

# Chapter 14

## Forced Migration and Refugee Policy

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### 14.1 Introduction

Since 2011, the international refugee regime has faced dozens of both traditional and non-traditional challenges in identifying and implementing policies for the protection of refugees and displaced persons. The massive displacement in and from Syria has garnished the most attention but large scale movements in the context of conflicts in South Sudan, Central African Republic, Ukraine and elsewhere merit consideration as well. Earlier in the decade, the famine and long-term conflict in Somalia sent hundreds of thousands across the border into Kenya and Ethiopia while the crisis in Libya and political instability throughout North Africa caused more than one million to flee across international borders, some seeking asylum while others (mostly contract workers) tried to get to their own home countries as violence erupted in their destination countries. Typhoon Haiyan in the Philippines displaced millions in 2013, leaving many in a situation of protracted upheaval.

Migration resulting from these natural and man-made events may correspond to current international, regional and national frameworks that are designed to protect and assist refugees—that is, persons who flee across an international boundary because of a well-founded fear of persecution—but often, these movements fall outside of the more traditional legal norms and policies. Yet, they have many characteristics in common with refugee movements. For example, they often take place in the context of political instability, countries of origin may not have the capacity or political will to protect their citizens from harm, an international response may be needed because of the scale of the migration, and the need for humanitarian assistance will likely overwhelm local capacities.

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This chapter focuses on international, regional and national legal norms, policies, organizational roles and relations and good practices that are applicable to the broader range of humanitarian crises that have migration consequences. The chapter examines movements stemming directly and indirectly from: persecution, armed conflict, extreme natural hazards that cause extensive destruction of lives and infrastructure; slower onset environmental degradation, such as drought and desertification, which undermine livelihoods; manmade environmental disasters, such as nuclear accidents, which destroy habitat and livelihoods; communal violence, civil strife and political instability; and global pandemics that cause high levels of mortality and morbidity. These crises lead to many different forms of displacement, including internal and cross border movements of nationals, evacuation of migrant workers, sea-borne departures that often involve unseaworthy vessels, and trafficking of persons. While the majority of those displaced from humanitarian crises move internally, a significant portion migrates cross borders to other countries.

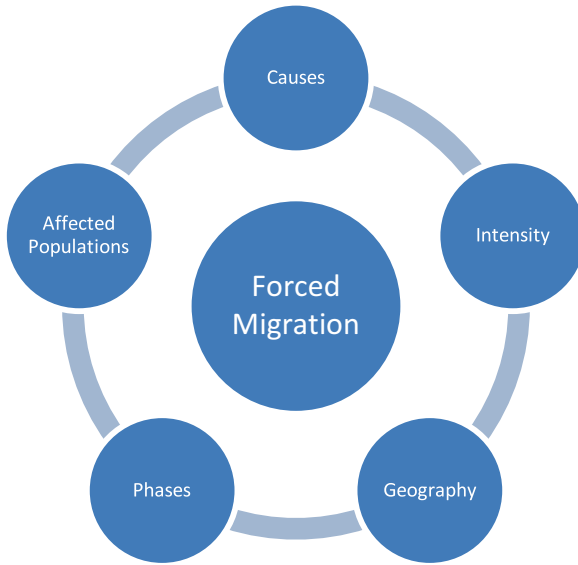
The chapter will compare the paucity of legal, policy and institutional frameworks for addressing these other crises with the more abundant frameworks for addressing the consequences of refugee movements. Part 1 introduces the concepts of the chapter, defining the types of humanitarian crises that have migration consequences. It will have subsections discussing briefly the range of crises referenced above, describing the types of forced migration that occur as a result of each category of crisis. Part 2 focuses on the legal frameworks and policies available at the international, regional and national levels for addressing the migration consequences of these crises. Part 3 will discuss institutional arrangements for addressing the types of migration under review. Part 4 will present the conclusions of the chapter and discuss the policy implications of the findings. It also discusses the important role that demography can play in helping to improve responses to forced migration in the context of humanitarian crises.

## 14.2 Crises and Forced Migration

This section presents a typology for analyzing the nature of forced migration. The migration consequences—and the resulting policy frameworks—will differ along five principal dimensions: the precipitating drivers or *causes* of forced migration, the *intensity* of these drivers, the *geography* of the displacement, the *phase* of displacement, and the *affected populations* (Fig. 14.1).

First, forced migration-producing events differ by their *causes*. Some are primarily generated by natural causes whereas others are human made. In most cases, however, a governance failure is at the heart of the crisis whether the trigger is natural or human. Among examples of the drivers of displacement are:

- Persecution, torture and other serious human rights violations. The precipitator of forced migration that, as we will see, fits best into current legal and policy norms involves persecution of individuals or groups on the basis of such factors



**Fig. 14.1** Typology of forced migration

as race, religion, nationality, membership in a particular social group (often used to address gender), and political opinion. Persecution can affect individuals or it can affect groups of people as defined by what are often referred to as immutable characteristics shared by large numbers of people. It often occurs in contexts in which there are no safeguards to protect racial, ethnic, religious, and other minorities who may be targeted by other groups. Persecution can involve serious physical or psychological harm (e.g., rape or torture), deprivation of one's liberty (e.g., imprisonment), forced removal or ethnic cleansing, severe economic deprivation, and other mechanisms that result in serious harm to the individual.

- **Armed conflict.** One of the principal drivers of forced migration is armed conflict. Although most displacement today occurs in the context of internal armed conflict, significant levels of forced migration accompany international armed conflict as well. Displacement may be a form of collateral damage as civilian populations get out of harm's way but in many conflicts forcing the relocation of civilians is an overt aim of one or another of the warring parties.
- **Political instability and violence.** The recent events in North Africa and the Middle East fit into this category, with millions fleeing violence perpetrated by the Islamic State (ISIS) and other terrorist and insurgent groups. Violence following contested elections in Kenya (2007), Zimbabwe (2008) and Cote d'Ivoire (2011) is another example of political instability that has generated violence that has resulted in large-scale displacement. Communal violence that does not rise to the situation of armed conflict, but nevertheless displaced large numbers, has occurred in and from the Karamoja region of Uganda, Bangladesh, Ethiopia and elsewhere. The violence can be between clans, ethnic groups, economic

competitors, religious groups or pastoralists claiming the same land. Violence can also be the product of drug cartels and gangs that fight each other or government authorities.

- **Natural hazards.** Recent examples of crises resulting from extreme natural hazards that have had migration impacts include hurricanes/cyclones (e.g., Hurricanes Mitch and Stan in Central America and Cyclone Nargis in Burma/Myanmar), tsunamis (e.g., Indonesia, Sri Lanka and Somalia in 2004 and Japan in 2011), flooding (e.g., Pakistan in 2010), earthquakes (e.g., Haiti in 2010); and prolonged droughts (Somalia in 2011). Generally, the hazard itself does not cause the crisis; a lack of national and local governance, lack of emergency preparedness, lack of adequate building codes, high levels of poverty and similar weaknesses in local and national capacity lead to crisis conditions. Experiences with mass displacement after Hurricane Katrina show that even very wealthy countries are not immune to such disasters, but stable, more economically advanced countries generally have greater capacity to assist their citizens. The differences in deaths and displacement from earthquakes in Haiti and Chile in 2010 are indicative. Although the seismic level of the Chilean earthquake was much greater than that in Haiti, the level of destruction was much greater in Haiti, which is one of the poorest countries in the world and suffered from decades of political instability. The 2012 earthquake in Mexico is another case in point. An albeit more intense earthquake in 1985 led to tens of thousands of deaths, but the recent experience demonstrated that new building codes, emergency preparations and timely response could reduce casualties to a handful.
- **Man-made environmental crises.** Man-made crises include nuclear/chemical/biological accidents and attacks, accidental or deliberate setting of fires, and similar situations that make large areas uninhabitable and cause displacement. The accident at the Chernobyl nuclear plant in 1986, for example, resulted in the evacuation of more than 100,000 people within days. The earthquake and tsunami in Japan led to further crisis when nuclear power plants lost their capacity to cool reactors, forcing the evacuation of thousands.
- **Pandemics.** Recent experiences with the Severe Acute Respiratory Syndrome (SARS), avian flu, and the H1N1 virus indicate that pandemics can pose serious migration consequences. First identified as a disease in 2003, the SARS virus causes a form of pneumonia that results in acute breathing difficulties and may result in death. Highly contagious, SARS infected more than 8000 people in two dozen countries in Asia, Europe, and the Americas within weeks of its discovery (CDC Basic Information about SARS, May 3, 2005). Although avian influenza A viruses usually do not infect humans, since November 2003, according to the Centers for Disease Control, “nearly 400 cases of human infection with highly pathogenic avian influenza A (H5N1) viruses have been reported by more than a dozen countries in Asia, Africa, the Pacific, Europe and the Near East.” Although transmission is from poultry to humans, epidemiologists are concerned that the virus may change and allow for human to human infection. Experience with the H1N1 virus demonstrates how quickly a pandemic could spread. In April 2009, the World Health Organization declared the outbreak of influenza from the H1N1

virus to be a Public Health Emergency of International Concern. By the end of the month, 11 countries had reported confirmed incidents. One week later, the number had grown to 22 countries and by the end of May, 53 countries officially reported 15,510 cases, including 99 deaths. By the end of the year, more than 200 countries had reported cases and the death rate exceeded 12,000.

This classification system, though useful in understanding the causes of crises with migration impacts, is not composed of pure types because there are often overlaps among the factors that create disasters. For example, an acute natural hazard and political instability may intersect to drive people from their homes. In fact, as stated above, an absence of good governance is almost always one of the factors that is present when forced displacement occurs. Demographic trends, while not usually directly linked to displacement, also intersect with each of these causes to increase or decrease a population's vulnerability or resilience. The demographic composition of the affected population also helps determine whether specific households or individuals will need to migrate. These may differ, however, depending on the causation. For example, adolescent and young men may be at particular risk of forced recruitment in conflict situations, necessitating flight if they do not wish to participate in the fighting. On the other hand, the elderly and young children may be at higher risk of starvation in the case of protracted drought, as discussed below.

A second dimension of the typology is the *intensity* of the driving factors. The division is broadly between *acute crises* and *slow-onset emergencies*. The former often lead to emergency displacements that are readily defined as "forced migration" because conditions in home countries or communities are seen as the primary reasons that people leave. By contrast, the displacement generated by slow-onset situations is often seen as voluntary and often anticipatory migration and may have elements of labor migration. Slower-onset crises arise in a number of different contexts. Prolonged drought is a principal cause of displacement for millions who are reliant on subsistence agriculture and pastoralist activities. Recurrent droughts undermine livelihoods when crops fail and livestock are sold or die because of inadequate rain and depletion of other water sources. When markets do not function in a manner that allows a redistribution of food to drought-affected populations, migration becomes one of the principal ways to cope with losses caused by the environmental change. Since many of the affected populations resemble others who migrate to obtain better economic opportunities, it may be difficult to distinguish those whose loss of livelihood is environmentally-related. In worse case examples, when (for example) drought combines with conflict or other political factors to preclude food distribution in communities of origin, famine may be in the offing. When affected populations have exhausted all of their other coping capacities, they may be forced to migrate or suffer starvation. Often, children, the elderly and those with pre-existing illnesses are among the first to succumb to famine in the absence of alternatives. They are also the least likely to be able to migrate without assistance. The third dimension is *geography*—where and how the displacement takes place.

In almost all of the situations that are discussed above, most migration is internal or into neighboring countries that share a contiguous border. A smaller proportion

of the movements are to countries outside of the immediate region of the crisis. Currently, those who cross international borders are designated as ‘refugees’<sup>1</sup> or ‘international migrants’ whereas those who remain within their national borders are ‘internally displaced persons’ or ‘internal migrants.’

How migrants leave their own countries, pass through transit countries, and enter destination countries also affect designations. Some migrants may have received permission to enter another country while others travel without documentation or otherwise on an “irregular” basis. Sea-borne migrants, particularly those in small, unseaworthy boats, face dangers not only from variability in the weather but also from pirates and others who prey on them. Migrants using smugglers may be routed through multiple countries before reaching their final destination. Those crossing difficult land terrains may find themselves endangered as they attempt irregular entry across deserts and mountains. While these irregular means of transit may be common when there is political instability or natural disasters, pandemics present another geographic challenge. Airports and seaports often become the focal point for action, especially when governments establish policies to quarantine those who may be carrying the disease.

The fourth dimension relates to *timing*. The migration consequences of crises take different forms and must be addressed through different mechanisms depending on the phase of displacement or movement and its duration. Some of the causes discussed above produce protracted crises whereas others lead to more temporary dislocations. For example, some cases of political instability are quickly resolved and new governments put in place but others drag on for years with no resolution in sight. Similarly, reconstruction after some extreme natural hazards moves ahead quickly and people are able to return to their homes with little loss of livelihoods, but in other cases, return is delayed or impossible because governments have too little capacity to implement reconstruction programs, there is such great likelihood of recurrence of the same type of natural hazard, and/or the home community has been damaged beyond repair. In extreme cases, an entire country may become uninhabitable (for example, Montserrat after the volcano and potentially, small island States as a result of climate change). In these cases, return may be impossible. These phases may play out differently for different populations affected by the same triggering event depending on their personal or household circumstances. They are also not necessarily linear; for example, those who return may find themselves engulfed in new crises and experience new displacements.

Needs and frameworks differ depending on the stage of the crisis. The first stage is pre-crisis, when actions to prevent, mitigate and help individuals adapt to the causes that may force them to move take place. Of particular importance is disaster risk reduction, which involves “systematic efforts to analyse and manage the causal

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<sup>1</sup> Refugees, as discussed below, have a specific status in international law. The 1951 UN Convention Relating to the Status of Refugee defines refugees as persons who are unable or unwilling to avail themselves of the protection of their home countries because of a “well- founded fear of persecution based on their race, religion, nationality, political opinion or membership in a particular social group.”

factors of disasters, including through reduced exposure to hazards, lessened vulnerability of people and property, wise management of land and the environment, and improved preparedness for adverse events” (UNISDR 2009). Disaster risk reduction does not prevent the extreme natural hazard from occurring but it helps communities to cope with their damaging effects. In some worse case examples, the only option to reduce the risk of disaster may be relocation from fragile areas.

Identifying and addressing demographic and socio-economic vulnerabilities is essential since the “characteristics and circumstances of a community, system or asset ... make it susceptible to the damaging effects of a hazard” (UNISDR 2009). Meeting the Sustainable Development Goals would have positive impact in enhancing the ability of people to cope with crises in situ. More broadly, economic, social and human development—with the aims of reducing poverty, increasing access to livelihoods, education and literacy, improving health outcomes, maintaining sustainable environments, etc.—will reduce long-term emigration pressures while giving people increased human security. Appropriate interventions will depend on the demographics of the affected populations.

Equally important, given the highly political nature of many of these emergencies, are efforts to improve governance in countries that are prone to crises. Effective governance not only helps mitigate the risks associated with natural and human made hazards (through such preventive actions as earthquake-resistant building codes or public health measures to lessen pandemic risks) but it also helps reduce tensions that can escalate into conflict. Early warning mechanisms can help trigger conflict resolution and mediation processes to reduce the potential for communal or political violence.

The second stage is the migration itself, with rights and needs differing depending on the form and stage of migration as well as the demographic and socio-economic composition of those who move. Those who have recently migrated will generally have greatest need for such basics as housing, employment, orientation to the social, cultural and political norms of the destination, and some knowledge of the host country’s language.<sup>2</sup> Over time, those who remain in the destination may have need for assistance to integrate more fully into the host community—for example, skills training to move up the economic ladder, language training and civics education if required for citizenship, services for their children, etc. Those who return to their home countries or communities may have needs very similar to what they had at the early stages of their movement. The decision as to whether return is possible involves a range of variables, including the extent, for example, to which the causes—either direct or through other channels—are likely to persist. Policies in the receiving communities and countries, depending on whether the migration is internal or international, will also affect the likelihood for return or settlement in the new location. In addition to immigration policies, the policies affecting return and settlement include land use and property rights, social welfare, housing, employment

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<sup>2</sup>For more information and examples of the life cycle of crisis migration, see Susan Martin, Sanjula Weerasinghe and Abbie Taylor, eds. (2014) *Humanitarian Crises and Migration: Causes, Consequences and Response*. Routledge.



and other frameworks that determine whether individuals, households and communities are able to find decent living conditions and pursue adequate livelihoods (Brookings Institution 2010).

The final stage of the life cycle involves (re)integration into the home community or new location. The issues outlined above regarding the potential for solutions will be key determinants of integration, influencing the access of displaced populations to housing, livelihoods, safety and security. These needs will vary depending on the demographic and socio-economic composition of the groups returning home or settling in new locations. Integration is also affected by plans and programs to mitigate future dislocations from the hazards that caused the movements, coming full circle on the life cycle to a focus on prevention, adaptation and risk reduction.

The fifth dimension of this typology refers to the *affected populations*. Responses may differ in terms of scale—that is, how many people are affected by the crisis. They also differ by the demographic and socio-economic characteristics of the affected populations. Generally, those most vulnerable to the harms associated with crises of the type described are already in difficult economic situations, with few financial resources to get them through the crisis. Unaccompanied and separated children, women at risk of gender and sexual based violence, adolescents at risk of forced recruitment into gangs and insurgencies, ill and disabled persons, the elderly and other vulnerable groups may require specific approaches to ensure their safety. Trafficking in persons is often associated with crises, with criminal elements preying on the desperation of people who have lost their homes and livelihoods.

## 14.3 Legal and Policy Frameworks

This section focuses on laws and policies for addressing the migration consequences of the types of crises discussed previously. The section focuses on frameworks governing migration *across* borders, including general human rights instruments as well as migration-specific instruments. It also discusses legal frameworks for protection and assistance of internally displaced persons as they provide useful guidance for issues related to protection and assistance for those who move across international borders (Fig. 14.2).

### 14.3.1 *International and Regional Instruments*

States possess broad authority to regulate the movement of foreign nationals across their borders. Although these authorities are not absolute, States exercise their sovereign powers to determine who will be admitted and for what period. The authority of States is limited by certain rights accorded foreign nationals in international law.



- Universal Declaration of Human Rights—free mobility within States and right to leave and re-enter one’s own country; right to seek and enjoy asylum (no government has obligation to provide asylum or to admit those seeking entry)
- General Human Rights Conventions, including International Covenant on Civil and Political Rights, International Covenant on Economic and Social Rights, Convention on the Rights of the Child, Convention on Racial Equality, Convention on the Elimination of All Forms of Discrimination Against Women
- “Voluntary” Migration Conventions, including Convention on the Rights of All Migrant Workers and Members of their Families International Labor Organization conventions (poorly ratified)
- Involuntary Displacement Instruments, including Convention Relating to the Status of Refugees (strong ratifications), and Humanitarian Law (Laws of War) Common Article 3 on civilian protection (strong ratifications but poor enforcement). African Union (AU) Convention Governing Specific Aspects of Refugee Problems in Africa, AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa, Cartagena Declaration on Refugees
- Both: Convention to Combat Organized Crime’s Protocols on Smuggling and Trafficking (strong ratifications but focus on enforcement, not protection)

**Fig. 14.2** International and regional legal instruments

The principal constraints on state authority are the non-*refoulement* provisions of the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol<sup>3</sup> and the 1985 Convention against Torture. Some migrants in the scenarios described above may be covered under these instruments. The Refugee Convention defines refugees as persons who were unable or unwilling to avail themselves of the protection of their home countries because of a “well-founded fear of persecution based on their race, religion, nationality, political opinion or membership in a particular social group.” States have no obligation to admit refugees, but they do have an obligation not to *refoule* (return) a refugee to “frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” In each of the crises discussed above, a subset of migrants may meet the refugee definition although the majority are unlikely to be able to demonstrate that they fear persecution on account of a protected characteristic (that is, race, religion, nationality, membership of a particular social group or political opinion), rather than a more generalized harm.

The *refoulement* provision of the Convention against Torture applies to persons who face “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acqui-

<sup>3</sup>The protocol eliminated geographic (that refugees be from Europe) and time (pre-1951) time limits on the Convention, making it a universal document.

escence of a public official or other person acting in an official capacity.” Particularly in the situations in which political instability and violence precipitate displacement, a subset of migrants may well meet this definition even if the majority does not have a well founded reason to fear torture upon return.

In Africa, the scope of coverage for refugees is greater because the 1969 OAU (now AU) Refugee Convention includes those who, “owing to external aggression, occupation, foreign domination or *events seriously disturbing public order in either part or the whole of his country of origin or nationality* (emphasis added), is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.” The Cartagena Declaration (a non-binding agreement) offers a similar expanded definition of refugees in Latin America: “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.” To the extent that a crisis involves generalized violence, massive violations of human rights or seriously disturbs public order, persons forced to leave their homes because of the crises described above may be covered under the AU and Cartagena instruments, while they would not be under the 1951 Convention. The new AU Convention on Internally Displaced Persons goes even further in specifying that those displaced by natural and human made disasters are covered.

Those who are forced to migrate, but who are not considered to be refugees or potential torture victims, have certain basic rights even if they are not covered under these specific instruments. The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic and Social Rights, for example, define certain rights that accrue to all persons, not just citizens.<sup>4</sup> Importantly, the Universal Declaration Article 13, which is enshrined in Article 12 of the International Covenant on Civil and Political Rights, declares that “everyone has the right to leave any country, including one’s own, and to return to one’s own country.” The Universal Declaration Article 14 states that “everyone has the right to seek and to enjoy in other countries asylum from persecution.” In neither situation, however, is there a corresponding obligation on the part of States to admit those who exercise their right to leave or to seek asylum. Other applicable human rights conventions include the International Covenant on Social, Economic and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Rights of Persons with Disabilities.

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<sup>4</sup>They include: the right to life, liberty and security; the right not to be held in slavery or servitude; the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment; the right not to be subjected to arbitrary arrest, detention or exile; freedom of movement and residence within the borders of each State; the right to marry and to found a family; and the right to work, free choice of employment and just and favourable conditions of work. These rights are provided without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property or birth (Art 2 of the Universal Declaration).

These instruments and relevant articles of the 1949 Geneva Conventions on armed conflict form the basis for the Guiding Principles on Internal Displacement. Although not legally binding, the Guiding Principles provide a critical framework for defining and promoting IDP protection. Under the Guiding Principles, IDPs are described as:

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual 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, and who have not crossed an internationally recognized stated border.

The Guiding Principles identify the rights and guarantees relevant to the protection of IDPs in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement, and set forth guarantees for safe return, resettlement and reintegration. They also establish the right of IDPs to request and receive protection from national authorities, and the duty of these authorities to provide protection.<sup>5</sup> African leaders adopted the AU Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) in Africa at a summit in 2009. It went into force in 2012.

Forced migrants who use irregular means of exit or entry may be covered under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air, both of which supplement the United Nations Convention against Transnational Organized Crime and went into force in December 2003 and January 2004, respectively. Within a few years of their adoption, the trafficking and smuggling protocols have garnered considerable support, with more than 100 signatories and 67 and 59 parties, respectively. These instruments apply respectively to “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” and “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.” Trafficking requires coercion or deception as well as exploitation of the labour of the trafficked person, whereas smuggling is usually a voluntary agreement between the migrant and the smuggler in which the migrant gains irregular entry and the smuggler gains a financial benefit. Under certain conditions—for example, when the smuggled migrants is placed in bondage to pay off his or her smuggling fees—smuggling may turn into trafficking. Those affected by crises are often more vulnerable to exploitation by both smugglers and traffickers, particularly if they are desperate to leave dangerous places with few options to support themselves and their families.

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<sup>5</sup> Guiding Principles on Internal Displacement, principle 3.

The UN Convention on the Law of the Sea has provisions applicable to persons in distress at sea, which can include sea-borne migrants. Under the convention, “State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers: (a) to render assistance to any person found at sea in danger of being lost; (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him; (c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.” The convention also has provisions that outlaw piracy, defined as “any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

- (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
- (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.”

The rights of those displaced by natural hazards have not been spelled out in international or regional law as has been the case with those affected by political events. Nevertheless, UN guidance provided to state authorities regarding displacement due to natural disasters, while not binding international law, is relevant to the issues covered in this chapter. *Human Rights and Natural Disasters: Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster* (Brookings-BERN Project 2008), issued by the UN Emergency Relief Coordinator and the Secretary General’s Special Representative on Internally Displaced Persons, defines the conditions for the voluntary return of displaced persons:

...the return of persons displaced by the disaster to their homes and places of origin should only be prohibited if these homes or places of origin are in zones where there are real dangers to the life or physical integrity and health of the affected persons. Restrictions should only last as long as such dangers exist and only be implemented if other, less intrusive, measures of protection are not available or possible.

Conversely, those who are internally displaced by natural disasters (who have freedom of movement within their borders) should not be required to return to areas in which their safety may be compromised: “Persons affected by the natural disaster should not, under any circumstances, be forced to return to or resettle in any place where their life, safety, liberty and/or health would be at further risk” (Brookings-BERN Project 2008).

Also relevant are the provisions of the *Sendai Framework for Disaster Risk Reduction: 2015–2030* that encourages greater cooperation in reducing the risks associated with disasters. The disaster risk reduction (DRR) strategies adopted in the Sendai Framework do not provide great specificity with regard to displacement from disasters aside from recommending that development actors include displaced

persons in efforts to “promote the incorporation of disaster risk management into post-disaster recovery and rehabilitation processes, facilitate the link between relief, rehabilitation and development, use opportunities during the recovery phase to develop capacities that reduce disaster risk in the short, medium and long term.” (UNISDR 2015). Nevertheless, the overall concept of disaster risk reduction would significantly lessen displacement by providing the tools with which people could remain in situ or return quickly when acute natural hazards strike.

Progress was made in 2015 and 2016 in filling some of the protection gaps. In 2015, the Conference of the Parties (COP) of the UN Framework Convention on Climate Change (UNFCCC) authorized establishment of a Task Force with its processes to identify ways to mitigate and respond to displacement. The State-led Nansen Initiative on cross-border disaster displacement issued an Agenda for Protection that spells out actions that governments can take today to provide humanitarian relief to persons requiring either admission or non-return in these contexts. Its successor, the Platform for Disaster Displacement, funded by the German government, is helping willing states adopt some of the proposed policies and programs. Another State-led process, the Migrants in Countries in Crisis (MICIC) initiative adopted principles, guidelines and effective practices to respond to the needs of non-nationals who are displaced by natural disasters and conflict. The 2016 UN High Level Meeting on Large-Scale Movements of Refugees and Migrants acknowledged the Nansen and MICIC Initiatives, recommending them as models for filling other gaps in protection for vulnerable migrants.

Taken together, however, the provisions in international law do not constitute a comprehensive framework for addressing forced migration that does not fit within the refugee context. They are particularly weak in reference to those who cross international borders during crises. Rather, each displacement tends to be addressed on a case-by-case basis. Whether there should be a stronger international legal framework to address non-refugee forced migration is a point that would certainly generate debate. There are a number of reasons that such a framework would be difficult to achieve. Trying to identify legal standards for a broad range of potential drivers of forced migration which may have little in common with one another would present challenges, particularly in setting out appropriate criteria for determining who among forced migrants would merit specific forms of protection. See Conclusions for further discussion of these issues.

### ***14.3.2 National Legal and Policy Frameworks and Practices for Addressing Forced Migration***

The immigration policies of most destination countries are not conducive to receiving large numbers of forced migrants, unless they enter through already existing admission categories or meet refugee criteria. Typically, in non-crisis situations, destination countries admit persons to fill job openings or to reunify with family

members. Employment-based admissions are usually based upon the labour market needs of the receiving country, not the situation of the home country. Family admissions are usually restricted to persons with immediate relatives (spouses, children, parents and, sometimes, siblings) in the destination country. At the same time, most overtly humanitarian admissions are generally limited to refugees and asylum seekers. Many, if not most forced migrants, however, will be unlikely to meet the legal definition of a refugee since their lives are endangered for reasons that do not involve persecution on the basis of a protected characteristic such as race, religion, nationality, membership in a particular social group or political opinion.

Despite these limitations, there are both legislative and ad hoc policies that do permit governments to respond when there are crises that provoke migration. They fall into three categories: (1) policies that permit migrants already on the territory of the destination country to remain for at least a temporary period; (2) policies to respond to new movements of people leaving either directly or indirectly as a result of the crisis; and (3) evacuation of citizens and selected others from crisis affected countries.

#### **14.3.2.1 Temporary Stays of Removals**

Some countries and the European Union have established special policies that permit individuals whose countries have experienced natural disasters, conflicts, pandemics or other severe upheavals to remain at least temporarily without fear of deportation. The United States, for example, enacted legislation in 1990 to provide temporary protected status to persons “in the United States who are temporarily unable to safely return to their home country because of ongoing armed conflict, an environmental disaster, or other extraordinary and temporary conditions.” Environmental disaster may include “an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected.” In the case of environmental disasters, as compared to conflict, the country of origin must request designation of Temporary Protected Status (“TPS”) for its nationals.

Those granted TPS are eligible to work in the United States. They are not considered to be residing under color of law, however, for purposes of receiving social benefits and they are not able to bring family members into the country to join them. Importantly, TPS only applies to persons already in the United States at the time of the designation. It is not meant to be a mechanism to respond to an unfolding crisis in which people seek admission from outside of the country. It also only pertains to situations that are temporary in nature. If an environmental disaster has permanent consequences, for example, a designation of Temporary Protected Status is not available, even for those presently in the United States, or it may be lifted. When the volcano erupted in Montserrat in 1997, TPS was granted to its citizens and was extended six times. In 2005, however, it was ended. US Citizenship and Immigration Services in the Department of Homeland Security explained “that the termination of the TPS designation of Montserrat is warranted because the volcanic activity caus-

ing the environmental disaster in Montserrat is not likely to cease in the foreseeable future. Therefore, it no longer constitutes a temporary disruption of living conditions that temporarily prevents Montserrat from adequately handling the return of its nationals. Similarly, the conditions are no longer “extraordinary and temporary” as required by section 244(b)(1)(C) of the Act.”<sup>6</sup>

Another significant factor is that the designation is discretionary, to be made by the Secretary of Homeland Security in consultation with the Secretary of State. Countries or parts of countries are designated, allowing nationals only of those countries (or affected regions within them) to apply. A further issue is the difficulty of ending the status. Although some early proponents of TPS argued that it was temporary in the sense that it would allow time to determine whether those granted the status could return or should be granted legal permanent residence, the legislation makes it difficult for them to remain permanently with full rights of immigrants. If *individuals* granted TPS otherwise meet the criteria for legal admissions as an immigrant, they are eligible to obtain permanent residence without leaving the United States. If it were determined, however, that as a *group* they cannot return home, special legislation would be needed to allow them to remain permanently. The legislation specifies that such legislation would require a super-majority (three-fifths) of Senators for passage.

TPS has proven to be a flexible mechanism for responding to a range of crises, from conflict (Somalia, Sudan, South Sudan, Syria and Yemen) to acute natural disasters (El Salvador, Haiti Honduras, Nepal and Nicaragua) to pandemics (Guinea, Liberia and Sierra Leone). At the same time, lifting temporary protected status has proven to be very difficult as well. TPS was originally triggered by the earthquakes in El Salvador (2001) and Hurricane Mitch (1998) in Honduras and Nicaragua, meaning that some of the beneficiaries have been in ‘temporary’ status for almost 20 years.

Canada may declare a temporary suspension of removals “when a country’s general conditions (for example, war or a natural disaster) put the safety of the general population at risk.” According to regulation, “the guiding principle of generalized risk is that the impact of the catastrophic event is so pervasive and widespread that it would be inconceivable to conduct general returns to that country until some degree of safety is restored. The suspension order is lifted when country conditions improve and the public is no longer in danger.” For example, the suspension of removal was lifted in 2009 for nationals of Burundi, Rwanda and Liberia. Recognizing that some had been in Canada for an extended period, these nationals were given the opportunity to apply for humanitarian and compassionate consideration for permanent residence in Canada. Such considerations as the best interests of any child directly involved, establishment in Canada, integration into Canadian society, and other factors put forward by the applicant are taken into account in determining if an applicant will be permitted to remain in Canada. Canada also

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<sup>6</sup>See USCIS, Termination of TPS for Nationals of Montserrat, July 6, 2004, available at [http://www.uscis.gov/files/pressrelease/MontserratQATPS\\_7\\_6\\_04.pdf](http://www.uscis.gov/files/pressrelease/MontserratQATPS_7_6_04.pdf)



undertakes a Pre-Removal Risk Assessment in determining if persons denied asylum would be at risk of other serious harm if removed to their country of origin.

A number of other countries provide exceptions to removal on a group or case by case basis for persons whose countries of origin have experienced significant disruption because of natural disasters, conflict and violence. After the 2004 tsunami, for example, Switzerland, the United Kingdom and Malaysia suspended deportations of migrants from such countries as Sri Lanka, India, Somalia, Maldives, Seychelles, Indonesia and Thailand. A number of governments announced similar plans after the 2010 earthquake in Haiti (Martin 2012). Germany uses the “*Duldung*,” a toleration permit when emergent conditions preclude immediate return (Schönwälder and Vogel 2006). These actions are generally *ad hoc*, allowing governments to respond differentially to crises. The decisions to trigger such responses is based on a combination of factors, including the intensity of the crisis, geographic proximity, the assessment of whether stays of removal will become a magnet for new arrivals, the presence of a strong constituency group within the destination country that calls for stays of removal and other similar factors.

Return of migrants granted temporary stays of removal remains problematic in many crises. Protracted crises are common, particularly in countries without the fiscal resources and governance structures necessary to reintegrate their citizens after an emergency. Moreover, over time, migrants begin to integrate into the new destination country, developing equities and ties that make the decision to return difficult. This is particularly the case when migrants granted temporary stays have children who attend school, learn the host country language and develop friendships and ties with local populations. Some efforts have been made to facilitate or assist return when conditions permit. After the Dayton Peace Accord, for example, a number of countries offered aid to Bosnians who had been granted temporary protection if they chose or were required to repatriate. For example, Denmark and Sweden funded Bosnians to take ‘look and see’ visits home to determine if conditions had improved sufficiently to return permanently. These countries and other EU members provided financial assistance to help those who voluntarily returned and provided information services about the right to remain or return. Similar programs were used in assisting Kosovars to return home.

#### 14.3.2.2 Addressing Mass Influxes and New Flows of Migrants

At the European Union level, the Temporary Protection Directive dated 20 July 2001 establishes temporary protection during “mass influxes.” With crises in Bosnia and Kosovo freshly in mind, the 1999 European Council meeting in Tampere urged swift action in addressing the issue of “temporary protection for displaced persons on the basis of solidarity between Member States.”<sup>7</sup> The directive itself notes that “Cases of mass influx of displaced persons who cannot return to their country of

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<sup>7</sup> See Tampere European Council, Presidency Conclusions, 15 and 16 October, 1999 available at <http://www.unhcr.org/refworld/pdfid/3ef2d2264.pdf>

origin have become more substantial in Europe in recent years. In these cases, it may be necessary to set up exceptional schemes to offer them immediate temporary protection.” The purpose of the directive is twofold: to establish minimum standards for giving temporary protection and “to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons.” Temporary Protection applies to persons who have fled areas of armed conflict or endemic violence and persons at serious risk of, or who have been the victims of, systematic or generalized violations of their human rights. Member States may apply temporary protection more broadly to other categories of persons affected by crises.

Unlike TPS in the United States, Temporary Protection in the EU is envisioned as a mechanism to address mass influxes, not to protect already resident migrants from removal. It can apply to those who spontaneously arrive as well as to those who are evacuated from situations in which they face serious harm. It is seen as a substitute for asylum in cases when “the asylum system will be unable to process this influx without adverse effects for its efficient operation.” Since its adoption in 2001, Temporary Protection has not been invoked, at least in part because of different views among member countries concerning what constitutes a mass influx and of concerns about whether it will be practicable to return those granted this status when it expires.<sup>8</sup> On April 8, 2011, the European Commission set out criteria under which it would ask for its use: “The Commission would also be ready to consider proposing the use of the mechanism foreseen under the 2001 Temporary Protection Directive (2001/55/EC), if the conditions foreseen in the directive are met. Consideration could only be given to taking this step if it is clear that the persons concerned are likely to be in need of international protection, if they cannot be safely returned to their countries-of-origin, and if the numbers of persons arriving who are in need of protection are sufficiently great.”<sup>9</sup> However, in the context of the mass movements in 2015 from Syria, Afghanistan, Iraq and elsewhere, the EU refrained from triggering a response under this directive and sought, often unsuccessfully, to negotiate responsibility-sharing agreements outside of the framework (Akkaya 2015).

Nevertheless, some of the provisions of the directive are worth considering for future policymaking. Individuals who would be granted the status are to receive a residence permit for the duration of the grant. Member states are to ensure access to suitable accommodations, social benefits and education. Those granted temporary protection are eligible to work or be self-employed but States may give priority for employment to EU citizens, citizens of the European Economic Area and legally resident third country nationals who receive unemployment benefit. There is also

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<sup>8</sup>Proposals were made to use the directive or otherwise share the burden across the EU when the number of Iraqi asylum seekers increased significantly after sectarian violence escalated in 2006.

<sup>9</sup>The European Commission’s response to the migratory flows from North Africa, MEMO/11/226, Brussels, 8 April 2011, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/226&format=HTML&aged=0&language=en&guiLanguage=en>

access to family reunification as long as the family relationship predated the grant of temporary protection.

While the Temporary Protection Directive addresses mass influx situations, asylum law and policies govern individual applications for protection. EU Directive allows for subsidiary protection for a person who does not qualify as a refugee but in respect of whom “substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin ... would face a real risk of suffering serious harm.” Serious harm includes situations in which there is a serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict. Those granted subsidiary protection have a less secure status than those granted Convention protection (for example, their residence permit is for one instead of three years).

The EU-wide provisions do not explicitly address crises caused by natural or human made hazards but individual countries have adopted legislation that protects some categories. Sweden includes within its asylum system persons who are unable to return to their native countries because of an environmental disaster. The decision is made on an individual, not group basis. Although many recipients of this status are presumed to be in temporary need of protection, the Swedish rules foresee that some persons may be in need of permanent solutions. Similarly, in the Finnish Aliens Act, “aliens residing in the country are 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.” Finnish law also allows use of transit centres for a fixed term, not to exceed three months, if the number of displaced persons entering the country is exceptionally high, to give time to conduct thorough processes for registration. This provision has not yet been invoked.

Governments often anticipate departures during crises and establish policies to deter or intercept migrants leaving countries of origin or transit countries. A common response has been to impose visa requirements on nationals of countries in crisis. Visas help to screen out those who purport to be coming as tourists or business travellers but who intend to stay for longer periods. Air and other carriers have the responsibility to check that international travellers have proper documentation before they are permitted to board the plane or ship.

In numerous cases, migrants attempt to enter destination countries clandestinely, across land borders and by sea. The United States, Australia and countries in the European Union have intercepted boats that were headed for their shores during crises. In many cases, the boats are unseaworthy and the interception is justified on humanitarian as well as border control bases. What to do with those who are intercepted, particularly those who are rescued at sea, can be a complicated issue. Bringing these individuals to the territory of the states that interdict the migrants can serve as a magnet that encourages still more people to risk dangerous crossings. Returning them to dangerous situations in their home country could have equally deleterious humanitarian ramifications. Obviously, leaving them on unseaworthy vessels would be inhumane.

One option that governments have tried is off-shore protection for those who are intercepted. The United States, for example, used Guantanamo Naval Base in the

1990s to provide temporary protection to Haitians and Cubans, rather than returning them into unsettled conditions. In the case of Haiti, most of those provided temporary safe haven returned home when the elected President of Haiti was returned to office. By contrast, most of the Cubans were eventually resettled into the United States, but Cuba and the United States signed a migration agreement that provided alternative mechanisms for legal immigration from Cuba and a commitment from the Cuban government to curb boat departures. Australia has established off-shore processing centres in Nauru and Papua New Guinea with the aim of curtailing access to asylum in Australia. Those found to have valid refugee claims would remain in those countries or be resettled elsewhere. The UN Human Rights Council, among others, has criticized the policy, especially for the harsh treatment and poor living conditions of asylum seekers in these other countries (Millar 2015).

### 14.3.2.3 Evacuation and Resettlement

A further range of policies pertain to people who are endangered in the countries in crisis or in neighbouring countries and who are evacuated to other states for safety. The most common form of evacuation is of citizens who are caught in the middle of a crisis. In recent cases, governments have evacuated their citizens from earthquake, tsunami, cyclone and flood affected areas (e.g., Japan, Haiti, Pakistan and Indonesia) or conflict zones (e.g., Cote d'Ivoire, Lebanon, Libya, Syria and Yemen).

When governments evacuate their nationals, decisions must be made about accompanying family members who are not citizens of the evacuating country. Although many countries will evacuate non-national spouses and minor children of citizens, they will not necessarily feel a similar obligation to parents, siblings and other relatives of citizens. Nor do they necessarily evacuate persons such as household servants who may be highly dependent on the citizens for their protection and support. Immigration authorities use various *ad hoc* measures to admit the non-national family members to their territory.

In some cases, migrants are working in such countries and an international effort is made to evacuate them to their home countries, either from the country in crisis or a nearby location that they have reached. The 2011 evacuation of thousands of migrant workers from Libya and Cote d'Ivoire and their bordering countries are such examples. While the majority of these migrants were able to return safely to their home countries, a minority were unable or unwilling to return because of concerns about their safety in the country of origin. The evacuations share many similarities with other forced migration situations. Migrants evacuated home may face problems of reintegration and lost income. Those who are unable to repatriate because of unsafe conditions at home will be in need of relocation to other countries. If they do not meet Convention refugee criteria (that is, the unsafe conditions do not involve their own fear of persecution), neighbouring countries may be unwilling to provide asylum and there may be limited opportunities for resettlement in third countries.

In rare cases, evacuations of large groups of vulnerable persons have been supported by the international community. The clearest case was the humanitarian evacuation of Kosovars in 1998. In order to convince the countries of first asylum to keep their doors open to Kosovars, other countries agreed to bring some of them to their countries at least temporarily. With the assistance of the UN High Commissioner for Refugees, more than 90,000 Kosovars were evacuated to 28 countries. Many of the participating countries set up reception facilities for the evacuees. When the fighting ended and Serb forces withdrew from Kosovo, many of the evacuated returned to their homes. The Kosovars were admitted without determining if they individually met the refugee definition, distinguishing this program from refugee resettlement initiatives that have been used to support first asylum in other contexts.

There are fewer mechanisms for permanent admission of people during non-refugee crises. A number of countries accelerate or facilitate processing of visas during crises so that those who otherwise would be admissible for permanent residence are able to enter. Canada, for example, gave priority to processing visas for persons directly and significantly affected by the Haitian earthquake. It also established a satellite office in the Dominican Republic and sent additional visa and control officers to the region. The United States, Canada, the Netherlands, and France put in place special provisions that accelerated the entry of Haitian orphans who had been approved for adoption prior to the earthquake. In the context of the Syrian refugee crisis, the EU has been considering a humanitarian visa through which asylum seekers could enter a member state and have the application heard in situ (Neville and Rigon 2016).

Finally, a number of governments have permanently resettled discrete categories of vulnerable persons for humanitarian purposes. Australia, for example, introduced the locally engaged employee policy, which enabled the permanent resettlement of Iraqis and Afghans who had been employed by the Australian government in their home countries. The United States instituted similar programs that permitted resettlement without regard to whether the employee met refugee criteria. Australia and Canada also consider applications for humanitarian visas from other persons who consider themselves to be at risk. In Australia's program, the individual must show that they are subject to substantial discrimination.

#### **14.4 Institutional Arrangements for Addressing Forced Migration**

Just as the legal frameworks for addressing forced migration in all of its manifestations are weak, so are the institutional roles and responsibilities at the international level. With the exception of the refugee regime, in which clear responsibility is given to the UN High Commissioner for Refugees, there is no existing international regime for managing international movements of people. This is not to say that

there is a total absence of governance. There are a plethora of international, regional and national organizations that have some responsibilities related to forced migration. The mandates and effectiveness of these institutions in addressing forced migration varies greatly.

### ***14.4.1 Institutional Arrangements at the International and Regional Levels***

At the international and regional levels, there is a lack of clear authority for addressing new forms of displacement that do not fit into existing mandates. The institutional arrangements differ somewhat based on whether the displacement is internal and can be addressed within the territory of the affected country or is cross border and affects other countries.

#### **14.4.1.1 Internal Displacement**

As discussed above, most displacement is internal. To the extent that institutional arrangements within countries affected by crises fail to provide adequate protection and assistance, cross-border movements may increase. Institutional arrangements to mitigate crises in situ are thus highly relevant to understanding how forced displacement might be mitigated. At present, the international response to humanitarian crises is based on the cluster approach. The UN High Commissioner for Refugees is the cluster lead for protection (focusing on conflict-induced displacement) as well as for the emergency shelter and camp management clusters. The International Organization for Migration has responsibility for camp management in the context of natural disasters. The situation is less clear cut with regard to protection of those displaced by natural disasters. UNHCR, the Office of the High Commissioner for Human Rights (OHCHR) and UNICEF have all been designated as having protection responsibilities in natural disasters (Global Protection Cluster 2017). In practical terms, IOM often takes on this responsibility because of its role in camp management.

Cluster leads have relatively little authority over other international organizations during these crises. The Interagency Standing Committee (IASC) Guidance Note on Using the Cluster Approach explains; “the role of sector leads at the country level is to facilitate a process aimed at ensuring well-coordinated and effective humanitarian responses in the sector or area of activity concerned. Sector leads themselves are not expected to carry out all the necessary activities within the sector or area of activity concerned. They are required, however, to commit to being the ‘provider of last resort’ where this is necessary and where access, security and availability of resources make this possible” (IASC 2006). The Note recognizes that “The ‘provider of last resort’ concept is critical to the cluster approach, and without

it the element of predictability is lost” (IASC 2006). For agencies with technical leads (e.g., health, nutrition, water and sanitation), the ability of the lead agency to take on responsibility is straightforward. However, the Note is more circumspect regarding the leadership for cross-cutting areas such as Protection, Early Recovery and Camp Coordination: “The concept of ‘provider of last resort’ will need to be applied in a differentiated manner. In all cases, however, sector leads are responsible for ensuring that wherever there are significant gaps in the humanitarian response they continue advocacy efforts and explain the constraints to stakeholders” (IASC 2006).

The cluster approach has had mixed results in filling gaps in the institutional framework for addressing the full range of issues pertaining to those who are internally displaced by the type of drivers discussed above. Certainly, the willingness of UNHCR to be the ‘provider of last resort’ in the protection of conflict induced IDPs is a critical issue. The numbers demonstrate a clear increase in UNHCR’s involvement with IDPs. UNHCR reported that it helped 32.3 million of an estimated 38.2 million internally displaced persons in 2014, as compared to only 4.3 million out of an estimated 22 million in 1995 (UNHCR 2014; Internal Displacement Monitoring Centre 2015). Nevertheless, there are continuing concerns about the nature of the response. For example, a Brookings Institution report concluded: “While humanitarian reform has improved operational short-term response, it has had little effect on either protecting people from new displacement or in finding solutions for those displaced. Questions of access and staff security continue to be the major limitations in protecting and assisting IDPs” (Brookings Institution 2014). The report called for reinvigoration of efforts to protect IDPs.

During this period, UNHCR also began responding, albeit in an ad hoc way, to forced migration stemming from causes other than persecution or conflict. Although UNHCR has limited its cluster leadership to conflict-induced internal displacement, it has nevertheless been drawn into providing assistance during several notable natural disasters. In the *State of the World’s Refugees*, UNHCR explained its involvement in tsunami relief: “The sheer scale of the destruction and the fact that many of affected populations were of concern to the organization prompted the move. Responding to requests from the UN Secretary-General and UN Country Teams, UNHCR concentrated on providing shelter and non-food relief. In Sri Lanka, UNHCR’s presence in the country prior to the tsunami allowed for a comparatively swift and sustained humanitarian intervention – including efforts focused on the protection of internally displaced persons” (UNHCR 2006, 21). UNHCR also assisted tsunami victims in Somalia and Aceh, Indonesia, pointing out: “The protection of displaced populations was especially urgent in areas of protracted conflict and internal displacement in Aceh, Somalia and Sri Lanka. Furthermore, there was concern for some affected populations whose governments declined offers of international aid, such as the Dalits (formerly known as untouchables) of India and Burmese migrant workers in Thailand; it was feared they might be discriminated against and their protection needs compromised” (UNHCR 2006, 21). UNHCR was also involved in the international response to Cyclone Nargis in Burma and China and Haiti’s earthquakes, providing shelter and supplies.



### 14.4.1.2 International Movements

UNHCR is the lead international agency with responsibility for refugees who have crossed international borders. Founded in 1950, UNHCR was charged from the beginning to find solutions for refugees, generally in the form of voluntary repatriation when conditions permitted, integration into a country of asylum, or resettlement to a third country. Because those solutions were often not forthcoming, UNHCR's day-to-day activity was generally to provide assistance to those who were unable to return, integrate or resettle.

UNHCR's responsibility for cross-border displacement has grown since its founding, from a focus on refugees and displaced persons from World War II and the emerging Cold War to a focus on delivering humanitarian aid to refugees in developing countries affected by international and internal conflicts. It continued to advocate for protection and solutions for refugees throughout the world. Its role has been limited, however, in addressing the situation of those who migrate internationally because of non-persecution or non-conflict reasons. UNHCR has, however, demonstrated increased interest in mixed migration. As stated in its 10 point plan, UNHCR recognizes that situations "in which people with different objectives move alongside each other, using the same routes and means of transport or engaging the services of the same smugglers, can raise serious protection concerns." The concept of mixed migration seems to be rooted in the assumption that the mix is between refugees and economic migrants and deals very little with other forced migrants. The 10 point plan does not address situations in which people are migrating for a mix of reasons that include extreme natural hazards, except for one mention of migrants from Aceh in Malaysia, or political or communal violence, except for one mention of Mexican migrants leaving because of domestic or other violence. In effect, it does little to help address situations in which crises precipitate movements that do not fit into the refugee framework but raise serious humanitarian considerations.

The potential for mass displacement from climate change is also an issue that occupied the then High Commissioner Antonio Guterres' attention: "When we consider the different models for the impact of climate change, the picture is very worrying. The need for people to move will keep on growing. One need only look at East Africa and the Sahel region. All predictions are that desertification will expand steadily. For the population, this means decreasing livelihood prospects and increased migration. All of this is happening in the absence of international capacity and political will to respond" (Guterres 2007). Then Assistant High Commissioner for Protection, Erika Feller, summarized the dilemma before the Executive Committee: "New terminology is entering the displacement lexicon with some speed. The talk is now of "ecological refugees", "climate change refugees", the "natural disaster displaced". This is all a serious context for UNHCR's efforts to fulfill its mandate for its core beneficiaries.... The mix of global challenges is explosive, and one with which we and our partners, government and non-government, must together strike the right balance" (Feller 2008). Thus far, however, there has been no inclination on the part of the Executive Committee for UNHCR to become

involved with those who cross borders because of natural disasters or climate change. Instead, following the commemoration of the 60th anniversary of UNHCR, the governments of Switzerland and Norway established the Nansen Initiative to generate further discussion.

The international organization with the longest and most sustained focus on international migration is the International Organization for Migration. IOM's Constitution sets out its role as a service organization operating on behalf of states. Its first two purposes and functions pertain to its original role in making arrangements for the transfer of migrants, refugees and displaced persons. IOM provides, at the request of and in agreement with the States concerned, migration services such as recruitment, selection, processing, language training, orientation activities, medical examination, placement, activities facilitating reception and integration, advisory services on migration questions, and other assistance as is in accord with the aims of the Organization. It also assists in voluntary return migration, including voluntary repatriation.

IOM's constitution also gives it a role to provide a forum to States as well as international and other organizations for the exchange of views and experiences, and the promotion of co-operation and co-ordination of efforts on international migration issues, including studies on such issues in order to develop practical solutions. In respect to this last function, it has launched a policy dialogue with governments on policy issues. Importantly, the organization has expanded significantly in terms of both staff and membership, which includes more than 130 member states and observers. IOM has been a focal point for discussion of forced migration since 1992 when it co-hosted a series of consultations on the interconnections between the environment and migration, in the context of the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro. As discussed above, IOM has also taken on lead responsibility for camp management in natural disasters.

In the area of pandemics, IOM's health program offers Travel Health Assistance to manage conditions of public health concern as individuals move across geographical, health system and epidemiological boundaries. These include pre-embarkation checks and pre-departure medical screenings to assess a migrant's fitness to travel and/or to provide medical clearance. These measures also ensure that migrants are linked to and given appropriate referrals to medical services once they have arrived in their destination countries. Migrants who need medical assistance and care during travel are escorted by health professionals to avoid complications during transit. IOM works in collaboration with the World Health Organization (WHO), whose work is guided by Resolution 61.17 on the health of migrants, adopted by the World Health Assembly in 2008 (World Health Organization 2008). The resolution encourages WHO to improve understanding and capabilities to address issues related to the health needs of migrants.

Finally, IOM takes the lead role in the evacuation of migrants in countries that fall into crisis, as seen in its role in evacuating migrant workers stranded on the Libya-Tunisian border, Cote d'Ivoire, Yemen and elsewhere. It played a similar role in evacuating migrants from Kuwait and Iraq in 1991 and Lebanon in 2006. As

discussed above, in the majority of cases, IOM assists the migrants to return to their home countries, but it works with UNHCR in the relocation of those unable or unwilling to repatriate because of unsafe conditions in the country of origin.

Until 2016, IOM operated outside of the United Nations. In the context of the UN High Level Meeting on refugees and migrants in September 2016, IOM joined the UN as a related organization (that is, in a capacity similar to that of the World Trade Organization). As a result, IOM will now be more fully integrated into the decision-making on migration issues within the UN. Operationally, the organization was already a member of UN country teams and followed most UN security and other protocols.

There are a number of other international organizations that have responsibilities regarding migration. Among the more significant, the ILO has a specialized office, the International Migration Program, which “provides advisory services to member states, promotes international standards, provides a tripartite forum for consultations, serves as a global knowledge base, and provides technical assistance and capacity-building to constituents.” The UN Population Division in the Department of Economic and Social Affairs (DESA) is responsible for collecting data on international migration and took the lead within the UN Secretariat for organizing the High Level Dialogue on Migration and Development. The Division also hosts an annual meeting for coordination of data and research on international migration.

The Office of the High Commissioner for Human Rights (OHCHR) supports the mandates of the UN Special Rapporteur on the Human Rights of Migrants and the UN Special Rapporteur on Trafficking and services the Committee on Migrant Workers, the treaty body supervising compliance with the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The UN Office for Drugs and Crime (UNODC) coordinates activities related to human trafficking and human smuggling, as the key agency responsible for implementation of the UN Convention against Transnational Crime and its smuggling and trafficking protocols. None of these agencies have evidenced a particular interest in the interconnections between climate change and the areas of their specific responsibilities. The UN Maritime Organization has responsibilities regarding the suppression of piracy at sea as well as the safety of persons rescued at sea.

Recognizing the complex set of organizational responsibilities, the Global Migration Group (GMG) was established to promote coordination and identify gaps in the international system. The GMG grew out of an existing inter-agency group, the “Geneva Migration Group”, established in April 2003 by the heads of the ILO, IOM, OHCHR, UN Conference on Trade and Development (UNCTAD), UNHCR and UNODC. In 2006 membership in the Geneva Migration Group was expanded to include DESA, UN Development Program (UNDP), UN Population Fund (UNFPA) and the World Bank. Following a recommendation by the Global Commission on International Migration for strengthened coordination, the Group was renamed the “Global Migration Group” that same year and expanded to include the UN Regional Commissions, UNESCO, UNICEF and UNITAR. Other agencies have since joined. While some participants in the GMG have noted that the group has too large and diverse a membership to be effective, the GMG is missing repre-

sentatives that would be useful in gaining progress on issues related to forced migration. For example, the Office for the Coordination of Humanitarian Affairs is not actively engaged.

Forced migration has not been a prominent issue on the agendas of regional organizations or regional consultative processes (RCPs), except in the area of refugees and asylum-seekers. The European Union is a notable exception, particularly in regard to the Temporary Protection Directive. Several regional groups have discussed related issues. The Inter-governmental Authority on Development Regional Consultative Process on Migration (IGAD-RCP), established in 2008, includes mixed migratory flows, environmental migration, and movements of pastoralists on its agenda. The Dialogue on Mediterranean Transit Migration (MTM) has also focused attention on mixed migration. The Inter-Governmental Asia-Pacific Consultations on Refugees, Displaced Persons And Migrants (APC) was established in 1996 to “provide a forum for the discussion of issues relating to population movements, including refugees, displaced or trafficked persons and migrants.” The aim of the consultations is to “promote dialogue and explore opportunities for greater regional cooperation” (APC 2008). Although not regional, the Intergovernmental Consultations on Migration, Refugees and Asylum (IGC) brings together 17 Participating States<sup>10</sup>, the United Nations High Commissioner for Refugees, the International Organization for Migration and the European Commission to discuss forced migration, among other issues.

Generally, the RCPs are not forums for discussion of emerging crises, even when these crises are within the region of the consultative body. Although Libya, Egypt and Tunisia are members along with European countries of the MTM, it does not appear that a meeting was called to discuss the evacuation of migrant workers or the increase in boat departures that corresponded with political events in Libya. A 2012 expert meeting in Malta did address issues related to irregular migration.

#### ***14.4.2 Institutional Arrangements at the National Level***

Addressing forced migration at the national level generally requires a ‘whole of government’ approach because of the complexities involved. Often, institutional responses are ad hoc, designed for a specific crisis. They may differ significantly depending on geographic considerations (e.g., the extent to which migrants are likely to reach the shores of the destination countries), the causes of the crisis (e.g., natural hazards versus political instability), the domestic political and economic climate, the extent of humanitarian need, and other similar factors.

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<sup>10</sup>The countries include Australia, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, United Kingdom and United States.

This presents challenges, particularly related to coordination across ministries and departments that do not necessarily have ongoing reasons to communicate or cooperate in managing movements of people.

Policies on and responsibilities for implementation on immigration issues generally fall to interior or homeland security ministries or dedicated immigration or border security agencies in destination countries although foreign ministries play important roles. A much wider set of government agencies become involved in responding to humanitarian crises. Which ministries are involved depends largely on the type of crisis, but it is not unusual for large scale crises to bring defense, foreign ministry, development, health, emergency response and other ministries into the process. Again depending on the nature and scale of the crisis, governments may establish a taskforce within the Prime Minister or President's office to coordinate actions across multiple ministries.

Situations vary but the ministries responsible for immigration issues may not initially be part of these taskforces, particularly if the migration ramifications are not clear at the start of a crisis. For immigration ministries that are addressing the impacts of pandemics, natural disasters, and political instability, gaining needed information about, for example, the need for quarantine of travelers or need for temporary protection can be difficult. Similarly, migration ministries may not be part of discussions taking place on climate change adaptation funding even though there is increasing recognition that migration is an age-old way in which people adapt to environmental changes.

## 14.5 Conclusions and Policy Questions

Forced migration is unlikely to disappear in the future. In fact, the number and frequency of crises that generate large scale displacement may well increase substantially in the years ahead. Climate change is expected to generate substantial internal and international displacement from increases in the intensity and frequency of natural hazards, rising sea levels, persistent drought and desertification, and, potentially, new conflicts over scarce resources. At the same time, recent events demonstrate that the process of political change taking hold in many parts of the world can be destabilizing, causing new movements of people. Increased mobility also means greater potential for pandemics to spread quickly throughout the world, as was seen in the SARS and H1N1 cases, and for governments to make decisions regarding non-return, as seen in the Ebola crisis in West Africa. All of these trends mean that governments will likely be facing recurrent crises that spark migration and accompanying humanitarian needs. Although much of this forced migration will be internal to countries facing emergencies, movements across borders are likely as well.

This review of laws, policies, practices and institutions reveal weaknesses and challenges in the current capacities to respond effectively, efficiently and humanely to the challenges presented by forced migration. Although many countries have advanced and tested systems to respond to refugees and asylum seekers, responses

to migration emanating from other crises—natural disasters, political instability and violence, pandemics, human made disasters—are ad hoc and, in many cases, untested. Most countries have mechanisms to provide temporary suspension of removal if conflicts or natural disasters preclude immediate return. With little underpinning from international and, sometimes, national law, the application of these provisions tends to be uneven and often dependent on factors that have little to do with immigration or humanitarian considerations or the balancing of these two factors. Crises that generate greater visibility, such as the 2010 earthquake in Haiti or Ebola pandemic in West Africa, may result in suspensions of removal whereas less known but potentially equally dangerous situations may not yield this response. When taken into account, immigration issues can work in different directions in determining whether to suspend removals or provide temporary protection. In some cases, concern that temporary protection may spur new movements of people is determinative in not granting suspension or triggering temporary protection, whereas in others, flow of remittances to countries in crisis may push a government towards the decision to grant the status and provide work authorization.

Once granted, temporary protection and suspension of removals have proven to be problematic vehicles to manage forced migration. Once granted, it is very difficult to lift the designation even if conditions change sufficiently in home countries to permit return. Often, the conditions do not change and the temporary grant of protection becomes a protracted one. In the absence of durable solutions, the forced migrants may end up in limbo for many years. As the stay prolongs, return becomes even harder as those granted permission to remain develop equities and connections to the country in which they are residing.

Temporary protection is an especially weak policy instrument when the conditions that cause flight are permanent. This may be the situation that arises in the context of climate change. Nationals from some low-lying island countries may be unable to return to their home countries if some of the projections of rising sea levels prove to be accurate and their countries are submerged.

Even weaker than policy frameworks for temporarily suspending removals of migrants already in the country are those for dealing with mass migration resulting from crises. As discussed, the European Union passed a Directive on Temporary Protection with new flows in mind but it has never been used. The United States had experience with such movements from Haiti and Cuba in the 1990s, using Guantanamo Naval Base to house the migrants until a determination could be made on their status. The aim of policies adopted in 1994 was to provide safe haven but no access to U.S. territory. Mixed migration is a challenge in handling mass movements in the context of humanitarian crises. Some of those leaving may be bonafide refugees deserving of asylum, others may have serious reasons to fear for their safety though they do not meet the refugee criteria, but still others may be leaving to seek better economic opportunities. Distinguishing among these groups is always challenging and, in the context of a mass migration emergency, even more difficult.

The absence of effective policy tools is especially troubling because these crises have implications that go well beyond immigration and touch on basic humanitarian

and human rights interests. Just as refugees are at risk of serious harm if returned to their home countries, migrants from countries experiencing crises may face life threatening situations. They may also have immediate need for humanitarian assistance, including shelter, health care, food and other basic items.

The promulgation of guidelines and the development of policies to respond to forced migration will require new modes of international cooperation. Given the potential for significant increases in such migration, efforts to build an effective toolkit should begin now. Whether a new convention on forced migration is desirable, or, for that matter, is feasible, are questions that beg easy answers. The history of international conventions related to migration is a mixed one. While the refugee convention and trafficking protocol are widely ratified, the conventions on labour migrants have had very low levels of ratification. Because the complex categories of forced migration discussed herein will likely have elements of both forms of migration, depending on whether the trigger is slow or rapid onset, the future of such a convention would be questionable.

Beyond feasibility, a number of other issues would need to be addressed before determining that a new Convention is the best way to improve policies to respond to forced migration. First, to what extent can existing legal frameworks be stretched to include a wider range of people who are forced to move? How should forced migrants be defined? For that matter, what term should be used in categorizing this form of migration; this paper has used forced migration and displacement as short hands. In other contexts, the terms crisis migrants and survival migrants have been used to describe those who do not fit current legal categories. Even more important, a new framework for protection—whether a new convention or stretching of existing ones—would need to specify who among forced migrants are deserving of international protection—as distinct from those who can rely upon the protection of their own countries. And, the list goes on.

In the end, though, international agreements—whether binding or soft law—will not be a substitute for national action. States should prepare for future crisis responses by preparing a menu of policy options that they could choose to implement in the event of large scale displacement that does not fit into current refugee frameworks. This process is already underway with the Nansen and MICIC Initiatives and the similar State process on other vulnerable migrants recommended by the High Level Meeting. These are forms of what Sir Peter Sutherland, the former Special Representative of the Secretary General on International Migration has called mini-multilateralism, that is, initiatives by a small set of representative governments to build norms and identify good practices to be adopted more universally. A further opportunity is negotiation of a Global Compact on safe, regular and orderly migration, an outcome of the High Level Meeting. Sir Peter Sutherland, in his final report as the Special Representative of the Secretary General, stated that a principal aim of the compact should be to identify mechanisms for “managing crisis movement and protecting migrants in vulnerable situations.” (Sutherland 2017).

In developing an appropriate set of policies for responding to forced migration, consideration needs to be given to the following questions:



- What policies and practices are needed to address the situation of migrants already in destination countries when return to home countries may be life-threatening or otherwise inadvisable? What are the criteria for determining to suspend removals? For how long should the suspension be granted? What criteria should determine if the suspension should be renewed or revoked? What information is needed and from whom to make these determinations?
- What policies and practices are needed to address individuals arriving from countries in crisis? Should individual determinations be made as to whether to allow them to enter or should decisions be made on a group basis?
- What policies and practices are needed to address mass migration flows? Under what circumstances is interdiction appropriate? What criteria should be used in determining whether to return or relocate interdicted migrants? What criteria should be used in determining whether to admit such persons on to the territory of other countries? What information is needed and from whom to make these determinations?
- If new policies are put in place for forced migration, how should these intersect with established refugee and asylum policies and systems?
- If there is a determination that conditions have changed and forced migrants can return safely, what if any assistance should be provided? If there is a determination that return will not be possible for an extended period, what steps should be taken to find durable solutions? Should third country resettlement, for example, be part of a policy toolkit for addressing the broad range of forced migration discussed herein? If so, what criteria should be used in determining who should be eligible for resettlement?
- Should forced migrants be granted work authorization? Should they have access to social benefits? Under what circumstances should authorities use reception centers or camps to provide initial or longer term accommodation? What forms of documentation and registration are needed in managing forced migration?
- How should authorities address potential for fraud and security risks resulting from forced migration?
- Which agencies within government need to be involved in decision making on forced migration? Which international and regional organizations should be involved?
- What forms of responsibility sharing among countries would be appropriate in managing forced migration? What are the appropriate forums for negotiating such arrangements?

Finally, governments should also be reconsidering the ways in which they conceptualize, fund and implement programs to help vulnerable populations adapt to changing conditions that may trigger large scale displacement. In these contexts, migration is not just a problem to be addressed. It may also be a solution for many of those who are affected by climate change and other problems. Too often, migration is forced because there are no alternatives for those who anticipate future harm but are unable to move in a safe and orderly fashion. They may lack the financial,

human and social capital to relocate to where there may be greater long-term opportunities, or government policies do not accommodate their movements. As governments consider National Adaptation Plans and Disaster Risk Reduction strategies, more attention is needed to ways to incorporate migration as a potentially positive response to pending emergencies.

Demography can play an important role in improving responses. Too little is known about the determinants of forced migration, especially beyond traditional refugee flows. There is consensus among researchers that no one factor—economic, social, political, environmental or demographic—is determinative but how the various drivers interact to produce one form of movement versus another is largely unknown. In this context, demography is important in two respects. First, demographic trends are themselves drivers of displacement in conjunction with other factors. This can play out in two ways—demography as a macro-level factor and demographic composition as a micro-level driver of movement. For example, in the context of slow onset climate change, there is need for better understanding of how population density, distribution and growth as well as household composition affects vulnerability and resilience to environmental change (Martin and Bergmann 2017). Understanding the ways in which these demographic and environmental factors intersect with each other and with political and economic drivers would be useful in assessing likely need for planned relocation as environmental conditions worsen.

Second, the demographic profile of forced migrants often affects the efficacy of policy and programmatic responses. Data on demographic as well as socio-economic characteristics of forced migrants are weak in general and, in the case of many types of forced migrants, non-existent. While some progress has been made in compiling aggregate numbers of persons who are displaced by natural disasters (see, for example, IDMC's data (IDMC 2015)), there are no comprehensive sources of data broken down by age or sex. Even in the case of refugees and conflict IDPs, the demographic breakdowns are lacking, particularly when they spontaneously settle and may not register with UNHCR. UNHCR reports that it has sex disaggregated data on 56% of those persons of concern, with sex disaggregated data on refugees at 72%, IDPs at 56% and stateless at only 8%. Age disaggregated data were available for 42% of the population of concern; while it was available for 64% of refugees, it was available for only 26% of IDPs of concern (UNHCR 2013).

Improving sex and age disaggregated data on all forms of displacement would help ensure that policies and programs are appropriate for all of those who are forced to move. It is difficult to plan for protection or assistance programs in the absence of such data. This is true in both acute and protracted phases of displacement. An absence of such data is particularly harmful with regard to needs linked to gender and age, including those related to health, education, food distribution, access to livelihoods and gender and sexual violence. Demographers could play an extremely important role in helping governments, international organizations and NGOs to collect basic data on forced migrants and thereby, improve protection and assistance for some of the world's most vulnerable persons.

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