

Rethinking Protection of those Displaced by Humanitarian Crises  
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**Abstract**

In June 2015, the UN High Commissioner for Refugees announced a landmark event in the history of his organization. UNHCR estimated that there were more refugees and displaced persons than it had counted since its establishment in 1950—almost 60 million who fled conflict and persecution. While certainly large in its own right, the number actually underestimates displacement in today's world. Many millions more are displaced each year and cumulatively from a much broader range of life-threatening humanitarian crises than captured by UNHCR's figures. An average of 26.4 million were displaced annually by acute natural hazards since 2008 and an unknown but sizeable number from gang and cartel violence, electoral and communal violence, nuclear and industrial accidents, and a range of other human made disasters. This paper argues for new legal, institutional and operational frameworks to more effectively address the situation of the totality of displaced persons.

**Introduction**

Displacement from humanitarian crises is complex and diverse. For the purposes of this paper, humanitarian crises are any situations in which there is a widespread threat to life, physical safety, health or basic subsistence that is beyond the coping capacity of individuals and the communities in which they reside (Martin et al 2014). Humanitarian crises may be triggered by acute events or slow-onset processes, and can unfold naturally, in combination with anthropogenic factors and/or through human accident or ill will. Hurricanes, cyclones, tsunamis, earthquakes, epidemics and pandemics, nuclear and industrial accidents, acts of terrorism, armed conflict, environmental degradation, drought, famine, climate change, situations of generalized

violence and political instability, and serious and pervasive human rights violations, including persecution and torture, are all potential triggers. In most cases, underlying structural factors exacerbate the situation. Poor governance at the national and local levels, high levels of poverty and inequality, and, insufficient access to basic services undermine coping capacities and make a crisis out of what might otherwise be a manageable event.

The 60 million refugees and displaced persons (UNHCR 2015a) referenced in this panel's title represent only one group of those affected by humanitarian crises—those fleeing persecution and conflict. Many others are displaced by other crises that, in some cases, present equally life threatening situations. According to the Internal Displacement Monitoring Center, between 2008 and 2014, an average of 26.4 million people per year was displaced by disasters brought on by natural hazards (IDMC 2015a). While the majority are displaced for a short period and then return home, an increasing number of those fleeing natural hazards, as is true of conflict, are in protracted situations. They are unable to return or to find permanent solutions in other locations. In addition, hundreds of thousands have been displaced by gang and cartel violence (e.g., the estimated 566,700 internally displaced persons (IDPs) in El Salvador, Guatemala and Honduras (IDMC 2015b)) as well as election and communal violence that does not rise to the level of armed conflict (e.g., the more than 600,000 estimated to have been displaced after the 2007 Kenyan elections (Adeagbo and Iyi 2011)).

### **Challenges**

In general, the legal, policy and institutional frameworks for protecting those who are displaced by humanitarian crises are woefully inadequate. Such protection includes physical and legal safeguards as well as access to humanitarian assistance and durable solutions. Generally, the extent to which those who move in the context of humanitarian crises have access to protection

under existing frameworks is affected by the specific causal factors that precipitate movement and whether affected populations cross international borders or remain within their own country. Not surprisingly, in light of the Holocaust and emerging Cold War, in creating the office of the UNHCR and promulgating the 1951 Refugee Convention, the international community gave special consideration to those fleeing persecution (Martin 2014). Soon, thereafter, however, UNHCR was increasingly asked to use its 'good offices' to provide protection to those fleeing armed conflict. The refugee convention remained focused, however, on persecution. In 1969, recognizing the inadequacy of the 1951 Convention in addressing displacement in Africa, the Organization of African Unity (now the African Union) adopted a regional convention that defined refugees to include persons compelled to leave because of external aggression, occupation, foreign domination or events seriously disturbing public order. In 1984, the Latin American countries adopted a similar definition in the Cartagena Declaration. Those fleeing other humanitarian crises are not, however, covered under these international or regional instruments.

Geography, or where the crisis and resulting migration takes place, also affects responses. Throughout the Cold War, the principal focus of the international community was the protection of those who were displaced across international borders. Many of those who were treated as refugees had fled Communist countries or they were displaced by superpower proxy conflicts. The end of the Cold War and subsequent interventions increased the visibility of persons forcibly uprooted within country borders because of armed conflict, internal strife and systematic violations of human rights. In 1998, Guiding Principles on Internal Displacement were promulgated by the Special Representative of the Secretary General. Although not binding international law, the World Summit in New York in September 2005 recognized the Guiding

Principles as "an important international framework for the protection of internally displaced persons (United Nations 2005)." Unlike the Refugee Convention, the Guiding Principles apply to persons displaced by a wide range of events, including "armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters." In 2005, UNHCR agreed to lead the UN cluster responsible for protection of IDPs in conflict situations; no single UN agency has responsibility for protection in other crises.

This patchwork of conventions, guiding principles and institutional mandates has proven to be highly ineffective in providing protection to those displaced by humanitarian crises. Even the long-standing refugee regime is facing major challenges in light of the multiple crises in the Middle East, Africa and mostly recently Europe that have led to the highest levels of displacement recorded by UNHCR. A lynchpin of the refugee system—burden sharing—appears to be withering just when most needed. Some members of the European Union refused to accept asylum seekers; financial support for refugees had reached dangerously low levels in the Middle East, necessitating large cuts in food rations for Syrian refugees in fall 2015 (before the EU stepped up its funding in the hopes of curtailing outmigration); and few countries pledged significant levels of refugee resettlement—even traditional resettlement countries like the United States, in which resettlement became a heated political issue.

A further challenge to today's handling of displacement relates to the length of average crises and the displacement they produce. Much of the existing system for protecting and assisting refugees and displaced persons is predicated on the need for short-term emergency responses, not long-term approaches. Yet, crises that produce refugees and displaced persons generally persist for years, often decades (Ferris 2011 and Loescher and Milner 2004). Increasingly, even natural hazards are creating conditions that make it difficult if not impossible

for people to return home quickly or ever. This trend is likely to accelerate as climate change renders larger areas uninhabitable or undermines traditional livelihoods. As these situations become more and more protracted, new sets of challenges emerge—not least, finding durable solutions to avoid the type of intergenerational displacement that has become too familiar in too many locations. Treating 30 year ‘crises’ as ongoing emergencies renders the refugees and displaced persons dependent on continuing humanitarian aid and deprives them of the opportunity to establish new livelihoods and resume normal lives.

### **The Way Forward**

It is time for a fundamental rethinking of the ways in which countries respond to large-scale displacement from all life-threatening events, regardless of location. First, we need legal frameworks based on the need for protection, rather than the triggering causes of the migration. Here one aspect of the refugee definition might pave the path. In addition to its emphasis on a well-founded fear of persecution, the convention definition of refugees specifies they must be unwilling or unable, because of their fear of persecution, to return to their own country. In effect, the refugee regime provides surrogate international protection for those who are unwilling or unable to accept the protection of their own country. Following this line of reason, one can divide those who move in the context of humanitarian crises more generally into three categories according to their relationship to their own governments, in order to determine if international protection is needed because of an absence of state protection.<sup>1</sup>

In the first category are individuals whose governments are willing and able to provide protection. Those affected by acute and slower-onset humanitarian crises in wealthy, democratic countries generally, though not always, fall into this category. There are also examples of poorer and more authoritarian governments that have good records in protecting and assisting those

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<sup>1</sup> See Martin (2010) for a more detailed discussion of this framework).

affected by acute events and slow-onset processes. Generally, movements in these contexts are internal, not international since the affected populations are able to find assistance from their own governments and have few reasons to cross an international border. There is a limited role for the international community, although other governments and international organizations may offer assistance—for example, in the form of search and rescue teams, financial aid for rebuilding homes, health professionals and other experts in disaster relief, and long-term development-related programs and interventions. There is generally no need in these situations for surrogate protection from the international community.

The second category includes individuals in situations where governments are willing but unable to provide adequate protection. Certainly, poor countries that do not have the financial capacity to provide assistance may fall into this category. They would like to protect their citizens from harm but do not have the capacity or resources to do so. If the affected population moves within the country of origin to find safety, a government may well attempt to fulfill its protection responsibilities by calling upon the international community to assist. In these situations, the international community has an important role to play, both in the short-, medium- and long-term in ensuring that it buttresses the willing State's ability to provide protection by offering financial and other aid. Equally, if people move across borders, host countries may need to offer temporary solutions and protection against non-refoulement until individuals are able to return in safety and dignity. There is a role for the larger international community in supporting both the host countries to protect and assist cross-border crisis migrants and the affected state in abating the crisis. In each of these instances, financial and technical assistance in helping this group of countries to recover from current crises, and to prepare for and reduce risk from future emergencies may be especially needed.

The third category includes situations in which governments are unwilling to provide protection to their citizens or non-nationals on their territory. In some cases, the government has the capacity to provide protection, but is unwilling to offer it to some or all of its residents. For example, the government may not spend its resources on political opponents or ethnic or religious minority groups. Alternatively, it may limit assistance and protection to citizens and not address the needs of non-nationals (some of whom may be illegally in the country). In the other situations, the government is both unwilling and unable to protect its citizens. Failed States would fit into this category because they have neither the willingness nor the ability to protect those living on their territory. These situations produce extremely high levels of vulnerability for those who are not afforded the protection of the state. In these situations, international protection may well be essential, regardless of the cause.

The levers for providing such protection may be limited in these cases, particularly when the affected state prohibits the international community from providing assistance and protection. Nevertheless, ways have been found in past crises. The state may oppose aid from certain sources—for example, Western democracies—but allow aid into the country from other sources—for example, neighboring countries. This occurred in Myanmar in the aftermath of Cyclone Nargis; the junta government refused international assistance for the victims of the cyclone but eventually accepted aid from ASEAN (Belanger and Horsey 2008). Even prior to the growth in humanitarian interventions in the 1990s (northern Iraq, Somalia, Haiti, Kosovo), cross border aid operations were mounted repeatedly in the Horn of Africa (e.g., Ethiopia during the 1984 famine and Sudan during Operation Lifeline Sudan in the late 1980s) (Minear 1991).

A second change needed in the approach to displacement involves notions of solidarity. Traditionally, governments have shown solidarity to the plight of refugees and displaced persons

in two ways: 1) by financing assistance to the affected groups and the countries hosting them; and 2) by resettling refugees who are endangered in countries of asylum or who have no other durable solution (UNHCR 2012). As noted, support for both of these mechanisms has eroded in recent years. To address the first problem—lack of financing—requires more than renewed commitments to humanitarian aid. Rather, to address the situation of both acute emergencies and protracted displacement requires a rethinking of the relationship between humanitarian aid and development assistance. The recently adopted Sustainable Development Goals reinforced the need “to strengthen the resilience of communities hosting refugees, particularly in developing countries” and included refugees and displaced persons as vulnerable populations requiring special attention. To achieve these aims will require new modes of cooperation between humanitarian and development actors, with a more effective delineation of responsibilities. The funding silos that often prevent a more comprehensive approach to aid need to be removed. In the United States, for example, funding for refugees comes from the Bureau of Population, Refugees and Migration in the State Department, for IDPs from the Office of Foreign Disaster Assistance in USAID, and for development from a range of other bureaus within USAID and elsewhere. Factoring in the role of remittances in both acute and protracted situations will also be needed to ensure a holistic approach to financing.

The second aspect of solidarity—responsibility sharing for the physical relocation of persons requiring protection or solutions—faces particular challenges as resettlement is politically controversial in many countries. UNHCR reports that about 960,000 refugees are in need of resettlement in 2015. The total number of resettlement slots worldwide is only 80,000, however, not counting some special programs recently announced for Syrian refugees. About 90 percent of refugees resettled in 2013 (the last year for which specific information is available)

went to the United States, Australia and Canada with much smaller numbers provided by a range of other countries. Increasing the scope of resettlement will be difficult but a number of countries are showing political leadership in this regard. For example, President Holland of France pledged after the terrorist attacks in Paris to maintain his country's commitment to resettle 25,000 Syrian refugees. The potential need for cross border relocation of those fleeing natural disasters and the likely effects of climate change has received recent attention in the Nansen Initiative, an intergovernmental process led by Norway and Switzerland that produced an Agenda for Protection which was endorsed by more than 100 governments.

The final shift needed for a more effective response to displacement is by far the most difficult to achieve. World leaders must accelerate efforts to find solutions to the causes of flight. As the former UN High Commissioner for Refugees Sadako Ogata famously said during the Balkan wars, there are no humanitarian solutions to humanitarian problems of this type. Only political will and leadership will address the conflicts, repressive regimes and lethal non-state actors (terrorist groups, gangs and cartels) currently besieging the world and creating massive displacement. Political will and leadership is also desperately needed to mitigate the impacts of climate change and carry out the pledges that governments are making in the context of the Paris negotiations on the UN Convention Framework on Climate Change.

The World Humanitarian Summit, which will take place in Istanbul in 2016, provides an opportunity to reconsider the entire international response to these situations of mass displacement. An initiative of UN Secretary-General Ban Ki-moon, the summit will bring together governments, humanitarian organizations, people affected by humanitarian crises and the private sector "to propose solutions to our most pressing challenges and set an agenda to keep humanitarian action fit for the future." The summit has four principal themes: humanitarian

effectiveness, reducing vulnerability and managing risk, transformation through innovation, and serving the needs of people in conflict. All four apply to refugees and displaced persons, although the fourth is most pertinent as conflict is the backdrop for most displacement. The agenda should focus on increasing solidarity at all stages, from early warning and prevention of displacement, to emergency responses, protracted displacement and, finally, durable solutions. Steps needed to revitalize broad responsibility-sharing among governments and other actors should be identified along with concrete pledges to finance and implement these actions.

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