syria.

In all these situations, conflict and forced displacement may erupt spontaneously from unpredictable and multiple triggers, leading to a state of radical uncertainty and high levels of livelihood vulnerability for those affected.

Poor governance, political instability and the failure to protect human rights may often underlie these situations leading to generalised violence that then puts pressure on people to move away to seek security or minimise their livelihood vulnerability and exposure to risks. Sometimes, the momentum created by these factors tends to generate slow-onset or episodic displacement rather than the more familiar humanitarian crisis conditions of rapid mass exodus in civil war (IFRC 2012:19–25).

Underlying conditions such as water scarcity, food insecurity, drought, environmental degradation, famine and natural disasters, as well as poverty, and the failure of economic development to secure viable livelihoods, constitute increasingly important conditions that produce population displacement. Even if not explicitly forced, in the terms described above, and not accompanied by violence, these conditions often oblige people to leave their homes: vulnerable people seek to escape these life-threatening and life-diminishing situations. Climate change, manifest in slow-onset sea level rise and desertification, and in the increasing incidence of rapid-onset extreme weather conditions, is likely to be a major contributor to forced displacement as this century progresses.

Most often it is a combination of these factors that commonly lies at the core of such displacement: these risk drivers include poverty, poor governance, the repression of human rights

4 The 1951 Refugee Convention was temporally limited to events (creating refugees) that occurred before 1951 and geographically limited only to refugees, as defined in the Convention, in Europe.

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exacerbate conflict or episodic and generalised violence that precipitate involuntary migration. Individuals, families and communities feel compelled to leave because these conditions make it difficult – if not impossible – to sustain their safety and livelihoods.

Already we can appreciate the definitional and terminological challenges. While the extremes of voluntary migrant and refugee may be sufficiently clear-cut, they define two ends of a spectrum in which voluntary migration gradually merges into forms of migration that are increasingly recognisable as forced.

Whether it is forced or voluntary, a distinctive and novel feature the contemporary patterns of mobility is that increasing numbers of migrants now transit through countries seeking access to Europe, North America and Australasia, rather than remaining in a neighbouring country or in-region. Mostly undocumented and increasingly reliant on smugglers to assist their journeys, these conditions intensify their vulnerability and need of protection.

The IOM suggests that a way of understanding these differentiated – yet often overlapping patterns and processes – is through a «migration crisis lens»: it is «a term that describes and analyses the complex and often large-scale migration flows and mobility patterns caused by a crisis that typically involve significant vulnerabilities for individuals and affected communities and generate acute and longer-term migration management challenges» (IOM 2012:2)[5].

«Forced migrants»: no simple definition, no official designation.»

For all these reasons the label «refugee» has seemed both problematic, when confined to its meaning in international law, and inadequate in scope to capture the complexity and multi-variate motives that drive involuntary migration (Marfleet 2006). Thus, other labels such as «mixed migration flows», (involving people propelled by overlapping migration drivers, or groups of people with different migration motives travelling together), the «asylum-migration nexus» (Castles and van Hear 2005), «crisis migration» (Martin et al., 2014), «survival migration» (Betts 2013), and people in «refugee-like situations», are used as shorthand terms to identify categories of people who, while not refugees under the 1951 Refugee Convention, experience many of the same outcomes of displacement, fractured communities, and destroyed livelihoods (Zetter 2007).

However, what is common is that some level of force and compulsion is present. It is this wider category of people broadly termed «forced migrants», for whom there is neither a simple definition nor an official designation, which constitutes the focus of this study.

Data on forced displacement are imperfect. Data collected by international agencies indicate that forced displacement predominantly occurs *within* the countries that are affected. Thus at the end of 2013, more than 33.3 million people worldwide were internally displaced by conflict and violence (IDMC 2014). In addition, an estimated 32.4 million people were newly displaced, mostly internally, by disasters associated with natural hazard events in 2012; the nature of the disaster displacement process and the lesser extent of protection needs compared with populations forcibly displaced by conflict and violence, renders this category of limited interest in this study and is not included. Concerning involuntary migrants *outside* their country of origin, approximately 11.7 million fall under the mandate of the UNHCR and were granted the privileged status of refugees in mid-2013 data (UNHCR 2013a:6)[6], a figure now in excess of 13.5 million including the further exodus of refugees from Syria since that time. In addition, almost five million displaced Palestinians come under the protection mandate of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). Thus, included in this study is a total of almost 53 million people involuntarily displaced, worldwide[7].

However, these are only the official statistics. The actual total is much greater. This is because an unknown number, certainly millions more involuntary migrants – both internally and internationally – are not recorded by governments or international agencies. Data on internally displaced people are haphazard, while large numbers of international migrants now enter a country by «irregular» means and remain, for the most part, undocumented (alternatively labelled «illegal» migrants). Many of those who are forcibly displaced are reluctant to be registered for

fear of being apprehended and returned. Others, migrating for better economic opportunities, remain undocumented because they simply cannot obtain the entry visas they need, given the increasing regulation of international migration. Still other undocumented migrants fit the mixed migration typology for which there are no clear immigration «regulations» and rights to seek protection.

Whether or not they are forcibly displaced, by definition these undocumented migrants cannot be accurately measured, and no global estimate is available. It is estimated that there were 11.4 million undocumented immigrants in the USA in 2012 (DHS 2012), while within the EU 27, estimates vary between 1.9 million and 3.8 million for 2008 (Triandafyllidou 2009), with possibly 618,000 undocumented immigrants in the UK in 2009 (Gordon et al., 2009). Between 80,000 and 100,000 undocumented migrants are thought to reside in Switzerland[8]. Anecdotal evidence suggest that as many as 400,000 undocumented migrants a year come from Central and Latin America and transit through Mexico seeking to access the USA (Frank-Vitale 2013), while estimates in 2011 from the International Organization for Migration (IOM) range from 1 million to 1.5 million undocumented Zimbabweans having fled to South Africa because of political repression and economic meltdown in their country (IRIN 2011). As many as 500,000 people may be transiting to the north African shore of the Mediterranean Sea, seeking access to European countries. The margins of error in all these estimates are enormous, but they give an indication of the scale of undocumented migration. Frontex, the EU's border agency recorded 107,000 detections of undocumented entry to Europe in 2013, but many thousands more slip under the radar of detection and registration. As we shall see, the expansion of undocumented migration, often reflecting the mixed motives of compulsion and aspiration noted above, lies at the root of the challenge of protection.

3.3 The governance of forced migration

With these new and complex dynamics of people on the move, both international migration in general and forced migration in particular are matters of high political saliency to governments, since almost all countries across the globe are now affected as a source, a transit or a destination for migrants. Symptomatic of the priority that the international community gives to international migration, both its positive contributions as well as the negative impacts, are two UN High-Level Dialogues on migration and development in 2006 and 2013 (UN 2006 2013) as well as the inclusion of migration in the post-2015 Millennium Development Goals. Equally symptomatic is the European Union's engagement with migration. Here, the overarching framework for external migration policy, the Global Approach to Migration and Mobility (GAMM) (EU 2011), the Common European Asylum System (CEAS), and the adoption of the Dublin III Regulation in 2013 (EU 2013) for determining Member State responsibility for examining asylum seeker applications for international protection, evidence the widespread reach of the migration agenda in general and forced migration in particular.

This new era of global migration has created a volume of international population mobility that increasingly challenges the capacity of states, sovereign governments and their citizenship regimes to manage and regulate these movements in ways that reflect a more restrictive political discourse on immigration – at least in post-industrial societies such as Europe – which is often perceived as a threat to sovereign interests, community relations and national identities (Zetter et al. 2006; Bloch et al. 2014:15–31).

«The expansion of undocumented migration lies at the root of the challenge of protection.»

5 IOM Migration Crisis Operational Framework, 101st Session 15 November 2012, MC/2355, page 2. https://www.iom.int

6 A further 1 million were «people of concern» to the UNHCR, i.e. without full refugee status.

7 This figure does not include the approximately 15 million persons who are displaced by development projects each year worldwide (Cernea and Mathur 2008). Although in some respects they are arguably forcibly displaced, they are not included in this study.

8 Anecdotal data cited at interview with Swiss Federal Government officials, February 2014.

9 Successor to the Dublin II Regulation of 2003 and the Dublin Convention of 1990.

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Thus, the governance of international migration and the prominence of immigration policy are high on the agenda of countries in the global north (see e.g. Betts 2011; Blitz 2014; Geiger and Pécoud 2012; Koslowski 2011; Gammeltoft-Hansen 2011). It is governments in post-industrial countries that are the most attractive destinations for increasing numbers of undocumented and forced migrants, which face the greatest pressures.

Concerning the movement of voluntary migrants across borders, this is governed as follows, by: an established regime of international conventions, norms and standards to protect the rights of people on the move; national immigration policies that manage and regulate the entry of international migrants; and the support of an international agency – the International Organisation for Migration (IOM) – which both promotes international cooperation on migration issues and also assists in ensuring the humane management of migration. These instruments permit documented voluntary migrants to move between countries, for the most part, in an orderly way with dignity and with appropriate levels of personal security, safety and rights protection.

«Many millions migrate without proper authorisation and official documentation.»

For forced migrants and for the countries they transit and for which they are destined, on the other hand, no similarly coherent paradigm either manages or protects this group of people on the move. A particular category of forced migrants who leave their countries of origin are recognised as refugees under the *1951 Geneva Convention relating to the Status of Refugees* and the *1967 Protocol*. However, as we have seen, the definition of a refugee under Article 1A (2) of the Convention – a person with «a well-founded fear of being persecuted» – decreasingly fits the complex, multi-causal drivers of displacement that characterise contemporary mixed migration flows. The diversity of factors outlined above, mediating why an individual leaves her or his country, makes it increasingly difficult to discern clear and precise causes of forced displacement, the degree of «force» that impels displacement or, indeed, the extent to which «persecution» describes the conditions which cause people to flee their countries. The distinction between «voluntary» or «forced» migrants and the labels we deploy to describe such people on the move are much less clear-cut than in the past (Zetter 2007). As a result, proportionately fewer migrants who are forced to leave their countries for whatever reason are able to claim or benefit from «refugee» status: the majority fall outside this recognised legal and normative framework that governs their reception and protection.

For states, governments, intergovernmental organisations and humanitarian actors confronting this predominantly south-north movement of people, it is the combination of multi-causal drivers that force people to leave their countries *and* the fact that such movement is mostly unregulated (i.e. the migrants are undocumented), that renders this form of international migration of profound concern and the most challenging to protect. In part this is because the unpredictable scale, patterns and processes of these population movements are perceived to produce adverse social and economic impacts on the destination countries, impacts that are complex and difficult to manage. In part, this is also because governments perceive that the unregulated flow of largely undocumented migrants, regardless of the reasons that have forced them to leave their countries of origin, threatens the sovereign control of national borders, access to territory and established concepts of state membership and citizenship. And finally there is concern that unregulated migration is a vector for terrorism and security threats (Lavenex 2001; Zetter 2014). For these reasons many destination countries, and supranational regional groupings such as the European Union, have put in place increasingly restrictive measures to both deter entry through tighter border controls and extra-territorial processing of migrants, and to severely restrict the rights of those who do gain access to territory by irregular means. These instruments and policies accentuate the challenges of providing effective and meaningful protection as we shall see in Chapter 5.

For the migrants themselves, whatever their reasons for leaving their country of origin, most confront progressively more difficult and hazardous challenges in reaching their destinations, which, as we have seen, are not necessarily a neighbouring country even if they secure refugee status there. Because of the circumstances in which they are often compelled to leave their countries, many millions migrate without proper authorisation and official documentation either from their country of origin or, more problematic, from the countries they seek to enter[10]. Accordingly, they often face dangerous and life-threatening journeys. The rising incidence of drowned migrants in the Mediterranean Sea[11] is symptomatic of these conditions[12]. Regardless of either the reasons that compel them to leave their countries or their immigration status, they are vulnerable to serious humanitarian and human rights abuse, widespread exploitation as targets for trafficking and smuggling, as well as detention or deprivation of freedom en route or in destination countries. They are in need of protection.

In short, the countervailing pressures of sovereign governance and protection, and the increasing tension between these two principles, lies at the heart of ensuring the rights of forcibly displaced people. Governments in post-industrial countries are struggling to regulate and restrain the entry of forced and, mostly undocumented, migrants who do not fall into the established legal or normative category of refugee. The migrants themselves, many if not most of whom may not be «convention refugees», have urgent protection needs that require attention but, unable to use legal pathways of entry and asylum-seeking, are compelled to use often life-threatening and irregular means to gain access to territory. These conditions compound their need for protection. Managed migration and tighter border control have created, as we shall see, spaces of restrictionism and contestation that have critical implications for the protection of certain forced migrants. These pressures lie at the heart of the protection challenges.

3.4 The architecture of protection – the legal and normative framework and beyond

What is protection? A widely accepted definition is provided by the International Committee of the Red Cross:

> *«All activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law, i.e. human rights law, international humanitarian law, and refugee law.»* (ICRC 2013)

Protection, in these terms, has a double connotation – the fundamental rights that individuals might enjoy, and the obligations of duty bearers to respect these rights (ICRC 2012:9–10).

States, in particular, have a responsibility to uphold and promote the fundamental human rights of their citizens and to protect them from violations of these rights. These rights are enshrined in international human rights and humanitarian law and a wide variety of international conventions, treaties, norms and standards[13].

The protection of human rights not only applies to citizens. International migrants, too, have rights and protection is necessary since mobility may often be precarious and expose migrants to vulnerability and discrimination: the interplay between migration and human rights is a particular concern of the *UN Office of the High Commissioner for Human Rights* (OHCHR 2013a). Accordingly, some human rights instruments apply to migrants and forced migrants – for ex-

10 Anecdotal interview evidence from the field-work for this study conducted in March – May 2014, suggests that as many as 700 undocumented migrants a day arrive in Italy. In the first three months of 2014, the number of undocumented migrants exceeded the total for the whole of 2013.

11 Between 20,000–25,000 people are estimated to have drowned in the past 20 years (Human Rights Watch 2014).

12 Anecdotal interview evidence from the field-work for this study in March – May 2014, suggests that the substantial majority of all the undocumented migrants landed in Italy now arrive with the assistance of smugglers.

13 These rights – including social, political, economic, and physical rights – are owed equally to every human being by state parties to the treaties protecting them. Amongst the most significant instruments in this context are the *1948 Universal Declaration of Human Rights*, the *1966 International Covenant on Civil and Political Rights*, the *1966 International Covenant on Economic, Social and Cultural Rights*, the *1981 Convention on the Elimination of All Forms of Discrimination against Women* and the *1989 Convention on the Rights of the Child*, *1954 Convention relating to the Status of Stateless Persons* and the *1991 Convention on the Reduction of Statelessness*.

14 For example, *1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*, the *2000 United Nations Convention against Transnational Organized Crime* together with the *2003 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, and the *2005 Council of Europe Convention on Action against Trafficking in Human Beings*.

ample refugees and people who are trafficked[14]. Specifically, our concern is with the protection of rights in situations of conflict, violence and persecution. Pre-existing failure to protect these rights may be among the causes of humanitarian crises, as we have seen, and these conditions frequently lead to forced migration. But it is the material presence of conflict, violence and disasters that constitutes the greatest threat to these rights; livelihoods become vulnerable, security conditions worsen, there is a loss of access to services, there may be abuse and violation of human rights, and people may be forcibly displaced. Protection is, therefore, an integral part of humanitarian action both to prevent forced displacement and to address the vulnerabilities of those who become forced migrants.

As we have seen, when states are unwilling or unable to provide protection from these phenomena (for example in Afghanistan, Iraq, Syria) or where non-state actors defy their obligation to protect civilians (for example Democratic Republic of Congo, Central African Republic, Somalia), a prevalent outcome is that people are forced, or may feel compelled to leave their localities and often their countries and seek protection elsewhere. Under these conditions all displaced persons, whether their displacement is internal or international, are entitled to the protection of their fundamental human rights. Indeed, such conditions tend to dramatically increase their vulnerability and thus accentuate the need for protection. This is the underlying rationale for this study. But for displaced people, what is protection under international law, norms and standards and other instruments, policies and mechanisms? Who provides protection?

«All displaced persons are entitled to the protection of their human rights.»

This study adopts a broad interpretation of protection that is conceptual and constitutive rather than operational and instrumental. Protection intrinsically derives from, and is underpinned by, human rights law and legal concepts, norms, standards and principles. But beyond this legal and normative framing, protection is also constitutive: that is, it includes the wider provision of safety, security and the reduction of vulnerability for people who are forcibly displaced because of threats to their lives and livelihoods (see e.g. Giossi-Caverzasio 2001). The conceptual and constitutive elements of protection come together in an operational framework, which comprises the policies, programmes and processes of governments, and intergovernmental, humanitarian and development agencies. While the underpinning of international law is discussed here, it is the constitutive elements of protection that form the backbone of the rest of this study.

In terms of legal concepts for the protection for forcibly displaced people, an obvious starting point for an analysis is the iconic opening paragraph of the *1951 Convention relating to the Status of Refugees* (the ‹1951 Convention›). Here we find that a refugee is:

> «Any person who: owing to a well-founded fear of being persecuted (…) is outside the country of his nationality, and is unable to or (…) is unwilling to avail himself of the *protection* of that country» (italics added).

This definition enshrined the principle of refugee protection within the wider context of international law. Protection, especially protection from *refoulement*[16], was established as the cornerstone of international obligations towards, and the fundamental right, of those who are persecuted. In other words, a crucial conjuncture was established between a precise form of forced displacement – a refugee – and the specific manner in which the protection needs of the refugee was conceptualised. The UNHCR was created as the agency responsible for supervising the 1951 Refugee Convention and, *inter alia,* for providing international protection to refugees falling within its competence[17]. Endorsing its mandate, the UNHCR provides legal and policy guidance on protection to governments, lawyers, legal aid providers and operational agencies working with refugees or IDPs[18].

Regional instruments build on the 1951 Refugee Convention. For example, the *1969 Organisation of the African Union* (now the AU) *Convention Governing the Specific Aspects of the Refugee Problem in Africa,* extends the definition of refugee in the 1951 Refugee Convention to include those who are fleeing events that «seriously

disturb public order». This has the effect of widening the scope of protection. Similarly, the *1984 Cartagena Declaration on Refugees* extended the definition to Latin and Central America although, unlike the OAU Convention, it is a non-binding agreement.

The conditions of population mobility and displacement in the contemporary world are profoundly different from the situation when the 1951 Refugee Convention and, later, the 1967 Protocol[19], as well as the regional instruments, were adopted. These changing circumstances bring into focus questions about the purpose, scope and application of protection. In particular, three interlinked conditions inform this study.

First, despite the fundamental importance of the principle of protection and although international law makes ample reference to protection, paradoxically, it does not define protection: this constitutes both a problem, but also an opportunity in terms of the forms of protection that might be afforded in different types of forced displacement situations.

Second, the dynamics of displacement in the present day pose many challenges to the concept and the practice of protection. We are confronted, as we have seen, with complex and diverse patterns of dislocation within countries, across borders, forward and backward movements, as the examples of Somalia or Syria illustrate. Internal displacement now far exceeds the number of refugees – those who have crossed an international border. Displacement is often unpredictable, as the sudden surge of the Arab uprisings from 2010 exemplifies. And the drivers of displacement now extend far beyond the classic conditions of persecution to include indiscriminate patterns of violence and conflict such as in DRC, natural disasters and climate change as well as human trafficking and smuggling[20]. Thus, beyond the category of refugees and persecution, many other uprooted and vulnerable populations have protection needs.

Third, this expanding range of displacement drivers and conditions exposes an increasing range of «protection gaps». In other words – categories of displaced people who are, in different degrees, forcibly displaced – but fall outside accepted statuses in international law and for whom there are no, or very limited, international protection instruments.

To an extent, the concept, the provisions under international law, the typologies and policies of protection have evolved to address these changing situations as the following discussion explains. Nevertheless, the core argument of this study remains that the *adaptation of protection norms and instruments has been insufficient to keep pace with the changing dynamics of forced displacement.*

«Internal displacement now far exceeds the number of refugees.»

In recent years an increasing number of states are codifying different generic forms of *subsidiary protection*. This may take different forms, with a substantial variation in the terminology and the precise interpretation of status in each country – «complementary protection», «humanitarian protection», «temporary protection», and «asylum» (Mandal 2005).

Complementary protection adopted by a number of states in the European Union, Canada, USA, New Zealand and Australia for example, is a form of legal protection for those whose claim for refugee protection under the 1951 Refugee Convention has failed, but cannot be returned to his or her country of origin because of other threats to their rights. These threats might be serious ill-treatment through torture, cruel, inhuman and degrading treatment or punishment, or the lack of appropriate medical treatments for specific pathologies.

Like «complementary protection» *temporary protection status* (TPS) has expanded in recent decades. It was invoked by the USA, for Hondurans and Nicaraguans following Hurricane Mitch in 1998, but only for those already outside those countries, not those actually

15 Article 1A(2) Convention relating to the Status of Refugees (1951 Convention), amended by the 1967 Protocol

16 Under Article 33 of the 1951 Refugee Convention

17 The Statute of UNHCR adopted by the UN General Assembly through Resolution 428 (V) on 14 December 1950

18 See e.g. UNHCR *Protection Manual* or directly at www.refworld.org/protectionmanual.html.

19 See footnote 4 supra.

20 See for example Chapter 1 in *World Disasters Report 2012 focus on forced migration and displacement,* Geneva: IFRC, www.ifrc.org/wdr

displaced by the hurricane within their countries. Switzerland granted TPS to thousands of Kosovo Albanians in 2000: this allowed a rather successful temporary protection programme that would have been difficult to achieve if full refugee status had been contemplated. Both Finland (in 2004), and Sweden (in 2005), have strengthened the normative potential of TPS in their immigration legislation by adopting this provision for individuals unable to return to their country of origin because of an environmental disaster.

More controversially, a number of European countries reactively provided TPS to hundreds of thousands of, mainly, Bosnians fleeing the civil war in the 1990s. This was after the failure of humanitarian operations to provide what the UNHCR termed «preventative protection» within that country. While the short-term achievements were positive, in the longer terms the refugees had a weaker status than under the 1951 Refugee Convention and were returned with undue haste (Hammerstad 2014:206).

Different forms of *subsidiary protection* may offer some scope to resolve certain protection gaps for significant groups not covered by other norms. However, governments are ambivalent. On the one hand, subsidiary protection enable states to avoid providing full protection under the 1951 Refugee Convention – arguably the most privileged form of protection – with all the obligations that this requires. On the other hand, there is the reluctance to create precedence and also to open up more and more avenues and categories of protection to which (undocumented) migrants might lay claim. A popular political argument in the global north, for which there appears to be no empirical evidence, is that this outcome has been a key factor attracting increasing numbers of migrants to the global north, especially those whose claims for protection fall broadly within the migration-asylum nexus. However, for the migrants themselves, inferior forms of protection often leave them in limbo and vulnerable for many years – unable to work, reunite families or develop a long term plan for their lives.

«The study adopts a broader framing of the concept of protection.»

As we have noted, the majority of those who are forcibly displaced remain in their country of origin. While this study is primarily concerned with the protection needs of forcibly displaced people *outside* their country of origin, there is an important point of connection because it is the failure or unwillingness of states to afford protection to their citizens that may then precipitate displacement of different categories of migrants across national borders and thus into the domain of international protection. The cases of Somalia, Iraq and now Syria, clearly exemplify this contention. As we shall see in the recommendations of this study, enhancing protection capacities and development strategies to deal with the drivers and impacts of forced displacement *within* countries of origin, is a vital means of reducing the pressures on the international protection regime and also for encouraging those who have fled their countries to return.

Now labelled Internally Displaced Persons (IDPs), there is no protection in international law since states themselves are supposed to afford such protection. IDPs cannot claim the status of refugee or forms of subsidiary protection. Recognition of this «protection gap» created the momentum for the adoption, by the UN General Assembly, of the *1998 Guiding Principles on Internal Displacement*[21], 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» (OCHA 2004)[22]. To support states in this obligation, the 1998 Guiding Principles provide a normative framework of protection standards drawn from a wide range of binding international human rights, refugee law and humanitarian law instruments. The 1998 Guiding Principles apply to IDPs who are defined as including «persons or groups of persons who have been forced or obliged to flee or leave their homes or habitual places of residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters» (OCHA 2004)[23].

Although the value of the 1998 Guiding Principles is accepted – for example they were endorsed at the World Summit on Development in 2005 – there are several significant limitations in their application. Although these standards are clear, of themselves they are not binding unless they have been domestically incorporated, and few countries have explicitly done so. They have been endorsed by the United Nations – but do not have status in international law – they are deemed «soft law». There are no effective measures for enforcement and accountability.

A potentially significant development of the 1998 Guiding Principles is the *2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (also known as the «Kampala Convention»), which has now been ratified. The Kampala Convention: reinforces and strengthens the status of the 1998 Instrument; further develops and consolidates key normative standards governing internal displacement; and provides, in principle at least, a comprehensive regional framework to tackle the challenges arising in all the key phases of internal displacement from prevention to durable solutions (IFRC 2012:27–28).

3.5 Conclusion

Protecting forced migrants, as we have seen, is a widely articulated principle in international humanitarian and human rights law. However, this study is premised on the existence of substantial gaps in the legal and normative frameworks of protection and the declining capacity of these norms to provide effective protection space to accommodate the complex drivers and causes of forced migration and the highly vulnerable conditions to which these people are consigned. Moreover, a concept of protection tied to specific normative categories of legal status, or disaggregated into constituent elements and categories, less readily recognises the different types of protection needs and overlapping vulnerabilities evident in contemporary patterns and processes of forced migration.

For these reasons, the study adopts a broader framing of the concept of protection, linking it closely with the concept of vulnerability. Such an approach recognises the value of normative and legal frameworks in grounding rights protection. But the contention here is that this approach defines too narrowly the nature of the protection challenge, precisely because the majority of forced migrants fall outside existing norms, standards and protection instruments.

The next chapter explores in more detail the scope and nature of these protection gaps. It also presents a concept of «displacement vulnerability» as a more coherent expression of the protection needs of forced migrants.

21 U.N. Doc. E/CN.4/1998/53/Add.2 (1998)

22 1998 *Guiding Principles* – Principle 3

23 1998 *Guiding Principles* – Introduction Scope and Purpose (2)

4 Current and emerging protection priorities

Malian refugees in an urban environment. *Photo: UNHCR / G. Gordon.*

4.1 Introduction

What are the protection needs of forcibly displaced people? When do forced migrants need protection? Are there different protection needs in different situations of forced displacement and for different categories of forcibly displaced people? Are current policies and instruments adequate? Are there protection gaps, and to what extent is «protection space» shrinking? These are some of the questions this chapter addresses.

Chapter 3 outlined the parameters and the contemporary dynamics of forced displacement, and it introduced the main international legal instruments and norms on which the concept of protection is predicated. Within that context, this chapter explores the current and emerging protection needs of forcibly displaced people in more detail, *focusing on priority issues* rather than a comprehensive survey. It considers situations of mass displacement in the «global south» and the sharply contrasting protection conditions in the global north and Europe in particular.

For three interrelated reasons, this chapter avoids both a formulaic or categorical typology of protection needs for different categories of forcibly displaced people, and also an explanation of the triggers and causes of displacement that give rise to protection. Instead, it examines a range of contemporary situations of displacement and mobility where protection needs and the instruments of protection are most heavily challenged.

First, as we have seen in Chapter 3, the multiple motives and destinations for forcibly displaced people – the «mixed migration flows» – call into question the usefulness of well-established «status-based» categories such as refugees or asylum seekers or IDPs as the primary determinant of protection situations and needs. A cause-effect relationship, in other words one causal factor linked to one category of displaced person and protection, seems clearly untenable.

Second, a categorical method that identifies protection needs for certain predetermined groups of forced migrants within an affected population – e.g. refugees – risks diminishing protection for the vulnerable population as a whole. Given the multi-variate factors that propel forced migration, and the diversity of categories now invoked to describe such people and their protection needs, it is essential to capture this variety. Conversely, it is also important to recognise that casting protection needs too broadly can lead to a diminution in the quality of protection as more people might fall through the safety nets.

A third consideration pertains to the dilemma of whether the approach to protection should be «status-based», «needs-based» or «rights-based». This study has highlighted how «status-based» determination, contingent on international legal and normative frameworks that designate certain categories of forced migrant, has dominated protection discourse and operational considerations. It has argued that disaggregating protection challenges into constituent elements and categories less accurately address contemporary protection needs.

By contrast, some humanitarian actors, for example the ICRC, contend that forced migration is a highly significant cause of protection crises and vulnerability, irrespective of the exact category or cause of displacement. Indeed, with violent conflict and forced migration taking on new manifestations, these agencies argue that protection is predicated on a ‹needs-based› response to these vulnerabilities (IFRC 2011), and not a specific legal status. Another line of argument, promoted by some humanitarian NGOs and the IFRC, proposes a ‹rights-based› approach for recognising and determining the protection needs forced migrants. In other words, the right to protection, like many other rights, is an entitlement that belongs to all human beings, most certainly forcibly displaced people. It is not contingent on a particular legal (or social or political) status. Rather, rights-based protection is based on ethical precepts and the empowerment of people who may be disempowered by conflict and displacement (Nyamu-Musembi and Cornwall 2004).

In essence, both needs- and rights- based approaches to protection are predicated on mainstreaming protection into humanitarian assistance programmes. Irrespective of the basis for protection, all three approaches point to the need for a framework that is as inclusive as possible. Moreover, a key theme underpinning this Chapter (4.3.), is the concept of «displacement vulnerability»: in other words the protection needs that arise from vulnerability from, during and after forced migration. The recommendations in Chapter 6 will argue that governments and humanitarian actors must address more fully the interplay between vulnerability and protection of forced migrants in their policies and praxis.

With these considerations in mind, a hybrid typology is adopted that provides a fruitful means of exploring current and emerging protection needs.

4.2 The new geographies of forced migration

The majority of forcibly displaced people still remain in their country of origin or in countries immediately neighbouring their country of origin, despite the widening geographies of mobility. Moreover, in the past, once they had been displaced, the affected populations largely remained in situ and usually in protracted exile. Indeed, the majority of refugees and IDPs are now in conditions of protracted displacement (Loescher et al. 2008; Zetter 2011). However, perhaps the most salient feature of contemporary patterns of forced displacement is the increasing mobility of the people who are displaced. Six distinct «geographies» or «spatialities» of mobility are explored. Each poses new, contrasting and challenging protection needs and challenges; and each exposes significant protection gaps and shrinking protection space.

First, the majority of forcibly displaced people are displaced with their own countries; they are internally displaced persons (IDPs). The protection challenges are thus the most significant, in terms of numbers involved, but also some of the most intractable.

Second, populations under threat of displacement deploy complex patterns of mobility to protect themselves and minimise risks; and once displaced they are decreasingly likely to remain in situ waiting for a solution to their exile.

Micro-level displacement and circular mobility characterise the lifestyles and livelihoods of increasing numbers, though still the minority, of forced migrants.

Third, the majority of forcibly displaced people – refugees and IDPs – now live in urban areas among their host communities. It is the minority who reside in camps, the iconic representation of the world of refugees.

The *fourth* and increasingly significant dimension comprises «stranded migrants in crisis». These are not «prima facie» refugees or forced migrants fleeing violence and conflict who can access protection, but Third Country Nationals (TCNs) who get caught up in crisis situations, are displaced as a result, but fall outside existing protection instruments.

The *fifth* spatial change is the «forced migration continuum» – the movement of migrants, whether forced or not, who transit through and then outside the region of origin eventually to the borders of post-industrial countries in Europe, the USA, or Australia. Migration chains of this type are characterised by: mixed flows and drivers – not all are refugees; increasingly organised rather than spontaneous movement; substantial protection gaps and the diminution of protection space.

Sixth, slow-onset climate change and environmental stress is an increasingly significant feature of the new geographies of displacement and mobility. This stands in contrast to the largely conflict-related and rapid-onset displacement drivers outlined so far. Yet, the actual and potential population displacement impacts, the cause-effect relationship, the extent to which such displacement may be considered forced, whether such displacement is and will be predominantly internal, are all aspects which pose substantial challenges to current legal and normative protection frameworks.

A feature common to all these new geographies of mobility is that the migrants, whether forced or not, are predominantly undocumented and thus unlikely to be able to access normal protection measures and systems in the countries in which they move, they enter, transit or seek as a destination. Falling between the orthodox categories of voluntary migrant and refugee, they lack the means to access protection that further accentuates their vulnerability. Non-entrée regimes are the principle means by which countries in the «global north» have sought to fracture or contain these forced mobility continuums; but these actions constitute a major diminution of protection space for the migrants.

The protection issues that arise in these six geographies of forced displacement, the adequacy of protection, and the challenges to protection are now explored.

4.2.1 Internal displacement and protection in conflict affected countries

That the majority of forcibly displaced people are internally displaced – some 65% of the 50 million documented forced migrants and many millions more who are undocumented – highlights the locus and scale of the projection challenge (IDMC 2014, 2014a). The majority of forced migrants remain as IDPs, rather than transferring across national borders for many reasons – maintaining social networks livelihoods and the fragments of a familiar environment, the wish to remain close to origins in case return is feasible, availing themselves of protection and assistance provided by their governments (in some circumstances) or international humanitarian actors, or they may lack the capacity or resources to move further afield. Yet, despite this evidence it is in these countries that the space and capacity for protection is generally most limited and difficult to secure. It is the failure to uphold rights and protect internally displaced people (IDPs), that then precipitates the transfer of the humanitarian crisis of forced migration across national borders and regions and eventually, in most cases, into a global protection challenge.

What are the protection challenges that forced migrants face in their own countries? It is helpful to consider this question from two viewpoints – the circumstances where protection needs arise and issues of capacity, protection processes and the like.

In terms of the circumstances and situations where protection needs arise, many of these are similar to the geographies of forced migration analysed in more detail in the following sections. Initially many internally displaced people try to stay close by on the, invariably mistaken, assump-

tion that they will soon return. They may move temporarily, mobilising their own self-protection capabilities (see Chapter 5.2.2.), or they may be protected through the assistance of humanitarian actors such as the ICRC. Similarly, the micro-level displacement and circular mobility strategies that are common to many different kinds of forced migrants (4.2.2), predominate among IDPs since this type of mobility resonates with their desire to remain close to their roots. Indeed, both self-protection and micro-level displacement and circular mobility are pre-eminently protection strategies that define IDPs. As displacement becomes more protracted, like other forced migrants most IDPs migrate, sooner or later, to towns and cities (4.2.3). In contrast to those who are displaced in towns and cities across borders, for IDPs the urban location offers better protection and physical security and also access to humanitarian assistance where this is available. Like other forced migrants IDPs are equally susceptible to ‹displacement vulnerability› not the lack of protection *per se* (Chapter 4.3., below). Lastly, in terms of the correspondence between protection challenges for IDPs and other forced migrants discussed in the following sections, there is extensive evidence to suggest that the displacement consequences of climate change will largely be experienced within affected countries and thus significantly increase the volume of IDPs in need of protection in the coming decades (4.2.6) (Piguet 2008; Piguet et al. 2011; Zetter 2010).

In addition to these wide-ranging displacement geographies and the protection challenges they generate, two specific circumstances apply in the case of IDPs.

One unique and important protection gap for IDPs, and one that inadvertently allows significant forced displacement in many countries of the global south, is the phenomenon of *land grabbing*: this constitutes a high protection risk. Land grabbing is the transfer of land from vulnerable rural communities – sometimes indigenous people – to private companies and investors, often by illegal, coercive or even violent means (IFRC 2012:146–7). This trend is frequently linked to large-scale agro-industrial agro-export production, often for markets in the global north – palm oil, bio-fuels, hydrocarbons, and shrimp farming. The process has been linked with forced (and often violent) displacement in countries such as Colombia, Guatemala, Indonesia, Malaysia, Kenya, Nigeria, Tanzania, and Bangladesh – not surprisingly, it leads to further impoverishment among poor peasant or land-hungry farmers. Land grabbing takes place frequently on the periphery of countries or on land that has previously held little value for governments or commercial farmers. These marginalised lands are often occupied by smallholder (often subsistence) farmers, indigenous communities and other land-tied, ethnic minorities who may have used the land for generations: but these tenure systems are hard to «protect» in a formal sense. Thus, their often customary/traditional land tenure arrangements are vulnerable to predation by local élites and multinational corporations. Governments, keen to boost export earnings, are themselves often complicit in the land grabbing process: they fail to provide oversight to private sector activities, to ensure the rights of people displaced as a result of land transfers are protected. Clearly, there is a significant gap in protecting land rights and livelihoods.

A second circumstance, highly specific to IDPs, is to distinguish between the protection challenges for people who have become forcibly displaced – the subject of the analysis so far and discussed in more detail in subsequent sections of this chapter – and the protection of civilians in situations of armed conflict. Since it is civilians who are mainly targeted in most contemporary wars perpetrated by armed non-state actors, their protection needs are vital, though not the main subject of this study. As a Swiss government report points out (Swiss FDFA 2013:6), the risks and thus the protection challenges for civilians in armed conflict vary considerably between countries and even between regions of the same war-affected country. Protection vulnerabilities and challenges also vary across demographic and social groups such as gender and age. While people affected by armed conflict often seek their own self-protection (5.2.2), they are highly vulnerable despite the legal norms and safeguards available in international human rights and humanitarian law.

Even though this is a study of forced migration and the situations where protection needs arise, it is important to recall that forced displace-

ment is the «option» of last resort. People leave their homes, evacuate their places of residence and rupture their livelihoods only with great reluctance and only when all other strategies to remain and protect themselves against violence and severe rights abuses have failed. Thus, the *«right to remain»* is a critical concept in the context of IDPs since it concerns the inception point where the potential for forced migration, within one's own country in the first instance, may become a reality. The right to remain has particular validity where land grabbing takes place: but the concept applies across all forced displacement circumstances.

«Forced displacement is the ‹option› of last resort.»

Given the rights-based underpinning of protection, humanitarian actors have increasingly engaged the concept of the «right to remain» as the ultimate means of protection for the vulnerable communities themselves, at risk of forced displacement, and to avert the burden that will fall on host communities if displacement takes place. However, the concept of «right to remain» needs be critical examined where conflict and violence render households and communities at high risk of «displacement vulnerability» (4.3). The right, in effect, to not be displaced cannot supersede or be used to deny individuals the protection of other fundamental rights such as freedom of movement, the right to be resettled, and ultimately the right to leave their country and seek protection under other jurisdictions. Increasingly, IDPs are being trapped with little or no protection in conditions of chronic crisis, for example in Syria, Iraq, and CAR. In these situations, the right to remain cannot be privileged over other measures for protection.

Turning now to the second main theme of this section on internal displacement, the challenges that arise around issues of protection capacity and processes, there are several observations.

An initial issue is that intra-state violence, and thus forced displacement and IDPs‹ protection needs, are usually local and small scale in the first instance. In most contemporary conflicts violence tends to erupt spontaneously and often from unpredictable and multiple triggers as we have seen in Chapter 3. There may be little publicity for the violence, civil society organisations that offer local protection may be threatened by the violence and there may be little awareness by outside actors. Mobilising prevention or advocating the right to remain is, as we have noted, rarely desirable or possible. These conditions escalate gradually, but the consequences cannot easily be addressed until armed conflict and substantial atrocities occur. A related issue is that very often governments, who have the prime responsibility to protect their citizens, are themselves complicit, or direct perpetrators of the violence and conflict that force displacement, for example in countries such as Sudan and Syria. Supporting governments to protect their own people, while at the same time diminishing a population's exposure to protection risks, is not easy in these situations where state sovereignty is inviolable.

Symptomatic of the protection challenges that IDPs face was international accord on the *1998 Guiding Principles on Internal Displacement*. As we have noted in Chapter 3, the problem here is that the 1998 Guiding Principles are *non-binding*, and while many countries acknowledge their existence and incorporate them into national legislation, they lack both the capacity and resources, and often also the willingness to invoke them. Local people may thus have great difficulty in accessing the rights that in theory are available in national legislation and normative guidance (IDMC 2014a).

The case of *post 2007 election violence in Kenya* is instructive here in exposing the protection challenges that confront IDPs in situations of conflict, as well as the wider political challenges. Some 600,000 people, mainly urban dwellers, became IDPs, finding refuge in a spontaneous fashion. But access to protection and basic needs was sporadic and mainly provided by local and international humanitarian organisations: government authorities were overwhelmed. At that time, the Kenyan government had neither incorporated the 1998 Guiding Principles into a national legal framework, nor adopted normative national guidelines on IDPs. Significant numbers remain displaced. Forced population displacement and territorial control is a longstanding and highly charged political issue in colonial and post-co-

lonial Kenya, not just the outcome of contested elections in 2007. Thus, since that time the Kenyan government has wrestled with the political problem of whether and how to incorporate the 1998 Guiding Principles into a new constitution. Only recently has this been accomplished, and an innovative element is the co-option of civil society actors working in the field of internal displacement and human rights, IDP representatives, international agencies and other organisations in developing National Policy guidelines.

It was to overcome some of these challenges that the African Union adopted the *2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (the «Kampala Convention»). The Convention entered into force in 2012 and is now signed by 39 and ratified by 22 of the 54 member states of the African Union. It is a remarkable normative development because, as a *binding legal treaty*, it gives force to the 1998 Guiding Principles that they have lacked so far. However, regional instruments, even binding ones such as the Kampala Convention, can only be effective in protecting IDPs if governments are committed, and have the capacity to implement them. It is perhaps too early to form a judgment, but the prognosis, from the experience in countries such as CAR, DRC, Libya – albeit fragile states – is not good.

When the protection of IDPs fails, people protect themselves through forced migration across national borders. The analysis now explores the protection challenges in this context, while recognising that communality of these protection risks and challenges for both IDPs and also forced migrants who seek international protection.

4.2.2 Micro-level displacement and circular mobility

New patterns and processes of mobility before, during and after forced displacement now characterise populations at risk and raise a second, significant tranche of protection gaps.

Populations under threat of displacement deploy complex patterns of mobility to protect themselves and minimise risks and vulnerability. Forced displacement itself is no longer a simple, linear, one-way movement from the locus of violence to refuge and protection a significant distance away; and, once displaced, these populations are decreasingly likely to remain in situ while «solutions» to their exile are organised. Instead, micro-level displacement and circular mobility characterise the lifestyles and livelihoods of increasing numbers, though still probably the minority, of forced migrants.

Evidence from Somali refugees in Kenya, Sudanese IDPs and refugees from Darfur, Afghan refugees in Pakistan, and earlier phases of the civil wars in Iraq and Syria, indicates that populations at risk of forced displacement deploy a variety of short-term risk-minimisation spatial strategies to avoid the more orthodox, long distance and protracted displacement (see e.g. Chatty 2011; Lindley 2011, 2013; Long 2011; IFRC 2012:21–23). Vulnerable people may carry out micro-level commuter or dormitory displacements within or between urban areas – across streets or neighbourhoods – or to peri-urban areas or rural hinterlands, for example the massive and spontaneous IDP urban settlement in the Afgoye corridor outside Mogadishu.

«Populations under threat of displacement deploy complex patterns of mobility.»

Mobility strategies may reduce immediate vulnerabilities, but they still expose the populations to substantial protection gaps. For example, where armed non-state actors and insurgents such as in Colombia, northern Uganda (Lord's Resistance Army) and DRC are the perpetrators of violence, they rarely if at all abide by their obligation to protect civilians.

Depending on the security situation and livelihoods, these mobile populations may return periodically to collect rents, access their smallholdings, or visit family. These temporary, small-scale movements to safety, which may be sustained over long periods of time, may help avert or avoid more conclusive displacement. At the same time, this process keeps open the option of more permanent return when levels of violence diminish.

Conversely, these strategies may presage the build-up to more definitive displacement

when violence and conflict becomes excessive. After the immediate protection needs in a refugee or IDP emergency have been secured, and as displacement becomes more protracted, these more permanently displaced populations also deploy circular mobility, even though conflict may still be continuing. From situations where some basic protection exists, there is mobility back and forth across borders by refugees (whether encamped or not) (Lindley 2013).

Equally, we should not forget that many people who might potentially be forcibly displaced, or wish to flee, are rendered involuntarily immobile: insurgents may prevent them from leaving; conflict makes it dangerous; they lack the minimal resources to move.

Providing adequate protection for trapped populations is rarely possible. Whether trapped or mobile, national governments are rarely able to provide effective protection under, for example, the *1998 Guiding Principles of Internal Displacement*. Humanitarian actors have experimented with remote management of assistance programming to support the livelihoods of mobile and immobile populations in situations of restricted access (see e.g. ALNAP 2009; UNHCR 2009a; UNHCR 2014b) as a form of «proxy protection»; but protecting livelihoods in this way is not an effective protection tool against violence, human rights abuses, harassment, extortion, and other consequences that come from a lack of legal standing. At the same time, host-governments are also resistant to protecting «mobile» refugees, perceiving such movement as a potential vector of security threats, or illegal trading that might undermine local economies. In the end, individuals and families resort to forms of self-protection.

4.2.3 From camps to cities

Against the backcloth of global urbanisation, it is *cities*, *peri-urban areas* and *smaller towns* that are now the destination of choice for forced migrants, not rural areas or refugee camps (IFRC 2012:112–142; UNHCR 2012:154–168). This preference applies to refugees, IDPs and returnees – a noticeable characteristic of refugees going back to Afghanistan or South Sudan, for example. The importance of the new protection challenges associated with this changing geography was recognised by the UNHCR in the wholesale revision of its 1997 policy on urban protection in 2009 (UNHCR 2009). Securing adequate «protection space»[24] for forcibly displaced people in urban settings is the major task of humanitarian actors, governments and advocacy organisations.

Yet, there are protection challenges even before the displaced reach their urban destinations. Refugee hosting countries are increasingly concerned at the sectarian nature of many contemporary conflicts, for example in Syria and Iraq. There is the fear that refugees might be the *vectors of security threats* or that there are risks of refugee conflicts spilling over to other countries in the region. But displaced people in urban locations are more difficult to keep under surveillance than in camps and this raises security concerns. Thus, periodic border closures by countries such as Lebanon (which does not have refugee camps) and Jordan to mitigate these perceived threats from urban refugees, puts their protection at greater risk. For example, both countries have regularly denied entry to Iraqi refugees from Syria and other groups without formal identity papers and, together with Iraq, they regularly deny entry to Palestine refugees from Syria (DMFA-TANA 2014:28–29). A similar situation pertains to Somalis entering Kenya. Access to cross the border can thus become a pressing protection concern for refugees in many contemporary crises where it is likely that they will end up in urban locations. The fact that refugees are no longer easily contained in camps, where they can be subject to closer surveillance, and, without such surveillance, may move backwards and forwards across the border to their country of origin without valid permits, heightens the reluctance of countries to provide asylum in the first place or to adequately fulfil their protection obligations.

There are a number of reasons why forcibly displaced people now prefer urban locations, despite the often impoverished conditions and the deplorable environmental standards they encounter (Pantuliano et al., 2010), and the better protection they may, paradoxically, receive in camps. Many displaced people have fled from urban areas and thus seek refuge in an environ-

ment with which they are familiar. For example, prior to their flight after 2005, Iraqi refugees were predominantly urban-based and settled in urban centres such as Beirut, Amman, and Damascus (Chatelard 2011). Economic opportunities are usually greater (Campbell 2006; DRC, UNHCR and FEG 2012; UNHCR 2011), especially for those with urban-based professional or other skills, and there is better access to a wider range of services and possibly assistance; there is usually greater access to political and social networks from their home countries. Refugees can more easily remain anonymous and undetected thus reducing potential threats from rival ethnic groups in exile, or minimising the risk of *refoulement*, or enabling them to work in countries that might prevent refugees from doing so. There is evidence of circular movement between camps and urban areas in some situations – for example Afghan refugees in Pakistan, Somali refugees in Kenya – so that the refugees can avail themselves of the urban opportunities.

However, these advantages are often offset by the substantial protection risks and increased vulnerability that displaced populations face in urban areas. There are *various protection gaps*.

Many such populations live in a *precarious legal status*: the lack of a legal standing or irregular status can impede access to official protection mechanisms and institutions such as the police, courts, legal aid, and housing land and property rights. Remaining undocumented or unregistered for protection and assistance, accentuates the potential risks of harassment, extortion, eviction, arbitrary arrest, and detention. Housing eviction and also periodic crack downs on informal working – for example against Somali refugees in Nairobi and Syrian refugees in Jordan – carry significant protection risks for forcibly displaced people since they multiply household vulnerability.

The ultimate protection risk they face is refoulement, which tends to be a higher risk for forcibly displaced people that are self-settled in urban areas compared to those in camps. This is because refoulement is obviously rather difficult to implement «en masse» for encamped refugees and is usually resolved though advocacy and the intervention of third parties such as UNHCR to ‹protect› the refugees. By contrast, self-settled populations in urban areas are usually widely dispersed, thus the threat of refoulement is more likely to be experienced on an individual basis with little recourse to outside assistance.

Multiple locations, as refugees move around the country of asylum, and urban self-settlement also heighten the risks of the displaced populations *falling in and out of protection*. Again citing the current Syrian crisis, refugees can enter Jordan with a passport and do not require a visa or residency permit and under certain conditions they can reside in urban communities. However, the retention of their identity documents in some circumstances is a protection concern. Possession of a UNHCR card is key to access assistance and local services; but many refugees fall out of status and lose access if they move around or fail to renew their card every six months. In Lebanon, a residence permit is required, valid for six months renewable for six months. But subsequent extension is unaffordable by most refugees, stripping them of their legal status and thus effective protection. In Iraq, there is a vacuum in the protection framework for Syrian refugees and uniform practice across the governorates is lacking. Palestine refugees coming from Syria are particularly vulnerable to failures in protection, falling between highly restrictive residency conditions and the severely stretched resources of UNRWA (DMFA-TANA 2014:29–30).

«Displaced people in urban locations are more difficult to keep under surveillance.»

Violence against refugees and IDPs in urban settings is a rising protection and security concern, driven by competition with host populations for scarce resources such as housing, food and employment. Urban violence itself is, in any case, a significant cause of internal displacement – the 2007 post-election violence in Kenya, drug cartels in Brazilian cities, sectarian violence in Syria and Iraq – and is symptomatic of governments' inability to provide effective protection to their citizens.

Demographic, socio-economic factors, combined with the lack of legal status, increase

24 See footnote 3 for a definition of protection space

the vulnerabilities of urban refugees and other forcibly displaced people, the range of abuses they might face and thus their needs for protection. Evidence suggests that the urban displaced may be more subject to incidents of domestic violence, SGBV and violence against children – risks that are increased by crowded living conditions Urban settings are more prone to encourage negative coping mechanisms such as child labour, early marriage, and prostitution, which tend to increase where effective protection and policies to reduce vulnerability are lacking.

Not all urban refugees and IDPs remain unregistered as a deliberate strategy. Rather, the failure may be due to the logistical and operational difficulties that self-settled displaced populations in urban areas face in getting registered and thus better protected. Evidence from the Syrian crisis indicates that many individuals fleeing Syria are *unaware of their rights* when they arrive in Jordan or Lebanon, and those who are irregular remain unaccounted for and are increasingly marginalised and vulnerable (DMFA-TANA 2014:29). For the registration authorities these populations may be highly mobile and, while the populations may want to register to access assistance and protection, they may not want to be officially documented. It may also be difficult to distinguish between populations of concern – i.e. refugees and IDPs – and the majority of the urban poor living in very similar situations of deprivation. International agencies as well as governments are familiar with mass registration procedures at borders and camps: but they lack the appropriate strategies, tools and instruments to cope with *individual and spontaneous registration needs,* and dispersed and mobile populations. These conditions make registration and documentation complicated and it may also make it difficult for individuals and families to sustain contact with the protection authorities.

«Contemporary migration flows consist of people with complex reasons for migrating.»

In this context, the problematic and slow roll out of the UNHCR's 2009 urban protection policy, and the potential ambiguities and conflicts of interest for the agency have been observed (see e.g. Edwards 2010), and are further discussed in Chapter 5.2.5.

4.2.4 Stranded migrants in crisis

As we have seen, contemporary migration flows consist of people with complex and multi-causal reasons for migrating: they may not be forced migrants. However, although these mixed flows are not necessarily driven by humanitarian crises, an increasingly significant protection gap concerns third-country nationals (TCNs), both regular and irregular residents, who inadvertently get caught up in humanitarian crises. These TCNs, such as labour migrants, domestic workers and so on may find themselves in crisis situations and become forcibly displaced as the crisis unfolds in the country where they reside. This typically results in a mixed flow of vulnerable people in need of assistance and protection but who fall outside existing protection instruments. They are neither «prima facie» refugees who can access international protection under the 1951 Refugee Convention if they have crossed a border, nor nationals of the country where they reside who can access protection within that country, if it is available, under the *1998 Guiding Principles on Internal Displacement*.

The needs and specific protection vulnerabilities of this population are frequently overlooked in crisis responses, yet this is a group that is growing in both the scale and the frequency with which it now occurs. Labelled stranded migrants, the IOM has highlighted the extent to which this newly emerging form of forced migration has impacted migration dynamics and forced migration governance in its Migration Crisis Operational Framework (IOM 2012).

One recent example, which exposed ‹stranded migrants in crisis› is the more than 800,000 sub-Saharan and Asian migrant workers stranded in *Libya* during the 2010 civil war (and NATO bombing) who sought refuge across the borders with Egypt and Tunisia (IFRC 2012:36–37). IOM recorded *migrants from more than 120 countries crossing the borders,* yet these migrants had no clear international legal protection status once displaced, no clear agency with institutional responsibility within the current

international humanitarian and legal regime: they remained in situ in temporary border camps. A pragmatic joint evacuation and protection mandate response was developed by IOM and UNHCR. Large-scale evacuation to country of origin was the reactive protection mechanism.

A more recent example is the displacement of up to one million people precipitated by the insecurity and the political and social instability in the Central African Republic (CAR) following the coup in March 2013 (UNHCR 2014a; IOM 2014). Some measure of the complexity of protection needs that arise from mixed migration flows is given in the following data. To the 65,000 CAR refugees who have fled their country to the Democratic Republic of Congo (DRC), the Republic of the Congo, Chad and Cameroon, and the more than 500,000 IDPs, must be added: the protection needs of more than 13,000 refugees hosted in CAR from Sudan, DRC and other countries; 50,000 Chadian refugees in CAR returning to their own country because of the violence in CAR; an unknown number of other TCNs who need protection; unknown numbers of displaced Chadians and Cameroonians who are long term resident in CAR. Of the last group, many do not have proof of nationality or IDs, and could be considered stateless, many are first or second generation immigrants, rather than migrants, but as de facto dual-nationals they are not recognised for protection as refugees and for whom evacuation to their country of origin is not a return process but forced displacement. IOM has organised evacuation of highly vulnerable populations, both Chadian and CAR citizens, but risks the accusation that such protection measures back-up the religio-ethnic separation that characterises the civil war.

Despite the growth of this complex migration dynamic and the experience gained in crises such as the Arab uprisings, Mali and CAR, a systematic approach to the protection needs of TCNs who have become ‹migrants stranded in crisis› has yet to be formulated (Chetail and Braeunlich 2013). As with other forced migrants, the protection gaps comprise a complex mix of factors: a lack of knowledge of, or access to national protection or assistance regimes by TCNs; exposure to violence and exploitation arising from lack of rights protection; lack of resources to escape crisis areas; lack of travel documents and passports (or their confiscation by employers), or lack of access to embassies to facilitate travel; border closures that prevent the TCNs fleeing violence; lack of clear status or designation, limiting access to humanitarian assistance once displaced; longer term impacts of ‹forced› return to countries of origin.

4.2.5 The forced migration continuum

The fourth spatial change is the emergence of the forced migration continuum. In contrast to internal or intra-regional mobility noted above, the concept of the forced migration continuum seeks to capture a continuum of a uni-directional trajectory of purposefully linked stages, which may take place over a protracted time period. Sometimes termed secondary mobility, it describes the process of migrants originating in their home country, or a host country/refugee camp, transiting through neighbouring countries in the region, and then eventually to the borders of post-industrial countries in Europe, the USA, or Australia. The country of first asylum is not a destination, as it was in the past, but a space of transit. Arguably many of the refugees and other forced migrants leave the country of first asylum and seek to transit eventually to the global north not, primarily, because they are dissatisfied with the level of protection, but because they see little prospect of return to their country of origin, and still less prospect of a sustainable future for themselves and their households in exile in the region.

The forced migration continuum is characterised by migrants who: are predominantly young and male; comprise mixed flows motivated by a range of drivers – not all are refugees, many are displaced by other drivers; irrespective of the cause of displacement, tend to use similar routes, modes of travel and aim for similar destinations; increasingly resort to organised movement and the assistance of people smugglers; are predominantly undocumented. Since they are not readily covered by specific protection norms or legal frameworks, each stage of the migrants' journeys exposes them to high levels of vulnerability and protection risks. There are significant protection gaps en route; and, the closer migrants

get to their putative destination, the more that protection space diminishes. Migrants in transit are much more vulnerable, more exposed to human rights violations, and the lack of adequate protection than migrants who have reached their destinations.

Conceptually, and in practice, the emergence of the forced migration continuum is perhaps the most salient and dramatic change to have occurred in the geographies of forced migration in recent years. It is the archetypal 21st Century migration process because it combines many of the specific manifestations of contemporary population mobility and forced migration – mixed drivers and therefore mixed flows of migrants, irregular and undocumented movement, global reach, outside protection norms and frameworks, not easily susceptible to border control or entry management. The forced migration continuum evidences the failure of refugee containment policies on the one hand, and the relative ease of global mobility linked to transnational social networks on the other. And it is for all these reasons that it is of most concern to governments in the global north.

Four critical and interconnected features define the crisis of protection that arises in the forced migration continuum.

First, most of the migrants cross international borders by irregular means because they do not have access to legal migration channels and the borders are both extensive and porous. Although irregularity is clearly not a deterrent to mobility, given the factors that impel them to migrate and the volume of migrants that now arrives at the borders of Europe and the USA, the protection consequences are severe.

As a new OHCHR report makes clear, access to territory – the encounter with the border of transit countries and at the borders of the migrants' «destination» countries – raises many profound concerns about the inadequacy of border governance measures to protect human rights *at* borders, and the failure to meet human rights obligations at the point of entry (OHCHR 2014).

Irregular or «illegal» entry prevents access to the basic protection that a regular migrant might enjoy. More problematic, their clandestine entry makes it exceedingly difficult for already highly vulnerable people to access refugee, asylum or temporary protection measures, even if they are fortunate enough to be eligible for these statuses. Many countries now try systematically to deny undocumented migrants access to these procedures or engage in forced deportation, returning the migrants to the vulnerable conditions from which they fled. Reducing access and eligibility forces putative claimants into «illegality» to assert their rights. The perverse logic of this process, which creates the pejorative terminology to describe these migrants such as «clandestine» or, worse still, «illegal» or «bogus» asylum seekers. It is a logic and terminology that panders to an anti-immigrant and anti-asylum seeker political rhetoric in many European countries (Zetter 2007).

Their *irregular status*, together with the lack of protection, significantly increases their vulnerability. In any case, many of the countries through which they initially pass have limited capacity to provide protection, even if they were minded to do so. And many of these same countries are themselves prone to violence, conflict and instability, which further underscore the vulnerability to which the migrants in transit are susceptible.

There is evidence from Mexico (cited in Chetail and Braeunlich 2013:32) as well as countries such as Yemen, Morocco, and Tunisia that transit migrants, especially if they are irregular, may become stranded or trapped in countries en route, through lack of funds or inadequate documentation. These conditions heighten their vulnerability, exposing them to similar risks, protection gaps and human rights violations described above.

The *second* protection crisis segues with the protection gaps that exist in relation to irregular migration. This crisis arises as a result of the means by which the migrants travel. Until recently it was assumed that the process of irregular migration was relatively spontaneous and that organised movement and transit payment was only deployed towards the end of the continuum, when the migrants confronted the most heavily protected international borders or used coastal rather than land entry routes. Now, there is increasing evidence that the migration continuum *may be organised*, albeit in a rather ad hoc and pragmatic fashion, from source to destination involving people smugglers, organised crime and,

in extreme cases, by people traffickers (GITOC 2014). Smugglers in source countries link up with counterparts in transit countries. Citing Europol data, a recent report indicated that 80% of the journeys are «facilitated» in this way by the provision of transportation, fraudulent documents, and corruption of border officials (GITOC 2014). From refugee camps and other locations in sub-Saharan Africa and the Middle East, or through staging posts in Latin America and especially Central America, this connectivity provides a constant flow of irregular migrants.

Paradoxically, as these journeys have become more hazardous in recent years and access to territory more difficult, the flow of migrants does not seem to decline. However, the implications for protection and vulnerability become even more acute. Human rights violations are widespread and violent. There are frequent media reports of migrants being victims of extortion, rape, sexual assault, abduction and robbery often by the smugglers who are escorting them. The risks are highlighted by the tragic deaths of 366 migrants and refugees off Lampedusa in October 2013 and it is estimated that approximately 20,000 migrants and refugees have lost their lives in the last 16 years while attempting to cross the Mediterranean Sea to reach Europe (EMHRN 2014:3). Unknown numbers of persons die along the routes even before they reach the Mediterranean Sea or the US border. Payment demanded by smugglers is increasing: figures of between $10,000 and $40,000 have been cited for Nigerian migrants (GITOC 2014:10). Additional demands for payment along the route are more frequent especially at the final leg of the journey: families in the country of origin are compelled to pay to save the lives of the migrant or to enable the journey to continue.

Little has been done to improve the protection capacity of the countries through which these migrant chains are routed, or to mitigate the acute protection risks and vulnerability to which these migrants are susceptible.

Of particular concern is the probability that many of the forced migrants in transit and seeking protection in the global north are already «bona fide» refugees recognised in countries in their region. But because they are travelling by irregular means their status is denied.

The *third* protection crisis, intricately linked to the second, is the protection crisis at *Europe's borders*. It is highlighted by anecdotal – but scaremongering evidence, given the source – that more than 600,000 people wait on the shores of North Africa for boats to smuggle them to Europe (UK Daily Mail 2014). For the USA, a recent research paper cites evidence that about 400,000 Central American undocumented migrants transit across Mexico each year seeking access to the USA (Frank-Vitale 2013:3).

«The flow of migrants does not seem to decline.»

Since the beginning of 2014, there has been a 10-fold increase of arrivals in the southern coasts of the European Union compared to the same period last year [2013]. In Italy, by May 2014, about 35,000 migrants had already arrived, almost reaching the 40,000 total for the whole of 2013 (EU 2014)[25]. The majority now come from Syria: underpinning this emergency is the combination of Europe's non-entrée regime and its overall failure to respond effectively to the UNHCR's call for large scale third country resettlement for Syrian refugees. Alongside entry by sea to Italy, similar pressures are evident in land access to Spain and Greece. Thus, for more than 20 years Spain has maintained a network of fences between its enclaves of Ceuta, Melilla, and Morocco to prevent access to the mainland. In 2012, Greece built a 12 kilometre fence along its border with Turkey, and Bulgaria is erecting a 33 kilometre fence along its border with Turkey while intercepting and preventing up to 100 people a day from entering its territory.

What do these data tell us? They are symptomatic of a protection crisis at Europe's borders, close to the end point of the migration continuum. The protection crisis is the result, in part at least, of an increasingly complex and sophisticated battery of physical instruments, legal processes, policy initiatives and international agreements designed to prevent access to territory – «Fortress Europe» (Geddes 2008) or what Guild has called the «Europeanisation of Europe's Asy-

25 By June this had reached almost 50,000 and arrivals were reaching 700 per day (Italian field work interview data April 2014).

lum Policy» (2006:630). The structure and the impact of the Europe's migration governance framework are explored in the next chapter (5.4).

The forced migrant's journey to Europe, as we have seen, is increasingly dangerous, or at least the dangers receive more publicity than in the past as a result of the volume of migrants involved. Seeking to prevent migrants from undertaking dangerous journeys to European countries merely increases vulnerability and the diminution of protection. This migration policy framework further reinforces the migrants› already high vulnerability and needs of protection. And from a policy perspective, the closing down of legal channels of access to the EU and the criminalisation of irregular entry makes it more difficult for vulnerable migrants to reach the EU safely and to exercise their legal rights (Bloch, Sigona and Zetter 2014:15–31; IFRC 2013; IFRC 2012:30–31). Thus, even if they manage to land in the EU, national level policies are restrictive: fast tracking applications; circumscribed grounds for appeal; international data sharing; dispersal and community fragmentation; the widening reach of detention and deportation powers; direct or indirect refoulement. Forced migrants, refugees and asylum-seekers are far from guaranteed adequate protection.

«The forced migrant's journey to Europe is increasingly dangerous.»

In the highly politicised circumstances of migrant admission in Europe, these conditions represent an approach to orderly migration control and management which, arguably, makes protection of migrants subservient to the wider interest of a Europe of «freedom, justice and *security*» (italics added) (European Commission 2001). Irrespective of their status, whether forced or not, the migrants arriving in this way are highly vulnerable and in need of protection. Although efforts to protect and save the lives of migrants in the Mediterranean, notably through the Mare Nostrum initiative of the Italian government since the 2013 Lampedusa catastrophe, it is highly debatable if migrants and asylum seekers have adequate safeguards for protection and respect of their dignity and safety. What from one perspective is a remarkably comprehensive framework of border control for Europe is, conversely, the fragmentation and systematic denial of protection for forced and vulnerable migrants[26]. That almost three quarters of asylum applications for refugee status in EU states were rejected in 2012 is not so much evidence of «bogus asylum seeking» as an indication of the extreme difficulties of claiming protection.

The *fourth* protection crisis, and a major reason underlying the draconian non-entrée regimes of Europe and countries such as Australia, is the mixed migration flows that comprise the forced migration continuum. On the one hand, as we have seen in Chapter 3, fewer forced migrants are eligible, or deemed eligible, for protection as refugees because it is decreasingly possible to align the specific causes of forced migration with the categorical requirements of claims to refugee status. The dilemma here is that by erecting a robust non-entrée regime to deal with mixed migration flows, those who have a genuine claim to the protection of refugee status are increasingly denied access.

On the other hand, the multiple drivers and, especially, the conditions under which migrants travel, expose a wide range of vulnerabilities and protection needs for which there is limited effective legal, normative or programmatic provision. The reluctance to make provision for different forms of forced migration, given the exclusionary nature of the 1951 Refugee Convention, and the denial of access to territory, not surprisingly, accentuates their vulnerability and intensifies the protection gaps. It is for these reasons that humanitarian organisations advocate needs- and rights- based understanding and responses to vulnerability and protection: this proposition is discussed below (4.3, 5.2.3).

In conclusion, it could be argued that these measures are not designed to enhance the protection of refugees and forced migrants. Instead the intention is to satisfy domestic political demands to protect, as rigorously as possible, the destination countries from the arrival of mixed flows of migrants. It is ironic that those states that create the strongest barriers against forced migrants and mixed migration flows, are the same states that advocate the expansion of protection capacity and humanitarian reception policies in the global south, in countries least able to bear the impact of hundreds of thousands

of such people. This is not to deny that improvement in the quality of protection is not desirable, merely that the full impact of the refugee burden on these countries should be acknowledged.

4.2.6 Climate change, environmental stress and forced migration

Climate change and environmental stress are increasingly significant features of the new geographies of forced displacement and mobility. Distinctive here is the contrast with the emergency and rapid onset of forced displacement examined so far. Displacement attributable to climate change and environmental stress is typically described as slow onset. These less familiar drivers and processes expose a range of protection challenges and gaps for which there is limited legal and normative provision.

The threat of rising sea levels, increasing drought, accelerating desertification, more frequent extreme weather events, evidence irreversible climate change. These conditions although rendering potentially many millions of people increasingly vulnerable and at risk of displacement, are rarely unique or direct cause-effect drivers of population displacement. In general, they operate in conjunction with economic, social and political factors, and are linked to existing vulnerabilities (Zetter and Morrissey 2013). It is thus conceptually and practically difficult to establish a precise category of environmental or climate migrant – certainly the populist term environmental refugee is inappropriate; and the extent to which migration is «forced» is open to debate (Zetter and Boano 2008; Piguet 2008; Piguet et al. 2011; Zetter 2010).

These circumstances echo the earlier discussion about mixed migration flows, multiple causes and the protection challenges that arise.

Those who cross international borders because of deteriorating environmental conditions face significant legal and normative «protection gaps» in international human rights and humanitarian law (McAdam 2010, 2011; UNHCR 2010; Zetter 2010a); they are not refugees, and extending the 1951 Refugee Convention to provide protection would both dilute and add confusion to the claims of those fleeing persecution: this would further harden resistance to refugees already discussed in Chapter 3. The work of the Nansen Initiative is seeking to find ways of bridging this protection gap and this will be discussed in the next chapter (5.6).

The substantial majority of those susceptible to climate-induced displacement will remain in their own countries and, in the countries that are likely to be most affected, there is increasing awareness of population displacement impacts. The issue has high political saliency in countries such as Bangladesh (GoB 2009) and in the national planning framework of «living with floods» in Vietnam (GoV 2009). Yet, when it comes to considering how rights protection might be afforded to displaced and resettled populations impacted by these phenomena, another «protection gap» exists. While the *1998 Guiding Principles on Internal Displacement*, in theory, provide a framework for protection, there are significant gaps (Kälin et al. 2012; MacAdam, 2010, 2011). However, few countries have fully operationalised the Guiding Principles and this means they do not adequately protect those affected, or displaced, within their own countries (Zetter 2011; Zetter and Morrissey 2014, 2104a).

> ***«Protection should not be privileged only to those displaced by climate change.»***

Given that the 1998 Guiding Principles provide a general protection apparatus, one of the protection challenges lies in whether it makes sense to define and identify a specific category of displaced people whose rights may be threatened and in need of protection. Here, the argument is that protection should not be privileged only to those displaced by climate change, or other forms of environmental stress, over other «involuntary migrants» who also fall outside well-established categories (UNHCR 2011a; Kälin and Schrepfer 2012; McAdam 2011).

Another challenge to providing protection for those susceptible to displacement because of climate change is to determine the duty bearers and their obligations. As we have seen, in the case

26 Of course Europe is only one example. Similar situations of comprehensive entry control and push back exist in the USA – the security fence between USA and Mexico is an iconic representation – and in Australia with its controversial, but highly effective, extra-territorial processing policy of mandatory detention of asylum seekers at the immigration detention facilities in Nauru.

of refugees and IDPs, and for some other categories of international migrants such as labour migrants, the duty bearers are well established[27]. In the case of people whose displacement may be attributed, in part or whole, to climate change and environmental stress, the question arises: who has the duty to protect? Should protection be a moral imperative and a tool of restorative justice, for example through resettling vulnerable populations, provided by developed countries that are the major CO_2 emitters that produce climate change (Zetter 2009)? This challenges the protection «obligations» of the impacted countries under the 1998 Guiding Principles. Conversely, is protection a humanitarian response to life-threatening disasters? In this case, the national governments are duty bearers supported by humanitarian actors that often take the lead in providing protection and assistance.

4.3 Protection and Displacement Vulnerability

Chapter 3 explored protection primarily from the viewpoint of international law and norms. That Chapter demonstrated how, from the conceptual foundations in the 1951 Refugee Convention, protection for forced migrants is a widely articulated principle in international humanitarian and human rights frameworks.

However, while forced displacement is the most obvious symptom of the «failure to protect», the complex and unpredictable dynamics, patterns and typologies of forced displacement explored in this Chapter seem to render both legal categories – such as refugee – and the norms that derive from international humanitarian and human rights law, inadequate to deal with the scope and diversity of contemporary protection needs. The classic conditions for which the 1951 Refugee Convention was adopted are no longer the greatest cause of forced displacement and thus constitute less powerful grounds for applying well-established protection norms. Many different types of migrants, displaced with varying degrees of force, undertaking complicated patterns of involuntary movement, and facing a wide range of human rights abuse, are exposed to broadly similar *protection needs irrespective of their legal status*. Moreover, poorly conceived migration policies, inadequate institutional capacities and political resistance in transit and, especially, in receiving countries, compound the limitations of the current protection regime.

Equally, while forced migration invokes diverse needs for protection, it is the case that even before forced migration takes place, people and communities are exposed to different types of vulnerability and thus the need for protection. Indeed, it is the lack of protection from this exposure that often precipitates forced displacement as the option of last resort. For example, it is not necessarily direct attack and violence alone that drive people from their homes, but *new manifestations of conflict* such as the deprivation (i.e. the vulnerability) caused by war – the material impacts such as food insecurity, and the socio-economic impacts such as the destruction of social networks, blocked access to key institutions such as markets and the damage to livelihoods, all of which are vital parts of communities‹ survival mechanisms (IFRC 2013:31). The targeting and disruption of livelihood systems and communities› core institutions are consistent and familiar strategies of warring parties in contemporary situations. As a last resort people are forced to move to reduce the life-threatening vulnerability that comes from the lack of protection.

Arguably, what underpins these experiences, and the different situations in which those susceptible to forced displacement and the forced migrants find themselves, is the vulnerability to which they are exposed. It is vulnerability in situations of violence and conflict that is highly likely to precipitate forced migration, not the lack of protection per se. In addition, forced migration itself, as we have seen, is a highly significant cause of vulnerability that in turn is a major threat to their protection.

These arguments question, therefore, whether protection alone is the only or a sufficient response, or whether the means to reduce vulnerability and exposure to vulnerability is an equal imperative. Given these arguments, the current configuration of protection is both too prescriptive and problematic in situations before displacement takes place and during forced displacement. As much as the gaps in protection and the diminution of protection space are crit-

ical issues, *a cross-cutting concept of «displacement vulnerability»* – vulnerability from, during and after forced migration – and its interplay with protection, may offer a more nuanced framing of the challenges. Here, the contention is that forced migration and protection needs are interlinked in a «vulnerability nexus» (Chetail and Braeunlich 2013:44). The primary objective, therefore, should be to respond to the complex and diverse vulnerability conditions to which people and communities are exposed rather than focusing on forced migration as the defining condition of protection needs.

These considerations point to three conclusions. First, vulnerability is *multi-dimensional and dynamic*. Increasingly, populations are exposed to a range of vulnerabilities before and during displacement. Second, in virtually all situations where people become vulnerable they are also exposed to significant *«protection gaps»*. It is exposure to vulnerability, and thus the likelihood of forced displacement, which lies at the heart of protection needs. In other words, vulnerability is equally the defining condition of protection needs, not forced migration per se. Third, the *concept of «displacement vulnerability»* seeks to embrace this interplay, rather than the protection of particular statuses of forced migrant. Chapter 5.2.2 will explore how protection initiatives have sought to respond to these conclusions.

4.4 Conclusion

This chapter has focused on protection challenges that arise from the new geographies and «spatialities» of mobility that forced migrants engage. The evidence also highlights the complex temporal configurations that underlie the changing patterns and processes of mobility. At the same time, it is clear that protection is a highly politicised process, far removed from the normative precepts on which it was originally based. Protection now exists at the nexus of human rights, legal and normative precepts and politics.

Essentially the argument has been that we can best understand the protection needs of forced migrants by examining the different spaces in which they find themselves at different temporal stages of their journeys. The evidence available from such an approach reinforces the premise on which this study is based – the existence of substantial gaps in the legal and normative frameworks of protection and the declining capacity of these norms to provide effective protection space for forced migrants whose mobility is driven by complex drivers and causes. Moreover, a concept of protection tied to specific or normative categories of legal status – the «refugee paradigm» – or disaggregated into specific groups, inadequately recognise the different types of protection needs and vulnerabilities evident in the different geographies of forced displacement.

«All forced migrants need some form of protection.»

Not every forced migrant is a refugee in need of the specific type of protection that accompanies refugee status determination; but, conversely, all forced migrants need some form of protection, as Chapter 5 will demonstrate. This is the fundamental point. Irrespective of how a journey starts for forced migrants, what happens when they leave raises protection needs. And it is this conclusion, combined with the proliferation of causes of forced migration, and the different modalities of that migratory process, that pose such profound challenges to the existing protection regime.

The interplay between protection and the concept of displacement vulnerability seeks to expose the multiplicity of protection needs that arise in contemporary forced migration situations beyond a normative frame. The methods, strategies and processes by which protection has been provided to address both normative needs and this wider conceptualisation is now explored in Chapter 5.

27 Of course since the *1998 Guiding Principles on Internal Displacement* are not international law, but soft law, technically there cannot be duty bearers. However, the Guiding Principles establish the principle of states being responsible for those displaced within their territories.

5 Responses to protection needs and challenges

Preparing for winter in Jordan. *Photo: UNHCR / J. Kohler.*

5.1 Responding to the protection challenge

Chapter 3 defined the complex dynamics of forced displacement in the contemporary world, and provided an analytical framework for understanding the two key concepts of forced migration and protection. Within that context, Chapter 4 then explored the current and emerging protection needs of forcibly displaced people in different displacement geographies. These geographies highlight the substantial shrinkage of protection space, the increasing scale and diversity of protection gaps and the displacement vulnerability to which forced migrants are exposed. This analysis questioned the capacity of legal and normative protection frameworks to meet the protection needs of these populations arising from the contemporary dynamics of displacement. Accordingly, Chapter 4 outlined the case for a wider conceptualisation of protection, strategies and processes beyond the well-established normative precepts and conditions. This chapter brings the two analytical frameworks of Chapters 3 and 4 together with an exploration of the initiatives and responses to these protection needs and challenges.

How have national, international and intergovernmental agencies responded to these protection challenges? In what ways do innovations in protection instruments offer remedies to the current crisis of protection? To what extent have these emerging, and substantial, protection gaps been filled? Is the diminution of protection space an inevitable consequence of the increase in unregulated international migration? What is the scope to enhance rights protection in the countries that generate significant numbers of forced migrants? Is it possible to provide effective ‹protection space›[28] for forcibly displaced people – an environment that is conducive for their rights to be respected and their needs to be met?

This chapter seeks to answer these questions by exploring and critiquing a range of current and emerging protection initiatives developed by national, international and intergovernmental agencies, as well as non-governmental humanitarian actors in recent years. It examines the scope of these initiatives and their capacity, strengths and weaknesses to address the protection needs and displacement vulnerabilities of forced migrants.

The chapter is in four parts: the first explores protection in countries and regions of origin, the second protection in transit, the third protection and Europe, and the fourth deals with climate change displacement and protection.

Very broadly, a pattern of protection gaps and varying protection space emerges. Little protection space and severe protection gaps in countries of origin give way to basic and very uneven protection regimes in countries of first asylum in region (5.2.). Then in transit (5.3) there are very substantial protection gaps and ill-defined protection space, leaving forced migrants highly vulnerable. Arrival at the global north (5.4.), finds the forced migrant facing a highly regulated environment where there are few protection gaps but virtually no protection space.

Five main arguments underpin the analysis in this chapter.

First, and readily apparent, is the proliferation of *definitions and practices of protection* in recent years but, equally, the lack of a coherent, systematic framework or overarching architecture to support these initiatives. For example, no new international Convention or Guiding Principles dealing with the contemporary dynamics and impacts of forced migration – such as the 1951 Refugee Convention or the 1998 Guiding Principles in the past – has been proposed[29]. Even if desirable, the prospects for such developments are negligible. Instead, an extensive array of policies, instruments and operational responses has been created; these are largely reactive and often pragmatically tailored to specific protection contexts and protection gaps.

Second, and echoing this *lack of a comprehensive approach to protection*, many of the initiatives have been developed by international agencies (for example UNHCR, UN-IASC, IOM, IFRC), or governments (such as those of Norway, Switzerland, and the European Union), or humanitarian NGOs (for example Oxfam), on an individual basis to meet their specific institutional goals or programming strategies. But what is significant here is that while the international duty bearers for protection rest with a small number of agencies, such as UNHCR and ICRC, many humanitarian organisations, notably NGOs, now mainstream protection in their response to forced migration almost as if they had a legal mandate to do so. Indeed, arguably, humanitarian assistance has become protection. Many humanitarian organisations now have professionally specialised protection staff and have well-developed policies and strategies on protection. Of course, NGOs cannot actually protect people from violence or conflict, although they can enhance protection with interventions that remove or reduce the threat of violence and conflict.

«Humanitarian assistance has become protection.»

One could argue that this «plurality of protection» better tailors protection machinery to particular situations, needs, and actor capacity. However, the key point here is that the impact of this «proliferation of protection» has reinforced the ad hoc and disaggregated response to contemporary protection challenges.

Third, there is a distinct and growing *dichotomy between the concepts and practice of protection* in regions of mass forced displacement compared to regions where non-entrée regimes for refugees, asylum seekers and other forced migrants are becoming increasingly embedded – the global north. From a unique starting point of international legal and normative standards set out in various conventions and covenants, a twin track protection model has emerged. Improved standards and expanded protection capacity are promoted in heavily impacted regions by external, usually global north actors, at the cost of diminished access to fair asylum proce-

28 The term «protection space» does not have a legal definition, but is now a widely used descriptor of the environment in which humanitarian actors seek to provide, (see e.g. UNHCR 2009c:4).

29 Academics at the University of Limoges (2010) and the University of Western Australia (2008) have independently proposed a new Convention for Environmentally Displaced People modelled on the 1951 Convention; but these have merely been academic exercises. See also discussion of the Responsibility to Protect (R2P), in section 5.2.8.

dures and progressively reduced commitment to refugee resettlement in precisely those same post-industrial economies.

Fourth and again consistent with this progressively more fragmented and institution-specific approach, these responses tend to be decreasingly based on international legal and normative frameworks and principles. Although some of the initiatives are «soft-law» based, and the scope of soft law is being extended as we have seen in Chapter 3, the focus on policy and operational instruments reflects and reinforces a profound transformation in the underlying rationale and practice of protection. This transformation is from norms-based principles to the «management» of protection linked to the reconfiguration of institutional structures and responsibilities noted above. This *«managerial turn» in the provision of protection* is a significant contention of the study, and potentially one of the most critical findings from the point of view of addressing the protection challenges posed by the contemporary dynamics of forced migration.

Finally, this chapter will present evidence of the highly politicised milieu, noted in 4.4 above, within which protection is now located. That protection now lies at the nexus of rights-norms-politics, is potentially the most disturbing contention of the study from the point of view of how protection of forced migrants is conceived, who should be protected, and with what instruments.

5.2 Protection in countries and regions of origin

Of the almost 53 million forced migrants documented worldwide (Chapter 3.2), the vast majority remain in their countries and regions of origin – some 33 million are internally displaced while of the 12.4 million refugees and the five million displaced Palestinians, we might estimate from UNHCR and UNRWA data that about 15 million remain in their countries and regions of origin. Thus, more than 95% of the forcibly displaced population worldwide remain in countries and regions of origin, and to this total must be added the potentially millions of undocumented forced migrants. Protection in country and region is the primary concern.

Chapters 3 and 4 indicated that many of the roots of the contemporary global protection crisis lie in the countries and regions of origin of forced migrants. Human rights abuse, state fragility and development failure, which may then precipitate humanitarian and displacement crisis, are the core drivers of forced migration.

To this complex of factors must be added: the increasing number of these crises, frequently but no longer exclusively, in the global south; the lack of capacity, or the unwillingness, to afford adequate protection in the neighbouring and transit countries to which refugees and other forcibly displaced people flee; and, further afield the lack of resettlement options, and the lack of channels for regular migration and barriers to entry in the global north (Piguet 2013).

Tackling these conditions is a formidable and long-term challenge. Clearly, sustainable and equitable development policies, promoting religious and ethnic tolerance, respect for the law and human rights, ensuring peace and security, are all strategies that can fundamentally reduce the propensity for forced migration in countries susceptible to this phenomenon. Development and protection thus go hand-in-hand, a vital combination of strategies requiring much greater traction in national and international fora.

On the one hand these goals, if successful, are more likely to encourage populations who currently feel excluded and compelled to migrate – usually by irregular means – to remain in their countries of origin or engage with regular migration channels. On the other hand, by promoting peace and security, these strategies can reduce the propensity for countries to descend into violence and conflict that then directly precipitates forced migration. And where this does occur, rights protection must become a vital component of the longer-term peace and reconstruction strategy. This is the thinking that lies behind the innovative initiative of the Swiss government, as set out in its «Whole of Government Approach» for engagement in conflict regions and fragile states, and its co-operation strategy with these countries and regions (see e.g. Swiss FDFA 2012, 2013a) – discussed below (5.4.4). At

a more instrumental level it also underpins the Mobility Partnerships programme of the European Commission, and the Migration Partnerships of the government of Switzerland (5.3.2).

Indeed, the designation of the UN High-level Dialogue on Migration *and* Development in 2013 (emphasis added), and the incorporation of international migration in the draft UN post-2015 Development Goals programme, recognise the fundamental significance of the linkage between development, in the widest sense, and migration. However, development in these terms, as the «structural» solution that will improve conditions for regular migration, reduce forced migration from countries of origin (and the ensuing protection crisis) is, of course, beyond the scope of this study. Regrettably, however, while migration and development remain in the post-2015 UN Development Agenda, all discussion of forced migration has been dropped.

While tackling at their roots the underlying, structural factors that create the protection crisis of forced migrants remains an elusive goal, there is nevertheless a significant range of protection initiatives in these countries of origin, and especially in the regions most impacted by this phenomenon. These are now examined. Sections 5.2.2, and 5.2.3, adopt an essentially community level, bottom-up focus, while the remainder of Section 5.2, turns attention to the more formal and institutionalised responses to protection challenges. Before that a preliminary section discusses evacuation and protection.

5.2.1 Protection in conflict – evacuation and internal displacement

Over recent decades the conflicts and violence that have led to forced displacement have, with very few exceptions, been internal civil wars. Depending on the situation, armed non-state actors (ANSAs) – insurgency groups or guerrilla movements or warlords – have been embattled with each other or with national defence forces. Although these conflicts display obvious military characteristics, the targeting of civilians has been the dominant means by which these conflicts have been propagated.

At the epicentre of these conflicts humanitarian access is denied or impossible, and so protection for civilians is rarely, if ever, available – neither basic life-saving physical security nor, more general, rights protection and adherence to Geneva Conventions. Mandated humanitarian protection actors, such as the ICRC, have some capacity to protect; other front-line, but non-mandated NGOs, have extremely limited capacity. These are the conditions that pertain in Syria, and now Libya and, on a more episodic basis, in Iraq, Somalia, Mali, DRC, and CAR to highlight a few examples. In these circumstances people spontaneously become forcibly displaced in search of basic protection and the different means of more sustainable protection, which are explored in the following sections.

However, beyond the mediating work of the ICRC, two protection initiatives have been developed to ameliorate these conditions. One is an emergency response for the protection of civilians, the other a longer-term and more structural response to IDPs. It is important to note that protection needs differ, and these are briefly considered.

Working in the interstices of conflict situations where, for example, there is temporary cessation of localised fighting that provides a window of peace, humanitarian agencies have developed the modalities for *emergency humanitarian evacuation* and *basic civilian protection*. In many war zones, such as those noted above, agencies such as IOM, UNHCR, ICRC IRC, have mobilised emergency life-saving evacuations. No more than temporary, during life-saving and seemingly vital life-saving interventions, two issues arise. First there are the questions of whether such interventions override local self-protection responses (5.2.2), and whether removal to protect populations at risk creates a vacuum that subsequently makes their return problematic. The second danger is the extent to which emergency evacuations – to protect populations subject to high risk – may, unwittingly compromise principles of neutrality and impartiality. For example, in the case of CAR, IOM became open to the accusation that it was «assisting» ethnic/religious cleansing by removing vulnerable communities from the war zones.

The second intervention concerns the extent to which the *1998 Guiding Principles on Internal Displacement* and, more recently the *2009*

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the «Kampala Convention») can be invoked as more sustainable approaches to protect populations who have been forcibly displaced. Mindful of the focus of this study on forced displacement and protection in an international setting protection, and that discussion on the 1998 Guiding Principles and the Kampala Convention is a major topic in its own right, only brief comments are made.

In principle, both instruments offer a vital means for filling important protection gaps. The 1998 Guiding Principles provide a valuable backcloth to innovative resettlement policies in Colombia for example. Various governments such as Switzerland, Canada, Finland and Norway, together with IDMC, actively support bilateral programmes for: the development of national legislation and norms, especially as part of post conflict peace and reconstruction programmes; the promotion of law policy initiatives; the incorporation of IDPs in development strategies; developing the knowledge and capacity of the judiciary as an agent of IDP protection; and building the capacity and enhancing civil society and advocacy capacity on internal displacement. Similar supporting initiatives exist for the Kampala Convention.

«Local communities and individual households often play a crucial role in their own protection.»

In the end, of course, the effectiveness of the Guiding Principles and the Kampala Convention as instruments of protection depends on three factors: first, the willingness of parliaments to pass laws on IDPs; second, the commitment of governments to accept their obligations and responsibilities set out in the legislation, norms and guidelines; third, it requires governments to link these specific commitments to wider social transformations that are necessary to respect human rights and protect people from violations of their rights.

5.2.2 Self-protection

Protection has largely been pre-empted as an institutionalised task by international agencies on the one hand, such as the UNHCR through the promotion of protection norms, and the operational role of humanitarian actors and civil society organisations, on the other hand, in promoting security programmes and risk-reduction assistance. However, local communities and individual households often play a crucial role in their own protection – they fashion the means for, and rely on, self-protection. Importantly, these protection strategies are often designed to avert forced displacement, as well as to cope with, and minimise the impacts of displacement when this becomes inevitable. In the latter case, self-protection is most appropriate where displacement is local rather than outside the immediate conflict zone or area of threat.

The starting point for any analysis of emerging protection initiatives must be the people in need of protection – those whose vulnerability makes them susceptible to forced displacement or those who become the forced migrants themselves.

The discussion in Chapter 4 on protection challenges within countries in conflict and in the context of micro-level displacement and circular mobility (4.2.1 and 4.2.2), and evidence from South Sudan, Zimbabwe, and Myanmar, for example (Local to Global Protection n.d.; IFRC 2012:59–65), demonstrates that communities frequently organise their own protection responses and survival strategies, particularly within their countries of origin in situations of local armed conflict. This may be informally organised by community or religious leaders, for example, or through indigenous and community-based Civil Society Organisations (CSOs). Moreover, self-protection is often mobilised long before the institutionalised awareness of protection needs and the arrival of outside assistance. These responses may include more obvious measures for physical security and material protection as well as adaptive, life-critical livelihood strategies; but they may often include «soft» political and social stratagems such as concealing political sympathies, or adhering to social and cultural precepts such as customary law and local traditions, rather than claiming protection through formal human rights «norms». By definition it is the failure of these latter norms to protect, or a lack of awareness that they exist, that creates the conditions for communities to

invoke self-protection. Conversely, protection initiatives by outside agencies are often remedial rather than proactive, in that they are implemented «ex post facto» – after displacement has occurred or the exposure to high vulnerability risks. Moreover, these external initiatives may be regarded as relatively unimportant by people at risk and, in some cases, even accentuate protection risks by exposing «protected» populations who have developed low-profile and risk-minimising protection strategies that are finely tuned to local threats.

This is not to say that self-protection strategies provide satisfactory or comprehensive protection and safety for vulnerable populations – they do not, and community protection strategies are not always without harmful effects. There may be the need to engage with armed non-state actors. Moreover, self-protection can rapidly lead to the disaggregation of mixed neighbourhoods and districts into mono-ethnic or mono-religious communities as has happened in Iraq and Syria with severe implications for post-conflict peace-building. Neither is it the case that external interventions to promote self-protection can be dismissed – external resources, providing safe passage and political leverage on warring parties are some of the essential protection contributions that external actors can offer. Important though it is, local agencies cannot be a complete substitute for the protection responsibilities of national authorities or international actors. Conversely, misplaced assumptions about the efficacy of mainstream humanitarian protection and perceived threats, which self-protection may present to the institutional interests of these agencies and their donors, may also be equally problematic.

How then, can we complete the circle of supporting indigenous responses without over-institutionalising protection instruments and assistance?

As a general approach, the ICRC usefully distinguishes three levels of intervention by which to support community self-protection and a framework for potential intervention by humanitarian and rights-based agencies. These are: *«responsive action»* undertaken in an emerging or established pattern of human rights abuse to prevent its recurrence and/or alleviate its immediate effects; *«remedial action»* taken to restore people's dignity and to ensure adequate living conditions after a pattern of abuse; *«environment-building»* efforts to foster a political, social, cultural, institutional and legislative environment that enables or encourages the authorities to respect their obligations and the rights of individuals (IFRC 2013:65).

Within this framework, the first point to emphasise is the value of self-protection strategies for at-risk populations who are *in their own* countries. There are two contexts where self-protection can be invoked: populations who are at risk of forced displacement; and those who have been forcibly displaced (and are likely to be internally displaced in the first instance). Support for self-protection, for example of the kind that ICRC provides to indigenous groups in Colombia – to reduce the risk of displacement – is key here. Mediation with belligerents to protect at-risk populations from forced displacement is a related strategy, and alongside these policies are contingency plans and stockpiles of emergency rations that are in place in case short term evacuation becomes necessary: where possible this is only over short distances. A field presence can help in mediation and in encouraging governments to adhere to human rights norms.

From an operational perspective, one requirement is for external actors to recognise that the communities they are seeking to «protect» need to be much more fully consulted in designing protection measures that respect indigenous responses, and do not undermine and disempower their coping mechanisms. At the same time, this requires greater accountability by external actors to the populations they seek to protect. External actors face the complex challenge of reconciling internationally accepted humanitarian principles, norms and rights-based programming with local customary law and local value systems, which may compromise externally created norms.

«Community protection strategies are not always without harmful effects.»

Another requirement is for external agencies to find pragmatic responses to the complex trade-offs that local communities confront in trying to safeguard their protection. Where livelihoods are threatened by locally-armed groups,

or fields land-mined in zones of conflict, may mean finding ways of protecting vulnerable populations with the remote assistance programming of food supplies.

A number of NGOs provide external support for self-protection. Valuable methods have been developed by the Norwegian Refugee Council (NRC), Oxfam, and the International Rescue Committee (IRC), for example, in their safe programming and protection sensitive approaches, which seek to ensure that sectoral projects, as well as enhancing community responsibility, also facilitate self-protection measures and ensure that affected populations are not put at further risk by the projects (Oxfam n.d.; Oxfam 2013; Swithern 2008).

«Address vulnerability through a rights-based approach.»

Finally, another challenge for external actors supporting the self-protection of vulnerable or forcibly displaced populations is to find ways of engaging with armed non-state actors. Local people may regard armed groups as both a threat and a source of protection. These groups may already be an important source of protection on which vulnerable populations, living in their areas of control, already rely.

Engagement with them may therefore be necessary. Of course, for outside actors the danger here is that they may compromise humanitarian precepts of neutrality and impartiality, and for this reason they have been reluctant to engage with these groups in any meaningful way to date. But if support for self-protection strategies is to become more meaningful, then a new modus operandi will need to be found. A recent study for Geneva Call (2013) on armed non-state actors and displacement offers some ways forward that still respect international norms and standards of protection.

5.2.3 Displacement vulnerability – mainstreaming protection in the context of rights and livelihoods

In discussing the interplay between vulnerability, displacement and the multiplicity of protection needs that arise in contemporary forced migration situations, Chapter 4.3, suggested that the concept of «displacement vulnerability» is a valuable means to examine protection needs beyond a normative frame. The argument was made that it is exposure to vulnerability before, during and after forced displacement that lies at the heart of protection needs. In almost all the situations where people become vulnerable they are also exposed to significant protection gaps. Thus vulnerability, arguably, is the defining condition of protection needs, not forced migration per se. This section now explores this interplay in more detail.

One way that this contention has informed the protection debate is in seeking to address vulnerability through a *rights-based approach* rather than a migrant protection platform in the first instance. This is an approach advocated in the «new humanitarianism» of the last decade or so, a philosophy which declares that people have rights that a wide range of duty bearers have a responsibility to uphold. This thinking also underpins major rights-based initiatives in humanitarian situations such as the Sphere Project (Sphere Project 2011).

To their familiar role of supporting vulnerable populations with material assistance, humanitarian actors now increasingly seek to tackle the determinants of vulnerability that emanate from the lack of social, economic and political rights (Hehir 2013:95–118) as well as aspects of personal identity such as religion, ethnicity, gender sexuality, and age (Collinson et al. 2009). Many humanitarian organisations mainstream rights protection and rights advocacy into their response to humanitarian emergencies and forced migration.

The rights-based approach is appropriate here since it enables humanitarian actors to provide assistance and protection to displacement-vulnerable people without having to distinguish between those whose legal status, and thus «eligibility» for protection, is clear. For example, refugees, and others households and communities exposed to the same vulnerabilities and needs, but who have no obvious legal entitlement (forced migrants or those potentially susceptible to forced displacement). By adopting a non-categorical approach, the concept of «displacement vulnerability» is valuable because it recognises the need to reduce vulner-

abilities and protect rights irrespective of a specific status.

For example, the 2011–12 drought in Somalia combined with enduring conflict and state fragility, destroyed livelihood systems and created famine. Typifying the complex mix of drivers discussed in Chapter 3.2, together these factors precipitated yet another episode in that country's long history of forced displacement. Of those displaced, some were persecuted because of their clan, others fled the on-going violence, while others fled livelihood and food insecurity that afflicted their households (Maxwell et al. 2014). A rights-based approach to rendering assistance recognises the shared vulnerabilities that cut across all three groups of forced migrants, irrespective of a precise «protection» status.

Transit migrants face severe displacement vulnerabilities and, as a result, perhaps the greatest exposure to a wide range of rights violations of all forced migrant groups. They are highly likely to experience exploitation and social exclusion, as well as xenophobia, racial and ethnic discrimination, as well highly constrained livelihood options. They face arbitrary and often prolonged detention in inhumane conditions. And they are exposed to high levels of SGBV as well as vulnerable to trafficking or smuggling. Yet, as we have seen in Chapter 4.2.4, and 4.2.5, transit migrants rarely have any legal status or claims to protection. Indeed, their irregular status renders them unable to access protection, in a normative sense, or due process from the authorities of countries they are transiting. Without legal status, displacement vulnerability is their pre-eminent condition for which a rights-based approach seems to hold out a more viable route to protection.

The rights-based approach to protection intersects with a second theme, the protection of livelihoods in the context of «displacement vulnerability». For example, in contemporary situations of micro-level displacement, or in the case of stranded migrants (discussed in Chapter 4.2.2, and 4.2.4, respectively), displacement vulnerability caused by the disruption to livelihood systems – access to food supply and production, natural resources, jobs, markets – or the destruction of core social norms and civil society institutions on which households depend for survival, exposes many protection needs beyond the normative sense. Rather, it is protection from the deprivation of the material necessities for livelihoods, and the undermining of social networks and support systems, which is essential.

Likewise, for populations forcibly displaced to and within urban areas (4.2.3), protection in the normative sense may be less important than protection from exposure to multiple material, livelihood, security and environmental vulnerabilities (5.2.5).

Maintaining or recovering access to key institutions such as markets and social networks, as well as sustaining livelihood options is, therefore, one of the biggest challenges to reduce the vulnerability and enhance protection of displacement-vulnerable people. Preparedness, social protection tools and safety nets, retaining the household unit, together with sectoral projects, are among the tools that humanitarian agencies now use to alleviate displacement vulnerability. One difficulty lies in identifying the vulnerable communities since they may be widely dispersed or their vulnerabilities may not be geographically concentrated, for example they may be distributed according to ethnic affiliation or gender.

When protection from forced migration, in these terms, fails and vulnerability shifts from a chronic to a traumatic condition, people are usually driven to move: they become forced migrants. As we have seen (4.2.2), forced migration in these conditions often takes place over short distances in the first instance – when there is no safe access for humanitarian agencies to provide assistance. It is in this context that these agencies have experimented with livelihood protection rendered through remote programming in countries such as Somalia (ALNAP 2009) and Iraq (UNHCR 2014b). Essential though this is for livelihood protection, such an approach does not provide effective protection for wider social political and economic rights.

In the context of displacement vulnerability, the IFRC, ICRC and Red Cross/Crescent National Societies play a leading role. They have generally defined this role as stemming from the objective of alleviating community and household vulnerability and, where possible, *lowering*

the risks of displacement or reducing the length of displacement, rather than differentiating on the basis of the status of migrants, or the reasons they have migrated.

Capturing the interplay between vulnerability and protection, the International Conference of the Red Cross and Red Crescent in 2011 reiterated its concern «about the often alarming humanitarian situation of migrants… *at all stages of their journey* and ongoing risks that migrants, in situations of vulnerability, face in regard to their dignity, safety, access to international protection … [and] providing humanitarian assistance to vulnerable migrants *irrespective of their legal status*» (emphases added) (IFRC 2011).

In conclusion, viewing protection through the lens of displacement, vulnerability is not necessarily an alternative to more orthodox approaches to assessing and ensuring the protection needs of forced migrants. But highlighting the nature of some of the challenges of protection helps to refine the ways in which some of the challenges can be met.

First, by focusing on rights-based and needs-based protection, it draws close attention to the *diverse objectives* of the protection task beyond its strictly normative purpose.

Second, concentrating on displacement vulnerability highlights some of the constraints of a status-based approach to the protection needs of forcibly displaced people: it recognises that vulnerability cuts across the legal status of forced migrants. It emphasises the important point that what might be seen as secondary risks from a purely status-based protection perspective, for example livelihood depletion, loss of assets and social networks, family separation, are in fact primary protection risks for the households involved. Of course the dilemma here – which has been a perpetual dilemma in the debate on refugee protection – lies in casting *the net of vulnerability* so wide that either it weakens the legal and normative entitlements of existing categories, or it results in too many vulnerable people falling through safety nets.

«Protecting people from forced displacement is the preferable form of protection.»

Third, protecting rights and sustaining livelihoods begs the question of who the *duty bearers* are. On livelihoods, humanitarian NGOs have taken the lead for many decades. But on rights, the proliferation of protection across the humanitarian regime, for the most part without effective mandates, has not necessarily yielded improved standards of rights-based protection for forcibly displaced people.

Finally, the concept of displacement vulnerability reminds us that, in theory at least, protecting people *from* forced displacement by alleviating the conditions that generate this phenomenon – extreme human rights abuse or the deliberate destruction of livelihoods – is the preferable form of protection.

The discussion in the rest of the chapter shifts attention from community-based and locally-embedded protection initiatives to formal, institutionalised responses to protection challenges.

5.2.4 The protection cluster – a platform for protection

In 2005, the UN Inter-Agency Standing Committee (IASC) undertook a Humanitarian Response Review, the main outcome of which was the design of the «cluster» approach for the delivery of programmes in both disaster and humanitarian crises. Built around 11 specialist sectoral clusters such as Water and Sanitation, Health, Shelter, Camp Co-ordination and Camp Management (CCCM), Education, the aim of the then new framework was to improve multi-agency coordination in the context of the increasingly complex needs and vulnerabilities of affected people, the increasing diversity of humanitarian challenges, and the expanding scale of forced displacement.

It is the *Global Protection Cluster* (GPC), for which UNHCR is allocated cluster lead responsibility, which is of interest in the present context. The cluster's title indicates its importance in this study.

The GPC is the principle global-level, inter-agency forum for collaboration and overall coordination of activities to support protection in humanitarian contexts. Like the other clusters it comprises a large partnership of intergovern-

mental and non-governmental actors. At the global level the GPC has a number of functions: setting and disseminating standards and policies; capacity building; providing operational support, promoting the mainstreaming of protection and the integration of crosscutting issues; and a general oversight on protection. Operationally, at the field level, the Protection Cluster supports field missions and strategies; provides policy advice, guidance and training; facilitates resource mobilisation; and engages in advocacy.

Despite its all-embracing title, and this wide remit, the GPC established an operational platform in *five «Areas of Responsibility»*: rule of law and justice; prevention of and response to gender-based violence; child protection; mine action; and land, housing and property rights. This selection of priority areas makes sense in the wider context of the UNHCR's unique mandate for refugee protection. From this perspective it makes little sense to «reinvent» or confuse this primary responsibility with the regime of the GPC. Nevertheless, as we shall see, it has led to operational concerns and issues of principle about the purpose and functions of the GPC.

Operational issues have been the preoccupation of all the Humanitarian Clusters and the GPC is no exception. Evaluating the interaction between field-base protection clusters, UN Integrated Missions and the GPC strategy, in constrained security situations exemplify this emphasis. However, in line with the overall remit of this study, rather than focusing on detailed technical and operational matters, the discussion considers two substantive dimensions of GPC's programme, which highlight some of the wider *dilemmas and challenges in the provision of protection* for forced migrants.

First, the GPC Protection Cluster was indeed a major innovation seeking, as it did, to provide a much-needed holistic and co-ordinated approach to the provision of protection in humanitarian emergencies. Yet, despite its innovative identity and eminently sensible mission to establish comprehensive and co-ordinated delivery of protection, the Protection Cluster has sometimes struggled to define and operationalise its purpose and role. There has been persistent concern that while evaluations commend significant improvement of the cluster at a technical level in recent years; gaps in leadership and capacity, in the quality and capacity of some of the five sub-clusters, and the lack of joint advocacy strategies remain. In addition, country-based protection strategies are critically lacking in many contexts (ALNAP 2012:61).

The «GPC Visioning» in 2011/12 was an ambitious strategy to meet these concerns and it has helped to re-orientate the GPC towards field operations – the underlying critique of the GPC: there are a number of positive outcomes. The review has ensured that the GPC retains a multi-dimensional protection response that fully recognises the protection risks of different demographic groups, gender needs and diversity. The review has also underlined the imperatives of advocacy and protection mainstreaming at the core of a humanitarian response (the latter is discussed next). In addition, the GPC is seeking to extend the timeframe of its involvement and accountability to affected populations from the well-established protection role during, and in the immediate aftermath of emergencies, to identifying approaches for durable solutions for displaced people. Who «owns» protection? In other words: how, and to what extent, is protection a crosscutting activity and process – is the second substantive concern: this goes to the heart of the protection challenge for forcibly displaced people. The GPC has become the *«guardian» of protection* – but not the mandated authority, which is the UNHCR – and as such the GPC has wrestled with two interlinked dilemmas in this context. First there is the dilemma of balancing a collective approach to protection and the wider «ownership» of protection with the specific remit and role of the GPC; second, there is the need to balance the remit of the GPC and the unique, mandated responsibility of the UNHCR for refugee protection.

«Who ‹owns› protection?»

As we have seen in the introduction to this chapter and confirmed in the analysis so far, protection is now a diffuse and widely practiced component of the humanitarian task. It extends well beyond the original normative and legal delineation, and beyond the very limited number of organisations originally mandated to provide

protection for forcibly displaced people – with this proliferation, protection now encompasses the operations of many humanitarian agencies. In this configuration, protection cannot easily be ring-fenced to one entity such as the GPC. Indeed, as the UNHCR notes «Cluster Lead Agency, cannot be held accountable for all aspects of the protection response for a particular humanitarian situation» (Global Protection Cluster 2011:11).

The challenge for the GPC has been how to lever protection as a crosscutting activity in other Humanitarian Clusters, and to widen ownership of protection while ensuring that coherence is not lost in the interventions of different «protection» actors, at different levels of programming and at different stages of a humanitarian crisis. In other words, the mission is how to cultivate environments and actions that are conducive to protection as part of other sectoral programmes and projects, but ensuring that the core protection functions are not lost in an emergency.

To address this tension, the GPC has been exploring the modalities and developing the tools to support protection mainstreaming in the other Humanitarian Clusters in field and country level operations. It has also sought to ensure coherence between its own guidance and tools and those used by other Clusters. Mainstreaming does not require all humanitarian actors to become alternative «protection agencies» – a potentially problematic tendency in the humanitarian regime. But it does require them to ensure, as a minimum, that their sectoral projects and programmes do not risk diminishing the quality of protection: preferably it encourages them to enhance the quality of protection. Examples here are not just delivering physical security and material protection, but also «indirect» protection – ensuring that registration systems, needs assessment surveys and the distribution of assistance do not unwittingly expose vulnerable people to exploitation, identification by belligerents, or the risk of refoulement.

Given the crosscutting nature of protection, in some senses the GPC is always going to struggle with its role and remit. In delivering its programme, it may have had the effect of oversimplifying the strategic and operational tasks of protection, as well as confusing the lines of responsibility and accountability – a wider issue noted by the Secretary General's Review of UN Action in Sri Lanka, (UN 2012), the «Rights Up Front» doctrine (UN 2014), and the IASC «Whole System Review on Protection in Humanitarian Action» currently being commissioned.

Mainstreaming raises a second problematic dilemma: this is how to reconcile the tension between the wider conceptual and operational reach of protection, and the privileging of protection within the UNHCR's unique mandate responsibility for the provision of refugee protection under international law, a function that cannot be transferred or delegated, has also been problematic. Protection cannot be separated from the wider disbursement of humanitarian assistance: an integral part of protection, as this study has consistently argued, is the provision of humanitarian assistance and the means by which it is provided. To this end, agency collaboration and crosscutting tools are essential to the effective delivery of the refugee mandate. Yet, the UNHCR has regularly «protected» its non-transferable protection mandate from incorporation within the Humanitarian Cluster system and the widening scope of the protection process; and it has asserted its leadership role in the provision of humanitarian assistance (as part of the protection mandate) in refugee emergencies, in order to mediate the extent to which collaboration and partnership might undermine its protection mandate (Hammerstad 2014).

Although the changing conditions and needs for protection introduce new dimensions to the debate on responsibility, the dilemma over expanding or retaining the present framework remains a persistent feature of the protection discourse.

In conclusion, it could be argued that in providing a platform for protection in humanitarian emergencies the GPC has to date illuminated, as much as it has resolved, many of the intrinsic tensions in establishing a coherent conceptual apparatus and an effective operational framework that meet the protection challenges of forced migration in the contemporary world.

5.2.5 Protection in an urban setting

For the majority of forcibly displaced people, refugees and IDPs, urban areas have become the destination of choice in the last decade (4.2.3). Now the main site of humanitarian response, this has rendered many long-standing protection tools and instruments ill-suited to this new setting. Humanitarian actors are gradually becoming more familiar with this locus of intervention and the new protection challenges it has introduced in meeting the needs of forcibly displaced people (see e.g. Urban Refugees.org 2014; Zetter and Deikun 2011).

Symptomatic of this changing location was the long-overdue, wholesale revision of the UNHCR's 1997 urban policy provided by the *2009 Refugee Protection and Solutions in Urban Areas* (UNHCR 2009c). Although the 2009 UNHCR Policy is, of course, only directed towards refugee protection, it has wider relevance within the context of this study since it sets out the conditions of protection to which all forced migrants should be entitled.

The aims of the policy are: to ensure that cities are recognised as legitimate places for refugees to reside; to create, deepen and expand the protection space available to refugees in cities; and to emphasise the importance of legal frameworks and the recognition of rights in the protection process (Guterres 2010:8–10; UNHCR 2009:5, §23). The UNHCR was careful to reemphasise its unique mandated responsibility for protection in this new location for refugees while calling on cooperation and support from many other actors, notably host governments and urban authorities.

The UNHCR 2009 urban policy was quickly followed by the *2010 IASC Strategy for Meeting Humanitarian Challenges in Urban Areas* (IASC 2010). The strategy had a wide-ranging remit to consolidate and enhance the expertise of humanitarian actors and build strategies and operational capacity to enhance urban programming and responses for the implementation of urban-based humanitarian assistance. Built around six strategic objectives, including improving multi-stakeholder partnerships, strengthening livelihoods and enhancing preparedness, Objective 4 is key in the present context – «Promote Protection of Vulnerable Urban Populations against Violence and Exploitation» (IASC 2010:8).

Since the production of these two intergovernmental initiatives, many humanitarian actors have now scaled up their strategic and operational capacity, and have developed and adapted their programmatic and project instruments and tools in many sectors; including needs assessment (vulnerability, targeting, enumerating, profiling and registration), food security, livelihoods, and emergency shelter.

Specifically regarding protection, Chapter 4.2.3, outlined many of the risks, vulnerabilities and challenges that forcibly displaced populations face in urban areas. What, then, has been the main contribution of these intergovernmental and other initiatives in meeting these protection challenges and protection gaps?

UNHCR conducted a series of evaluations of its 2009 Policy and urban refugee operations in a limited number of its country offices (UNHCR 2012). The evaluations found only very limited progress. Despite the UNHCR policy, urban refugees were often unable to formalise their status due to a variety of logistical and practical factors. Thus the number of asylum seekers approaching UNHCR offices in the survey far exceeds its capacity to register them. But, more importantly, the main failure of registration is because of the lack of awareness of procedures, the poor quality of government registration data and/or fear of arrest. Accordingly, there was only limited achievement of the objective of safe and sustainable stay in urban areas where the *relationship between the government and the host community* was of critical importance.

«Cities as legitimate places for refugees to reside.»

A wide-ranging critique of the UNHCR's review of its own 2009 Policy cast serious doubts on UNHCR's capacity to protect the rights of urban refugees (Morris and Ben Ali 2014). And a recent report has highlighted the severe protection situation in Nairobi, a major city where a large number of refugees are found (Urban Refugees 2014a). The evidence suggests there is some way to go to ensure adequate protection for the

forcibly displaced populations in urban areas. Others have found «lingering hints» of a camp bias (Edwards 2010:49).

Taking the broader perspective on protection adopted in this study, current praxis advocates, and seeks to ensure the protection of, a broad range of rights to which forcibly displaced people in urban areas should be entitled. The policies covers aspects such as legal and secure residency rights, access to livelihoods and labour markets, adequate shelter and living conditions, access to public and private services, and freedom of movement. Many host countries currently derogate or circumscribe the Articles of the 1951 Refugee Convention designed to support refugee security, livelihoods and well-being. Safeguarding these rights reduces the risks and vulnerabilities to which the displaced populations are exposed, such as detention and deportation, by virtue of the fact that they are frequently officially excluded from these basic entitlements in urban areas. The means of fostering good relationships between the host population and the displaced is also advocated to reduce tension and the risks of conflict between the two communities. *Promoting better security* consequently improves the quality of protection for the forcibly displaced.

«Urban refugees were often unable to formalise their status.»

Important as these developments are, they have a long way to go in providing adequate protection and a risk-free environment for displaced populations in urban areas. Many host countries remain reluctant to recognise these rights. The reasons for this are the perceived security threats that forcibly displaced populations bring especially, but by no means exclusively, where they are undocumented in urban areas (Urban Refugees 2014a), and because of the commitment to protect their own populations against the diminution of living standards that may come from labour market competition, for example. More generally, even where specific rights, such as the right to work are protected, other harder-to-detect social vulnerabilities lack adequate protection, for example local incidents of violence against forced migrants, SGBV, child labour, and prostitution. Local protection agencies, such as the police or security forces are rarely adequately trained to detect these significant gaps in protection, and may even be perpetrators of human rights abuses against highly vulnerable members of forcibly displaced communities.

The protection of urban populations brings to the fore the question of which agencies are responsible for providing protection. In contrast to refugee and IDP camps, in urban areas it is urban authorities and civil (and sometimes) military security forces that are responsible, not humanitarian agencies. The 2009 UNHCR policy outlined the normative conditions for this responsibility, where the Agency itself was not the protection authority. But, as regards humanitarian actors, the 2010 IASC Strategy recognised that as governments are key agencies for protecting forcibly displaced people in urban areas, then engagement with urban interlocutors in order to support their obligations under human rights or refugee law, and to strengthen protection policies and tools that can mitigate the effects of violence on at-risk populations were essential. In this context the Strategy reinforced the need for dialogue between humanitarian actors, local protection and enforcement agencies to prioritise measures of physical protection of «at-risk» groups, including IDPs and refugees, women and children. Similarly, it advocated the rollout of protection assessment methodologies created by the Global Protection Cluster.

Concerning a narrower legal and normative basis of protection, as we have noted in Chapter 4.2.3, the principal concern is the exposure to protection risks that comes from the lack of documentation for forcibly displaced people in urban areas. Thus, the main dimensions of current protection initiatives seek to ensure that: refugees are documented by undertaking registration and data collection processes as the means of ensuring, inter alia, that determining refugee status; providing appropriate reception facilities; promoting access to the durable solutions of voluntary repatriation, local integration and resettlement. Arguably, since the protection risks in urban areas are more usually experienced on an individual basis compared to encamped populations, these initiatives potentially offer significant improvements to the situation of forced migrants.

While registration and status recognition, in theory, afford better protection there are two counter arguments in practice. First, these processes only apply to refugees who have recognised status, of course, not to the wider categories of forced migrant included in this study. For example, IDPs – another category of forced migrant albeit not protected under international law – often do not receive the adequate protection they might expect under the 1998 Guiding Principles. In the 2007 post-election violence in Kenya, in present day Iraq, and in the long-running civil war in Colombia, urban IDPs are not adequately protected. Second, even where forcibly displaced populations may be able to avail themselves of protection through some form of documentary recognition, they may often *prefer to remain anonymous and undetected* since the quality of protection provided may be inadequate or inappropriate for their needs.

5.2.6 Regional protection programmes, regional development and protection programmes, and development-led approaches to protection

In a 2004 Communication (EC 2004) the European Commission first highlighted the case for enhancing *refugee protection in countries of first asylum* as the counterpart to the then emerging Common European Asylum System (see 5.4). The Communication emphasised the need to assist host countries in regions of refugee origin in developing their legal and administrative capacity to afford refugee protection to international standards, and to promote human rights and the rule of law in that context. As the full title of the Communication implies, («Managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin»), this initiative was not just to improve the protection capacity of these countries, but also to develop the means to tackle, at source, the *growing pressure on the asylum system within Europe* itself.

Then, in 2005, this policy was formerly adopted as a European Commission policy of Regional Protection Programmes (RPPs) with an action plan for pilot projects (EC 2005).

Despite their somewhat ambiguous purpose, RPPs are a *potentially valuable instrument adding to the quality and reliability of protection* for forced migrants in regions of origin. The stated aims of RPPs are to enhance the protection capacity both in regions of origin and transit regions alike, and to improve refugee protection through durable solutions (return, local integration or third country resettlement). The RPPs adopt a broad approach to enhancing protection capacity. The actions include specific and orthodox operational considerations such as projects designed to establish effective procedures for determining refugee status and refugee profiling, as well as protection training for persons working with refugees and migrants. But there is a wider remit to promote other (unspecified) projects of direct benefits for refugees and the local community hosting the refugees. These latter proposals, as we shall see below, significantly expand the concept of protection.

The RPPs also included a resettlement component and the call for a voluntary commitment by Member States to provide durable solutions. These elements recognised the need to demonstrate EC solidarity and partnership with the countries mainly impacted by forced migration who were party to the RPPs. This, as we shall see below in Chapter 5.4, was a somewhat disingenuous political gesture, given that, at the same time, the European Commission and individual European member states were adopting increasingly restrictive entry controls for asylum seekers and, arguably, diminishing the scope of refugee protection for those who did gain entry to Europe.

RPPs were rolled out through two pilot projects: one in the transit region of Ukraine/ Moldova/Belarus and the other in a region of origin, the East Africa-Horn of Africa region[30]. However, there has been no overall evaluation of the initiative, specifically on the extent to which protection capacity has indeed been enhanced, but there are some *lessons learned* from project monitoring. These include: the need for longer-term programme planning and funding as well as a more strategic approach to institutional reform;

30 The Horn of Africa RPP replaced an earlier proposal for a pilot in the Great Lakes Region.

better co-ordination between the country components of the RPPs and the UNHCR programmes; and better linkage and coordination between international organisations and local organisations. Equally there is no evaluation of the twin objective of promoting resettlement and durable solutions.

The UNHCR gave a guarded welcome to RPPs, mindful of the underlying agenda implicit in the title of the 2004 Communication and the increasing «protection crisis» in Europe. The organisation noted that this initiative should, firstly, be *additional* to, and not a substitution for, *access to fair asylum procedures* in Europe (UNHCR 2005:2) and, secondly, that resettlement under RPPs should be *additional to national programmes* rather than a re-packaging of existing schemes under the RPP framework (UNHCR 2005:4).

Despite the lack of an overall evaluation of this protection initiative, the European Commission has extended its approach with the approval, in June 2014, of a Regional Development and Protection Programme (RDPP), responding to the Syrian refugee crisis. This three-year programme based in Lebanon, Jordan and Iraq is supported by a platform of humanitarian and development donors, with a budget in excess of €24 million: it involves the European Union, Denmark, Ireland, UK, Netherlands and the Czech Republic. The programme is led by the government of Denmark.

In two respects, *the Syrian RDPP* is a significant expansion of the concept and scope of protection, not only as envisaged in the original RPPs but also in terms of the practice of protection by other humanitarian agencies.

First, in addition to enhancing operational capability for protection capacity-building and strengthening protection of refugees and asylum seekers within the context of the «1951 Refugee Convention», the Syrian RDPP seeks, more broadly, to enhance the governance structures of the countries and to scale-up programme capacity by developing comprehensive strategies for refugee reception and protection embedded in a rights-based framework. Thus it proposes actions that seek to improve the provision of basic legal, social and economic rights for refugees. It also seeks to ensure that the standards of protection are more consistent and effective by developing stronger legal benchmarks, and better coverage of protection gaps in the national legal frameworks, for example by reducing the practices of arbitrary detention and deportation/refoulement, and by promoting advocacy and the role of civil society organisations.

Second, and more significant, included in the title of the Syrian programme is the prefix «*Development*». Noted above, it was the wider commitment of RPPs to promote projects benefiting refugees and local communities hosting the refugees beyond the formal operational actions to enhance protection. In the case of the Syrian RDPP, this includes both protection programming *and* development-led responses. Indeed, the majority of the budget is dedicated to socio-economic development *actions for both the refugees and hosts*. These aim to improve the life conditions, livelihood capacities, self-reliance, economic opportunities, and labour market participation, for refugees during displacement, and for host communities.

The case for this expansion of the RPP is as follows. On the one hand, it can be argued that longer-term development interventions for both host communities *and* refugees are likely to offset tensions between the two groups. In this way, protection for the forcibly displaced – in its wider non-normative sense – can be improved by reducing sources of conflict, harassment and exploitation of displaced people that arise from competition for work, housing and water, for example, or the assumed dependency on host country public sector resources and services. On the other hand, development-led programmes also help to reduce the livelihood vulnerability of forcibly displaced households (discussed in Chapter 4.3 and 5.2.3), and thus to provide them with economic resources and skills as self-sufficient development actors that can lead to *more durable long-term solutions* such as local integration or resettlement. Thus longer-term protection goals are also achieved.

The link between protection and socio-economic development in the Syrian RDPP reflects the profound reconceptualisation that is taking place in the way humanitarian and development actors are now responding to humanitarian emergencies. While the forced displacement of refugees and IDPs is, and will remain, pre-emi-

nently a humanitarian and a human rights challenge, the conventional humanitarian emergency relief model allied to its normative basis in protection has not provided durable solutions to displacement crises. At the same time, perhaps paradoxically, large-scale displacement crises also present significant development opportunities and challenges. Substantial empirical evidence demonstrates the positive economic developmental outcomes (macro- and micro-, commercial, business and informal sectors) from humanitarian crises for both displaced populations and their hosts and the scope these approaches offer for sustainable outcomes (Zetter 2014; Zyck and Kent 2014).

However, a significant gap in virtually all emergency humanitarian interventions has been the lack of analysis of these economic impacts of forced displacement, both positive and negative, a gap that severely hampers the design and implementation of longer-term developmental responses and programming to tackle humanitarian crises. From early beginnings in the UNHCR's Convention Plus initiative «The Targeting of Development Assistance for Durable Solutions to Forced Displacement» (UNHCR 2006), subsequent but limited progress in the Transitional Solutions Initiative of 2009 by UNHCR, UNDP, World Bank (UNHCR 2009b), now reinvigorated by the Solutions Alliance (2014), intergovernmental actors (UNHCR, IOM, UNDP, World Bank, EC), humanitarian NGOs and the private sector are becoming increasingly engaged with development-led approaches to refugee crises. It is recognition of this humanitarian-development nexus that underpins the Swiss government's long-term development co-operation programmes and its *whole government approach* in conflict affected regions such as the Horn of Africa (Swiss FDFA 2013a).

Of course the scope of this reconfiguration of humanitarian emergencies as development opportunities (Zetter 2014) goes well beyond protection in a normative sense. However, the point to be made, and this underpins the rational of the RDPP model and the Swiss FDFA policy, is that by better harnessing the productive assets of refugees and IDPs, and by reducing livelihood vulnerability and increasing their self-reliance, this can enhance the human rights, dignity, security and protection, in its wider sense, of forcibly displaced populations. Together with socio-economic developmental support for host communities, these initiatives offset the security and protection risks to refugees and IDPs.

To conclude this section, in principle, any initiative to support refugee protection and to promote durable solutions is to be welcomed. RDPPs and development-led responses to protection aim to satisfy these conditions by *widening the concept and practice of protection*. Recognition of long-term protection needs, alongside the more familiar focus on short-term normative standards is also a welcome expansion of the meaning of protection. At the same time, these initiatives forcefully illustrate the «managerialist turn» in protection. The diversification of approaches and thus perhaps a retreat from underlying norms has its own operational logic and value. But where this might be an instrument to deflect access to fair asylum procedures and resettlement of forcibly displaced people in the global north, then this is a disturbing tendency.

«Increasingly engaged with development-led approaches to refugee crises.»

5.2.7 Protection and the «10-point plan of action»

Concerned at the possible dilution of protection standard for refugees in a world increasingly dominated by irregular and mixed migration flows comprising many different types of forced migrant (discussed in Chapter 3.2), in 2010, the UNHCR issued new policy guidance on «Refugee Protection and Mixed Migration: A 10-Point Plan of Action» (UNHCR 2006b). Reinforcing its own unique refugee protection mandate, the «10-Point Plan of Action» was an important reminder, mainly addressed to governments in the global north, of the norms of protection and operational guidance to ensure that the *quality of refugee protection* provided by receiving states was safeguarded. The aim was to assist governments to incorporate refugee protection considerations into more general migration policies

designed to cope with the growing scale of mixed migration.

The timing of the policy, as the European Commission (EC) and EU Member States (EUMSs) were struggling to agree a Common European Asylum System (CEAS) and increasing the efficacy of border control measures to limit irregular entry, was probably deliberate. The implications are discussed below in Chapter 5.4, which deals in more detail with Europe and protection. Among the positive measures dealing more specifically with protection, were actions to ensure protection-sensitive entry systems and the improved reception arrangements.

The «10-Point Plan of Action» was an important initiative of itself. But, in the context of a study on protection for forced migrants, which includes – but goes well beyond refugees – the value of these protection standards for all forced migrants should be recognised. While recognising the UNHCR's position that governments should «provide appropriate and differentiated solutions for refugees, side by side with such other solutions as need to be pursued for other groups involved in mixed movements» (UNHCR 2010b:10), at the same time the increasing crisis of managing mixed migration at Europe's borders, cannot easily be solved by differentiated approaches to protection.

5.2.8 Responsibility to Protect (R2P)

So far the analysis of current and emerging initiatives to tackle the protection needs of forced migrants in countries and in regions of origin has focused on the policy and operational initiatives of national, international and intergovernmental actors. This focus reflects the «managerial turn» in the provision of protection and the diminishing strength of normative principles on which protection is based.

Standing in contrast to the instrumentalisation of protection is the doctrine of the Responsibility to Protect (R2P). The desire to tackle governments' unwillingness (or incapacity) to meet their obligations to protect their citizens precipitated an initiative known as the Responsibility to Protect (R2P) led by the United Nations. This was subsequently adopted at the 2005 United Nations World Summit, where the doctrine and its objectives were outlined in an initial form (UN 2005:paras 138–139) and then later reaffirmed in Resolution 1674 (UN 2006a:4).

The responsibility to protect is *a political concept,* not a legal concept based on international humanitarian, human rights and refugee law in terms so far discussed in this study. In the latter case, protection relates to violations of that body of law. In contrast, R2P aims to articulate the situations and the means by which the international community might overcome its persistent failure to protect people from the most extreme human rights abuses that governments perpetrate against their citizens, such as in Rwanda and Bosnia, and more recently in Kosovo and Darfur. These situations usually lead to humanitarian crises of mass forced displacement either within the country, where the *1998 Guiding Principles* fail to provide protection, or the large-scale exodus of refugees. Averting the need to mobilise large-scale humanitarian assistance programmes is an implicit, albeit supplementary objective, of the rights-based protection intention of R2P.

The R2P doctrine advocates that if a state is unwilling or unable to protect its population from four specific mass atrocities – genocide, ethnic cleansing, war crimes, or crimes against humanity – *collective international intervention* might be a necessary and appropriate course of action. R2P does not, therefore, deal directly with forcibly displaced people and their protection needs; rather, it aims to tackle the conditions that lead to such displacement but where, until R2P, an international doctrine had not been articulated.

R2P is significant in the present context in three respects. First, in contrast to the policy- and operationally-driven initiatives it stands alone as an attempt to develop a norms-based approach to protection, albeit limited to the most extreme manifestations of contemporary human rights abuse. Second, R2P outlined situations where state sovereignty – a fundamental principle in international relations, of course – could be limited. However, these limitations were significantly couched in terms of a responsibility of the state in question «to protect», not a right of other states to intervene «to protect». Third, it stands alone as a truly international

response, through the UN, rather than an initiative of a specific agency designed for particular conditions.

However, despite its intentions, R2P remains an exercise in principle and theory, not practice. Although its origins lie in international human rights and humanitarian law, R2P is not a new legal principle and it does not have any status in international law: even its status as a norm is debateable (Hehir 2013:137); as noted above, it is a doctrine. Although implicitly transferring responsibility to the international community, where a state has committed one or more of the four mass atrocities, no international body is mandated with the «responsibility to protect». The Achilles' heel of the R2P doctrine, and indeed from a slightly different perspective both the *1998 Guiding Principles* and the «2009 Kampala Convention», is the matter of enforcement: none of the three instruments constitute an absolute «right to intervene» in the sovereign affairs of a state, and none of them define the scope of «legitimate intervention». As a result none has become, as yet, an effective practical instrument in preventing the types of severe human rights abuse that lead to forced displacement and, as regards R2P, it has not led to any actual changes in international relations or human rights (Martin 2010; Forsythe 2012; Genser and Cotler 2012; Knight and Egerton 2011; Hehir 2013:122–144). For, example, attempts failed to invoke R2P to counter the severe human rights abuse and forced displacement that ensued after the conflict in Darfur post-2003.

These outcomes reflect the reluctance of the international community to commit itself to reframe the concepts and norms of protection to tackle contemporary challenges. Above all, it demonstrates a resistance to finding the means to translate and implement a normative doctrine of protection into practice, and a preference for ‹managing protection› through case and situation specific policies and instruments.

5.3 Protection in transit

For forced migrants, the first point of contact with «protection» is at the international border; this becomes a familiar experience that is repeated many times in transit. How, and to what extent, are the rights of migrants protected at international borders? This is one theme of this section on protection in transit.

A second theme concerns the fact that substantially increasing numbers of forced migrants now seek protection outside their regions of origin. Discussion of the new geographies of forced migration in Chapter 4 introduced the concept of the «forced migration continuum» (4.2.5), a term of art that seeks to capture what is a new and significant transitional stage in the trajectory of these migrant's. For the most part they are transiting through neighbouring regions and countries – typically the Maghreb, Northern Africa, Mexico – which are both close to and en route to the migrants' putative destination in the global north. Another group of migrants also populates this intermediate zone. Comprising the IOM's «stranded migrants in crisis» (4.2.4), these are TCNs who are inadvertently caught up in countries in conflict and become forced migrants to escape the violence.

«R2P remains an exercise in principle and theory, not practice.»

Typically comprising mixed flows of vulnerable people, what links these two groups is that, although in need of protection and assistance, they generally fall outside existing international protection instruments and norms: for example they are rendered more vulnerable because, invariably, they are undocumented, cross international borders by irregular means and/or lack valid visas or travel documents. Moreover, national and international protection capacity in this «zone of transition» is very poorly developed; the forced migrants rarely have access to refugee status determination and they are clearly not IDPs.

Lacking protection norms, instruments and capacity, there is a *very significant protection gap in this intermediate zone*. It lies between regions of origin, where host countries and the international community provide reasonably well-established protection norms and capacities (discussed in Chapter 5.2), and destination countries in the global north that, as we shall see

in Chapter 5.4, have sophisticated and comprehensive apparatus of immigration control to regulate access to protection.

This section of the study analyses the initiatives and responses by different stakeholders to remedy this protection gap.

National and international agencies have struggled to develop effective responses to the protection challenges presented in this transit zone. The initiatives are largely palliative, rather than a structural solution to the problem, and reinforce the argument that the «managerial turn» in protection is gradually subverting norms-based principles.

5.3.1 Protection at the border

Up to this point, the study has discussed how protection is provided *within* countries and has reviewed the innovative practices to enhance the quality of protection. We have assumed that crossing an international border to seek protection in a neighbouring host country is relatively unproblematic for forced migrants. To an extent this is true, since the protection regimes of host countries in regions where conflict takes place generally allow, or are unable to contain, mass access to territory: international humanitarian actors bolster this facility and seek to mediate the periodic or indiscriminate practices such as border closure.

However, as a recent OHCHR report highlights, meeting human rights obligations and the protection of rights *at* borders should not be taken for granted (OHCHR 2014). The OHCHR *Principles and Guidelines on Human Rights at International Borders* emphasise that, while states are entitled to exercise jurisdiction and control of borders, the measures put in place in response to cross-border phenomena often disproportionately impact human rights. While the Guidelines remind states of their obligations to protect the rights of all migrants at their borders, the need to protect the rights of irregular migrants is also emphasised – hence the importance of the Guidelines for this study as a significant addition to, and elaboration of, protection norms in a hitherto neglected area of migration. The particular value of the Guidelines is that they provide a comprehensive set of operational advice and processes for capacity building and governance, but are set within a robust normative framework of rights protection.

5.3.2 Mobility and migration partnerships

Mobility Partnerships are soft law-based, bilateral agreements between the European Commission (EC), or individual member states, and countries that are sources of migrant labour coming to Europe but, more recently including transit countries for forced migrants and mixed migration flows destined for Europe (European Commission 2007). Mobility Partnerships have taken a variety of forms since their inception in 2005. Now located within the framework of the EC's Global Approach to Migration and Mobility (GAMM), Mobility Partnerships serve as a *migration management and institutional capacity building tool*, funded by the EU (sometimes co-funded by individual member states), covering four dimensions: legal migration and mobility; maximising the development impact of migration; irregular migration and trafficking in human beings, and international protection and asylum policy. The partnerships aim to provide a comprehensive framework, «to ensure that migration and mobility are mutually beneficial for the EU and its partners» (EC 2011:10). Clearly, it is the third and fourth components – irregular migration and protection/asylum policy – and the «transit country» partners that are the main concern here.

Among the countries in partnership with the EC are Republic of Moldova, Georgia and Armenia and, more recently, Morocco, Tunisia and Mali. Bilateral agreements have included Italy-Libya, France-Tunisia and Spain-Morocco. The EC has promoted the IOM to take a leading role as its implementing partner.

The Swiss Federal Departments of Justice and Police (SFDJP) and Foreign Affairs (SFDFA) have also developed a similar instrument, *Migration Partnerships*, anchored in law in 2008, and based on rather similar objectives to the EC model. However, there are two significant differences or refinements. First, the Swiss Migration Partnerships allow for a much wider agenda for dialogue and partnership including aspects of collaboration that have only indirect links to migration, for example development co-operation,

debt rescheduling, social security arrangements. Second, the mobilisation of Partnerships in the Swiss model recognises that migration policy must reflect a combination of both domestic and international interests. To ensure policy coherence and consistency, close interdepartmental cooperation is ensured through the «Whole-of-Government» approach (SFDFA 2008). Migration Partnerships have been developed, to different degrees with the West Balkans (Bosnia and Herzegovina, Serbia and Kosovo), Nigeria and Yemen.

Mobility Partnerships offer a number of positives:

Linking irregular migration and the protection/asylum needs of migrants, on the one hand, with voluntary (labour) migration, on the other hand, offers an *holistic response* to the challenges of managing international migration and the kind of mixed migration flows that defy easy categorisation, as discussed in Chapter 3.2.

An important and welcome element of the Mobility Partnerships is the assistance they offer to third countries to fulfil their obligations and commitment to protecting refugees and asylum seekers under international law and norms. The EC has an important role here as a standard-setting global actor. Enhancing the protection capacity of the third country partners to respond to the protection needs of both the forced migrants and mixed («irregular») flow of migrants that transit their countries, is an important objective. As we have seen (especially in Chapter 4.2.5) this is a major characteristic of the new geographies of forced migration.

Improving rights-based protection for international migrants in countries that often have a limited respect for human rights, reducing human rights violations and arbitrary and discriminatory practices such as detention of migrants or refoulement, and increasing the transparency of procedures, are important steps in diminishing the high vulnerability to which migrants are often exposed to in these transit countries. Better border management and governance, and training of border and immigration staff in rights and procedures are also essential in developing fair processing of asylum claims and the accountable and dignified treatment of migrants.

In the longer term, if these measures are successful, then partnerships will be seen to have been a valuable instrument to enhance protection.

However, there are worrying counter arguments that Mobility (and Migration) Partnerships have, in fact, less to do with population mobility than co-opting third countries with weak immigration capacity into Europe's migration management regime: simply another instrument to serve Europe's armoury of migration controls (ECRE 2011:2–4; Kunz and Maisenbacher 2013; Migration Policy Centre n.d.; Reslow 2012).

First, should enhancing a country's human rights regime, which is essentially a development issue, sit with explicit policies and practices to manage population displacement and forced migration, especially when such people are highly vulnerable? Moreover, whereas the OHCHR Guidelines, discussed above, are explicitly rooted in a normative human rights framework, the Partnerships lack this basis.

«Mobility Partnerships offer a number of positives.»

Next, the instrumental nature of the partnerships is also a matter of great concern in this context. Partnership countries are supportive because the agreements can offer the incentive of visa quotas for their labour migrants – a potential development gain – and raise their international standing. But it is the international migrants in transit, and those with irregular status, who are largely the losers in what may simply be a *new push back instrument*.

For example, Mobility Partnerships may provide for readmission agreements from European Union member States (EUMSs) to the partner country for irregular migrants, and they may augment the procedures for the return of irregular migrants from the partner country itself to the country of origin. Yet, even with the partnership support, there are concerns that the protection capacity of these countries, and their respect for human rights, may not be sufficiently well grounded to safeguard the rights of the migrants.

Third, underlying these fears is the more fundamental point that Mobility Partnerships are, in effect, a «*rebordering of Europe*» to deny

access to territory – developing the capacity for extra-territorial or «upstream» processing of migrants by intercepting asylum seekers or other forced migrants without clear status well before they arrive at Europe's borders. Furthermore, extra-territorial processing removes the claim for access to (European) territory from the scrutiny of active civil society organisations and reduces the level of democratic accountability, since many of these countries have weak CSOs; the quality of protection for the migrants is further reduced. Again, the argument here is that processing migrants whose trajectory is Europe, whatever their putative status, should be separated from the wider objectives of human rights capacity building on the one hand, and strengthening Europe's border management apparatus on the other. Strengthening protection in transit regions is not a substitute for the request for protection at the border or within the EU. This is to deny refugees the right, in the 1951 Refugee Convention, to claim protection in a country of their choosing.

«These populations become secondary forced migrants.»

Primarily serving as a policy to consolidate Europe's migration management objectives, some countries, for example Senegal, have refused to agree Mobility Partnerships because of the conditionality required and the high costs incurred for little overall national benefit.

Whether intentional or not, the overall impact of these Partnerships may actually be to reduce the quality of protection for forced migrants at a critical stage in the migrant's journey. How Partnerships fit into the wider framework of Europe's protection and migration management agenda will be considered below in Chapter 5.4.

5.3.3 Migrants in crisis and the Mixed Migration Task Force

The large-scale, complex and diverse migration flows that result from conflict and violence have spill-over effects, exposing significant gaps in the international protection and rights regime for diverse groups of people without recourse to refugee protection norms and processes. Chapter 4.2.4, highlighted these gaps of so-called «stranded migrants» in crisis situations, that is populations such as third country nationals (TCNs) both legal and undocumented residents, migrants in transit, and resident refugees who are indirectly caught up in conflict. Examples of this growing phenomenon are: the flight of some 800,000 migrant workers from Libya to Egypt and Tunisia after the 2010 uprising; the displacement of hundreds of thousands of Iraqi as well as Palestinian refugees resident in Syria, as a result of that country's civil war in the last three years; and the displacement, from the civil war in CAR, of different nationality groups of residents and migrants. In effect, these populations become *secondary forced migrants*.

In the case of Libya, faced with this normative protection gap, the IOM and UNHCR operationalised a pragmatic form of protection to prevent the crisis from escalating into a parallel humanitarian emergency with potential spill-over migration flows to Europe (IOM 2012a). Merging their mandates and resources, they worked jointly to evacuate TCNs (resident and migrant), and then, where possible, to repatriate them to their countries of origin.

Subsequently, IOM has refined its migration crisis approach in its Migration Crisis Operational Framework (MCOF) (IOM 2012). This seeks to establish a more coherent and comprehensive framework for meeting the protection needs and redressing the vulnerabilities of different groups of migrants not privileged by well-established protection norms. The MCOF focuses on a portfolio of migration management tools that can support the humanitarian response for migrants caught in crisis situations. These operational tools include: technical assistance for humanitarian border management; liaison to ensure that migrants have access to emergency consular services; referral systems for persons with special protection needs; and the organization of safe evacuations for migrants to return home, which is often the most effective method of protection for migrants caught in crises.

Consistent with its operational-led approach, the IOM has rolled out the MCOF approach in, inter alia, Mali (IOM 2013), Somalia (IOM 2014) and as part of its wider humanitarian assistance programme in Syria. In the latter case,

the assistance aims to support up to 150,000 migrant workers and an estimated additional 700,000 undocumented migrants (IOM 2012a).

A parallel initiative to tackle the protection gap for mixed flows of migrants is the Mixed Migration Task Forces (MMTF) for the Horn of Africa, created under the auspices of the Global Protection Cluster (Chapter 5.2.4.), and of the UNHCR, IOM, OCHA, the Danish Refugee Council (DRC) and the NRC, initially focused on Somalia in 2007 and then Yemen in 2008 (see e.g. UNHCR 2008). The aim of the MMTFs has been to provide and co-ordinate a pro-active rights-based strategy that responded to the protection and humanitarian needs of migrants and asylum seekers transiting through these countries. In contrast to the IOM's more generic and systematic approach to the protection gap for migrants in transit, and those in mixed migration flows through the MCOF methodology, the MMTF initiative is essentially a *pragmatic operational tool designed for very specific circumstances.* It has not been replicated.

In conclusion, the need to ensure that humanitarian and human rights principles guide these interventions remains a substantial challenge. It seems highly unlikely that the need to fill this large and growing protection gap will yield major new normative provisions. Rather, as we have seen, the response has been to invoke the «managerial turn» in protection, highlighted in the introduction to this chapter.

5.4 Europe – protection space or protection denied?[31]

Nowhere have the norms or the processes of protection for forced migrants come under such strain in the last decade than across Europe; and nowhere is the issue of migration in all its forms – intra-European mobility, international migration, mixed migration, forced migration, refugees – so highly politicised in public discourse than in Europe: national elections, elections to the European Parliament in 2014, the 2014 Swiss referendum on immigration quotas for the European Union, and rising xenophobia provide ample evidence. Discussion of the «migration continuum» in Chapter 4.2.5, outlined the protection challenges and crises in Europe. This section of the study now analyses the response.

However, as a preface to the analysis it is instructive to put the migration figures in context since they comprise a remarkably small proportion of the total EU population. Based on a recent study (Triandafyllidou and Dimitriadi 2013) and allowing for slightly different time series, immigration into the EU – regular, undocumented and asylum seekers – amounts to barely more than one per cent per annum of the EU's resident population of just under 500 million in 2012. Immigration comprised: 1.2 million migrants or about 0.2% of the 2013 population; undocumented migration (in 2008) broadly estimated between 1.9 and 3.8 million or between 0.25% and 0.8% of the total EU population (Triandafyllidou 2009); and 450,000 asylum seekers to the EU in 2013 of whom 136,000, or 0.02% were granted some form of protection status (Eurostat 2014)[32] [33].

The challenges of coping with mixed migration flows and undocumented migration (notably in terms of access to territory), and the search for communality of immigration and asylum policies (notably admission, reception and status determination), highlight how the European «migration project» has attempted to adapt and remodel the norms of a global protection system to its policy agenda and its political realities. Providing more evidence of the «managerial turn» in protection, many gaps have been closed and valuable initiatives have been adopted by the EU and the EC to ensure better protection. But the overall argument in this section of the study is that the outcomes are ill suited to the contemporary dynamics of migration and the protection needs that arise. Some protection gaps may have been closed, but simultaneously, and perhaps paradoxically, protection space for the migrants themselves, at the borders and within the EU, has contracted very severely.

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31 In this section of the study, the analysis of the EU also includes Switzerland, Norway and Iceland. Although not EUMSs they have opted in to EU policies and procedures related to external borders, migration and intra-European mobility and are signatories of the Schengen Agreement and Dublin Conventions.

32 UNHCR data record a lower figure of 398,200 registered asylum claims to European Union Member States in 2013 (UNHCR 2014)

33 In addition, 4% of the EU population, 20.4 million people comprise third country nationals.

Two general propositions frame the analysis in this section of the study.

First, a non-entrée regime – described by others as «Fortress Europe» or the «thickening» of the EU's external border (Geddes 2008; Levy 2010) – has been constructed to «securitise» Europe (Zetter 2014a), and to address the mobility-migration-citizenship nexus (Blitz 2014). This has relentlessly diminished the quality of protection for refugees, asylum seekers, forced migrants and people in mixed migration flows. And it has closed down the capacity of legal routes to access asylum.

Inter alia, the non-entrée regime comprises: efforts to unify the EU's asylum policy through the Common European Asylum System (CEAS), Dublin III, the Post-Stockholm Programme roll out of the CEAS; extensive border surveillance; a battery of instruments and interventions, mainly in southern member States and the Mediterranean, to enhance security of the common external border – Frontex[34], EUROSUR[35], EASO[36], the Task Force for the Mediterranean; the «deborderering and reborderering» of the European Union (De Giorgi 2010; Harding 2012) – to enable extra-territorial processing of migrants and asylum seekers through Mobility Partnerships (5.3.2.), Readmission Agreements and Regional Development and Protection Programmes (5.2.6.); fragmented and decidedly resistant humanitarian admissions and resettlement policies for refugees and other highly vulnerable people; and a political discourse which reinforces the securitisation of migration and asylum at the expense of the rights and protection of migrants (Zetter 2015).

«A non-entrée regime has been constructed to ‹securitise› Europe.»

This portfolio constitutes, not a coherent protection policy but, arguably, a remarkably comprehensive and robust *non-entrée regime* that increases the vulnerability and diminishes the rights, human dignity and quality of protection for migrants. In these circumstances, the protection crisis at Europe's borders will grow while protection for all types of migrants will become an increasingly fragile commodity.

The second proposition is that the outcomes of the EU's immigration and asylum agenda demonstrate, very clearly, the now sharp dichotomy between protection – concept, norms, instruments, procedures, state obligations – in the global north and protection in the global south (i.e. countries experiencing mass displacement crises). The EU is an exemplar of the now dominant model in the north – non-entrée regimes, targeted to individual applicants and which, in effect, reduce the quality of protection. In the global south, mass entry and mass protection regimes, of varying quality, dominate the regions of large-scale forced displacement. Of course, states have a legitimate interest to control their borders and regulate entry to territory, and a legitimate concern that the process of international migration is managed in an orderly way – functions that have become increasingly difficult to sustain, given the contemporary dynamics. However, when the bi-polar protection machinery seems, increasingly, to serve the interests of restrictionism, then questions of *proportionality of response* and the *equity of burden sharing* need to be asked. The politicisation of protection, it is contended, is the answer.

The interplay between the problematic issue of migration management and the declining quality of protection is explored in four subsections: Europe's migration policy framework; protecting Europe's borders; Protection in Europe; the Post-Stockholm Programme and Protection.

5.4.1 Europe's migration policy framework

This subsection briefly sets out the context – the Global Approach to Migration and Mobility (GAMM) (EC 2011) – in order to understand how the protection of forced migrants fits into the wider apparatus of migration management and control in Europe.

The origins of GAMM lie in the Hague Programme (2004–2009) that was a collection of measures in pursuit of the long-standing vision of strengthening the European Union as an area of freedom, security, and justice within the Member States (EC 2001). GAMM's purpose, in what it terms a «migrant-centred approach», is to establish a comprehensive, strategic policy framework to tackle the external migration challenges and opportunities which the EU and

EUMSs faces. The substance of GAMM provides further evidence of a core argument in this study: this is that the «managerial turn» of protection has displaced the search for normative conditions of protection that might address the new dynamics of international migration.

Its baseline objective is to organise and facilitate legal channels of mobility and migration for safe access to the European Union. This is a welcome objective, because without well-functioning arrangements for regular migration, irregular migration will inevitably increase. More specifically with regard to the focus of this study, GAMM embraces a range of initiatives and programmes, some of which have been discussed earlier in this report; inter alia, these seek to fill protection gaps, strengthen protection instruments, and/or tailor them to the specific circumstances of migration to Europe. Thus, for example, promoting international protection, enhancing the external dimension of asylum policy, promoting rights protection for migrants (but not, regrettably, a rights-based approach), the fight against trafficking and smuggling, regional protection efforts in third countries (e.g. Mobility Migration and Partnerships, (5.3.2), and resettlement, are identified. These are significant and positive initiatives; and they underpin the ambitious objective, set out in GAMM, for the EU to be a global player in promoting global responsibility sharing, for refugees.

Where the GAMM protection agenda becomes ambiguous, at least by implication, is in addressing more controversial policy matters: preventing and reducing irregular migration; and strengthening the management of the EU's external borders. The operational dimensions of these policies, such as the Mediterranean Task Force, actions to prevent migrants from undertaking dangerous journeys to Europe, and the speedy return of irregular migrants, Eurosur, the expanding role of Frontex, all question the quality of protection that is being provided.

Here, GAMM's position in developing a governance framework to tackle the migration problematique, which is the focus of this study – irregular and undocumented migration, the broad groupings of mixed migration and forced migration – reveals the tension at the heart of the policy. And it reveals the tension between the internal and external political interests that drive the EU's migration policy. In short, the quality of protection appears to be sacrificed to the primacy of migration enforcement and control.

5.4.2 Protecting Europe's borders or protecting forced migrants?

In common with other major destination countries that are confronting the new dynamics of international migration, for example the USA and Australia[37], the EU has also «thickened» its external borders both metaphorically and physically. Discussion of Mobility and Migration Partnerships (5.3.2), was an advanced indication of this strategy of «debordering and rebordering» of the European Union (De Giorgi 2010) through extra-territorial border control.

However, developing the protection capacities in transit countries should not shift European protection responsibilities and obligations to third countries. What then happens to migrants and their protection needs if they get to Europe's borders?

The precarious situation of migrants crossing the Mediterranean, and the media profile given to the human rights violations and the loss of lives at sea, have highlighted the policy agenda and the protection dilemmas in a dramatic way. What initiatives have been taken to tackle the protection issues? How have these evolved? Have these initiatives improved protection? What is the quality of protection?

For a number of years the EU response has been to strengthen maritime control (e.g. Frontex, EUROSUR) and accede, if reluctantly, to the construction of border fences in Greece and Bulgaria. These measures came about for three reasons. First, the EU simply did not have the means to prevent or contain large-scale migration,

34 Frontex -European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

35 EUROSUR – European External Border Surveillance System

36 European Asylum Support Office

37 Australia overtly deploys extra-territorial processing of asylum seekers in Nauru, formerly a dependent territory of Australia. More than 1100 asylum seekers are currently held in detention centres on the island.

ironically a situation rather similar to countries in regions of origin. Second, and this is critical to the protection issue, when confronted with mixed flows of forced migrants it had neither a definitional framework nor the procedures to distinguish between the different categories of, mainly undocumented and irregular, migrants and thus their different protection needs. Inevitably, without some means to discriminate then the quality of protection, especially for those with the greatest claim, is reduced. Third, the channels for regular migration to the EU were insufficient to offer a realistic alternative means of territorial access. The, largely erroneous, image of well-organised networks of smugglers has been instrumentalised to reinforce the justification for securitising the borders.

«What quality of protection can forced migrants expect in Europe?»

While not entirely stopping migration to the EU, these measures manifestly restricted entry to territory by non-admission, push back and readmission procedures (Andrijasevic 2010). Moreover, by increasingly restricting the irregular migration channels the migrants were rendered more vulnerable to life-threatening risk, exploitation and smuggling (IFRC 2013). In other words, irregularity is intrinsically linked to policies aimed at limiting access to EU territory. The overall effect was clearly a progressive reduction in the quality of protection for all migrants, but especially those who potentially had well-founded claims for refugee status.

A sharp, if pragmatic, shift in EU border protection policy took place after the October 2013 Lampedusa catastrophe. Under the leadership of the Italian government, the Mare Nostrum initiative was adopted, which meant that detention and push back were rejected in favour of search and rescue at sea, and safe landing in Europe. Two outcomes of this switch in policy are: first, an immediate reduction in the vulnerability of the migrants; and second an intensification of measures by EC entities to prevent trafficking and smuggling.

In principle, these measures could improve the quality of protection since increasing interception rates of un-seaworthy boats directly translates into lives saved. In practice it is less certain that the quality of protection has improved for several reasons. Normative gaps remain in how to undertake protection at sea. There are no EU procedural guidelines, as yet, for interception at sea and EUMSs are guarded about sacrificing their rights, under the laws of the sea, to a more co-ordinated approach. Meantime the Mediterranean Task Force, EUROSUR and Frontex, all of whom have their own protocols and operating procedures, have sustained the existing EU migration management approach by reinforcing border control measures. The escort of ships outside territorial waters and the return of migrants, who do not have proper access to legal assistance in the intercepted boats, still take place – in effect, collective processes of status determination and expulsion. The migrants who are landed may be detained, and in some cases processed, by military authorities but not in what might be understood, in terms of good protection practice to be a ‹safe place›. Mare Nostrum has delayed push backs and thus improved protection, temporarily at least; but the operations has created «downstream» blockages since, once landed, reception, admission, status determination and settlement procedures cannot keep pace with the volume of landed migrants.

It is not clear that admission policies of countries such as Italy have improved, since screening at borders is poor and rejection at the borders is often summary. Without radical improvements it remains questionable if protection in a normative sense has improved, or whether it is merely the physical safety of the migrants that may have been enhanced. Moreover, it is not evident how politically sustainable Mare Nostrum is among EMUSs since the number of undocumented migrants who are landed has escalated, the scale of smuggling appears to have increased, and so there is political pressure for European border control agencies to reinforce their approach. Revised border surveillance, it is asserted, will prevent migrant deaths – but mainly by monitoring known departure points for irregular migration. As a result, forced migrants are likely to be «contained» in highly vulnerable conditions without satisfactory protection on the southern shores of the Mediterranean.

As we shall see in the next section, the implications of Mare Nostrum for solidarity and burden sharing by EUMSs, key principles underpinning the CEAS, have revived the underlying political tensions between member states and presage a possible fragmentation in Europe's co-ordinated approach to asylum policy thus far.

Two conclusions can be drawn. Despite occasional modification, the structure of border control has been progressively reinforced resulting in the commensurate diminution of access to protection for forced migrants. The quality of protection for forced migrants is trumped by the need for efficient and rigorous border control (Triandafyllidou and Dimitriadi 2013). Second, the challenge of ensuring quality protection for migrants at the borders inevitably returns the debate to the core concerns of this study – whether and how to distinguish between different types of forced migrant in mixed flows of migrants and their protection needs.

5.4.3 Protection within Europe – the Common European Asylum System (CEAS) and the Post-Stockholm Programme

When, or if, forced migrants arrive in Europe, what quality of protection can they expect? The parameters of protection are delimited by the Common European Asylum System and the Post-Stockholm Programme[38]. Briefly, after a decade of negotiation – the time period is symptomatic of the political and operational tensions between the EUMSs on agreeing immigration and asylum polices – the CEAS was adopted in June 2013. It comprises a portfolio of Directives and Regulations[39] that sets out the minimum standards for reception, processing and interpretation of asylum in the EU, seeking to ensure consistent management and handling across all member states.

The content of the CEAS is not, of course, new: the Directives and Instruments have been around for many years in various forms. To this extent, the adoption of the CEAS very much remains a work in progress through the Post-Stockholm Programme. But it is a landmark in terms of: consolidation into the «acquis»; establishing, at least in principle, a *coherent policy framework for asylum policy*; and representing solidarity among EUMSs on a highly sensitive political issue.

However an efficient asylum system for EUMSs is not the same thing as effective protection for forced migrants. In four respects the CEAS is also a landmark symbolising the extent of the *shrinkage of protection space within Europe*.

The first and principal concern is that by tightening every stage in the asylum seeking process, the outcome is a severe reduction in the quality of protection space that is available in the EU for all migrants. With its focus on the asylum seeking and refugee determination paradigm, the tightening of procedures and standards has not only diminished the quality of protection for asylum seekers, but it has failed to tackle the complex conditions of mixed migration and, especially, forced migration that confronts Europe. Either a migrant fits, with some difficulty, the asylum track or she/he does not. The CEAS is not a policy to tackle the complexities of forced migration and the protection needs of forced migrants.

In seeking to establish fair and efficient procedures, efficiency dominates, and the quality of protection contracts. The evidence is substantial: limited access to procedures at borders and collective expulsions for migrants rescued at sea; widespread acceleration of determination and appeal procedures; declining access to courts and justice in general and more limited rights of appeal; the difficulty of implementing the obligation on EUMSs, under Asylum Procedures Directive, of identifying vulnerable people; the blurring of the grounds for detention – but the increasing use of detention (including women and children) – and deportation for so called manifestly unfounded claims or those who deemed likely to ‹escape›; the call for alternatives to detention which is too general and

38 The Stockholm Programme (2009–2014) provided the framework for the harmonisation of the CEAS. Thus the Post-Stockholm Programme refers to the process, now underway, for the transposition and implementation of the asylum *acquis* through interpretative guidelines remedy of remaining flaws and protection gaps and incorporation of rights through jurisprudence.

39 The Qualification Directive 2011/95/EU (application 21 December 2013)
The Reception Conditions Directive 2013/33/EU (application 20 July 2015)
The Asylum Procedures Directive 2013/32/EU (application 20 July 2015)
The Dublin III Regulation 604/2013 (application 1 January 2014)
The Eurodac Regulation 603/2013 (application 20 July 2015)

lacks procedural safeguards; the flawed and inefficient Dublin process which has high human costs in terms of family reunion for example.

Underpinning the operational provisions and procedures of the CEAS in many EUMSs is not an acceptance that protection might be desirable, but a culture of disbelief (Robinson 1999), the criminalisation of irregular migration and the implication that this is a threat to security. Irregular migration is not a crime and not the threat to security that it has been made out to be. It is not the migrants who are blurring identities, but precisely state policies and practices that effectively criminalise forced migrants for seeking protection.

The second major concern is the lack of consistency and coherence in the way member states provide protection, despite harmonisation being one of the major objectives of the CEAS. Instead of convergence after 10 years of effort, there is still vast policy and operational divergence, as a recent Eurodac report noted: «There is a wide diversity in the handling of asylum applications across the EU Member States: this may be linked to differences in the citizenship of applicants in each EU Member State, and may also reflect asylum and migration policies that are applied in each country» (Eurostat 2014:6).

There is divergence in procedures (reception, admission, status determination, nationality and age verification test, appeals, and removals). Evidence of this divergence in procedures can be found in the recognition rates for asylum applications. Whereas only 4% of asylum applicants received positive first instance decisions in Greece in 2013 and 18% in France, in Italy the rate was 60%, in Sweden 53% and in Switzerland 40% (Eurostat 2014:6). Other examples are the different return policies and procedures among the member states, and different procedures for evaluating «first country» asylum seekers and their return under the Dublin Convention, although the ECHR has been more restrictive on supporting appeals against returns under the convention because of the divergent praxis between states.

«The current failure of burden sharing works against effective protection of migrants.»

There is divergence in standards, for example the practices of access to legal advice, detention, deportation and temporary protection varies very substantially between EUMSs. Likewise there is variation in the conditions for subsidiary protection and the mutual recognition of asylum seekers. Some countries, such as the UK, use well developed Country of Origin (CoO) information to assist in the status determination process, for others the CoO quality is rudimentary. The conditions under which the procedures take place vary. In some countries, there is little respect for privacy or human dignity and hearings may be in public spaces with implications for the emotional well-being of the migrant.

Not only is there divergence in the governance of asylum and migration policy between EUMSs but also within countries. For example, in Italy delegation to provincial administrations, and in Switzerland the division of competences between the cantons and the Federal government, can lead to variations in the quality of protection that a forced migrant might receive. In the case of Italy, given the enormous increase in undocumented migration, decentralisation has been necessary to enlarge the processing capacity; but this has been at the expense of quality of protection since decision-making is fragmented.

The third concern may seem somewhat tangential to the issue of protection, but it is very relevant. As with all policy making in Europe, the underlying motivations are *harmonisation*, *solidarity* and *burden sharing*: these mantra appear frequently in the context of the CEAS. As discussed above, harmonisation is far from being achieved with negative impacts on the quality of protection. Likewise, whereas burden sharing and solidarity should, in principle, offer secure foundations for equal standards and procedures for protection, in practice they do not. In essence the thinning of Europe's internal borders – essentially the borderless Europe of the Schengen area – tied to the thickening of the EU's external borders has had the paradoxical effect of reducing the solidarity and burden sharing apparatus of the CEAS; the Dublin Convention reinforces the lack of solidarity. In turn these outcomes underscore the divergent protection standards across Europe[40].

In essence the issue is that the CEAS and the task of dealing with irregular migration – asylum seekers, undocumented and forced migrants – imposes differential costs and impacts on members states: a two-tier Europe is the result. Countries on Europe's borders highlight the heavy burden on their administrative capacity imposed by access, admission, return, processing, the burden on their relatively weaker social security systems, and especially the burden of undocumented migrants. The migrants are weakly protected against human rights abuses and vulnerability. Conversely, the claim of northern states – somewhat protected by the Dublin Convention – is that southern member states are not strict enough in limiting access to territory so that the different categories of migrants transit north, thus relocating the burden. In addition, countries such as Germany, Sweden, France and the UK already receive two thirds of all asylum cases (Eurodac 2013). Resource transfer is the price they may have to pay to maintain the Dublin Convention, which is somewhat threatened by the burden sharing debate. Eurosur and Frontex provide the means for a pragmatic resource transfer to southern member states, although with self-interested motives.

The implications for the migrant protection are clear since the current failure of burden sharing works against the effective protection of forced migrants[41]. The challenge is to find an equitable burden-sharing process, because without this, the quality of protection will suffer in terms of: differential standards; increased vulnerability of the migrants; the political pressure within individual EUMSs to reduce the «burden» by reducing the quality of protection; the lack of dignity in treatment of migrants, for example through increased use of the already heavily criticised return procedures under the Dublin Convention.

The final concern is that, by focusing so strongly on asylum, the wider context of migration policy will be ignored, if not at the Commission level, then almost certainly at the level of member states under constant political pressure to «solve» the asylum/mixed migration problem. The CEAS will not provide effective protection unless it sits within a wider and comprehensive policy agenda for migration that includes: enlarged, resettlement and humanitarian admissions policy for refugees; a coherent labour migration policy that could relieve the pressure of irregular migration; and the framework of GAMM. Seeing the issue of migration only through the prism of asylum obscures the protection needs of other forced migrants who are more numerous, but do not fit this profile.

The constant tightening of control that reduces the quality of protection and the divergent standards, procedures and governance within CEAS that result in inconsistent protection raise serious questions about the CEAS. In summary, there is little evidence of either a 360° protection system for all forced migrants, or the co-ordinated access to protection *and* rights.

Without this wider vision the protection crisis at Europe's borders will grow and as will a protection regime that lacks coherence, fairness and a basic respect for the dignity and rights of all types of migrants.

5.4.4 Europe – improving protection on the margins

On the margins of the CEAS and the fragile protection environment it has created in Europe, it is possible to detect *some positive developments:* but these are indeed marginal and tend to be initiatives taken at the individual member state level, not EU-wide. In general terms, the policies and campaigns *to fight human trafficking and combating hate crime, xenophobia and discrimination* – frequently cited in the context of the CEAS – are to be welcomed, although it often seems the rhetoric is stronger than the actions.

One progressive outcome is the *whole-of-government approach in Switzerland*. This provides a «joined-up», interdepartmental approach to policy making for migration (in all forms), an approach advocated for, but lacking in the EU, as

40 For a parallel example see a study examining the Canada-US *Safe Third Country Agreement* that argues that this «refugee sharing» agreement diminishes the legal protections available to refugees under domestic and international law, and prompted a rise in human smuggling and unauthorised border crossings (Anker and Arbel 2014).

41 An original attempt to calibrate burden sharing using a multi-factor model using GDP, population level and unemployment to calculate the reception capacity of each EUMS can be found in Angenendt et al., (2013).

noted above. It includes, inter alia, the Department of Foreign Affairs and the Department of Justice and Police, the Federal Office for Migration, as well as Embassies in countries of origin. There are focal points in these units that are co-ordinated and cross cutting structure for migration and mobility policy making. The whole-of-government approach provides a comprehensive response from the point of origin of forced and other forms of migration in countries of conflict and fragile development, to the destination in Switzerland. There has been no evaluation specifically dealing with the protection outcomes of this approach, but – in principle at least – the comprehensive governance of mobility offers potential benefits for developing a more responsive and coherent protection framework.

Another positive development in the *UK* is the appointment of an *independent Chief Inspector of Borders and Immigration*, a post created in 2008 to assess the efficiency and effectiveness of the UK's border and immigration functions. The remit includes for example: the practice and procedure in making decisions; the treatment of claimants and applicants; consistency of approach, and the handling of complaints. This portfolio tackles a number of the CEAS procedures and standards that have been critiqued earlier. The effectiveness of this type of agency largely depends on the personality of the inspector. The first post holder in the UK developed a reputation for authoritative, forthright and often highly critical reports on the functioning of the UK's asylum system. A cause-effect link is difficult to establish, but in general terms the outcomes could be expected to improve the quality of protection.

In *Norway,* reforms that led to the establishment of a completely independent and a particularly significant *non-judicial appeals system* against refusal of status, is a welcome development. It contrasts with the often adversarial, judicial format of other appeal systems that seem to reflect the culture of disbelief.

Some EUMSs, and Switzerland, have enhanced *programmes of voluntary assisted returns* (VARs) for «failed asylum seekers», and irregular migrants whose admission has been rejected; these are useful responses. For the country concerned, this reduces the political pressure of migration with a potential long-term pay off in reducing tensions between citizens and migrants. For the migrants themselves, this ensures they are not left in limbo and thus vulnerable, and without protection. However, VAR can only be acceptable if protection conditions in the country of origin to which the migrant is returned are secure and can be guaranteed – often this is not the case.

In Switzerland, the easing of *Temporary Protection* (TP) by allowing extensions on humanitarian grounds is a welcome enhancement of the quality of protection, although without provision for family reunification, this cannot be considered to respect the need for human dignity.

Resettlement, protected entry, and humanitarian admissions remain underutilised protection instruments by EU Member States; but they are initiatives that offer the means to improve protection, albeit on the margins – since the numbers will always be very limited. For example, on resettlement, ECRE and other NGOs are campaigning for a modest target of 20,000 places in EUMSs annually by 2020. Somewhat superseded by the crisis in Syria, European countries have offered less than 32,000 places for resettlement, humanitarian and other forms of admission for Syria refugees, against the call by UNHCR to provide resettlement and other forms of admission for 100,000 in 2015 and 2016. Meanwhile, more than 2.9 million refugees are in countries immediately neighbouring Syria. Sweden and Germany account for more than half the admissions to date (UNHCR 2014c).

The Italian Council for Refugees (CIR) and ECRE, among others, have campaigned for the reintroduction of *protected entry* (Protected Entry Procedure PEP), a potentially valuable addition to the protection portfolio (CIR/ECRE 2012). This is a procedure to allow individuals to approach the authorities of a potential host country outside its territory in order to claim international protection and be granted an entry permit in the case of a positive response. Yet there seems little political will to reinstate this process, which from the point of view of the EC, would undermine the role of Mobility Partnerships as a more effective means of extra-territorial processing. Switzerland had this procedure, but it was

used under very restricted circumstances. Only 10% of the more than 6000 cases in 2011 where granted PEP – a proportion rather higher than preceding years (CIR/ECRE 2012: 57). It was abolished in fall 2012.

These marginal improvements would, at least, demonstrate a more liberal agenda than containment and the reduction of protection space, and an agenda more in keeping with the claim to European values. And they highlight the following conclusions:

Protection in the EU is highly politicised, it is now as much a political concept as a normative one.

Frequent recourse to fundamental «European values» as the justification for its humanitarian stance on forced migration abroad, its agreements on migration with third countries, and its response to forced migrants arriving in Europe sits rather uncomfortably with the fact that protection finds its real power in international human rights norms, standards and law. Protection is not something that is particular to European values, though these values might add strength to the norms. Europe's global message on protection might have more meaning if it advocated respect for the global values that underpin the provision of protection for vulnerable people.

Finally, the need for cohesion in EU migration and mobility policies remains as vital as ever. The firewall between asylum on the one hand, and forced migration, mixed and irregular migration on the other – and the criminalisation of these latter types of mobility – creates an artificial distinction. All these types of migrants need protection. The challenge is to find the means and the will to afford this protection and the appropriate channels by which it can be accessed. Otherwise, refugees and other types of forced migrants will continue to try to find ways to reach protection in Europe.

5.5 Climate change and protection

In discussing the sixth of the new «geographies of forced displacement and mobility», the final section of this analytical chapter offers a major change in tempo and in substantive content.

Whereas the types of forced migration discussed so far have largely been characterised by rapid onset and mass displacement, the displacement effects associated with climate change and environmental stress tend to be slow-onset and the pattern of mobility incremental. It is important to recall, as discussed in Chapter 4.2.6, that, like the other forms of forced migration, climate change and environmental stress usually contribute to a multi-casual ensemble of factors linked to existing vulnerabilities that drive forced displacement: there is a rarely unique or direct cause-effect except in the cases of extreme weather events and disasters and the so called sinking islands of the future. Moreover, although there are similar manifestations of the humanitarian needs that underpin forced displacement by conflict, violence and persecution, the frame of reference has tended to be disaster relief and disaster risk reduction in relation to natural hazards, not the humanitarian emergency paradigm.

«The need for cohesion in EU migration and mobility policies is as vital as ever.»

Nevertheless, international acceptance of the displacement impacts was cemented at the Cancún outcome agreement on long-term cooperative action under the *United Nations Framework Convention on Climate Change* (UNFCCC) in 2010. The agreement adopted Paragraph 14(f) which «invites states to enhance their action on adaptation including by measures to enhance understanding, co-ordination and cooperation with regard to *climate change induced displacement*, migration and planned relocation, where appropriate, at the national, regional and international levels» (emphasis added)[42].

Yet, even so, in a number of ways the protection challenges and consequences of displacement, resulting from impacts climate change and environmental stress, fit uncomfortably in an analysis of forced displacement. The lack of an obvious «cause» or force such as war and conflict, the incremental nature of the displace-

42 Outcome of the Ad-hoc Working Group on Long-term Cooperative Action under the Convention, Cancún, December 2010

ment, and the disaster paradigm constitute the reasons why it has been difficult to establish both the nature and the scale of the protection challenge.

Nevertheless, the fact that displacement is involuntary invokes concern that the rights that citizens might normally expect to enjoy should not be weakened or removed – i.e. a concern about protection gaps – and so the question of protecting those rights becomes valid and important.

All rights should be respected, but in the present context, what are the rights that require particular protection? Examples of material and social/political rights serve to demonstrate the scope. One obvious right that should be protected is access to resources, notably land and the associated rights of land and property. This pertains to re-settlement, in the event of permanent displacement, or protection as a process of mediating competing land interests when, for example pastoral communities come into conflict when desertification depletes the quality and area of gazing land. An important aspect here is that even where countries have land (and disaster) compensation mechanisms, access to these mechanisms for property restitution and compensation is usually both complicated, and open to abuse and corruption. Another important right is the democratic right to consultation and active participation in government re-settlement policies – an important right that was largely ignored in summarily resettling rather than returning communities to their previous locations after the Indian Ocean tsunami of 2004. Disaster conditions threaten many rights: one example is the safety and security of citizens – both personal and property – and thus states should endeavour to protect this right.

«Protection gaps for people affected by climate change and environmental stress.»

This section considers, first, the nature of those rights and the ways in which the protection machinery has developed in response to the challenge. Then it considers a specific gap that the Nansen Initiative seeks to fill. The copious literature on the subject of climate change, displacement and protection – highlighted in Chapter 4.2.6 – indicates that only a brief discussion is provided here.

5.5.1 Developing protection capacity and policy

The majority of those displaced in the context of climate change will remain within their own country. Thus, it is generally accepted that the *1998 Guiding Principles on Internal Displacement*, with its provision to provide protection before, during and after displacement, constitute an appropriate and workable framework for their protection. The AU «Kampala Convention» of 2009 gives added strength to the 1998 Guiding Principles.

The focus of strategy and policy, not surprisingly, has been on rapid-onset manifestations of climate change and environmental stress – floods, cyclones and earthquakes – rather than slow-onset change such as desertification, rising sea levels and salination, although these are likely to be much more prominent factors in population displacement. And this focus has conditioned the protection priorities.

Of the three phases of protection in the 1998 Guiding Principles, Disaster Risk Reduction (DRR), and the currently in-vogue strategies for adaptation, resilience and mitigation, clearly fit within the ambit of protection before, and after, displacement. However, protection in these phases is generally less well developed than *during* displacement where protection capacity rests on the impacted state –more usually international humanitarian and disaster relief agencies – to provide disaster relief and reconstruction.

Significantly, in all three phases, protection is largely instrumentalised by addressing the material and physical responses, rather than political, civil and social rights. A core recommendation is that national governments should give greater priority to developing policies and norms for protecting IDPs, ensuring that the needs of people displaced in the context of climate/environmental change are embedded in these responses.

Moreover, since the 1998 Guiding Principles are «soft law» they do not have the force of international law unless they are incorporated into national law when they then become the duty bearer. However, as many commentators have pointed out, the challenge of protection in

the present context is less one of law and norms – though few countries have in fact adopted legislation on the 1998 Guiding Principles – but in finding the resources and the capacity to implement and operationalise protection in development and climate change plans and strategies. For example, research in Kenya, Ethiopia, Ghana, Bangladesh and Vietnam – five countries of contrasting climate change vulnerability, political structures and governance capacity – demonstrated a lack of political will to provide protection, the absence of normative apparatus, weak implementation capacity and limited public resources dedicated to responding to environmental change and weak civil society to articulate rights protection (Zetter 2011; Zetter and Morrissey 2014, 2104a).

Valuable ways in which these protection challenges can be met is where national governments strengthening and mainstreamed protection their plans, strategies and the roles of agencies dealing with environmental change, climate change and migration. Enhancing co-ordination and collaboration between government ministries and agencies is also essential to ensure that rights-based policies are developed and operationalised more effectively. Developing professional expertise – legal and operational – in human rights protection and environmental law is also essential if national governments are to make progress. The engagement and empowerment of civil society actors to provide rights-based awareness and advocacy on behalf of communities vulnerable to environmental displacement should be a priority for national governments. At the same time, national governments should explore ways of strengthening the independent monitoring and reporting of its compliance with human rights protection, which would also include the rights of environmentally displaced people. An independent national human rights institution could be one model (Zetter 2011:53).

International and intergovernmental agencies and humanitarian actors such as UNHCR, OHCHR, IOM, OCHA, ICRC, and IDMC, have a role to play in supporting and encouraging national governments by: encouraging and facilitating national governments to adopt policies and norms for protecting and assisting IDPs developing the knowledge base on environmental displacement and normative protection; by ensuring that international policies and frameworks provide an effective backcloth for national action; and by facilitating international and regional agreements.

5.5.2 Nansen initiative and international protection

A major protection gap exists for people who are displaced temporarily or permanently by environmental factors across international borders. They are not protected by the 1951 Convention and the 1967 Protocol, and jurisprudence has generally ruled against claims in this context[43]. Proposals to create a new international convention on environmental refugees have gained no traction as we have seen (5.1.1). And in virtually all destination countries, extant refugee, humanitarian admission, temporary protection and general immigration laws do not recognise migrants displaced in the context of environmental factors.

But two significant initiatives have placed the issue of protection for those displaced in the context of climate change on the international agenda.

Nordic countries such as Sweden and Finland have slightly less restrictive temporary protection provisions, which open the possibility for claims resulting from environmental displacement and, in the case of the Finnish Aliens Act, provides «aliens residing in the country [to be] issued with a residence permit on the basis of a need for protection if ... they cannot return because of an armed conflict or *environmental disaster*» (emphasis added), (Section 88(1) 2004 Aliens Act. The significant caveat of «residing in the country», in other words not actually migrating, mirrors the temporary protection status offered by the USA to Hondurans resident in the

43 An interesting, but rare exception to this, is the upholding of an appeal by a family from Tuvalu at the New Zealand Immigration and Protection Tribunal against earlier refusal to provide residence visas for the family. The Tribunal upheld the claim on the grounds of the adverse impacts of climate change and socio-economic deprivation (New Zealand Immigration and Protection Tribunal [2014] NZIPT 501370-371, www.forms.justice.govt.nz

country at the time of Hurricane Mitch in 1999 and unable to return.

The second and more significant response to challenges of protection for those who are forcibly displaced in the context of environmental and climate change events is the Nansen Initiative, led by the governments of Norway and Switzerland. Following its inception in 2011, this state-led, bottom-up consultative process is exploring the scope to fill the legal gap in the protection of people displaced across national borders due to natural disasters, particularly in the context of climate change. Aiming, more widely, to build consensus at domestic, regional and international levels on the development of key principles and elements for cross-border protection of this specific group, this approach is a more pragmatic initiative, but one much more likely to succeed than moves to create a new convention.

«The Nansen initiative facilitates exchange of experiences.»

Substantial progress has been made through a methodology that has developed case study scenarios of five sub-regions, particularly affected by disaster-induced displacement. These case studies provide the opportunity for states to exchange experiences, share good practices and build consensus on key normative, institutional and operational elements of a protection regime. The Initiative aims to complete its work in 2015, which may then be followed up by an action plan.

6 Ways forward and new modalities

With timing that is as poignant as it is symbolic, this concluding chapter is being written in mid-August 2014 as the tragedy unfolds of the 35 migrants from Afghanistan – including 13 children and one man who was dead – found trapped, dehydrated and suffering from hypothermia in a shipping container at Tilbury Docks in the UK. Fleeing in this unimaginable way the enduring humanitarian crisis that constitutes their country, these people can only be described as forced migrants seeking protection and security: nor can there be doubt that people desperate for protection resorted to smugglers who are accountable for this appalling vulnerability. In terms of recommendations, there is perhaps only one – a common humanity that calls for a more humane protection system that recognises the level of vulnerability and desperation that produces such traumatic outcomes for these people and many millions more who are forced to migrate.

In line with a study, which is analytical rather than a policy evaluation, this chapter presents ways forward and new modalities, not detailed recommendations. Similarly, it aims to be aspirational rather than operational, seeking to promote wide-ranging debate and to further understanding of the subject. It is intentionally generic so that a wide range of humanitarian and development actors and agencies involved with forced migration and protection can draw on the analysis and discussion.

A new life for refugees in Riace, Italy. *Photo: Giovanna Del Sarto.*

6.1 Definitions and principles – forced migration and protection

1. The label «forced migration» seeks to capture the complex, wide-ranging and multi-causal dynamics that drive population displacement. Recognising the phenomenon of «forced migration» is an essential

pre-requisite to diagnosing and responding to contemporary protection challenges and needs, most of which fall outside the well-established norms, standards, and instruments. The potential for developing international Guiding Principles for the protection of forcibly displaced people should be explored.

2. While the well-established protection norms predicated on the refugee paradigm remain an essential pillar of protection, wider consideration needs to be given to developing and operationalising the concepts of «needs-based» and «rights-based» protection for forced migrants.
3. A crosscutting concept of «displacement vulnerability» offers a fuller understanding of protection needs in terms of safety, security, maintaining livelihoods, and the reduction of vulnerability from, during and after forced migration. The interplay between vulnerability and protection needs to be more fully addressed in policy and praxis.
4. The politicisation of protection is a matter of profound concern: a «human rights – humanitarian norms – political nexus» is gradually displacing the unique normative foundations of protection for forced migrants. The desirability of re-establishing norms of protection that transcend national interests is perhaps the most complex and searching, but necessary challenge for the international community.
5. The study has highlighted how the «managerial turn» has transformed protection from its norms-based principles. Thus, the need to rebalance protection around normative standards and practices is a pressing challenge.
6. A twin-track protection model has emerged of non-entrée regimes in the global north and mass entrée protection regimes in the global south. A deep and lasting commitment is needed by the international community to ensure that protection norms, standards, and practices for forced migrants are global and indivisible.
7. Protection has become mainstreamed to the extent that humanitarian assistance has almost become subsumed in protection. While the «proliferation» of protection actors and activities offers many advantages, there is the need to take stock of the negative impacts of increasingly ad hoc and disaggregated responses to contemporary protection challenges and the impacts on the small number of duty bearers.
8. The Responsibility to Protect Doctrine (R2P) should be resuscitated and retained at the forefront of international political discourse on forced migration. Although this doctrine only deals with extreme human rights abuses that may precipitate forced displacement, it is a reminder to states of their human rights obligations to their citizens, and a reminder to the international community of the need to afford protection.

6.2 Migration, forced migration, development and protection – structural responses

1. Protecting people *from* forced displacement is the most desirable form of protection. The most effective form of protection is to remove or avert the conditions that precipitate forced migration. In countries susceptible to conflict, fragile governance and other drivers of forced displacement, sustainable development that is equitably distributed, enhancing governance and civil society capacity, and embedding a thorough respect for human rights, are essential strategies to secure protection in the long term.
2. Forced migration has distinctive characteristics, but under contemporary conditions of global mobility and mixed migration flows it is not a completely separate phenomenon from regular migration. The current, bipolar approach to policy-making is damaging to all interests – migrants, forced migrants, destination countries. Recognising the interconnectivity of forced and regular migration would be an important step in formulating coherent and complementary policies, at national and interna-

tional levels, that better manage all forms of migration in an orderly and equitable fashion. The model of the «whole-of–government» approach to «joined-up» policy-making is advocated.

3. In light of this connectivity, it is of great concern that a global response to refugees and forced migration has been removed from the draft post-2015 UN Development Agenda; it should be re-instated.
4. Policies that secure more open channels for orderly, managed, regular migration and mobility, especially to countries in the global north, will greatly assist in relieving the pressure of irregular migration and thus the protection challenges that derive from it.
5. Much progress has been made by international actors and host governments in closing protection gaps, adapting norms and standards and in improving protection capacity and quality in regions impacted by forced migration (e.g. through RDPPs). However, it is essential that countries in the global north do not simply strengthen protection in countries of first asylum as a substitute for fair and equitable protection polices for forced migrants who move out of their regions of origin.
6. International and national humanitarian and development actors and agencies should scale up support and efforts that encourage national governments to adopt *and*, more importantly, to implement and adhere to the *1998 Guiding Principles on Internal Displacement*. Citizens have a right to expect, and governments have an obligation to provide, effective protection before, during and after displacement within countries where this occurs. Effective use of the 1998 Guiding Principles will also reduce the propensity for forced migration to become an international challenge.
7. The ratification of the *2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* is a welcome expansion of protection norms and obligations, and warrants wide international backing to support uptake and implementation.
8. Much larger and more effective resettlement programmes in the global north are essential to: secure longer-term protection for a greater number of refugees; relieve the pressures of irregular migration; and to demonstrate burden sharing with highly-impacted countries.

6.3 Enhancing the policies and praxis of protection

1. By developing an enhanced understanding of the modalities of self-protection for at-risk populations, humanitarian actors may be better able to support this practice in ways that respect and strengthen indigenous coping mechanisms.
2. Humanitarian actors are encouraged to develop the protection tools and modalities that reduce the vulnerability of forced migrant communities that often engage in highly risky local and circular mobility – a well-established strategy to safeguard livelihoods, property, and to investigate the scope for return.
3. An enhanced role for intergovernmental agencies, such as the UNHCR and IOM, is advocated to reduce the substantial protection gaps and the high risks and vulnerability that forced migrants experience within and at the borders of «transit» countries. Although Europe-led Mobility and Migration Partnerships have begun to address the protection challenges of secondary migration, they risk being compromised by an implicit aim of promoting extra-territorial processing of migrants seeking access to the EU.
4. An extensive portfolio of strategic and operational policies and praxis for protecting forcibly displaced populations in urban settings now exists. By consolidating this expertise, humanitarian and development actors, together with national and local interlocutors can substantially enhance the quality and scope protection space in urban locations.
5. Now widely accepted, development-led responses in humanitarian crises should also

be fully promoted as an indispensable means of enhancing protection and the dignity of displaced people, and by improving security. The «value-added» role of development-led strategies that embrace both forcibly displaced *and* host populations can enhance protection by reducing livelihood vulnerability and decreasing tensions between hosts and forced migrants.

6. Given the prevalence of protracted displacement for the majority of forced migrants, incremental and flexible approaches to local integration – for example, progressive forms of formalising status, permanent residency and citizenship – conditional on, for example, economic self-sufficiency, offer an appropriate way of securing better protection of the rights and well-being of forced migrants.
7. Smuggling and trafficking constitute some of the most severe threats to the protection of forced migrants. Although governments and intergovernmental actors have scaled up their attack on these processes, far more resources and actions need to be taken to eradicate this reprehensible exploitation of vulnerable people.
8. The development of appropriate capacities and instruments to provide protection to communities, and individuals susceptible to land grabbing that might result in displacement, is urgently needed.

6.4 Europe and Protection

9. A substantial number of the «Ways Forward» already proposed, apply to Europe. Especially of note are the:
   - necessity of recognising the phenomenon of «forced migration» and developing appropriate policies and protection norms to address it
   - profound need to re-conceive a model protection that is not subsumed in a non-entrée regime
   - negative impacts of extra-territorial processing on protection and the right to access territory and protection in Europe
   - importance of connecting policy making on migration and forced migration in a co-ordinated and comprehensive manner within the GAMM framework
   - need to reverse the politicisation of protection and the «managerial turn» in protection, both of which challenge the fundamental normative precepts of protection
   - importance of substantially expanding resettlement opportunities in Europe
10. The EU's border management strategy and policies require a fundamental review in the context of GAMM. The current policies, instruments and machinery to control borders – e.g. Frontex, Eurosur – are clearly both unsustainable and severely detrimental to the proper protection of forced migrants.
11. The EU and the EUMSs should seek to develop a full 360° protection system for all forced migrants that effectively co-ordinates access to territory with protection *and* rights.
12. The substantial divergence in procedures and standards of protection between EUMSs should be urgently addressed in the Post-Stockholm Programme.
13. The EU and EUMSs are urged to adopt or expand the use of Temporary Protection (TP) measures, and the scope and use of protected entry and humanitarian admissions. Although not likely to substantially expand the number of forced migrants who can secure protection in Europe, these measures would demonstrate a wider acknowledgment of European humanitarian obligations.
14. An expansion of Voluntary Assisted Return may ease some pressures on the migration regime, but can only be acceptable if protection conditions in the country of origin can be guaranteed.
15. A reduction in the use of detention and deportation of irregular migrants, or those with unfounded claims, would similarly demonstrate a more humane response to the vulnerabilities these migrants face.
16. European protection standards would be enhanced by the sharing and standardis-

ing Country of Origin information that's used in Refugee Status Determination.

17. National governments should appoint independent inspectors with responsibility to assess and advise on improving border, asylum, immigration and protection functions. The EC should consider a similar appointment at EU level.
18. Much more concerted messaging and action is required at EU and member state level to counter the negative perceptions and attitudes towards all categories of migrants among the media, government agencies and citizens, in order to improve the safety and well-being of migrants at all stages of their access and recognition process.

6.5 Climate change, environmental stress and protection

1. The *1998 Guiding Principles on Internal Displacement* and the *2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* provide a viable basis for protecting the rights of people susceptible to internal displacement in the context of climate change and environmental stress. However, national governments should give greater priority to developing protection policies and norms, and mainstreaming them in plans and strategies, dealing with climate change and migration. Better co-ordination and collaboration between government ministries and agencies would enhance strategic policy-making and operational capacity. Expanding professional expertise in human rights protection and environmental law, in the context of climate change related displacement, would further enhance policy-making and operational capacity.
2. International and intergovernmental agencies and humanitarian actors should play a larger role in supporting and encouraging national governments in developing their capacity to respond to the protection needs of displaced communities, or those susceptible to displacement.
3. Expanding Temporary Protection Status, internationally, for those displaced in the context of climate change and environmental disasters would help to relieve some of the pressures that arise in rapid-onset disasters.
4. The Nansen Initiative is a valuable international focal point for exploring the migration-protection nexus in the context of climate and in resolving protection gaps, notably for forcibly displaced people moving across international borders after natural disasters. The Nansen Initiative should continue its function as a focal point for normative, institutional and operational developments in this field after it has reported its main findings in 2015.

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